1930

Judicial Organization and Procedure

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The Ohio Judicial Council Embarks on a Survey of Justice. In 1923 the first state judicial council in this country was established in Ohio. The Massachusetts act providing for such a council was introduced earlier and formed the basis for the Ohio law, but it was not adopted until 1924. The judicial council provided for by the Ohio law was composed of the chief justice of the supreme court, two associate justices, the chief justice of the court of appeal, one common pleas judge, one municipal court judge, and three lawyers.

The council was charged with the duty of making a continuous study of the organization, rules, methods of procedure, and practice of the judicial system of Ohio, as well as the work accomplished and results produced by that system and its various parts. The results of this continuous study were to be reported biennially to the legislature, with such recommendations for the modification of existing conditions as the council might see fit to make. The council was authorized also to submit suggestions for the consideration of the judges of the several courts with regard to rules, practice, and procedure.

To accomplish its purposes, the council was authorized to hold public hearings, administer oaths, and require the attendance of witnesses and the production of books and documents. A witness giving false testimony, or failing to appear when duly summoned, was made subject to the same penalties to which a witness before a court is subject. The clerks of the various courts and other officials are required to submit to the council such reports as the council may prescribe.

The council went to work with enthusiasm. A large program of work was planned, but the initial appropriation of $1,000 proved inadequate and the work was compelled to lapse. In the meantime other states followed the Ohio plan, with the difference that some of

2 Since 1923, substantially one-third of the states have adopted some form of judicial council. Though varying in powers, personnel, and immediate program of action, all are actuated by one common purpose—that of making an organized attempt to work out the judicial problems of the state through the
them were more generous in providing funds with which to work. For example, California established a judicial council in 1926, and that body has been extremely active. Equipped at the outset with an appropriation of $50,000, it inaugurated a survey of business in all the courts, and as a result entered upon a campaign to relieve overworked courts. In this matter it has apparently been quite successful. It has also made a study of readjustment of jurisdiction in the courts of review in the interest of greater efficiency.

In a short time the judicial council in California has learned much that should be known about the state's judicial problems, and it is taking steps to solve them. It must be noted, however, that the legislature has made this possible by substantial appropriations. In 1927 the sum of $170,000 was appropriated, $40,000 for the direct objects of the council and the remainder to pay extra compensation and travel expenses of assigned judges. A like sum was appropriated by the 1929 assembly, of which $27,000 is available to the council directly, and $143,000 is to be used for judges assigned to work outside of their counties. This carries the council to June 30, 1931.

But if the work of the Ohio judicial council was delayed at the beginning, the organization undertook a pretentious program when it once started, and there is now under way under its auspices a study in judicial administration which, if successfully-carried out, may very well take its place alongside the important surveys which have been made in recent years in different parts of the country in the field of justice. Though conducted under the auspices of the judicial council, this study is being directed largely by the Institute of Law of the Johns Hopkins University, which has made the work possible by extending

united efforts of bench and bar. Whether they have been composed wholly of judges or of both judges and lawyers, there has resulted a systematic attempt to study the work of our courts with a view to improvement. In two states, lay representation is found in the judicial council; and in a number the attorney-general or a member of the general assembly is added. At this time, councils are in existence in Ohio, Oregon, Massachusetts, Washington, North Carolina, California, Rhode Island, North Dakota, Connecticut, Kansas, Virginia, Kentucky, Michigan, Texas, Illinois, Pennsylvania, Iowa, Idaho, and Wisconsin.

the help of its staff and financial resources. The survey is the first of several studies of state-wide scope which that institution will undertake in conjunction with state judicial councils.

Preliminary plans for the study were approved by the Ohio State Bar Association in the summer of 1929, and a representative committee of that association is assisting actively in the work. The attorney-general of the state and representatives of the leading law schools are also lending assistance. Indeed, before the survey is completed it is hoped to enlist the help of every agency in the state, research or otherwise, which has a substantial and continuing interest in the scientific study of legal and other social problems. The committee of direction* is taking stock of these agencies as one of its preliminary steps. Its purpose is not only to provide a bibliography of research completed and under way, but also to lay the basis for cooperation with the research personnel which will be interested in the various aspects of the work of the survey.5 It is anticipated that this finding list will be completed during the spring.

