JUDICATURE

Volume 50 / Number 2 / August–September, 1966

The Journal of The American Judicature Society

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A Fresh Approach to Judicial Administration

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Since its founding by Herbert Harley, Roscoe Pound, John Wigmore, and others in 1913, the American Judicature Society has played a leading role—often a lonely role—in promoting court reform through improvements in judicial administration. That its struggle should so often be a lonely and difficult one is puzzling and unfortunate. It is a tragic reflection of our times that other, more striking problems have led legislators and the public to ignore the difficulties of the courts, for the effective operation of the judicial system is central to our notion of free and responsible government. Our system depends on the orderly and peaceful settlement of disputes according to the rule of law. When the courts of law cannot perform this function with fairness and dispatch, the result will be frustration and ultimately chaos.

It cannot be overemphasized that an effective judicial system requires not only that just results be reached but that they be reached swiftly. As Chief Justice Warren warned in an address to the American Bar Association, "Interminable and unjustifiable delays in our courts are . . . corroding the very foundations of constitutional government in the United States. Today, because the legal remedies of many of our people can be realized only after they have sallowed with the passage of time, they are mere forms of justice." Lawyers are particularly aware that the courts are confronted with cases of unprecedented number and complexity and that in their pursuit of legal relief many litigants are faced with intolerable delay. They should be equally aware that, to maintain the rule of law as the basis for a free society, a way must be found to meet this challenge. I firmly believe that with determination and imagination—by breaking away from indifference and ancient prejudices—we can bring the judicial system into the twentieth century and make the judicial process once again both swift and just.

A few statistics will illustrate the magnitude of the problem. Look at the plight of federal district courts in large metropolitan areas.

—The Southern District of New York, with 24 judges, had a backlog of 10,000 civil cases as of July, 1965. The median elapsed time from issue to trial for the middle 80 per cent of civil cases was 39 months. More than 17 per cent of all cases there—more than 1,700 cases—had been pending in excess of three years.

—The Eastern District of Pennsylvania, with 11 judges, has an even more serious problem. During fiscal 1965 the backlog increased 14 per cent to 6,000 cases, and median delay between issue and trial was 41 months.

It is not only the larger districts that suffer from significant backlogs and long delays:

—In the District of Rhode Island, with one judge, 17 per cent of all cases have been pending for more than three years.

—In the District of Delaware, with three judges, this figure is slightly higher.

The number of cases being filed in federal courts is steadily increasing. Between 1962 and 1965 the weighted caseload per judgeship rose by 13 per cent from 242 to 274. And during the same period the total backlog in all federal district courts increased approximately 15 per cent from 64,000 to more than 74,000 cases. The federal courts of appeals also find it impossible to keep up with the rising caseload. The number of appeals has increased from 4,204 in fiscal 1961 to 6,766 in fiscal 1965—an increase of 60 per cent. In just one year, fiscal 1965, the backlog rose by more than 25 per cent—from 3,780 to 4,755 cases.

Similar problems exist in state systems:

—In Louisiana in 1964, 77,000 suits were filed, while only 59,000 were terminated, adding more than 18,000 cases to an already staggering backlog.

—In the Circuit Court of Cook County, Illinois, the average litigant in a civil jury case faces a delay of 70 m
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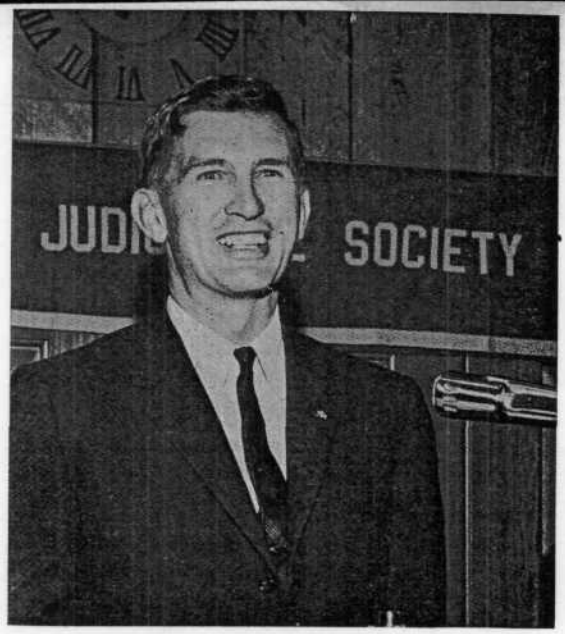
—In Texas in 1961 the backlog was 130,000 cases and approximately 20 per cent of all cases had been pending for over five years. Texas authorities no longer compile figures indicating how long cases have been pending. However, we do know that the backlog is currently in excess of 212,000 cases.

