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Report of Committee on Judicial Administration*

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TO THE PRESIDENT AND MEMBERS
OF THE LOUISIANA STATE BAR ASSOCIATION

As will appear from a report presented to this Association at the meeting held in Alexandria in April, 1939, a former committee appointed to review the report of the section on "Judicial Administration" of the American Bar Association, reviewed at length the recommendations of the Seven Committees on reform in judicial administration of the American Bar Association, with recommendations looking to the accomplishment of certain reforms in Louisiana's legal procedure. The report of that committee with its recommendations was referred by this Association to the Louisiana State Law Institute for further study, with the object of securing appropriate legislation to accomplish the reforms as recommended. That reference was graciously accepted by the Louisiana State Law Institute, whose committee on Procedural Reform thereafter prepared several proposed bills, which the Institute itself approved, and which now await favorable action in the ensuing session of the Legislature. Further study looking to procedural reform, as recommended in the former Committee's report, is being made by the Institute and in due course, other subjects will be considered and acted on.

Your present committee, being appointed to co-operate with a like committee of the American Bar Association, looking to the improvement of judicial administration, as result of further study of means and methods of improving upon the conditions in our own State, submits herewith its report embracing two objectives, which, if accomplished, would, in the Committee's opinion, make for a better administration of the law in Louisiana.

*The Report of the Committee on Judicial Administration presents a very constructive suggestion as to means of improving our Louisiana judicial system. This report was very considerably discussed and much interest was manifested in it at the April meeting of the Bar Association. In view of this interest the report has been printed verbatim and a few leading members of the Louisiana Bar have written brief critical comments expressing their views, which the Louisiana Law Review is very pleased to publish.

The first has to do with inaugurating a system of securing judicial statistics from the inferior courts for use by the Supreme Court, and the other has for its purpose to interest the judges to hold judicial conferences at least once a year.

JUDICIAL STATISTICS

The framers of the Constitution of 1921 intended to and did create a unified judicial system for Louisiana. The Supreme Court is vested with broad supervisory jurisdiction and control over all inferior courts with the right to interchange the judges as the public business may require. (Article 7, Sec. 10). The same Constitution vests in the Supreme Court the power to require all inferior courts to furnish under such rules as it may prescribe, reports of the nature, character and amount and condition of the work and business before them. (Article 7, Sec. 12) The power to require inferior courts to furnish statistics to the Supreme Court has never been exercised, and the Court has exercised the power to interchange the judges, with minor exceptions, only in cases of vacancy in office of the sitting judge or his physical incapacity to function in and for the district for which he was elected.

Judicial statistics are as necessary for the proper functioning of the courts as accounting is to a commercial enterprise. In Louisiana no one is specially charged with the duty of reporting on the daily workings of the courts. Up to now no system has been adopted to effect so necessary a purpose, although the authority for doing so has lain dormant in the Constitution since 1921. The framers of the Constitution of 1921 when vesting in the Supreme Court power to interchange judges as the public business should require, clearly foresaw the need for regular reports of the work of all the inferior courts and conferred upon the Supreme Court, for the first time, the authority to require statistics to be furnished under such rules as the Supreme Court itself might prescribe. Such reports, if required periodically, would give the Supreme Court exact information concerning the status of the dockets of the courts reviewed. The facts existing in any judicial district concerning the work before that court would then be available for instant use for determining the need for assigning a judge in case of need from one to another district. When congestion of dockets occurs in any particular district, as so often happens, a judge from some other district with little work to perform should be assigned temporarily to relieve the situation. The makers of the Constitution of 1921 clearly contemplated the exercise by the Supreme Court of the power to inter-

change judges, not only in specific cases of vacancy in office or physical inability of the sitting judge to act, but in any case in which the need should arise. Louisiana, is possessed of enormous natural resources, the exploitation and development of which frequently brings about serious and lengthy litigation. A district judge may consume several months in the trial and disposal of a single suit. In such instances, all other litigation before that court must suffer from the delays which bring about so much of present day criticism and complaint of judicial administration. The criticism and complaint so often heard concerning the courts is not directed at the substantive law which the courts administer, but is aimed at legal procedure and the failure of the judicial machinery to meet the demands upon it. Often as not, the litigant is more annoyed over the unseemly delays encountered in getting his case tried and determined than in the result of the decision itself.

