

St. John's Law Review

Volume 10
Number 1 *Volume 10, December 1935, Number*
1

Article 1

May 2014

Civil Judicial Statistics in New York

Leonard S. Saxe

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

Saxe, Leonard S. (1935) "Civil Judicial Statistics in New York," *St. John's Law Review*: Vol. 10 : No. 1 ,
Article 1.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol10/iss1/1>

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

ST. JOHN'S LAW REVIEW

VOLUME X

DECEMBER, 1935

NUMBER 1

CIVIL JUDICIAL STATISTICS IN NEW YORK

THE statute creating the Judicial Council of the State of New York in 1934 made effective for the first time the eight-year-old constitutional requirement that civil judicial statistics be collected, compiled, and published.¹ It marked the culmination of a half-century of effort toward that end.²

¹ CONSTITUTION STATE OF NEW YORK, art. VI, §22 so far as relevant reads as follows: "The Legislature shall provide * * * for the collection, compilation and publication annually of the civil and criminal judicial statistics of the State. * * *"

² Laws of 1934, c. 128; J. L., art. 2A, §§40-48, so far as it pertains to this subject, reads as follows:

"§45. Powers and duties. The Council shall have the powers and shall be charged with the following duties:

"(a) To make a continuous survey and study of the organization, jurisdiction, procedure, practice, rules and methods of administration and operation of each and all the courts of the state, including both courts of record and courts not of record, the volume and condition of business in said courts, the work accomplished and the results obtained.

"(b) To collect, compile, analyze and publish the judicial statistics of the state in compliance with article six, section twenty-two of the constitution. * * *

"(f) To adopt and from time to time amend and promulgate with the force and effect of law rules and regulations not inconsistent with any statute with respect to the manner of keeping records of the business of any court.

"§46. Reports to council. The clerk of each court of the state and each judge or justice of a court not of record which has no clerk and each official referee, and the district attorney of each county shall make to the council periodically or from time to time as the council shall prescribe, such reports on such matters and in such detail and form as the council directs, and a failure to observe a requirement of the council shall be deemed a neglect of duty constituting grounds for removal from office.

"§48. Reports of council to legislature. The council shall on or before January fifteenth each year make a report to the legislature of

HISTORY AND DEVELOPMENT.

France pioneered in the field of civil judicial statistics under Napoleon and in 1827 began their regular annual publication. Other countries emulated the French model.³ Today civil judicial statistics systems are maintained in England,⁴ Scotland,⁵ France,⁶ Belgium,⁷ Italy,⁸ and other European countries.

In the United States, with the creation of the Department of Justice in 1870, regular statistics of federal litigation on a somewhat restricted scale were rendered available in the annual Reports of the Attorney-General of the United States.⁹ More useful data from an administrative point of view have been supplied as a result of the creation in 1922 of the Federal Judicial Conference.¹⁰

Civil judicial statistics for the judicial systems of the individual states, however, were not affected by the federal provisions. Thus fifteen years after the inauguration of federal reports by the Attorney-General of the United States, a movement to get the facts and data of our state courts' work was begun in the American Bar Association, then eight years old, under the greatest of New York and American law reformers, David Dudley Field.¹¹

The masterly report of a special committee headed by Field, stated as one of fourteen recommendations designed

its proceedings of the work of the various courts of the state during the past judicial year, the conditions of business therein, and any recommendations which require action by the legislature to improve the administration of justice. It may during the legislative session make such further and supplemental reports as it may deem proper. The judicial year is defined as the year beginning July first, and ending June thirtieth of the succeeding year."

³ See Jaffin, *Prologue to Nomostatistics* (1935) 35 COL. L. REV. 1, 19, 20, and notes 37 to 40.

⁴ Civil Judicial Statistics of England and Wales, London, 1857, to date.

⁵ Civil Judicial Statistics of Scotland, Edinburgh.

⁶ *Compte Generale de l'Administration de la Justice Civile et Commerciale*, Paris.

⁷ *Statistique Judiciaire de la Belgique, Statistique Civile et Commerciale*, Bruxelles.

⁸ *Statistica Giudiziaria Civile e Commerciale*, Torino.

⁹ See 16 STAT. 164 (1870), and 17 STAT. 578 (1873), 5 U. S. C. A. 333 (1926).

¹⁰ See 42 STAT. 838 (1922), 28 U. S. C. A. 218 (1926).

¹¹ 8 A. B. A. REP. (1885) 364; and see 9 A. B. A. REP. (1886) 326.

to decrease delay and uncertainty in judicial administration, "Statistics of the litigation in the courts of the United States and of each state, should be collected and published yearly, that the people may know what business has been done and what is waiting to be done." The Association adopted this recommendation without debate.¹²

Field's committee had reported on the difficulty in obtaining statistics, "sufficiently comprehensive and at the same time sufficiently minute to form the basis of an exact report." "It is to be regretted," commented the committee, "that it is not made the duty of some public officer in every state to furnish the statistics of litigation. The laws provide for statistics of many branches of business and many transactions of government; and it is remarkable that provision has not been made for the operations of that department of the government which most affects the security and well-being of the people."

