Are Our Courts Keeping Step?

The State of the California Judiciary in 1934

by chief justice william h. waste*

The judicial department of the State of California, like those of practically all the other states, is patterned along the lines of the judicial system of the United States. It was organized along these lines when the first constitution of the state government was framed in 1849. Some new courts have been created, the names and scope of the jurisdiction of others have been changed; otherwise, the system has remained substantially the same.

A technical discussion of these changes need form no part of the present consideration. While procedure in the state courts has been, in many respects, materially changed, the most striking and helpful changes have been made within the last decade, and resulted from a situation throughout the United States which was erroneously attributed to the courts.

Slow, Antiquated, and Inefficient

Mr. Chief Justice William Howard Taft, of the Supreme Court of the United States, having departed from a practice not to talk on current subjects while a member of the bench, was widely quoted, a number of years ago, because of certain statements he was alleged to have made concerning the condition of the judicial business of the nation. By reason of the important position the Chief Justice held and his great experience with courts and in judicial matters, wide attention was given to his expression of opinion on the subject. His statements were received and accepted generally as a final "summing up" of the true nature of the condition of the business in the courts of the country. Attention was not given to the fact that the various observations made by the Chief Justice were directed by him to the "crime and lawlessness sweeping over the United States," and to an analysis of the legal phases of the crime situation. Furthermore, the arraignment uttered by him was directed almost exclusively to *the handling of criminal matters* in the courts, and not to the disposition of civil judicial business. Notwithstanding that fact, his remarks were given general application to the work of the courts, which were assailed as being "slow," "antiquated," and "inefficient."

In the public discussion and editorial comment that followed the statements of the Chief Justice, sight was frequently lost of the fact that, in his opinion, the fault lay not so much with the courts as with the hampering of the courts by legislative restrictions. In one of the most widely circulated interviews, Judge Taft said: "The machinery for the arrest and prosecution of criminals is confronted with obstacles in the character of the peoples themselves that no other country has. . . . In the first place, in many jurisdictions — I mean among the states — the judges of the courts in the trial of criminal cases have had their powers weakened by restrictive statutes. In the matter of charging the jury and helping the jury to understand what the issue is before them, in the conduct of the trial generally, and in winnowing out from the evidence the irrelevant and unsubstantial so that the jury may gain a sense of proportion as to the value and weight of evidence, many of the courts are so restricted that a judge at a trial doesn't amount to more than a moderator at a religious conference."

The Chief Justice was striking at the insistence with which state legislatures have allocated to themselves the power of making rules for the direction and guidance of the courts in procedural matters. The consensus of opinion among lawyers and experienced judges has long been that rules promulgated by the courts result in the more prompt dispatch of judicial business and in more efficient methods of procedure. The practicability of such action is easily demonstrable; and the facility with which such rules may be modified by the courts in constant session to conform to discovered needs is highly preferable to dependence upon a legislature meeting at infrequent sessions and composed largely of laymen who have had no court contacts or experiences.

In 1934, the courts were facing issues still familiar today.

During his service as Chief Justice, Judge Taft succeeded in convincing the Congress that the judges of the federal courts were better qualified to formulate rules of procedure than the lawmaking branch of the national government. He secured from the lawmakers a delegation of power to the Supreme Court of the United States to formulate rules, under which the federal courts have been able to simplify procedure and to expedite the transaction of judicial business.

* Chief Justice of California, 1926–40. The article is excerpted from the January 1934 issue of *California Monthly.*

Creating the Judicial Council

Court practice in California has, until a very recent period, been governed largely by rigid statutes. Thirty years ago, the old California Bar Association inaugurated a study of the question of changing the Practice Act so that purely procedural matters might be prescribed by rules of court rather than by legislative enactments. Nothing of value was accomplished, beyond the occasional passage *by the legislature* of a *law,* frequently at the insistence of some member of that body to fit the exigencies of his private practice.

