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## CURRENT TRENDS IN THE BUSINESS OF THE FEDERAL DISTRICT COURTS

WILL SHAFROTH\*

Congestion in the dockets of many United States district courts in metropolitan centers has called attention to the effects on the judicial business of the great economic development of the past few years, a growth which far exceeds in extent that in any period of equal duration in our history.

In the short space of thirteen years from 1940 to 1952 the market value of the output of goods and services produced by the nation's economy increased from 101 billions to 346 billions.<sup>1</sup> Part of this phenomenal rise was due to a 90 percent increase in the cost of living, but in terms of 1939 dollars the 1952 gross national product was still 71 percent larger than that of 1940. Automobile registrations are up over 55 percent, revenue passenger miles flown by air up 1100 percent, national income from 81 billion to 290 billion, personal income from 78 billion to 268 billions and population increased almost 20 percent. We are truly in a period of unprecedented industrial expansion and as will be seen, although the volume of litigation in the federal courts is keeping pace, the judgepower of the courts is not.

An upward trend in the number of civil cases filed and pending in the federal trial courts has been almost continuous and has resulted in a virtual doubling of the work-load of the federal courts since 1944. This does not mean that the actual number of cases to be disposed of has doubled, but with the great increase in the kind of cases which consume a proportionately large amount of time the work to be done by the trial courts is nearly twice as great as it was 10 years ago. While the number of civil cases commenced has increased from 38,000 to 64,000, the backlog of cases to be disposed of has more than doubled. Criminal cases commenced are about the same as in 1944 but the number of new bankruptcies has doubled and this year will reach 50,000 as compared with 19,500 in 1944.

If we go back to the fiscal year 1941, we have a somewhat better basis for comparison as that was the last year before World War II and was a normal pre-war year. If we compare the private civil cases, *i.e.* those between private parties, commenced and terminated in that year and pending at the end of the year with similar figures

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\* Chief, Division of Procedural Studies and Statistics, Administrative Office of United States Courts.

1. These figures and those immediately following are taken from the STATISTICAL ABSTRACT OF THE UNITED STATES (1953).

for 1953 we find an increase of 83 percent in the number commenced, 51 percent in the number terminated and 130 percent in the number pending. Since the end of World War II the increase has been rapid and startling as is shown by the following table:

*Private Civil Cases*

<i>Fiscal Year</i>	<i>Commenced</i>	<i>Terminated</i>	<i>Pending at end of year</i>
1941	21,931	23,364	18,807
1942	21,067	22,488	17,386
1943	17,717	20,124	14,979
1944	17,604	17,446	15,137
1945	17,855	16,753	16,239
1946	22,141	18,438	19,942
1947	29,122	23,091	25,973
1948	30,344	26,418	29,899
1949	31,386	28,159	33,126
1950	32,193	30,494	34,825
1951	32,176	31,419	35,582
1952	35,548	32,610	38,520
1953	40,120	35,384	43,256

The significance of these figures can only be realized against a background of the relative amount of judicial time required for disposition of different types of cases. Studies of the Administrative Office indicate that civil actions between private individuals are much the most time consuming of any handled by the district courts.

Information obtained from daily diaries kept for short periods of time during the years 1946 to 1949 by 29 district judges showed that private civil cases were taking on the average about three times as much judicial time in court and chambers per case as civil cases in which the United States was a party. Criminal cases were taking less time per case than Government civil cases. Of the time spent in court, 54 percent was devoted to private civil cases, 20 percent to United States civil cases and 26 percent to criminal cases. But the studies also showed that the average amount of time spent in chambers in study, research, writing of opinions and other official work was 50 percent more than time spent in court. And if the time in court and chambers are added together, the time studies showed a total of three times as long was being spent on each private case, on the average, as on each civil case in which the United States was a party.

The estimates could not be exact and the ratios may have changed since that time. But in any event, the extraordinary increase in private cases has greatly increased the demands on the time of district judges and built up a large backlog of future work for them. Criminal cases are taking, on the average, not more than a third or a fourth of the total time of the judges—perhaps even less—and their number has not changed radically since 1940. Undoubtedly the work load of

the federal district courts has increased much more, proportionally, than the additions to the judicial force.

