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THE WORK OF JUDICIAL COUNCILS†

By P. S. SIKES*

It may, we believe, be safely assumed that there is a real and generally recognized need for improvement in the administration of justice in the United States.

Perhaps the thought that comes to the minds of a majority of persons when the improvement of a governmental function or agency is suggested is that there "ought to be a law" enacted or changed. And it is true that many legal enactments or changes will probably be necessary as a basis for improving the administration of justice. On the other hand it may be possible to bring about considerable improvement in some states through changes in rules by courts themselves, or through other methods.

If one assumes that changes should be made through legislative and judicial action one cannot be sure that those in authority are in a position to take intelligent action, or that they will be inclined to act. Such a step is one that requires much study and deliberation. This study and deliberation the legislatures and courts may not have the time, facilities, and inclination to give.

Under our American system of state government the legislature is charged generally with the task of authorizing or instituting changes in policy. Are our legislatures, as presently composed, in a position to cope with this task? Upon the basis of data from state blue books, the legislative manuals, and constitutions, it may be estimated that the "turn over" in state legislatures is around 50 per cent for each term. Salaries paid state legislators are not such as to attract and hold the best types of men. In few states can a legislator expect more than an average of \$500 a year as compensation for his services.¹ Under these circumstances it may be safely concluded that in state legislatures there are few who can be considered professional lawmakers. A member of a state legislature does not, as a rule, become an expert in any particular phase of legislation.² No considerable number of such persons can be expected to take upon themselves the responsibility of urging extensive changes in a field in which tradition and custom are so deeply entrenched as is the case in the field of law and

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¹ The range in salary is from \$200 for a two year period, New Hampshire, to \$2,500 a year in New York; or from \$3 a day for each session in Oregon to \$15 a day in Arizona.

² For analyses of state legislative membership see J. C. Jones, "The Make-up of a State Legislature," 25 American Political Science Review, 116-119 (Feb., 1931). Deals with the legislature of Kentucky which met in 1930: Robert Luce, *Legislature Assemblies* (1924), a more general work.

its administration. Under such circumstances it may reasonably be concluded that the initial urge for changes in judicial organization and administration must come from some source outside the legislative halls.

During the last two decades much has been done in the United States relative to the investigation of crime conditions and judicial administration. To mention only one type of such investigations there have been several more or less extensive crime surveys in certain states and cities, for examples, the Missouri Crime Survey, Cleveland Crime Survey, Illinois Crime Survey, New York Crime Studies, and the extensive studies of The National Crime Commission commonly called the Wickersham Commission. However, such studies have been somewhat expensive and often limited in scope. The Missouri Crime Survey which was begun on April 1, 1925, and completed early in 1926 cost approximately \$75,000. Yet it dealt with only one county in each of the thirty-eight judicial circuits of the state. The Illinois survey extended from February, 1926, to 1929 at a cost of about \$100,000. It was concerned primarily with only twenty-two counties (including Cook County and Chicago) in Illinois and the city of Milwaukee Wisconsin, for purposes of comparison.³ The New York Crime Commission started its investigation in 1926 with an appropriation of \$100,000. Additional appropriations were granted until by 1930 it had spent \$300,000. Another commission was created in 1931. It reported to the legislature on January 25, 1934. The Cleveland survey extending from February, 1921, until June, 1921, and confined to that city, cost \$38,000.⁴

It is not the purpose here to disparage the results of such surveys as the above. They present much valuable, and often startling, information. However, it is the writer's belief that it is unnecessary to have to resort to these fact finding surveys as a permanent policy. There is now a tried and proven public organ in many states, designed to secure reliable comprehensive information and to make recommendations for, or take actual steps toward reforms. This organ is the judicial council.

Judicial councils have been created in one-half of the states, the first being established in Wisconsin in 1913.⁵ No attempt will be made here to study the work of all the councils, or all of the work of any one council. Other writers have covered this in a general way.⁶ In this paper we will present

³ See "Report of the Special Crime Commission," 19 Massachusetts Law Quarterly 7-223 at 9, for a brief statement relative to the work of the Illinois, Missouri, and Cleveland surveys.

⁴ 17 Journal of the American Judicature Society, 172 (April, 1934).

⁵ Wisconsin Laws, 1913, p. 691. It was not, and is not, termed a judicial council in the statutes, but rather the Wisconsin Board of Circuit Judges. A council was created in Ohio in 1923. Laws of Ohio, 1923, pp. 364-365.

⁶ Perhaps the best single study of the judicial council movement is a book, *The Judicial Council*, prepared by the Committee on Judicial Administration of the Merchants' Association of New York and published in 1932.

Professor W. F. Willoughby in his book, *Principles of Judicial Administration*, 264-280, gives a very lucid discussion of the establishment and work of the councils in several states.

The Journal of the American Judicature Society gives up to date information relative to the establishment and progress of councils. Hon. J. C. Ruppenthal, of Kansas, prepares a report of the work of councils—as shown by their reports—and these reports appear periodically in the Journal.

