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# THE REORGANIZATION OF THE LOUISIANA JUDICIAL SYSTEM

*John B. Fournet\**

MANY changes have been made in the Louisiana judicial system since I became Associate Justice of the supreme court in 1935, but it seems a little out of place for me to spend much time reminiscing about them. There is still much work to be done, and I am altogether too busy for nostalgia. Nevertheless, as I pause to recall the reforms which have already been made, I find my dedication to the progress of judicial administration in Louisiana resharpened. Perhaps the story of what has already been accomplished will help kindle enthusiasm elsewhere.

## I. THE SITUATION IN 1935

Prior to my election to the supreme court, I served the state in the Legislature from 1928 to 1932, when I was Speaker of the House, and as Lieutenant Governor from 1932 to 1935. The practice of law and the political forum were my principal interests, but when I assumed the duties of Associate Justice I realized that a significant contribution to the state could be made by improving the structure of the judiciary.

The docketing system of the supreme court provoked my immediate concern. I can well remember how, as a practicing attorney, I had waited in New Orleans to argue a case set near the end of a docket which the supreme court had no hope of clearing. It seems ridiculous today to imagine that the supreme court could actually have docketed so many cases that lawyers waited days to argue, yet such was the case. Upon becoming an Associate Justice, I insisted that the court docket no more appeals for argument on any one day than could be heard and that the time allotted for argument be kept within reasonable bounds. I realized, of course, that the business of the court could not be expedited as long as continuances were granted for little or no reason, and, therefore, I proposed that they be allowed only for the most valid and compelling causes. This policy was stringently enforced, and it is rare today that the supreme court even receives a motion seeking a continuance.

Younger members of the Louisiana Bar will have difficulty in believing that in those days the justices of the state supreme court

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did not even have research assistants. Realizing that no court of last resort could hope to improve and stabilize the state's jurisprudence without such a staff, I was able to persuade the Legislature and Governor in 1938 to provide an appropriation for law clerks for the court.

## II. THE JUDICIAL COUNCIL

These reforms alleviated the most pressing needs in the supreme court at that time, and I then concentrated upon a consideration of the entire judicial structure. It did not take long to realize that there was a tremendous variation in docketing procedures among the district courts (Louisiana's trial court of general jurisdiction). Such a situation was inevitable, of course, since at the time there was no organization concerned with the uniform and expeditious handling of judicial business. Human nature being what it is, everyone tends to think his way of doing things is best, especially when he has no opportunity to compare it with what others are doing.

Reforms were needed, and at first I thought they might be accomplished quickly, provided a constitutional convention were called. But the possibility of a convention lessened each year, and I finally began steps to form a state-wide council to undertake the reforms piecemeal.

As far back as 1916 a system of district judicial councils under a supreme council had been suggested to the state bar association by its committee on reform of legislative and judicial procedure. In the following years similar proposals were often discussed, but in 1934 the matter seemed to be dead, since a committee formally reported that there was not enough interest on the part of bar membership to make such a proposal effective. Interest was revived, however, by the establishment in 1946 of a section on judicial administration within the bar association. Prior to its second meeting, all members of the judiciary of Louisiana were invited to join, and subsequently, materials were presented on the operation of judicial councils elsewhere in the United States. The section approved in principle the formation of such a council.

In 1948 I became chairman of the section on judicial administration, and that same year the bar association requested the supreme court to establish a judicial council by rule of court. The then Chief Justice did not support the idea and it failed. The following year, however, upon becoming Chief Justice, I hastened to put the recommendation of the bar association into effect. On May 3, 1950, the Judicial Council of the Supreme Court of Louisiana was created by

Court Rule XXII; the Council was composed of twenty-five members, including representatives from the supreme court, intermediate courts of appeal, district courts, the bar, and the Legislature.<sup>1</sup> (Since then the changes which the Council has pioneered in the judicial structure have been reflected in the Council membership, and there are now thirty-five members, including representatives from the city courts.)