Statistics like these indicate that existing administrative practices of our courts are not adequate to cope with ever growing caseloads. In keeping with traditional concepts of an independent judiciary, the courts have been left largely to their own devices to solve administrative problems and to initiate reform. But the courts have not taken enough initiative to solve their own problems, and the Congress and the state legislatures have been indifferent to the few proposals for reform that have been brought forth.

Fortunately, congressional interest in the administration of justice has been increasing in recent years. The Judiciary Committees of both Houses have championed a number of long-needed reforms, including the Criminal Justice Act of 1964 and the Bail Reform Act of 1966. The Senate Judiciary Subcommittee on Improvements in Judicial Machinery, of which I am chairman, is charged with the responsibility of recommending appropriate legislation to enhance the effectiveness of our courts. Some of the more important projects of the Subcommittee in recent months include:

—The Federal Magistrates Act of 1966, a bill to overhaul the United States Commissioner system in an attempt to upgrade the "front line" of federal justice and make a more rational allocation of federal judicial functions.

—A study of the problems of judicial fitness, in the hope that an appropriate way may be devised to remove, retire, or discipline federal judges who, because of misbehavior, age, se-



JOSEPH D. TYDINGS, United States Senator from Maryland, was the principal speaker at the Society's 53rd annual meeting in Montreal on August 10. He has served for the past year as chairman of Senate Judiciary Subcommittee on Improvements in Judicial Machinery.

nility, or other impairment, should no longer sit on the bench.

—A reconsideration of the present method of selecting chief judges in our federal courts, in order to determine whether a system of selection based upon administrative ability rather than seniority would assure more effective judicial administration.

—A re-evaluation of the structure and operation of the circuit judicial councils.

—Assuring that federal judiciary has sufficient supporting personnel to enable it to discharge its duties effectively.

—Co-operation with the courts of the District of Columbia to secure a comprehensive study of their organization and operation, with an eye to stimulating other courts to undertake extensive self-evaluation.

Given the mandate of the Subcommittee, improving the federal judiciary has been our prime concern. Yet, the problems of the state courts cannot be ignored. These courts touch the lives of a far greater number of individuals than have contact with the federal courts. If the state courts falter, people will increasingly look outside the judicial process for the effective vindication of rights. We cannot allow this to happen. Therefore, it is not only appropriate but necessary that the Congress take steps to

encourage state courts to revitalize themselves.

It was to this end that this month I will introduce the National Court Assistance Act. Its purpose is to promote the administrative improvement of state judicial systems by making federal funds available on a grant-in-aid basis to state courts. Under the bill, money would be available for a variety of purposes—court studies, seminars for administrative judges, and other programs to improve court administration. The bill provides that applications for funds must be approved by the chief or presiding judge of the court involved and further prohibits any interference with the function or control of state courts by the Office of Judicial Assistance, which would be created by the act to administer funds. An additional service of that office would be to act as a comprehensive repository of information on administrative improvement, a resource which at present is lacking. In short, by doing for state and municipal courts what the Law Enforcement Assistance Act is already doing for local law-enforcement authorities, this bill would help the state judicial systems help themselves.

One purpose of the National Court Assistance Act and of our efforts to sponsor a pilot study of the courts of the District of Columbia is to stimulate an imaginative and farsighted approach to problems of judicial administration. Too little attention has been paid to the possiblility that with improved techniques more cases can be handled by each judge without any impairment of the traditional decision-making process. Too much of the thinking in this area has been characterized by the stale notion that the only solution to backlog and delay is either more judges or fewer cases.

In fact, the experience of the federal courts indicates that adding more judges can at times be no solution at all. During fiscal 1959 more than 62,000 civil cases were terminated in the federal district courts. Two years later, in 1961, 63 additional district judgeships were created. Yet in fiscal 1964, after virtually all those judgeships had been filled, the district courts handled only 64,000 cases. This means that, despite a 25 per cent increase in judicial manpower, the courts were able to dispose of only 3 per cent more cases. I do not know why this occurred, but it is clear that at least in this one case adding more judges accomplished virtually nothing to alleviate congestion in the federal courts.

