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REPORT OF CHIEF JUDGE ALBERT CONWAY FOR THE COURT OF APPEALS AND AS CHAIRMAN OF THE JUDICIAL CONFERENCE

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I. Introduction

Once again I come before you to make my report as Chief Judge of the Court of Appeals and Chairman of the Judicial Conference. Each meeting of this Association, Winter or Summer, is a noteworthy experience. My own feeling, after some forty years of membership, is that each meeting has merited its own stamp of excellence. This achievement is the direct result of the effort, labor and thought of the Officers and Staff of the Association which is this year under the leadership of the talented and distinguished lawyer, Clarence R. Runals, of Niagara Falls. As a result we, the beneficiaries, always leave these meetings better lawyers and better citizens.

II. The Work of the Court of Appeals During the Year: 1956-1957

It is a pleasure to report that the Court of Appeals has completed another full year since last Summer's meeting, with out calendar right up to the minute. At each session of the Court and again before the completion of our last session, an opportunity for oral argument was given in every case where briefs had been filed and counsel were ready. When we returned to our home chambers to prepare our reports and opinions in the cases which are to be decided on July third (our Summer Decision Session), there were but nineteen records on file in our Clerk's Office. No briefs had been filed in those cases and, of course, counsel were not ready to argue. Every other case in our Court had been argued or submitted. It is also gratifying to be able to report that, because of the current condition of our Calendar, with consent of counsel for all parties, an Appeal to our Court may be brought on for argument on almost any day agreed upon, or, by the insistence by one side upon compliance with the Court Rules, any Appeal may be brought on for argument within 30 to 40 days after it is filed. During the twelve month period since my report to you last year, the Court of Appeals has heard oral argument in 354 Appeals and disposed of 473 Motions.

This Report was given at the 1957 Summer Meeting of the New York State Bar Association at Saranac Inn, New York, June 27 to 29, 1957.

III. The Work of the Judicial Conference

During the past court year, the Judicial Conference held nine plenary meetings. In addition, the Departmental Committees have also held several meetings. Incidentally, the Judicial Conference and the Departmental Committee of the Third Department will hold plenary meetings here today in conjunction with this annual summer meeting of the State Bar Association. We in the Conference feel that much good can come of meeting thus. Not only are we afforded the opportunity of transacting our official business in delightful surroundings, but, at the same time, we are available to you —to discuss the business of the courts with you, receive your suggestions and answer your questions. I wish you would interpret that statement as an invitation—we need and sincerely solicit your assistance.

During the 1957 Legislative session, the Judicial Conference sponsored sixteen bills, some of which were adopted and became law. During the year the Judicial Conference also recommended changes in the Rules of Civil Practice which were adopted by the four Appellate Divisions.

A. *Notes of Issue and the "Readiness" Rule.*—It was just a year ago that the Judicial Conference, meeting here at Saranac Inn, on June 21st, undertook positive action to relieve calendar congestion in the Supreme Court. The Judicial Conference had been gravely concerned over the common and almost automatic practice in filing notes of issue. Investigation disclosed that although there had been little preparation, examination or analysis of the case, the attorney was uncommonly quick to file the note of issue. Having filed the note of issue, the attorney then commenced his preparation of the case for trial. Too often this preparation was at a leisurely pace so that when the case was called for Trial, adjournment was sought to conduct Examinations Before Trial, secure Bills of Particulars, to make Motions and discuss settlement. Although statistics indicate that, in personal injury cases in which notes of issue are filed, approximately 90% are settled before Trial or before Verdict, there was an almost reckless haste to file notes of issue.

This situation demanded correction. At the same time, attorneys, as officers of the courts, had to assume some share of the responsibility for the operation of our courts.

To this end, the Judicial Conference recommended to the Appellate Divisions the adoption of a "readiness" rule. Under that rule, the attorney, at the time of filing the note of issue, would also be required to file a statement that all preliminary proceedings have been completed or that sufficient time had elapsed to permit of the completion of such proceedings, if not completed, or that the parties do not intend to institute such proceedings; that the cause is ready for Trial, that settlement has been discussed unsuccessfully or an explanation of the reasons why settlement discussions have not taken place.

The "readiness" rule has thus been adopted in all four Judicial Departments of the state and already its adoption has produced most salutary results in reducing calendar congestion. I commend the following figures to your attention:

In New York County, there was a total of 6,092 cases pending on December 31, 1956. A total of 2,350 cases was struck off under the Rule up to May 31, 1957 after appropriate notice. At the present time, there are 3,085 cases pending on all calendars in New York County Supreme Court.

