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A BLUEPRINT FOR THE DEVELOPMENT OF THE NEW JERSEY JUDICIAL SYSTEM

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When the Judicial Article of the 1947 Constitution became effective on September 15, 1948, the New Jersey court system was widely hailed as a model for other states. The intervening years, however, have seen other jurisdictions modernize their judical systems, so that the New Jersey courts no longer serve as an example for others to emulate but rather as an example of the old maxim that to stand still is to fall behind. Thus today, while the New Jersey system is still highly regarded for the excellence of its Chief Justice and Supreme Court, for the competence and integrity of its judges, for its up-to-date rules of procedure and evidence, and for the vigor of its administration, as a system it no longer holds the position of pre-eminence that it once occupied and so

richly deserved.

In four months, when the system attains its majority, the new adult in all major respects will still closely resemble the promising infant at the time of its birth 21 years ago. True it has grown considerably in size, cost and complexity, but otherwise it remains basically unchanged.

It seems to me, therefore, that it is not only appropriate but essential at this time that a plan be devised for the future development and modernization of the system so that we can again have pride, not just in being good but in being the best, and so that in the years ahead our courts can continue to serve the needs of our society. Needed changes and improvements are not likely to be made unless we first chart the course we want to pursue. Accordingly, I should like to take this opportunity to outline for you the direction I think the future development of the New Jersey judicial system should take. Let me note here that, because

of the limitation of time among other reasons, I do not intend to deal with the substantive civil and criminal law, with the rules of procedure, or with the admission and discipline of attorneys; although I recognize that these are important subjects which intimately affect the administration of justice.

The Court Structure

The structure of our court system has been changed in only two respects since its reorganization in 1948. The Criminal Judicial District Courts that once existed in Bergen, Hudson and Passaic Counties and the County Traffic Courts in Bergen and Hudson Counties were abolished in the early 1950's. The amputation of these useless appendages to the judicial anatomy was laudable, but of minor significance. Otherwise the courts we have today are the same as those we had 21 years ago, although the number of judges of these courts has increased substantially and their jurisdictions altered in minor respects. The structure has

remained static, notwithstanding that the judicial system created by the 1947 Constitution was the product of compromise and considered by some to be less than ideal; and notwithstanding that since then changes in the court systems of other states have made the shortcomings of our own system increasingly evident.

To modernize our court structure I would recommend the following changes:

1. The County Courts should be abolished and their jurisdiction and personnel incorporated into the Superior Court. To do this, in my opinion a constitutional amendment is required and legislation toward that end is pending. Every lawyer knows that the jurisdiction of the County Court is duplicative of that of the Superior Court, that the judges of the two courts try cases off the same calendars, and that no substantial reason, other than home rule, exists to justify their separate existence. Their consolidation into a single constitutional court would have several

advantages: judges who today do equal work would receive equal treatment; the Chief Justice would have a substantially larger pool of judges from which to select those for assignment to key positions on the Appellate Division, as Assignment Judges and to handle General Equity matters; technical differences in jurisdiction and procedure would be eliminated; and the clerical work of the courts simplified.

2. The Juvenile and Domestic Relations Court should be established as a full-fledged Family Court with comprehensive jurisdiction over the wide variety of civil and criminal actions affecting the welfare of the family unit. This should include such matters as adoptions, minor penal offenses involving husband and wife, and, most importantly, divorce and other matrimonial causes. To bring about this change no amendment of the Constitution would be required. I am aware that others are on record in favor of establishing a family court as a division of the Superior Court,

but on balance it seems to me preferable to continue it as a separate legislative court. It is my observation that lawyers appointed to serve on a trial court of general jurisdiction have little aptitude or appetite for the type of work that service on a family court necessarily entails. At least judges specially appointed to serve on a family court are fully aware when they ascend the bench of the type of work they will be doing day in and day out and hopefully the appointing authority will select for such positions those who are not only learned in the law but also have an acquaintance with the social science disciplines relevant to the human problems with which such a court is concerned. I might also add that I do not consider as valid the objection some might raise that giving such a court jurisdiction over matrimonial matters demeans the importance of the family unit and the sacred bonds that created it.