Though plans for the survey are for the present largely tentative, they involve as a primary feature the formulation of a detailed scheme for the study of judicial administration in Ohio. To frame this detailed plan, a planning committee has been organized, composed of representatives of the key institutions and industries of the state. As the work proceeds, this group will be supplemented by various types of advisory committees. The planning committee will study the whole field in a preliminary way with a view to blocking out the specific detailed research tasks which should be undertaken and selecting the agencies and the personnel to perform these tasks.

A secondary feature of the work will be the formulation of an adequate system of judicial statistics. It is hoped that a system of records and statistics will be developed which will in future provide automatically much of the material which must at present be secured so laboriously. In working out this problem, careful attention will be given to

* The committee of direction is composed of Chief Justice Carrington T. Marshall of the supreme court, chairman of the judicial council; John A. Elden of the Cleveland bar; Leon C. Marshall and Hessel E. Yntema, professors of law at the Johns Hopkins University.

5 For example, the Ohio Institute, a research organization with offices in Columbus, has received an appropriation of $25,000 from the Bureau of Social Hygiene for a study of crime. This work will undoubtedly dovetail to some extent with that of the Institute of Law.
the experience of other jurisdictions, to the existing literature on the subject, and to the results of specific studies now under way.

That we are in a pre-statistical era, as far as judicial business is concerned, has been pointed out more than once. In its preliminary investigations in this field, the committee found itself in uncharted waters. "Aside from criminal statistics," said Dr. Marshall, "only the crudest and most elementary statistical tables are available as records of our state courts." Though criminal tabulations have been made, they are for the most part rudimentary; and when it comes to interpretation of statistical data, and especially to correlation of judicial statistics with other types of statistical information, the void is quite complete.

Though the compilation of statistics in itself serves no purpose, the committee is of the opinion that without reliable judicial data from which to proceed, any attempt at a scientific evaluation of the judicial process is impossible. It would have been fortunate for the purposes of the survey if this work had already been done. Since it has not been done, and since it must be carried out as a means of making possible scientific work in law, the committee has undertaken the task. If it succeeds in formulating and installing in Ohio a system of judicial statistics that will show something, it will have accomplished a lasting service.

The problem of precisely what such records should show is one of *In discussing the matter, W. F. Willoughby says: "There is an almost complete absence of statistical data regarding the operation of courts in the adjudication of civil cases. Nor is there much in the way of consideration of the problem of devising and operating a system for the collection and presentation of such statistics." Principles of Judicial Administration, 647. Albert Kocourek has also called attention to this dearth of statistical data in civil cases. See "The Need for Statistical Information in Civil Litigation," Jour. Amer. Judic. Soc. (Apr., 1918).

*Criminal judicial statistics have received more attention. (See Willoughby, Principles of Judicial Administration, 648-650). But even in this field much work must be done. Raymond Moley, in discussing the subject, says: "Such scanty reports as we have from a number of police departments, a few attorney-generals, and a few other officials are almost useless for comparative purposes. Records are likewise inadequate. A vast amount of criminal law administration is conducted without records. Much of the remainder is hidden in antiquated and inaccessible dockets, in irregularly filed court papers, and in the generally unintelligible and sometimes dishonest records of city police departments." Politics and Criminal Prosecution, 35.
great difficulty, since so little has been done to point the way. As tentatively outlined by the committee, the purposes governing the formulation and installation of the desired records center on several points: (1) the effective business organization and management of courts; (2) the compilation of data for the use of judges, legislators, judicial councils, scholars, and others interested in improvement of the judicial machine; and (3) the compilation of data which will show the legal process in its social setting, which of itself is a tremendous undertaking. The committee will probably experiment long and carefully before setting up a definite system of records to be used permanently.

On the side of research projects also, emphasis is being placed on permanent results. It is assumed that every such project undertaken will result in a valuable contribution in and of itself; and, in addition, that each separate project will fit into a comprehensive program of study of the administration of justice in the state.

The specific research tasks contemplated for 1930 involve at the outset: (1) an analysis of the civil judgments, and later an analysis of divorce cases and criminal prosecutions, in the common pleas courts; (2) a study of litigation in the courts of appeals and the supreme court; (3) an analysis of the work of the municipal courts. This survey will provide a continuous flow of objective data which will enable the committee to find out to some extent how residents of Ohio are affected by various types of litigation. It will lead to a series of studies concerning the human effects of the judicial process, such as the Institute of Law of Johns Hopkins University has been established to develop. The studies may show, among other things, whether the cost of litigation in time and money is disproportionate to the results; how litigation is affected by the character of the judiciary and the bar; the relationship of litigation to industrial background; and what procedural matters need special study.

