P-Speeches-Misc.

"JUDGING IS ALSO ADMINISTRATION"

AN APPRECIATION OF CONSTRUCTIVE LEADERSHIP IN THE JUDICIAL ADMINISTRATION OF THE COURTS OF THE UNITED STATES

Address by HON. HAROLD H. BURTON, Associate Justice of the Supreme Court of the United States, before the Section of Judicial Administration, American Bar Association, Cleveland, Ohio, September 24, 1947

On June 30, 1921, former President William Howard Taft was nominated Chief Justice of the United States. At the October Term he found the Supreme Court of the United States more than a year behind in its docket.[1] The Court was flooded not only with cases entitled to full consideration but with many not justifying further review. The Court sat in the much-liked original Senate Chamber in the Capitol but lacked adequate facilities for its library, its Clerk, its Marshal, the members of its Bar and the chambers of its Justices. The rules of procedure throughout the federal court system were antiquated and cumbersome. Many of the lower federal courts were behind in their dockets but there was little authoritative information by which to measure the need for additional permanent district or circuit judges. There was no coordination between the administrative offices of the federal courts, much less any businesslike control over their operations. There was no authorized procedure for mobilizing the experience of the courts to help Congress consider legislation dealing with judicial administration.

[1] "By 1921 it required between something more than a year to something less than two years for a case to be reached for argument after its docketing, and there was grave ground for apprehension that the calendar would soon become even more congested." Charles E. Hughes, Jr., in Proceedings in Memory of Mr. Justice Van Devanter, 316 U. S. V, XII.

On March 30, 1922, Chief Justice Taft estimated that it then took eighteen to twenty-four months to reach an ordinary case on the Docket. Hearing before Committee on the Judiciary, House of Representatives, on H. R. 10479, 67th Cong., 2d Sess. 7, 12.

Instead of translating the tremendous motive power of the people into efficient judicial action, the administration of our courts often handicapped the judges in dispensing justice. It was clear that not only wisdom and clarity but speed and efficiency were essential to the judicial process. "Judging is also administration"; [2] and in the face of such conditions, Chief Justice Taft and his successors in office have demonstrated the value of competent judicial administration to the cause of justice.

Almost exactly twenty years later, when Chief Justice Charles Evans Hughes, on July 1, 1941, retired from his eleven years of arduous service which followed the equally arduous nine of his predecessor, the judicial administration of the Supreme Court of the United States had changed from a cause of national concern to one of national pride. The federal judiciary had been converted from an outstanding example of an unordered judiciary to an outstanding example of efficient judicial administration. Chief Justices Harlan Fiske Stone and Fred M. Vinson have maintained this high standard.

1921–1941 was a time when economic readjustments led to many fundamental changes in governmental structures and policies. Nevertheless, through the application of the wide executive experience of the two Chief Justices of the United States who served in that period, the courts of the United States not only preserved our judicial structure but strengthened it.

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[2] Hart, The Business of the Supreme Court at the October Terms, 1937 and 1938, 53 Harv. L. Rev. 579, 613. That article is the concluding one in the following series covering the Judicial Administration of the Supreme Court of the United States since 1789:

Frankfurter and Landis, The Business of the Supreme Court (1789–O. T. 1926); Frankfurter and Landis, The Supreme Court under the Judiciary Act of 1925 (O. T. 1927), 42 Harv. L. Rev. 1; Frankfurter and Landis, The Business of the Supreme Court at October Term, 1928, 43 *id.* 33; (O. T. 1929), 44 *id.* 1; (O. T. 1930), 45 *id.* 271; (O. T. 1931), 46 *id.* 226; Frankfurter and Hart (O. T. 1932), 47 *id.* 245; (O. T. 1933), 48 *id.* 238; (O. T. 1934), 49 *id.* 68; Frankfurter and Fisher (O. T. 1935 and 1936), 51 *id.* 577.

The technique of the judicial process is as properly the responsibility of the judges and lawyers as the technique of automobile production is the responsibility of mechanical, industrial and financial experts. Judicial administration is largely a technical matter dealing with the jurisdiction, structure, procedure, personnel and equipment of the courts and of their administrative agencies. Each of these subjects in our federal judicial system needed and received the personal attention of Chief Justices Taft and Hughes. They came to this task of judicial administration equipped with an extraordinary wealth of appropriate experience. In addition to several years of federal judicial experience, each had had long and practical experience in dealing with the executive and legislative procedure of a free and representative government. Each had an appreciation of the initiative, determination and patience required to secure the substantial improvements sought.[3] Chief Justice Taft laid the essential foundations

[3] Chief Justice Taft, in addition to many years spent in the general practice of his profession, in professional organizations, and in his service as Chief Justice of the United States, 1921–1930, served as: Assistant Prosecuting Attorney of Hamilton County, Ohio, 1881–1883; Assistant County Solicitor of Hamilton County, 1885–1887; Judge of the Superior Court in Cincinnati, Ohio, 1887–1890; Solicitor General of the United States, 1890–1892; U. S. Circuit Judge for the Sixth Circuit, 1892–1900; Professor and Dean of the Law Department, University of Cincinnati, 1896–1900; President of the U. S. Philippine Commission, and later the First Civil Governor of the Philippine Islands, 1900–1904; Secretary of War, 1904–1908; and President of the United States, 1909–1913. During his Presidency, Congress adopted the Judicial Code of March 3, 1911, and he appointed to the Supreme Court Associate Justices Lurton, Hughes, Van Devanter, J. R. Lamar and Pitney. He also appointed Associate Justice White as Chief Justice of the United States. From 1913–1921, he served as Kent Professor of Law at Yale University.

