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THE WILLIAMSBURG CONSENSUS REVISITED

JAMES G. FRANCE*

Court delay, scarcely a recent phenomenon, has worried scholars for many years; only recently, however, has the effort to eradicate it been concerted. Comparatively new organizations, such as the Institute of Judicial Administration, the Institute for Court Management, the Federal Judicial Center, and the National Center for State Courts, together with the Law Enforcement Assistance Administration (LEAA), have led this recent effort, while the American Bar Association, its foundation, and the American Judicature Society have been less active. Each organization, to some degree, has posited that improvement of the quality and timespan of the litigation process, both civil and criminal, can be achieved by improving judges' pay and tenure, streamlining court structure, revising court procedure, or utilizing parajudicial talent to handle non-decisional functions such as calendaring and case processing.

In March 1971, representatives from these and other similar organizations attended a National Conference on the Judiciary in Williamsburg, Virginia, financed largely by LEAA, to analyze court problems and to develop solutions. After a series of speeches and small-group discussions, the Conference arrived at a Consensus Statement¹ on the remedies to be pursued. Predictably, adequate compensation and tenure of judges were emphasized, as was the single-level trial court with accompanying abolition of specialized family and traffic courts and justices of the peace. Parajudicial administrative talent also was endorsed, although the extent to which court administrators should be used in calendaring and case processing operations was left unclear. Only the question of revising court procedures was unemphasized, possibly because most states already had undertaken such revision.

Of the suggested improvements, only those relating to judicial tenure and increased pay lacked a logical basis. It might have been

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1. Findings and Conclusions of the National Conference of the Judiciary, Consensus Statement, Williamsburg, Virginia, March 11-14, 1971, in 55 J. Am. Jud. Soc'y 29 (1971).

more rational to use these carrots to reward increased productivity after it is achieved than to hope that before-the-fact charity would lead to improved performance, especially since the recipients themselves were partially to blame for existing court delay. Providing parajudicial assistance to lighten judges' administrative workloads also would be inconsistent with increased judicial compensation.

Other reforms that were stressed, however, seemed sufficiently reasonable to justify evaluation of their actual effect. Some state court systems had fully integrated or unified structures, and some already used parajudicial administrative personnel to conduct their affairs. These states should have been models of efficiency for others to follow; assuming other variables were constant, the states with uncluttered structures and no duplication of court function and those using parajudicial managerial talent should have concluded their cases more quickly and more systematically than those with a myriad of overlapping jurisdictions or those in which judges had to do their own housekeeping. This result appeared so logical that for a time it went untested.

For these reasons, a seven-state comparative time-lapse study was conducted.² The timespan of tort jury litigation³ was measured in each state at a time shortly before the Conference met. If the Consensus Statement was correct, then states with streamlined structures and those with extensive use of outside managerial talent should have shown faster and generally more efficient case processing than states relying on traditional organization and personnel.

The results of the study, however, were precisely opposite. Four states, New Jersey, Ohio, Pennsylvania, and Louisiana, conformed more to the desired structural model than did the other three, although they varied among themselves in the degree of conformity.

2. See France, *Judicial Administration: The Williamsburg Consensus-Some Errors and Omissions*, 14 WM. & MARY L. REV. 1 (1972) [hereinafter cited as *Judicial Administration*]. The seven states studied were Florida, Louisiana, New Jersey, Ohio, Pennsylvania, South Carolina, and Tennessee. *Id.* at 15, Table II.

For an explanation of the measurement techniques used in the seven-state study, see *id.* at 7-14. The followup study discussed in this Article utilized the same methods, consisting primarily of the measurement of the time taken to dispose of various percentages of the tort cases filed in the court being measured. This method facilitates constant monitoring of courts to evaluate their performance for different filing years, thereby enabling direct comparison of the current study's results with those of the earlier study.

3. For consideration of the reasons for using the personal injury tort case for comparative studies of civil litigation performance, see *id.* at 9-10.

Yet these states had the poorest disposition record in tort litigation.⁴ Far better records were exhibited by Florida, South Carolina, and Tennessee, each of which contained a welter of courts with overlapping jurisdictions.⁵ Moreover, among the four states with systems approaching the recommended model, the greater the degree of court integration, the poorer the performance. New Jersey's system, the most advanced in terms of interchangeable judges, was the most time consuming.⁶ Louisiana's system, which closely approximated a single-court structure, performed almost as slowly as New Jersey's in the later stages of litigation, although there was some speculation that operational defects in addition to the structural pattern contributed to this result.⁷ The less integrated Pennsylvania and Ohio courts performed significantly better than New Jersey courts during most stages of the litigation process.⁸

Conversely, the more grievous the structural disorganization, the faster cases moved. In South Carolina, which had only two sets of trial courts of record, one of limited and one of general jurisdiction, and in which lack of uniformity of jurisdictional limits was the main structural problem, performance was considerably less commendable than in Florida and Tennessee.⁹ In Florida, where the use of justices of the peace was more extensive, but where very few civil and criminal courts of record were created to take up the jurisdictional slack of the circuit court system, progress was measurably slower than in Tennessee.¹⁰ This last state, whose performance excelled, had, and now has to an even greater degree, a bewildering array of dual-system law and chancery courts organized on a state-wide basis with overlapping boundary lines, as well as separate criminal courts¹¹ and varying jurisdictional standards for its limited

4. *Id.* at 15, Table II.

5. *Id.* at 17-18.

6. *Id.*

7. *Id.* at 16 & n.30, 37-38.

8. *Id.* at 16-17.

9. *Id.* at 15, Table II.

10. *Id.*

11. These criminal courts typify the complexity of Tennessee's court structure. The courts, of circuit court status, were created primarily in Tennessee's four major metropolitan counties, but also are found in multi-county circuits in east and middle Tennessee. One of these courts was created as the 26th Judicial Circuit, with jurisdiction in only one county (Sullivan). The 26th Circuit crosses the boundaries of the 20th Circuit; this latter court retains civil and criminal jurisdiction in all the counties within its circuit except Sullivan County, where it has only civil jurisdiction. The 5th Circuit has a separate criminal judge for its 11 counties, while the 25th Circuit has been created to handle only civil matters in five of these counties.

jurisdiction General Sessions courts. Interlaced with these courts were six third-level general jurisdiction civil courts for the state's medium-size communities.¹²

Unpredicted results also were obtained from a comparison of the use of parajudicial talent in each state. Thus, Tennessee, with an efficient administrative staff at the supreme court level but no court administrator or even an assignment clerk in any of its circuit courts or chancery divisions, had the least delay of any of the states measured.¹³ Florida, which had the next best record,¹⁴ had no administrative staff at the time of measurement, not even at the supreme court level. The results were substantially poorer in South Carolina, where local court administrators were not used. The rotation of judges among circuits may have had some effect on case-flow management, and the results may be explained at least partially by the use of the bar-control system of calendaring in this state.¹⁵ Nevertheless, South Carolina had less delay than states using trial court administrators, indicating that parajudicial docket control may be less efficient than the seemingly more disorganized system of bar control.

Each of the four remaining states, Louisiana, Pennsylvania, Ohio, and New Jersey, had some form of trial court administrative help. Yet this entire group of administered-trial-court states was substantially slower in dispositions than the unadministered states.¹⁶ Within the administered group, an increased degree of administration did not lead to speedier disposition, at least not in the earlier stages of litigation. Administrative help in Louisiana and Pennsylvania was recent and covered only a small portion of the court system; trial court administration in New Jersey and Ohio was general, at least in the more populous counties, and had been estab-

Thus there are two civil circuits co-terminous with a single criminal circuit. See 1971 EXEC. SEC'Y SUP. CT. OF TENN. REP. 38, 42, 44.

12. Each court covers a single county in an area where there are only multi-county circuits and chancery divisions. Four courts use the circuit and chancery clerks and clerks-masters in their counties for recordkeeping; a fifth, called the Common Law and Chancery Court, has in addition probate and juvenile jurisdiction and has its own clerk; the sixth was created in 1972. Integrating these courts into a consolidated circuit-chancery superior court was recommended by a consultant's report, INSTITUTE OF JUDICIAL ADMINISTRATION, THE JUDICIAL SYSTEM OF TENNESSEE 55 (1971).

13. *Judicial Administration* 25.

14. *Id.*

15. *Id.* at 37.

