

# FEDERAL JUDICIAL STATISTICS

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The word "statistics" has an unfortunate connotation in the popular mind. For most people it means long columns of meaningless figures, which can be interpreted to support any particular thesis which is being advocated. Nevertheless, the activities of all business are based on statistics, and much of our national policy is determined by them. Our tax program, our budget, our national defense, all are founded upon statistics, and the Marshall Plan, which is now the major plank in our foreign policy platform, depends upon how much assistance the nations of western Europe need and how much we can afford to furnish, both of which can be determined only from a statistical base.

## THE PURPOSE OF JUDICIAL STATISTICS

Court statistics have a similarly valid purpose but on the whole have been a neglected branch of the art. It is fair to ask, "Why do we want judicial statistics?" The short, simple answer is that they are useful in improving the administration of justice, both in an individual court and in a court system. The purpose of the statistical work of the Administrative Office of the United States Courts, which collects the federal judicial statistics, is well set forth in the 1945 report of the Judicial Statistics Committee of the Judicial Conference of Senior Circuit Judges in the following words:

While the law's delays are a dramatic setting in which to view the need of information as to the ordinary day-to-day activities of a court, it is obvious that they are but a part of the information necessary to know how the extensive federal judicial business is being carried on and how the courts' functioning may be bettered. Indeed, one of the most practical uses of the statistical reports quite naturally is to be found in the information thus made available as to the nature and amount of business from district to district and the adequacy of the personnel to care for it. . . . Such information is used by Congress in passing upon legislation for additional judges, by various circuit councils in seeing that business is properly expedited, by the Director of the Administrative Office in making suggestions to the Chief Justice and to senior circuit judges for the assignment of both circuit and district judges under the new flexible statutory provisions to circuits and districts where need is acute, and by these judicial officers in making those assignments which are proving so effective for the rapid and orderly dispatch of judicial business in congested areas.

It has been often pointed out that just as no great business expects to function without

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careful statistical reports and audits of its activities, so the vast judicial establishment needs like reports for an understanding of what is being done and where efficiency may be promoted. This general purpose is the most immediate and prime function of judicial statistics.<sup>1</sup>

An illustration of the application of statistics in measuring the effect of procedural changes is found in the District of Columbia, where, following the adoption of the new Federal Rules of Civil Procedure, a system of pre-trial conferences was inaugurated in civil cases in the United States district court. The question whether the new system was expediting the disposition of cases was answered by the figures on the number of dispositions and on the reduction in time between the date cases went on the calendar and the date they were tried.

During the fiscal year 1940, with only one more judge operating during the entire year than in 1939 and a second additional judge sitting for about a month, 2,237 civil cases were disposed of in comparison with 1,074 the year before. The interval that elapsed from the time when a jury case went on the calendar until it reached trial was reduced from twenty-three months in October, 1939, to fifteen months in June, 1940, and, during the same period, the time for reaching non-jury cases was shortened from twenty-two months to eight months. With the inauguration of pre-trial, cases disposed of by praecipe and by consent verdicts and judgments increased from 755 in the fiscal year 1939 to 1,288 in 1940. Most of these dispositions represented compromise settlements. During the fiscal year 1940, 317 cases were settled at pre-trial and 253 between pre-trial and final trial. These statistics furnished a most powerful argument for the effectiveness of pre-trial procedure.

The use of court statistics by Congress has already been referred to. An illustration of such use is found in the report of the Senate Judiciary Committee on a bill<sup>2</sup> to authorize the appointment of an additional judge for the district of Delaware. In recommending the bill the committee quoted the report furnished to it by the Administrative Office, a part of which was as follows:

For some time it has been apparent that the load is too heavy for one judge. Although the number of cases brought before him does not appear to be unusually large and in fact is somewhat below the average per judge throughout the country, the suits filed in the district of Delaware contain a relatively high proportion of cases that demand a large amount of the judge's time; such, for instance, as patent suits, stockholders' derivative actions, and suits in relation to the dissolution of holding companies under the Public Utility Holding Company Act of 1935.

As an example, there were on the docket on June 30, 1945, 22 patent cases, which were approximately one twenty-second of all such cases pending in the 84 district courts of the United States, exclusive of the District of Columbia. Compared with this number of patent suits of 22 for the judge in the district of Delaware, the number per judge in other districts with a high proportion of such suits was 8.3 for the southern district of Ohio, 7.8 for the southern district of New York, and 6.5 for the northern district of

<sup>1</sup> *Report of Committee on Judicial Statistics*, 7 FED. B. JOUR. 292, 294 (1946).

