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# The Accelerated Civil Jury Trial Program in the District Court for the Eastern District of Pennsylvania

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FALL 1967]

## COMMENTS

### THE ACCELERATED CIVIL JURY TRIAL PROGRAM IN THE DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

*The purpose of this report is to present the results of the recently conducted accelerated jury trial program and to evaluate the effectiveness of the procedures that were employed on the basis of the statistical data that was gathered. The information is analyzed in light of the primary purpose of the program, which was the immediate reduction of the jury trial backlog through greater procedural efficiency. No attempt was made to compare the results of this program with that of previous studies in judicial administration; however, the comments that are offered may provide some insight into effectively structuring the future endeavors which must be made in this area.\**

#### I. INTRODUCTION

The advent and popularity of the automobile, the enormous increase in population, and the often complicated relationships engendered by an urban, industrial society, are but a few of the factors that have contributed to the increasing demands made on our court system.<sup>1</sup>

As of June 30, 1964, there were 5,285 civil cases pending before the United States District Court for the Eastern District of Pennsylvania;<sup>2</sup> of those cases, 622, or 11.8%, were 3 or more years old.<sup>3</sup> By June 30, 1966, the number of civil cases pending before the same court had increased to 6,686,<sup>4</sup> and 1,126 of those cases, or 16.8%, were 3 years old or older.<sup>5</sup> Many of these were 5 or 6 years old and some were commenced more than 10 years ago. Therefore, in the period between June 30, 1964, and June 30, 1966, there was not only an increase in the total number of civil

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\* The *Villanova Law Review* would like to thank the Judges of the United States District Court for the Eastern District of Pennsylvania for the advice they have given and the help they have rendered. This report would not have been possible without the data which was compiled by Mr. Russell Garman under the direction of Mr. Joseph Spaniol of the Office of Judicial Administration, and Mr. Robert Criswell of the Office of the Clerk of Courts.

1. Kaufman, *The Philosophy of Effective Judicial Supervision Over Litigation*, in *Seminar on Procedures for Effective Judicial Administration*, 29 F.R.D. 191, 210 (1962).

2. 1964 ADMIN. OFFICE ANN. REP. OF THE PROCEEDINGS OF THE JUD. CONF. OF THE U.S. 234.

3. *Id.*

4. 1966 ADMIN. OFFICE ANN. REP. OF THE PROCEEDINGS OF THE JUD. CONF. OF THE U.S. 191.

5. *Id.*

cases pending, but there also was an increase of 3 months in the median length of time from issue to termination, thereby making the median age of each case approximately 42 months.<sup>6</sup> Any system of justice which makes people wait 3 or 5 years for trial cannot retain the respect of the people.<sup>7</sup>

In an attempt to alleviate the backlog and its attendant hardships,<sup>8</sup> the United States District Court for the Eastern District of Pennsylvania instituted an Accelerated Civil Jury Trial Program.

## II. DESCRIPTION OF THE ACCELERATED PROGRAM

The basic purpose of the Accelerated Program was to eliminate as many cases from the backlog as possible. In order to accomplish this objective, every available judge in the Eastern District heard civil jury trials for an 8 week period.

Prior to the commencement of the program, the court utilized three preparatory procedures. A special argument list was heard to dispose of outstanding pretrial motions and to enable counsel to complete all outstanding contested discovery.<sup>9</sup> A preliminary call of the cases of the calendar was held<sup>10</sup> at which the law firms identified counsel who would try each case, estimated the trial time for each case, made all motions for continuances, and were given an opportunity to request a settlement conference. Generally, the court granted continuances only in unusual circumstances, and refused to grant continuances when the only reason for the request was unpreparedness. Settlement conferences were granted only when requested by counsel for all parties to the litigation, with the single purpose of each conference being to establish a dollar figure which was acceptable to the parties involved.<sup>11</sup> During the weeks of April 3rd and April 10th, 230 settlement conferences were conducted by the court.<sup>12</sup>

Ordinarily, before the trial of each case in the Eastern District, counsel are required to submit pretrial memoranda and to attend a pretrial conference presided over by a district judge. The primary purpose of the memorandum and conference is to limit and define the issues for trial and thereby save the court's time during the trial by disposing of immaterial issues, or issues upon which counsel can agree. During the Accelerated Program, because of the limitations of time, approximately 250 cases had

6. Compare 1964 ADMIN. OFFICE ANN. REP. OF THE PROCEEDINGS OF THE JUD. CONF. OF THE U.S. 245 with 1966 ADMIN. OFFICE ANN. REP. OF THE PROCEEDINGS OF THE JUD. CONF. OF THE U.S. 205.

