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Introduction

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INTRODUCTION

By HON. ANTHONY M. KENNEDY*

The Ninth Circuit, like other federal courts, has been subject to the pressure of a caseload which threatens perpetually to outdistance the ability of its judges to dispose of it. As the editors of the *Golden Gate University Law Review* no doubt learned, during the 12 months covered by this issue the court disposed of 588 cases by published written opinion and decided an additional 799 cases by written dispositions that were not published. During the same period there were approximately 1300 orders and rulings on motions and related matters, both pre- and post-judgment. However, even these efforts have not appreciably narrowed the gap between our workload and our ability to keep abreast of it.

This is not the proper forum for a discussion of proposals for increasing the number of federal judgeships or of decreasing federal jurisdiction, although it appears both are indicated. Rather, it is appropriate in this first issue of the *Golden Gate University Law Review* devoted to the Ninth Circuit to explain an experimental program by which the bar of the Ninth Circuit can assist the court in reducing its backlog. The program is called the Accelerated Disposition Calendar.

We have given notice to counsel in all pending civil cases, other than cases for review of administrative orders, that they have the option of requesting assignment to the Accelerated Disposition Calendar. Initially, no more than 100 cases will be assigned to the calendar. This is to allow the court and the attorneys who practice before it to evaluate the merits of the procedure prior to its adoption. If the program is successful, we hope to continue it on a permanent basis. The institution of such a procedure will have a beneficial effect on the court's caseload disposition rate, and, importantly, it will allow the attorneys appearing before the Ninth Circuit to share the responsibility for shaping the court's calendar and its publication procedures.

Cases were assigned for the first Accelerated Disposition Calendar, to be heard in June 1976, within 30 days after the Clerk's office received notice of consent by all counsel. Decisions in these cases will normally be announced from the bench after

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recess and conference, or by a short written disposition, not for publication, issued within 30 days after oral argument. In exceptional cases the court may determine it appropriate to write a full opinion for publication. While the practice of rendering decisions from the bench has a long history in this country and in England, and is sporadically used today by other circuits, we are aware that not all attorneys are comfortable with such a procedure. By permitting counsel to elect assignment to the calendar, it should meet with wider acceptance.

There is no reason that all cases on our docket must be determined by precisely the same decisional process. Oral argument may, and probably should, have even a more critical role in the determination of cases on the Accelerated Disposition Calendar than it does under our regular procedures. In the first instance counsel for the parties should be in a better position than the court to determine those matters on our docket which lend themselves most readily to oral presentation followed by decision announced in the presence of counsel. After some experience with the Accelerated Disposition Calendar, perhaps both the bar and the court will develop guidelines for identifying those cases which are most appropriate for the alternative procedural mode we are adopting.

We recognize that, despite innovations in calendaring and argument techniques, justice must be rendered case by case, after judges have weighed the claims of all litigants. Every party is entitled to have his controversy carefully considered by a panel of this court and deserves as much of each judge's time and thought as is required to satisfy the judge that a reasoned and principled decision controls the outcome.

After the new procedure has been in operation, we will welcome the comments and criticisms of lawyers and law students. We are certain, moreover, that continuous scrutiny by the academic community of all aspects of the court's business will be most valuable.

It is a tradition unique to the legal profession that great deference is given to student commentary, and the judges of this court look forward to receiving this special issue of the *Golden Gate University Law Review*. We are certain that the exchange of ideas it generates will benefit both the bench and the bar of the Ninth Circuit.