Moreover, those who suggest that the plight of a particular court can be alleviated by curtailing its jurisdiction should remember that such a step may simply transfer a block of cases from that court to another which may be even less equipped to deal with them. And the more radical measure of removing certain classes of cases from the judicial process altogether is an admission of defeat before the battle for sound judicial administration has even begun. We should not conclude prematurely that courts are incapable of serving as a forum for peaceful settlement of disputes in an increasingly complex world.

THREE WAYS TO END COURT DELAY

If the solutions of more judges and fewer cases are rejected as unsuitable, what then can be done? I suggest that before the courts—and I speak here of both federal and state courts—can begin to overcome the problems of congestion and delay three important steps must be taken:

First, each court system must have a supervising judge with the power and personnel to make and implement administrative decisions.

Second, each court system must establish procedures to collect and analyze detailed current information about all relevant aspects of the court's operations.

Third, each court system must have adequate physical facilities, competent clerical

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Let me elaborate upon these three prerequisites for sound judicial administration.

First, judiciary efficiency and centralized administration of a court system are inseparable. In the judicial process there are a number of necessary and important decisions that are not judicial decisions in the traditional sense. They are, rather, determinations affecting the efficient administration of the court. Control of the docket, the assignment of judges to cases, and the use of supporting personnel are all related elements of a total administrative picture. At present, too often these matters are regulated by the inertia of the system rather than by conscious choice. Administrative decisions must be made quickly, on a day-to-day basis. They are best placed in the hands of a single judge having the power to enforce his administrative judgment.

An example of what central administration can accomplish is provided by the Superior Court of Los Angeles, a trial court of more than 120 judges serving a vast and growing metropolitan area. A series of forceful presiding judges, elected by their colleagues for administrative ability and aided by a permanent administrator, implemented reforms in docket control that reduced delay in civil jury cases from more than two years to less than six months.

The recent reorganization of the Illinois court system has given the Chief Judge of the Circuit Court of Cook County administrative control over 238 judges. With the assistance of qualified administrative personnel, the chief judge has begun to implement a sweeping program of reform. This program, like the Los Angeles experiment, was made possible by central judicial control and has given rise to the hope that the court will be successful in its assault upon a staggering caseload.

Second, in order to make effective use of a sound administrative framework, the judge discharging administrative duties must have at his disposal current and meaningful data that will allow him to make informed decisions. In too many of our courts today statistics are compiled unsystematically and too late to allow the court to control the flow of cases in an intelligent way. Modern science has devised methods of collecting and analyzing information and making it available almost instantaneously. Only a few courts have begun to take advantage of these techniques, but these few courts have found modern methods an indispensable tool in a program to reduce backlog and delay. Availability of information places control of the calendar in the hands of the court rather than in the hands of the litigants or their attorneys.

A notable example of the application of modern information-gathering techniques in a judicial context is found in the Court of Common Pleas of Allegheny County, Pennsylvania, which handles *nisi prius* judicial business in the metropolitan area of Pittsburgh. All relevant information about each case is transcribed onto punchcards when the case is filed. Steps taken from the time of filing the complaint until final disposition of the case are rapidly recorded on these cards. The status of cases can be checked accurately in a matter of minutes, and any aspect of the judicial process may be statistically analyzed by running the cards through an appropriately programmed sorter. With this kind of information the court can easily monitor the status of cases and take appropriate steps to encourage lawyers to keep their cases moving. For example, notices reminding attorneys of their obligations can be automatically printed, and the court can easily learn—indeed, can automatically be informed—when lawyers are failing to prepare their cases expeditiously. If it

appears that a law firm is unable to move cases to trial because it has accepted more than it can handle, corrective steps can be taken by the court. For instance, in Allegheny County, the chief judge has confronted several law firms with the statistics and has prevailed upon them to hire more trial attorneys.

Without adequate information on lawyers' caseloads, attorneys are often scheduled to appear in two different courtrooms at the same time. Such a scheduling conflict necessarily produces a continuance in one of the cases, and, given the condition of most courts' dockets, this may mean a delay of several months. Such a delay is not unavoidable; is is simply the product of poor management. The most elementary system of modern information-gathering can eliminate most of these conflicts and expedite the trial of many cases.

Third, each court must conduct a careful study of its facilities, personnel, and business procedures. For example, systems of record storage should be modernized. Though quill pens and green eyeshades are not nearly so abundant in clerks' offices as of old, there are still far too many records painstakingly maintained by hand. The courts store tons of documents in dusty bins which pre-empt valuable space. There is practically no use being made of such modern recording devices as microfilm and magnetic tape. Furthermore, the clerks' offices of our courts must not be allowed to serve as convenient and comfortable pastures for political hacks. An efficient court system requires competent personnel at all levels.