Not only would statistics revealing the daily workings of the inferior courts be of great assistance and benefit to the Supreme Court in the exercise of its supervisory powers, particularly with regard to the interchange of judges, but would bring to public notice the courts whose dockets are congested, with opportunity for ascertaining the cause or causes for the "law's delay" in any particular jurisdiction. In addition to furnishing statistics as to the number of suits filed and the status of each during the period covered by the report, inquiry should disclose also the number of cases held under advisement more than 30 days after submission, and the reason for the delay. It is a significant fact that in every jurisdiction, both State and Federal, in which a proper system of gathering judicial statistics is in effect that notable achievement in expediting the trial of litigation has been the result. This, in short, is evidently what the Judicial Council section of the American Bar Association contemplated when it made the following, among other recommendations, under the title, "Judicial Administration."

"Judicial statistics to be required, sufficient in form and as often as needed, to reveal the work of the courts, without being unnecessarily onerous."

Many deficiencies in judicial administration may be traced to the lack of knowledge of what the courts are doing or are not doing. Judicial statistics in such cases would seem to be the answer. In some states the collection of judicial statistics and the right to comment thereon is wisely entrusted to a judicial coun-

cil. Such a council has recently been created as a section of the Louisiana State Law Institute, and this newly created council would be greatly assisted by such statistics in its survey of the workings of the courts, with opportunity to suggest ways of improving upon the administration of the law by and through the courts of Louisiana. If such a system were inaugurated in Louisiana there is every reason to believe that the same beneficial effects would result as have been experienced in other jurisdictions where the system has been in effect.

Louisiana's judicial system is composed of many courts, exercising varying kinds and degrees of jurisdiction, some of which overlap. The District Courts however being Courts of General Jurisdiction, in both Civil and Criminal matters, it is suggested that for the purpose of inaugurating a system of collecting Judicial statistics periodic reports from the District Courts and the intermediate appellate Courts be first undertaken and put into effect, with opportunity to extend the system to other of the inferior courts as the need is felt and experience should dictate.

JUDICIAL CONFERENCES

The next project which the committee has considered, the adoption of which it believes would be highly beneficial in promoting a better administration of the law in Louisiana, is that of having the judges hold conferences at least once a year at a time and place most convenient to the Judges themselves.

The tendency under our system of electing judges in and for a certain judicial district is to isolate the judge from his associates as a member of a common judiciary from which circumstance the judge is likely to view the problem of administering the law from a standpoint of his limited district rather than from the state as a whole. A conference at which all of the Judges would participate would tend to break up this isolation and afford opportunity for them to discuss the problems common to the judicial machinery of the entire state. As judges are entrusted with and engaged daily in the administration of justice, they know where and when the judicial machinery is failing and when and where it works smoothly and efficiently, and the reasons why. Judge John J. Parker, Chairman of the Judicial Council Section of the American Bar Association and Senior Judge of the Fourth United States Circuit Court of Appeals, has been a prominent advocate of judicial conferences. In giving the experience of such conferences in his own circuit, Judge Parker has said:

"I would first call attention to the value of the conference as a means for securing knowledge of conditions existing throughout the circuit, interchange of ideas among the judges as to common problems, and expression of the collective view of the judges as to matters affecting the administration of justice. All of these are of the first order of importance. Any effective use of judicial man power by assignment of judges to hold court for relief of congestion must rest upon the adequate knowledge of conditions existing throughout the Circuit; and the first thing that is done upon the opening of a conference is to have each judge report in detail upon the condition of affairs in his district.

"The result of this is not merely to give all of us knowledge of existing conditions but to give to each judge a comprehensive view of the way in which justice is being administered throughout the circuit. The rural judge gets a better understanding of the problems of administration in the centers of population and the City Judge of the problems that confront his brethren in the rural sections. Matters that have occasioned difficulty are discussed and the wisdom of the group is brought to bear upon them. The conference furnishes a means by which the judges can give collective expression to the views of the members and can instruct the senior circuit judge as to matters which they would like to have presented to the conference of senior circuit judges.

"The amendment of rules by the Supreme Court, the recommendation of needed legislation to congress, better cooperation by the department of justice in the administration of the probation and parole laws—all of these have been the subject of resolutions by the conference.

"The conference performs another most important function—it furnishes to the judges and leaders of the bar a great legal institute in which they can keep themselves informed of the trends in legal development and give expression to their views relating to these matters."

As the Bench and the Bar are responsible for the proper administration of justice in any particular jurisdiction, it is thought advisable to permit representative members of the Bar to attend the conference of the judges and participate in the general discussion of the problems common to the operation of the judicial machinery and to suggest possible means of improvement in any judicial district of the State. Limited representatives of the Bar

at such conferences might include lawyers especially designated for that purpose and for limited periods of time by the President of the Louisiana State Bar Association, the President of the Louisiana State Law Institute with representative members from the faculties of each of our three law schools. The Attorney General and members of his staff might also be invited to attend.