7. Olney, *An Analysis of Docket Congestion in the United States District Courts in the Light of the Enactment of the Omnibus Judgeship Bill*, in *Seminar on Procedures for Effective Judicial Administration*, 29 F.R.D. 191, 224 (1962).

8. In many instances, the litigant who has lost his job or suffered a substantial decrease in his earnings or earning power cannot afford to live during the prolonged period between the time his complaint is filed and the time of trial.

9. The Special Argument List was heard on March 10, 1967.

10. A Preliminary Call of the cases pending during the Accelerated Program was made on April 4th and 5th, 1967.

11. The Settlement Conference should not be confused with a pretrial conference. No issues were discussed at any settlement conference other than what dollar amount was acceptable to each litigant.

12. Settlement Conferences were heard by six judges during the 2 week period.

no pretrial conference. Counsel in these cases were only required to submit the usual pretrial memoranda.

There were originally 1500 cases available to the Accelerated Program, contained in parts I, II, and III of the trial calendar. Due to termination, continuances, and the like the number of cases available on April 17, 1967, the starting date for the Program, was 774.

Chief Judge Thomas J. Clary sat throughout the program as an administrator and calendar judge to hear motions and to conduct settlement conferences in cases not yet assigned to another judge. All the remaining judges, except one, were on trial with cases in the Accelerated Program from April 17 to June 9.<sup>13</sup> One visiting judge assisted the court from May 12 through June 7.<sup>14</sup>

Cases on the calendar were placed in a Ready Pool or a Deferred Pool, depending upon their status when called.<sup>15</sup> The Clerk of Court maintained at all times a ready list of approximately 25 cases which were listed in numerical order with the oldest case having the lowest number. No busy slips were outstanding in any of the cases in the Ready Pool, and when a busy slip was handed in and accepted, the case was reassigned to the Deferred Pool and another case added to the Ready Pool.<sup>16</sup>

The court initiated a program whereby the attorneys for each party to any of the first five cases in the Ready Pool were "locked in."<sup>17</sup> That is, they were subject to immediate call when a judge and court room became available to begin a new trial and were required to be physically present in the court house; busy slips were not accepted from an attorney who was locked in, and no continuances were granted. As soon as one case was terminated by trial or settlement before a sitting judge, he was assigned a new case, and the assigned case was replaced by another case in the Ready Pool. In order to insure the success of the "lock in," the

13. One judge was on trial with a protracted case unconnected with the Program for the entire period.

14. The Honorable John F. Kilkenny of the District of Oregon aided the court during the Accelerated Program.

15. In practice, there is a large board in the Clerk's Office which graphically depicts the status of each case called. When a case is called, it is automatically assigned to the Ready Pool unless a continuance has been granted, a busy slip is outstanding, or an attorney in the case is already on trial before the district court, in which event the case is transferred to the Deferred Pool. Cases in the Deferred Pool remain there until the counsel involved are no longer engaged elsewhere. The case is then transferred back to the bottom of the Ready Pool and proceeds to move upward as cases above are called until it is called for trial or until a busy slip is filed, causing the case to be returned to the Deferred Pool.

16. A busy slip is submitted by counsel to indicate that he is presently engaged in order to place all his pending cases in a deferred status until his engagement has been completed. During the Accelerated Program, valuable data was collected from busy slips which provided the name, address, and telephone number of the attorney filing the slip; the name of the judge before whom he was engaged; the court in which he was engaged; the name and number of the case with which he was engaged; the approximate time for which he expected to be engaged; the trial calendar number of his first case in the Ready Pool, and; the designation of the party he represented in the district court.

