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HELPING STATE AND LOCAL COURTS HELP THEMSELVES: THE NATIONAL COURT ASSISTANCE ACT

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In the midst of the current "litigation explosion," courts throughout the United States are being subjected to sharp criticism because of delays in the judicial process. This criticism is not a new development; the need for a thorough overhaul of the administrative machinery of our courts has been recognized for many years. Indeed, a symposium on "Lagging Justice!" published in the March 1960 issue of the *Annals of the American Academy of Political and Social Science* documented complaints of delayed justice in the United States as early as 1839. But it is scarcely consoling to acknowledge that the problem of congestion has plagued the courts of our nation since the middle of the last century. It is instead an indictment of our legal system that it has too long remained unresponsive to the unassailable case for reform.

It is true that a few state courts have taken steps forward, and leading examples of judicial reform can be found in New Jersey, New York, Pennsylvania, Illinois, Oregon and California. These instances of improvement are sometimes cited to show that court congestion and delay is finally under attack, but a few current statistics may help bring the problem into focus:

> Of the seven county courts in Massachusetts that sit continuously, three averaged a time-lag of about three years from filing to trial for civil cases. In the remaining four counties the time lag was more than two years.[1]

> In Wayne County, Michigan, the average delay from filing to trial in automobile negligence jury cases is more than 34 months, and in non-jury cases it is more than 30 months.[2]

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[1]Massachusetts Executive Secretary, Ninth Annual Report to the Supreme Judicial Court 8 (Boston 1966).

[2]Michigan Court Administrator, Annual Report and Judicial Statistics for 1965, 45 (Lansing 1966).

> In Maricopa County, Arizona, the delay from filing to trial of civil jury cases is more than 30 months.[3]
>
> In Essex County, New Jersey, the number of cases pending on the civil calendar at the close of fiscal 1965 was 15 per cent higher than the corresponding number at the close of the previous fiscal year, while the number of cases pending for more than two years increased by more than 100 per cent over the same period.[4]
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> In San Francisco, California, even after all pretrial is completed and a case is finally set for trial, the median delay until the trial is 13 months. This delay span is 12 months for San Mateo and 10 months for San Diego.[5]
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> 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.[6]
>
> In the Circuit Court of Cook County, Illinois, the average litigant in a civil jury case faces a delay of almost six years from filing to trial.[7]
>
> In Texas in 1961 the backlog was 120,000 cases and approximately 20 per cent of all cases had been pending for over 5 years.[8] 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.[9]

These instances of clogged judicial dockets are not isolated; they characterize the situation that generally prevails throughout the country.

Problems of judicial administration in state courts must be combated vigorously, for if these courts falter, the people will increasingly look outside the judicial process for vindication of their rights. We must take steps to encourage states to revitalize their court systems.

What innovations must we seek? There are two primary goals: (a)

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[3]Arizona Court Administrator, 1965 Annual Report to the Superior Court in Maricopa County, Arizona 12 (Phoenix 1966).

[4]New Jersey Administrative Director of the Courts, Annual Report 1964/65, 9-10 and Table B-4; Annual Report 1963/64, Table C-3 (Trenton 1965 and 1966).

[5]California Administrative Office of Courts, Annual Report of Judicial Statistics for the fiscal year 1964/65, 32 (San Francisco 1966).

[6]Louisiana Report to the Judicial Council of the Supreme Court, Table X (1964).

[7]Illinois Administrative Office of the Illinois Courts, Statistical Bulletin for Calendar Year 1965, 5 (Chicago 1966).

[8]Texas Civil Judicial Council, Judicial Statistics 14 (Austin 1961).

[9]Texas Civil Judicial Council, Thirty-seventh Annual Report for Calendar Year 1965 (Austin 1965).

Diminishing the cost of securing judicial resolution of legal disputes so that the mere bringing of litigation does not impose a penalty upon all parties involved. Currently, the remedy secured by a plaintiff is often decimated by the cost of obtaining it, and the judgment imposed upon a defendant is compounded by the expense of litigation; (b) Reducing the time involved to secure a judicial decision. It is disgraceful, even apart from the fact that time is often equivalent to money, that many litigants must wait three years and longer to obtain judicial determination of their rights.

