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Remarks of C. William O'Neill
Chief Justice, Supreme Court of Ohio

Effective July 1, 1970, the Ohio Supreme Court adopted new civil rules, juvenile rules and appellate rules. Recently, the court resubmitted to the General Assembly new criminal rules, which became effective July 1, 1973.

The most important thing that the court has done is to adopt the new Rules of Superintendence governing the Common Pleas Courts of Ohio. The adoption of these rules did not require any action by the General Assembly. The purpose of the Rules of Superintendence was to eliminate delay in the courts, which is the most serious problem in the administration of justice in Ohio. A few years ago, if one had been in an automobile accident in Cleveland and had to bring an action in court to recover one's losses, he would have been fortunate indeed if his case had come to trial within four years after the date of its filing. In all probability it would have come to trial almost six years after the accident. If that case had been appealed, it probably would have been anywhere from seven to ten years before it was finally disposed of in our court. That situation existed not only in Cuyahoga County, or even other big-city counties; it occurred far too often in the rural counties of Ohio. This required people to borrow money, pay interest to cover the losses, pay attorney fees, and suffer a great many losses for which there is no legal recovery. Most significant, this delay caused litigants to lose faith in the judicial system of the state.

The same situation occurred in criminal cases. It frequently took as long as 14 months after indictment for a criminal case to come to trial. At the time we put the superintendence rules into effect on January 1, 1972, there were 51 first-degree murder cases pending on indictment in Cuyahoga County alone.

We approached the task of adopting the Rules of Superintendence by attempting to identify the causes of delay.

We decided to identify the causes of delay by bringing in the judges who were on the trial bench and saying to them in a private conference: "Look, you know what causes the delay in your court. Identify them and give us your recommendations as to what tools we could provide you with to eliminate them." Many of the judges were amazingly candid and knew exactly what the problems were. They gave us their recommendations, and we drafted the rules.

To cite an example, those of you who are lawyers know that no judgment by a court is final until a journal entry is filed, signed by the judge. One of the greatest causes of delay in many cases, particularly in domestic relations cases, was that the judge in a contested case would say from the bench: "Divorce granted." The wife occasionally took the

judge at his word. We found cases where the wife remarried, had children, divorced, remarried again, but was never legally divorced intially because the journal entry was never filed. The reason that it was not journalized, in most cases, was that the lawyer delayed until he was paid his fee, contrary to the canons of ethics, and contrary to his oath of office. Therefore, we passed a simple rule: If the journal entry is not journalized within 30 days, it is the responsibility of the judge to journalize it himself.

In the criminal field, we found great delay in bringing a person, who had been apprehended and charged with a crime, to the grand jury-months upon months of delay. We found an enormous delay in the time after indictment until trial, often far more than a year. If an accused was in jail and could not make bail, it was bad. If he was innocent and in jail, it was horrible. If he were out on bail, he was often out committing crimes.

We passed a simple rule: Within 60 days - get the accused to the grand jury or dismiss the case. Six months after arraignment on the indictment-trial. If not tried, the case must be reported to the Chief Justice who is under an obligation to see that the case is tried forthwith.

We found many instances where, after conviction and after a probation report was returned to the judge's desk, sentencing was delayed for as long as 14 months. Why? In an effort to protect the lawyer's fee! We passed a rule which states that 15 days after the probation report is made to the judge, the defendant must have a hearing on the sentence.

We arrived at the ten causes of delay in the courts and we adopted rules designed to eliminate each cause. For example, the greatest cause of delay in the trial of cases, particularly criminal cases and personal injury cases, is that the expert criminal defense counsel, the expert insurance company lawyer in a civil case, or the expert plaintiff's lawyer in a personal injury action are so encumbered with cases that, if they want to delay a case, they can always be busy with some other case in some other court. And, in almost every case, it's to the advantage of one side or the other to delay the case. If one is guilty and awaiting trial, one may hope to delay the case until a key witness is intimidated, or until the witness forgets, gets sick, has a stroke, dies, moves away, or gets lost. If one is involved in a civil case and has a weak case, he may delay, hoping to get a settlement. The best way to dispose of cases like these is to "put their feet to the fire" and make the parties come to trial. Parties settle quickly when they have to come to trial, or, in a criminal case, will often plead guilty.

To correct that type of delay, we passed a rule (this is the most sensitive rule that we passed, because it reaches right into the lawyer's pocket). The rule states that, if the lawyer has agreed to the trial date but is not ready to try the case on that date, then he must provide another lawyer to try the case. If he fails in that, the administrative

judge of the court has authority to remove him from the case.

The next greatest cause of delay, in personal injury cases, is the unavailability of doctors to testify when the judge and lawyers are ready to try the case. We solved that delay by a rule which states: If the witness is not likely to be available at the time of trial, one can use his videotape deposition. If he is present he can testify, but if not, the case is not held up or continued. The doctors were delighted with that rule. They like to be able to sit in their office (or the hospital where they have their x-rays and their records) and make the deposition at their convenience, and not be called down to court, and have to wait for the lawyers to argue the legal points or the jury to go to lunch. Committees from both the medical association and osteopath association wholeheartedly endorsed the idea, and some of the best doctors now take the position that they will not testify in a case, other than on videotape. Lawyers who had been using typewritten depositions are finding that a doctor on videotape is more effective with a jury than a lawyer standing in court reading a lifeless document in a monotone voice. They are also finding that videotape is cheaper than shorthand, court-reported depositions. This has been a very successful rule.