Other references that might be mentioned are: Charles H. Paul, "The Judicial Councils and Reform of Judicial Procedure," 5 Oregon Law Review, 1 (1925); Albert B. Ridgway, "The American Judicial Council, Its Powers and Possibilities," *ibid.*, 292; James W. McClendon, "A Review of the Judicial Council Movement," 9 Texas Law Review, 266; Edson R. Sunderland, "Organization and Function of the Judicial Councils," 9 Indiana Law Journal, 479 (May, 1934); Henry B. Cabot, Jr., "Results of the Creation of the Judicial Council of Massachusetts," 18 Massachusetts Law Quarterly, 49 (Feb., 1933).

certain facts relative to the organization and work of the councils in a few states in an attempt to show that the judicial council is, or can be, a well qualified, economically operating agency capable of contributing toward the improvement of the law and its administration.

With reference to the composition of the councils those in the following states may be taken as fairly typical:

California, eleven members made up of designated members of each of five state courts;⁷

Connecticut, nine members consisting of four judges from as many state courts, four attorneys (private) and one state's attorney;⁸

Kansas, nine members consisting of three judges from as many state courts, four attorneys, and the two chairmen of the legislative judiciary committees;⁹

Michigan, ten members, three judges from as many courts, three private practitioners, two laymen, the attorney general of the state, and a member of the faculty of the state university law school;¹⁰

Texas, sixteen members, as follows: five judges from three state courts, three laymen, the two chairmen of the legislative judiciary committees, the attorney general of the state, and one member of the state university law school faculty.¹¹

The members of a judicial council, if not ex-officio, are usually chosen, or designated, by the governor, the chief justice of the state's highest court or the president or governing board of the state's bar association or by a combination of two or all of these methods.

Councils are usually created by a legislative enactment, although in California the council was created through a constitutional amendment¹² and in Idaho,¹³ South Dakota,¹⁴ Utah,¹⁵ and Oklahoma¹⁶ they are creations of the respective state bar associations, with or without express legislative authorization.

According to Professor Sunderland, "There are two responsibilities which appear to be placed upon the judicial council. The first is express, the second is implied. The first is a very definite responsibility, for formulating and presenting to the proper authorities suitable measures for procedural reform. The second is a very indefinite responsibility for promoting and facilitating the adoption of the measures proposed."¹⁷ To these two responsibilities one might add a third, that of expediting the business of the courts through the formulation of rules and the supervision of the courts. It is true this third responsibility is not usually conferred upon councils, but the council in California has such a responsibility as is seen from the statements in the second paragraph below.

Most judicial councils are what are called "weak" councils, that is, they have advisory powers only. The Massachusetts council exemplifies this type. It is empowered to make a "continuous study of the organization, rules and methods of procedure and practice of the judicial system of the

⁷ Constitution of California, Art. VI, Sec. 1a (amendment).

⁸ Connecticut General Statutes, 1930, Sec. 5362.

⁹ Laws of Kansas, 1927, 243-244.

¹⁰ Public Acts of Michigan, 1929, 106.

¹¹ Texas Laws, 1929, 689-691 (Regular Session).

¹² See supra, note 7.

¹³ 5 Proceedings of Idaho State Bar, 101 (1929).

¹⁴ 2 South Dakota Bar Journal, 39 (Oct., 1933).

¹⁵ Utah Bar Bulletin, October, 1931, 13.

¹⁶ 17 Journal of the American Judicature Society, 167 (April, 1934).

¹⁷ Edson R. Sunderland, "Organization and Function of Judicial Councils," 9 Indiana Law Journal, 479 (May, 1934).

commonwealth, the work accomplished, and the results produced by that system and its various parts." The council is required to "report annually on or before December first to the governor upon the work of the various branches of the judicial system." It "may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable."¹⁸

The judicial council of California illustrates the strong type of council. Besides advisory functions similar to those possessed by the Massachusetts council it may "adopt or amend rules of practice and procedure for the several courts not inconsistent with laws that are now or that may hereafter be in force; and the council shall submit to the legislature, at each regular session thereof, its recommendations with reference to amendments of, or changes in, existing laws relating to practice and procedure." In addition it is provided that, "The chairman shall seek to expedite judicial business and to equalize the work of the judges, and shall provide for the assignment of any judge to another court of a like or higher jurisdiction to assist a court or judge whose calendar is congested, to act for a judge who is disqualified or unable to act, or to sit and hold court where a vacancy in the office of judge has occurred." The constitution directs that "The several judges shall cooperate with the council, shall sit and hold court as assigned, and shall report to the chairman at such times and in such manner as he shall request respecting the condition, and manner of disposal, of judicial business in their respective courts."¹⁹

It appears, however, that most of the work of a majority of the councils consists of conducting surveys, assembling information and recommending proposed changes in the organization and procedure in the various courts of the respective states. Attention will now be given to some of the results obtained in certain states through recommendations of judicial councils.