Of course this is not true for each individual district but viewed on the whole as against an increase in judge-power of only 14 percent, until the enactment of the omnibus judgeship bill on February 10, 1954, it accounts for the present condition of many courts. For while the output of the national economy and the amount of civil litigation in the federal courts have been increasing by leaps and bounds, the number of judges in these courts has changed very slightly, until this year.

The number of district judgeships including temporary judgeships<sup>2</sup> at the end of each fiscal year from 1941 to 1953 and as of March 1, 1954 together with the increase or decrease during the year has been as follows:

*Increase in the Number of U.S. District Judgeships Since 1941*

Fiscal Year	Number of Judgeships			Increase in the Number of Judgeships
	36 Dist.	Other	Total	
1941	179	18	197	—
1942	179	18	197	—
1943	181	18	199	2
1944	179	18	197	Decrease of 2*
1945	180	18	198	1
1946	182	18	200	2
1947	183	18	201	1
1948	181	18	199	Decrease of 2*
1949	182	18	200	1
1950	200	21	221	21
1951	202	22	224	3
1952	202	22	224	—
1953	202	22	224	—
1954	229	22	251	27

\*Decreases caused by expiration of temporary judgeships.

The figures show that since 1941 the total civil cases commenced have increased 66 percent, private civil cases 83 percent, and the number of judges by only 27 percent. Public Law 294 of the 83rd Congress, approved February 10, 1954, provided for 27 additional district judgeships included in the above percentage and three circuit judgeships, thereby increasing the number of district judges by 13.7 percent of the 1941 judicial force.

With the mounting volume of civil business and an almost stable number of district judges, from 1941 to 1953, it is not remarkable that the pending civil caseload has more than doubled during that time.

2. A temporary judgeship is a position created by Congress with the provision that the next ensuing vacancy in the district shall not be filled or that the judgeship shall expire with the retirement, resignation or death of the person appointed to fill it.

The effects of the increasing number of cases on the dockets of the metropolitan districts and a few others are shown by the following time interval statistics for civil cases tried:

*Median Time Intervals for Certain United States District Courts  
for 1941 and 1953*

	<i>Median Interval (in months)</i>			
	<i>Filing to Disposition</i>		<i>Issue to Trial</i>	
	<i>1941</i>	<i>1953</i>	<i>1941</i>	<i>1953</i>
New York, Southern	20.8	47.3	14.4	37.2
New York, Eastern	10.8	32.6	4.7	28.5
Pennsylvania, Eastern	10.6	25.8	5.7	19.7
Ohio, Northern	19.5	21.4	12.7	12.9
Tennessee, Middle	6.3	19.8	4.3	13.8
Ohio, Southern	21.5	19.6	8.3	11.4
Pennsylvania, Western	8.7	19.0	5.9	15.0
New Jersey	21.5	18.3	15.1	13.5
Michigan, Eastern	16.9	15.3	7.1	7.9
Indiana, Southern	8.0	15.0	3.7	10.9
Northern Carolina, Eastern	9.7	14.9	6.8	7.2
Louisiana, Eastern	11.3	14.9	4.0	7.7
Illinois, Northern	9.9	14.8	7.1	10.5
California, Northern	12.3	13.6	5.7	8.7
Massachusetts	14.2	13.4	9.9	10.8
Kentucky, Western	8.8	13.4	3.5	6.9
Louisiana, Western	10.5	13.0	3.7	4.2
Texas, Western	6.5	12.8	4.7	8.3
Florida, Southern	9.2	12.6	5.1	9.4
Virginia, Eastern	4.4	12.6	1.3	7.4
86 Districts <sup>3</sup>	10.2	12.4	5.3	7.4

One means of bringing the courts to a current condition is to curtail the business which reaches them. A bill now pending in Congress which has previously passed the House would raise the jurisdictional amount in diversity and in some federal question cases from \$3,000 to \$10,000, but this would have little effect on the tort cases which constitute the fastest growing segment of the courts' business, because of the practice of alleging damages far in excess of the jurisdictional requirement, regardless of the extent of the injuries or the actual amount which can be reasonably expected to be recovered by the plaintiff under the most favorable conditions. The Judicial Conference of the United States has also approved legislation which would provide that in cases based on diversity of citizenship, a corporation shall be deemed to be a citizen both of the state of its creation and of the state in which it has its principal place of business.