3. The Municipal Courts should be abolished and the County District Courts, which already have concurrent jurisdiction, expanded to take on the additional volume of business. I need not take the time here to detail the reasons for this recommendation. Twelve years ago Chief Justice Weintraub covered this subject fully, and his recommendation at that time has since been echoed by a variety of commissions, committees and individuals who have had occasion to consider the matter. The problem in getting support for such a change is that our municipal courts on the whole are doing a good job; yet the very system precludes their giving the people of this State the caliber of justice which they deserve and which a change in the system could provide them. It is ironic that the present Municipal Court system which 20 years ago brought New Jersey nationwide acclaim for sounding the death knell for the justice of the peace and the fee system, is the same system that now fails to measure up to nationally accepted standards.

While I advocate that the County District Courts replace the Municipal Courts, I wish to emphasize that it is not my thought that the court sit only at the county seat. On the contrary, it should sit at such places throughout the county, and at such times, as the business of the court and the convenience of the police and the public warrant. However, its administrative and clerical machinery should be centralized, and with the utilization of electronic data processing equipment and modern management procedures far greater efficiency should be achieved than can now be expected with over 500 separate courts of all different sizes.

There is one major change in jurisdiction which I think warrants consideration. To me the routine assessment and collection of fines in parking cases is not an appropriate judicial function and should be discharged by some local administrative agency and not the courts. As you perhaps have noted,

legislation to this effect has recently been passed by the Legislature in New York and is now awaiting the Governor's approval.

Before the Municipal Courts can be phased out and their work absorbed by an expanded County District Court, a management study should be made to determine personnel and facilities requirements, to develop clerical and administrative procedures, and to resolve the financial problems incident to such a change. Requests have been made to a variety of sources for the funds needed for such a study, thus far without success.

4. The so-called Surrogate's Court should be eliminated and its functions taken over by the Clerk of the Superior Court acting through deputy clerks in the several counties. By the Gonstitution the Surrogate is an elected official, although interestingly enough the office is not provided for in the Judicial Article (Article VI) but in Article VII dealing with Public Officers and Employees. By statute, however, provision

is made for a Surrogate's Court in each county with the elected Surrogate as both the judge and clerk thereof, and by statute he likewise serves as clerk of the Probate Division of the County Court. To me it is anomalous that in a judicial system otherwise staffed entirely by appointed judges, probate matters are under the aegis of an elected official who need not be an attorney. I must in fairness mention that my recommendation for the elimination of the Surrogate as a judicial officer is not based on any documented deficiences or dissatisfactions with the present system, but solely upon my belief that it would be best for our judicial system if all judicial officials were completely removed from politics.

Judges

People are the most important factor in any system, and a court system is no exception. It will surprise no one, that the key people in a court system are the judges. New Jersey is, I think, most fortunate in the caliber of its judiciary which is generally

regarded by experts throughout the country as equal if not superior to that of any other state. There are several good reasons why this is so, but I shall not take the time to enumerate them here, since the purpose of my remarks today is not to delineate what is good in our judicial system but to outline the areas in which I think improvement can be made. Insofar as judges are concerned, I would make four suggestions:

1. The number of authorized judges of the courts above the municipal court level has increased from 71 full-time (including 5 Advisory Masters) and 56 part-time judgeships on September 15, 1948 until today we have 233 full-time and only 1 part-time judgeships. While this "judge explosion" plainly indicates that the executive and legislative branches have not been insensitive to the needs of the judicial branch in its efforts to keep pace with the "litigation explosion", the fact remains that in point of time the authorization of new judgeships has lagged behind the

need for them. Thus, for example, while as of the present time I estimate that 36 additional judgeships are required to keep current with the present volume of litigation, if past experience holds true it will be several years before that number is authorized, by which time, of course, further increases in litigation will make that number inadequate. Moreover, the increases that have taken place have followed no logical pattern. Thus, in one county there may be more Superior Court judges assigned than there are County Court judges, while in another county there may be only County Court judges sitting; in one county there may be judges specially appointed to the Juvenile and Domestic Relations Court and to the County District Court, while in a larger county these courts may have no specially appointed judges. There is a need, I submit, for the development of criteria to serve as the basis for increasing the number of judgeships as the need for them arises, and for the development of a logical pattern for the distribution

of judgeships not only among the various courts but also geographically according to need.