In the first eight years of the judicial council's existence in Massachusetts, eighty-five statutory changes (or new enactments) were recommended and forty-three were enacted. During the same time special investigations and reports were made at the request of the legislature or governor upon thirty-three different subjects—usually accompanied by draft acts.²⁰

In its first four (biennial) reports the California judicial council recommended sixty-eight statutory changes.²¹ Of these thirty-nine were enacted into law. The first six annual reports of the council in Rhode Island show seventeen bills recommended with thirteen enacted;²² in New Jersey, four annual reports, forty-seven recommended and twenty enacted;²³ Texas, four biennial reports, twenty-five recommended and fifteen enacted;²⁴ and Connecticut, two biennial reports, fifty-six proposed and eight enacted.²⁵ Summarizing the number from these six states, there were 298 proposed legal changes and 138 enactments.

¹⁸ Acts and Resolves of Massachusetts, 1924, 228.

¹⁹ See *supra*, note 7. No other judicial council has administrative powers comparable to those possessed by the California council but the councils in Washington, Kansas, Connecticut, and Oklahoma have important rule-making powers. The recently created judicial council in New York is expressly authorized to recommend changes in rules of practice to any body vested with the rule-making power.

²⁰ Report of the Judicial Council of Massachusetts, Nos. 1-8 (Annually, 1925-1932).

²¹ Report of the Judicial Council of California, Nos. 2-4 (Biennially, 1929-1933).

²² Report of the Judicial Council of Rhode Island, Nos. 1-6 (Annually, 1926-1931).

²³ Report of the Judicial Council of New Jersey, Nos. 1-4 (Annually, 1930-1933).

²⁴ Report of the Civil Judicial Council of Texas, Nos. 1-4 (Annually, 1929-1932).

²⁵ Report of the Judicial Council of Connecticut, Nos. 1 and 2 (Biennially, 1928, 1930).

It is true that many of the bills recommended and passed were very simple—almost trivial—in nature, yet every one of them had some characteristic or feature which indicated that it would lead, even if in a small degree, toward improvement in the administration of justice in the state affected.

It is believed that it would be possible to take up the enactments singly and show some actual and beneficial effect of each, but space would not permit such a procedure. Instead of this a sampling method will be used to show the results obtained from laws enacted, upon council recommendation, in certain states as well as the possible effect of certain recommendations not yet favorably acted upon.

In its first report the council in Massachusetts recommended a law to permit the waiver of a jury in the superior court in all criminal cases, except capital. The recommendation was repeated in its second, third, and fourth reports before favorable legislative action was secured in 1929.²⁶

The full effect of this law cannot be demonstrated from statistics available. The number of jury waived cases is not shown. However, it is noted that for the year ending June 30, 1929 (the last full year before the law went into effect) the number of criminal cases tried in the superior court was 2,553. While the number tried during the year ending June 30, 1931 (first full year after the new law went into effect) was 3,308. There is a difference between the two of 755 cases.²⁷ Since non-jury cases can be tried much more quickly than jury cases, at least a part of this gain may reasonably be attributed to the effect of the new law. To say the least, for every non-jury trial had there will be an actual saving to the taxpayers of approximately \$250.²⁸

Another law, recommended by the judicial council in its first report, repeated in three subsequent ones, and enacted in 1929,²⁹ is apparently demonstrating its usefulness. This law removes the jurisdictional limits of the district courts in civil cases providing the defendant a right of removal to the superior court for a hearing with or without a jury in cases involving more than the former jurisdictional limits of \$3,000 (\$5,000 in Boston). Since this law became effective it appears that many cases formerly filed in the superior courts are now being brought into the district courts. A study of the statistics of cases entered in these courts will reveal this. During the year ending June 30, 1926, there were 70,326 civil cases filed in these two systems of courts, of which 38.5 per cent was in the superior courts. During the year ending June 30, 1929, the number entered in the two kinds of courts was 99,235, of which 37.4 per cent was entered in the superior courts. Taking the four years, July 1, 1925, to June 30, 1929, the number filed in both kinds of courts was 337,868 of which 38.3 per cent was in the superior courts. On the basis of these facts we are perhaps justified in taking 38.3 per cent as the proportion of such cases normally coming into the superior courts before the law under consideration went into effect. But if we take this proportion of the cases filed in the two kinds of courts during the year ending June 30, 1933, we get 41,180 instead of 32,190, the number actually filed in the superior courts during this latter year. The difference between these two latter numbers, or 8,990, may reasonably be accepted as the "effect" of the new law. However, there was a gain of 1,611 in cases appealed from the district courts to the

²⁶ Acts and Resolves of Massachusetts, 1929, ch. 185.

²⁷ Report of the Judicial Council of Massachusetts, No. 9, p. 13 (1933).

²⁸ This is the estimated cost of a jury trial in the superior court made by the Judicial Council in its eighth Report, p. 14.