The analysis of civil judgments (excluding divorces) rendered in the common pleas courts of Ohio, January 1, 1930, to December 31, 1930, will involve: (1) the preparation of data cards to be filled in by clerks in the various counties; (2) the setting up of special ma-
chinery in jurisdictions in which the number of civil common pleas cases brought annually is too great to permit the clerks of court, in addition to their regular duties, to take upon themselves the additional burden involved in reporting on industrial cases; (3) reducing the data to individual cases to code and transferring them to cards for the tabulating machines; (4) the analysis and interpretation of data; (5) the study of the whole field preliminary to the formulation of an effective recording system.

The data cards now in use require information as to the age, sex, residence, occupation, and status of the parties involved; the type of case; origin of case; trial or disposition of the case; the amount involved; the time consumed between the filing of the petition and the final disposition of the case; the time consumed between successive steps in the case, as, for example, the time between the filing of the petition and the beginning of the trial; and the time between the beginning of the trial and the satisfaction of the judgment.

The information secured should be very useful indeed. The evils springing from delay have been repeated to the point of monotony by all commentators on the judicial process. In California, Delaware, Idaho, North Dakota, Oregon, and Pennsylvania, legislative action has been taken to eliminate delay in criminal trials, including shortening the time within which appeals can be taken. If there is delay in Ohio, it should be demonstrated beyond dispute. Steps might thereupon be taken in an intelligent fashion to correct the matter. In California,
measures to clear the congested dockets were taken speedily when once the facts were definitely ascertained by the judicial council.12

Information is sought also concerning the number of cases involving traffic and installment sales. If the use of the automobile and the payment plan have added to the work of our courts, some accurate information with regard to the matter should prove useful. The data sheet containing these questions will be used for a short time, possibly three months, when it will be replaced by a revised sheet which will probably be more concerned with procedural matters.

The reason for selecting civil judgments in the common pleas courts for 1930 as the subject-matter for the first specific research inquiry is that, though over fifty per cent of the common pleas cases fall into this class, it is nevertheless practically neglected in Ohio judicial statistics. Any attempt at a complete study of judicial administration must await exploratory work in this neglected area. Fortunately, this field lends itself readily to an objective, statistical approach. The investigation, too, should arouse interest and secure the active participation of many persons throughout the state.

The analysis of litigation in the appellate courts of the state, which is the second specific research task to be undertaken during 1930, will be concerned, first, with litigation in the supreme court during 1927-28 and 1928-29. This will involve an analysis of some thirteen hundred cases, including cases on the merits and rejected motions to certify record. The study will be concerned, secondly, with an analysis of approximately three thousand cases in the court of appeals for the year January 1, 1930, to December 31, 1930.13

This field has been selected for immediate attack because of the relatively small number of cases to be covered, and also the relatively greater accessibility of the data (as compared with the common pleas civil judgments), which makes possible a fairly detached and precise analysis of this important section of Ohio's court work. It is also considered important to conduct some studies in the first year of the survey of a more intensive character than the general analysis of the common pleas civil judgment cases will provide. The proposed studies lend themselves readily to objective and statistical analysis, can be pushed to completion, and are well designed to secure active participa-

13 The data sheet for the appellate courts and supreme court will probably be put into operation by July 1.
tion by key persons in the state. They are also fundamental to the
development of a state-wide system of adequate judicial statistics.
The committee is insistent that the statistical records of all parts of
the system shall be tied together.

A third specific task which is to be started during 1930 is an analysis
of the work of the municipal courts. This study will undoubtedly be
carried on well into 1931. This field has been selected for early study
because of the importance of the municipal courts in the judicial
scheme of affairs in Ohio. The number of cases tried in such courts
would of itself justify early attention. In 1928, in the municipal court
of Cleveland alone, 54,764 civil cases and 108,880 criminal cases were
disposed of. This means a total of 163,644 cases, as compared with
93,385 common pleas cases in the entire state for the same period. Re-
ports made on the large amount of litigation in the municipal courts
are mostly inadequate.

