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THE COURTS OF NEW JERSEY -- PART VII
JUDICIAL ADMINISTRATION

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JUDICIAL ADMINISTRATION

Introduction

The most striking aspect of judicial administration, from the point of view of the general public, is an apparent total disregard for ordinary business efficiency and economy.[1] Apart from the confusing welter of courts and overlapping jurisdictions, each tribunal has its own collection of special procedures which varies not only for each court, but sometimes for different judges in that court.[2] Moreover, the various personnel employed in the administration of justice are often independent of each other and function without central regulation.[3] Finally, many of the practices and office procedures employed in dispatching juridical business are cumbersome, time consuming and expensive, dating from the time when the mails were unreliable and typewriter, films, telephones and business machines had not been invented.[4]

Almost every business man has drawn up his own prospectus for changes in the administration of justice, while pacing the court house corridors waiting for a case to be reached for trial.[5] Nearly every judge and lawyer could add to that list of improvements out of long experience in coping with the diffuse and unintegrated court structure and unwieldy procedures. However, the 1844 Constitution and subsequent legislation established a rigid pattern for judicial administration which is not readily susceptible to change.[6] Moreover, central organization and supervision of judicial business, which is the core of almost every proposal for revision, is opposed to the tradition

of local self-government, which was so largely responsible for the present, discrete court structure.[7]

According to experts, the nature of the judicial process is altogether compatible with techniques of efficiency and economy employed in modern business and in other branches of government.[8] Moreover, the proposals developed in this report have actually been tested in the operation of other judicial systems. Several of the recommendations could be given effect without constitutional revision, but all would be advanced by specific constitutional authorization.

Other reports deal with the merger and simplification of the court structure, the most basic of the changes necessary to modernize the administration of justice. This report is concerned with improvement of the day to day business administration of the work of the courts, however they may be constituted.

Rules of Practice and Procedure

The body of legislation, precedents and practices which governs the procedure of courts is generally referred to as adjective law, while substantive law defines the rights and duties asserted or enforced by litigation.[9] Logically, adjective law should have been closely adapted to its functional purpose, namely the efficient presentation of controversies for decision by courts. In fact, the development of that branch of the law took a very different course. For reasons not particularly relevant to the 20th Century, adjective law very early became crystallized into a set of rigid patterns for legal redress.[10] The ability to discover an applicable writ of action and to formulate the controversy by pleadings

eventually overshadowed the merits of the litigation.[11] The predominance was so complete that it became practically as well as philosophically impossible to identify substantive rights and duties except in terms of the procedures available for their enforcement.[12]

In more recent history, the unbalanced development of adjective and substantive law has been at least partially redressed. Lord Mansfield's observation that the common law forms of action rule us from the grave is no longer completely valid. However, the traditional predominance of adjective law has left at least two heritages which still afflict judicial administration. The first is the body of voluminous, inflexible, and minutely detailed codes of procedure which almost every state legislature has enacted in an effort to compel the displacement of archaic judicial practices. The second is a continuing tradition of regard for technicality in the presentation and trial of controversies.

New York is an outstanding example of the first tendency. In 1846 its constitution was revised to permit the merger of courts and the simplification of the judicial structure. The Field Code, adopted by the legislature in 1848, laid down minute specifications for practice and procedure in the courts. This action became the model for other constitutional conventions and legislatures engaged in the reform of judicial administration.[13] Although they may have been modern at their inception, legislative codes in turn became outmoded. In the meantime, they had developed their own cults of observances, which were difficult to eradicate.

The second tendency, namely,a continuing regard for procedural technicalities, was in a sense a product of the first. So long as legislative codes regulated judicial practices, courts found in the letter and

intent of practice acts both the opportunity and the duty to follow outmoded procedures.[14]

The right to govern their own practice and procedure, at least in matters not controlled by the constitution or legislation, has always been asserted by courts as an inherent attribute of the judicial function.[15] Nearly all New Jersey courts have formulated and published general rules of practice, which have the effect of law, subject to the court's power to suspend the rules as the needs of justice may require.[16] Most experts in judicial administration would have the scope of court rules amplified to include all phases of practice and procedure.[17] They argue that judges and lawyers are among the best informed critics of their own procedures. Concentration in the courts of all responsibility for judicial practices would abolish the present causes and excuses for antiquated methods of administration. The courts would become answerable not merely for the product of their work but also for the methods by which they get their business accomplished. The element of rigidity in constitutional or legislative codes of practice would be displaced. Procedures completely within the control of the courts would be the subject of recurrent study and evaluation and could be revised as promptly and as often as conditions required.