²⁹ Acts and Resolves of Massachusetts, 1929, ch. 316.

superior courts in 1933 over 1929, so that the apparent net reduction of cases in the superior courts during 1933 (year ending June 30) was 7,379.³⁰

Since the superior court dockets are usually overcrowded, and since trials in the district courts are without juries, there can be little doubt that this law has proved its usefulness as a time and money saver. Mr. Frank W. Grinnell, secretary of the council, considers this act one of the most important acts resulting from the work of the council.³¹

Massachusetts can by no means be said to have a judicial utopia, but it can hardly be denied that the judicial council has accomplished much good in the Bay State.

An act which seems of slight importance but which nevertheless saves a few dollars—whether deflated or inflated—for the taxpayers is one recommended by the Civil Judicial Council of Texas.³² This act dispenses with the file docket in the courts of civil appeals and provides for the docketing of cases directly on the trial docket. For the nineteen years during which the file dockets were required to be kept not a single order was entered upon them. The books cost from \$30 to \$50 each, they made additional work for the clerk, and increased the volume of archives to be preserved. This single example shows the need of some agency to study the judiciary to point out useless appendages connected to the organization, procedure or even equipment of the courts.

In a state with a complicated court system such as that found in Texas, it is often difficult for even the best lawyers to determine in what court a particular case should be started. In the past when a case was filed in the wrong court the statute of limitations ran against it from the day of filing, even if it were found to be in the wrong court. On account of overcrowded dockets, necessary and unnecessary delays, *et cetera*, innocent parties often found themselves thrown completely out of court for no other reason than that they had made the wrong guess as to which courts their cases should have been filed in in the first place. Upon recommendation of the council a law was passed in 1931 extending the period of limitation in such cases, unless the party shows an intentional disregard of jurisdiction.³³ It is impossible to say just how many cases will be "saved" by this law, but judging from the number of cases that have been reversed on this ground by the highest court of civil appeals in the past, the number will be considerable.

Almost every reform suggested by a judicial council directly, and in a sense, adversely, affects some person or groups of persons in the state. Regardless of the good to the public generally or to certain sections of the public which such proposed laws will bring about, there will usually be more or less opposition to each proposed reform. In its fourth report the Texas council proposed a bill permitting citations to be served and returns made by registered mail, upon request of one applying for citation. At present citations ordinarily cost from \$2.25 upwards. This proposed law would reduce this to twenty-one cents for the service and return. However, the bill had strong opposition and it failed to pass.³⁴

³⁰ Report of the Judicial Council of Massachusetts, No. 6, p. 64 and table opposite; No. 7, p. 50 and table opposite; No. 8, p. 70 and table opposite; and No. 9, p. 70 and table opposite.

³¹ Personal letter to the writer.

³² Texas General Laws, 1931, 99. (Regular session.)

³³ *Ibid.*, 1931, 124.

³⁴ Report of Texas Civil Judicial Council, No. 4, p. 10 (1932). It is a well known fact that if this bill were enacted many fee-paid officers would stand to lose money.

The judicial council of Rhode Island recommended, and the legislature passed, a law requiring that in civil cases originating in, or appealed to, the Superior Court if neither party before the assignment day demands (in writing) a jury trial, the case shall be tried without a jury.³⁵ This, on its face, seems to be of little significance. However, in 1928 in Providence and Bristol counties out of 521 cases tried only 13 or .24 per cent were tried without a jury; while in 1933 out of 483 cases tried 138 or 28.57 per cent were tried without a jury. It has been estimated that a jury trial in these counties costs \$238.77. Therefore, a saving of approximately \$32,940.26, speedier trials, and a less congested court docket have resulted from this law.³⁶

Another law passed upon the recommendations of the Rhode Island Council is one changing the method of appeal, and abolishing removal by transfer, of civil cases from the district courts.³⁷ Previous to the adoption of this law an appeal could in effect be taken by claiming a jury trial after decision or a removal to the superior court could be secured by claiming a jury trial on entry day. Since its adoption a jury trial cannot be claimed at all in the lower court, but an appeal may be taken after decision upon payment of reasonably substantial costs. After the case has reached the superior court, jury trial, if desired, may be claimed as in cases of original entry in the court (see last paragraph above). The effect of this law is easily perceived. In 1928 the number of claims of jury trial on entry day totaled 1,089, and after decision 934. The new law did away altogether with the first kind and has reduced the number of the second. In 1932 the number of the latter kind had dropped to 667, a decline of 28 per cent. The percentage reduction in the total number of appeals or removals, that is, counting those in which juries are claimed either on entry day or after decision is about 67 per cent—in Providence and Bristol counties 68 per cent. The number of cases upon the district court appeal trial calendar of the Superior Court (for Bristol and Providence counties) dropped from 956 in 1928 to 147 in 1933 or 84 per cent.³⁸

Under the old system the ratio of appeals (and transfers) to civil entries in the district courts was about 1:7; under the new provisions it is about 1:20; and in the superior courts the ratio of cases on district court appeal trial calendar to the total number of cases on the trial calendars was 1:2.4 but is now 1:4.³⁹

It appears from a study of the application of this, and other laws, recommended first by the judicial council that the work of this council offers convincing proof of the usefulness of a council.