Finally, in 1925, the Commonwealth Club prepared, and caused the legislature to submit to the people for adoption, an amendment to the state constitution creating a Judicial Council, to be composed of the Chief Justice of the Supreme Court, as chairman, and 10 other justices and judges of the different courts, with the clerk of the Supreme Court as secretary. The proposed amendment as drawn by the club provided that the Judicial Council should survey the condition of business in the several courts of the state, with a view to simplifying and improving the administration of justice, and should "adopt or amend rules of practice and procedure for the several courts."

But the lawmakers were not ready to relinquish the opportunity to direct and control action by the courts. On the day of the final vote of approval by the legislature, there was added the provision that such rules should not be inconsistent with laws then in force or that might thereafter be adopted by the legislature.

With this provision in it, the amendment was adopted by a very large vote of the people at the election in November 1926, and the ultimate power to make rules of procedure for the courts remains where it has reposed since California became a state. There are statutes on the books enacted when California was a sparsely settled state and travel was difficult which still apply to the courts in the great centers of population.

However, the constitutional amendment provides that the Judicial Council shall report to the Governor and the Legislature at each regular session, and make such recommendations as it may deem proper. Consequently, and notwithstanding the power the Legislature still has to control or restrict court procedure, the creation of the Judicial Council has had a helpful effect. The recommendations of the council, created by the fiat of the people expressed in the constitution, and composed of experienced members of the courts of the state, have, to a great extent, been favorably received by the Legislature and expressed in legislative enactments. Many rules modifying procedure and others establishing new methods of court procedure have been adopted by the council, with beneficial results. Much is yet to be accomplished, but a substantial beginning has been made. An interesting sidelight on the situation is the fact that some of the greatest obstacles the council has met in the Legislature are those interposed by legislators who are members of the legal profession, thus lending support to the contention often made that the legal profession is the most conservative of callings.

Chief Justice William H. Waste

Under the power conferred by the constitution, as the judicial business of the state increased and as demands on the administration of justice enlarged, the situation was met by the creation of new judgeships by the Legislature and the filling of the places so created by appointment by the Governor. Notwithstanding the increase in the manpower of the courts, with a resulting increase in the cost of the judicial department of the state and its local subdivisions, the courts have practically always been behind in their work, and the time consumed in disposing of litigation has called forth frequent utterance of the trite declaration that "justice delayed is justice denied." The cause has been a natural one — the tremendous growth of the state's

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population, and industrial development resulting in increased litigation.

The Judicial Council plan seeks to remedy this situation without the constant creation of new courts and additional judgeships. The Chief Justice, its chairman, is vested with wide administrative and executive powers over the entire judicial department of the state. It is made his duty to seek to expedite the judicial business of the state and, so far as is possible, to equalize the work of the judges. For that purpose, he may assign judges of those courts in the smaller communities having little litigation to the courts in the populous centers where the court calendars are congested, or if the judges are disqualified or for any reason unable to act. In case a vacancy occurs in a court, the chairman of the council may, by assigning to such court a judge or justice of another court to sit *pro tem,* care for the work of that court until the vacancy is filled by appointment by the governor or election by the people. When the calendars of any of the courts become congested, or the work of a court is falling behind, the Chief Justice may, in like manner, assign judges of other courts to assist in relieving the situation.

How well this authority to mobilize the manpower of the courts, where needed, works in actual practice is best illustrated by the experience in Los Angeles. When the Judicial Council amendment became effective in 1926, the usual time within which a case could be brought to trial in the Superior Court in that county was from 18 months to two years from the time the cause was actually ready for trial. Many judges of the Superior Courts of other counties were sent to Los Angeles to sit in the trial court. Within a year and a half, the period between the time causes were ready for trial and the actual trial was reduced to about 90 days. It needs no comment to point out the great benefit to the bar and to those otherwise interested in litigation arising in Los Angeles County resulting from such an improved situation.