More effective techniques than those now employed can be developed if courts will enlist the aid of experts. Management consultants and systems analysts have not been utilized to any great extent. But business and industry have profited from the help of these counsellors, and there may be many techniques adaptable to court administration. The notion of a court administrator—a non-judge whose job is to oversee the administrative aspects of the judicial process—is one that is gaining increased acceptance. Where the non-judicial aspects of a court's business have been delegated to an administrator with authority to implement needed reforms, there is evidence of marked improvements in court administration in decreased docket backlogs.[10] The more efficient flow of cases results in better utilization of a judge's time and speedier justice for litigants, without any impairment of the traditional judicial decision-making process.

Unfortunately, our courts today are administered in essentially the same way as they were two hundred years ago. An administrative practice should not be maintained merely because it has been followed for many years. If that tenet had guided the leaders of industry, finance, science and technology, our nation would have remained in the eighteenth century, and our high standard of living would be unknown.

In an effort to stimulate improved judicial administration of state and local courts I introduced, during the second session of the 89th Congress, the National Court Assistance Act, S. 3725. The measure has been reintroduced in the current session of the 90th Congress.[11] This

[10]Administrative Office, The Court of Common Pleas of Allegheny County, Pittsburgh, Pennsylvania, Report for the Court Year July 1, 1965-June 30, 1966 (Pittsburgh 1966).

[11]*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) there is hereby established within the Department of Justice the Office for Judicial Assistance, to be headed by a Director appointed by the President of the United States, by and with the advice and consent of the Senate. The Director shall be compensated in the amount of $26,000 per annum. The function of the Office for Judicial Assistance

shall be to encourage and assist improvement in the organization, procedure, and administration of local and State courts.

(b) The Director shall have the power to appoint and fix the compensation of such personnel as he deems advisable, in accordance with the provisions of the civil service laws and the Classification Act of 1949, as amended. The Director may also procure, without regard to the civil service laws and the Classification Act of 1949, as amended, temporary and intermittent services to the same extent as is authorized for the departments by section 15 of the Act of August 2, 1946 (60 Stat. 810), but at rates not to exceed $50 per diem for individuals.

SEC. 2. In carrying out the functions of the Office for Judicial Assistance, the Director is authorized—

(1) To conduct or cause to be conducted studies and evaluations of local and State court systems, to make recommendations for organizational, procedural, and administrative improvements of such systems, and to contract with public or private agencies for the purpose of having such agencies assist him in the exercise of his authority under this paragraph;

(2) To conduct or cause to be conducted seminars and other educational programs for judges and personnel of local and State courts;

(3) To collect, evaluate, publish, and disseminate information, materials, and other data relating to studies, programs, and projects conducted or carried out under this Act;

(4) To cooperate with and render technical assistance to Federal, State, local, or other public or private agencies; and

(5) To accept, in his discretion, gifts and other donations to be used by him in carrying out the function of his office.

SEC. 3. To assist him in carrying out the function of his office the Director of the Office for Judicial Assistance is authorized to make grants to local or State courts or to public or private non-profit organizations to be used by such courts and organizations for the following purposes:

(1) To study and evaluate local and State court systems, and to prepare recommendations for organizational, procedural, and administrative improvement of such systems;

(2) To present seminars and other educational programs for judges and personnel of local and State courts;

(3) To implement organizational, procedural, and administrative improvements of local and State court systems recommended as a result of studies conducted under this Act; but in no event shall any such grant or part thereof be used for the construction, improvement, or alteration of buildings, or for the payment of salaries of judges or court personnel on a continuing basis; and

(4) For such other purposes, consistent with the purposes of this Act, as the Director shall determine necessary or desirable in carrying out the functions of his office.

SEC. 4. Within six months after the enactment of this Act, the Director shall, by regulations, establish general standards for obtaining grants under this Act. The regulations shall provide for regular reports by any recipient of a grant under this Act to the Director who shall, from time to time, on the basis of the reports and other information available to him, review and, if necessary, revise the standards established pursuant to this section.