In New Jersey, also, good work has been accomplished by the judicial council. One of the crying evils in this state has been the inordinate congestion of the supreme court dockets—with its resultant expense and delay to litigants. Partially to remedy this the council recommended, and the legislature enacted, a law providing that when a rule to show cause why a new trial should not be granted is allowed by the circuit judge before whom the trial of a supreme court issue has been held, the hearing on said rule shall be had before said circuit court judge (formerly had to be before a supreme court judge).⁴⁰

³⁵ Laws of Rhode Island, 1929, ch. 1327.

³⁶ Report of the Judicial Council of Rhode Island, No. 6, p. 8 (1932).

³⁷ Laws of Rhode Island, 1929, ch. 1326.

³⁸ Report of the Judicial Council of Rhode Island, No. 7, Appendix, Table No. 10 (1933).

³⁹ *Ibid.*, Table No. 4.

⁴⁰ New Jersey Public Laws, 1931, ch. 356.

To quote from a report of the council: "The effect of this act in reducing the congestion in the supreme court is already apparent; the number of cases listed in part one of the supreme court at the October term being considerably less than two-thirds the number of cases listed at the May term. Litigants have been saved the cost of having the record transcribed by the court stenographer in practically all of such cases, and of having the record and briefs printed in every such case. What is even more important, they have been spared the delay under the former practice of six to eight months in obtaining a decision on the rule; under the present practice the circuit court judges are hearing arguments on rules to show cause within a week after the trial and are disposing of most of them by oral opinion at the conclusion of the argument. * * * The new practice * * * seems to have met with the general approval of the bar."⁴¹

In order to permit a better use of the judicial manpower a law was passed in 1931, upon recommendation of the judicial council, providing that the chief justice of the supreme court may from time to time assign or appoint common pleas judges to hold such of the circuit courts as may be deemed expedient by him.⁴² This law was supplemented in 1932 by a law permitting the same authority to assign judges of the circuit court to courts other than their own—this was also recommended by the council.⁴³

Statistics are not available to show the number of assignments made under these laws but beginning with the year 1931 there has been a noticeable falling off in the number of cases listed for trial at the fall terms of court in eight of the twelve counties. In 1933 only one county showed an increase over 1932.⁴⁴

The judicial council in New Jersey apparently has to wage a battle for every reform accomplished. The secretary thinks "it is generally conceded that the reforms thus far accomplished by the council would never have taken place had the council not been created."⁴⁵

It will be recalled that California's council is a so-called strong council created by constitutional amendment.⁴⁶ It will be of interest, therefore, to note some of the accomplishments of this council in its field of positive powers as well as laws it has recommended.

As was noted above it is provided that the chairman of the judicial council in California, who, incidentally, is the chief justice or acting chief justice of the state's supreme court, "shall seek to expedite judicial business and to equalize the work of the judges, and shall provide for the assignment of any judge to another court of a like or higher jurisdiction to assist a court or judge whose calendar is congested, to act for a judge who is disqualified or unable to act, or to sit and hold court where a vacancy in the office of judge has occurred." This provision was characterized by the late Chief Justice Taft as the most valuable provision in the California plan.

During the first six years of operation under the law, 3,983 assignments of judges to courts, other than their own, were made. The council says: "One of the most gratifying results of the consistent use in other courts of judges who have spare time in their own courts is shown in the report of the council of the condition of the appellate business of the state. The report for the past two years will serve to indicate that a substantial reduction has

⁴¹ Report of the Judicial Council of New Jersey, No. 2, p. 1 (1931).

⁴² New Jersey Public Laws, 1931, ch. 317.

⁴³ *Ibid.*, 1932, ch. 15.

⁴⁴ Report of the Judicial Council of New Jersey, No. 4, pp. 22-23 (1933).

⁴⁵ Personal letter to the writer.

⁴⁶ See supra, note 7.

been made in the number of undecided cases, as compared with preceding years. Two years ago there were 2,242 uncalendared cases in the Supreme Court and District Courts of Appeal. This year's report shows only 1,443, a reduction of 799, and of the 1,443 pending cases, in but 659 had the respondents' briefs been filed."⁴⁷