In New York the recommendation of the American Bar Association was adverted to, *en passant*, in the New York State Bar Association,¹³ but that body, as presently appears, took no serious interest in this foundational subject until 1912. In the meantime, New York underwent the periodic legislative commission method of reviewing what in perspective seems to have been a chronic collapse of the state judicial system. In 1904 the legislative body investigating court conditions in the city of New York and known as the Commission on the Laws' Delays, pointed out that "if adequate judicial statistics such as those kept and published in England were maintained in New York State, a large part of the labors devolving upon such a commission as this would be unnecessary."¹⁴

The specific recommendation was that statistics be kept upon the plan of the English judicial statistics requiring court clerks to make reports to the Secretary of State for annual tabulation and publication in order to render the facts available to the public and to place them entirely beyond dispute.

¹² 8 A. B. A. REP. (1885) 79.

¹³ 9 N. Y. S. B. A. R. (1886) 95.

¹⁴ See N. Y. SEN. DOC. (1904) No. 21, pp. 7 and 70.

The Commission also made a specific recommendation for classification of cases placed upon the court calendars by requiring that the type of action be indorsed on the "note of issue."¹⁵

Counsel to the Commission, J. Noble Hayes, was also active in the work of the New York County Lawyers' Association, and under his sponsorship that Association drafted a bill on the subject of judicial statistics which passed the legislature in 1904 but failed to receive executive approval. The following year the bill was reintroduced but in view of the Governor's unfavorable action in 1904 it failed to pass the legislature.¹⁶

In 1912 a Committee of the New York State Bar Association chairmanned by Charles A. Boston, was formed to grapple with the subject as a preliminary to the coming constitutional convention.¹⁷ The Committee reported that the justices of the Supreme Court for the First Judicial District having been, in their opinion, maligned by a report based upon incomplete and inaccurate statistics furnished by the county clerk, had voluntarily with the assistance of an expert accountant and an attorney prepared forms for obtaining judicial statistics of the work of the Supreme Court in their Department, *i. e.*, for New York and Bronx Counties.¹⁸ This was the genesis of the very complete, accurate and useful "Judicial Statistics of the Work of The Supreme Court of the State of New York in the First Judicial Department," which has been printed annually since 1913.

The State Bar Association's Committee further reported that except for the Supreme Court in the First Department no statistical data were obtainable. As a result a bill providing for the collection of judicial statistics in great detail was introduced in the legislature of 1914. It failed of passage for the given reasons that the Commissioner of Efficiency and Economy had been designated to collect the data and also because of the expense which it was feared would be entailed, but for the actual reason that the county clerks

¹⁵ Laws of 1904, c. 474.

¹⁶ See 36 N. Y. S. B. A. R. (1913) 71.

¹⁷ 35 N. Y. S. B. A. R. (1912) 347.

¹⁸ 36 N. Y. S. B. A. R. (1913) 66.

feared that, under the provisions of the particular bill in question, far too great a burden would be placed upon them.¹⁹ The following year, although the bill was amended to provide that the Secretary of State be charged with the duties of collection, it again failed of passage.

Meanwhile, the Constitutional Convention of 1915 proposed a constitutional amendment on the subject and the New York State Bar Association Committee expressed its belief that if this were adopted by the people, legislative action would be required. But the proposed 1915 Constitution failed of adoption.²⁰

The 1921 Convention formed for the sole purpose of preparing a revision of the Judiciary Article of the State Constitution, recommended a section on civil and criminal judicial statistics which was ratified by the people in 1925 and became effective January 1, 1926.²¹

Although legislative provision was made for the collection of criminal judicial statistics in 1928²² no such attempt was made to effectuate the constitutional mandate regarding civil judicial statistics.

Thus the Commission on the Administration of Justice which began to function in 1931 found itself just as handicapped as the Commission on the Laws' Delay of 1904 by the absence of statistical data.

The Commission on the Administration of Justice, using the questionnaire method for a preliminary survey as to the Supreme Court, found that only 15 out of 61 counties of the state where the Supreme Court held sessions kept any sort of summary of the business transacted. It further found that almost none of the inferior courts in any of the 59 cities other than New York City kept summary records.²³

This lack of information proved such a serious handicap that it was responsible for the Commission's recommenda-

¹⁹ *Infra* note 43.

²⁰ See generally on the activity concerning this subject, 37 N. Y. S. B. A. R. (1914) 143-173; 38 N. Y. S. B. A. R. (1915) 134-136; 39 N. Y. S. B. A. R. (1916) 42 and 43; 40 N. Y. S. B. A. R. (1917) 56-64.

²¹ *Supra* note 1.

²² Laws of 1928, c. 875, amending CODE OF CRIMINAL PROCEDURE §§947-949.

²³ See for the Commission's work on judicial statistics, REPORT OF THE COMMISSION ON THE ADMINISTRATION OF JUSTICE, N. Y. LEG. DOC. (1934) No. 50, pp. 61, 71, 367, 495 *et passim*.

tion that a Judicial Council be created, one function of which should be to establish a proper system of civil judicial statistics throughout the entire state.

In New York, at the time the subject was entrusted to the Judicial Council, besides the annual Supreme Court figures published in the First Department, a system of monthly reports of business transacted in the Supreme Court was also in force in the Second Department. A detailed annual report had also been set up for the year 1934, in the Fourth Department. This was superseded by the Council's system to avoid duplication. Some other courts were also, on their own volition, preparing reports which were occasionally made public. These, too, have been replaced, in many instances, by the Council's reports.