17. Report by the Honorable Thomas J. Clary to the Trial Practice and Technique Committee of the United States Judicial Conference, 29, Dig. 3, San Francisco, California, July 25, 1967 [hereinafter cited as Clary].

district court came to an agreement with the Common Pleas Court of Philadelphia which provided that common pleas would accept busy slips not only from counsel who were actually on trial before the district court, but also from counsel who were locked in the district court's Ready Pool.<sup>18</sup>

### III. RESULTS OF THE ACCELERATED PROGRAM

A total of 338 cases were disposed of during the 39 day period of the Accelerated Program.<sup>19</sup> Of these, 285, or 85%, were settled; 52, or 15%, were tried to a verdict.<sup>20</sup> An average of 8.4 cases were terminated each day of the program. Only one hundred of the 285 cases settled required the time of a trial judge;<sup>21</sup> 185 were settled without any judicial intervention.<sup>22</sup> Of the cases settled without the court's aid, 64% had already been assigned to the Ready Pool; only 36% were settled while still in the Deferred Pool.

An average of 10 judges sat each day of the program.<sup>23</sup> The maximum number sitting on a single day was 11, and on only 4 days did fewer than nine judges sit.<sup>24</sup> Excluding the 185 cases settled without the aid of a sitting judge, the court actively disposed of 152 cases.<sup>25</sup> Approximately 7½ days of judge time were required for each case that was terminated by trial and verdict,<sup>26</sup> and approximately 4 days of judge time was required for each case that was settled after it had been assigned to a trial judge.<sup>27</sup> Of the cases which required judicial action, 34% were tried to a verdict, and 66% of these cases were settled after they had been assigned to a trial judge.

The results show that the program was significantly successful because, for the first time in 18 years, the court approached an equilibrium between terminations and filings. There was a 20% increase in terminations during this fiscal year over the preceding fiscal year,<sup>28</sup> and for the 6 month period from January through June, more cases were terminated than were filed.

18. The agreement between the district court and the Court of Common Pleas, along with the instructions to the bar, were published in the 156 Legal Intelligencer No. 73, Apr. 17, 1967, at 1, col. 1, at 2, col. 1.

19. Garman, Report of the Accelerated Jury Trial Program, Table 3 (unpublished report of the Administrative Office of the United States Courts) [hereinafter cited as Garman]. Consolidated cases were treated as a single case for the purposes of this report.

20. Garman at Table 4.

21. These figures were compiled from the Judicial Manpower Calendar, a daily report prepared by the Office of the Clerk of Court during the Accelerated Program.

22. Garman, *supra* note 19.

23. Garman, *supra* note 19, at Table 2.

24. Judicial Manpower Calendar, *supra* note 21, weeks of April 17, May 15, 22, 29 (1967). During the first week of the Program, fewer judges sat on cases involved in the Program since they were finishing other assignments such as criminal cases; in the last week, certain members of the court finished their assignments before the end of the week.

25. Garman, *supra* note 19, at Table 4.

26. This figure is based upon calculations made from data included in the Judicial Manpower Calendar, *supra* note 21, and the Daily Summary Reports compiled by the Office of the Clerk of Court.

27. *Id.*, <http://digitalcommons.villanova.edu/vlr/vol13/iss1/5>

28. Clary, *supra* note 17, at 32.

## IV. EVALUATION OF THE ACCELERATED PROGRAM

A. *Administrative Preparation*

Three procedures were utilized to prepare the trial calendar for the Accelerated Program. The court heard a special argument list,<sup>29</sup> made a preliminary call of the cases,<sup>30</sup> and conducted settlement conferences prior<sup>31</sup> to the actual commencement of the Program. These procedures served a dual purpose; they insured that counsel would be ready for trial, and they eliminated cases from the calendar which should not require the court's time during the program.

The special argument list disposed of outstanding pretrial motions and effected the completion of discovery in cases which were on the trial calendar list for the Accelerated Program. After discovery was completed, each party had all the information which would be available before trial, and could decide, upon the respective merits of his and his opponent's case, whether to proceed to trial or whether the case should be settled.