<sup>2</sup> REP. NO. 1037 to accompany S. 1801, 79th Cong., 2d Sess. (1946), by Mr. McCarran for the Committee on the Judiciary, United States Senate.

Illinois, and from there down. Of 56 stockholders' derivative actions which were pending in the 84 districts of the United States as of June 30, 1945, 11, or approximately 19 percent, were in the district of Delaware. In the only other district in which there was any considerable number of actions of this type, the southern district of New York, the number was only 14, or slightly over one case per judge for the 12 judges, as compared with 11 for the one judge for Delaware. On December 31, 1945, 17 suits brought by the Securities and Exchange Commission in relation to plans for dissolution of holding companies under the Public Utility Holding Company Act of 1935 were pending in the district of Delaware and affected the companies, many of them well known, listed on page 4 of Mr. Shafroth's memorandum enclosed.

Another factor indicative of the considerable proportion of difficult cases brought in the district is the comparatively high number of appeals, an average for the last 5 years of 20 per year for the district judge in Delaware, in comparison with an average number per judge in all of the districts of 11.3. Other pertinent data are shown in Mr. Shafroth's memorandum.

It is plain from observation of the work of the court during the last years that two judges are needed.

This statement was accompanied by a more extensive analysis of the business of the district and tables showing the flow of cases for a period of six and one-half years, the caseload per judge in the district as compared with that in the Third Circuit and in the eighty-four districts for a period of six years, the number of civil cases filed in the district by nature of suit for a similar period, and some detailed information with reference to patent cases and bankruptcy cases filed in the district.

A further important use of judicial statistics which needs to be stressed is the part which they can play in furnishing information to students of the social sciences. No study of the operation of rationing and price control is complete without a knowledge of the court actions, both civil and criminal, brought to enforce the regulations and to punish violations. Was the May Act of July 11, 1941,<sup>3</sup> prohibiting prostitution in areas adjacent to army camps, as effective as it was hoped it would be? The answer must include some information on the extent and results of court actions to enforce it. The number of prosecutions under the Selective Service Act was far less than under the Draft Act of World War I. Was this due to more vigorous prosecutions and a more speedy operation of the courts or was it due to the manner in which the two laws were drafted and the policy of the enforcement officials? Answers to these questions require, among other things, a close study of the cases involving the statutes which were brought in the federal courts. It is an interesting fact that over a given period the percentage of convictions of defendants tried by jury for three types of offenses varied from 95 per cent for defendants in Selective Service Act cases to 54 per cent in OPA cases and 49 per cent for defendants charged with violating the May Act.

With the current talk of the possibility of reinstating rationing and price controls, it is of interest to know that of 75,000 civil cases brought in the federal courts in the fiscal years 1945, 1946, and 1947 by the Office of Price Administration or its

<sup>3</sup> 55 STAT. 583 (1941), as amended, 18 U. S. C. A. §518a (Supp. 1946).

successors for injunctions or treble damages, only three per cent of those disposed of during those years have been tried, the vast majority being dismissed or terminated by judgments entered by the consent of the parties. During the same period 8,800 criminal proceedings were brought. It seems obvious from these figures that civil actions rather than criminal prosecutions were generally used against at least the smaller violators and that in filing such civil actions the enforcement agency was aware that the bulk of them would never be tried.

To the end that the federal court data which has been accumulated shall be of as great use as possible, the Administrative Office of the United States Courts and the Judicial Statistics Committee have offered to make information available to scholars and students on such subjects as: the use in criminal law enforcement of the charge of criminal conspiracy or of mail fraud; the extent of the choice of venue in Federal Employers' Liability Act cases; the results of the new Federal Rules of Criminal Procedure providing for waiver of indictment (Rule 7(b)) and transfer for plea and sentence (Rule 20); the use of the statutory three-judge court; the diversity jurisdiction of the federal courts and the use of the removal statute;<sup>4</sup> the extent of recidivism among probationers of the federal system; pre-trial procedure as a means of promoting a more efficient disposition of judicial business; the use of discovery and summary judgment proceedings in the federal courts;<sup>5</sup> the operation of the Selective Service Act during the war;<sup>6</sup> and the number of denaturalization cases brought in the federal courts.