The condition of civil judicial statistics in other parts of this country had not materially changed since 1930 when Dean Charles E. Clark wrote: "In the main * * * we can say that the judicial councils have practically a clear field before them in developing a real science of judicial statistics in this country."²⁴

THE PRESENT SYSTEM.

When the Judicial Council of the State of New York was organized on July 2, 1934, it devoted its immediate efforts to the installation of a system of civil judicial statistics with permanent value.²⁵

The principal difficulty in this field heretofore has always been the collection of the figures.²⁶ This seemed to be

²⁴ Clark, *Present Status of Judicial Statistics* (1930) 14 J. AM. JUD. SOC. Interesting was the attempt, since discontinued, of a Law Review to work in this field. See (1931) 17 IOWA L. REV. 116, 280, 434, 555, and (1932) 18 IOWA L. REV. 105.

²⁵ For the system generally synopsized as of December 31, 1934, see FIRST REPORT OF THE JUDICIAL COUNCIL OF THE STATE OF NEW YORK, N. Y. LEG. DOC. (1935) No. 48, pp. 16-19.

²⁶ The statistical studies of the Commission on the Administration of Justice, *supra* note 23, the studies done by the Institute of Law, Johns Hopkins University, for the states of Ohio and Maryland, and A STUDY OF THE BUSINESS OF THE FEDERAL COURTS, 2 vols. (1934, The American Law Institute), all cost large sums to produce. Cf. also Moley, *The Collection of Criminal Statistics in the United States* (1928) 26 MICH. L. REV. 747, 753.

due chiefly to the fact that past data had been collected rather than a day-to-day collection of current data, and second, that case histories had been collected rather than mass statistics. The inordinate amount of work and the great expense entailed by these two methods seemed disproportionate to the results achieved.

It was therefore immediately decided that the Council would not attempt to collect any past data nor to collect data on the basis of individual case histories from beginning to end. Complete case histories in any event, under the present law, are available only in the Municipal Court of the City of New York where every paper is required to be filed.²⁷

Statistical systems in any field are justified only to the extent of their utility. Civil judicial statistics are no exception and the Council at once took the position that statistics for purely descriptive and tabular purposes were to be avoided. In other words, the statistics were not, as so often is the case, to prove an end in themselves, but were to be in such form as to be susceptible to analysis with the ultimate view of "validating inferences."

The first step, therefore, was to determine the purposes of the statistics to be gathered.²⁸ It was decided to limit the system generally, at least until it was thoroughly tested, to legal as distinguished from sociological purposes.

Aside from the power to deal with judicial statistics, the function of the Judicial Council is to develop and present recommendations to the legislature and rule-making bodies on (1) the organization and jurisdiction of the courts; (2) the administration of the courts; (3) practice, procedure and evidence. It was therefore chiefly to aid and assist in these fields in which its duties lie (evidence excepted) that the Council's statistical system was devised.

The Council has stated the matter as follows:

"The purpose of gathering statistical data is threefold; first, to obtain a clear picture of the business

²⁷ Cf. C. P. A. §100.

²⁸ Pound, *What Use Can Be Made of Judicial Statistics?* (1926) 12 ORE. L. REV. 89.

transacted in the courts from which to draw up a *quasi* balance sheet and profit and loss statement of business; second, to use this information as a basis on which to make recommendations for better and more intelligent administrative control of the courts; third, to use this information when considering proposed changes in practice and procedure.”²⁹

It was essential that the system designed to fulfill the above purposes be practical. Existing machinery had to be utilized to the fullest extent and yet not overloaded. It was decided to require monthly reports from all of the courts of civil jurisdiction but to confine the data generally to work done in the courtroom. There seemed to be no way of obtaining figures concerning chambers work and strictly clerical work outside of the courtrooms, without, in some cases, requiring new machinery; that is, more personnel.

With respect to work done in the courtroom the picture is complete except as to matters upon which decision has been reserved by the court, for example, the manner of disposition of non-jury trials and of motions for new trials. As to such after-court dispositions, the exigencies of practicality caused such information to be omitted.

To repeat, on the basis of past experience, the system adopted has eschewed case histories and retrospective data and has been confined chiefly to courtroom work done. This is collected in a few minutes daily by the clerks but is reported to the Council after totalling only once a month. Most courts have been reporting since January 1, 1935, but at the opening of the courts for the first fall terms of 1935 the following reports were being made to the Judicial Council:

- (1) The Court of Appeals; periodically as desired by the Council;
- (2) The Appellate Division of the Supreme Court in the four judicial departments; periodically as desired by the Council;

²⁹ FIRST REPORT OF THE JUDICIAL COUNCIL, *supra* note 25, p. 17.