SEC. 5. After the regulations referred to in section 4 of this Act have been issued, any local or State court or any public or private agency desiring to secure a grant under this Act may submit an application therefor to the Director. The application shall be in such form and contain such information as may be prescribed by the Director. No application submitted by any local or State court

bill would provide two major resources for state and local courts: grants-in-aid to foster programs for reforms in judicial administration, and a central Office of Judicial Assistance.

The bill proposes a relatively modest financial aid program of $5 million a year for three years, at the end of which time Congress would determine whether to continue the grants. These grants would not be used for personnel salaries, or for the construction of new facilities. They are designed for such purposes as programs of continuing education for state and local judges; support and expansion of activities, organizations and institutes concerned with judicial administration; efficiency studies by management consultants; and other activities of the bench and bar that encourage improved court administration.

Nowhere today in the United States is there a comprehensive repository for information on judicial administration.[12] My Subcommittee on Improvements in Judicial Machinery is the frequent recip-

for a grant under this Act shall be approved by the Director unless such application has been first approved by the chief or presiding judge of the court submitting such application. No application submitted by any public or non-profit organization for a grant under this Act in connection with any local or State court shall be approved by the Director unless such application has been first approved by the chief or presiding judge of that court.

SEC. 6. The Director may approve any application which complies with the provisions of this Act. The payment of moneys to any applicant under this Act may follow the approval of his application by the Director. Payment of any such grant may be made in advance or by way of reimbursement, and in such installments as may be determined by the Director, and shall be made on such conditions as the Director finds necessary to carry out the purposes of this Act.

SEC. 7. The Director shall not approve any application for a grant under this Act received by him after January 31, 1970.

SEC. 8. Nothing in this Act shall be construed as authorizing the Office for Judicial Assistance or the Director thereof to supervise or control in any manner or to any extent the administration or organization of any local or State court, or to conduct or cause to be conducted any study or evaluation of any local or State court without the prior approval of the chief or presiding judge of the court with respect to which such study or evaluation is to be conducted.

SEC. 9, For the purpose of making grants under this Act, there is hereby authorized to be appropriated for the fiscal year beginning July 1, 1967, and for each of the two succeeding fiscal years, the sum of $5,000,000.

SEC. 10. On or before April 1 of each calendar year, the Director shall report in writing to the President and to the Congress on his activities pursuant to the provisions of this Act during the preceding calendar year.

[12]While both the Institute of Judicial Administration, of which I am a fellow, and the American Judicature Society are vitally interested in improving judicial administration in state and local courts, neither organization is set up or designed to provide the services contemplated by the National Court Assistance Act. What is needed for these courts is a facility for gathering, analyzing and publishing judicial statistics and information. In other words, State and local courts need the type of help in this area that is provided to the federal courts by the Administrative Office of the United States Courts.

ient of inquiries from judges and judicial organizations seeking information about administrative reforms. Unfortunately, we can be of little help. The first concern of the Subcommittee must be the federal courts. But the Office of Judicial Assistance could provide such a service to state judicial systems by receiving, compiling and disseminating useful statistics and information. This information would include evaluations of trends in litigation, reports of successful experiments in judicial administration, advice to courts on how to gather and analyze statistics regarding case flow, data on new systems for the storage and retrieval of information, and other material of use in streamlining the judicial process.

The letters I have received about the National Court Assistance Act from judges, bar associations and court administrators across the nation have been encouraging, and there seems to be widespread support for legislation of this nature. There have been some doubts expressed about the wisdom of the bill, however, usually on one or more of the following bases:

(1) Court congestion is a local problem and can best be solved locally.