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The smaller localities are not left without adequate judicial service when the judges of their counties are sent to serve in the crowded centers. By a system of assignments worked out by the council, the judges of such smaller counties have annual assignments enabling them to sit in each of the counties adjoining their own. On summons from the clerk of the court thus temporarily without its regular judge, one of the nearby judges carries on the work of the court. In some instances, a competent local justice of the peace is under similar assignment for the purpose of handling the routine matters of the Superior Court, and frequently trying important cases. Thus, no locality in the state is left without adequate judicial service.

The power of the Chief Justice as chairman of the Judicial Council to assign judges and justices to courts other than their own, when their services are needed, extends to the appellate courts. Judges of the Superior Court serve as justices *pro tem* in the District Courts of Appeal, and justices of the latter courts serve under like assignment when their assistance is needed in the Supreme Court. Acting under this power of assigning justices and judges, that their services may be made available in other courts, the chairman of the council has made nearly 4,000 temporary transfers of Superior Court judges from trial court to trial court. More than 300 assignments have been made of judges of the Superior Court to the District Courts of Appeal, and half a hundred of justices of the latter court to the Supreme Court for varying periods. As a result, the administration of justice in all of the courts of California has been speeded, and court business has been materially advanced.

Another, and a most important, duty imposed by the constitution on the Judicial Council is that of surveying the condition of business in the several courts, with a view to simplifying and improving the administration of justice, and to submit to the court suggestions that may seem in the interest of uniformity of procedure and tend toward the expedition of court business. Until within a decade, rules of procedure in trial courts varied greatly in different counties. Under the provision just noted, the council submitted, and the trial courts of the state on its recommendation are functioning under, the rules of court procedure before referred to, having uniform operation in all material matters. Some of these changes, because not in accord with existing law, required legislative action, which was had. In other instances, efforts to make changes have met with stubborn and successful opposition by the lawmakers.

Another duty of the council is to exercise such functions "as may be provided by law." The Legislature, by appropriate statutes, has in a number of instances directed that certain procedural steps be taken in the courts of both civil and criminal jurisdiction in accordance with rules "to be provided by the Judicial Council." Therefore, although the Legislature still has concurrent power with the courts through the Judicial Council to make court rules, it seems to be a matter of reasonable expectation that a general and harmonious course of action by the two departments of the state government will eventually

SUPREME COURT OF CALIFORNIA, 1927–32

Chief Justice William H. Waste (CENTER) *and* (LEFT TO RIGHT) *Associate Justices John W. Preston, John W. Shenk, Emmet Seawell, John E. Richards, Jesse W. Curtis, and William H. Langdon*

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lead to such power being vested in the courts, where it logically belongs.

The California Judicial Council plan was incorporated in and made a part of article VI of the constitution relating to the judicial department of the state. The section providing for the council is found immediately after the enumeration of the different courts. The opening sentence is: "There shall be a Judicial Council." Then follow the various provisions fixing its membership and prescribing its powers and duties. Therein lies its strength. The Legislature cannot abolish the council without the vote of the people of the state, although it may, and on one occasion has, seriously crippled its activities by refusing to appropriate sufficient funds to enable it to properly carry on its work.

The consideration by the council of the problems relating to the administration of justice, and its activities in endeavoring to afford a solution of these questions, have so appealed to the people and to the press of the state that it is very doubtful if any effort to abolish it can succeed. It is more probable that additional power and authority will be conferred on it. Some of the problems to be studied as the basis for recommendations looking to improvement in the judicial system are almost as old as the life of orderly procedure in courts of justice. No doubt, the results of the study of some of them must be submitted directly to the people for consideration and approval. Indifference and antagonism (for some exists) of members of the legal profession, and even of some judges, toward the council's effort to place California in the forefront in the matter of the administration of justice must be overcome. If the people are sufficiently interested in doing that, the prospect for the future is bright.