In Bronx County, there was a total of 3,803 cases pending on December 31, 1956. A total of 440 cases have been struck off after appropriate notice under the Rule up to May 31, 1957. At the present time, there are 3,002 cases pending on all calendars in Bronx County Supreme Court.

In the Second Department, all new notes of issue filed beginning January 15, 1957, were required to have a statement of readiness attached.

Attorneys in all cases pending on October 1, next, must file a statement of readiness. After that date, if no statement has been filed, the case will be stricken from the calendar.

In the Third Department, the rule became effective on January 1, 1957, to apply to all notes of issue filed beginning with the January 1957 term, in the Third District only. In the Fourth and the Sixth Districts, the rule will become effective September 1, 1957, to apply to all notes filed beginning with the September 1957 term. No provision has been made regarding pending cases.

In the Fourth Department, for all counties except Erie County, the statement of readiness will be required for all notes of issue to be filed beginning with July 1, 1957.

For all notes of issue filed prior to July 1, 1957, a statement

of readiness must be filed by December 31, 1957 or the cases then pending will be stricken from the calendar.

In Erie County, new calendar practice rules were adopted, effective January 1, 1957, under which all new cases go on a general calendar but are not considered pending on their new trial calendar until a statement of readiness is filed.

In New York County, on June 30, 1956, there were 5,014 law cases pending with a reported delay in disposition of 42 months in Tort Jury Cases. As of May 31, 1957, the number of pending cases had been reduced to 2,634 with a reported delay of 20 months. I am informed that the delay figure has been further reduced, as of today, to 19 months.

In Bronx County, on June 30, 1956, there were 3,427 law cases ending with a reported delay in disposition of 41 months in Tort Jury Cases. As of May 31, 1957, the number of cases had been reduced to 2,902 with a reported delay of 32 months.

I must caution you that application of this rule is not a panacea. Our judicial manpower, especially in the Supreme Court, remains a matter of prime concern. From 1942 through 1956, the number of incoming civil cases in the Supreme Court increased by 62%; the backlog of cases, in the same period, increased by 170% although the trial justices disposed of 45% more cases in 1955 than they did in 1942; the number of available trial justices increased by only 7 in the same period—from 93 to 100. If we are to keep pace with our ever-increasing business and remain reasonably current in the disposition of cases, it is necessary that our manpower in the Supreme Court be increased.

Another facet of this problem concerns the present disparity in compensation for Supreme Court justices upstate and downstate. Whatever may have been the historical reasons for this disparity, I am convinced that they are no longer valid. Good administrative policy as well as the economic realities of the present day require that the compensation of Supreme Court justices be uniform throughout the State. The salaries of all justices of the Supreme Court residing outside New York City should always be the same as those paid to Justices residing in New York City. In no other branch or department of State Government does an incumbent's salary depend on his place of residence. Unless and until this is accomplished, we will be in the position of countenancing the present inequity.

B. *Personnel Practices and Policies of the Courts of New York.*

—The Judicial Conference has embarked upon a project, the completion of which will benefit not only the court system but all the people of the State.

Personnel practices and policies vary from court to court, from judicial district to judicial district, from department to department. Without citation of specific examples, there is little or no standardization in so far as titles, salaries, job content or qualifications of court personnel are concerned. This fact not only causes a considerable degree of discontent within the court system itself, but it also serves to bring the system into disrepute and it is seized upon by critics who compare the court system, always unfavorably and often unjustifiedly, with the operation of a private enterprise.

It should be stated—and I speak from nearly forty-seven years of personal experience—that the court employees in the main constitute as loyal, conscientious and hardworking a group as will be found anywhere in private industry or in any court system. They need no defense. In fairness to them, however, and also that a complete and accurate picture of the personnel situation may be obtained, the Judicial Conference has undertaken a study of the personnel practices and policies of the courts of the State.

We have already commenced this study. For the first year, it will embrace the Court of Appeals, the Appellate Divisions, the Supreme Courts and the Court of Claims. Thereafter, it will be extended to other courts.

We prepared questionnaires which have been distributed and returned by those employed in the Court of Appeals, in three of the Appellate Divisions, in the office of the State Reporter and by the Board of Law Examiners.

We are aware of the many difficulties inherent in this project. At the same time, we are conscious of the obligations imposed upon us by statute. Apart from both of these considerations, however, and paramount to them is the simple fact that the court system is the property of all the people and they are entitled to the efficient and economical operation of all parts of that system.