The council continues: "Two factors may be said to have contributed to this reduction of the number of appealed cases. First is the service in the District Courts of Appeal of judges of the Superior Court assigned by the chairman of the judicial council. The number of published opinions written by justices *pro tem.* in the District courts of Appeal during the last biennium was 820—a number, coincidentally, closely approximating the number of the reduction of uncalendared appeals during the same period. The total time given by these justices *pro tem.*, approximated 160 months or the equivalent of full time for six justices and 16 months for a seventh. The total cost to the state was \$44,667.90. The output above shown is considerably above the average output of the same number of regular justices—whose time is broken by the calling of calendars and the consideration of rehearings of decided cases, as well as petitions for relief in special proceedings—such average output for a ten year period, as shown in the second report of the council, being 52 opinions per year by each justice. Had the manpower in these courts been increased by two additional regular divisions, the salaries of six justices would have cost the state \$120,000 (disregarding the seventh judge mentioned above) almost three times the actual cost. In addition, the cost of clerical and secretarial assistance, permanent quarters, and other expenses necessarily incident to the creation of new divisions, based on the appropriation for the two new divisions established in 1919, would have approximated \$40,000. We may, therefore, justly assert that the *pro tem.* justice method has disposed of this great amount of appellate business at a biennial saving to the state of over \$100,000. We therefore urge a sufficient appropriation to continue this assistance."⁴⁸

As a result of the council's activities in the mobilization and utilization of the judicial manpower, Mr. B. Grant Taylor, Secretary of the Council, believes "it is reasonably demonstrable that the saving for salaries alone, thus accomplished, as compared with what would have been the cost of paying a corresponding number of new judges, was \$650,000."⁴⁹ (The council was established in 1926—thus this represents less than eight years savings.)

Laws recommended by the council have contributed a share in bringing about improvement in the administration of justice in California. Appellate divisions were created in the superior courts of Los Angeles and San Francisco under an act approved in 1929.⁵⁰ In three years the Los Angeles Superior Court handled 2,613 appeals, over 1,200 of which would, but for law, have been appealable to the District Court of Appeal.⁵¹ Increasing the jurisdiction of municipal courts (including money demands up to \$2,000 at present) has greatly relieved the higher courts.⁵²

In this paper we are interested primarily in what may be termed the measurable results of some of the work of certain judicial councils. For example, an attempt has been made to show that laws first recommended by councils have actually brought about speedier justice, reductions in court

⁴⁷ Report of the Judicial Council of California, No. 4, pp. 8-9 (1933).

⁴⁸ *Ibid.*

⁴⁹ Personal letter to the writer.

⁵⁰ Laws of California, 1929, ch. 475.

⁵¹ Report of the Judicial Council of California, No. 4, pp. 9-10 (1933).

⁵² Laws of California, 1931, ch. 834.

expenses, or some other real improvement in the administration of justice. Perhaps another aspect of the work of judicial councils should be given consideration. The good results of this feature of the work may not be as apparent as those flowing from specific recommendations, but the work no doubt is of great value. Surveys or investigations carried on by, or under the supervision of, judicial councils are examples of this feature of their work.

In California, when the judicial council was organized in 1926, no funds were provided for research and investigation. Judge Harry A. Hollzer, a superior court judge of the state, offered, if relieved from his immediate judicial duties, "to assume the direction of a preliminary survey respecting the present condition of the judicial business throughout the state." His offer was accepted and he proceeded at once to the task. In the course of his new duties, he visited nearly all the counties of the state for personal interviews with the judges of the superior courts and the county clerks and for conferences with members of the bar. He also visited several other states, the national capital, and certain Canadian provinces.

With such information as he gathered on these visits at hand and with the statistics collected from the court clerks in California by the judicial council, he was able to point out in his report many outstanding defects in the California system, and noteworthy improvements in other jurisdictions, and to submit a genuine program of reform for California. Judge Hollzer continued his research for the council through 1930. Further suggestions were made to the council by him, but about this time he accepted an appointment to the Federal District Court and the council had to look elsewhere for a person or agency to carry on its research.

Outstanding among investigations attributed to judicial councils are the extensive studies carried on in Ohio. In 1929 the council in that state arranged with the Institute of Law of Johns Hopkins University for a three-year study of judicial administration in Ohio. The work was carried on under the auspices of the council with the cooperation of the State Bar Association, the Attorney-General, and the leading law schools of the state.

The results of these studies, embodied in a series of monographs, pamphlets and reports, published by the Institute, furnish a veritable mine of information. F. R. Aumann, writing in the *American Political Science Review*, after the publication of the council's second report on these studies said "the survey was now well advanced, and although by no means completed, it already furnished the largest mass of information concerning litigation in any American state."⁵³

The Michigan Judicial Council makes special studies of certain problems of judicial administration and submits the results in its annual reports. The first study was of "Condemnation Procedure"; the second was a general study of "Discovery Procedure"; and the third was "The Organization and Operation of Courts of Review." These were included in the first, second and third annual reports respectively.

In its first report the judicial council of Maryland stated that it was not its "prime purpose to find opportunity for legislation." Accordingly it has followed a procedure somewhat similar to that followed by the Michigan council and has carried on studies of particular subjects without specific recommendations. Some of the subjects upon which it has reported are "Use of Judgments by Confession," "Proceeding by Information in Criminal Cases," and "The Cost of Resort to Courts in Non-contentious Proceedings."