The need for a more expeditious disposition of litigation is pressing in the state courts as well as in the federal courts. Nation-wide aver-

3. Only 84 districts in 1941.

ages for 97 metropolitan state courts showed an average time interval in 1953 of 11.5 months from issue to trial of jury cases as compared with a median of 7.5 months in 86 United States District Courts, and for state courts having jurisdiction of county populations in excess of 750,000, the overall average was 22 months. For ten state courts the situation was much worse, the average period from issue to trial varying from 30 to 53 months.<sup>4</sup>

### *Changing Trends in Civil Cases*

Mention has been made of the great increase in the volume of civil cases. This does not always mean more work for the judges. For example, during the years 1945-1947 a veritable flood of price and rent control cases fell upon the federal courts.<sup>5</sup> But these were mostly *in terrorem* cases which were settled outside of court and which took little time of the judge. On the other hand, other types of action such as Government and private antitrust suits are often long drawn out and hard fought and frequently involve important questions of law. Therefore the more that is known about the individual kinds of cases being filed, the more chance there is of an accurate forecast as to the amount of judicial time they will require for disposition.

Tort cases which form the largest and most important single group of the private cases have been increasing rapidly. Their numbers are directly related to economic conditions. This is particularly true of automobile injury cases, the volume of which has expanded with the increase in the number of cars on the road. In the district courts having purely federal jurisdiction there were 1829 of these cases filed in 1941<sup>6</sup> compared with 6863 in 1953, an increase in the latter year of more than 275 percent.

Other tort cases brought by private litigants under the diversity of citizenship jurisdiction of the federal courts increased in the same period in these districts from 1802 to 4307 or 139 percent. Personal injury actions by railroad employees under the Federal Employees' Liability Act skyrocketed from 100 to 1316 or 1216 percent; Jones Act cases for injuries to seamen, not including those against the United States, went up from 1128 to 2985 or 160 percent. All tort cases, including those against the United States, rose during the same thirteen years from 5194 to 17,454 or 236 percent. About 12 percent of

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4. See N.Y.U. SCHOOL OF LAW, INSTITUTE OF JUDICIAL ADMINISTRATION, *Calendar Status Study: State Trial Courts of General Jurisdiction* (1953). For nonjury cases the state court situation is much better. The interval from issue to trial for that class of cases was 5.7 months in 1953 compared with 7.4 months in the federal courts.

5. During the three fiscal years 1945-47, 40 percent of all civil cases filed were rationing, price or rent control cases brought by the OPA.

6. The 1941 figures in this and subsequent comparisons do not include Hawaii and Puerto Rico.

these cases, excluding admiralty cases and those under the Federal Tort Claims Act, are tried to a jury, and take on the average twice as long as they would if tried by the court which is the method of disposition of a much smaller number. More than any other single factor, it is the increase in these cases which is causing court congestion both in federal and state courts.

But other cases have also increased. Contract cases under the diversity jurisdiction are up from 2685 to 5624, an increase of 110 percent. These cases are more often tried to the court, but frequently require the writing of opinions in addition to the finding of facts and cannot be said to be less burdensome on the average than tort cases.

Other types of cases include private antitrust cases which on the whole take an amount of time entirely out of proportion to their number and which increased from 110 in 1941 to 207 in 1953, admiralty suits which went up from 1688 to 3897, tax suits against the United States which with the large increase in taxes went up from 779 to 1051 and habeas corpus petitions by state or local prisoners which were 127 in 1941 and 548 in 1953.