2. The present constitutional provisions for the appointment of judges by the Governor with the advice and consent of the Senate and our unique tradition of a bi-partisan judiciary, have on the whole, in my opinion, served the State well. Rather than abandon such procedures for the widely recommended so-called ABA or Missouri plan, I would instead suggest two modifications of our present system. First, a limitation should be placed on the time within which the Senate must either confirm or reject a nomination by the Governor. This would, I think, help to reduce the delay which too often has occurred in the filling of judicial vacancies. Second, all initial appointments should be for life, subject to good behavior, as in the Federal system. Experience has indicated that incumbent judges do not fail of reappointment because of lack of ability or of judicial temperament, but the

reappointment of outstanding judges has been delayed or put in jeopardy for purely extraneous reasons. Every judge, I believe, will perform better and more independently of distracting considerations if from the day he first ascends the bench he need not consider what effect the forthright performance of his judicial duties may have on his continuance in judicial office. The merit of the Federal system in this regard has been amply demonstrated in recent years, if one considers what would have been the fate of those trial and appellate judges in the Federal system who adhered to their constitutional obligations in the face of almost overwhelming local public pressures, if they had been required to stand for reappointment.

3. The Constitutional provision that judges of the Superior and County Courts "be subject to removal from office by the Supreme Court for such causes and in such manner as shall be provided by law" should not only be promptly implemented, but provision should be made for the discipline of judges short of removal.

Such procedures for removal and discipline should also be made applicable to the judges of the other trial courts. The experience of other states which have provided for the removal and discipline of judges has demonstrated the desirability and workability of such procedures, so that latent fears can no longer justify failure to implement this long-neglected constitutional mandate. The citizens of this State should no longer be denied assurance that those who abuse their judicial office or who are proven unfit to hold it can be appropriately dealt with, and our Supreme Court should not be required to fall back on its superintending power over the legal profession or on the use of informal persuasion in order to insure the integrity of our judiciary and to maintain public confidence in our courts.

4. Fortunately judicial salaries and pensions in New Jersey compare favorably with those in many other states, although not so favorably with those of judges in the Federal system and in

our neighboring states of New York and Pennsylvania. This does not, however, mean that there cannot and should not be improvement in our system in this regard.

I need not elaborate for this audience on the importance of adequate judicial salaries and pensions to the maintenance of a quality judiciary. I would suggest, however, that judicial compensation in New Jersey has not always kept pace with the times and that periodic and sporadic efforts to obtain increases can be the source of embarrassment to both judges and legislators. It is my recommendation, therefore, that New Jersey follow either the Federal example, whereby judicial salaries are reviewed periodically by a commission and can be adjusted without the need of further legislative action, or the California example, whereby judicial salaries are automatically adjusted every four years in accordance with the change in the index of personal income in that state.

In addition, in accordance with recommendations previously made by the Supreme Court, there should be a uniform judicial pension system with equal benefits for all judges, regardless of the court on which they serve, so as to eliminate the present inequities that exist not only between courts but between judges on the same court, and so as to eliminate repetitive efforts by individual judges for special pension legislation to fit their peculiar circumstances.

Supporting Personnel

While judges are the key people in a judicial system, they cannot function effectively without competent supporting personnel in adequate numbers. The existing situation in New Jersey leaves much to be desired. Without any effort to list them in the order of their priority, I would recommend the following changes:

1. As with the Surrogates, about whom I spoke earlier, I think it is inappropriate for the County Clerk, an elected public

official, to serve as clerk of the courts at the county level. The clerk of every court should be responsible and responsive to the judges of the court he serves and not directly to the electorate. Accordingly, I would recommend that the County Clerks be relieved of their court duties and that the clerks of the courts at the county level be deputies of and appointed by the Clerk of the Superior Court, subject to approval by the Supreme Court. While the County Clerks are Constitutional officers, since they are not provided for in the Judicial Article of the Constitution and since the Constitution does not specify their duties, it would seem that such a change could be effected by legislation without a constitutional amendment.