The primary purpose of the preliminary call was to insure that all parties were ready to proceed immediately to trial, and to prod counsel who were not fully prepared. For example, the court refused to continue cases in which counsel claimed they could not go on trial because discovery was incomplete. The court reasoned that counsel in a case which had been at issue for three or more years had had ample opportunity for discovery, and to continue and thus delay the action would be unfair to the litigants. At the preliminary call, the law firms designated the attorney who would try each case. This information was valuable to the court in identifying concentration of the trial bar and anticipating obstacles and delay which would result therefrom during the Program.<sup>32</sup> Counsel were then given the opportunity to request a settlement conference.

During the weeks of April 3rd and April 10th, settlement conferences were held to eliminate cases from the trial calendar which were unlikely to require judge time during the program. Conferences were conducted only when requested by all parties to the litigation since such an expression would indicate that the parties were willing to compromise, thereby increasing the probability of settlement before the case is assigned for trial. These short conferences saved valuable trial time for the program because many cases were settled, and even those cases which were not settled had the benefit of an independent evaluation of their claims upon which counsel could base further negotiations. It is unfortunate that of the many conferences that had been requested only 230 could be held,<sup>33</sup> since a great

29. See p. 138 and note 9 *supra*.

30. See p. 138 and note 10 *supra*.

31. See p. 138 and note 11 *supra*.

32. See p. 143 *infra*, for a discussion of the problem of concentration of the trial bar.

33. Settlement conferences were arranged on a first come basis. The dictates of time and judicial manpower limited the number of conferences to 230. Those who made their requests too late, or who did not appear at the preliminary call, were denied the opportunity of a settlement conference conducted by a judge.

deal more time might have been saved during the program if additional cases had been disposed of by a settlement conference rather than requiring the average of 4 days of judge time after assignment in order to effect a settlement.

The lack of pretrial conferences in many cases evidently had no effect on the time required for trial. Although there was no data collected which would enable cases which had been pretried to be compared to cases which had not been pretried, the members of the court felt that there was no appreciable difference in respect to consumption of judicial time.

### B. Delay Caused by Calendar Breakdown

Although the courts cannot limit our expanding population, simplify our complex industrial society, nor reduce the number of motor vehicles on the highway they do have an affirmative duty to prevent the delay which results from calendar breakdowns.<sup>34</sup> Such breakdowns usually occur either when cases in the Ready Pool are settled so rapidly that the cases below are unprepared for immediate trial, or when counsel are not immediately available when their case is assigned for trial.<sup>35</sup>

When one case is terminated and the next is assigned there is normally a certain amount of delay before trial can commence. The calendar judge and Clerk of Courts must be notified that a judge is awaiting a case; counsel must be notified, and they must then assemble their witnesses, come to the court house, and select a jury. Therefore, even if counsel are contacted immediately, the procedure includes a built-in delay which must be experienced before the commencement of each trial. Even assuming a minimal delay of  $\frac{1}{2}$  hour between cases, 10 trial hours are wasted for each 20 cases that are called. The court effectively prevented this type of delay during the Accelerated Program by initiating the "lock in" procedure. Counsel who were locked in were physically present in the court house and, therefore, were immediately assigned to trial when a judge became free. During the locked in period counsel assembled their witnesses and selected their juries so that trial could commence as soon as a case was called.

Another frequent cause of calendar breakdowns has been the settlement of many cases which were in the Ready Pool awaiting assignment for trial. When such settlements occur, the cases lower in the Ready Pool are often insufficiently prepared and there is a delay until a case which actually is ready can be called. During the Accelerated Program, twice as many cases were settled while in the Ready Pool as were settled while in the Deferred Pool, even though the Deferred Pool held eight times as many cases as the Ready Pool. This fact demonstrates the reluctance of counsel to settle before the eve of trial, thereby contributing to these

34. Rosenberg, *Mastering the Calendar*, in *Seminar on Procedures for Effective Judicial Administration*, 29 F.R.D. 197, 275-76 (1962).

35. *Id.* at 276-77.

calendar breakdowns. During the Accelerated Program, however, a sufficiently large Ready Pool was maintained to preclude the possibility of reaching unprepared cases.