⁵³ "The Ohio Judicial Council: Studies and Reports." 27 *American Political Science Review*, 957 at 958 (Dec., 1933).

The value of such reports to the policy forming branches of the state government is apparent.⁵⁴

The judicial council of North Carolina prepared and sent out a manual for sheriffs to guide these law enforcement officers in the performance of their duties.⁵⁵ In Massachusetts the council prepared and sent out a letter to judges and court clerks pointing out the common errors to be avoided.⁵⁶

Finally, in this connection it might be mentioned that members of the various state judicial councils have formed a National Conference of Judicial Councils to serve as a clearing house of ideas and information regarding problems of judicial administration. This Conference is under the auspices of the American Bar Association.

A great many people, especially those inclined to be cynical, might contend that the creation of a judicial council is merely "another commission," "more bureaucracy," or perhaps another scheme to give deserving politicians "junketing trips." It is true that councils have not been uniformly successful,—but on the whole judicial councils appear to take their tasks seriously and are rendering substantial, or perhaps distinguished, service.

It might be worth while to go "behind the scenes" and see how some of the councils work. In Massachusetts the council meets regularly at least fortnightly, except during the three summer months. These meetings are uniformly held at Boston on Saturday mornings. Secretary Grinnell states that during nine years of the council's existence the meetings have been well attended—an average of six or seven members (out of a total of nine) per meeting.⁵⁷

Before each meeting the secretary mails each member a list of the subjects for discussion, together with copies of suggestions or drafts of proposed legislation. This gives each member an opportunity to be prepared to contribute to the suggestions and discussions at the meetings.

In New Jersey it is the practice for the council to work through committees. After a committee has studied a subject assigned to it, it reports to the council as a whole. Meetings of the council are held at least once a month except during the months of July and August.⁵⁸

Texas, being a large state, cannot have frequent meetings, especially since the annual appropriation for the council has been only \$1,000 for some years. The Texas Civil Judicial Council, consisting of sixteen members, has divided itself into five regular committees of three members each, except the one on *court procedure* which consists of seven members—with three members in each of two subcommittees into which it is divided. Each committee, and subcommittee, has a chairman. These committees consider matters in their respective fields and report to the council at its infrequent meetings. One regular meeting and two or three special meetings are held each year.⁵⁹

In general it may be said that the method of work by a council depends largely upon whether the state is a small or a large one, and whether the council has a paid secretary, or sufficient research facilities. It can hardly be denied that frequent meetings, adequate preparation, and sufficient expert aid are essential to the success of any council.

The most successful councils do not attempt to function as things apart.

⁵⁴ J. C. Ruppenthal, "Work Done by Judicial Councils," 14 Journal of the American Judicature Society, 17 at 21 (June, 1930).

⁵⁵ Loc. cit., 99 (October, 1930).

⁵⁶ Ibid., 77.

⁵⁷ Personal letter to the writer.

⁵⁸ Personal letter from the Secretary of the Judicial Council of New Jersey to the writer.

⁵⁹ Ditto. Secretary of Texas Civil Judicial Council.

They cooperate with bar associations, law schools, civic bodies and other organizations, including, of course the executive, legislative and judicial branches of the respective state governments.

As illustrative of the use of the service of a non-governmental agency the Connecticut Judicial Council's use of the Yale Law School faculty may be taken. We find the council acknowledging this service as follows:

"We renew our acknowledgments to the Yale School of Law for its continued help in providing the council at different times with problems connected with our work. Mr. Paul W. Bruton of the Yale School of Law prepared for us a valuable memorandum on the admissibility of entries in the regular course of business and which we later quote from extensively in discussing this subject. Mr. John Wallis, recommended to us by the Yale School of Law, prepared a brief upon the 'constitutional questions involved in the adoption of a system of District Courts in Connecticut' which Professor Dodd and Dean Clark of the Yale School of Law went over before its submission to us. It proved very serviceable in making up our report on the District Court System of Connecticut. Mr. Wallis also made a very complete survey of the district courts in and around Springfield, Massachusetts, after study of these courts for upwards of two weeks. This was of service to us in determining many matters regarding these courts."⁶⁰

The council expressed its wish to cooperate with the legislative branch of the government. It said in its third report:

"It is our desire to establish closer relations with the General Assembly, and to work in cooperation with its judiciary committee. The Massachusetts Judicial Council is called upon frequently by the Senate and House to make studies of and render opinions on acts before the General Assembly, or on proposed objects of legislation. If a similar plan were adopted in Connecticut the council might be able to render valuable service to the General Assembly."⁶¹

We are told that in California during the 1931 session of the legislature activity by the council was at a low ebb, and its proposals did not fare so well. "A favorable development, however," says the secretary of the council, "was the appointment by the president of the State Bar, on the invitation of the chairman of the council, of an advisory committee composed of outstanding lawyers from various parts of the state, to attend meetings of the council and participate therein, and acceptance of the invitation from the council to the deans of the law departments of the University of California, Stanford University, and the University of Southern California, to attend and participate in consideration of all matters presented."⁶²