### III. THE WORK BEGINS

At first the work of the Council proceeded slowly, since an appropriation for expenses was refused by the Governor at the 1950 and 1952 legislative sessions. Then in the spring of 1954, the foreman of the Orleans Parish grand jury placed before me a report disclosing that persons charged with crimes in Orleans Parish were being held in jail from two to four years because of a backlog of 2,500 cases in that court. The foreman and some of his fellow jurors sought my advice as to the best way of correcting this intolerable situation. Mindful of the fact that public disclosure of this sort of thing often brings discredit to judicial institutions and seldom effects little reform, I persuaded these men to direct their efforts toward procuring an appropriation from the Governor which would enable the Judicial Council to clear up this situation and similar state-wide conditions. The appropriation was forthcoming, and a full-time judicial administrator for the Council was appointed in July of that year. The first concern of the Council was the condition of the district court dockets, many of which needed streamlining. Within a year numerous backlogs of pending cases were cleared away, including the backlog of cases in Orleans Criminal District Court.

### IV. THE APPELLATE REVISION

At that time it became apparent that some revision in the appellate structure of the state was necessary. Section 10 of article 7 of the Louisiana Constitution provided that most civil appeals where the amount of dispute exceeded 2,000 dollars went directly to the supreme court, which also handled all criminal appeals. In terms of numbers this meant that about one-third of the 900 appeals each

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<sup>1</sup>The Louisiana Constitution gives the supreme court the power and authority to require all inferior courts to make such reports of the nature, character, amount and condition of the work and business before them as the court by rule may prescribe, and to direct such investigation into the business and affairs of such courts as it may deem proper, and to that end to require the services of the Attorney General, his assistants, or such other officers as may be found necessary. La. Const. art. VII, § 12.

year in Louisiana went to the supreme court directly, and qualitatively it meant that they were also the more difficult cases. In addition to this case load, the supreme court was required each year to consider from 250 to 300 applications for writs to lower courts. The result was that the supreme court's backlog could never be eliminated, since cases continued to mount up. Nearly half of these cases waited over a year for decision and many waited several years. Consequently, the court was forced to devote only a minimum of time to its decisions in an effort to keep from slipping further behind.

One method of alleviating the situation was to transfer appellate jurisdiction for most of the cases to the intermediate courts of appeal, and this was the plan finally adopted by the Judicial Council. The proposed change would leave the supreme court largely free to consider the cases of more far-reaching consequence through the exercise of its supervisory jurisdiction to the lower courts. In order to enable the intermediate appellate courts to handle effectively the increased case load, their number would be increased from three to four, and ten additional judgeships would be added. After considerable work had been done to educate the bench and bar to the desirability of this proposal, the Council presented it to the 1958 Legislature, which approved the constitutional amendment necessary so to alter the appellate structure. In the November elections, the amendments were ratified by the people.

#### V. STATISTICS CHECK THE RESULTS

The new appellate structure went into operation on July 1, 1960, and the judicial administrator's office immediately began a statistical study of its effectiveness. On June 30, 1962, after two complete fiscal years under the new structure, the statistics showed that the plan was achieving the desired results. The simplified and inexpensive review afforded by the new system had resulted in some thirty-three per cent more appeals and about eighty-five per cent more applications for writs. Despite this increase in judicial business, there had been significant decreases in appellate delay. Under the old system nearly half the cases in the supreme court waited over a year before a decision on them could be rendered. During fiscal 1962, however, most opinions were rendered in less than six months. In the intermediate courts of appeal where no backlog was carried over from the old system, median delay from filing to decision had dropped to less than four months. The benefits of the new appellate structure cannot be disregarded: the supreme court and courts of appeal are

now handling seventy-five per cent more cases than they did prior to the revision, yet the litigants are getting their decisions much faster.

#### VI. JUDICIAL ADMINISTRATION IN LOUISIANA

Although the primary duty of any court system is just and equitable determination of causes, it is imperative that judgment be rendered promptly and efficiently. All too often unnecessary delay in the rendering of decisions results in a decision of little value to the parties concerned. So important is this consideration that much of the day-to-day work which the Council performs is concerned with promoting the efficient administration of justice.

The Council regularly collects data on filings and dispositions in the appellate and district courts, and these are used in recommending to the supreme court any action necessary to relieve temporary docket congestion wherever it may occur. In this manner overloads caused by death or retirement are not allowed to accumulate. Good use is made by the supreme court of this power to transfer district judges temporarily, as evidenced by the fact that thirty-eight such transfers were made during the last year.