In addition, we put new responsibilities on the individual judges. One should remember that no one in Ohio ever told a judge that he had to do anything; there had never been any superintendency of any court. Judges were kings in their own domain so to speak. They reported to no one, were responsible to no one and were supervised by no one. We found that another serious cause of delay in the multi-judge courts in all the big counties was that no one was responsible for those 26 judges of Cuyahoga County, or the seven in Summit County, or the 11 in Franklin County. No one was responsible for their work. And, when that case that had been ten years in the courts came up to us, there was no way to determine who was responsible. A civil case often had been to one judge on a motion, another judge on a demurrer, another judge on a pre-trial, another judge for the trial, and there was no way to tell who had caused the delay.

The first thing we did was to say that in both civil and criminal cases, when a case is filed, it is assigned to one judge by lot and that judge is responsible for that case until it is terminated in the trial court. In the multi-judge courts, we appointed a judge as an administrative judge. Prior to that change, we always had presiding judges, but they only had perfunctory duties. They had no authority over their fellow judges, and the meetings were usually social gatherings. We made the administrative judge responsible to the Chief Justice for carrying out the rules. We required each judge in the state to make a monthly report to the Chief Justice. The administrative judge is responsible for the accuracy of those reports. We had a lot of foot-dragging on those reports, but it has worked well.

Let me turn now from the causes of delay and from the restraints that we have put on the judges, to the results. The rules went into

effect January 1, 1972. At that time there were over 1,800 criminal cases in Ohio that were more than six months old. After one year, there were only 705 cases that were over six months old. A reduction of over 1,100 cases in one year. In that year there were more criminal cases filed than ever before in Ohio, and not a single additional judgeship was added in this state. Usually, when you talk about eliminating delay, the response is "We need more judges." This time we decided to do with what we had. As of March 31, 1973, the 705 were reduced to 631. Two hundred and forty-two of those 631 were from Cuyahoga County. On the 23rd of April we started an attack on that backlog. I assigned five judges from rural counties, who were not busy, to Cuyahoga County, and we took five of the regular judges from there and started a double shift. We tried cases from 8:00 in the morning until 2:00 in the afternoon, after which time another judge came into that courtroom in another shift to try cases from about 3:00 to about 8:00 that night.

Overall, I had set a goal: By Labor Day of 1972, I wanted 50% of the counties to have their dockets current to a point where there were no criminal cases on their docket more than six months old. They exceeded that goal. We had a reading just after Labor Day and 60% of the judges in 60% of the counties had their docket completely up to date. One hundred and fifty-one of the judges out of 181 had no more than five cases on their docket that were more than six months old.

On March 31, 1973, only 17 judges in Ohio had more than ten cases on their docket over six months old, and only ten had more than 20 such cases. Those ten judges are not entirely to blame because some of them took over dockets at the first of the year from judges who retired, were defeated or were elected to another office and left big backlogs, and five out of that ten are in Cuyahoga County. The double shift should help that situation.

What happened, to be candid, is that the judges went to work. They amazed themselves with what they could do, and the lawyers cooperated. Either the judges or the lawyers could have destroyed the effect of those rules. The judges worked harder in this state than they ever worked before, and the lawyers have given them their complete cooperation.

We are also performing some experiments. In addition to having videotape depositions, we are also having videotaped trials. We recently had a first-degree murder case in which the only defense was not guilty by reason of insanity. That type of case lends itself particularly to a videotape trial. All the evidence is put on videotape trial. All the evidence is put on videotape prior to the date of trial. This defendant waived his objections to having a videotape trial, and the prosecutor was agreeable. All the witnesses were psychiatrists and doctors, which lends itself to examination and cross-examination in their offices or in the hospital at a time convenient for everyone. All the jury has to do is watch the videotape, because the judge has already ruled on the objections. The tape has been rerun on another tape which has left out objectionable material, so there is no argument as to whether an objection

should be sustained or overruled. A smart lawyer can no longer ask a question that he knows he shouldn't ask, have the witness answer quickly and the judge sustain the objection by saying "Now disregard that," and thereby call the jury's attention to it. That ploy has been eliminated.

Other cases which lend themselves to this videotape process are appropriation of land cases, because all the witnesses are usually appraisers and experts. The lawyers do not have to take all depositions on the same day; they can take them at a time convenient for everyone and then they can be submitted to the jury and the judge. The lawyer does not have to stay in the courtroom, but can be out trying a case in another courtroom. As a matter of fact, one of the judges in Summit County this year tried four cases in one day, three on videotape and one the regular way, and handled them all successfully.