Chief Justice Hughes, in addition to his general practice of his profession, his activity in professional organizations and his service as Chief Justice of the United States, 1930–1941, served as: Professor of Law and Lecturer at Cornell and at the New York School of Law, 1891–1900; counsel for the Stevens Gas Commission (N. Y. Legis-

for the improved judicial administration of the federal courts. Chief Justice Hughes built important superstructures upon those foundations.

Of their contributions to the improvement of judicial administration five are emphasized here:

1. The Coordination of the Federal Judiciary.
2. The Enlargement of the Discretionary, and the Restriction of the Obligatory, Jurisdiction of the Supreme Court.
3. The Building and Equipment of the Supreme Court Building.
4. The Federal Rules of Civil Procedure.
5. The Administrative Office of the United States Courts.

1. *The Coordination of the Federal Judiciary.*

Traditionally, not only the Supreme Court but each court of the United States had been administratively independent of every other court and of every administrative control. While litigated cases moved from court to court, and orders issued by the several courts generally were obeyed by those to whom they were directed, there was little coordination of administrative service. There was no statistical information, authoritatively analyzed, as to the work of the courts. Statistical material presented to Congress as a basis for appropriations was collected largely by the Attorney General of the United States. This produced the inappropriate result that the federal courts, before which the Attorney General's staff constantly appeared, were dependent upon that same Attorney General for recommendations in support of appropriations for the courts.

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lature), 1905; counsel for the Armstrong Insurance Commission (N. Y. Legislature), 1905–1906; Governor of New York, 1907–1910; Associate Justice of the Supreme Court of the United States, 1910–1916; Candidate for President of the United States, 1916; Secretary of State of the United States, 1921–1925; member of the Permanent Court of Arbitration, The Hague, 1926–1930; Judge of the Permanent Court of International Justice, 1928–1930.

In 1921, the most pressing need of the federal courts was for additional judges or for a reduction in pending cases. The absence of factual data as to the comparative needs of the different districts made it difficult for anyone to determine what relief might be secured by temporary reassignments of judges between districts and even between circuits. Furthermore, there was no judicial authority adequate to make such reassignments or even to bring judges together to prepare recommendations as to the relative needs of their respective districts.

As soon as William Howard Taft became Chief Justice, he brought to bear on this issue his unique combination of experience as a Circuit Judge and as President of the United States. He saw all sides of the question. As President he had devoted much attention to the appointments he made to the federal judiciary and he had approved the creation of two new courts, namely, the United States Court of Customs Appeals [4] and the United States Commerce Court.[5] Since 1909, the American Bar Association had advocated judicial reform pointing toward a unified judiciary and a judicial council.[6] In 1914, after leaving the Presidency, Mr. Taft had urged the establishment of a council of federal judges "to consider each year the pending Federal judicial business of the country and to distribute [the] Federal judicial force of the country through the various districts and intermediate appellate courts, so that the existing arrears may be attacked and disposed of." [7]

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[4] Act of August 5, 1909, 36 Stat. 105. It is now the United States Court of Customs and Patent Appeals, Act of March 2, 1929, 45 Stat. 1475.

[5] Act of June 18, 1910, 36 Stat. 539. Abolished by Act of October 22, 1913, 38 Stat. 219.

[6] Report of the Special Committee to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation, 34 Am. Bar Assn. Rep. 578.

[7] William H. Taft, The Attacks on the Courts and Legal Procedure, Address at Cincinnati Law School Commencement, May 23, 1914, 5 Ky. L. J. 1, 15.

As Chief Justice, he gave his vigorous support[8] to a proposed amendment to the Judicial Code providing for the summoning annually by the Chief Justice of the United States of a Conference of the Senior Circuit Judges to meet in Washington on the last Monday in September. The amendment proposed, among other things, that—

> "Said conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment and transfer of judges to or from circuits or districts where the state of the docket or condition of business indicates the need therefor, and shall submit such suggestions to the various courts as may seem in the interest of uniformity and expedition of business."[9]

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[8] His support included, among other efforts, his testimony of October 5, 1921, in the Hearings on S. 2432, 2433 and 2523, before the Senate Committee on the Judiciary, 67th Cong., 1st Sess., 11. During the pendency of the Bill in Congress, he spoke on this subject before the American Bar Association at Cincinnati, August 10, 1921, 46 Am. Bar Assn. Rep. 561, and at San Francisco, August 10, 1922, 8 Am. Bar Assn. J. 601, 47 Am. Bar Assn. Rep. 250, 6 J. Am. Jud. Soc. 36, 57 Am. L. Rev. 2 and the Chicago Bar Assn., December 27, 1921, 8 Am. Bar Assn. J. 34.