C. *County Clerk's Fees.*—One area of court business which has been the subject of well deserved criticism is that relating to County Clerk's fees. These fees are presently set out in over forty different sections and subsections of the Civil Practice Act and a more incomprehensible group of statutes could hardly be devised. Moreover, these schedules are being constantly revised so that it is vir-

tually impossible for any lawyer to remain abreast of them. For example, in the 1957 Legislative session, twenty separate bills were introduced, and many of them passed, seeking revision of these statutes and thus further compounding the confusion.

This chaotic situation was the subject of study by the Judicial Conference last year and an analysis of these disparate statutes was contained in the Second Annual Report of the Conference.

This report commended itself to the County Clerks' Association which, too, was concerned about the situation. That group has been in consultation with the Judicial Conference, in an effort to draft legislation which will not only obviate the present hodge-podge of statutes but which will assure a fair realistic monetary return to the counties for the services performed by the County Clerks.

Following this meeting, representatives of the Judicial Conference will meet with the County Clerks' Association at their annual convention in Chautauqua. They will discuss the proposed legislation relating to the County Clerks' fees and other matters relating to the work of the Courts. This join endeavor is a forward step in court administration in our State.

D. *Inventory of the Work of the Courts.*—Another item of interest to lawyers and judges is the inventory of the work of the Courts. No business organization can continue to conduct its business efficiently and economically unless it knows (1) what its capacity is for the production and disposition of its product; (2) what its inventory of product is at a particular time; and (3) what the outlook is or what trends are discernible. So, too, with the Courts. Our product is justice and we must insure that our product is always readily available to the public. However, we must be informed, and we must be prepared to inform others, as to the state of our business, our needs and the outlook for the future. We cannot do this by any hit or miss method. Ever mindful of the fact that our courts are primarily concerned with the human equation, we must, at the same time, be as accurate in our reports as is possible. Any less standard is a disservice to the people.

To accomplish this end, the Judicial Conference has determined upon a new method for the collection and compilation of judicial statistics. For many years, the work of the Courts has been reported on a volume basis—how many cases come in, how many were disposed of, how many months calendars were behind. No attempt was made to discover what type of cases preponderated in our calendars,

how long they took for disposition, the causes of undue delay. In other words, volume was a substitute for information.

We have undertaken to remedy this obvious shortcoming. Commencing on July 1, 1957—the statistical commencement of the judicial year—a record of each case, from its inception to its conclusion, will be maintained. I will not burden you with the details of the system except to say that, through the use of IBM machines, meaningful, accurate, and up to the minute statistics on the work of our courts will be instantly available. Moreover, and not the least important, this new system will free the clerks from the onerous task of filling out complicated forms in reporting the work of their courts. I would be remiss if I did not acknowledge publicly the cooperation and understanding which have been extended to us in this undertaking by the members of the legislature and especially by Senator Erwin and Assemblyman MacKenzie.

E. *Disparity in Local Rules of Court.*—In the procedural field, the attention of the Judicial Conference has been directed to the disparity in local court rules. These rules vary from Department to Department and from District to District. As practicing lawyers, I am certain that you have had to contend with these variances and I am equally certain that your comments concerning them have been pithy and critical.

I am frank to tell you that I do not subscribe to the theory that uniformity, per se, is desirable. However, there is no reason why, within reasonable limits, court rules should not conform one to another.

A notably aggravating situation obtains in the City of New York. Some of the counties comprising the City are in the First Department and the others are in the Second Department. Lawyers in the City practice in both Departments. Differences in the court rules have plagued lawyers for years.

Early this year, the Conference suggested to the Deputy Administrators for the First and Second Departments areas where uniformity in the court rules might be achieved. Subsequently, the Appellate Division, First Department, undertook a study of the court rules in the First District. The Conference then suggested that this study be broadened to encompass the counties of the City of New York within the Second Department. This suggestion was gracefully received and in May of this year, representatives of the Conference met with representatives of Presiding Justice Peck and Presiding

Justice Nolan to study the matter. I may report to you that the project is in capable hands and under way. It is my hope that, in time, these artificial barriers which have sprung up to vex us in the practice of our profession will have disappeared through enlightened reappraisal.

F. *Summer Sessions in the Courts.*—You will recall that last year I reported to you on the subject of the then-projected summer sessions in the Courts. These sessions were held last Summer in the Supreme Courts, City Courts and Municipal Courts of the First and Second Department with what I personally termed significant and gratifying results. The experience of last summer motivated the Judicial Conference to recommend that summer sessions be continued to afford litigants the opportunity of trying their cases during July and August. Last year the Supreme Court in New York, Bronx, Kings, Queens and Westchester Counties disposed of 452 cases; the City Court of the City of New York, of 224 cases; the Municipal Court of the City of New York, of 512. That made a total of 1188 cases. That was a sizeable number. I shall ask the Bar Associations of the metropolitan area and the Judicial Conference to consider whether we should not revert to the method used in 1956. The Appellate Divisions this year in the First and Second Departments have devised the procedural arrangements to implement this recommendation and the trial justices—without exception—have indicated their willingness to undertake and carry out this public service. The following is the table of assignments of Justices and the number of cases which attorneys notice for trial in July and August.