16. *Id.* at 15, Table II.

lished over a longer period of time. The former two states definitely were quicker in disposing of the first 60 percent of their cases, although they fell behind the latter two states thereafter.¹⁷

The study's results, although startling to devotees of court streamlining and use of nonjudicial administrators, may have had limited credibility, since some of the states studied were affected by more than one variable. Tennessee and Florida, for example, had cluttered, overlapping-jurisdiction courts and did not utilize trial court administrators; Ohio and New Jersey had streamlined courts that were fully administered. Poor performance or superior efficiency therefore could not be attributed entirely to either factor. Moreover, other factors clouded the results.¹⁸

Nevertheless, the seven-state time-in-process measurements suggested that none of the standard remedies had improved efficiency when adopted. Unfortunately, the study neither specified which remedies were ineffective nor indicated where geography alone was responsible. Such a side-by-side test could not allow one group of states to experiment with a single remedy while other states acted as a control. However valuable such an experiment might be, no state would be likely to concentrate on only one method of improving court efficiency when reformers urged the simultaneous adop-

17. *Id.*

18. Tennessee, which excelled in performance, had the most inferior trial court judicial pay scale and tenure conditions; Pennsylvania and New Jersey, both relatively poor performers, had the best paid judges with the most secure tenure. *Id.* at 21. This data would indicate an inverse relationship between productivity and working conditions, an almost intolerable proposition to court reformers.

Ohio and Louisiana had distinctly higher ratios of general jurisdiction judges to population than the other states, while Tennessee, Florida, New Jersey, and Pennsylvania were in a middle group, and South Carolina had markedly fewer judges per thousand population. U.S. DEP'T OF JUSTICE, NATIONAL SURVEY OF COURT ORGANIZATION 257 (1973). The relative number of judges in a state was not found to be closely correlated with the expeditious disposition of tort cases. *Judicial Administration* 15, Table II. There was also the complicating factor that the help which could be obtained from limited jurisdiction judges varied among the states, as did the amount of time general jurisdiction judges devoted to trying *de novo* cases appealed from limited jurisdiction courts.

Finally, all the states found to be efficient were southern and primarily rural, while the poorly performing states were northern and heavily industrialized. This distinction might be a result of heavier caseloads, more complex cases, more use of dilatory tactics, more thorough preparation, or use of delay to increase, as a result of inflation, the dollar value of settlements and verdicts, all of which arguably are more prevalent in urbanized locales. A limited study conducted in South Carolina indicates, however, that heavy caseloads alone are not detrimental to efficiency. See Institute of Judicial Administration, Preliminary Report on the Judicial System of South Carolina 15-16, 97-98, October 1, 1971.

tion of numerous remedies.¹⁹

Since side-by-side comparison of states having similar backgrounds is therefore impracticable, a before-and-after study in states recently altering their court structure or methods of administration offers the best means to contrast systems. Currently, the most advocated reforms are the single-court structure, strongly advanced by the American Bar Association,²⁰ and the infusion of administrators into all courts, a current goal of the Chief Justice of the United States.²¹ Two states included in the original comparison group, Florida and Ohio, fulfilled the requirements for such a study by changing their court structures and administrative procedure after the earlier study was made. Thus it was necessary only to collect followup data showing time-lapses after the changes were made to test their effectiveness.

The changes in Florida were twofold and clear cut. Beginning in January 1972, and extending to September of that year, many Florida circuits employed trial court administrators for the first time. These administrators, financed by LEAA funds, were concerned primarily with the criminal process, but their activities also influenced civil case processing directly and indirectly. Because only a portion of the circuits observed in the prior study introduced these administrators, it was possible to make a side-by-side study in addition to a before-and-after comparison, all within the same state. Scarcely had these administrators settled into their jobs when, on January 1, 1973, a second change occurred, this time on a statewide basis. Pursuant to a constitutional amendment passed March 14, 1972, and effective January 1, 1973,²² the courts were restructured completely: the special civil and criminal courts of record were abol-

19. The largest step any state had been willing to take for experimental purposes was New Jersey's division of cases into experimental and control groups for Professor Rosenberg's study of the effects of the pretrial conference. M. ROSENBERG, *THE PRETRIAL CONFERENCE AND EFFECTIVE JUSTICE* (1964). Since New Jersey already has adopted all of the frequently recommended remedies, no controlled study seemed feasible there.

20. Among the standards relating to court organization approved in February 1974 by the American Bar Association was the call for a single-court structure. See 57 J. AM. JUD. SOC'Y 333 (1974). Pressures for the single-court structure are not confined to the United States: despite a three-volume report of the Ontario Law Reform Commission recommending against merger of the province's trial courts, Ontario's county judges continually campaign for merger. See *Toronto Star*, June 15, 1974, § A, at 4, cols. 2-3.

21. Burger, *Report on the Federal Judicial Branch—1973*, 59 A.B.A.J. 1125 (1973).

22. FLA. CONST. art. V.

ished,²³ the probate functions of the county courts were transferred to circuit courts,²⁴ and the small-claims and misdemeanor functions were consolidated in the county courts, subject to administrative control by the circuit courts.²⁵ While some municipal courts were retained for a short time, they too were slated to be absorbed into the county court structure.²⁶

Ohio's changes were less distinct. The first, instituted on July 1, 1970, had been authorized by a 1968 constitutional amendment.²⁷ It was ostensibly procedural, adopting rules of civil procedure, based on the federal model, to replace Ohio's Field Code. Ohio, however, was not content merely to copy the federal rules.²⁸ It went beyond them in two areas, jurisdiction and venue, in which the federal advisory committees had refrained from acting. The old restrictive venue system was changed by adopting a modern, plaintiff's-choice venue rule.²⁹ Another provision was added to make the process of all courts run throughout the state.³⁰ This change added nothing to the reach of process of the general jurisdiction common pleas courts, whose process already had statewide range, but the rule completely eliminated the typical statutory limitations imposed on the extent of in personam jurisdiction of the municipal³¹ and county courts,³² creating a structure in which amount in controversy represented the only real distinction between the civil activities of the general and limited jurisdiction courts.

Ohio's second change, created by the supreme court's Rules of

23. *Id.* § 20(d).

24. *Id.* § 20(c)(3).

25. *Id.* § 6.

26. *Id.* § 20(c)(4).

27. OHIO CONST. art. IV, § 5.

28. For a discussion of the various departures from the federal model, see France, *Rules of Criminal Procedure: The Background of Draftsmanship*, 23 CLEV. ST. L. REV. 32, 38-44 (1974).

29. OHIO R. CIV. P. 3. The changes in concept are discussed in McCormac, *Venue—"New" Concepts in Ohio*, 39 U. CIN. L. REV. 474 (1970).

30. OHIO R. CIV. P. 4.6(A).

31. OHIO REV. CODE ANN. § 1901.19 (Page 1973) still provides:

[A] municipal court has jurisdiction within the limits of the county or counties in which its territory is situated:

. . . .
(D) In any civil action or proceeding at law in which the subject matter of the action or proceeding is located within the territory or when the defendant or some one of the defendants resides or is served with summons within the territory

32. OHIO REV. CODE ANN. § 1911.012 (Page 1973) carries limitations on service substantially identical to those of section 1901.19(D).

Superintendence two and one-half years later,³³ also was eclectic. Primarily, the trend toward giving court administrators power to control calendaring and trial scheduling was reversed by making each judge responsible for his own case processing and scheduling. In addition, the Rules of Superintendence specified that all judges in a multi-judge court should be allotted civil, jury, criminal, and equity cases, thereby abolishing the criminal and equity divisions of the courts where they had existed and moving Ohio one step nearer to the single-court concept.

Thus each state moved, by different routes, away from the multi-court, through the two-court, and toward the single-court, system. Florida initiated the use of nonjudicial administrators, and Ohio, which previously had used them extensively, sharply curtailed their use. Since the steps in each state had been taken separately, it was possible to measure the results of each step to determine its effect on the efficiency of case processing.