[9] Act of September 14, 1932, 42 Stat. 838–839. That Act provided also that—

"The senior district judge of each United States district court, on or before the first day of August in each year, shall prepare and submit to the senior circuit judge of the judicial circuit in which said district is situated, a report setting forth the condition of business in said district court, including the number and character of cases on the docket, the business in arrears, and cases disposed of, and such other facts pertinent to the business dispatched and pending as said district judge may deem proper, together with recommendations as to the need of additional judicial assistance for the disposal of business for the year ensuing. Said reports shall be laid before the conference [of senior circuit judges] . . ., by said senior circuit judge, . . ., together with such recommendations as he may deem proper." *Id.* 838.

The Conference of Senior Circuit Judges now includes also the Chief Justice of the United States Court of Appeals for the District of Columbia. 50 Stat. 473.

The Bill authorized a senior circuit judge to reassign district judges of his circuit temporarily to where they might be most needed in that circuit. Under certain limitations, the Chief Justice of the United States, likewise, was authorized to assign to such duty a district judge or a circuit judge from outside the circuit where the need existed.[10] He said of this proposal:

> "These provisions allow team work. They throw upon the council of judges, which is to meet annually, the responsibility of making the judicial force in the courts of first instance as effective as may be. They make possible the executive application of an available force to do a work which is distributed unevenly throughout the entire country. It ends the absurd condition, which has heretofore prevailed, under which each district judge has had to paddle his own canoe and has done as much business as he thought proper." [11]

As finally adopted, September 14, 1922, the Act also authorized the appointment of twenty-four additional district judges.[12]

This application of administrative common sense to an uncoordinated judicial system provided a permanent mechanism for securing factual appraisals of the requirements of the respective districts for adjustments in judicial manpower. It established a natural agency for the coordination of policies and for the consideration, and even initiation, of legislative proposals affecting the judiciary. For example, the regular session of this Conference, held October 1–4, 1946, dealt with twenty-two administrative and legislative problems none of which otherwise could have received comparable attention and as to which

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[10] 42 Stat. 839. The Act of August 27, 1937, 50 Stat. 753, has strengthened the authorization.

[11] Address to American Bar Association at San Francisco, August 10, 1922, 6 J. Am. Jud. Soc. 37; 57 Am. L. Rev. 3, and see 8 Am. Bar Assn. J. 601, 47 Am. Bar Assn. Rep. 252.

[12] 42 Stat. 837.

the executive and legislative branches of the Government otherwise could not have received as competent an opinion.[13]

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[13] At the 1946 Conference, the Chief Justice of the United States presided. The ten circuits, plus the District of Columbia, were represented. Five other federal judges reported on special committee assignments. Addresses were made by the Chairman of the Judiciary Committee of the House of Representatives and by the Attorney General. The latter dealt with the Administrative Procedure Act, the Federal Tort Claims Act, the new Federal Rules of Criminal Procedure, the Federal Jury Bills, Youth Offenders' Bill, Public Defenders' Bill, Habeas Corpus Procedural and Jurisdictional Bills and Bills as to reviews of orders of certain administrative agencies. He requested appointment of a committee to consider procedure in cases of juvenile delinquency.

The Seventh Annual Report of the Director of the Administrative Office of the United States Courts was received. It included a Report of the Division of Procedural Studies and Statistics and is printed with the Report of the Conference.

The state of the Dockets of Circuit Courts of Appeals, District Courts and Special Courts was reviewed.

Other matters reviewed, and generally made the subjects of specific recommendations, were those of: Additional Judges; Court Reporters (including changes in basic salaries, description of positions and operating arrangements, and recommendations as to provisions on court reporters in proposed revision of the Judicial Code); Budget Estimates; Bankruptcy Administration, including recommendations as to proposed amendments to the Bankruptcy Act and as to action to be taken at a special meeting of the Conference to be called to deal with the new Referees' Salary Act (This special meeting was held April 21–22, 1947, and final action was taken in time to go into effect July 1, 1947); Review of Orders of Interstate Commerce Commission, other Administrative Agencies and of Three-Judge Courts; Treatment of Insane Persons Charged with Crime in the Federal Courts; Sentencing and Parole of Federal Offenders; Removal of Civil Disabilities of Probationers Under Certain Conditions; Trial of Minor Offenders by Commissioners; Transfer of Jurisdiction for Supervision of Probationers from Court of Original Jurisdiction to the District of Supervision; Use of Trial Memoranda in Criminal Cases; Habeas Corpus Procedure; Jury System; Representation of Indigent Litigants; Judicial Statistics; Assignments of Judges Outside of their Circuits; Amendments to Admiralty Rules; Disposition of Old Records; Postwar Building Plans for Quarters of the U. S. Courts; Salaries in the

2. *The Enlargement of the Discretionary, and the Restriction of the Obligatory, Jurisdiction of the Supreme Court.*

In 1924, without an order for advancement, it still required a year to reach a case on the Docket of the Supreme Court.[14] In the years immediately preceding the October Term, 1925, the obligatory jurisdiction of the Court accounted for over eighty percent of the cases on its appellate docket, or about two hundred and fifty cases a year. The remaining twenty percent consisted of sixty to seventy cases in which petitions for certiorari had been granted, out of about five hundred such petitions directed to the discretionary jurisdiction of the Court.[15] As long as the obligatory jurisdiction thus applied to so much of the Docket, there was little hope of limiting hearings to cases of public significance or of relieving the Court from hearing cases which presented no substantial reason for a further review. With an approaching increase of federal litigation, the Court foresaw that its Docket would be so filled with cases under its obligatory jurisdiction that it would not be able to give to issues of public concern the attention they deserved. On the other hand, the establishment of the Circuit Courts of Appeals,[16] and the aboli-

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Administrative Office of the U. S. Courts; Procedure in Circuit Conferences as to Legislation Affecting District Courts and District Judges; and Keeping of Certain Court Offices Open on Saturday Forenoons. A Conference Committee on Probation with Special Reference to Juvenile Delinquency was added to the existing committees. Two Conference Committees were discharged and all others continued.