- (3) The Appellate Terms of the Supreme Court; monthly; ³⁰
- (4) The Supreme Court; monthly; ³¹
- (5) Surrogates' Courts; annually; ³²
- (6) Surrogates' Courts; monthly; ³³
- (7) Official Referees; monthly; ³⁴
- (8) The County Courts; monthly; ³⁵
- (9) The Court of General Sessions of the County of New York; monthly; ³⁶
- (10) The Court of Claims; periodically as desired by the Council;
- (11) Inferior Courts in cities outside of New York City; monthly; ³⁷
- (12) The City Court of the City of New York; monthly; ³⁸
- (13) The Municipal Court of the City of New York; work done in the courtroom (including small claims) and work done in the clerk's office; monthly; ³⁹
- (14) District Attorneys, on perjury; annually. ⁴⁰

³⁰ Rule 2 of the Judicial Council; see FIRST REPORT OF THE JUDICIAL COUNCIL, *supra* note 25, pp. 28 and 29.

³¹ Rule 1 of the Judicial Council; see FIRST REPORT OF THE JUDICIAL COUNCIL, *supra* note 25, p. 28, and facsimile of the report to be made to the Judicial Council, herein reproduced.

³² Rule 6 of the Judicial Council; adopted June 20, 1935.

³³ Rule 7 of the Judicial Council; adopted June 20, 1935.

³⁴ Rule 3 of the Judicial Council; see FIRST REPORT OF THE JUDICIAL COUNCIL, *supra* note 25, pp. 28 and 30.

³⁵ Rule 1 as amended June 20, 1935.

³⁶ *Ibid*

³⁷ Rule 5 of the Judicial Council; see FIRST REPORT OF THE JUDICIAL COUNCIL, *supra* note 25, pp. 28 and 34.

³⁸ Rule 4 of the Judicial Council; see FIRST REPORT OF THE JUDICIAL COUNCIL, *supra* note 25, pp. 28 and 32.

³⁹ Rule 9 of the Judicial Council; adopted June 20, 1935.

⁴⁰ Rule 8 of the Judicial Council; adopted June 20, 1935.

The courtroom dispositions of criminal cases is also reported by those of the above courts having criminal jurisdiction.⁴¹

In short, precise information of all civil judicial work of the state is being obtained by the Judicial Council exclusive of that performed by justices of the peace outside of cities, and in addition information as to criminal judicial work is likewise being received. The statistical material gathered from the reports gives New York State for the first time in its history an accurate and full picture of the work done by its judicial machine.

All of these reports for the courts and officers of original jurisdiction except for the Court of Claims, the Surrogates' Courts, official referees, and district attorneys are fundamentally alike and the facsimile of the Supreme Court and County Courts Report reproduced on pages 12 and 13 will serve to illustrate all.

It will be observed that each numbered item on the form is placed in the logical order in which normal dispositions would occur in the ordinary course of courtroom practice. Thus, statisticians would refer to it as a "mortality" report. For the sake of clarity and to aid in analyzing court processes very few items are combined unless they form a definite procedural group, such as "settled or discontinued during trial" (item 12). On the reverse side of the report sheet, pages 14 and 15, instructions are printed explaining possible ambiguities and differentiating items. The monthly recapitulation provides a volume "profit and loss" statement according to three practical classifications: law jury, law non-jury, and equity, *i. e.*, the number of cases pending at the month's beginning, those added, those disposed of, those remaining at the end of the month and the relative increase or decrease over the beginning of the month. One sheet is filled out for each part of the court held and these, when pieced together, render available a complete record of the courtroom work of each judge in the state.

A cardinal aim of this form was to combine the maximum information with maximum simplicity. This was de-

⁴¹ Detailed criminal judicial statistics are required to be made to the Department of Correction, *supra* note 22.

sired not only to make the system practicable from the standpoint of the collecting clerks but also for the benefit of the judges, lawyers and laymen charged with making use of the data. No specialized statistical technique is needed in dealing with the system.⁴²

A great advantage of this type of statistical system is its elasticity. As items serve no useful purpose they will be dropped. In the same way, necessary items can be added.

A great advantage of the system is its low cost: Since the reports are being furnished by the court clerks, a statistical clerk to combine and correlate the figures suffices. The analysis and preparation for publication and use is, however, a matter of more than clerical importance. Field work is nominal; printing of forms and postage reasonable. On the whole, therefore, the total cost of operation is insignificant. This is all the more striking when compared with the cost of studies in the same field which are clearly not as comprehensive.

The New York State county clerks' organization, two decades ago, several times caused the defeat of certain bills in regard to the collection of statistics on the ground that too great particularity would require much extra work.⁴³ The Council, realizing the force of the objection, endeavored to construct a simple, uniform system of reporting only the most essential facts. The fact that not one clerk has failed to render his reports promptly, accurately and completely is ample proof that the system is practical and not onerous. It is difficult to acknowledge adequately the fine cooperation rendered by the court clerks throughout the state, especially in view of the fact that this type of reporting is a new departure and outside the ordinary experience of the clerks.

Three basic principles have been utilized—universality, uniformity and precise definition. Universality means that all of the courts of civil jurisdiction throughout the state are

(Continued on page 16)

⁴² To insure the workability of the system, tentative draft forms were submitted to justices and clerks, many of whose suggestions were incorporated in the forms as finally approved.

⁴³ See 40 N. Y. S. B. A. R. (1917) 56 *et seq.*

MONTHLY REPORT TO THE JUDICIAL COUNCIL OF THE STATE OF NEW YORK

(Law 1934, Chapter 128)

1.