An example of the help which has been furnished along such lines is the data supplied by the Administrative Office to the Department of Political Science of the University of Minnesota concerning the judicial business of the United States District Court for the District of Minnesota in connection with the study which is being made concerning federal and state relationships in that state.

Another purpose of mass statistics is given by Mr. Sam Bass Warner, now Register of Copyrights and formerly a professor of law at Harvard:

The function of mass statistics is . . . to focus attention on matters needing investigation and explanation.

. . .

The value of criminal statistics in society's struggle with crime may be compared with that of the balance sheet and profit and loss statement in a corporation's struggles for profits. Neither the balance sheet nor the profit and loss statement show why the business has been successful, yet no corporation would think of operating without them. The balance sheet and the profit and loss statement are for the corporation the indispensable tools of knowledge. Similarly, mass criminal statistics are the indispensable tools of knowledge

<sup>4</sup> An interesting study of this subject is Clark, *Diversity of Citizenship Jurisdiction of the Federal Courts*, 19 A. B. A. J. 499 (1933).

<sup>5</sup> An excellent unpublished study on this subject of cases in the Southern District of New York was made by Mr. Abram Stockman for the New York Law Society in 1942.

<sup>6</sup> A study of Selective Service cases was made by Mr. Ronald H. Beattie while Statistician of the Administrative Office and published in the quarterly report of the Director for the second quarter of the fiscal year 1945.

for any community that is attempting to reduce its crime and improve its administration of criminal justice.<sup>7</sup>

This caveat against too great reliance on criminal statistics to point the way to the correction of defects should also be applied to civil judicial statistics. In the words of the late Chief Justice Harlan F. Stone:

The statistical method of dealing with social problems often cannot be relied on as mathematical demonstration leading to specific conclusions, but it may be used to indicate tendencies, to mark out the boundaries of a problem and to point out the direction which should be given to a particular investigation of a non-statistical character.<sup>8</sup>

To attain as far as possible the objectives of judicial statistics which have been mentioned, a system for the collection of data from the federal courts has been set up by the Department of Justice and elaborated by the Administrative Office to such a point that it may now be stated that federal judicial statistics are more comprehensive than those compiled by any other country, and more complete than those of any state, including New York and California, where excellent statistical work is done by the judicial councils.<sup>9</sup> It is true that the criminal statistics issued by Germany before the first World War, and by France, Italy, and England, and perhaps some other European countries, up to the time of the second World War were more comprehensive than our federal statistics in the detail with which they reported the amount and nature of criminality and the characteristics of convicted offenders. Such reports were very useful from a sociological viewpoint. Statistics of this kind are issued periodically by the Federal Bureau of Investigation and the Bureau of Prisons of the Department of Justice. But from the standpoint of court administration, more complete information as to federal judicial statistics is available in the Administrative Office as to both civil and criminal cases than can be found for the courts of any other nation or state. The reason for this is the use of the individual case card system, which is more fully explained below.

#### HISTORICAL REVIEW OF FEDERAL JUDICIAL STATISTICS

The first comprehensive data on the business of the federal courts is found in the report of the Attorney General for the fiscal year 1872.<sup>10</sup> This contains reports of criminal cases and of civil suits to which the United States was a party classified into five divisions, viz., customs, internal revenue, post office, quo warranto, and miscellaneous. Beginning with 1873 data on other federal civil business is also given. By 1922 the number of classifications used in the tables published in the Attorney

<sup>7</sup> SAM BASS WARNER, *CRIME AND CRIMINAL STATISTICS IN BOSTON* 54-55 (1934).

<sup>8</sup> Book Review, 35 *HARV. L. REV.* 967, 968 (1922).

<sup>9</sup> See also bibliography of judicial statistics compiled by the author, 38 *LAW LIBRARY JOUR.* 37 (1945).

<sup>10</sup> The Act of June 22, 1870, which established the Department of Justice, required the Attorney General to make an annual report "of the business of the Department of Justice . . . and of any other matters appertaining thereto that he may deem proper, including a statement of the . . . statistics of crime under the laws of the United States, . . ." and as far as practicable, under the laws of the several states. *REV. STAT.* §384 (1875), 5 *U. S. C.* §333 (1940). Some information was included in the annual report for 1870.