[14] Mr. Justice Van Devanter estimated that the Court then was "hearing cases on the regular call that have been on the docket about 12 or 13 months." Hearing before a Subcommittee of the Committee on the Judiciary of the Senate on S. 2060 and 2061, 68th Cong., 1st Sess., 42 (1924). Chief Justice Taft, two years before, had estimated it at eighteen to twenty-four months. See note 1, *supra*.

[15] These approximations are based upon the tables as to the Docket of the Supreme Court in Frankfurter and Landis, The Supreme Court Under the Judiciary Act of 1925, 42 Harv. L. Rev. 1, 10, 13.

[16] Act of March 3, 1891, § 2, 26 Stat. 826.

tion of the Circuit Courts,[17] together with the authorization of a partially discretionary control by the Supreme Court over the cases to be reviewed from those courts,[18] were providing a satisfactory solution within the limited class of cases thus affected. The mechanism controlling this discretionary jurisdiction was proving to be one of the best devices for governmental control of discretionary procedure yet developed in any part of this nation's broad experience with checks and balances.

Thus fortified by thirty years of experience with petitions for certiorari, the Court, even before Chief Justice Taft joined it, had appointed a Committee of Justices to prepare legislation which would further restrict the obligatory jurisdiction of the Court and would substitute for it the Court's discretionary jurisdiction.[19] The plan proposed by the Justices was to increase materially the scope of review by petition for certiorari and the Bill became known as the Judges' Bill. Due largely to the active

[17] Act of March 3, 1911, § 289, 36 Stat. 1167.

[18] Act of March 3, 1891, § 6, 26 Stat. 828.

[19] This Committee consisted of Justices Day and McReynolds, with Chief Justice White as a member *ex officio*. Chief Justice Taft added Mr. Justice Van Devanter to the Committee, and himself pressed the matter vigorously. Upon the retirement of Mr. Justice Day, Mr. Justice Van Devanter became the Committee Chairman and the principal draftsman of the Bill. (Chief Justice Taft, 35 Yale L. J. 2.) Mr. Justice Sutherland, a former member of the Senate Committee on the Judiciary, was added to the Committee and the Bill was thoroughly explained in Committee Hearings. *E. g.*, Chief Justice Taft, in Hearing before Committee on the Judiciary, House of Representatives, on H. R. 10479, 67th Cong., 2d Sess. 1 (1922); Justices Van Devanter, McReynolds and Sutherland, in Hearing before Subcommittee of Committee on the Judiciary of the Senate, on S. 2060 and 2061, 68th Cong., 1st Sess. 25–62 (1924). Justices Van Devanter, McReynolds and Sutherland, with Chief Justice Taft, in Hearing before Committee on the Judiciary, House of Representatives, on H. R. 8206, 68th Cong., 2d Sess. 6–30 (1924).

For a summary of the nature and effect of this Bill and of the service rendered by this Committee, see statement by Charles E. Hughes, Jr., in Proceedings in Memory of Mr. Justice Van Devanter, March 16, 1942, 316 U. S. V, XII–XIV.

sponsorship of it by the Chief Justice and the Court's Committee of Justices, it was approved February 13, 1925.[20] It has been eminently successful and has become the basic mechanism in maintaining a flexible, but firm, control over the volume of the Supreme Court's work.

The granting or denial of a petition for certiorari is not a decision on the merits of the case. The petitions relate, almost exclusively, to cases which previously have been heard by a federal or state court of three or more judges. In most of them, a separate trial court also has passed upon the issues. The character of the reasons guiding the Supreme Court's discretion in acting on petitions for certiorari are stated in its Rules.[21] Accordingly, nearly all of the cases decided in the Circuit Courts of Appeals no longer are reviewable in the Supreme Court except upon a writ of certiorari, which is granted only in the discretion of the Supreme Court. This has enabled the Supreme Court to protect itself against such abuse of its jurisdiction by litigants as previously had occurred and again was being threatened. The danger of an overloaded docket, without such a check, is evident from the fact that, from 1925 to the present, the denial of these petitions at each Term has averaged about eighty percent of those filed.[22]

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[20] 43 Stat. 936.

[21] Revised Rules of the Supreme Court of the United States, Rule 38 (5), 306 U. S. 718–719. See also, Rule 12 as to Jurisdictional Statements Required in Appeal Cases, 306 U. S. 694, amended 316 U. S. 715.