Rent control cases of which there were about 2700 brought by the Government and 500 by private litigants in 1953 will disappear from the dockets in the future in the absence of new legislation. Land condemnation cases, which usually include a large number of tracts in a single case, decreased from 1783 in 1941 to 982 in 1953. Government antitrust cases, often requiring months for trial, decreased from 25 to 15 (but 97 of these cases were still pending on July 1, 1953). Patent and copyright cases, often difficult of decision and sometimes requiring extensive opinions declined from 560 and 953 cases respectively in 1941 to 199 and 557 in 1953. Finally actions by private parties under the Fair Labor Standards Act declined from 816 to 215.

About 5000 of the diversity cases commenced in 1953, or almost 30 percent, had been originally begun in state courts and then removed to the federal court.

#### *Criminal Cases*

Criminal cases have precedence in the United States district courts and therefore are usually disposed of promptly. The carry over from year to year usually does not exceed a fifth or at most a fourth of the number of cases filed in a year and about 20 percent of these cannot be tried because they include fugitive defendants. Some types such as criminal antitrust suits and the Smith Act or "Communist cases" may individually take a very long time. Some mail fraud cases, tax violations and contempt of Congress cases, to mention only a few other classes, are likewise burdensome and time-consuming.

But on the whole criminal cases take much less time of the judges than do civil cases, and much less time per case.

During the past 12 years (figures breaking down the cases filed by type of offense are available from 1942) the actual number of criminal proceedings has increased somewhat (from 30,577 to 34,615), but the number of defendants in these cases has decreased, and if we eliminate illegal immigration cases which take an appreciable amount of court time only in the five districts bordering on Mexico, criminal cases also have decreased.

The following table gives some comparisons:

*Criminal cases commenced in 86 districts for certain types of cases*

<i>Nature of Offense</i>	<i>1942<sup>7</sup></i>	<i>1953</i>
Total, original proceedings	30,577	34,615
Transportation, etc., of stolen motor vehicles across state lines	1,876	3,170
Fraud and other theft	3,981	7,259
White slave traffic	441	314
Narcotics	1,945	2,113
Liquor, internal revenue	9,591	3,654
Food and Drug Act	371	347
Immigration laws	2,157	11,558
Juvenile delinquency	955	1,233
Migratory bird laws	620	472
National defense laws:		
Selective Service Act:		
1940	3,356	4
1948	—	760
OPA-OHE, price and rent control	—	3
Defense Production Act of 1950	—	70
Alien registration	720	76
Kidnaping	19	29
All other	4,545	3,553

From this it is apparent that the principal changes have been a great rise in immigration violations, considerable increases in motor vehicle theft and in fraud, and some increase in juvenile delinquency cases as contrasted with a very large decrease in liquor violations and in draft evasion cases.

*Bankruptcy*

The bankruptcy business of the United States courts has been a see-saw affair for the last 50 years. From about 17,000 cases in 1905 the number filed annually rose to 27,600 in 1915 and then dropped in the next five years to a low of 13,500 in 1920. The next 15 years

7. Figures for 1953 are for 86 districts and for 1942 for 84 districts. The filings in the two additional districts, Hawaii and Puerto Rico, are not sufficient to affect general conclusions which may be drawn from this table.



saw a tremendous increase to a peak of 70,000 cases in 1932 which was almost reached again in 1935. The downward curve then commenced and continued to 1946 when the annual filings were just over 10,000 cases. Since then the trend has been sharply up with a prospect this year of 50,000 new cases commenced, the highest since 1942.

#### *Conclusion*

The review of recent trends in the district courts has been designed to give a picture of current conditions and the difficulties which judges are now facing. The primary need has been more judge-power, and greater flexibility in the employment of judges by the chief judge of the circuit and his judicial council fortified by current information from the Administrative Office. But also there is the possibility of more efficient procedure in handling current business which includes in some districts a more effective and "all out" use of pre-trial procedure. Less than half of the district courts are making anything more than a partial and extremely selective use of this common sense method of simplifying and shortening litigation.

The new judgeships just created will be of material assistance, but it is important that Congress should maintain a vigilant attitude and act promptly on recommendations of the Judicial Conference of the United States where additional positions are needed.