CHANGES IN OHIO

Procedural Changes

Prior to 1970 Ohio had a poor record for tort case disposition. Much of the blame was cast on constantly amended procedure statutes, including those restricting venue. Consequently, the effective date of the new rules of civil procedure was regarded as the beginning of a new era in which court delay would be ended. Nothing of the sort happened, however. In fact, 1970 was a disastrous year for civil cases, as the number of cases pending at year's end rose sharply in most counties of the state, with particularly large increases in the more populous metropolitan counties.³⁴ The length of time required to dispose of each percentage level of tort jury cases filed in that year also increased. Six counties were used for a time study prior to the Consensus survey. Comparison of time-lapse performance in these counties in 1970 with their performance in 1968, also not a particularly good year, revealed that in 1970 it took four and one-half months longer to dispose of the first 40 percent of the tort cases filed, four and one-half months longer for the median case, and four months longer for disposition of 80 percent of all cases.³⁵ The same

33. OHIO SUP. R. 4 & 5.

34. See OFFICE OF THE ADMINISTRATIVE DIRECTOR, SUPREME COURT OF OHIO, 1970 OHIO COURTS SUMMARY 11-14.

35. Time-lapse studies of the individual counties in the group are discussed in detail and

slowdown occurred in Cincinnati,³⁶ Dayton,³⁷ and Springfield.³⁸ Of the 15 Ohio counties studied, only Franklin and Columbiana Counties remained relatively constant.³⁹

Significantly, there was less deterioration in the rate of disposition of criminal cases between 1967, the original study year, and the 1970 filing year in the counties studied in the original group. One county, Mahoning (Youngstown), improved its criminal disposition time markedly.⁴⁰ Performance in Stark County (Canton) remained relatively constant,⁴¹ and in only three counties, Cuyahoga (Cleveland), Portage (Ravenna), and Summit (Akron), was there a significant deterioration in criminal case processing time between 1967 and 1970.⁴² Statistical releases from the administrative director of the Ohio supreme court also showed that the increase in number of criminal cases pending in 1970 was much less than for civil cases.

Undoubtedly there were other reasons, besides the alteration of the civil procedure rules, for this virtual collapse of the Ohio courts in disposition of civil, but not criminal, cases in 1970, although they are highly conjectural. It cannot be denied, however, that the new civil rules had some effect. The structural changes wrought by these rules, although arguably among the least important causal factors for the poor 1970 showing, were among the more drastic changes in the new system and therefore must share the responsibility to some degree.

portrayed graphically in France, *Order in the Courts Revisited: Progress and Prospects of Controlling Delay in the Tort Jury Litigation Process, 1966-1973*, 7 AKRON L. REV. 5, 17-19 (1973) [hereinafter cited as *Order in the Courts Revisited*].

36. The timespan of the median tort jury case increased from 15 months in 1968 to 22 months in 1970. *Id.*

37. In 1968, the median case was disposed of in 19 months, while disposition of 60 percent of the case samples took 21 months, and 70 percent took 24 months. The 1970 samples showed time-lapses of approximately 21, 24, and 26 months for the same percentages of completion. *Id.*

38. The 1968 record for Clark County (Springfield) was 20 months for 40 percent of their tort case dispositions, two years for 50 percent, and 27 months for 60 percent. By 1970 the same disposition percentages took 25, 30, and 31 months, respectively. *Id.*

39. For Franklin County (Columbus) the constant figure was approximately 24 months for the median tort jury case. *Judicial Administration* 34, Table IV. Columbiana County kept a constant 24-month disposition record for the median case while actually showing improved time-lapses for higher percentages of dispositions. *Order in the Courts Revisited* 18 n.40.

40. The disposition rate improved by two to three weeks at every measured level of dispositions. Eighty percent of the criminal cases filed were disposed of within six months in 1970. *Order in the Courts Revisited* 19 n.49.

41. *Id.* at 19.

42. *Id.* at 18-19.

Administrative and Structural Changes

The supreme court's Rules of Superintendence constituted, at least in part, an attempt to reverse the trend illustrated by the 1970 slowdown.⁴³ The rules, effective on January 1, 1972, provided for an administrative judge empowered to assign cases among the trial judges in multi-judge trial courts while requiring progress reports from them on cases assigned.⁴⁴ Adoption of the individual assignment system entailed fixing responsibility on each judge to dispose of cases assigned to him and to report on their progress.⁴⁵ This modification was intended to transfer the responsibility of trial scheduling from the parajudicial assignment commissioners to individual judges,⁴⁶ thereby eliminating the administrators as traffic controllers and potential bearers of the blame for poor performance.

As with the new rules of civil procedure, there was an important structural aspect to the Rules of Superintendence. Most Ohio multi-judge courts had maintained a criminal division formally or informally, whether they used the individual judge's docket system or a master calendar-control system.⁴⁷ All criminal defendants were arraigned before judges in the criminal division, and those judges remained in the criminal division either for one term of court or for

43. OHIO CONST. art. IV, § 5(A)(1), gives the supreme court general superintendence power over all courts in the state, enabling that court to promulgate rules of superintendence. Section 5(B) empowers the supreme court to promulgate rules governing practice and procedure which must be filed with the clerk of each house of the General Assembly by January 15 to be effective automatically on the following July 1, unless disapproved. *Id.* § 5(B). An attempt by the General Assembly to secure voter approval of a constitutional amendment permitting the legislature to amend the rules during this interim period failed in 1973.

That the purpose of the rules was to reduce serious delay problems was evidenced by the statement in rule 1(A):

Delay in both criminal and civil cases in the trial courts of Ohio is presently the most serious problem in the administration of justice in this state. It is to be remembered that the courts are created not for the convenience or benefit of the judges and lawyers, but to serve the litigants and the interests of the public at large. When cases are unnecessarily delayed, the confidence of all people in the judicial system suffers. The confidence of the people in the ability of our system of government to achieve liberty and justice under law for all is the foundation upon which the American system of government is built.

OHIO SUP. R. 1(A).

44. OHIO SUP. R. 3.

45. OHIO SUP. R. 4.

46. Formerly, most of Ohio's multi-judge courts had operated assignment commissioner's offices responsible to the collective bench through the presiding judge.

47. For a discussion of different calendar-control systems, see *Judicial Administration* 29-36.

a year at a time. All preliminary matters were heard before them, and usually the cases were tried before them, instead of before other judges although, where the individual judge's docket system prevailed, the cases sometimes were tried before a particular judge even after he had been transferred to another division of the court. Similarly, a few courts informally had established a civil nonjury or equity division in which specified judges sat regularly in all equity, prerogative writ, and other nonjury matters. This system, using judges' expertise or preference to advantage, was eliminated by the new rules.⁴⁸ Only one division of a multi-judge court would be recognized for all types of case assignment and disposition, with each judge assigned approximately an equal number of cases in each category. This portion of the rules dealt not with administration, but with a purely structural change precluding subsequent recognition of judicial preference or expertise.⁴⁹ This went far beyond Pound's⁵⁰ or Vanderbilt's⁵¹ concept of the single court, returning to a system of equal opportunity and demand for performance with total interchangeability of judicial machinery.

To these two modifications, one administrative and one structural, a third, the "norm," was added, apparently to provide a measure of performance. Each type of case in the general division was given a norm for disposition by Report Form A. Eminent domain and criminal cases had norms of six months; workmen's compensa-

48. See note 45 *supra* & accompanying text. Rule 4, as part of the individual assignment system, provides that cases, immediately upon filing, are to be assigned by lot to the judges of a multi-judge division. The assignment system went into effect on January 1, 1972, when each judge was required to report an inventory of cases pending. The first reports on the disposition of cases were due February 15, 1972, with reports on case disposition due monthly thereafter. See OHIO SUP. R. 4 & 5; Ohio Supreme Court Report Form A.

49. This aspect of the rules did not pass unchallenged by the Ohio General Assembly. While the Rules of Superintendence abolished the criminal and equity divisions created by local court rules, they did preserve the probate and domestic relations divisions previously created by statute. When the General Assembly amended the judicial article of the Ohio Constitution in 1973, it was careful to insert that the trial court could act by "a probate division and such other divisions . . . as may be provided by law," thereby ensuring its ability to create such divisions of the trial courts as it, not the supreme court, should deem necessary. OHIO CONST. art. IV, § 4(c).

50. Pound proposed that the trial court should have as many specialized divisions as necessary. See R. POUND, ORGANIZATION OF COURTS 277-80 (1940).

51. Chief Justice Vanderbilt of the Supreme Court of New Jersey never conceded that a single trial court was the answer. Rather, he advocated a local court of limited jurisdiction in addition to a trial court of general statewide jurisdiction. Vanderbilt, *The Essentials of a Sound Judicial System*, 48 NW. U.L. REV. 1, 2 (1953).

tion cases, an unusual form of administrative appeal,⁵² were given a norm of one year; personal injury cases had a norm of two years; all other civil cases had an 18-month norm.⁵³ The continued listing of any case on a judge's docket for longer than its norm presumably indicated a need to explain why he had not disposed of it.

The relative differences in these time allowances, as well as their absolute periods, raised some question of priorities. Obviously the time allowance of six months for criminal cases was proper, both absolutely and in relation to other classifications. The rationale of providing different norms for eminent domain and workmen's compensation, however, was not apparent so readily; nor was the unequal treatment of personal injury and other tort cases easily understandable. The intended effect of these differences on judicial priorities when scheduling the court calendar also was not clear, since a logical reaction might be to give preference to those cases in each category which were approaching their deadlines, causing possible distortion of the priority system to improve the judge's performance within the allotted time.