2. All other supporting personnel of the courts at the local level, such as court attendants and jury clerks, should be appointed by responsible officials within the judicial branch of government and not, as at present, by the sheriff, the prosecutor,

or the board of chosen freeholders. The judiciary cannot be held fully responsible for its own operation unless, as with the other branches of government, it has control over its own personnel. In addition, the judiciary should have a greater voice in determining the number, qualifications and salaries of its own personnel subject, of course, to legislatively established appropriation limits. Ideally, I think, the judicial branch should have its own merit system, independent of civil service, as does the Federal judiciary and the courts of some other states.

3. The courts at the trial level, and particularly those with criminal, juvenile and domestic relations jurisdiction, are in need of additional professional assistance, whether provided by qualified court staff or made available to the courts by other governmental or private agencies. The trial courts, throughout the State are also lacking in competent administrative staff of executive caliber. The Assignment Judges, who are generally

responsible for the administration of civil and criminal justice in all courts within their county or counties, have extensive administrative responsibilities but little or nothing in the way of staff assistance, although the Assignment Judges in the larger counties have recently been provided some help by the assignment to them of administrative assistants from the staff of the Administrative Office. To a lesser degree, the presiding judges of multi-judge courts in the larger counties are also in need of administrative staff. To remedy this need, each of the 12 Assignment Judges should have a highly qualified, adequately compensated, executive officer, comparable to the Administrative Director at the State level, to assume responsibility for the administrative affairs of the courts within his jurisdiction -- an executive officer who would be able to deal on equal terms with other county and local officials.

Court Facilities

In recent years several new court houses have been built or are in the process of erection, and several old court houses have been added to or renovated. Even in those counties, the need for additional or improved facilities too long preceded the date of occupancy. In other counties, trials are still being held in make-shift courtrooms, and judges, if they are lucky enough to have any regular chambers, are assigned offices hardly befitting a justice of the peace, with no concrete progress being made on plans for new court facilities. If New Jersey had today the number of trial judges needed to keep current with the influx of litigation, a number of judges would be required to sit in counties where the local volume of business did not require their services, and we would still be 27 courtrooms short. This lack of adequate facilities not only demeans the dignity of the courts and thereby the public impression of justice, but interferes with efficient court operation.

Since the counties presently have statutory responsibility for providing court facilities for all our trial courts (except the Municipal Courts and the Chancery Division of the Superior Court), the temptation and tendency is to place the blame for this situation on county officials. This is often unfair, since in most instances they have been most cooperative. Their reluctance to proceed with plans for building or modernizing courthouses to meet the needs of the courts is quite understandable, being attributable, I think, to three factors. First, the rapid expansion of the judiciary has placed obligations on the counties which they are ill-equipped to finance out of the already over-burdened property tax. Second, we at the State level responsible for the administration of the courts have been unable to predict for them with any reasonable degree of accuracy what the future needs of the courts in their counties will be. This is attributable both to the lack of an overall plan for the development of the

system and to the lack of information about factors which influence litigation growth rates. Third, all too often judges and other court personnel have overly expensive concepts as to the architectural requirements of a court house. They sometimes have a tendency, I think, to measure the dignity of a court by the amount of marble in the court house. There is no reason why modern court houses, like modern schools, cannot be at one and the same time modest, functional and dignified.

