

BOOK REVIEW

DISPATCH AND DELAY: A FIELD STUDY OF JUDICIAL ADMINISTRATION IN PENNSYLVANIA. BY A. LEO LEVIN AND EDWARD A. WOOLLEY. Philadelphia: Institute of Legal Research, University of Pennsylvania, 1961. Pp. xv, 426. \$6.00, hard cover; \$3.00, paper back.

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A. Leo Levin and Edward A. Woolley, in *Dispatch and Delay*, have brought into focus the many causes of delay in the Pennsylvania courts of common pleas. Their comprehensive gathering of facts and statistics presents a formidable picture of actual conditions here and now in the courts of typical modern communities. The picture is drawn with complete detachment in an atmosphere of cool and objective appraisal of the many factors which have brought about present conditions.

The authors chose for their study the courts of common pleas in seven counties of Pennsylvania: Philadelphia and Allegheny, two metropolitan areas; Dauphin, containing the state capital; Montgomery, a suburban area; and Franklin, Carbon, and Wayne, agricultural, mining, and forest counties. These seven were selected from sixty-seven counties as representative of the conditions existing in the various types of environment throughout the Commonwealth.

Of the 15,949 cases listed for trial in these seven counties in the year 1953-54, 2,832 separate cases were chosen for examination. (p. 136.) The progress of these cases was studied at nine stages from the accrual of a cause of action until its final disposition. This method provided extremely illuminating results as the study progressed. One of the results of this analysis was the discovery that the greatest delay was not in the period between placing the case at issue and listing it for trial, as has been commonly supposed, but after the case reached the trial list. It was then that continuances and neglect on the part of lawyers and judges occasioned or augmented the delay.

In examining the cases selected, the authors chose short and long cases, simple and complicated cases, trespass and equity cases, so that conclusions were formed from fair samples of litigation. Each case was relentlessly followed on the docket, in the lawyer's office, in the courtroom, and in the judge's chambers before and after trial. The authors succeeded in unmasking the judicial mechanics of the common pleas courts in Pennsylvania.

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The authors had the wisdom to state their conclusions from the survey in the beginning of the book. After engaging our interest, they go on to describe the method used in making the study, and then give us a detailed analysis of the cases examined in each of the seven counties.

It is interesting to observe some of the worst examples of unwarranted delay: months spent in the pleading stage in the smaller counties; numerous preliminary objections followed by long waits for opinions disposing of them; extensions of time for filing pleadings; extensions for filing briefs; delays in handing down opinions after trial; repeated absences of lawyers when cases were called.

Many counties have particular problems which, though present in other counties, constitute significant roadblocks to dispatch. In Philadelphia County motions for continuances delayed the trial of cases as much as four years. In Franklin County the failure of the reporter promptly to file transcripts has constituted a major cause of delay. In Allegheny County forty per cent of the cases were settled after a jury was sworn, sometimes before any evidence was introduced. Indeed, in Allegheny County the authors found "the poorest record of dispatch, the worst picture of delay, in any county which we studied . . ." (p. 226.)

It is evident from the factual data presented in *Dispatch and Delay* that the causes for the delay which appeared in the counties studied were due partly to lawyers and partly to judges. While laxity of lawyers can be cured by a more disciplined approach by the judiciary, the failure of judges to cope with delay poses a more difficult problem. The authors point out that various state legislatures have tried to police the work of judges by requiring decisions to be made within a fixed period, or by holding up judges' salaries until they decide cases. These legislative attempts may be properly criticized as an interference by one branch of the government with another, but they serve to emphasize the need for reform by the judiciary itself.

Who is responsible for delay? The authors discuss the old view that a judge is not concerned with the backlog of cases in his court. His job is to dispose of cases when they enter his courtroom for trial; he acts only as an arbiter. This view places the responsibility on lawyers to initiate action.

The newer concept, to which the authors subscribe, is to place the obligation on the judges to *move* all cases to completion. The authors say: "In our view, it is essential that the judge be charged with larger responsibilities than those of a mere umpire." (p. 26.)

Another major concern of the authors is the unification of the courts into an integrated judicial system. They stress the need for a constitutional amendment to implement this proposal, under which the Supreme Court of Pennsylvania would be charged with the supervision and operation of the system. They are of the opinion that the Chief Justice should be chosen by some method other than automatic succession. Of the present system,

the authors say: "However fortunate the results of this system in individual instances, it can hardly be considered as the method of selection best calculated to provide vigorous and efficient administration of a state-wide system of courts." (p. 104.) They also point out the need for an administrative officer for the courts of Pennsylvania to be appointed by and responsible to the Supreme Court. Such an administrative officer would provide facts on which to base improvements in court administration. *Dispatch and Delay* itself is an excellent example of the indispensable need for statistics. It is only this kind of patient, accurate accumulation of all of the facts which gives breadth and depth to our understanding of the actual, day-by-day status of cases in the courts.

Compulsory arbitration and its impact on the backlog of cases, particularly in Philadelphia and Allegheny Counties, is discussed at length. The authors indicate its possible deterioration in practice, but they are perhaps overcautious in this regard. Their warning may be theoretically sound, but for the practicing lawyer with small claims, arbitration has proved to be an effective modern tool in our judicial machinery.

The authors find settlements reached at pretrial conferences to be the major contribution of that stage of litigation. Pretrial is difficult to appraise, because it is as variable as the personalities of the pretrial judges. Its real failure lies in the inability of judges and lawyers to grapple with a case before trial. But, when used effectively, pretrial can be an excellent device for simplifying issues, finally determining the admissibility of evidence, and canalizing testimony for the conduct of the trial. The trial can then be narrowed and governed by the pretrial ruling in cases where no settlement is possible.

The conservative point of view of the authors is best seen in their comment on "The Radical Remedies," in which they include elimination of the jury, compensation for automobile injuries, and comparative negligence. They say:

Proposals so motivated and their variants, have one thing in common: they relegate the substantive law to the role of a handmaiden for procedure. They would reshape the rights of the parties to accommodate the failures of our present system of judicial administration. This is an unhappy price to pay for the elimination of delay, assuming for the moment that substantial improvement would in fact follow. It is a price paid in the wrong coin, exacted from the wrong source, at the wrong time and in the wrong way. Deficiencies in method, in procedure and in administration, should be met with improved methods, and with devices to increase efficiency rather than with the confession of failure implicit in altering radically what it is that the litigants are entitled to. Certainly this is so when there is a plethora of procedural devices which give promise of bringing our courts to an acceptable level of efficiency and dispatch. (pp. 22-23.)

The issue is joined: Can the bench and bar meet the challenge and out of the "plethora of procedural devices" bring the courts to "an acceptable level of efficiency and dispatch" before the problem of judicial reform is taken in hand by laymen?

There has always been much criticism of delay in the judicial system. The reason may in part lie in the nature of the judicial process, which is not an originating activity of society, but a finishing process—a system for resolving conflicts resulting from social or economic activities which have been concluded. The past is static. It gives no impetus to dispatch; delay comes naturally.

The authors deserve the gratitude of every lawyer and judge of Pennsylvania for their magnificent achievement in gathering together and analyzing the innumerable details of the mechanism of judicial procedure as it operates in twentieth-century courts.

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