A week ago today, we started an experiment in Franklin County aimed at the elimination of delay in a criminal case on appeal. Our goal is to cut the time from conviction in Common Pleas Court to determination on appeal to 90 days. The biggest cause of that delay is the time it it takes to reproduce the shorthand records, frequently taking three to four months before one can go forward with an appeal. To eliminate such delay, we are making a videotape record in every criminal case in that county. It is working excellently.

For instance, if the jury wants to re-hear a witness' testimony, it is quicker to review a tape record than for the recorder to look through her book which often takes a half-hour or more. Videotape can play it back in two minutes, similar to the pro football instant replay. The monitor is visible in the courtroom to show that it is operational. We know that the record is being made accurately and we know that the day after the trial is completed and a conviction secured the record can be filed in the Court of Appeals and the appeal started. To further eliminate delay, we may have to reduce the time for filing a brief. We chose Franklin County because this Court of Appeals' docket is current.

As to other reforms, the Criminal Rules are now in effect. In my opinion this is the best set of criminal rules in this country. The most important aspect of the Criminal Rules is the new discovery rule, which provides that the defendant can discover what evidence the prosecutor has and vice versa before they go to trial. In this way, we eliminate the game-playing, the surprises and the delays. All the rules are designed not only to expedite trial of criminal cases, but more importantly, to improve the quality of justice in the courts.

Another reform we intend to adopt is a new code of judicial conduct for judges. We are going to consider the code that was recommended by the American Bar Association at its convention last August. The sensitive things about that code are that it prohibits judges from holding any membership on the board of directors of any business organization; it tightens up the restrictions on campaign financing, and it limits judges'

political activities more than they are limited now. It also requires judges to report their income outside their judicial salaries.

The next major job we intend to undertake is the new set of Rules of Superintendence of Municipal Courts, which is badly needed. We have done a little investigation, and delay in Municipal Courts is as great and its effect probably worse than that of the Common Pleas Courts. It is more difficult to approach that task than in the case of the Common Pleas Courts, because of the great amount of time that municipal judges spend in traffic court on assignment compared to the criminal side of their dockets, and with small claims. After that project we will consider uniform rules of evidence for all the courts. The one thing that is really causing serious problems in the many Municipal Courts across the state is the enormous backlog of driving-while-intoxicated cases, where the habit of asking for a jury trial is growing because of the effect of convictions in those cases.

There is another problem with us which no one seems to be aware of. The Supreme Court of the United States last November issued a decision which, in effect, says that, in the community where the mayor is the chief executive of the city and also has judicial duties, a Mayor's Court cannot try a criminal case where there is a plea of not guilty. This problem, apparently, has not even been approached by the General Assembly, and I assume there are many defendants and perhaps lawyers not even aware of it at the present time. The General Assembly should address itself to that problem.

The General Assembly should also address itself to the problem of a public defender program in this state. This is badly needed because it is a burden that the Bar cannot, and in many places does not want to, handle. Moreover, the appointive system does not give defendants the counsel expertise in criminal law that they ought to have, and certainly the individual appointment system is not the most economical way for the taxpayer to have this problem handled. I have great hopes that the General Assembly will pass the bill now before the Senate.

Those are the basic reforms underway; those are the results, particularly in the criminal field. Those are the things that are just ahead of us, and those are some of the matters that I hope the General Assembly will address itself to in order to improve the quality of justice in criminal law. Of course, the law, as well as medicine, business and science, ought to take advantage of modern technology. We now have a system called "O-Bar" from which we can do our research so far as Ohio cases and the United States Constitution are concerned. It's connected to a computer in Dayton, which responds to research requests in a matter of seconds and provides reprints as speedily, thus cutting down the time one has to look in those musty books. It is a growing thing and will soon be available to the public in all major cities of Ohio. Lawyers can use it and pay for only the time they use. As I have indicated to you, we are attempting to use videotape in every way possible, as well as audio-recording to expedite and improve the work of the courts.

Our major goal is the restoration of confidence in the judicial system in this country and in the institution of the law. When Vance Packard wrote his book, The Status Seekers, federal and state judges ranked near the top in status in America. They don't rank there today, and neither do lawyers. I don't think confidence and respect can be restored by public relations men, by gimmicks or by tricks. It has to be earned, re-earned, if you please, by the job the judges and lawyers do. I say this to the judges and lawyers as a lawyer and as a judge now with 12 years experience on the highest court in the state. I believe that the rule of law, liberty and justice under law as contrasted to the rule of might underlies everything that America stands for. One can sum up what America is all about in those last words of the Pledge of Allegiance to the flag - liberty and justice for all. The rule of law underlies that. No man's property or liberty is safe unless there is confidence in the justice of the judicial system and in the rule of law, and that, in my opinion, is the most important thing to be accomplished by the judicial reform now going on in Ohio. I believe that, as bad as Cleveland was, by next January they are going to really have the model judicial system among the large industrial cities in America. This state has a chance to have the best judicial system in the country within two years. That is our goal and with the kind of hard work we have been getting from the judges, the cooperation we have had from the Bar and the response we hope to get from the citizens, I believe that we will do it.

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