Court Financing

It is frequently said that in New Jersey we have an integrated court system yet when it comes to the financing of the system nothing could be further from the truth. Of the over 600 courts in the State, only the Supreme Court is wholly financed by State appropriations. The Law Division of the Superior Court, except for the judges' salaries and the clerk's office in Trenton, is financed by the counties, as are the County Courts, except for a

State reimbursement of 40% of judges' salaries. The costs of the Juvenile and Domestic Relations Courts and the County District Courts are borne entirely by the counties, and each municipality wholly finances its own Municipal Court. The considerable variation in the ability and willingness of the several counties and municipalities to shoulder the reasonable costs of their courts, inevitably results in a wide variation in salaries, facilties and services which in turn is reflected in variations in the caliber of justice.

This situation should not exist, but I fear it will continue as long as our courts are largely financed at the local level. All of our courts, however titled and wherever located, are State courts and the administration of justice should rightfully be a State and not a local responsibility. Accordingly, I would recommend that all of the courts in the State be wholly financed by State appropriations. If this were done, the total cost of the judiciary, including capital costs, would still be only about 5% of total State expenditures, and this does not take into account

the additional court revenues the State would receive or increases in efficiency that could reasonably be expected. I might add that such a move would be in keeping with the trend in other progressive states throughout the country.

Before leaving the subject of court financing, there is one other recommendation I should like to make. As in the Federal government and in many other states, the budget request of the judiciary as an independent branch should be transmitted intact to the Legislature, although the Governor should be free to accompany it with such recommendations and comments as he deems appropriate. Moreover, within the limit of such appropriations as may be enacted, the judiciary should be given maximum freedom in making expenditures without unnecessary executive and legislative restrictions and review.

Court Management

It has been said, and not without justification, that a 19th Century lawyer would feel quite at home were he to walk into some of our courts or clerk's offices today. I know that I would like to have a dollar for every time a businessman has said to me, "If I ran my business like you run your courts, I'd be out of business." Now, of course, the courts are not a business and there are many reasons why they can't be run like a business. But the unpleasant fact is that courts generally, and our courts are no exception, have failed to make full use of modern business management methods and machines. Two related reasons for this are that the courts have had neither the managers nor the money necessary to modernize their operations. But there is also, I suspect, a third reason: judges and lawyers have been all too reluctant to concern themselves with the administrative or management problems of the courts, but have been content merely to criticize their inefficiency.

Fortunately the situation is changing, and changing rapidly, in many places. Management firms and computer manufacturers and consultants are finding in the courts a new market. Several major metropolitan jurisdictions, such as Chicago and Los Angeles, have made considerable progress in the computerizing of court operations and many smaller jurisdictions, including the courts in several of our own counties, have discovered the punch card. The experimental and exploratory work which the Federal Judicial Center and the Administrative Office of the United States Courts are doing in this area under the stimulus of Mr. Justice Clark and Mr. Friesen in a short time should pay big dividends in improved efficiency for both federal and state courts. There is no doubt in my mind that during the next few years the most significant improvements in judicial administration will be attributable to the introduction of business management methods and electronic data processing equipment to court operations.

We in New Jersey should be alert to take advantage of this new methodology and technology. The elimination of the County Courts and the Municipal Courts, the employment of competent trial court administrators, and the financing of all courts by the State, which I have recommended, would certainly facilitate progress in this direction. But these changes are not likely to occur overnight, and we should not wait for them before acting. Bench and bar together should actively seek public and private funds to finance court management studies aimed at modernizing both our court clerical and calendaring operations, taking care that any new systems installed are compatible with each other so as to facilitate the exchange of information between them and their eventual consolidation. We need to explore the feasibility, within the restraints of our present structure, of establishing a combined master calendar for our major contiguous counties so as to eliminate to the fullest extent possible the numerous

calendar conflicts that plague Assignment Judges and trial attorneys alike. We can and should develop a more sophisticated court information system, so that essential facts will be available on a current basis for purposes of identifying and resolving problems as they arise and for designing and measuring the utility of new procedureal remedies.

While we have made a small start in this direction -- a management analyst on my staff is working virtually full time in this area -- we are far behind where we should be and have a long way to go to catch up.