[22] "At the 1937 term 701 petitions [for certiorari] were denied on the merits; at the 1938 term, 666. The 155 petitions granted at the 1937 term were 17.7% of the total filed: the 130 at the 1938 term, 16%. Like percentages have maintained themselves with singular consistency since prior to the enlargement of discretionary jurisdiction under the Act of 1925. The percentage of petitions granted during the sixteen terms since that of 1923 is 18.1%; the term-by-term figures disclose no sustained trend either upward or downward." Hart, The Business of the Supreme Court at the October Terms, 1937 and 1938. 53 Harv. L. Rev. 579, 585.

The Docket of the Supreme Court for its October 1946 Term shows: petitions for certiorari acted upon (exclusive of those filed *In Forma*

Without further explanation, such a high percentage might suggest a possible abuse of its own discretion, by the Court, in unduly restricting access to it. However, a unique practice of the Court, fully explained to Congress, has provided an excellent safeguard against such a possibility. This safeguard is the practice of the Court to grant any such petition upon the favorable vote of a substantial minority—that is, four out of nine—of the members of the Court rather than to require the favorable vote of a majority. Unless at least a substantial minority of the Court believes that the case should be heard, it seems clear that it should not be. On the other hand, if a substantial minority of the members of the Court feels that

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Pauperis) 733; of which 148, or about 20.2% were granted. The 529 additional cases, treated as petitions for certiorari, but filed *In Forma Pauperis* included the many requests for review received from penitentiary inmates. Only 8, of these 529 "petitions," were found to justify the granting of them. To include these "petitions" would produce a misleading total of 1,262 petitions for certiorari acted upon of which 156, or only 12.4% were granted. To avoid this confusion, a change in practice is being put into effect whereby these informal requests will be placed on the Miscellaneous Docket and will be transferred to the General Docket only when and if granted.

"[T]he jurisdiction [of the Supreme Court to review cases by granting a writ of certiorari] was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing. Our experience shows that eighty per cent. of those who petition for certiorari do not appreciate these necessary limitations upon our issue of the writ." Taft, C. J., in *Magnum Co.* v. *Coty*, 262 U. S. 159, 163.

"I think that it is safe to say that about 60 percent of the applications for certiorari are wholly without merit and ought never to have been made. There are probably about 20 percent or so in addition which have a fair degree of plausibility, but which fail to survive a critical examination. The remainder, falling short, I believe, of 20 percent, show substantial grounds and are granted. I think that [it] is the view of the members of the Court that if any error is made in dealing with these applications it is on the side of liberality." Hughes, C. J., in a letter to Senator Burton K. Wheeler, March 23, 1937, reprinted in 81 Cong. Rec. 2814–2815 (1937).

it should be heard, the Court, as a whole, hears it and passes upon the issue it presents.[23]

The Act of 1925 had the hoped-for results. From the time its full effect was felt, the Court has been current with its business. At the close of the October Term, 1929, which was presided over in turn by Chief Justice Taft, Mr. Justice Holmes and Chief Justice Hughes, the Court made the official entry that it had disposed of all cases submitted to it and all business before the Court at that

[23] "For instance, if there were five votes against granting the petition and four in favor of granting it, it would be granted, because we proceed upon the theory that when as many as four members of the court, and even three in some instances, are impressed with the propriety of our taking the case the petition should be granted. This is the uniform way in which petitions for writs of certiorari are considered." Mr. Justice Van Devanter testifying before a Subcommittee of the Committee on the Judiciary of the Senate on S. 2060 and 2061, 68th Cong., 1st Sess. 29 (1924).

See also, statements by Justices Van Devanter and Brandeis on Hearings before Senate Committee on the Judiciary on S. 2176, 74th Cong., 1st Sess. 9–10 (1935).

"In all matters before the Court, except in the mere routine of administration, all the Justices—unless for some reason a Justice is disqualified or unable to act in a particular case—participate in the decision. This applies to the grant or refusal of petitions for certiorari, which are granted if four Justices think they should be. A vote by a majority is not required in such cases. Even if two or three of the Justices are strongly of the opinion that certiorari should be allowed, frequently the other Justices will acquiesce in their view, but the petition is always granted if four so vote." Hughes, C. J., in a letter to Senator Burton K. Wheeler, March 23, 1937, reprinted in 81 Cong. Rec. 2814 (1937).

"But as we have adhered to our long standing practice of granting certiorari upon the affirmative vote of four Justices, the case is properly here for decision and is, I think, correctly decided." Stone, C. J., in *Bailey* v. *Central Vermont R. Co.*, 319 U. S. 350, 359.

That three votes were not sufficient to grant, see *Scarborough* v. *Pennsylvania R. Co.*, 326 U. S. 755; *Helvering* v. *Sprouse*, 315 U. S. 810; and *Simmons* v. *Peavy-Welsh Lumber Co.*, 311 U. S. 685. And see Boskey, Mechanics of the Supreme Court's Certiorari Jurisdiction, 46 Col. L. Rev. 255, 257.

Term.[24] Of its October Term, 1930, it has been stated that "on any basis of comparison the Court cleared its docket more than at any time during the last hundred years." [25] Of its October Term, 1932, it is said:

> "In effect, for the first time since the early years of its institution, the Court is hearing and disposing of all litigation brought before it without delay and without sacrifice of any of the guarantees of ample argument and due deliberation which the effective exercise of its functions demand. In so doing, it sets a standard for state courts of last resort throughout the country." [26]

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[24] "All cases submitted, and all business before the Court, at this term, having been disposed of,

"It is now here ordered by this Court that all cases on the docket be, and they are hereby, continued to the next term." (1929) Sup. Ct. J. 311.