Supreme Court County Hon. Justice Part Trial Term, From 193 to 193 to 193
County Court County Hon. Judge Part Special Term, From 193 to 193 to 193

To be sent to the Executive Secretary of the Judicial Council, 80 Centre St., New York, N. Y., by the 10th day following the month covered herein.

Table with columns for dates (1-31) and rows for various legal categories (1-25) such as Total causes on the day calendar, Settled, discontinued or dismissed on day calendar call, Marked off calendar, etc.

PA 511,205 (10-10-11)

[Reverse Side of Report Sheet]
**RULES OF THE JUDICIAL COUNCIL OF THE
STATE OF NEW YORK**

Rule 1. (Rule adopted December 15, 1934, as amended June 20, 1935). The Clerks of the Supreme Court and of each County Court in the state and of the Court of General Sessions of the County of New York shall file with the Judicial Council on or before the 10th day of each month a report of the business transacted by their respective courts during the previous month.

The report shall be made on the form prescribed and distributed by the Judicial Council, and shall be signed by the clerk rendering the report. The first report shall be due on or before February 10, 1935 covering the month of January, 1935.

The reports for the county courts located within the city of New York and for the Court of General Sessions of the county of New York for the period beginning January 1, 1935 and ending June 30, 1935 shall be due on or before September 30, 1935.

INSTRUCTIONS

A separate sheet shall be filled out for each part of the court in session according to the judge sitting in that part. For example, if a part of the court is called Trial Term, Part 3, and Judge X sits from the 1st to the 17th of the month, while Judge Y sits from the 17th to the 31st, Trial Term Part 3 will report for the month on two sheets, one covering the period in which Judge X sat and the other in which Judge Y sat.

Symbols to be used :

cc—cause continued

X—no session of court

If a cause is tried which comes from another county and therefore is not on the calendar, note that fact below under Remarks.

Item No. 1 (Dates). The dates which fall on a Saturday, Sunday or legal holiday should have marked over them, "Sat," "Sun" or "Hol" respectively. If the court does not sit on any weekday, such date shall be marked over with an "x." If illness is the cause of absence, the word "ill" should be written in.

Item No. 2 (Total causes on the day calendar). The answer to this item should include all causes brought before the court for the day whether jury, non-jury or equity causes and whether or not they are on a formal day calendar. A matter before the court which is in the midst of trial from the previous day should be noted separately in the top of the box for this item by the use of the "cc" symbol.

Item No. 4 (Marked off calendar). "Marked off calendar" means the cause has been stricken from the general calendar as distinguished from a cause which is merely marked over until the next term. This latter item is covered by item No. 5.

Item No. 5 (Adjournments granted or causes marked over to another term). The word adjournment refers only to causes adjourned over the day and not to some time later the same day.

Item No. 6 (Marked ready but not reached for trial). This item has been added so that an accurate balance may be shown of the disposition of the causes before the court each day. Causes which come under this heading and are carried from day to day until tried should be included in the answer to item No. 2, as well as under this item, for each succeeding day until tried.

Items No. 9, 10 and 11 (Judgments consented to or settled after calendar call but before trial. Settled or discontinued during trial. Dismissed or non-suit during trial). "Before trial" means before any witness has been sworn. Item No. 10 includes voluntary non-suit.

Items No. 10, 11 and 12. These items should not be included under item No. 13 unless proof has been completed and both sides have rested.

Item No. 13 (Jury causes tried [proof completed]). Includes causes withdrawn from the jury on motion after proof is completed. "Proof completed" means that both sides have rested.

Item No. 14 (Non-jury general causes tried [proof completed]). Includes causes where the jury is waived before or during trial. Includes all types of causes where witnesses are sworn and testify, such as condemnation proceedings.

Item No. 22 (Verdicts for defendant on counterclaims). This refers only to affirmative verdicts for the defendant. It does not include "set-offs."

Item No. 34 (Total contested motions heard or submitted). This item includes motions granted on default by the party opposing the motion.

Item No. 37 (Indictments dismissed by court). This includes dismissal on demurrer and dismissal on the merits when there is no actual trial.

Item No. 40 (Pleas of guilty before trial). Please note below, under Remarks, the number of cases in which a plea was taken to a lesser offense than that indicted for.

Item No. 49 (Number of witnesses sworn in all causes). This includes the number of witnesses in civil as well as criminal matters, but not those sworn in inquests under Item No. 27.

Those counties in which the whole calendar is called on the first day of the term should report the number of cases on the calendar and the markings thereof separately from the regular daily report for the court.

If a matter does not fall under any of the subjects listed please note the circumstances below.

REMARKS

.....
.....
.....
.....
.....
.....

rendering similar reports.⁴⁴ Through this universality of report, a complete continuing record of the business disposed of by the judicial system of the entire state will be made available for comparison and correlation. This element of completeness will be of great use in the future in analyzing trends and in making predictions which it is not possible to do on the basis of small samples nor without several years of comparable figures.

Universally reported figures, however, would be essentially worthless unless bound together by a fundamental uniformity. A uniform year, from July 1 to June 30, has been established for every court reporting. The reports are standardized, the intrinsic plan and definitions for all the different courts being the same. The framework of each report is (1) the amount of work entering the court, (2) the amount disposed of, (3) the manner of disposition, and (4) the amount left pending.