General's report had increased to about fifty for civil cases and an equal number for criminal cases. However, the major change in federal judicial statistics did not occur until 1935, when a system of individual card reporting for each civil and criminal case was adopted on the recommendation of a committee appointed by the National Commission of Law Observance and Enforcement (popularly known as the Wickersham Commission). The committee's chairman was Judge Charles E. Clark, now of the United States Circuit Court of Appeals for the Second Circuit, and at that time dean of the Yale Law School. This system gave the flexibility which was needed for a study of particular aspects of the business of the federal courts. When the Administrative Office of the United States Courts was organized in 1939 the Department of Justice's system was taken over. Through the setting up in the Administrative Office of a Division of Procedural Studies and Statistics, the opportunity has been afforded for a detailed study of the work of particular courts and districts and for an annual review of the total business of the federal courts.

At the time of the transfer, only the collection of civil and bankruptcy statistics was taken over by the Administrative Office. Reports on the criminal business of the courts were being made by the United States attorneys to the Department of Justice, and criminal statistics furnished by the Department were published by the Administrative Office in its annual reports for 1940 and 1941. Beginning July 1, 1941, the clerks of court were instructed also to furnish information to the Administrative Office on criminal cases, and since that date all district court statistics have been under the control of the judicial branch of the government. The Department continues to receive reports from the United States attorneys, but these differ in some respects from the information on criminal cases supplied to the Administrative Office. A major difference between the two sets of statistics has been that the Administrative Office from the beginning has tried to eliminate from its figures the duplicate counting of defendants who appeared in more than one charge at the same time or whose cases were disposed of during the same period, while the Department has not eliminated such duplication.

Individual case cards for cases in the circuit courts of appeals were initiated at the same time the criminal statistics were taken over. Since the transfer of the federal probation system from the Department of Justice to the Administrative Office, statistics in reference to probationers and some data with reference to parolees and conditional releasees have been furnished to that office by probation units in the field and have been included in its annual report.

Primary responsibility for establishment of the Administrative Office's statistical system is to be credited to Ronald H. Beattie, an extremely able statistician, who served the office from 1940 to 1944.<sup>11</sup> While the general system was taken over from the Department of Justice, Mr. Beattie adapted it to the task of furnishing more complete information concerning the work of the courts, trained the office

<sup>11</sup> Mr. Beattie is now Statistical Consultant of the Department of Corrections of the State of California.

statistical staff, and did some noteworthy research on his own initiative. He was succeeded as statistician by Mr. Orin S. Thiel, who has continued to develop the possibilities which are inherent in the complete collection of statistical data furnished by the clerks of court.

#### THE STATISTICAL DIVISION OF THE ADMINISTRATIVE OFFICE

One of the prime purposes in creating the Administrative Office was to speed up the operation of the federal courts through the furnishing of accurate information on the state of business in each individual court and in each class of courts. The legislative history of the bill shows that this was thoroughly discussed in the hearings both in the Senate and in the House and was referred to in the committee reports.<sup>12</sup> In an address before the American Law Institute on April 6, 1941, former Chief Justice Charles E. Hughes, after stating that the chief objective of the legislation was "to promote promptness and efficiency in the disposition of litigation," said: "One of the necessary steps to this end is to obtain an adequate understanding of the course of administration by perfecting a system of statistics so that they will be really informative and not a mere mass of figures, which through lack of proper analysis are either meaningless or of slight value."<sup>13</sup> When the office was set up a statistical staff was provided, and two attorneys in addition to the Chief were allocated to the division for the purpose of inspection of the dockets of the several courts. Another provision of the Act creating the office gave the Director the duty of examining the state of the dockets and of making quarterly reports to the Senior Circuit Judges of each circuit, "to the end that proper action may be taken with respect thereto."<sup>14</sup> From a statistical point of view, another important provision of the Act directed the clerks of the district courts to comply with any and all requests made by the Director for information and statistical data.<sup>15</sup>

The statistical methods used in the Administrative Office are of some interest and importance. The clerk of each district and circuit court in the federal system

<sup>12</sup> The report of the House Judiciary Committee contained the following statement: "The design of the legislation is to furnish to the Federal courts the administrative machinery for self-improvement, through which those courts will be able to scrutinize their own work and develop efficiency and promptness in their administration of justice. To that end, the Director is required to prepare and submit quarterly, to the senior circuit judge of each circuit, statistical data and reports of the business transacted by the district courts therein, and a semiannual council of the circuit judges in each circuit is provided for the purpose of studying such reports and expediting the work of the district courts, as well as the circuit courts of appeals. The district judges are required to carry out the directions of the council as to the administration of the business in their respective courts. In addition to the council, the bill provides for an annual conference of the circuit and district judges in each judicial circuit, with participation by members of the bar for the purpose of considering the state of the business of the courts and advising ways and means of improving the administration of justice within each circuit." REP. NO. 702 TO ACCOMPANY H. R. 5999, 76th Cong., 1st Sess. 2 (1939).