"At the last term the Court disposed of every case that was ripe for decision. For the first time in many years no case that had been submitted was allowed to go over." Frankfurter and Landis, The Business of the Supreme Court at October Term, 1929, 44 Harv. L. Rev. 1, 2.

"The Supreme Court is fully abreast of its work. . . .

". . . We shall be able to hear all these cases [twenty-eight awaiting argument March 23, 1937], and such others as may come up for argument, before our adjournment for the term. There is no congestion of cases upon our calendar.

"This gratifying condition has obtained for several years. We have been able for several terms to adjourn after disposing of all cases which are ready to be heard." Hughes, C. J., in a letter to Senator Burton K. Wheeler, March 23, 1937, reprinted in 81 Cong. Rec. 2814 (1937). This letter also tabulates the case load for O. T. 1930–O. T. 1935.

[25] Frankfurter and Landis, The Business of the Supreme Court at October Term, 1930, 45 Harv. L. Rev. 271, 274.

[26] Frankfurter and Hart, The Business of the Supreme Court at October Term, 1932, 47 Harv. L. Rev. 245, 249.

In the proceedings held in the Supreme Court in memory of Chief Justice Taft, on June 1, 1931, Chief Justice Hughes said:

"Deeply concerned with improvements in administration, the Chief Justice gave special attention to his own duty as administrator. Even

That Act was born of judicial experience. It was written into law and put into operation under the leadership of Chief Justice Taft. The high standards of judicial administration which it made possible have been maintained to this day.

3. *The Building and Equipment of the Supreme Court Building.*

From its earliest days, the Supreme Court, its library and its staff were handicapped by lack of adequate space

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the distinction of his contribution to the jurisprudence of the Court does not obscure, but throws into a stronger light, by reason of his versatility, his preëminence in the executive department of its work. In the successful endeavor to end the delays which bring such a deserved reproach upon judicial procedure, he was ever a leader, and he would have been the first to recognize the able support which he received from his colleagues in this effort. It was not a vain attempt to bring the Court up to its work by a spasmodic activity, but the intelligent formulation of a plan which, receiving the sanction of Congress, has put the Court, we trust permanently, upon a basis by which it can keep abreast of the demands upon it. So long as we follow the example which he has set and avail ourselves of the opportunity which his leadership provided, the delays of justice will have no countenance or illustration here.

"But the Chief Justice was not content with expediting the work of this Court. He felt a special responsibility with respect to the entire Federal judicial system. Many years before he came to this bench, he had suggested that either the Supreme Court or the Chief Justice should have an adequate executive force to keep current watch upon the business awaiting dispatch in all the districts and circuits of the United States and to make a periodical estimate of the number of judges needed in the various districts and to make the requisite assignments. In a different manner, it was sought to attain the object he had in view by the establishment, in 1922, through his persistence, of the Judicial Conference of the Senior Circuit Judges, held annually, at which the Chief Justice of this Court presides, and which considers the needs of judicial service in the different districts and makes recommendations accordingly. This is an instrumentality of great value, and what it has accomplished and the promise of what it may achieve are due in the largest measure to the foresight and intelligent guidance of Chief Justice Taft." 285 U. S. XXXIV–XXXV.

and facilities. A "building for the Judiciary" was among the recommendations of a Committee of the House of Representatives in 1796 and the original plans for the Capitol included no room for the Court. However, no "building for the Judiciary" was built and, for 135 years, the Court was housed in surplus space temporarily assigned to it in the Capitol. During its first eight years, it met in a small room, 24 feet wide by 30 feet long, which was then known as the Senate Clerk's office. Later, during most of Chief Justice Marshall's service, the Court met in a room in the basement beneath the then Senate Chamber. The space for its library and its Clerk was inadequate and the Justices maintained their chambers in their respective homes. In 1860, when the Senate moved into its new Wing of the Capitol, the Court was moved upstairs to the original Senate Chamber.[27] This provided a hearing room to which the Court became greatly attached and it then used its former courtroom as a law library. As time went on, the increasing business of the Court outgrew the space allotted to its Clerk, its Marshal, its Justices and the members of its Bar.

Again Chief Justice Taft took the lead. This time he induced Congress to see the appropriateness of providing the Supreme Court with facilities comparable to those of the legislative and executive branches of the Government and reasonably adapted to the needs of the future. The purchase of a site opposite the Capitol was authorized in 1926.[28] The United States Supreme Court Building Com-

[27] I Warren, The Supreme Court in United States History (1935) 169–171; II Warren (1937) 362.