Therefore, both the "lock in" and the size of the Ready Pool contributed to the prevention of the delay normally encountered as a result of the assignment procedure in the Eastern District.

### C. Concentration of the Trial Bar

One of the most significant and far-reaching causes of the backlog in the Eastern District of Pennsylvania has been the concentration of cases among a small number of the trial bar and the attendant lawyer-caused delay. This problem was a major concern of the court in its attempt to decrease the backlog during the Accelerated Program.<sup>36</sup>

There were 1,736 "assigned days" during the Accelerated Program;<sup>37</sup> 666 of those were days when an attorney was on trial and 1,070 constituted cases for attorneys in the Ready Pool.<sup>38</sup> The 20 most active lawyers in the Program represented only nine firms, but accounted for 603 of the "assigned days," or an average of 30 "assigned days" per attorney. The remaining 70 most active attorneys accounted for 1,333 "assigned days," or an average of only 19 "assigned days" each. Only four plaintiffs' firms and eight defendants' firms had lawyers who were assigned, either on trial or in the Ready Pool, for 20 days or more during the Program. These statistics clearly show the concentration of a great number of cases within a small number of firms, and indicate that the success of an attempt to alleviate the backlog is dependent upon the full cooperation of approximately 12 law firms in the City of Philadelphia.

It has been noted that over 60% of the cases which were settled before assignment were settled while in the Ready Pool. It is clear, therefore, that the more cases that reach the Ready Pool, the more cases that will be settled. The court recognized this phenomenon and, in preparation for the Accelerated Program, requested counsel with more than five cases below number 750 on the civil jury trial list (350 of the 750 had already been disposed of) to reassign some of their cases.<sup>39</sup> Prior to this request, certain lawyers had as many as 15 or 16 cases among the first 750 cases on the trial list; one lawyer had 30 cases in the first one thousand on the trial list.<sup>40</sup>

Throughout the Accelerated Program there were an average of three attorneys involved in each case in the Ready Pool.<sup>41</sup> This simple statistic highlights the problem with which the court was faced. When three attor-

36. Clary, *supra* note 17.

37. Garman, *supra* note 19, at Table 15. The number of "assigned days" is the total number of trial days for each case added to the total number of days each case was in the Ready Pool.

38. Garman, *supra* note 19, at Table 15.

39. Letter from the Honorable Thomas J. Clary to law firms with more than five cases below number 750 on the civil jury trial list, March 29, 1967.

40. Clary, *supra* note 17, at Table 19.

41. Garman, *supra* note 19, at Table 9.



neys are involved in one case, it must be deferred every time any one is engaged in some other matter which entitles him to a busy slip. If all three attorneys have five or more cases below number 750 on the trial list, it is evident that any case in which all three are involved may not come to trial for three or more years.<sup>42</sup> In actual practice, in the Eastern District of Pennsylvania, certain cases have not come to trial for as long as 2 years after they first reached the Ready Pool because of subsequent repeated deferments.<sup>43</sup>

The court's approach to the problem of congestion was reassignment of cases within the individual law firms. In response to the court's initial request, all of the law firms reassigned many of their cases; one firm reassigned 18 out of 23 cases which had been accumulated by one attorney in that firm.<sup>44</sup> Reassignments alleviated this problem until cases between numbers 750 and 950 were reached, whereupon the court again requested a similar reassignment of cases.<sup>45</sup> This request, however, was not met with the same degree of compliance by the bar, and certain counsel complained of violation of their constitutional rights.<sup>46</sup> The Chief Judge, nevertheless, gave counsel the alternative of reassigning their cases or having the court inform their clients of the cause of the delay,<sup>47</sup> and counsel thereafter reassigned cases in accordance with the court's request.<sup>48</sup>

Although counsel eventually complied with the Chief Judge's second request for reassignments, some basic questions were raised by counsels' original hesitancy. There is little doubt that the court would have exercised a valid prerogative if it had notified litigants of lawyer-caused delay, but there is still a question of whether the court has the power to force reassignments. Suppose a litigant were completely satisfied with a delay occasioned by other engagements of his attorney. Could the court, for its own convenience, force him to accept a substitute for the attorney he hired? Perhaps in some situations a litigant has a right to delay. And possibly counsel has a right to his client. Forced reassignment could deprive a lawyer of the fee for which he contracted, thereby invoking fourteenth amendment questions of due process. These questions have not yet arisen but, nevertheless, may be cause for concern in the future.