<sup>13</sup> 27 A. B. A. J. 334 (1941).

<sup>14</sup> The Director is charged with "examining the state of the dockets of the various courts and securing information as to their needs for assistance, if any, and the preparation of statistical data and reports of the business transacted by the courts, and promptly transmitting the information so obtained quarterly to the senior circuit judges of the respective circuits, to the end that proper action may be taken with respect thereto. . . ." 53 STAT. 1223 (1939), 28 U. S. C. §446 (2) (1940).

<sup>15</sup> 53 STAT. 1223 (1939), 28 U. S. C. §446 (7) (1940).

makes a report on a separate card as to each case filed in the court and as to each case terminated. Bankruptcy termination reports are prepared in the referee's office on a form sheet, filed with the clerk and forwarded by him to the Administrative Office. All these case reports are sent in once a month by each clerk with a summary form showing the number of cases filed and terminated during the month, and the number of cases pending at the end of the month. Cards for the cases filed show the district, the docket number, and the nature of the case or the type of offense, and also the name of the case. The termination report shows the procedural progress of the case in court, whether there was a trial or not, how long the trial lasted, by what judge the case was tried, and the outcome, which means the amount of recovery in a civil case, or the type and length of sentence in a criminal case.<sup>16</sup> In bankruptcy the distribution to creditors is given with an analysis of the expenses of administration. The information on these cards is classified by the Administrative Office staff by a numerical code, and the numbers for each item are then punched on the card which has been sent in, a light cardboard card measuring  $3\frac{1}{4}$  by  $7\frac{3}{8}$  inches, suitable for processing through a mechanical sorting and counting machine of the Hollerith type. During the fiscal year 1947 approximately 225,000 separate case reports were received from the clerks. Obviously it would be impossible to tabulate these by hand. The Hollerith statistical system had been employed in the study of cases conducted by the Yale Law School in the Connecticut Superior Courts, by Johns Hopkins Institute of Law in its study of state court statistics in Maryland, Ohio, and West Virginia, and by the committee of the Wickersham Commission which conducted the study of the business of the federal courts. Therefore, when the Department of Justice adopted the individual card reporting system, the adaptability of the punch card system to judicial statistics had been sufficiently demonstrated. It was immediately used in connection with the individual card reporting. In addition to machines for punching the cards and the Hollerith sorter and counter, the Administrative Office has also added other International Business Machines equipment, including a tabulator which lists the figures on punch cards and adds them at the same time, a summary punch which, when attached to the tabulator, makes a new punch card giving combined figures which have been added on the tabulator, a collator, which automatically matches filed and terminated cards of the same docket number, and a gang punch which simultaneously punches a number of cards. These are all time-savers which have enabled the office to produce more accurate figures more promptly. There are various uses to which these figures have been put, several of which have already been mentioned. By a quarterly report, the senior circuit judges and the members of each circuit court, constituting the judicial council of the circuit, are given information as to the condition of the district courts in the circuit, to assist them in fulfilling the supervisory functions placed upon them by the Administrative Office Act.<sup>17</sup>

<sup>16</sup> The cards used for reporting civil and criminal cases are reproduced in Figs. 1-4, showing the information requested.

<sup>17</sup> Section 306 of the Act provides: "The senior judge shall submit to the Council the quarterly



INITIAL CIVIL DOCKET REPORT - J. S. 5

DISTRICT		OFFICE	DATE FILED	DOCKET NUMBER	DIS. OF.	MO.	DAY	YR.	DOCKET NUMBER	CHAR. OR RES.	NATURE OF ACTION
PLAINTIFF											
DEFENDANT											
I WHERE DOCKETED											
II ORIGIN OF CASE											
III ASSIGNED TO JUDGE											
IV NATURE OF SUIT OR ACTION (EXPLAIN FULLY)											
V BASIS OF JURISDICTION											
VI PARTIES AS FOLLOWS:											
VII RES. - NATURE OF SUIT -											
ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, WASHINGTON 13, D.C.											
MO. OF FILING											
DOCKET NO.											
MARCH OF YEAR											