The only factor not as yet included is the uniform classification of cases. That, of course, is of importance. But as it was not thought practicable to start everything at once, classification of types of actions was left to be developed after the essentials of the statistical system were going smoothly. Meanwhile, a tentative uniform classification ^{44a}

⁴⁴ In the two or three instances where it is possible to get any desired information readily through the clerk from the court records as now maintained, such unnecessarily duplicating work has not been required (see list of court reports, *supra*).

^{44a} TENTATIVE CLASSIFICATION OF ACTIONS FOR USE IN
THE MUNICIPAL COURT OF THE CITY OF NEW YORK

*Item
Number*

(A) Of a Tortious Nature

Negligence

- 1.....Personal injuries
- 2.....Property damage
- 3.....Both
 - (a).....Relating to automobiles
 - (b).....Relating to buildings
 - (c).....Any other type of negligence

Fine, penalty or filiation bond

- 4.....By city
- 5.....By state
- 6.....By others

has been developed and is under consideration for use in the Municipal Court of the City of New York. Another, applicable to the jurisdiction of the City Court of the City of New York, is also being considered. After a practical test uniform classification will be extended to the County Courts and the Supreme Court.

The final foundation-stone of the system is precise and exact definition. This insures accuracy. But precise definition is peculiarly necessary in dealing with judicial functions where identity of terms often conceals substantial variations in what is described. For example, "trial," perhaps the most often used word in the vocabulary of judicial statistics, may have various meanings. In one court, it was considered a trial as soon as the trial fee was paid; in another

-
- 7.....Replevin or warrant of seizure
 - 8.....Conversion or loss of property
 - 9.....Escape from the jail liberties
 - 10.....Fraud and deceit
 - 11.....Personal injury or property damage not listed above

(B) Of a Commercial Nature

Breach of contract or agreement

- 12.....Goods sold and delivered
- 13.....Employment
- 14.....Warranty
- 15.....Account stated
- 16.....Money loaned
- 17.....Money had and received
- 18.....Guaranty and surety
- 19.....Check, draft, bill of exchange, trade acceptance
- 20.....Promissory note (negotiable or non-negotiable)
- 21.....Bond or undertaking, marshal's bond
- 22.....Premium on insurance
- 23.....Benefit under insurance
- 24.....All other breaches of contract or agreement

Work, Labor and Services (including incidental materials)

- 25.....Professional
- 26.....Commissions or fees
- 27.....Other or unspecified
- 28.....Wages

Rent

- 29.....Residential
- 30.....Commercial
- 31.....Foreclose lien on chattel
- 32.....Establish mechanic's lien on real property
- 33.....On a garnishee order
- 34.....On a judgment

when the jury had been sworn; in another when the first witness was sworn. The Judicial Council laid down the definition that an action was only to be considered tried when proof was completed.

Doubtless many specialized facts and special combinations of facts are not included in this system but it would be a tremendous task, out of all proportion to the value of the possible results, to attempt to include everything. Special problems must always be solved by field workers rather than the court clerks; nevertheless, the general system that has been set up facilitates such special research.

USES OF THE SYSTEM.

A few examples of the uses to which the figures have been and may be put as suggested by the first six months of the system's operation may prove interesting. Accordingly the uses in the fields heretofore mentioned are considered *seriatim*; namely, organization, jurisdiction, administration, practice and procedure. Of course, some of these topics overlap and tend to coalesce, particularly organization, jurisdiction and administration.

The figures are being analyzed and applied in the studies of the judicial system now being conducted by the Council.

With respect to jurisdiction of the courts in connection with proposals for reorganization, although statistical data cannot be fully effective until the uniform classification of cases on which the Council is working has been established, nevertheless even the present non-uniform classification found in the printed calendars and elsewhere is being utilized in conjunction with the Council's reports.

Small claims procedure was established in the Municipal Court of the City of New York in September, 1934, on the recommendation of the Commission on the Administration of Justice. It provides for the disposition of individual plaintiffs' (not corporations, partnerships or assignees) claims up to \$50 upon service by regular mail without formal pleadings or rules of evidence, without juries, with a minimum of appeals, and at a nominal expense.

In the year September 1, 1934, through August 31, 1935, 14,276 small claims were instituted and disposed of in that court of which 11,301 or 79% were filed by the claimant in person. Figures showing the complete mortality process are reported monthly to the Judicial Council upon its prescribed forms as part of the Municipal Court's regular reports referred to above.

At the same time that the efficacy of the small claims procedure now in effect is thus being observed in detail, the advisability of extending the procedure to the inferior courts in cities other than the city of New York is a problem in jurisdiction and procedure which the Judicial Council is considering. To ascertain the types of cases handled in these courts, their reports to the Council through September have included two items, one indicating the number of cases instituted involving \$1. to \$100.; the other, indicating the number over \$100. The overwhelming majority of actions (including, however, corporations, partnerships, and assignees as well as individuals) were under \$100., 37,935 as compared to 21,866 over \$100. The reports since October have been changed to furnish the line of demarcation at \$50.