[28] Acquisition of site authorized, Act of May 25, 1926, 44 Stat. 630; appropriation of $1,500,000 approved, Act of February 28, 1927, 44 Stat. 1254; increased by $268,741, Act of March 4, 1929, 45 Stat. 1614. The acquisition of land was completed November 25, 1929, the largest parcel being that purchased from the National Woman's Party, often referred to as the Little Brick Capitol, which had been used for meetings of Congress after the British had burned the Capitol in 1814. Final Report of the United States Supreme Court Building Commission, Sen. Doc. No. 88, 76th Cong., 1st Sess. 1–2 (1939).

mission was created in 1928.[29] Chief Justice Hughes, as Chairman of the Building Commission, was able not only to secure completion of the building in time to use it throughout the October Term, 1935, but to do so for nearly ten percent less than the sum appropriated.[30]

Today not only does the simple majesty of the Supreme Court Building inspire the members of the Court and the public, but its facilities have increased the efficiency of the Court. The building houses not only the courtroom, the law library, the Clerk's office and the Marshal's office, but also the Justices' chambers, the Justices' library, conference rooms for the Judicial Conference of Senior Circuit Court Judges and other appropriate bodies, rooms for the

[29] The United States Supreme Court Building Commission originally consisted of: Chairman: Hon. William Howard Taft, Chief Justice of the United States. Members: Hon. Willis Van Devanter, Associate Justice of the Supreme Court of the United States: Hon. Henry W. Keyes, chairman of the Senate Committee on Public Buildings and Grounds; Hon. James A. Reed, ranking minority member of the Senate Committee on Public Buildings and Grounds; Hon. Richard N. Elliott, chairman of the House Committee on Public Buildings and Grounds; Hon. Fritz G. Lanham, ranking minority member of the House Committee on Public Buildings and Grounds; Hon. David Lynn, Architect of the Capitol.

At the conclusion of its service, it consisted of: Chairman: Hon. Charles Evans Hughes, Chief Justice of the United States. Members: Hon. Willis Van Devanter, Associate Justice (retired); Hon. Tom Connally, Senator from Texas; Hon. James A. Reed, former Senator from Missouri; Hon. Richard N. Elliott, former Representative from Indiana; Hon. Fritz G. Lanham, Representative from Texas. Member and executive officer: Hon. David Lynn, Architect of the Capitol. Final Report of the United States Supreme Court Building Commission, Sen. Doc. No. 88, 76th Cong., 1st Sess. 4 (1939).

[30] Appropriation for building and grounds, including furniture, furnishings and equipment..... $9,740,000.00
Expended for building, treatment of grounds, furniture, furnishings and equipment..... 9,646,467.98

Unexpended and unobligated balance June 6, 1939... $93,532.02

Final Report of the United States Supreme Court Building Commission, Sen. Doc. No. 88, 76th Cong., 1st Sess. 21 (1939).

Attorney General, the Solicitor General and members of the Bar, rooms for the Court Reporter and his staff, a print shop for the printing of opinions, the Administrative Office of the United States Courts, and a cafeteria for the visiting public as well as the employees. The Court has substantially adequate physical facilities and seeks to render services worthy of them.

4. *The Federal Rules of Civil Procedure.*

Having thus put its own house in order, the Supreme Court, under the leadership of Chief Justice Hughes and of the Judicial Conference of Senior Circuit Judges, undertook to meet the long-felt need for generally simplified federal court procedure. In 1914, seven years before William Howard Taft became Chief Justice, he had coupled his advocacy of simplified procedure with his advocacy of a Judicial Conference.[31] Chief Justice Hughes had a like interest in this subject. With the support of the American Bar Association, legislation was secured which authorized the Supreme Court "to prescribe, by general rules, for the district courts of the United States and for the courts of the District of Columbia, the forms of process, writs, pleadings, and motions, and the practice and procedure in civil actions at law." It expressly provided also that "The court may at any time unite the general rules prescribed by it for cases in equity with those in actions at law so as to secure one form of civil action and procedure for both: . . . ."[32] Under this authority, an outstanding Advisory Committee was appointed by the Supreme Court.[33] Its service was competent and dili-

[31] Address at Cincinnati Law School Commencement, May 23, 1941; 5 Ky. L. J. 1, 14. See also, his recommendation of uniform federal rules of practice, both in law and equity, made as Chief Justice, in the Hearings before the Senate Committee on the Judiciary on S. 2432, 2433 and 2523, 67th Cong., 1st Sess. 16–17 (1921).

[32] Act of June 19, 1934, 48 Stat. 1064, 28 U. S. C. §§ 723b, 723c.

[33] The Advisory Committee appointed by the Supreme Court to assist it in drafting a unified system of Equity and Law Rules and

gent. Through several publications of its preliminary drafts and comments, it forestalled as many errors and ambiguities as it could. Following the Committee's Final Report, the Supreme Court adopted the new Federal Rules of Civil Procedure December 20, 1937, and these became effective September 16, 1938.[34] This procedure led to similar action which produced the new Federal Rules of Criminal Procedure, effective March 21, 1946.[35]

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to serve without compensation consisted of: William D. Mitchell, of New York City, Chairman; Scott M. Loftin of Jacksonville, Florida, President of the American Bar Association; George W. Wickersham, of New York City, President of the American Law Institute; Wilbur H. Cherry, of Minneapolis, Minnesota, Professor of Law at the University of Minnesota; Charles E. Clark, of New Haven, Connecticut, Dean of the Law School of Yale University; Armistead M. Dobie, of University, Virginia, Dean of the Law School of the University of Virginia; Robert G. Dodge, of Boston, Massachusetts; George Donworth, of Seattle, Washington; Joseph G. Gamble, of Des Moines, Iowa; Monte M. Lemann, of New Orleans, Louisiana; Edmund M. Morgan, of Cambridge, Massachusetts, Professor of Law at Harvard University; Warren Olney, Jr., of San Francisco, California; Edson R. Sunderland, of Ann Arbor, Michigan, Professor of Law at the University of Michigan; and Edgar B. Tolman, of Chicago, Illinois. Charles E. Clark was appointed Reporter to the Advisory Committee. 295 U. S. 774–775.