IBM 749512

FIG. 1—INITIAL CIVIL DOCKET REPORT



INITIAL CRIMINAL DOCKET REPORT - I.S. 2

DISTRICT	OFFICE	DATE FILED	DOCKET NUMBER	DIS. OFF.	MO.	DAY	YR.	OFFENSE	DOCKET NO.	
<b>III NAMES OF DEFENDANTS</b>										
1	INDICTMENT	4	REMANDED FROM APPELLATE COURT	7						0
2	INFORMATION	5	REMOVED FROM STATE COURT	8						1
3	INFORMATION - INDICTMENT WAIVED	6	REINSTATED OR REOPENED							2
<b>II OFFENSE OR OFFENSES CHARGED</b>										
U.S. Code										
Title and Section				Description of Offense						
1										No. of Counts
2										7
3										8
4										9
5										10
6										
7										
8										
9										

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, WASHINGTON 13, D.C., IBM 749510 DIS. OF. NO. III II. DOCKET NO. OFFENSE NOS. LICENSED FOR USE UNDER PATENT 1,772,492

Fig. 3--INITIAL CRIMINAL DOCKET REPORT

FINAL CRIMINAL DOCKET REPORT DEFENDANT—J.S.3

DISTRICT	OFFICE	DATE TERMINATED	DOCKET NUMBER	DIS. OF.	MO	DAY	YR	DOCKET NUMBER	DEFT. NO.
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DEFENDANT'S NAME \_\_\_\_\_

NO. FROM J.S.2 \_\_\_\_\_

**I PLEAS:**  
 INITIAL PLEA --- NOT GUILTY  NOLLO CONT.  GUILTY  DATE \_\_\_\_\_  
 LAST PLEA --- NOT GUILTY  NOLLO CONT.  GUILTY  DATE \_\_\_\_\_

**II TRIAL:**  
 NOT TRIED  BY JURY  BY COURT  DATE BEGUN \_\_\_\_\_  
 DISPOSITION --- NOT GUILTY  GUILTY  OTHER (SPECIFY) \_\_\_\_\_  
 NUMBER OF DAYS ON TRIAL \_\_\_\_\_ TRIAL OR SENTENCING JUDGE \_\_\_\_\_

**III OFFENSES OF WHICH CONVICTED: CONVICTED OF ALL OFFENSES CHARGED ; OF PART OF OFFENSES OR OF LESSER OFFENSE (SPECIFY) \_\_\_\_\_**

**IV SENTENCE:** \_\_\_\_\_

**V OTHER DIS- OF ALL OFFENSES CHARGED: NOLLOED OR DISCONTINUED  QUASHED OR DISMISSED  OTHER (SPECIFY) \_\_\_\_\_**

**POSITION: OF PART OF OFFENSES CHARGED: (SPECIFY UNDER PROPER HEADING) \_\_\_\_\_**

**VI DOES THIS REPORT SHOW THE FINAL DISPOSITION OF ALL OFFENSES CHARGED? YES  NO**

46 47 48 49 50 51 52 53 54 55 56 57 58 59 60  
 DIS. OF MO DAY YR DOCKET NO DEF.

Fig. 4—Final Criminal Docket Report

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, WASHINGTON 13, D.C.

FORM 742511

When legislation with reference to additional judgeships in particular districts is introduced in Congress, it is customary for the House and Senate Judiciary Committees to ask the Administrative Office for a report on the judicial business of those districts. This normally consists of tables showing the flow of cases in the district for some years, an analysis of the types of cases, both civil and criminal, which have been filed, a statement showing the caseload per judge in the district as compared with the average caseload in the federal courts in the United States as a whole, and some comment on the business of the district. Information as to the speed of disposition of civil cases in the district as compared with the general average is also given. In addition, Congress has shown interest in information concerning special types of litigation such as habeas corpus, Fair Labor Standards Act cases involving portal-to-portal claims, and the bankruptcy cases.

In 1946 a law was enacted providing for a system of salaried referees in the federal courts, replacing the previous fee system. The Administrative Office was directed to make a survey of the bankruptcy business and make recommendations concerning the number of referees and the salaries, both of which were to be fixed by the Judicial Conference of Senior Circuit Judges. For this purpose it was necessary to go back into the reports received for the past ten years. Very detailed information by referee was available for the past five years, and this was used in estimating the amount of business the several districts might produce in the future. The earnings of each referee for this period were tabulated for the Conference and were used by it in making its determinations. This was an instance in which figures not published in any tables but available in the Administrative Office files were of great importance in helping the Judicial Conference in its determination of salaries, personnel, and fees to be charged under the new referee act. One of the greatest benefits of the individual card reporting system is that it makes available information which may be needed in the future, and provides a "readiness to serve" feature which is valuable.