The chief necessity for a sound system of civil judicial statistics is as an aid to the more efficient administration of the courts. The statistical system was especially adapted toward that end. It enables the administrative heads to put to use the full resources of the judicial forces, so far as constitutional limitations permit. The problem includes the *intra-court* and *inter-court* assignment of judges.

The determination of how to assign or transfer judges to the greatest advantage would not be possible without the "accounting" made monthly of the business of each court. For example, the Judicial Council published a complete analysis of the five divisions of the City Court of the City of New York for the six months, January through June, 1935.⁴⁵ Three tables were appended, each according to county and according to types of calendars; that is, general jury, general non-jury, commercial jury, and commercial non-jury. The tables indicated by months the amount of delay,

⁴⁵ See 94 N. Y. L. J. 463, Aug. 15, 1935.

the number of cases remaining pending on the calendars, and the profit and loss as measured by cases instituted and cases disposed of. The Council also obtained monthly statements of the number of days the judges sat and the work accomplished by each judge.

The six-month analysis made evident a decrease in the calendar congestion of the court. The number of cases on the calendars in that period decreased 38%, from 30,489 cases to 18,907 cases, and the aggregate delay decreased 35%, from 238 months to 155 months. The profit and loss statement showed the court easily able to cope with current litigation as now being instituted since 7,888 cases were instituted and 11,426 disposed of, a net gain of 3,538 cases. The Judicial Council's statistical system will render relatively simple the task of computing the number of judges or the number of "judge-days" needed to reduce the delay on the four congested calendars of the City Court to a reasonable figure.⁴⁶ Since there is delay in four divisions of the court there can be no question of the assignment of justices within the court except from the one division remaining. The problem here is to obtain the transfer of judges from other courts.

The data so far obtained have already proved useful in the more efficient assignment of justices of the Supreme Court on a state-wide basis. By combining the Council's figures as to the number of days each justice sat and the amount of work to be done in each district and county of the Court, it has been possible to determine accurately from which districts justices can be most efficiently transferred to aid overburdened courts. In the first, second and ninth districts of the Supreme Court, the justices during the six months covered by the reports worked, on the average, the full possible number of days. The courts there, nevertheless, are overburdened and there is great delay. On the other hand, there are districts with no delay where the justices sit from 64%

⁴⁶ As of June 30, 1935, the delay on the calendars was as follows:

<i>County</i>	<i>Calendar</i>	<i>Months' Delay</i>
New York	General Jury	31½
Bronx	General Jury	40½
Kings	General Jury	42½
Kings	General Non-Jury	25½

to 78% of the number of days which has been computed as the possible total after making a fair allowance for chambers work, travel, illness and other emergencies.

A recent transfer of justices outside of their own districts is worthy of note. For the six-months period under consideration, eight justices, exclusive of justices of the Appellate Division, sat a total of one hundred and seventy-two days outside of their own departments in the Ninth Judicial District. These transfers were largely instrumental in reducing the delay in Westchester County from thirty-six to sixteen months within a period of a year.

The Judicial Council is now proposing the extension of this principle of a mobile judicial force by means of a constitutional amendment providing for the temporary transfer of a judge of a court of record to any other court of record within or without his own department.⁴⁷ Such a procedure may easily be carried out with the definite information provided by the statistical system of the Judicial Council. Figures indicating the possibilities in such an amendment will doubtless be presented by the Council.

The usefulness of statistics in bringing into distinct outline practice and procedural defects and suggesting needed remedies is constantly demonstrated not only by many individual scholars in the field ⁴⁸ but also by the Judicial Council's figures.

In the Judicial Council's work, a case in point is the pending proposal for a constitutional amendment authorizing legislation to permit a five-sixths jury verdict in civil cases. As one phase of the subject it has been argued that the economic loss caused by the unanimous verdict requirement would be lessened by the five-sixths verdict. To shed

⁴⁷ For the full proposal see 94 N. Y. L. J. 881, Sept. 23, 1935.

⁴⁸ For some examples of yeoman work in this field besides those elsewhere referred to in this article see *STUDY OF CIVIL JUSTICE IN NEW YORK, A STUDY OF DAY CALENDARS* and other publications of the Institute of Law, Johns Hopkins University, Baltimore; also the studies on Connecticut figures listed in Clark and Shulman, *Jury Trial in Civil Cases* (1934) 43 YALE L. J. 867, 872, n. 9. See also *TENTATIVE REPORT OF THE COMMITTEE ON IMPROVEMENT OF SUPPLEMENTARY PROCEEDINGS* (Brooklyn Bar Association, 1932); *SOME ASPECTS OF APPEALS* (New York Law Society, 1934); FRANKFURTER AND LANDIS, *THE BUSINESS OF THE SUPREME COURT* (1927) especially with reference to appellate organization and jurisdiction.

statistical light upon this the Judicial Council published the actual figures ⁴⁹ for the six-months period from January 1, 1935 to June 30, 1935 as follows:

<i>Court</i>	<i>Number of Jury Trials</i>	<i>Number of Disagreements</i>	<i>Percentage of Disagreements</i>
Supreme Court (entire state)	3,031	263	8.6
County Courts (entire state)	455	18	3.9
Inferior courts in cities other than New York	370	34	9.
City Court of the City of New York	1,035	88	8.5
Total	4,891	403	

As explained in the letter accompanying their publication:

“The above figures will be found more accurate than those of the past because the Judicial Council has defined a jury trial as one in which the proof has been completed and the case has therefore gone to the jury, which definition applies uniformly to all the courts. The above figures do not contain directed verdicts. The foregoing explains why nearer 9 per cent of disagreements to the total number of cases that went to the jury appears in all but the County Courts rather than the 4 per cent figure arrived at by previous less precisely defined and uniformly applied statistics.”