[34] Notes were published with the Committee's Preliminary Draft of May, 1936. They were revised and published with the Committee's Report of April, 1937, and revised again to conform to the Committee's Final Report of November, 1937, and to the Rules as approved by the Supreme Court, December 20, 1937. Federal Rules of Civil Procedure 215. These Rules were reported to Congress by the Attorney General, January 3, 1938, and took effect on September 16, 1938, three months after adjournment of the second regular session of the 75th Congress on June 16, 1938. See Rule 86 and 52 Stat. 1454. 308 U. S. 645–788, 28 U. S. C. fol. § 723c.

Rule 81 (a) (6) was amended December 28, 1939, 308 U. S. 642, 28 U. S. C. fol. § 723c. See also, amendments adopted by the Supreme Court December 27, 1946, and reported to Congress by the Attorney General January 2, 1947, 16 Federal Digest (1947 Cum).

[35] The Supreme Court was authorized by the Act of June 29, 1940, 54 Stat. 688, 18 U. S. C. § 687, to prescribe new Federal Rules of Criminal Procedure for the District Courts of the United States. On

5. The Administrative Office of the United States Courts.

There still remained to be taken the unprecedented but essential step of providing the federal courts with a business administration of their affairs without undue interference with their independence.

Without the Judicial Conference of Senior Circuit Judges and the coordination of the administration of the federal courts resulting from it, this step would have been inconceivable. However, when the members of the Conference became convinced of the desirability of a coordinated federal judiciary, the Administrative Office of the United States Courts was but a natural implementation of the idea.

By the Act of August 7, 1939, Congress gave the necessary authority.[36] The Supreme Court appointed Henry

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February 3, 1941, the Court appointed the following Advisory Committee on Rules in Criminal Cases to serve without compensation: Arthur T. Vanderbilt, Newark, New Jersey, Chairman; James J. Robinson, Professor of Law at the Indiana University Law School, Reporter; Alexander Holtzoff, Washington, D. C., Secretary; Newman F. Baker, Professor of Law at the Northwestern University Law School; George James Burke, Ann Arbor, Michigan; John J. Burns, Boston, Massachusetts; Frederick E. Crane, New York City; Gordon Dean, Washington, D. C.; George H. Dession, Professor of Law at the Yale Law School; Sheldon Glueck, Professor of Law at the Harvard Law School; George Z. Medalie, New York City; Lester B. Orfield, Professor of Law at the University of Nebraska Law School; Murray Seasongood, Cincinnati, Ohio; J. O. Seth, Santa Fe, New Mexico; John B. Waite, Professor of Law at the University of Michigan Law School; Herbert Wechsler, Professor of Law at the Columbia Law School; and G. Aaron Youngquist, Minneapolis, Minnesota. 312 U. S. 717–718.

After the consideration of several drafts, the Supreme Court, on December 26, 1944, prescribed the new Rules. 323 U. S. 821. These were filed with Congress January 3, 1945, and took effect March 21, 1946, three months after the adjournment of the first regular session of the 79th Congress on December 21, 1945. See Rule 59 and 59 Stat. 849. 327 U. S. 821, 18 U. S. C. A. fol. § 687, 1946 Pocket Part 205.

[36] Chapter XV, entitled "The Administration of the United States Courts," was added to the Judicial Code by the Act of August 7, 1939, effective November 6, 1939, 53 Stat. 1223, 28 U. S. C. §§ 444–450.

P. Chandler Director and Elmore Whitehurst Assistant Director.[37] The Administrative Office has proved its value many times over—not only to the Chief Justice of the United States, the Supreme Court and the Judicial Conference of Senior Circuit Judges but to the Circuit Courts of Appeals, the District Courts, the Special Courts, the Department of Justice and to Congress. For the first time, authoritative judicial statistics are available, supervision is given to every financial responsibility of the federal courts, efficiency is gained in securing quarters and equipment, technical assistance is available for the supervision of developments in administrative activities such as those of official reporters, bankruptcy referees, U. S. Commissioners and probation officers. The Administrative Office is now an integral part of the federal judicial system and it has a flexibility that will permit it to meet the demands of the future.

As a result of the constructive leadership in judicial administration that has been described, our federal courts today are coordinated, the Supreme Court Docket is current, the Supreme Court is adequately housed and equipped, simplified Federal Rules of Civil and Criminal Procedure are in effect and a permanent Administrative Office for the Courts of the United States is in operation.

The eyes of the world watch each test of the constitutional structure of the United States. The keystone of that structure is its independent judiciary. It remains for that judiciary to fit its actions so perfectly to the needs of each opportunity that they will strengthen the case for a government of laws as the best guaranty of human liberty.

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[37] 308 U. S. 642, 641.