Court Calendars

Much of what I have already had to say obviously has a direct bearing on court calendars, and I shall not repeat myself. It is not sufficient, however, to merely concern ourselves with ways to improve the efficiency of the courts and their ability to expedite the disposition of cases. It is also important that, for

different types and classes of litigation, we establish optimum times or norms as to how speedily cases ought to be reached for trial and, in the likely event that those norms cannot all be attained, the priorities to be observed. For example, how soon should the ordinary felony case be scheduled for trial after indictment or the average Superior Court personal injury case after the filing of the complaint? If, as at present, the courts are behind in their work, should the trial of a negligence case take priority over the trial of a matrimonial action, and what effect should the age of each case have on that priority? At first blush these may seem to be relatively simple problems, but it strikes me that in fact they are quite complex because of the numerous variables and competing interests involved. Yet this complexity, although it may make the establishment of such norms and priorities difficult, increases the desirability of having standards to serve as a guide for the deployment of available judicial resources and for estimating what resources are needed.

For purposes of illustration -- although I realize it is at the risk of creating controversy -- I should like to suggest some very rough norms and priorities.

As to norms, the average case of its type should be reached for trial within the following time periods: disorderly persons offenses - 2 weeks; misdemeanors - 2 months; high misdemeanors - 3 months; murder cases - 6 months; juvenile offenses on the informal calendar - 2 weeks; juvenile cases on the formal calendar - 1 month; domestic relations support cases - 2 weeks; small claims cases - 2 weeks; landlord and tenant cases - 1 month; district court, contract and negligence cases - 4 months; county and superior court, contract and negligence cases - 9 months; matrimonial cases - 6 months; general equity cases - 9 months; and prerogative writs - 6 months.

As to priorities, if on the average cases cannot be reached for trial within the established norms, they should be preferred

for trial in the following order: 1 - juvenile cases; 2 - domestic relations support cases; 3 - criminal cases; 4 - prerogative writs; 5 - district court cases; 6 - matrimonial and general equity cases; and 7 - contract and negligence cases.

While I am quite sure that none of you will agree with the specific norms and priorities which I have just suggested, I hope you will agree with the thesis that it is important for norms and priorities to be established. As it is today there are few guidelines to follow, with the result that there are wide variations between counties; variations that are difficult to justify either to lawyers or litigants; and there are equally few standards for determining the relative need of various courts and counties, or the overall need of the entire system for judicial manpower and other essential court resources.

Probation Services

It may seem odd to some of you that I should single out this subject for special mention. I do so, however, not only because it is a subject of special concern to me and my office, to which we have been devoting a good deal of attention, but also because statewide we are now spending over $8,000,000 annually on probation services, more than 20% of all court expenditures, state, county and municipal. Quite bluntly, I do not think we are getting our money's worth.

While it is true that probation caseloads are excessive, the basic difficulty in my judgment, and increasingly of experts in the field, is that traditional probation supervision methods are outmoded and ineffective and in need of radical revision. The classic casework approach whereby a probationer reports periodically to his probation officer at the courthouse or other office and is visited at varying intervals at his home or place

of work, just is not capable of producing the desired result. Probation supervision today has become largely irrelevant to the problems of the convicted defendant, be he adult or juvenile.

The solution, I think, does not lie in merely adding probation officers in order to reduce caseloads, or in getting probation officers' feet out from under their desks and on the streets of the communities in which their probationers live, although both would be helpful. A whole new approach is needed. Accordingly, we have recommended the establishment in the urban ghetto areas of neighborhood probation centers, manned by trained professionals aided by non-professional local community residents. Such centers should be equipped not only to provide the range of special services needed, but also to establish and maintain a continuing and meaningful relationship with those on probation. Experience in other jurisdictions indicates that this approach offers at least a reasonable hope that probation can achieve

its objective of rehabilitation. I should mention that OEO funds have just been committed to establish a neighborhood center for juveniles in Paterson, and other grant requests have been made under the Federal Crime Control Act to establish such centers in other urban areas. In addition, of course, it is essential that we continue to experiment with other new techniques and approaches. Public support, however, for such projects is needed, since, as might be expected, there are many with a vested interest in the present system who are not enthusiastic about changing established patterns.