In the 1933 report of the council in California it is stated that:

"A cooperating and intercommunicating arrangement between the research department and sections of the state bar, under the directorship of Professor Evan Haynes of the University of California and the judicial council is now in effect; and this in conjunction with the unselfish assistance and advice from the members of the State Bar Advisory Committee, provides a helpful substitute for a special research director for the council."⁶³

Probably no other judicial council has gone as far in its effort to secure aid and advice from different individuals and organizations as has that in New Jersey. In its second report it availed itself of the opportunity of "expressing its gratitude to the members of the bench and bar, the clerks of

⁶⁰ Report of the Judicial Council of Connecticut, No. 2, p. 14 (1930).

⁶¹ *Ibid.*, No. 3, p. 9.

⁶² Personal letter from B. Grant Taylor, Secretary of the Judicial Council of California, to the writer.

⁶³ Report of Judicial Council of California, No. 4, p. 11 (1933).

the various courts, as well as the members of the business and civic associations, for their assistance and suggestions covering the administration of justice in this state." It stated that substantially all of the recommendations made in the report were made as a result not only of unanimous agreement of the members of the council but after conference with, and with the whole-hearted cooperation of the judges of, the various courts involved in the proposed changes.⁶⁴

In submitting a proposed amendment to the judiciary article of the constitution the council said it had sought the advice and counsel of various members of the bar (naming five in particular), and had conferred with representatives of the institutions of higher education in the state and the accredited representatives of the several county bar associations, and committees of the New Jersey Press Association, New Jersey Federation of Labor, New Jersey Federation of Women's Clubs, New Jersey State League of Municipalities and a committee representing one hundred credit and business organizations of the state. It can hardly be denied that the council in this state is at least trying to act only upon full "information and belief."⁶⁵

Professor Sunderland seems to imply that judicial councils, as now constituted, are rather imperfect and unwise creations. He thinks a more efficient organization could be had if the bar took full charge. Of twenty-one council memberships listed by Professor Sunderland at least fourteen would be composed entirely of lawyers or men learned in the law, five would probably be 100% lawyers (The possible non-lawyer members would be the chairmen of the legislative judiciary committees), while only two would necessarily be less than 100 per cent of the legal fraternity. The percentage of lay members in the latter two would be 18¾ for the Texas council and 16¾ for the council in North Carolina. A majority of the members of councils in most cases hold public office—chiefly judicial offices.

Now if the legal profession can assume the burden of "convincing the public and its legislative representatives that measures which it proposes are in the interest of the people as well as of the profession," as Professor Sunderland thinks it could, why can it not equally assume the burden of convincing this same public that it should select as public officials such as judges and prosecutors men of "personal ability, liberality of mind, imagination, soundness of judgment, and the strength of their interest in making the administration of justice a satisfactory public service." (The kind Professor Sunderland thinks should be members of judicial councils.) It is this writer's frank opinion that if the bar will assume the task of "cleaning up" its own membership—including those on the bench and those engaged in the practice of law—the good work accomplished by councils will become more effective.

Professor Sunderland asserts that the task of formulating proposals for improving the judiciary is a somewhat simple one, but that putting these into law is much more difficult. Granting this, it may be said with him that the latter task is a political one. With the personal knowledge that virtually every voter has of certain members of the legal profession, it may be justifiable for him to be skeptical of a program which has "the approval and support of the entire profession." Since this more difficult part of a program of reform is political in nature one might ask if it would not be better for the bar to "line up" behind this buffer organization—the judicial council—if its members really desire to assist in a worth while program of reform?

⁶⁴ Report of the Judicial Council of New Jersey, No. 2, pp. 28-29 (1931).

⁶⁵ Reprint of the Report of the Judicial Council of New Jersey, 1932, 4-5.

This writer is not unmindful of the great public service the legal profession has rendered to our country. The judicial council itself came about as a result of the efforts of lawyers. Councils have been created only in states in which active organized bars have worked for their creation. However, it does not follow that the judicial council should be merely a committee of the bar association, any more than that our judiciary should be merely an integral part of the organized bar, rather than a coordinate branch of our government.

True it is that the members of the bar must cooperate if the administration of justice in this country is going to be raised to a high degree of efficiency. But as an agency of reform bar committees on "Jurisprudence and Law Reform" do not appear to be sufficient. It is yet to be demonstrated that judicial councils within the bar associations, as are those in Idaho, South Dakota, Utah and Oklahoma, will accomplish better results than will councils created without reference to the organized bar. Even in those states having strong integrated bars, programs of reform cannot be carried through unless the political branches of the governments are willing to support reform movements. This study indicates that the judicial council is well adapted to the task of serving as a sort of liaison agency between the organized bar, or other agencies interested in improving judicial administration, and the political branches of the state governments.