Judicial conferences, whether state-wide in scope or limited to a particular class of courts, are called by the Chief Justice of the State, in the one instance, and by the Senior Judge of the Circuit, as in the Federal system, in the other. In either case the conference is composed of the judges with such representatives of the Bar and of the law schools as the judges determine to invite specially, or by general rule admit to the conferences.

It is assumed, of course, that judicial conferences to be successful require both effort and planning. The time and place should be made suitable, so as to secure the largest possible attendance. A program should be prepared on subjects of particular interest and persons assigned in advance to discuss them. While all in attendance should be given opportunity to express opinion, those leading the discussion should be asked to prepare themselves in advance on the topics respectively assigned them. The problems affecting the administration of justice with particular emphasis on practice and procedure before the Louisiana Courts should, however, be the key note. It should be understood that the conference is designed for the purpose of improving the administration of the law and not a gathering for the amusement of those attending. Conferences so conceived and held, it is believed, are distinctly worthwhile. Should the honorable Supreme Court see fit to call conferences of the judges, it is believed that the organized bar and related agencies, including the law schools, the Louisiana State Law Institute and its section on judicial council, among others, would cheerfully co-operate in an earnest effort to make the conferences a means of promoting a better administration of the law in Louisiana.

The question has been considered as to whether the actual and necessary expenses incurred by the Judges in attending a conference should be allowed them, as expenses incurred in the discharge of official duty. The question would seem to answer itself. No business is of more importance to the general welfare of the State than the proper functioning of its judicial machinery to insure the utmost efficiency and dispatch of the litigation which finds its way in the Courts. A conference of the judges

called to familiarize the Supreme Court with the judicial business of the entire State; to review the work done and to consider the status of the dockets of the several courts; to make available information for the proper interchange of judges, as the public business should require, coupled with the study of ways and means of improving, generally, the administration of justice, for the accomplishment of which the minds of both bench and bar be brought to bear "is a consummation devoutly to be wished." So considered, it may rightfully be said that judges while attending such conferences are engaged in the performance of a duty as important as attending a session of court. Judicial conferences were held in difference Federal Circuits by consent of the judges, long before Congress in 1939 made the holding of a conference in each Circuit necessary and attendance thereat of District Judges compulsory. No question it seems was ever raised regarding the right of federal court judges to be paid their actual expenses while attending conferences even before the statute of 1939 was adopted, and this because attending a conference was considered just as proper a charge as an expense incurred in attending court.

We should not fail to comprehend that courts are not created for judges and lawyers. As existing under our present form of government, courts are not absolutely indispensable. Perhaps the most significant trend in American law in the present century has been the creation of numerous administrative agencies and commissions, both State and Federal, which have cut deeply into the volume of litigation which theretofore was centered only in the courts. The chief claim of their proponents and defenders has been that these agencies do a better job, within shorter time and at less cost. They have disadvantages, however, which should not be overlooked.

These tribunals often lack the qualifications which we think Judges should possess—knowledge of the law and capacity to apply it—coupled with freedom from executive control and influence and tenure of office. Often too, cases are decided on insufficient evidence or of dubious quality. Yet our regular constituted courts when properly organized and conducted could meet and overcome every possible advantage claimed by the partisans of administrative agencies, and without their attendant disadvantages.

If we think realistically of the problem we cannot fail to see that it behooves the courts, and the lawyers alike, to take steps

to meet this new, and already to some extent entrenched, opposition to the continuance of our traditional courts here and elsewhere. The two objects, the subject of this report, if adopted and put in practice, if not the means to meet and overcome this new challenge, may aid materially to minimize if not remove entirely the present day criticism and complaint aimed at legal procedure and failure of the judicial machinery to meet the demands upon it. And, after all, we should not fail to remember that among the primary purposes for which this association was organized are to "advance the science of jurisprudence, promote the administration of justice."

For the reasons stated and, in summation of the foregoing, the Committee recommends:

1. That this association endeavor to have inaugurated a system for the making of periodic reports and the collection of statistical data from the District Courts and also from the intermediate appellate courts, for use by the Supreme Court; said reports to be furnished under such rules as the Court itself shall prescribe.

2. That this association endeavor to have judicial Conferences called by the Honorable Supreme Court, to be composed of Judges of the District Courts and the Judges of the intermediate appellate Courts, the convening of such conferences to be postponed, however, until the present national emergency shall have passed.

3. That in the interim, and should the Honorable Supreme Court in the exercise of its high prerogative, determine to convene judicial conferences, then, that appropriate steps be taken to provide the needed funds with which to defray the actual and necessary expenses of the Judges, while in the performance of their official duty attending the Conferences.

Respectfully submitted,

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