Even though reassignments did alleviate the problems caused by concentration, the relative sizes of the Ready and Deferred Pools indicated the inherent nature of the concentration problem. In order to maintain a Ready Pool of approximately 25 cases, the Deferred Pool was swelled to more than two hundred cases. These figures indicate that for every one case that was available for trial, eight were delayed because of various engagements of counsel.

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42. Clary, *supra* note 17, at 18-19.

43. *Id.*

44. Clary, *supra* note 17, at 21.

45. Letter from the Honorable Thomas J. Clary to law firms with more than five cases on the civil jury trial list between numbers 750 and 950, May 16, 1967.

46. Clary, *supra* note 17, at 23.

47. *Id.*

48. Clary, *supra* note 17.

#### D. Other Lawyer-Caused Delay

Another problem, inherent in our adversary system, caused substantial delay during the program. Forty-two percent of the cases settled after assignment for trial were not settled until after the first witness had taken the oath,<sup>49</sup> with an average of 4 days of judge time required for each case. There is no absolute answer why such an extended period was required for settlement after assignment. One can only hypothesize that counsel wanted to observe the presentation of his opponent's case before making or accepting any final offer of settlement. In any event, the court took no action to remedy this delay, nor does it seem that any course of action was available to the court in this area.

#### V. CONCLUSION

The most obvious achievement of the Accelerated Program was that more cases were terminated than were commenced. It seems, however, that this increased disposition rate was not limited to the period encompassed by the Program, for there was evidently a certain aura pervading the periods before and after the Program, itself. It seems that the publication of the procedures which the court was initiating for the Accelerated Program<sup>50</sup> and the stricter attitude of the court before the Program actually began (regarding such matters as continuances) brought certain new pressures to bear on the bar.<sup>51</sup> These pressures evidently increased the percentage of dispositions over the number normally expected during a similar period of time, for approximately two hundred additional cases were disposed of from February through June 30, 1967, as a result of the implementation of the Accelerated Program.<sup>52</sup>

Although the aura contributed to the success of this Accelerated Program, the fact that it existed poses some problems in the evaluation of the procedures employed; since the effect may simply have been the

49. Garman, *supra* note 19, at Table 6.

50. For example, the busy slip procedure prior to the Program was informal; there were no formal records kept, and counsel were able to defer a case by simply calling the clerk's office. The procedure during the program, however, required a statement signed by counsel. See note 16 *supra*.

51. For example, see the following notice pertaining to the required presence of counsel while locked in the Ready Pool and the busy slip procedure to be followed, signed by Chief Judge Thomas J. Clary, 156 Legal Intelligencer No. 73, Apr. 17, 1967, at 2, col. 1.

Commencing April 17, 1967, and continuing for the duration of the planned accelerated jury trial program, all counsel, parties and witnesses in the first five cases in the Ready Pool shall be present daily at 10 a.m. in Room 2040 of the United States Court House and remain there until assigned to a courtroom or released by the Calendar Judge.

All busy slips must be filed with the Calendar Clerk in Room 2012 of the United States Court House by 4:00 p.m. of the day preceding the engagement. Counsel are obligated to notify the Calendar Clerk immediately upon becoming free from the engagement for which the busy slip was filed.

Busy slip forms will be available at the Clerk's Office, Room 2004, United States Court House.

52. Clary, *supra* note 17, at 31. This increase was in addition to that recorded during the formal program.

result of a novel pressure exerted upon the bar, it can not now be known whether such a notable side effect would accompany any subsequent Accelerated Programs.

It has been shown that delay resulting from last minute settlements and the traditional method of assigning cases may be to a large extent obviated by the use of a lock-in procedure and an adequate Ready Pool. There are other factors, however, which must be considered in planning any future attempts to erase the backlog and maintain a manageable trial docket.