First reports after the effective date of the Rules of Superintendence did not give a clear indication of their effectiveness in expediting case disposition. Through the first year, the reports largely praised those judges who had "terminated"⁵⁴ more than a specific number of cases, presumably another norm determined with reference to the average number of cases previously terminated by the judges on that particular bench or by all judges in the state. Judges who exceeded a certain number of dispositions received awards, but because these terminations were not related to the number of cases assigned to that particular judge, his effectiveness in case management could not be determined.⁵⁵ Inasmuch as terminations were not

52. In Ohio, although the appeal from the Industrial Commission to the court is in the form of an administrative appeal, the single question of one's right to participate in the workmen's compensation fund to the extent found by the Commission is decided by the court or by a jury if demanded. OHIO REV. CODE ANN. § 4123.519 (Page 1973).

53. Address by Chief Justice C. William O'Neill, Ohio State Bar Association Annual Meeting, May 10, 1973, in 46 OHIO B. 755, 756 (1973).

54. The word "terminated," as used by the Rules of Superintendence, does not correspond in meaning with the former term "disposed of." Cases transferred to other courts or to other judges of the same court for disposition and criminal cases in which the defendant has escaped or jumped bail after arraignment are all considered "terminated," but they were not "disposed of." See *Order in the Courts Revisited* 21-22.

55. This lack of correlation between terminations and backlog reduction was conceded by Ohio's chief justice. Address by Chief Justice C. William O'Neill, Ohio State Bar Association Annual Meeting, May 10, 1973, in 46 OHIO B. 755, 763-64 (1973).

classified according to criminal and civil matters or among the various types of civil cases, the types of cases or norms given priority also could not be discerned. Meanwhile, the administrative director of the supreme court abruptly suspended publication of monthly filing and termination reports for the trial courts for a full year.

After the beginning of 1973, through speeches and the press, some data became available concerning filings in relation to terminations and gain or loss in case backlog; still there was no breakdown of dispositions by types of cases and no way to determine whether the civil and criminal proportions of the total backlog had changed. In addition because there were significant changes in the accounting system involving determination of the date when a case should be considered pending⁵⁶ or terminated,⁵⁷ the figures for 1972 could not be compared realistically with previously published statistics.

The 1972 annual courts summary by the administrative director, not released until May 1973, also was disappointing. While it showed the total number of cases filed in each of an increased number of categories, it recorded only subtotals of cases disposed of by various modes. Mere addition of the subtotals involved risk since all modes of disposition might not have been included in the summary. At face value, the report showed a statewide reduction of 2,300 cases in the total number pending at the end of the year.⁵⁸ Personal injury case pendency was reduced by 3,837 cases, while the number of criminal cases pending increased by 2,597. This result was shocking in light of the high priority given to criminal cases under the Rules of Superintendence. The risk of assuming that the 1972 summary's various subtotals included all modes of disposition or termination, however, materialized since a substantial number of cases, the majority of which were criminal, apparently had been disposed of but not reported in the summary. Since the reporting error, never corrected, approximately equaled the apparent increase in the number

56. A criminal case formerly was considered pending from the time a committing magistrate certified for grand jury indictment his record finding probable cause, but under the Rules of Superintendence, a defendant's case is not pending, even after indictment, until the "date of arraignment on the indictment or information." OHIO SUP. R. 5; Ohio Supreme Court Report Form A.

57. See note 54 *supra*.

58. The questionable accuracy of the report was emphasized by a simultaneous proclamation by the state's chief justice that the number of cases pending at year's end had been reduced by more than 9,000. See Address by Chief Justice C. William O'Neill, Ohio State Bar Association Annual Meeting, May 10, 1973, in 46 OHIO B. 755 (1973).

of pending criminal cases reported, Ohio in fact had not lost ground in its criminal case dispositions, while it had reduced the number of pending personal injury cases by almost 4,000.

This report did not indicate, however, whether there had been any reduction in the disposition time of the typical, median, or average tort jury case with which the earlier comparative study had been concerned. During the 1966 and 1968 studies an approximate 1:1 ratio had been established between the time taken for disposition of the median tort jury case and "statistical delay," the latter measurement being the quotient of all pending civil cases divided by the average monthly disposition of all such cases.⁵⁹ In the 1970 disaster year this ratio had been altered drastically,⁶⁰ and there was no assurance that it had been restored by 1972.⁶¹ Actual measurement of 1971-filed cases, by sample, was the only alternative to reliance on the unamended and obviously misleading totals of the 1972 annual summary. In addition actual measurement of 1972 samples was required to determine whether or not, after this year of drastic change, the former 1:1 ratio would be reattained. Actual measurement of these timespans for both years was commenced at approximately the same time the 1972 summary figures were released; measurements for the 1972 and new 1973 samples were continued for a full year. The composite, or unweighted average, of times taken to reach various percentages of disposition, through April 1974, is shown in Table I for the six-county study area.

The decrease in disposition time after filing year 1970 was substantial, but generally less than the increase between 1968 and 1970; in the six-county area, at least, the courts had not made up the losses of the disaster year. In other counties the results varied. In Clark County (Springfield), despite some impressive early gains, only 27 percent of dispositions were recorded by 17 months after

59. "The quotient of pending cases, or backlog divided by average monthly dispositions, is sometimes referred to as 'statistical delay,' or the number of months it would theoretically take to reach the last pending case, if all cases were disposed of in order of filing." *Order in the Courts Revisited* 19. "The calculated measurements, or statistical delay . . . is from arrest, not from indictment, to final disposition, or sentence, not the date of trial or plea." *Id.* at 19 n.50.

60. For both the 1966 and 1968 filing years, the measured time for disposition of the median case was 90 percent of the statistical delay. For the filing year of 1970, it was 150 percent of statistical delay.

61. A comparison made after the 1973 figures were released and measurements completed through the 26th month after filing showed statistical delay for the 1972 filings to be 127 percent of the measured median.

TABLE I
MONTHS REQUIRED TO DISPOSE OF VARIOUS PERCENTAGES OF
TORT JURY (PERSONAL INJURY) CASES BY FILING YEAR

Filing Year	10%	20%	30%	40%	50%	60%	70%	80%
1966	4.0	6.3	10.3	14.1	17.0	22.1	25.7	29.2
1968	2.8	7.0	10.2	14.2	17.1	20.8	26.0	
<u>Rules of Civil Procedure (1970)</u>								
1968							26.0	30.7
1970	4.0	10.3	15.3	18.6	21.6			
1971	4.7	9.7						
<u>Rules of Superintendence (1972)</u>								
1970					21.6	25.0	28.7	35.0
1971		9.7	11.2	15.5	19.0	20.7	25.0	27.9
1972	3.5	7.2	11.4	15.0	18.0	20.9	23.3	
1973	5.3	11.0	13.1+	15.0				

filing for both 1972 and 1970 filings. In Cincinnati, as in the composite group, the reduction since 1970 was substantial (six months for the median case) but less than the loss from 1968 (eight months for the median case). In Dayton and Columbus, the 1972 cases moved substantially faster than both the 1970 and 1968 case groups.⁶²

It was not surprising that efficiency improved less on a measured than on a purely numerical basis. Any change in the reporting of case assignments might reveal a quantity of cases still technically pending which had long been regarded as completed. Many of the cases disposed of by the 1972 changeover "inventory" undoubtedly were in this category: cases old enough not to have been included in the samples drawn for measurement in prior years, whose disposition, probably by penstroke alone, would not be reflected in the measurement, although their presence or absence on the pending list would affect the age of the "average" pending case.

After the "inventory" and "housecleaning" effects⁶³ of the system change were exhausted, disposition time continued to improve. The

62. In Dayton, studies completed in December 1973 showed that the 1972 sample median case was disposed of in less than 16 months, compared with 19 months for the 1968 sample median and nearly 22 months for the 1970 median. In Columbus, the 1972 median case was disposed of in 15.5 months, compared with 24 months in the 1966, 1968, and 1970 sample median cases.