Until the creation of the Judicial Council, the form of the organization and the jurisdiction of the so-called inferior courts, such as the Justice's Court, were substantially the same as in 1850, when they began to function. By appropriate legislation, initiated by the council, these courts have been reorganized. Their civil jurisdiction in the more largely populated townships has been increased. In a number of the cities they have been merged in, and replaced by, the newly created Municipal Courts, which are courts of record having still wider jurisdiction. In each case the courts possess the substantial features of, and the practice and procedure followed are practically the same as in,

the Superior Courts. The result of these changes has been to greatly decrease the volume of civil litigation filed in the Superior Courts.

Cleaning Up the Legal Profession

Within a year after the creation of the Judicial Council, another activity came into existence which has had a decided bearing on the practice of law in California, and which has indirectly benefited the courts. Culminating more than a decade of untiring effort by the old voluntary organization known as the California Bar Association, there was organized the State Bar of California. It was created by the Legislature as a public corporation, with power to provide for its own organization and government, and was given authority to regulate the practice of law and to provide penalties for misconduct of its members, who are those members of the legal profession entitled to practice law in California. No one not an active member of the State Bar is permitted to practice law in this state.

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Following its complete organization in 1927, its board of governors devoted itself to a "cleaning up" of the legal profession in California. About the time the State Bar was created, there was a "hue and cry" being raised all over the land about the "inefficiency" of the legal profession, its "rottenness," its "crookedness," and its "venality." Warnings appeared from many sources that if the profession "did not clean its own house, the people would do it." The threat did not seem without foundation and, disagreeable as the task was, the State Bar took up the duty and has consistently and bravely carried on.

One hundred and twenty cases have reached the Supreme Court, after careful consideration and hearing by the Bar, with recommendations that members of the bar be disciplined. As a result, 34 attorneys have been disbarred from practice, 71 have been suspended for varying periods, and several publicly reprimanded. Further purging of the profession of undesirables through these disciplinary activities has been most wholesome, and the work is not complete. With the approval of the Supreme Court, the State Bar governors have formulated and are enforcing rules of professional conduct for all members of the bar in this state. These rules rest upon the highest ideals of the legal profession, and follow closely approved rules laid down by the American Bar Association and by the bars of other American jurisdictions.

Another of the general powers conferred on the State Bar by the act creating it is that of aiding "in the advance of the science of jurisprudence and in the improvement of the administration of justice." Local committees and sections of the members throughout the state engage in studying measures which have been, or are about to be, submitted to the people or to the Legislature. Well advised action of the Bar at its annual meetings may determine the disposition of such proposed legislation.

A matter of vital concern to students and others preparing to enter the legal profession, and one having a very material connection with the administration of justice, is the power conferred on, and courageously assumed by, the State Bar to determine the qualifications for admission to practice law. An important duty is owed the public, that of seeing that unprepared and unworthy persons do not enter the profession. A discussion of this phase of the work of the State Bar since its creation merits a separate article in order to do it justice. It cannot be indulged in here.

The result of the constructive work that has been directed toward the betterment of the legal profession and the improvement of the courts during the past 10 years is reflected in a like distinct improvement in the administration of justice in the state. California is a state of vast areas and great distances. When it was formed, travel was hard and communication uncertain. Many of the laws, when enacted, and rules of court procedure as laid down were adequate for the times and conditions. The state's population has increased tremendously. Its commercial and industrial pursuits have multiplied. Rapid transportation and methods of quick communication now exist. Every form of business in the state now functions under improved and up-to-date forms of organization and along efficient lines of operation. Other departments of the state are highly organized and function according to approved business methods.

Forward March

The judicial branch of the state government, by far the most important in many of its relations to the people, has been slow to move. Its conservative antipathy to changes and innovations has held it from a progressive forward movement. The people of the state, by a great vote of confidence in adopting the Judicial Council plan, and their representatives, the legislators, by fine experimental legislation creating the incorporated State Bar of California, have challenged the courts and the legal profession to a "forward march," with great opportunities ahead. The most encouraging feature of the progressive movement already under way will be the confidence and intelligent support of the educated men and women of the state. ✯