From the point of view of the impact of the system of justice upon
human welfare, the work of the municipal courts is strategic. Economic
and social situations are involved which are only indirectly reflected
in the work of the higher courts. A special advisory committee is now
being organized and will recommend the direction which the study of
the municipal courts can most effectively take, as well as the particular
investigations which such a study will involve. Inasmuch as the juris-
dictions of the common pleas courts and the municipal courts have a
close connection, it is planned to study the two sets of courts, in so far
as possible, concurrently. This will be especially helpful in establish-
ing a satisfactory system of judicial statistics.

The specific research projects for 1929-30 here set forth are presented
rather to suggest than to indicate definitely the scope and character
of the survey contemplated. Though plans have been made for the
complete undertaking, they are still largely tentative and experi-
mental. The committee of direction is anxious to avoid drawing up a
definite program until after it has made a careful study of available
research personnel and has secured much counsel and advice in the
matter.

Although no definite program is as yet possible, certain areas of
study have been listed which will undoubtedly receive attention. These
are: (1) the field of agencies concerned with law administration;14

14 This might include: (1) the judicial machine proper; (2) administrative
(2) studies connected with the efficient functioning of these agencies;¹⁸
(3) studies connected with suggested changes in judicial administra-
tion;¹⁶ (4) studies in the field of legislation; (5) certain outstanding
social aspects of the administration of justice;¹⁷ and (6) certain actual
experiments which might be worked out.

Whatever lines the work may eventually take, it will be compre-
prehensive; the directors of the survey are all quite agreed on that. The
judicial council is concerned with securing a systematic analysis of
the whole judicial system, and the Institute of Law is likewise inter-
ested in making a thoroughgoing state-wide study of the judicial

commissions engaged in law administration; (3) the relationship of the execu-
tive branch to law administration; (4) the work of non-governmental agencies
engaged in law administration. The studies of the judicial machine proper would
include studies of the supreme court, the appellate courts, the common pleas courts,
the probate courts, the municipal courts, the domestic relations courts, the concilia-
tion courts, etc. Public utilities commissions, workmen’s compensation com-
misions, and such administrative commissions concerned with law administra-
tion would also be studied. In studying the relationship of the executive law
administration, special investigations might be made of the work of the governor, 
attorney-general, prosecutors, police, sheriff, and coroner. Non-governmental
agencies engaged in judicial work which might be studied would include com-
mercial arbitration boards, boards of trade, trade unions, etc.

¹³ This might involve: (1) the statistical studies already mentioned; (2) studies
of the personnel aspects of judicial administration, i.e., selection, tenure, transfer,
promotion, education, removal, etc.; (3) studies of the bar of the state, legal edu-
cation, requirements for admission, activities of the State Bar Association and
local bar associations, etc.; (4) special studies in the substantive law, e.g., install-
ment contracts, small loans, incorporation acts, etc.; (5) special studies in the
procedural field; (6) special studies of administration of criminal justice, either
a series of dovetailing studies or a comprehensive survey; (7) studies of the
physical surroundings of the courts, e.g., quarters, architecture, adequacy, appro-
priateness, etc.

¹⁶ The whole problem raised

by suggestions of having “a unified court” or
“a ministry of justice” might be considered. Proposed modification of existing
judicial machinery might be studied, e.g., different use of grand and petit jury,
possibilities of securing “expert” juries, greater use of commercialized ar-
bitration, and specialized courts for special purposes.

¹⁷ Studies might be made in the field of juvenile delinquency, divorce, etc.; in
the cost of litigation, visible and invisible, to the participants and to the state
and community; the costs of corrective institutions; the costs of wasted man
power, etc. The possibilities of psychology and psychiatry as tools to be used
in the administration of justice might receive attention; also problems in con-
nection with parole, probation, and penal institutions.
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process in a populous state. Every effort is being made to organize the work thoroughly. Lawyers and judges are helping to form the program. Leaders in industry and business are to have a hand in the work, and the social scientists of the state will be called upon to extend their service. Judicial councils in other states will be consulted, and men who have gained valuable experience in similar surveys throughout the country will be called on for advice, and in some instances to take over particular portions of the study.

The survey would be an interesting experiment if judged from the viewpoint of technique and methodology alone. It represents an attempt adequately to organize technical research in a field of judicial administration, with its proper social setting given more than passing consideration. The study will not be limited to the actual operation of the courts, but will attempt to go beyond that and to look into the causes and effects of law administration in the social process. In doing so, it will give basis for much encouragement to those interested in a more intelligent approach to our social problems.

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