The backlog in the District Court for the Eastern District of Pennsylvania, although numerically large, is quite deceptive. Of the 6,686 cases comprising the backlog approximately only 1,100 will ever go to trial.<sup>53</sup> The actual trial backlog is, therefore, much smaller than generally assumed. But the real problem is that many of these cases will require a great deal of judge time aside from trial. Even if 5,500 of the 6,686 cases never reach trial, most will be the source of motions and arguments before the court prior to their termination. The essential problem, therefore, is not the backlog of cases which must be tried, although that too is significant, but the inordinate amount of the court's time that will be consumed by cases that will never go to trial. Hence it is obvious that the deferral of a case, even though replaced by another case without undue delay, will in most cases contribute to the backlog problem by virtue of its very retention on the calendar.

It has already been noted that the concentration of the trial bar may be related to case deferment. There may also be a relation between this concentration and the number of cases settled on the court house steps. Perhaps many of these cases are not settled until the eve of trial because counsel, working under heavy trial loads, were unprepared and unaware of the real merits of their cases until that time.<sup>54</sup>

The pretrial conference, which theoretically forces earlier preparation, evidently had no appreciable effect on the time required for trial during the Accelerated Program.<sup>55</sup> This might indicate that the pretrial procedure is being followed in a perfunctory fashion, or that counsel have adopted a "wait and see" attitude.

Many problems have been left unanswered. How, for example, can the court continue to procure counsels' consent to reassignment in order to relieve the congestion which contributes to the age of many cases? Does the court have the inherent power to compel reassignment? Individual litigants certainly have an equal right to choose the counsel who will appear on their behalf. What remedy has the court for delay occasioned by counsel

53. Interview with Mr. Joseph Spaniol, Chief of the Division of Procedural Studies and Statistics, Office of Judicial Administration. According to Mr. Spaniol, only 17% of the cases filed in the United States district courts reach trial.

54. See Kaufman, *The Philosophy of Effective Judicial Supervision Over Litigation*, *supra* note 1, at 215.

55. See p. 142 *supra*.

who do not settle until the trial has been in progress for 4 days? The court cannot simply force or coerce counsel into early settlements or re-assignment of cases, but must rely on counsel's faithful performance of the duties owed to the court if the backlog is ever to be reduced to manageable size.

It is unfortunate that one competent trial judge was unable to try cases because of the press of administrative duties. Perhaps the time has come when courts must follow the trend of business and appoint one person as administrator of the court. This function would be best fulfilled by the chief judge who could handle the ever-increasing administrative duties without bearing the strenuous burden of simultaneously trying cases.

A wealth of data was accumulated during this program and many of the unanswered problems of court congestion might be answered if this data could be processed by a computer.<sup>56</sup> Computerized calendaring, for example, would provide a method by which the court could assign cases to busy counsel without encountering the delay to individual litigants occasioned by the submission of busy slips. During the Accelerated Program a great deal more data could have been collected and effectively utilized with the aid of a computer. For example, a comparison could readily have been made of the time expended on cases which had a pretrial conference with the time expended on those which had none. This comparison would aid an evaluation of this procedure in respect to judicial efficiency. A computer could easily and rapidly provide information that would aid in the development of new methods by which concentration could be alleviated and more efficient calendar control could be planned.

The Accelerated Program benefited all parties.<sup>57</sup> The court successfully began a campaign to reverse the trend of an increasingly serious problem; litigants have been given an opportunity to be heard; and counsel have reaped increased monetary rewards and have been provided with certain new opportunities.

The Program, nevertheless, must be viewed narrowly; it was only a well-conceived beginning. The court, with the full cooperation of counsel, must now implement the procedures which were successful. Only the extreme efficiency which marked this Accelerated Program will suffice if more voluminous backlogs are to be avoided.

*C. William Kraft, III*

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56. Computer processing of data concerning Jones Act and longshoremen cases supplied the impetus from which the idea of the Accelerated Program arose.

57. Clary, *supra* note 17, at 24. At least three new law firms emerged from the program.