63. "Housecleaning" effects included those resulting from such factors as the rule requiring dismissal of cases that remained inactive for six months. See *Order in the Courts Revisited* 23-24.

samples of early 1973 filings in all six counties over a period of 14 months showed dispositions almost equal to the 1971 and 1972 standards for that period of pendency. Meanwhile, the 1973 annual summary, this time with complete totals, again evidenced a smaller but still impressive backlog reduction in all categories, including the personal injury classification, which corresponded closely to the cases selected for the tort jury trial measurements. Clearly there was housecleaning, which would not be reflected in the time measurements, still going on in some of the counties. Other counties, however, notably Summit and Mahoning, had exhausted almost all of their long-forgotten tort cases, and their statistical gains were reflected in greatly increased disposition percentages at the 14-month level. In others, notably Trumbull and Medina Counties, the disposition rate for both 1973 and 1972 samples declined, and the calculated and measured median time for case disposition approached the former 1:1 ratio. The first year of progress of the 1973 samples indicated that these cases were, in fact, taking longer for the first 10 and 20 percent of case dispositions than the 1972, 1970, 1968, and 1966 cases, as Table I reveals. Meanwhile the rate of progress of the 1972 cases, after a faster start due to the new system, was not noticeably greater than for 1970 cases, and cumulative dispositions by the 20th month of pendency were still below the 1968 level. Early in 1974 it appeared that the effectiveness of the Rules of Superintendence in promoting faster disposition time had decreased.

By April 1974, however, when the 1973 summary appeared, showing continued reduction of cases pending in all categories, the rate of progress for tort jury case dispositions advanced substantially in both the 1972 and 1973 filing year samples. For the first time, the cumulative disposition rate for 1972 cases rose above the 1968 rate for the same period of time, showing 70 percent of all cases disposed of in 23 months. Meanwhile the 1973 cumulative dispositions rose to 36 percent in 14 months of processing and to 48 percent in 18 months.

Total Effect

It is difficult to determine how much of the lost efficiency between 1968 and 1970 resulted from the changed court procedure and how much was due to the incidental change in court structure.⁶⁴ Un-

64. See notes 34-42 *supra* & accompanying text.

doubtedly, more should be attributed, at least initially, to the purely procedural change. Civil case filings increased greatly in 1970 when the new rules of procedure became effective, partially as a result of litigation saved for filing under the new system. This great mass of new litigation affected not only the pendency statistics but also the ability of judges to process cases with which the bar was testing the new rules. There is some indication that by the latter part of 1971 the courts were overcoming this major setback.⁶⁵

It is clear that more credit for improvements after the 1972 changes should be given to the new administrative functions of judges than to the abolition of the separate criminal and equity divisions. The divisions had been abolished and varying norms for disposition of case types established for the obvious purpose of moving criminal cases faster at the expense of personal injury and other cases, but this result was not achieved. There was no substantial reduction in the elapsed time for disposition of criminal cases, although a significant reduction for the disfavored cases occurred. It seems unlikely that changes favoring criminal rather than civil cases would be so unsuccessful that they would cause the latter to gain at the expense of the former. Therefore, it would appear that most of the gain should be attributed to the substitution of judges for court administrators as case-flow managers. Indeed, the improvement might have been greater, and may have extended to the criminal field, had the rules continued to make use of expertise of judges sitting in specialized divisions, thereby also avoiding increased scheduling conflicts for the trial bar.⁶⁶ The wisdom of judicial case-flow management thus has been illustrated by the total changes between filing years.

Of equal importance were the trends in disposition rates of the various filing years. In 1968, the pre-change base year for comparison, the progress line for the six Ohio counties studied was relatively straight, indicating a constant disposition rate from month to month. In 1970, dispositions slowed down in the early months after filing, followed by a slightly higher rate after the first 18 months of

65. The rate of disposition for the 1970 cases began to rise in March 1971. By May 1971, the rate actually exceeded that for the comparable period of 1968 cases. Because of poor progress in 1970, however, cumulative production still was almost five months behind the 1968 performance. See Table II.

66. For a discussion of the scheduling difficulties produced by use of the unrestricted individual judge's docket, see *Judicial Administration* 34-36.

pendency. Total productivity for the 1970 samples, however, did not surpass the 1968 standard until more than three years after filing, more than one year after the adoption of the Rules of Superintendence. This early deceleration reappeared in the disposition of the 1971 samples, with total production equaling the 1968 total 21 months after filing, but not exceeding it appreciably for some time thereafter. In 1972, the initial rate was slightly higher, undoubtedly as a result of the implementation of the Rules of Superintendence; total production again equaled the 1968 standard by 21 months after filing and greatly exceeded it after two years from the filing date. The 1973 filings exhibited the same slow pace in the early stages as in the 1970 and 1971 samples, but the rate increased markedly after the first year of pendency. Although this general trend was not apparent in each county studied, the overall effect significantly indicates that less concern was being given to early disposition in the later years and that only as the two-year time standard of the rules-imposed "norm" was approached was any emphasis placed on settlement of cases still pending. Variations in progress rates are shown in Table II.

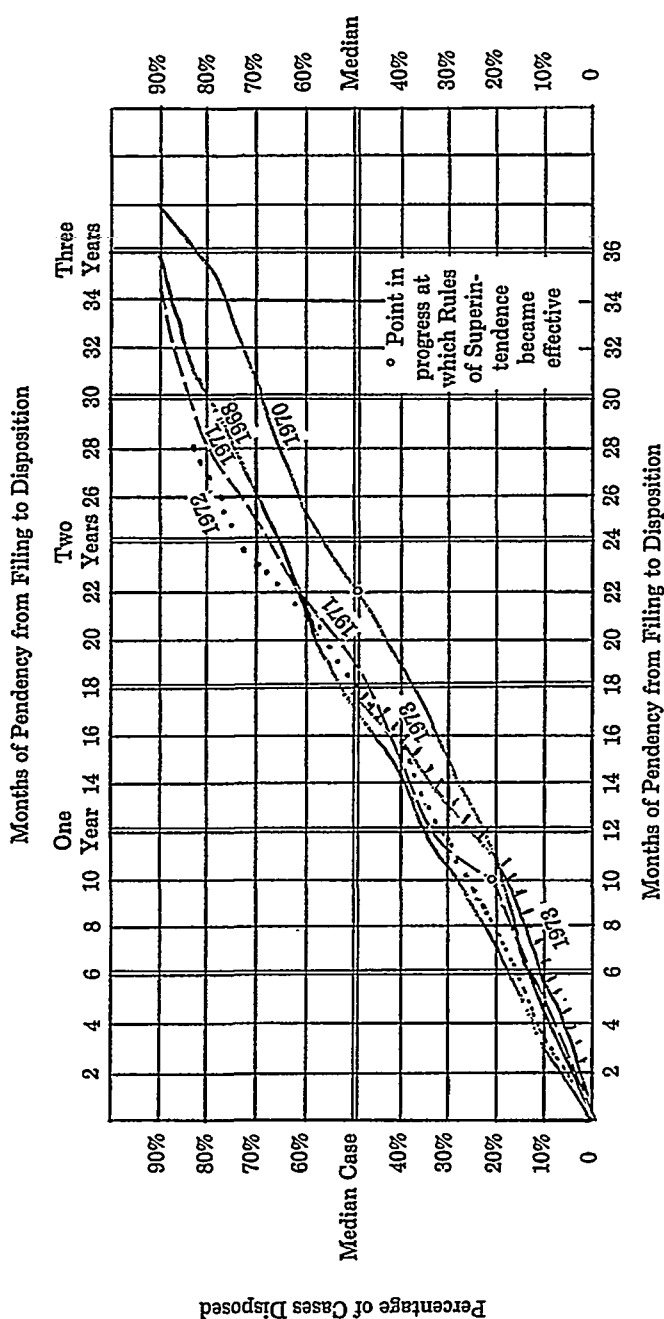
Even after several attempts to expedite case processing, Ohio has not progressed much beyond its earlier low standing, compared to its sister states,⁶⁷ in the elimination of litigation delay. In 1974 its tort jury cases are moving almost as slowly as in 1968-69. The Ohio General Assembly, relatively quiescent in creating new judgeships during the change years of the early 1970's, apparently does not share the confidence of the state's chief justice that changes in judicial machinery and administration alone can establish the state as a leader in speedy justice. In 1973, the legislature proposed changes, subsequently ratified by the voters, in the constitution's five-year-old judicial article authorizing the legislative creation of a single-court system by turning the limited jurisdiction courts into divisions of the general jurisdiction Common Pleas courts.⁶⁸ The salaries of many of the limited jurisdiction judges were raised almost to the level of the general jurisdiction judges' salaries.⁶⁹ Reducing the distinctions between these two types of judges indirectly

67. See *id.* at 15, Table II.

68. See OHIO CONST. art. IV, § 1.

69. See OHIO REV. CODE ANN. § 1901.11 (Page 1973) (effective Nov. 16, 1973). The constitutional amendment also removed the previously existing ban on "in-term" salary raises for limited jurisdiction judges. OHIO CONST. art. IV, § 6.