This solution for the deficiencies in legislative practice codes was long advocated and finally adopted in the federal judicial system. By an Act of Congress, adopted in 1934, the United States Supreme Court was authorized to displace the existing procedures in all civil cases and to promulgate a single, uniform set of general rules of court.[18] The former practice was governed by a medley of state and federal legislation, separate

rules of court for law and equity cases, a variety of state court rules of procedure, and a residual composite of mixed practices.[19] The United States Supreme Court appointed a committee, consisting of judges, lawyers and teachers, who spent four years devising a set of rules, which were officially adopted in 1938.[19] By means of these rules of court, civil practice in the federal courts throughout the nation was made uniform, procedure was greatly simplified, cumbersome, outmoded expensive methods of conducting litigation were discarded and the work of the courts was greatly expedited.

The Constitution proposed for adoption by New Jersey in 1944 made provision for a similar program.[20] The highest court of appeal was directed to "make rules governing the administration of all of the courts in this State." In addition, the court was authorized to lay down general rules of pleading, practice and evidence to govern all the courts subject to the overriding power of the Legislature to change or abrogate these rules.

Since the reform of federal civil procedure was made possible by an Act of Congress, opinions may differ as to need for a constitutional provision on the subject. However the desirability of a modern, uniform, simplified code of practice is beyond controversy. The superior advantages of rules of court, as a means of accomplishing this urgently needed reform, has been demonstrated in the federal judicial system. Of itself, the simplification of court practice, expedition of litigation calendars, and elimination of unnecessary expense and delay, will go far towards correction of the most severely criticized deficiencies in judicial administration.

A Business Office for the Courts

The judiciary apart, almost every other branch of government functions under a central, directing authority with power to coordinate the activities of the various units and to assign personnel, as needed for the dispatch of business. In New Jersey, the Chancellor has both the power and the duty to direct the business operations of the Court of Chancery. Similarly, the Chief Justice controls the assignment of state judges and occasionally gives temporary assignments to county judges as well. However, sustained, day-to-day supervision and coordination of judicial business throughout the State has been lacking in New Jersey. For the most part, each judge functions independently of his associates on the bench, minimum standards of performance are not available or enforced, and the condition of court calendars in the several counties and often within the same county vary widely.[21]

It is difficult to imagine a successful business enterprise as loosely organized and as poorly coordinated as the system of courts in New Jersey. While the history from which New Jersey's court structure developed may account for this condition in the past, it will not satisfy the need and current demand for a business-like administration of the judicial branch of government.

Here again, the federal judicial system offers a model. A Conference of Senior Circuit Judges was created by an Act of Congress in 1925.[22] It served as a clearing house for the exchange of information among the several circuits into which the federal judicial system is divided and also investigated and recommended changes in practice and procedure. The

experience gained in this fashion merely emphasized the need for more accurate and detailed information as to the day-to-day activities of the courts and the advantages which might be realized by closer supervision and coordination of their activities. As a result, Congress established in 1939 an Office of Administration of the United States Courts, under a Director and Assistant Director to be appointed by and responsible to the United States Supreme Court.[23] The function of this office is to administer all fiscal affairs of the court system, to prescribe and collect statistics as to the number and type of cases brought in each district and before each judge in that district, the volume of business transacted by the several judges and the time required for the decision of cases, the condition of local calendars and the availability of individual judges for special assignment to other districts.

The Constitution proposed for adoption by New Jersey in 1944 followed the federal model in providing for an executive director to assist the Chief Justice who was constituted "the administrative head of all of the courts in this State."[24] Specifically, the director was required to collect and publish statistical records of the work of all judges and courts and the cost thereof.[25]

If the desirability of a centralized, business administration of the judicial system be conceded, a constitutional provision on the subject is indispensable. Since the courts themselves are created by the Constitution, the commission to administer, supervise and coordinate their activity would seem to require authority of equal degree. Whatever objection may be made to the integration of local courts into a single, statewide system, there is little room for difference as to the public need for regular and accurate

reports of the work of the court. The creation of a business office for New Jersey's court system would appear to be the only practical, proven method of satisfying that demand.