The information gathered by the Council is also valuable in locating conditions which require extraordinary measures. For example, last year it was discovered that the backlog of cases arising in the Fourth Circuit Court of Appeal as a result of the appellate revision could not as a practical matter be eliminated during the regular court term, despite the extraordinary efforts of the judges of that court. The Council recommended a special program, which brought together twenty-four district and six court of appeal judges from elsewhere in the state to New Orleans, the domicile of the Fourth Circuit Court of Appeal, to hear arguments on nearly 300 cases during July of 1962. These special panels completely eliminated the temporary backlog.

#### VII. THE CREATION OF ADDITIONAL JUDGESHIPS

Prior to the creation of the Judicial Council, additional judgeships in the state were created by the Legislature more to accommodate local political wishes than judicial needs. In order to obviate this possibility where additional judgeships for the new intermediate courts of appeal were concerned, I insisted that the amendment to article 7, section 21 of the constitution contain a provision that increases in the number of judges could be made by the Legislature only upon the recommendation of the Judicial Council. Such an

occasion arose prior to the 1962 legislative session, when the Fourth Circuit Court of Appeal petitioned the Council to recommend an additional judgeship. A comparison of the cases filed in all four courts of appeal for two years did show that current filings in the Fourth Circuit would require additional manpower. Accordingly, the Council recommended an additional judgeship, which was approved by the Legislature.

It is desirable, in fact, that increases in the number of judgeships at all levels in the judiciary be subject to Council approval, since only the Council possesses the statistical data necessary to evaluate the need for additional judicial manpower. Often a court seems to be falling behind in its work, and immediately the cry is raised for an additional judgeship. An examination of the situation usually reveals that a revision in the administration of the court's business through a change in docketing procedure is sufficient to alleviate the congested condition. Only the amount of judicial business actually being presented to each court should determine the number of judges necessary to do the work.

#### VIII. THE ANNUAL JOINT MEETING

The sound administrative measures being pioneered by the Judicial Council are indeed gratifying. However, these measures would be ineffective were it not for the extraordinary unity of the Louisiana judiciary that has come about as a result of Council activities during the last decade. The court of appeal, district, and city judges all have active associations which promote the needs proper to their position in the judicial picture; furthermore, liaison with the Council is maintained through the judicial administrator's office.

A most significant institution for promoting unity has been the Annual Joint Meeting of the Judiciary and the Judicial Council held in connection with the opening of the supreme court in New Orleans each year. Eight of these annual meetings have been held, and the forum created by the entire judiciary has proved invaluable in promoting the progress of judicial administration throughout the state. Numerous minor changes in the judicial structure have been proposed by judges at the joint meeting, referred to appropriate committees, and effectively carried out. The joint meeting also furnishes all judges an excellent opportunity to exchange ideas concerning different techniques, and the result has been a gradual tendency toward the uniformity of efficient court procedures throughout the state. Of particular efficacy along these lines is the seminar technique,

which was utilized for the first time this past October in cooperation with the American Bar Association's Committee for the Effective Administration of Justice.

#### IX. THE FUTURE

As I sit here in the Supreme Court Building, busy with the administrative affairs of my office, considering the problems in the trial court structure of Louisiana which still require solution, it seems almost too early to reflect on what has already been accomplished. Nevertheless, much has been done. The Supreme Court Building itself is dramatic evidence of the change which has been made in the judicial system of Louisiana. The old Civil Courts Building in the French Quarter, where all the state courts in the city were once housed—rambling, ancient, monolithic, and tending toward inefficiency—was a fitting symbol of the old order. The new Supreme Court Building here in the Civic Center, of the most modern and advanced design, became, upon its completion in 1958, a fitting symbol of the new.



## The United States and Mexico— Sources of Conflict

Within the past few years, several major points of conflict between the United States and Mexico have come to the fore. Among the sources of irritation are those concerning the Chamizal Zone, the Colorado River saline waters, the rights of American shrimp fishermen in the “territorial” waters of Mexico, and the rights of foreign oil-prospectors in Mexican off-shore waters. In spite of the usually tranquil, mutually cooperative relationship between the two countries, the problems mentioned have aroused tempers on both sides of the border and have thus far proved irreconcilable.

At a 1962 regional meeting of the American Society of International Law, speakers from the United States and Mexico were invited to air their respective sides of the controversies. Presented below are two of the papers delivered at that meeting. The first, by Mr. Moore of El Paso, deals solely with the American side of the Chamizal Zone dispute. The second, by Dean Sepulveda of the University of Mexico School of Law, is a position paper representing the feelings of a prominent member of the Mexican Bar on the four disputes mentioned.