#### CASES UNDER ADVISEMENT

One other form of statistics which the Administrative Office collects should be mentioned. Upon the authorization of the Judicial Conference, the office sends quarterly to each district judge a letter requesting information as to the cases which at the end of the quarter had been held under advisement by him for more than thirty days. If a case has been held more than sixty days it is suggested that the reason why it has not been decided should be given. For the purpose of this report, a case is not regarded as under advisement until it has been fully submitted and all papers filed. This does not include cases in which the decision is being postponed on request of counsel for all parties nor cases in which the court is awaiting the handing down of another opinion. Cases which are held more than sixty days

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reports of the Director required to be filed by the provisions of Section 304, Clause 2, and such action shall be taken thereon by the Council as may be necessary. It shall be the duty of the district judges promptly to carry out the directions of the council as to the administration of the business of their respective courts." 53 STAT. 1223 (1939), 28 U. S. C. §448 (1940).

awaiting the filing of briefs are also to be listed, as are cases which have been referred to masters more than ninety days before the end of the quarter, and in which no report has been filed. The Administrative Office makes a compilation of the answers received, and sends it to the members of the circuit councils, which are made up of the judges in the circuit courts of appeals, each council receiving information concerning cases in that circuit only. The late Judge Otis of Kansas City has said of this report:

Every three months every federal trial judge receives a little communication . . . asking three questions. . . . I cannot speak for other judges but I do say speaking for myself that the innocent little inquiry coming to me four times a year has affected me even as a spur affects the sluggish steed. Mr. Shafroth's gentle hint does more to stir me, and my colleagues too, than all that Shakespeare in the soliloquy of Hamlet wrote concerning "the evil of the law's delays," than all that Milton uttered in his Latin verse about "the lawyer with his inexhaustible ten year case."

The first report received by the office in 1940 indicated a total of 415 cases or motions within the scope of inquiry, among which were twenty-nine under advisement for more than a year, including six cases which had been held over two years and three which had been held over three years. The second annual report of the Director indicated that by August 1, 1941, the number of cases or motions held over thirty days had been reduced to 314, of which there were but six which had been held more than a year, and in two of those opinions had been drafted but not yet filed. These reports continue to be made each quarter. A recent report shows 225 matters held under advisement over thirty days, of which one was over a year old.

The value placed upon these reports by the Statistics Committee of the Conference is shown by the following statement contained in the Committee's first report:

Notwithstanding the inconvenience to the individual judges thus called on for statements as to their work, the committee is of the opinion that the furnishing of the quarterly report on cases under advisement to each circuit council, showing the cases under consideration by the district judges in the circuit, is one of the most important functions which the statistical division performs. District judges who have no cases to report are asked to keep in mind that these reports are for the good of the judicial system as a whole, even though in a particular case they may be entirely unnecessary.<sup>18</sup>

The quarterly reports required by the Act are designed to give an up-to-date picture of the condition in each district. They constitute a report on the flow of civil, criminal, and bankruptcy business, with figures giving the number of cases pending at the beginning of the period in each district, the number filed, the number terminated, and the number pending at the end of the period. For the second quarterly report, each year, there is a further refinement showing the types of civil and criminal cases filed in each district for the half-year period. In addition to this purely statistical report, which is accompanied by a general analysis of trends, there is the separate report previously mentioned which goes to the circuit judges

<sup>18</sup> 7 FED. B. JOUR. 292, 299 (1946).

in each circuit, summarizing the information furnished by the district judges of that circuit as to cases under advisement. The fourth-quarter report consists only of this information, as the data for the entire year published in the annual report gives the condition in each district as of June 30.