Judicial Control Over Non-Judicial Officers Concerned With the Administration of Justice.

The primary duty of judges is to try cases. Yet no court could function without a varying number of administrative officials to maintain the court records, file papers, serve documents, execute judgments, make transcripts of court proceedings and assist in preserving order in the court room. At present such duties are distributed among a number of officials, variously appointed, subject to different discipline and without central direction either as to procedure or performance. For example, the Secretary of State, appointed by the Governor with the advice and consent of the Senate, is clerk of the Court of Errors and Appeals.[26] The respective clerks of the Supreme Court and the Court of Chancery are appointed in the same way.[27]

However, the county clerks, elected by the people, are the clerks of a number of the local courts.[28] The surrogate, who also acts in a clerical capacity, is likewise chosen by popular election.[29] The county sheriffs, who serve documents, execute judgments and also perform other duties in connection with the administration of justice, are elected officials.[30] A complete list would substantially extend this enumeration.

The practices of these officers are as varied as their official titles and methods of selection. In matters of office routine, each county clerk establishes his own procedure. Even the clerks of statewide courts do

not follow the same practice. The plaintiff, in an action commenced in the Supreme Court, must purchase a copy of the papers in the file, for use of the judge at the trial.[31] The clerk will not permit the papers to leave his office at Trenton except under subpoena. The Chancery Court clerk, by contrast, will forward files for use of the Vice-Chancellor or Advisory Master who conducts the hearing. Until only recently, the clerk enrolled, i.e., had copied in writing at length, all final decrees of the court, at the expense of the litigants.[32] Here again, the number of instances could be multiplied.

Centralized administration and control of the courts themselves would at best be effective only partially unless the activity of non-judicial officials concerned with the administration of justice could be integrated as well. The consensus of all expert opinion is that all clerks of court should be appointed by and subject to the discipline of the courts themselves, and that the operation of clerical offices, like court procedure and practice, should be governed by rules of court.[33]

The 1944 proposed Constitution adopted that plan. The highest appellate court was empowered to appoint its own clerk and the clerk of the only other court (Superior Court) mentioned in that document. The approval of the Governor was required for the appointments and the incumbents were to hold office at the pleasure of the court. While county clerks and surrogates, elected as heretofore, were continued in their functions as court clerks, they were to perform only "such duties as may be prescribed by rules of the Supreme Court subject to law."[34]

Both the need and the desirability of equivalent provisions in any newly proposed Constitution would seem to be apparent. In no other way can the advantages possible from flexible, informed and economical administration

of the judicial system as a whole be fully realized.

Judicial Council

An act adopted by the New Jersey Legislature in 1930 created a permanent judicial council, comprised of judges, legislators, the Attorney General, the president of the State Bar Association and five lawyers of his selection. Their function was to

> "make a continuous study of the organization and relation of the various courts of the state, counties and municipalities, the rules and methods of procedure and practice of the judicial system of the state, the work accomplished and the results produced and shall, from time to time, submit, for the consideration of the justices and judges of the various courts, such suggestions in regard to the rules of practice and procedure as it may deem advisable."[35]

The prior recommendations for improving judicial administration have the common feature of centralizing power in the Chief Justice or in the Court of Appeals. Necessary as this may be in the interest of efficiency and uniformity in direction, practice and procedure, no provision is made for independent, critical appraisal of the results accomplished and the work which remains to be done. Judicial councils have been established as a regular part of the judicial structure of many states, frequently by constitution.[36] A judicial council in New Jersey could become the principal independent agency for recurrent review of the operation of the judicial system as a whole, and for the investigation and initiation of methods and programs for improvement.