Involvement

The current struggles of the black, the poor and the young have highlighted the importance of having effective channels of communication among all groups affected by policy decisions. It is not sufficient today, if it ever has been, for unilaterally formulated policy to be wise, or even beneficial to those it touches; it is essential that all concerned have a meaningful

voice in its formulation. Those responsible for the administration of the courts should, I think, heed this lesson by creating more effective means whereby judges, lawyers, court employees, elected officials and the citizenry as a whole can participate more fully in determining how the courts shall be run.

This widely representative Judicial Conference, which was intended to serve this very purpose, has in my opinion failed to do so, although it has been valuable as a forum for the public discussion of proposals pertaining to the judiciary. The principal reasons for this failure, I believe, are that the conference delegates do not in fact speak for the groups from which they are selected; that conference sessions are scheduled too infrequently to permit the delegates to really become informed or involved with the issues on the agenda; that delegates have been given no real responsibility for initiating ideas or programs for the improvement of the judicial establishment; and finally, that

while the views expressed at the confernence may have influence, the delegates do not acutally participate in the subsequent decision as to what action shall be taken.

Quite frankly, I have no definite ideas on how to correct this situation without impinging on the Supreme Court's constitutional responsibilities. Perhaps, as in some other states, it might be helpful to have an executive committee of the Conference, in the nature of a Judicial Council, composed of about 15 judges, lawyers, legislators, public officials and laymen. Such a group might take initial action on matters discussed at the Judicial Conference, subject to subsequent Supreme Court approval.

A judicial system from an administrative point of view is not unlike a university, in that it is staffed primarily by high level professionals with a great sense of independence. Such an institution, unlike the typical business enterprise, does not respond

well to centralized administrative authority. Many of the incentives that produce response to executive authority in a business organization, such as increased compensation or promotion as rewards for performance or conformance, and the termination of employment as the penalty for failure in either respect, just do not and should not exist in a judicial system.

Although our Chief Justice by the Constitution is the administrative head of all the courts, he has no authority to appoint, promote, demote or remove any judge; neither may he increase or decrease any judge's compensation. More subtle and less direct means must be used to encourage maximum performance by all within the system. The greatest single incentive that exists is each individual judge's desire to measure up to his own personal standards of excellence. In essence the motivation to perform well is, and must be, self-motivation. If this is so, and I'm convinced it is, then the greater the centralization of authority

and responsibility, the less individual responsibility and self-motivation. This, I think, accounts in large part for the fact that we have some judges who are literally working and worrying day and night in an all-out effort to make our system work well, while other judges go along at a leisurely pace and worry little about the problems of the courts.

It would seem, therefore, that if we wish to improve judicial performance levels we must devise ways of giving each judge a real sense of responsibility for his own performance and the performance of the system as a whole. In this regard, it is interesting to note that generally throughout the country the multi-judge courts most current with their work are those where each judge is responsible for running his own calendar, rather than those courts using a central assignment system, although patently such a system would appear to be a more efficient method of running a multi-judge court calendar. While I am not

necessarily recommending that we abandon the central assignment system, since with our trial bar practicing in several counties the problem of avoiding calendar conflicts would be magnified. I do feel, however, that we need to find ways to give each judge a greater share of responsibility, perhaps by periodic rotation of judicial assignments and by wider delegation by the Assignment Judges of their many responsibilities.

Certainly today we have men on the bench whose talents are not being fully utilized and who have not been given a real opportunity to demonstrate their abilities. Continued failure to call upon a judge up to the limit of his capacity can only result in the gradual withering of both his abilities and his interest, with both the judge individually and the system of which he is a part being the losers.

While efforts have been made from time to time to set up effective channels of communication between the judiciary and

the legislature, and between the bench and the bar, they have met with sporadic and limited success. This has resulted, I think, from the fact that the channels have been informally established; have not been clearly defined; have depended in large measure on individuals whose positions of authority change; and have been utilized only as specific problems arise and not as a means of maintaining a continuing dialogue leading to better mutual understandings. The foregoing suggests the remedy without need of reiteration. In addition, I think it might be desirable if annually, preferably in the late fall prior to each new legislative session, the Chief Justice were to make a public report on the state of the courts, their accomplishments, their problems and their needs. Such a report should be helpful to the Governor, the Legislature, the bench and bar, and the citizens of the State in better understanding the operation of our judicial system and accommodating its needs. (Parenthetically, I might add, in my opinion an

annual report by the Administrative Director of the Courts is not an effective substitute.)

