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THE COLLECTION OF JUDICIAL STATISTICS IN  
WEST VIRGINIA

T. W. ARNOLD\*

At the closing of the last annual meeting of the West Virginia Bar Association announcement was made that Yale University Law School would cooperate with West Virginia University Law School for the purpose of collecting judicial statistics in this state. The beginning of this work is being financed by Yale University, though funds to carry it to its completion must be sought elsewhere. The work is now under way at Wheeling and by the time this issue of the Law Quarterly appears in print will have been commenced in Charleston, Clarksburg and Morgantown.

*Outline of the Problem.*

For the benefit of those who are unfamiliar with the purpose and scope of this investigation a short explanation may be useful. For illustration of the difference between the administration of the judicial system and a business corporation, let us take a large bonding company which insures against accidents, writes indemnity bonds and does business of a character which requires the adjudication and payment of claims. Suppose such a company sent out officers empowered to pay claims and equipped with a complicated set of rules, some of which were useful, and some of which were merely traditional. Suppose that after thus equipping and sending these officers out the corporation made no attempt to find out what results they were accomplishing, what effect these results had on the business, what business was profitable, what activities were useful to the company and what were not. Suppose further the corporation changed the rules from time to time but in determining whether a change should be made the directors would retire to a room and shut their eyes as to what was actually going on in the field because even if they wanted to find out how the rules were operating they would have no place to go for information.

If a new board of directors wanted to change this system

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without disrupting the even tenor of business, how could they possibly do it without finding out, by actual reports from the field, just how it was working? Could they get this information by examining the logical reasons for the original drafting of the rules one hundred years ago when the company was founded?

It is manifest that such a method of doing business on the part of a business corporation would lead to bankruptcy. Yet the picture is not an unfair example of the way our judicial system is being operated today. Of course the judicial system does not go bankrupt because the country is rich and the burden is widely disseminated. Yet that fact offers no sufficient reason why we should not attempt to find something out about it. Nor does it make it any more intelligent to continually offer changes to that system without attempting to find out how it works from an actual examination.

Strange as it may seem some people consider an attempt to collect judicial statistics as either useless or revolutionary. Let us contrast ourselves with England. In England every year a compilation of judicial statistics appears. It is somewhat dry reading but it contains an immense amount of information. Following the publication of these statistics will be found articles in English legal periodicals discussing certain phases of them. Following those articles you will find changes constantly being made. These changes in law and procedure are made on the basis of facts which are available to the persons making the change. Changes in America are made on the preconceived ideas of lawyers and legislatures based on no one knows quite what.

The reasons why there should be a complete picture of what is going on in our nisi prius courts seem unanswerable. Why have we never taken this rather simple step? Mr. Sunderland of Michigan suggests that it is because business men compete with each other in finding better and more efficient methods, but no such competition exists among lawyers. They must all use the same method. Better methods do not directly increase the income of either lawyers or judges,—hence the compelling necessity which creates efficiency in business does not exist in court

procedure. The impulse must come from public spirited members of the bar, of the judicial councils and the law schools.

*Aim of the Investigation in West Virginia.*

The plan of the Law School is to collect information on all cases coming before inferior courts for two years. We are starting with the years 1928 and 1929. Men who have had legal training are sent into the offices of clerks with a printed form upon which several hundred possibilities are listed. These have been carefully compiled to include all the information which will be valuable for either a legal or sociological purpose. Among other things the forms are designed to test pleading devices, to find out where delays exist, to determine what kind of results are being obtained from jury trials; to examine what kind of results are obtained from special proceedings like attachment, injunction, etc; to find out whether judgments are being obtained or not in various types of cases, and if so, how much and what the relation between the amount asked for and the amount received is; to find out whether judgments are being collected and, if so, in what type of cases; to determine what courts are crowded and what courts are not; to find out how many cases are dismissed; how many are terminated by default, stipulation, etc. In negligence cases we want to know what juries are doing; how long it takes to try them; where the accidents are happening; who the victim is; in what activity the accidents are occurring; who the defendant is. In divorce cases we are interested in custody of children, support of wife and children; who the defendants and plaintiffs are; what are the causes for divorce; what the marriage date is; how long the marriage lasted; what period elapsed between the marriage and cause of divorce; the period between the cause and complaint, the custody of children; the number and ages of children; alimony and support of children. In criminal cases we want to know how many true bills are granted; what happens to the true bills; how many are nol-prossed; the number of arrests; number of convictions; the length of

time criminal proceedings take; the kind of crimes; what happens to the sentences; what happens to the defendants.