Conclusion

A discussion of judicial administration is not complete without consideration of the roles of grand and petit juries, the prosecutor's office,

the desirability of public defenders, probation departments, specialized courts to deal with small causes, domestic relations, juvenile offenders and the like, the coordination of the work of courts and other governmental agencies, as for example, police courts and the Commissioner of Motor Vehicles, and numerous other topics. Few, if any of these subjects are proper material for treatment in a Constitution. The salient changes in judicial administration, suitable and eligible for constitutional consideration, are the items which have been dealt with under the main topic headings, to which this report is accordingly confined.

Foot Notes

1. W. F. Willoughby, Principles of Judicial Administration, 1929, p. 3, et seq.

2. See Revised Statutes, Title 2, Administration of Civil and Criminal Justice.

3. See, e. g., the Enumeration of Non-Judicial Officials Concerned with the Administration of Justice, infra, p. 10

4. See R. H. Temple, Court Officers: Their Selection and Responsibilities, p. 5, et seq. Paper presented at the 42nd annual meeting of the American Political Science Assn., Cleveland, Ohio, December 28, 1946.

5. E. R. Sunderland, "The English Struggle for Procedural Reform," 39 Harv. L. Rev. 725 (1926).

6. See N. J. Constitution, Art. VI, Judiciary. See also Art. X, Schedule 1.

7. See Proceedings of the Constitutional Convention of 1844, p. 348.

8. See Willoughby, supra, p. 11

9. E. N. Morgan, The Study of the Law, p. 1, et seq.

10. Pollock and Maitland, History of English Law, 2d ed., Vol. 2, p. 561.

11. See Morgan, supra, p. 58.

12. See Report of Essex County Bar Association Committee on Constitutional Revision of the Judicial Article, N. J. Law Journal, June 5, 1947, p. 2.

13. R. W. Millar, "Notabilia of American Civil Procedure," 50 Harv. L. Rev. 1017 (1937).

14. E.g., the refusal of appellate courts to review decisions on questions of evidence, where counsel failed to note an exception after the objection was over-ruled. This practice dates from the time when testimony was not taken down stenographically and the trial paused for every exception to permit counsel to write out the subject with exception and to enable the judge to sign and seal the exception.

15. Millar, supra, p. 1063.

16. Supreme Court Rule 218; Chancery Rule 4.

17. See Roscoe Pound, "Regulation of Judicial Procedure by Rules of Court," 10 Ill. L. Rev. 163; Wheaton, "Procedural Improvements and the Rule Making Power of Our Courts," 22 Amer. Bar Assn. Journal.

18. Act of June 19, 1934, 651, 48 Stat. 1064, 28 U. S. C. A. sec. 723 b, c.

19. See testimony of Justice Sutherland, Hearings Before Subcommittee of Senate Committee on the Judiciary. 68th Cong., 1st Session, (1924) p. 54.

20. Article V, Sec. II, Par. 3.

21. In Essex County, for example, negligence cases started at the same time, will be reached for trial sooner in the Court of Common Pleas than in the Circuit or Supreme Court. Yet both courts have civil jurisdiction, unlimited in the amount and distinguished only by the fact that the Court of Common Pleas is available if the defendant cannot be served within the county.

22. 42 Stat. 837, 28 U.S.C.A. par. 218.

23. Public Statutes #229 Chap. 501, 76th Cong., 1st. Session.

24. Article V, Sec. VI, Par. 1.

25. Article V, Sec. VI, Par. 2 (2) (3).

26. N. J. Const. Art. VI, Sec. II, Par. 4; Article VII, Sec. II, Par. 3.

27. N. J. Const. Art. VII, Sec. II, Par. 3.

28. N. J. Const. Art. VII, Sec. II, Par. 5.

29. N. J. Const. Art. VII, Sec. II, Par. 5.

30. N. J. Const. Art. VII, Sec. II, Par. 6.

31. R. S. 2:27-186.

32. R. S. 2:29-52. On May 28, 1947, the Governor signed Senate Bills 77 and 78 (P.L. 1947, c. 228 and c. 229), authorizing the Chancellor to have pleadings, decrees and other papers entered or enrolled by the use of "any photostatic, photographic, or mechanical process whatsoever," including microfilming.

33. See Temple, supra, p. 12.

34. Article V, Sec. VI, Pars. 3 and 4.

35. R. S. 2:17-7.

36. See Willoughby, supra, p, 264.