We have often heard it said that the courts do not exist for the benefit of judges and lawyers, but to serve the litigants and the public. Sometimes, however, I wonder whether we do not in fact operate the courts for the convenience of these groups in the order named. A couple of questions will suffice to indicate what I mean. Are Municipal Court sessions scheduled during the daytime in some municipalities, and during the evening in other municipalities, because of a determination that the scheduled time will best suit the citizens of that municipality, or because the scheduled session suits the convenience of the Municipal Court judge? Are small claims cases in the County District Courts and nonsupport cases in the Juvenile and Domestic Relations Courts always heard during the day because judges do not like to work at night, or because it has been determined that the litigants in

these courts prefer to lose a day's pay rather than miss their favorite evening television program? Of course I do not intend to be sarcastic, but I do feel that sometimes we tend to give less than full consideration to the interests of the people the courts are supposed to serve. Don't misunderstand me; I don't believe that the interests of judges and lawyers should be ignored, but I do think they should be kept in proper perspective. I would, therefore, suggest that we re-examine the operation of all courts with a view to making certain that the legitimate interests of all groups concerned are given appropriate consideration.

Need for Action

I have outlined for you some of the changes which I believe should be made, or at least considered, if our judicial system in New Jersey is to best serve the people of the State. In the process, while hopefully I may have made some recommendations which please some of you, I fear that in my customary tactless fashion I have

made recommendations that have irritated everyone of you. My purpose, however, has been neither to please nor to irritate, but to set forth frankly for your consideration a blueprint for the future development of our judicial system. It is not important whether you agree or disagree with the specific changes I have recommended. However, I think it is important that we recognize the need for some plan to guide our future growth; that we collaborate on the formulation of a plan which takes into proper account the interest of all affected groups; that we then put aside our individual parochial concerns and bend our every effort to bring about the plan's implementation; and that whatever plan we may agree on, be subjected to re-examination and revision at frequent intervals so as to assure that it continues to meet the needs of the times.

One final comment. A former Chief Justice once stated that "court reform is no sport for the short-winded." Historically

there is no doubt but that this has been so, but I submit that it should not and cannot continue to be so. If we who have the ability to accommodate our social and governmental institutions to meet the legitimate and recognized needs of society do not on our own initiative make the requisite reforms, then we cannot in the future justifiably complain when those who are ill-served and dissatisfied with those institutions militantly demand that they be changed on their terms. We need only consult university administrators for expert advice in this regard.

It is not sufficient to mutter platitudes such as: "be patient," "change takes time," or "we're working on it." Nor does it help to castigate those who would move us faster than we want to go as "facists," or "rebels," or "revolutionaries." I have two children in college (one at Cornell) and two in high school. Believe me, while they are conservative kids as kids go these days, it is impossible to explain to their satisfaction

why, for example, if an Administrative Procedure Act was desirable, it took 21 years of agitation by the bar to secure its enactment; or why, if the Municipal Courts should be abolished, 12 years have gone by since Chief Justice Weintraub recommended such a change. They know that only 13 years elapsed between the Declaration of Independence and the adoption of our nation's Constitution; that it was only 12 years from the time Hitler rose to power until he was buried in a bunker in Berlin; that only 8 years ago President Kennedy committed an earth-bound nation to putting a man on the moon; and that Moshe Dayan took 6 days to win the war against Egypt only because for the first 5 days he had his patch on the wrong eye!

Accordingly, I suggest that we develop a sense of urgency about making needed changes in our judicial establishment. If we have the will and the energy and the enthusiasm for the task, within a year or two we can have a court system second to none of which we can all be proud.

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