I do not dispute that court congestion is a local problem. If local judges do not initiate or implement reforms in judicial administration, the battle is lost. I have no reason to believe, however, that the judges of our state and local courts will refuse to take advantage of new ideas. Our judges are dedicated to the legal system. I believe that, given help and encouragement, they can and will accomplish needed administrative reforms. Often, state legislatures may fail to provide the money and expert help necessary to assist them. Two hundred years of judicial history demonstrate that the judges cannot do the job *alone*. They are more than equal to the task if they have some help, and that is the purpose of the National Court Assistance Act.

(2) The legislation invites encroachment by the Federal government upon the independence of the States.

I, too, deplore intervention by the federal government into areas that have traditionally been within the domain of the states. I have long believed, however, that the main reason for such intrusion has been the inability or unwillingness of the states to discharge adequately their responsibility of providing forward-looking solutions to current problems. Hence, the National Court Assistance Act is designed to help state and local courts strengthen themselves and thereby strengthen the federal system.

Further, the Act contains specific provisions that prohibit inter-

ference with the independence of the courts. First, assistance to courts is provided only with the approval of the chief or presiding judge of the court involved.[13] Second, the Act specifically prohibits the Office of Judicial Assistance from exerting any control or influence over state or local courts.[14] The Office can help the judges of state and local courts in their own efforts for improvement. It should not be suspect merely because it is established by Congress.

(3) The solution to court congestion is more judges and courthouses.

Statistics from the federal court system disparage the validity of this conclusion. During fiscal 1959, more than 62,000 cases were disposed of by the federal district courts. Two years later, in 1961, 63 additional judgeships were created. Yet, in fiscal 1964, after virtually all of those appointments had been filled, the district courts disposed of only 64,000 cases.[15] 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 how to explain this phenomenon, but it is clear that in this instance more judges was not the answer to court congestion. Further, until we have carefully examined and evaluated present administrative procedures, it seems foolish to rely on additional manpower alone. We must first discover how to handle court business in a better way before we appoint more judges to do the old job in the old way.

Some critics argue that the federal courts are themselves in desperate straits, and that my efforts should be spent in seeking improvements there. I have been engaged in such activities through my Subcommittee, and we have underway a variety of programs designed to assist federal courts in solving their own administrative problems. We have been cooperating with the courts of the District of Columbia to

[13]S. 1033, 90th Congress, 1st Session, § 5: "No application submitted by any local or State court for a grant under this Act shall be approved by the Director unless such application has been first approved by the chief or presiding judge of the court submitting such application. No application submitted by any public or private non-profit organization for a grant under this Act in connection with any local or State court shall be approved by the Director unless such application has been first approved by the chief or presiding judge of that court."

[14]*Id.* § 8: "Nothing in this Act shall be construed as authorizing the Office for Judicial Assistance or the Director thereof to supervise or control in any manner or to any extent the administration or organization of any local or State court, or to conduct or cause to be conducted any study or evaluation of any local or State court without the prior approval of the chief or presiding judge of the court with respect to which study or evaluation is to be conducted."

[15]Administrative Office of the United States Courts, Annual Report of the Director, Table C-1 (Washington 1966).

secure a management study to aid in combating the backlog that is growing continually in the Capital city. The District of Columbia has federal courts as well as courts similar to those within the states, and a demonstration study there may yield programs applicable both to other federal districts and circuits, and to state and local courts.

Additionally, we have been working on a system to replace the U.S. Commissioner with a more effective judicial officer—the United States Magistrate. We have cooperated in securing additional supporting personnel for federal judges, and are busy evaluating a variety of new procedural rules and techniques to ascertain whether the business of the federal courts can be handled more efficiently.

Yet, while this activity goes forward, we cannot ignore the state courts. I believe them to be the mainstay of our nation's judicial system. State and local courts touch the lives of far more people than do the federal courts, and if confidence in the judicial system is to be maintained, modernization at the state and local level is vital. Enactment of the National Court Assistance Act will not be the whole answer, but it is a start.

The words of the late John J. Parker, Chief Justice of the Fourth Judicial Circuit come to mind:

> "If democracy is to live, democracy must be made efficient . . . . If we would preserve a 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." [16]

[16]Parker, *Improving the Administration of Justice*, 27 A.B.A.J. 71, 76 (1941).