Upon the basis of these figures, Mr. Archibald R. Watson, the Editor of the *New York Law Journal*, made an estimate of the possible saving to the taxpayers should a five-sixths jury verdict in civil cases be enacted. Should the proposal become law the Council's future figures will be the means for ascertaining whether these predictions are borne out.

⁴⁹ For the full publication see 94 N. Y. L. J. 1168, Oct. 8, 1935.

A recent study has indicated the small percentage of probate contests in New York County which are successful.⁵⁰ The Council's reports will indicate the number of such contests in the entire state that eventuate successfully, and if this number is small, it may tend to discourage such suits.

The use of statistics in connection with procedural improvements is excellently illustrated by reference to bills of particulars in the City Court of the City of New York. In September, 1934, the City Court by an amendment to its rules provided for typical bills of particulars requirements in negligence cases and shifted the burden from a motion to require the same, usually made by a defendant, to a motion by the plaintiff to show why these bills of particulars should not be given. The figures for the New York County Division for the six months January 1 to June 30, 1934, showed that, exclusive of supplementary proceedings motions, thirty per cent of the motion calendar was devoted to bills of particulars, and that of all the applications that the court was finally called upon to adjudicate only two per cent were denied. When a comparison was made between the months of February and March, 1935, with February and March, 1934, the analysis disclosed that there were forty per cent less motions for bills of particulars on the calendar under the newly adopted rule. This information was of value to the Judicial Council in its consideration of bills of particulars procedure from a state-wide viewpoint.

In the field of the summary judgment, the statistical method applied to procedure has received perhaps its greatest use.⁵¹ The figures collected by the Commission on the Administration of Justice⁵² showed that summary judgment procedure in the Municipal Court of the City of New York was clearly out of line with favorable results in the Supreme

⁵⁰ Powell and Looker, *Decedents Estates* (1930) 30 COL. L. REV. 919, 930 and 932. Over the period 1923 through 1929 in New York County "While only 4.25% of wills offered for probate are contested only 10.44% of those contested are rejected." In New York County only 6 out of 1,000 wills are rejected, in Kings County only 4 out of 1,000.

⁵¹ See Cohen, *Summary Judgments in the Supreme Court of New York* (1932) 32 COL. L. REV. 825; Saxe, *Summary Judgments in New York* (1934) 19 CORN. L. Q. 237; *ibid.* REPORT COMMISSION ON THE ADMINISTRATION OF JUSTICE, *supra* note 25, p. 367; Shientag, *Summary Judgment* (1935) 4 FORD. L. REV. 1, 41.

⁵² *Supra* note 25, p. 367 ff.

Court and City Courts of the City of New York. The figures indicated that since an appeal to the Appellate Term from an order of the Municipal Court denying a motion for summary judgment could only be had by permission, it had the tendency to encourage the denial of such motions in this court. A recommendation to allow such an appeal as of right was favorably acted upon by the legislature.⁵³ The Judicial Council has obtained figures showing the number of motions for summary judgments respectively granted and denied in all the courts.

These examples show that a system of judicial statistics such as that of the Judicial Council is not merely a collection of numbers which makes more specific what everyone knows generally. It also isolates unsatisfactory conditions, suggests possible remedies, and furnishes a check-up on the efficacy of those remedies.

This is pioneer territory which has in the past been too much the exclusive property of statistically minded workers rather than analysts of judicial problems. Indeed, this analysis and the correlation of numerical data and legal problems has produced a new technique in judicial administration, the technique not of the statistician, the judge or the lawyer but, if a word may be coined, of the "judician."

* * * * *

As recently as 1933, Professor Leon C. Marshall, Director in charge of litigation surveys for the Judicial Councils of Ohio and Maryland, wrote, "If one were to summarize the present situation in judicial statistics in a series of propositions they might well run thus:

"4. Statistics of civil actions other than divorce are almost nonexistent and a very modest amount of experimentation is under way. The problems of classification and distinction are enormous; the practical problem of collection is serious. Until these problems have had much experimental study, there is little hope of considerable and permanent advance in the field."⁵⁴

⁵³ Laws of 1933, c. 351 amending MUNICIPAL COURT CODE §154, subd. 6a.

⁵⁴ 167 ANN. AM. ACAD. 135, 141-142.

At the time when he wrote, his words constituted a fair appraisal of the situation, but happily the appraisal does not at this time apply to the state of New York. Undoubtedly, the presence of the administrative heads of the state's judicial system upon the Judicial Council is to a large extent responsible for the results obtained.

In New York State, at least, the science of civil judicial statistics is no longer in an embryonic state, and it does not seem too much to hope that with the nurture and attention it deserves, the infant science will, in due course, grow to full stature.

LEONARD S. SAXE.