The Act provides for this annual report, and requires that it be filed with the Congress. It contains a statement by the Director, full information as to the judicial business, an analysis of developments during the year, a general report as to the condition of the dockets, tables showing the time required for disposition of cases by the district courts and by the circuit courts of appeals, further details concerning districts which are reported as in arrears, and a report of the annual meeting of the Judicial Conference of Senior Circuit Judges. A ten-year flow-of-cases table concerning the work of the Supreme Court, derived from the records of the clerk of that Court, is also included, as well as reports from the Court of Claims, the Court of Customs and Patent Appeals, the Customs Court, and, for the last three years, the Emergency Court of Appeals, created to hear appeals from determinations of the Office of Price Administration in certain cases. This annual report is printed and distributed to members of Congressional committees, to the federal judiciary, to the clerks of courts, to law libraries, and to certain interested individuals. The quarterly reports are mimeographed and are supplied only to judges, clerks, and officials of the judicial system.

#### THE STATISTICS COMMITTEE OF THE JUDICIAL CONFERENCE

In the year 1943, the Judicial Conference authorized the appointment of a committee "to consider in consultation with the Director methods of improving the existing scheme of collecting and compiling federal judicial statistics by the Administrative Office." This committee has been of material assistance to the statistical division. It is composed of a group of judges familiar with the operations of the federal courts who meet at least once a year and review the work of the division, make suggestions, propose research projects, review techniques, and make recommendations to the Judicial Conference in the field of judicial statistics.

#### WEIGHTING THE CASELOAD

The most recent project of the Committee is of such general interest that a brief description of it is in order. Analysis of the caseload in the district courts for the purpose of determining the relative amount of time required by a district judge for the disposition of various types of cases, and particularly of types of civil actions, has been a subject of interest to the committee for some time. It is obvious that the number of cases alone is not an accurate criterion of the amount of work involved in their disposition. This is well illustrated by the fact that the great flood of civil cases filed by the Office of Price Administration for injunction and treble damages in the fiscal years 1945 and 1946 in the district courts of the United States practically doubled the total number of civil cases filed, although it increased the work of the judges by only a comparatively small amount. The Administrative

Office's figures on disposition show that only 3 or 4 per cent of these cases ever reached trial, and that nine out of ten were settled by consent judgment or consent dismissal. Eight district judges were asked by the Committee to keep time records showing the relative amount of time spent on cases of different kinds. The results for a period of three to six months were summarized. The information obtained from that study showed that a great deal more time was put by those judges on private cases than on any other type of litigation which came before them. Particularly in view of the fact that Congress often asks the Administrative Office for information concerning the need for additional judgeships which have been requested in particular districts, the Committee felt a further investigation should be made, and this study is being continued with the cooperation of a number of district judges.

The chairman of the Statistics Committee is Judge Charles E. Clark, of the United States Circuit Court of Appeals for the Second Circuit, who was in charge of the study of the business of the federal courts for the Wickersham Commission, which has already been mentioned. The other members of the Committee are: Judge William Denman, of the Ninth Circuit Court of Appeals, Judge Herbert F. Goodrich, of the Third Circuit Court of Appeals, Judge William H. Kirkpatrick, District Judge of the Eastern District of Pennsylvania, Judge Allen B. Hannay, District Judge of the Southern District of Texas, and Judge Royce H. Savage, District Judge of the Northern District of Oklahoma.

#### CONCLUSION

Federal judicial statistics are still in a state of development. The adoption of the individual card reporting system and the punch-card method of tabulation has produced a considerable improvement. Since the establishment of the Administrative Office, a principal duty of which is to gather, publish, and interpret judicial statistics, further progress has been made. The office is seeking to develop a system which will meet as nearly as may be the objectives set forth by Justice Felix Frankfurter and Mr. James M. Landis in their excellent work on the federal courts:

We ought to know how the different districts and different judges dispose of their business, the demands of different classes of litigation upon court time, the expedition or delay in adjudications, the part played by jury trials, the administration of extraordinary remedies, the relation between federal courts and state courts, and the work of the federal courts in regard to litigation involving no peculiar federal questions. Similarly, appropriate annual statistics of the circuit courts of appeals—now happily free from arrears—will give us an authoritative knowledge of courts which, since the Act of 1925, are in so large a measure ultimate courts of appeal. Such an adequate system of judicial statistics, improved and amplified by experience, will, through the critical interpretation of the figures, steadily make for a more vigorous and scientific approach to the problems of the administration of justice.<sup>19</sup>

A great opportunity in this field lies before the Administrative Office, for in no other system, so far as is known, is there now as complete and adequate a method of judicial statistical reporting as is now used by the clerks of court in reporting to that office the business of the federal courts.

<sup>19</sup> FELIX FRANKFURTER AND JAMES M. LANDIS, *THE BUSINESS OF THE SUPREME COURT* 253-254 (1927).