TABLE II
COMPOSITE CHART SHOWING TIME REQUIRED FOR DISPOSITION OF EACH TEN PERCENT OF TORT
CASE FILINGS — SIX NORTHEASTERN OHIO COUNTIES (UNWEIGHTED) 1968, 1970-73



indicates a lack of confidence in the prior procedural, structural, and administrative reforms; the legislature's activity in other areas has emphasized that lack of confidence more directly. The state inched closer to no-fault automobile insurance⁷⁰ to reduce the tort caseload. The legislature also doubled the maximum monetary jurisdiction of the municipal courts,⁷¹ and it enacted a no-fault divorce statute⁷² to ease the disposition of the steadily increasing number of domestic relations cases on the general jurisdiction docket.

Despite these changes to reduce the volume and difficulty of the general jurisdiction caseload, and notwithstanding the chief justice's pronouncements that Ohio was winning the battle with court delay, the General Assembly, in June 1974, considered proposals to increase drastically the number of judges, primarily in the metropolitan counties.⁷³ These additional judgeships were to be concentrated not in the separate domestic relations divisions, in which filings have increased by over 25 percent in the last 10 years, but in the general divisions, where there had been only a three percent increase in the number of personal injury cases over the same period and where the ultimate effect of no-fault insurance and of increased monetary jurisdiction of the municipal courts would be a reduction in cases filed. This indication of legislative intent to create additional judgeships to handle general docket civil matters⁷⁴ does not lend credence to predictions that Ohio can become a leader in eliminating court delay with existing court resources.⁷⁵

70. The problems of reconciling lawyer-legislators in the Ohio House of Representatives to a reasonable "threshold" for tort suits prevented the enactment of a no-fault statute during the 1974 session. A Senate committee restored drastic cuts made in the threshold amount, but the bill languished in the Rules Committee and did not reach the Senate floor.

71. OHIO REV. CODE ANN. § 1901.17 (Page Legis. Bull. 1, 1974), amending OHIO REV. CODE ANN. § 1901.17 (Page 1973), set the new maximum limit of \$10,000. The previous limit in most of these courts had been \$5,000.

72. OHIO REV. CODE ANN. §§ 3105.61-65 (Page Legis. Bull. 3, 1974) (effective Sept. 23, 1974).

73. Substituted H.B. 1153, Ohio General Assembly (1973-74), which would have increased the number of general jurisdiction judges by 19, a 10 percent increase statewide, was defeated on the floor. It later passed the House, but died in the Senate.

74. Some legislators, however, frankly acknowledged that the purpose of the proposals was not solely to create additional judgeships. The positions, some in areas where they were both unneeded and unwanted, were offered to induce House members to vote for a provision in an omnibus court bill that would have abolished the judicial functions of Ohio's mayors. When the latter provision was stricken, the bill failed to pass.

75. See note 89 *infra* & accompanying text.

CHANGES IN FLORIDA

Trial Court Administration

The purposes of Florida's changes, unlike those in Ohio, were clear, without hidden objectives or inadvertent effects. The first change, administrative in nature, was tentative and optional for the circuits. Initially, a professionally trained state court administrator was obtained, and a staff assembled to receive and act upon operations reports from the intermediate appellate and trial courts; previously the loosely organized Judicial Council staff only had collected statistics. Thereafter, the circuit courts were encouraged by available LEAA grants to employ local trial court administrators or executives. Although their duties and range of authority were not rigidly specified, it was assumed in view of the source of the grants that these administrators would be concerned primarily with organization of the criminal docket.

The employment of court executives began in southern Florida (Dade County) in early 1972, spreading northward, through Orange County (Orlando) by April, and reaching north Florida (Jacksonville) by June of that year. Other courts followed, and by the end of 1972, only four circuits were without such administrative assistance. Of the counties originally subjected to time-lapse measurement, three, Marion, Lake, and Pinellas, were in circuits that did not acquire administrators during the year. Since no precise scope of duties was established for the new administrators beyond the requirements to submit intelligible data to the state administrator's office and to concentrate their efforts in the criminal case field, their general field of activity varied with their backgrounds, their susceptibility to suggestion from the state administrator's office, and the concerns of the chief judge of the circuit to whom each administrator was directly responsible. The background of the administrators varied; among them were former newspapermen, deputy court clerks, law librarians, and one practicing trial attorney.⁷⁶

A. Initial Studies

The before-and-after studies of both administration and structure

76. The attorney was employed despite a clear preference of the training organization, the Institute for Court Management, for individuals who would be unlikely to use the administrative position as preparation for seeking election as a judge. Statement by the then Director of the Institute for Court Management to Jacksonville Bar Association advisory committee for the Duval County Circuit Court, August 1972.

centered initially on the north and central Florida counties where the direct time studies for the seven-state comparison had been made: Duval (Jacksonville), Alachua (Gainesville), Marion (Ocala), Orange (Orlando), and Lake (Tavares). Later, St. Johns County was added as a replacement for Volusia County (Daytona-DeLand) because of difficulties in obtaining reliable measurements from Volusia County's virtually nonexistent docket monitoring system. Studies were postponed in Pinellas (Clearwater-St. Petersburg), Hillsborough (Tampa), Dade (Miami), and Broward (Fort Lauderdale) Counties because most of the pre-1971 statistics in those counties had not been calculated from direct docket-sample measurement.⁷⁷ Greater accuracy of actual measurement was needed for a before-and-after study.

Two of the six counties studied initially, Orange and St. Johns, had administrators involved in civil case processing; two, Duval and Alachua, had administrators who for different reasons⁷⁸ did not concern themselves with this field; two, Marion and Lake, had no administrators and therefore could be used as controls. In the early stages of case processing, heavily administered Orange County produced a slightly better record in 1972, after administration commenced, than in 1970. In later stages, however, it took longer to achieve the same percentage of case dispositions.⁷⁹ In smaller, but also heavily administered, St. Johns County, the time advantage was clearly greater for the court in its last unadministered year, 1971, than in 1972.⁸⁰

The results were less clear where the administrators were less involved in civil case processing. In Duval County, the time-in-

77. Pinellas, Dade, and Hillsborough Counties had been included in the composite Florida progress graph line (See *Judicial Administration* 15, Table II), but only Pinellas had been subjected to docket-sample measurement. The other two counties' records had been calculated from figures published by the Institute of Judicial Administration. For a consideration of the limitations on these latter figures, see *id.* at 10.

78. The Duval County executive, the county's former chief trial counsel, was well aware of the court's outstanding performance record and made no attempt to improve upon it. The Alachua County executive, a former newsman without legal training, admitted to the author that he knew too little about the civil litigation process to suggest any calendaring changes.

79. While final results, at 90 percent of cumulative dispositions, showed virtually identical timespans, the 1972 disposition rates between the 20th and 60th percentiles were one to two months faster than in 1970.

80. Because of the small volume of cases and the resulting small samples, the swings in elapsed time from year to year were extreme. The years 1969 and 1971 showed that 75 percent of all tort cases were disposed of within seven months. The same disposition percentage took nearly a year for 1972 cases and more than two years for cases filed in 1970.

process between 1970 and 1972 increased by one month for 40 percent of dispositions and by four and one-half months at the 90 percent level. By contrast, in Alachua County there was improvement at the earlier disposition levels of the 1972 cases of from 1.4 to 3.0 months over 1970 dispositions at the median disposition level; thereafter, the disposition rate for the 1972 cases fell off rapidly.⁸¹ Results in the counties without any parajudicial administration were mixed. Efficiency declined in Lake County between 1970 and 1972 by one to two and one-half months through the 60 percent disposition level, but an improvement of from one to six months through the 70 percent level for the same years occurred in Marion County.

This sparse data indicates that the presence of concerned and active administrators cannot assure rapid disposition of civil cases and that less active administrators may restrain disposition much less. Although other extraneous factors caused the results in unadministered counties to vary greatly, improvement of case flow seemed more likely without administrators, further indicating an inverse correlation between the use of nonjudicial administration and efficient case processing.

B. Later Studies

Serious difficulties subsequently developed with the use of the counties initially selected as typical of Florida's experience. St. Johns County, substituted for Volusia County, had too few tort cases for reliable measurement; Lake County seemed atypical for other reasons⁸² and therefore was not used. Other counties experiencing more characteristic case processing and calendar control problems were substituted: Pinellas County (St. Petersburg), which had been used in the 1970 study but which had not been measured since; Hillsborough (Tampa) and Dade (Miami) Counties, both of which had been used on a calculated basis for the 1970 study; and Broward County (Fort Lauderdale), an example of the fast-growing

81. The 1972 rate in this county was slightly better than the 1968 and 1970 rates up to the 60th percentile (eight months), but it took 21 months to secure 80 percent dispositions compared with less than 20 months for the same level of dispositions for 1968 and 1970 cases.