SUMMER SESSIONS—1957
SUPREME COURT

Department	*District*	*County*	*Cases on Calendar*	*Judges Assigned*	*Jurors Drawn*
First	First	New York	2		
		Bronx	4		
			6	4	250
Second	Second	Kings	43	12	1200
	Ninth	Westchester	36	5	600
	Tenth	Queens	12	4	200

Note: No Summer Assignments in Third and Fourth Departments.

CITY COURT OF THE CITY OF NEW YORK			
New York	6	3	150
MUNICIPAL COURT OF THE CITY OF NEW YORK			
Borough of Manhattan	1		
Borough of Kings	5		
Borough of Queens	3		
Total	9		

Note: A. No special assignments.
B. Regular Panel of 125 jurors for each Thursday.

I must say to you that I am disappointed in the response to this unselfish tender of service by our courts. I would be less than frank with you if I did not tell you that I am inclined to place the fault with the lawyers. Despite the clamor over delay in the disposition of cases—to which the lawyers have also given voice—they have been unwilling to match the sacrifice which the courts have been willing to make. Even though officers of the court, and assistants in the administration of justice, they have ignored their obligations and placed self-interest above the community interest. This is a serious indictment which must and will be tried in the court of public opinion. Too long have the courts been accused unjustly and saddled with the responsibility for delay and congestion when, as a matter of fact, it has been the judicial system itself which has attacked these problems directly and effectively. One such method of attack I have already reported on—the readiness rule. But we need —and we will expect to receive—the cooperation of the bar in our endeavors. We are approaching the point where if we are to operate efficiently, we can no longer countenance the attitude that the courts are the private preserve of any lawyer or lawyers who are willing to accept every benefit our courts can give, but are unwilling to give something in return.

It has been reported to me that there are lawyers whose practice consists of personal injury cases who are unwilling to try or settle more than a certain number of cases during a year, for fear of incurring increased income tax liability. This is understandable but not excusable for since 90% of those personal injury cases are settled and the portion of the bar which makes those cases its specialty is small, their income must indeed be high.

The Insurance Expense Exhibit published by the New York Insurance Department shows that for automobile liability, the losses for 1954 amounted to $149,370,000 and for 1955 amounted to $175,180,000. These figures excluded all loss adjustment expenses. They represent the experience of all carriers.

With 90% of those amounts paid without trial, this has in many ways become a business rather than professional work. We must remember, as I have pointed out on other occasions, that personal injury actions constitute the only segment of court work as to which there is delay.

G. *The Need for Law School Instruction in the Administrative Aspects of the Law.*—There is another subject which I should like to discuss with you for a minute or two. During my more than a quarter of a century on the Bench and, more recently, as Chairman of the Judicial Conference, I have been deeply impressed by the manifest lack of knowledge and understanding of our courts, how they operate, their problems, their needs. This failure may be understandable in the general public, but certainly not in so far as the lawyer community is concerned.

It is my opinion that understanding and knowledge of our court operation is indispensable if lawyers and the courts are to work effectively as a team in more than a nominal sense. This understanding, I feel, must be inculcated early in the neophyte and fostered and nurtured in the mature practitioner.

To this end, therefore, I recommend that the law schools of this State adopt, as part of their regular curriculum, instruction in the administrative aspects of the law. Such a course might properly include study of the operation of the court plant, the teaching of means of alleviation of calendar delay, evaluation of the effect of local procedural rules. Such a course could be implemented by a workshop program, somewhat akin to the popular moot court programs. Moreover, the law schools, with the cooperation of the courts, could assign members of the third-year class, for example, to work in the various parts of the court, the trial parts, the clerks' offices, in chambers. With such a program, young lawyers, upon graduation, would approach the courts with a deeper and sympathetic understanding of the nature of the judicial process.

Bar associations, too, can be of material assistance, in so far as the lawyer is concerned. Local associations might properly invite the

president of the local Board of Justices, the County Clerk or the Court Clerk to speak to the membership from time to time, or to write articles, concerning court administration.