We have not attempted in the above to give any complete picture of our forms but simply to mention a few of the salient things which may be obtained from them. They are the result of over two years study in Connecticut. They will have to be changed no doubt. A sufficient number of them have been made use of in West Virginia to enable us to get a fair idea of how they are working.

It is impossible, with our present funds, and would be inadvisable even if we had the funds, to do more at present than to start this work in order to see how our forms are working and how our method of collecting statistics is working. No doubt we will learn from experience. The final aim is to devise a simple form giving the information which can be kept automatically by clerks of court or other court officials, as it is done in England.

#### *Method of Tabulating Results.*

The forms are so designed that each bit of information given thereon is assigned a number. These numbers indicate holes which will be punched in cards which are inserted in the tabulating machine, which is used by Yale University Law School. By simply selecting the number and turning a switch the cards are automatically sorted and you can find any desired information as to any combination of the various factors included in the forms almost instantly.

#### *Coordination of the Plan of Statistics with Our Proposed Judicial Council*

In the draft of the act providing for a judicial council which the Law School faculty proposed in the last number of the Law Quarterly, a bureau of statistics was provided as an adjunct to a judicial council. It is our intention, in gathering these statistics, to get this machinery in operation as soon as possible so that if and when a judicial council is provided for in this state it will find some machinery at hand with which to operate. The judicial council of Ohio, after many years of inactivity, this year

started a complete statistical survey in the state of Ohio in connection with the Institute of Law at Johns Hopkins. No single thing has given the idea of basing judicial reform upon an actual examination of what the courts are doing so much impetus as Mr. Hoover's so-called prohibition commission. This commission is actively making plans for the study of legal procedure, particularly criminal procedure, from the point of view of results rather than of logic. Whatever its effect on prohibition may be it is bound to accomplish something in its factual approach to judicial administration. The members of this commission, most of them lawyers, are all convinced that they cannot get very far in organizing judicial machinery without knowing how that machinery is operated and without having means of finding out how proposed changes will operate. There is no other rational method of attacking problems of administration of justice and every judicial council when it gets to work sooner or later realizes this. Therefore we are trying to open the way for a judicial council in West Virginia, if one is formed, to commence to function immediately.

#### *Cost of Collecting Statistics.*

Based on our experience in Wheeling we estimate the cost of making a complete survey of the business done in courts in West Virginia for the year 1928-29, to be approximately \$6000. We have sufficient funds to make enough of a start to show what is happening in Wheeling, Clarksburg, Morgantown and Charleston. When these results are tabulated we hope to arouse sufficient interest in the project to continue it.

#### *Court Records in West Virginia.*

While no complete examination of court methods of keeping records in West Virginia has been made, the following observations are interesting.

(1) No two counties which we have examined have the same method of keeping records. Some of them are more

alike than others; others are not alike at all. Many of the systems seemed unbelievably cumbersome. It would be an error to blame this situation on the clerks. They have had to take the methods as they found them and none of them, excepting in Wheeling, have had the funds or opportunity to make a complete change of method.

(2) Criminal records are very inadequately kept. Much of the data which we want can only be found in the office of the prosecuting attorney and from the justice court. It is our belief that systems can be devised which will give a great deal more information and at the same time will be easier to keep than the present system. There is a duplication of books and of indices, and a lack of any one source where all the information about a case can be obtained.

(3) The different methods of keeping records have differing effects upon the practice in each county which is quite noteworthy. In many counties much of the pleadings are oral and many of the orders are written up by the clerks. In other counties all pleadings and orders are written. In some counties therefore everything pertaining to the case is found in the files; in other counties files are incomplete.

West Virginia is interesting in this regard because it is doubtful if many other states show such complete differences in methods and systems of keeping books in the different counties as are shown here.

We suspect that the different systems may very well contain traps for lawyers who are used to practice in one county and start a suit in another county.

#### *Value of Statistics.*

It is impossible to predict just what these statistics will show, but the following may be said about them:

(1) They are unbiased. They simply show results of the actual rules of law and procedure working upon the various facts of the cases.

(2) The principle of the plan is the same as any efficient corporation would adopt in the conduct of its business, to

find out what is necessary before it attempts to change any methods of operations.

(3) Courts are business institutions, intended to give people seeking their aid the rights which facts entitle them to and to do this with a minimum expenditure of time and money. We cannot afford to waste either time or money, and yet without exact information we are bound to waste both. It is impossible to change the old processes of procedure without knowing: first how the rules are working, and second, whether a change is needed or not, and third, what sort of a change is needed. This cannot be discovered by an examination of the one case out of one hundred decided by an appellate court, but can only be found by an examination of cases in the courts of first instance with which every litigant comes in immediate contact.