This, then, is a general outline of the type of measures that can help us to meet the challenge facing our judicial system. Men trained primarily in the law, however, need expert assistance to work out the details of the necessary administrative reforms. Through the application of improved management techniques and with the help of trained management experts, commerce and industry have been able to achieve more efficient use of available resources. Of course, in the judiciary efficiency is not an end in itself. Rather, what is desired is the expeditious processing of cases while preserving the traditional requirements of due process of law. The decision-making process—as opposed to the mechanics of administering the caseload of the court—must not be short-circuited by techniques designed primarily for speed.

Nevertheless, principles of good business management can be tailored to the needs of the judicial system and can enable the courts to handle their caseload with maximum efficiency and minimum delay. Far from impairing the quality of the decision-making process, such reforms, I suggest, will enhance it by releasing time now spent by judges on administrative detail and making this time available for resolving the underlying merits of judicial disputes.

MANAGEMENT CONSULTANTS

Thus far, most judges have been reluctant to make use of the services of management consultants. This is in part due to the lawyer's traditional distrust of methods that are new and strange. Some judges fear that their judicial functions may be "computerized," that management consultants will intrude into areas that affect the decision of cases. There is a feeling that non-lawyers may not comprehend the needs of the judicial system.

The management consultants themselves have not made their usefulness clear to the judiciary. They have failed to explain in cogent terms just what their studies can accomplish. They have failed to assuage the fear of the legal fraternity that "efficiency experts" will be unable to distinguish between delays in the judicial process that serve the ends of justice and delays that are unnecessary

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and avoidable by improved management. Just as judges and lawyers must understand that with proper guidance management engineers can help the courts, the management engineers must understand that the administration of justice is not just another business and that, if they are not to do more harm than good, they will need guidance from lawyers. But, once the courts and the consultants recognize each other's needs and potentialities, they can co-operate to make the judicial system a modern instrument of justice. The preservation of the decision-making process is the value we must protect, and the goal of a management study must be to allow this process to function free from impediments and unnecessary administrative burdens. What precisely can a management study do toward this end? Let me suggest a few possibilities:

–It can identify the administrative decisions that must be made in a court system and determine by whom and at what level in the judicial hierarchy these decisions can most efficiently be made.

–It can define the appropriate grouping of courts to make up an efficient administrative unit.

–It can recommend a suitable system of information collection and analysis and the equipment necessary to implement it.

–It can evaluate and redesign office procedures for the processing of papers and the maintenance and storage of records.

–It can indicate the necessary qualifications and number of clerical and other court personnel.

–It can plan the efficient and comfortable use of available courthouse space.

All these areas–and many more–fall within the purview of qualified management engineers, and let me emphasize again that training in the law gives one no special competence to deal with these matters. Management consultants can serve the best interests of the courts without encroaching in any way upon traditional judicial functions. Their assistance is needed if the courts are to discharge their responsibility to society. For that responsibility, as I said earlier, is not only to settle disputes but to settle them quickly. Twenty-five years ago the late John J. Parker, the distinguished Chief Judge of the Fourth Judicial Circuit, spoke of the impediments to swift justice. Regrettably, his words remain as true today as they were then:

> . . . If the lawyer wishes to preserve his place in the business life of the country, he must improve the administration of justice in which he plays so important a part and bring it into harmony with that life. If he imagines that the present functioning of the courts is satisfactory to the people, he is simply deluding himself. Workmen's compensation commissions were established very largely because the courts were not handling efficiently the claims arising out of industrial accidents. . . . Business corporations are willing, as all of us know, to suffer almost any sort of injustice rather than face the expense, the delay and uncertainties of litigation. Arbitration agreements are inserted in contracts with ever-increasing frequency; and every such agreement is an implied affirmation of the belief that lay agencies for attaining justice are more efficient than the courts. Let me remind you that the administration of justice is the business of the lawyer as well as if the courts, and that if he does not wish to see his business slip away from him, it behooves him to go about it in an efficient and businesslike way.
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> . . . If democracy is to live, democracy must be made efficient; . . . If we would preserve free government in America, we must make free government, good government. Nowhere does government touch the life of the people more intimately than in the administration of justice; and nowhere is it more important that the governing process be shot through with efficiency and common sense. . . . Nothing else that we can possibly do or say is so important as the way in which we administer justice. The courts are the one institution of democracy which has been intrusted in a peculiar way to our keeping.