82. Although the twelfth largest county in the state, Lake County had no city of moderate size to generate legal business; also its court operations had been disrupted by a prisoner mistreatment charge against the county sheriff, and the only resident circuit judge had suffered a disabling heart attack.

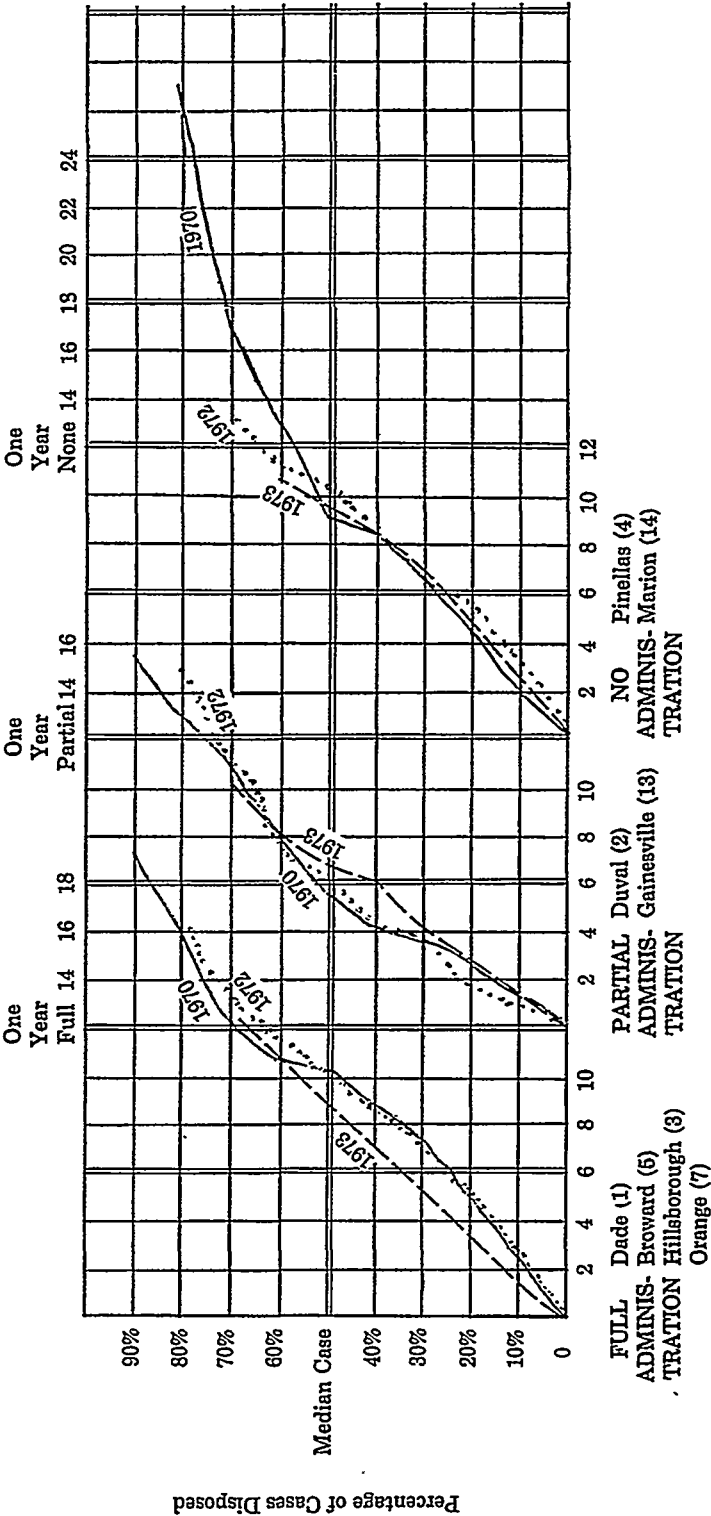
east coast counties in southern Florida. Eight of the state's fourteen largest counties were represented in the later study, evenly balanced between south, central, and north Florida. Of the eight, four had instituted inclusive trial court administration soon after authorization; two, both in north Florida, had administrators who refrained from managing the civil docket; the remaining two elected to have no nonjudicial administration.

The results of time-lapse studies carried on in this large group of more representative counties over a longer time period varied somewhat from those of the earlier studies. In both Dade and Hillsborough Counties, which were fully administered, the timespans for tort jury case disposition lengthened measurably for 1972 compared with 1970.⁸³ In Broward County, after some initial improvement in the earlier stages in 1972, the progress lines for the two years were virtually identical.⁸⁴ A composite progress chart for the two years shows that the four fully administered counties (Dade, Broward, Hillsborough, and Orange) actually lost ground in 1972, their first year of administration. The partially administered counties (Duval and Alachua), whose administrators did not participate in civil case processing or scheduling, maintained their 1970 pace until the 70 percent disposition level, then lost some ground. The unadministered courts in Pinellas and Marion Counties, after virtually identical progress in disposing of their median cases, showed measurable improvement over 1970 performance at the higher disposition levels. Table III illustrates the comparative composite progress of the Florida counties studied. Although the great improvement of the unadministered courts was due largely to Marion County's unimpressive record for its 1970 filings, the presence or absence of a trial court administrator was nevertheless the sole distinguishing feature between counties during the years observed. Structural change had some influence on the improved showing by some courts in the following year.

83. In Dade County, through the 40th percentile of tort case dispositions, the time-lapses were negligibly shorter for 1972 cases than for the 1970 filings; thereafter it took measurably longer to reach each level of disposition. In Hillsborough County, the 1972 timespans at every level above 20 percent were one to two months longer than for 1970.

84. The 1972 cases took less time for disposition than the 1970 cases for levels below the 60th percentile; thereafter the 1972 progress line was indistinguishable from the 1970 line.

TABLE III



Structural Changes

Because there were no control groups or partial changes in the structural field, the time-lapse changes caused by the 1973 constitutional amendments⁸⁵ were relatively easy to assess. Of the six counties first studied, all but one (Marion) had increased their time-spans for tort case dispositions at every measured percentile of dispositions from 1972 to 1973. A comparison with the 1970 record, additionally influenced by administrative changes, showed mixed results, with three of the six counties taking a considerably longer time, two taking a shorter time, and one approximately the same time, for disposition of cases at every level. The results on a composite or unweighted average basis for all six counties were as follows:

MONTHS REQUIRED FOR DISPOSITION OF VARIOUS
PERCENTAGES OF TORT JURY CASES

<u>Filing Year</u>	<u>20%</u>	<u>30%</u>	<u>40%</u>	<u>50%</u>	<u>60%</u>	<u>70%</u>
1970 (no trial court administration)	4.0	5.2	6.8	8.4	10.4	16.0
1972 (partial administration)	3.9	5.9	6.5	8.5	10.6	13.4+
1973 (new structure)	4.9	7.0	8.5	9.7	Not reached	Not reached

When the longer measurement period for the revised group of more populous counties was observed, the evaluation of progress from 1972 to 1973 changed appreciably. The timespan for disposition lengthened slightly in three counties (Duval, Pinellas, and Orange), remained relatively constant in one (Broward), and improved significantly in the remaining four. Trial court administrators might have claimed that the improvement was merely a delayed effect of their efforts in the previous year; there was both progress and deterioration, however, in counties with each degree of administration. Moreover, Broward County, one of the first fully administered counties, had virtually identical performance in each year. Administrative factors therefore seemed to have little effect on these composite figures.

The comparative time for disposition of tort jury cases by all eight Florida counties showed surprising differences from the original six counties studied. The months required for various percentages of tort case disposition for 1972 and 1973 evidence the overall effect:

85. See notes 22-26 *supra* & accompanying text.

	<u>20%</u>	<u>30%</u>	<u>40%</u>	<u>50%</u>	<u>60%</u>	<u>70%</u>
1972 (old structure)	4.5	6.0	7.5	9.0	10.6	13.0
1973 (new structure)	3.8	5.5	7.5	8.6	9.9	Not reached

While the earlier Florida study mirrored Ohio's experience that a structural change may be accompanied by a temporary loss of efficiency during an adjustment period, the results from the larger group of more populous counties did not support this conclusion. Florida's circuit judges responded favorably to their additional tasks:⁸⁶ there was a significant gain at nearly every level of tort case disposition. This improvement does not necessarily demonstrate the superiority of the single-court system, for Florida has not adopted the concept, but it does illustrate the success of a well-planned approach to the single-court structure, while also showing that the assumption of additional administrative duties by judges does not necessarily slow case disposition.