I am not alone in recommending this program to the law schools and to the bar associations. The Executive Committee of the Attorney General's Conference on Court Congestion, meeting in Washington, D. C., on January 7, 1957, made substantially similar recommendations.

I may say to you that I and each member of the Judicial Conference are ready and willing to render all assistance to the law schools and bar associations of our State in order that this program may get under way soon. We solicit their understanding and cooperation in this important educative undertaking.

H. *Court Reorganization.*—The last item I wish to discuss with you is Court reorganization. I am the only member of the Judicial Conference who is a state-wide officer. During the 1957 session of the Legislature, by actual count there were ten separate bills introduced concerning this subject. As you know none was passed.

In the forefront of the cause of reorganization is the Temporary Commission of the Courts. The Commission presented to the legislature this year the synthesis of its efforts. It failed of passage. Other plans, varying in scope from the Temporary Commission plan, also failed of passage.

You may recall that when I spoke in Albany on February 12, 1957, at the public hearing on the Plan of the Temporary Commission, I counselled that further consideration was necessary to be given to the plan. Events subsequent to that date have tended to substantiate the position I took. The flood of proposed legislation dealing with court reorganization which followed the submission of the Temporary Commission Plan indicates quite conclusively, I believe, that the thinking of our people on the subject of court reorganization has not yet crystallized to the point of agreement on either the scope thereof or necessity therefor.

I am mindful, of course, that there is support for court reorganization; I am, at the same time, aware that there is opposition to it. Regardless of the position we adopt, under our democratic system we have regard for opposing viewpoints. We do not seek to force our opinions upon others; we seek to convince, to educate, to win over. Should we fail in that undertaking we adopt another, perhaps modi-

fied, course and hope thereby to achieve, substantially, *through agreement,* our original goals.

I have studied these various plans and I am convinced that, in so far as they vary one from the other, they are the reflection of local needs and desires. We should not discount or ignore this evidence but should assess it carefully.

Relating these general premises to the particular subject, it is my conclusion that the only area with respect to which there is general agreement on the need for court reorganization is the City of New York.

The Mayor's Committee on the Courts, in its report to Mayor Wagner, dated February 1, 1957, approved the concept of reorganization of the courts in the City. Mayor Wagner has stated the City's present court structure has become "an obsolete vehicle through which to discharge its increasing juidical responsibilities."

This is a striking endorsement for reorganization of the city's judicial structure. However, it is fair to say that the problems of the City of New York are unique and are not necessarily representative of the entire state. When to this fact is added forceful and powerful opposition to *state-wide* court reorganization, the time has come to re-appraise the objectives in the light of reality and practicality.

This is the counsel of moderation. It is, if you please, a plea for clear thinking not only in terms of what is desirable but of what can be achieved.

Adaptation of sound concepts of reorganzation to the court structure in New York City would result not only in direct benefit to the City, but would provide an invaluable pilot study for the rest of the State.

Such a plan of reorganization, as I envision it, would call for the merger of the Court of Special Sessions and the Magistrates' Courts, either as a separate entity or as an arm of the Court of General Sessions in New York County and the County Courts in the other four counties; it would call for the merger of the Municipal Court of the City of New York with the City Court of the City of New York; it would also call for the creation of one Family Court along the lines advocated by Presiding Justice Peck and his Associate Justices of the Appellate Division, First Department (N. Y. Law Journal, Feb. 1, 1957, page 1, column 1), and thus obviate the con-

flicting and overlapping jurisdiction of which complaint has been made. All these to be under the supervision of the Appellate Divisions of the First and Second Departments.

If this plan could be accomplished, it would be a not inconsiderable achievement since the City of New York embraces a population of more than eight million people, or approximately one-half that of the entire State, living on approximately 204,000 acres while the other eight million live on approximately thirty-one million five hundred thousand acres—approximately one hundred and fifty times the area of the City of New York—in fifty-seven counties with their county governments and in sixty-one cities.

In making this suggestion, I am not rejecting or endorsing any plan or legislation on this subject. I tender this suggestion to you upon the single premise that I believe it to be acceptable, practical and workable.

IV. CONCLUSION

THERE is one other thought I would leave with you. All power is derived from the people. It will be ultimately for the people to say, through their representatives in the Legislature or in a Constitutional Convention whether or not they wish this plan or that plan of reorganization of the Court structure, or no plan. Whatever their decision, we must be prepared to accept it, however partisan we may have been on the subject of court reorganization. However—whatever the decision—I trust that the day will never come in this State when we will cease to seek new ways and means to improve the administration of justice. If we will consecrate ourselves to that proposition, the future of our courts—and thereby our rights and liberties —is bright and promising.