Total Effect

The combined effect of Florida's changes was distinctly for the better. Efficiency lost before 1972 in the fully administered counties was more than recouped in 1973 with the new structure. In the entire group of counties, the timespan for case processing did not lengthen appreciably between 1970 and 1973; at every percentage level except one the timespan decreased. Only occasionally did longer spans appear, and these were only for limited periods. Perhaps foremost was the absence of drastic fluctuations in disposition rate that had been observed in Ohio, as indicated by the greater disparity among the yearly progress lines for Ohio as compared to those for Florida in Table IV. Ohio's abandonment of nonjudicial case processing had produced an almost instant improvement in disposition time; the introduction of court executives in Florida, however, did not produce the expected sharp loss of efficiency.⁸⁷

86. These judges absorbed the county court judges' probate functions, supervised the new county courts, and in some cases, with the help of additional judges, replaced the old criminal courts of record. See notes 22-26 *supra* & accompanying text.

87. Certainly, the unwillingness of some counties to use executives at all, as well as the reluctance of some administrators to participate in civil case processing, aided this result. Nonparticipation in civil matters seemingly is inconsistent with at least some job descriptions for the position; the Ninth Judicial Circuit executive's tasks, for example, include the development of an administrative plan for 75 percent utilization of courtrooms and the duty "to manage the new Circuit Court." See National Center for State Courts, Court Improvement Programs 15, November 1972.

Similarly, Ohio's experience in 1970 might have foreshadowed a complete collapse of civil case processing in Florida due to the 1972 structural changes. Surprisingly, however, there was a slight but noticeable improvement in the disposition rate. A possible explanation for this difference is that Florida's structural changes, though at least as substantial as Ohio's, were well advertised and prepared for by those concerned, while in Ohio the effort to achieve structural change was indirect and by dubiously constitutional sleight of hand.⁸⁸

In one respect the reactions in the two states were alike. After the changes had been in effect for a full year, Ohio's chief justice predicted in 1973 an era in which his state would lead the nation in speedy justice.⁸⁹ A year later Florida's chief justice similarly contrasted achievements in the first year after the structural change with the system's previous decrepitude.⁹⁰ The two statements were equally wide of the mark, but for different reasons. Ohio cannot expect overwhelming improvement upon its present and past poor record for tort case disposition. Florida, however, had been a leader in tort jury case processing long before the administrative and structural changes extolled by its chief justice. Its progress since 1970, while discernible, was slight, and the Chief Justice gave too little credit to the prior achievements of his trial judges.

CONCLUSION

This double before-and-after study, with some degree of control of other variables, tested two conclusions reached in the seven-state study of 1970-72: that unrestricted use of parajudicial administrators for case processing inhibits efficient disposition of tort jury cases, and that the single trial court structure is not the most efficient for disposing of tort jury cases. The other original conclusions were ignored where possible to avoid too wide a spectrum of determinations based on the same data and to avoid any question of regional superiorities, an unintended result of the prior study. The followup study supported earlier impressions of the use of parajudicial case processors, while conclusions concerning modified court

88. For another possible cause of differing results in Florida and Ohio concerning ease of transition, see note 96 *infra* & accompanying text.

89. Address by Chief Justice C. William O'Neill, Ohio State Bar Association Annual Meeting, May 10, 1973, in 46 Ohio B. 755, 766 (1973).

90. See Florida Times-Union, Mar. 22, 1974, § A, at 14, cols. 3-4.

structure could not be drawn so easily; additionally, some incidental conclusions supplemented the results.

The evidence, both direct and indirect, clearly illustrated the detrimental effects of using parajudicial administrators: in varying degrees, Florida experiments indicated that efficiency varied inversely with the extent of civil case processing by administrators; when Ohio abandoned the use of administrators in case processing as far as possible, a noticeable increase in efficiency resulted immediately. Ohio's rate of progress decreased slightly after the first year of change and after the "inventory" and "housecleaning" effects subsided, but in early 1974 Ohio finally surpassed the progress rate of its pre-change base year, 1968. Even if it does not become a leader in efficiency, Ohio can expect some improvement if judges, not administrators, retain responsibility for case processing.

It does not follow that court administrators necessarily hinder efficiency, since they may be very useful in many of the primarily business-oriented court tasks, such as budgeting and personnel management. The virtue of their use in case processing and trial scheduling simply has been oversold. Court administrators should not perform tasks that call for professionals in the litigation process. In the important area of the pretrial conference an experienced administrator might perform efficiently. Such a master also might dovetail the list of trials to take place on any given day, but only if he has the complete backing of his judges. Such support may be difficult to obtain since an attorney frequently will go behind the administrator's back to the judge to frustrate a well-planned trial schedule with an ill-timed continuance or adjournment. Far too many state court judges, dependent upon the good will of the litigation bar, may capitulate, creating a source of disruption that may explain the general lack of success of both lay and professional case processing.

There is also a secondary conclusion concerning court administration. The hypothesis that judges would be more efficient case processors if relieved of other administrative duties was refuted to some extent by the Florida results. In 1973 the chief judges of the Florida circuits were given responsibility for administrative supervision of the new county courts⁹¹ as well as for integration of the caseloads and new judges into their own courts. Despite this rather awesome

91. FLA. CONST. art. V, § 2(d).

and essentially nondelegable responsibility, they performed admirably, increasing the productivity of their own courts as well. If such increased duties can improve performance, it seems unlikely that reduced burdens would have a similar effect.

On the other hand, no clear conclusions could be drawn to support the prior evaluation of the single-court concept. Neither Ohio nor Florida went forthrightly to this framework, as both changes were only preparatory, and Ohio's was quite indirect.⁹² Thus no indication can be taken from this study that institution of a single trial court will improve tort jury case processing, leaving uncontradicted the original side-by-side study's finding⁹³ that, as illustrated by Pennsylvania and Louisiana, a single-court structure is less efficient than a multiple-court system.

An incidental conclusion can be stated regarding the benefits of increased numbers of judges. Ohio's General Assembly apparently felt at the outset that efficient court operation could be achieved without a large number of additional judges. Few additional judgeships were created between 1969 and 1974, although rather large salary increases were provided.⁹⁴ By the time the legislature attempted to increase judicial manpower,⁹⁵ the other reforms were complete. In contrast, Florida's administrative and structural changes were accompanied by the creation of more judgeships.⁹⁶ This added supply of judges during the critical months of transition may explain why Florida adopted its modifications more smoothly than Ohio.

92. Staff notes to rule 4.6(A) of the Ohio Rules of Civil Procedure indicate that no consideration was given to the problem of statutory limitations on the exercise of in personam jurisdiction by municipal and county courts. Staff Note, OHIO R. Civ. P. 4.6(A). The constitutional amendment creating new divisions of the court was passed under a description, issued by the Secretary of State, which emphasized creation of multi-county general jurisdiction court districts and equalization of judges' pay.

93. See *Judicial Administration* 16.

94. See OHIO REV. CODE ANN. §§ 1901.11, 1907.081 (Page 1973).

95. See note 73 *supra* & accompanying text.

96. A former judicial article (FLA. CONST. art. V, § 6(1956)) had tied the number of judges to the population, computed by the decennial federal census, which increased in 1970. New openings thus became available by appointment in the last days of Governor Kirk's administration, and the furor over these "midnight-judge" appointments highlighted the need for a new judicial article (FLA. CONST. art. V, § 6 (1972)) that would abandon the population basis and return the power to determine the need for new judgeships to the legislature. Responding to the need for political balance among new judges, the General Assembly also created additional judgeships to compensate for the appointments made by the outgoing governor, whose political party was in the minority in the legislature.

For many states the lessons to be learned from Florida's and Ohio's experiences may be of little significance. Illinois, Pennsylvania and North Carolina, for example, already are committed to their own types of restructuring and administration. Tennessee, with its reluctance to adopt structural unification⁹⁷ or even tenure for appellate judges,⁹⁸ exemplifies those states that have resisted all court reform. Many other states, however, such as Virginia, Kentucky, Georgia, Louisiana, and Wisconsin, have remained uncommitted to either court unification or lay court administration. For these states the Florida and Ohio results are significant. Achievements in disposition of tort jury cases alone, of course, are not determinative; the changes may have had entirely different effects in other areas. Nevertheless, it is clear once again that the frequently posited remedies for courtroom delay have not been entirely successful. Their use should not be adopted lightly.

97. See notes 10-12 *supra* & accompanying text.

98. After the governor and nominating commission had fumbled badly on the appointment of a supreme court justice in 1972, thereby allowing election of a write-in candidate at the next polling, the Tennessee legislature repealed TENN. CODE ANN. § 17-714 (1972), which had provided for incumbent appellate judges, appointed to fill vacancies, to run unopposed for election, the only question being whether the judge should be retained for the unexpired term of his predecessor.