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THE GROWTH OF THE JUDICIAL COUNCIL
MOVEMENT

BY CHARLES H. PAUL*

By Magna Charta every free man was given not only the right to the lawful judgment of his peers and the benefit of the law of the land, but also the right to have justice without delay. Coke says that delay of judgments was forbidden both by the common law and acts of parliament.

In spite of the general recognition early given to the principle that "justice delayed is justice denied," a practice had grown up in the fourteenth century whereby the court might voluntarily adjourn difficult cases to parliament in order that the opinion of all the judges upon them might be taken. This interference with the process of the lower courts tended to delay justice, and the consequence according to Holdsworth, was the statute of 14 Ed. III (1340), creating "A Court for Redresse of Delayes of Judgements in the King's great Courts." This statute reads in part:

*Judge of the Superior Court of Washington for the County of King, Seattle, Wash.

1 "No freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any otherwise destroyed, nor we will not pass upon him nor, condemn him, but by lawful Judgement of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right." Magna Charta Cap. XXIX. 1 Statutes at Large, pp. 10, 11. It will be noticed that even at this early date denying and deferring justice were placed in the same class.

2 4 Coke, Inst. 67.

3 Holdsworth, History of the English Law, 182.

4 In Staunton's Case, Y. B. 13, 14, Ed. III, (R.S.) XXXVI-XLII, according to Hale, there was illustrated the fact that the Courts below were beginning to, set their faces against such interferences. Jurisdiction of the House of Lords, 117, 118. In this case repeated adjournments of parliament and the contest between the power of the Courts and parliament caused such delays that the plaintiffs in error finally abandoned the case.

5 14 Ed. III Cap. 5; 4 Coke Inst. Cap. VI.
"Because divers mischieves have happened of that, that in divers places, as well in the Chancery, as in the Kings Bench, the Common Bench, and in the Exchequer, before the Justices assigned, and other Justices to hear and determine deputed, the judgements have been delayed, sometimes by difficulty, sometimes by divers opinions of the Judges, and sometimes for some other cause, It is assented, established, and accorded, that from henceforth at every Parliament shall be chosen a Prelate, two Earls, and two Barons, which shall have commission and power of the King to heare by Petition delivered unto them the complaints of those that will complaine them of such delays and grievances made."

This court or "commission," (the act gives the prelate, earls, etc., "Commission and power of the king") is then given power to call before it the delinquent justices with their records and in conjunction with the "chancelor, treasurer, the justices of the one bench, and of the other, and other of the king's councell, as many and such as shall seem convenient, shall proceed to take a good accord, and make a good judgment." If "the difficulty be so great that it may not well be determined without the assent of parliament," this honorable body is to bring the matter before the next parliament who determine the matter and order the case to proceed to judgment "without delay."

It is not recorded that this particular commission was successful, the fact apparently being that it was merged into appellate procedure, for as Coke says the court was "rarely put in use because of the frequent use of the Court of Exchequer Chamber."

The statute of 1340 remained on the statute books of England until 1863, when it was repealed by the Statute Law Revision Act.

Even if we cannot recognize in the almost uncanny parallel of the statute of 14 Ed. III the prototype of the modern judicial council, it is somewhat remarkable that after its formation and

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6 Coke, Inst. 67
7 At a very early date, parliament, in keeping with the spirit of the statute of Edward, directed among other things that "The Chief Justice of the Court of the King's Bench might be summoned before the Justices of the Common Bench and barons of the exchequer, into the exchequer chamber, there to be examined by the said justices of the common bench and barons aforesaid." (27 Eliz. c. 8.) It should be noted that the reason for the creation of this court of exchequer chamber was that "erroneous judgments in the King's bench could only be reformed by the High Court of Parliament," and that "Neither yet such erroneous judgments can be well considered of and determined during the time of the Parliament, whereby the subjects of this realm are greatly hindered and delayed of Justice in such cases." (See also 30 Eliz. C. L.)
8 26-27 Vic. chap. 125.
demise no effective administrative body to aid in solving procedural problems was created until 1875, when the English Judicature Act placed the power to make rules in the entire High Court. In 1876 it was found advisable to transfer this power to a "Rule Committee" of six judges. In 1909, by the Rule Committee Act, a committee was finally organized which consists of two practicing barristers, being members of the general council of the bar, and two practicing solicitors, one such solicitor being a member of the council of the law society and the other being a member of the law society and also of a provincial law society, to be appointed by the Lord Chancellor and to serve with any five or more of the following judges of whom the Lord Chancellor must be one: Lord Chancellor, Lord Chief Justice of England, Master of the Rolls, the president of the Probate Division and Admiralty Division of the High Court of Justice, and four other judges of the Supreme Court of Judicature, appointed from time to time by the Lord Chancellor.

As was said by Professor Edson R. Sunderland of the University of Michigan:

"By the creation of the Rule Committee, responsibility, previously scattered, was localized through the addition of active members of the practicing bar, a broader outlook was obtained, and better contacts were established with the commercial communities and with the public generally. These measures obviously promote efficiency and have been adopted in other parts of the British Empire."

In America we were considerably slower than England in perceiving the necessity for the formation of an administrative body similar to the English Rule Committee. The first step of consequence in this direction was taken in 1919, when the Massachusetts legislature created a commission to investigate the judicature of the commonwealth. In 1921 the Massachusetts Judicature Commission, after having held numerous public hearings, and having made an intensive study of the judicature of the commonwealth "with a view to ascertaining whether any and what changes in the organization rules, and methods of procedure and practice of the several courts would insure a more prompt, economical and just discharge of judicial business," reported its

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9Section 17.
10Appellate Jurisdiction Act, Sec. 17.
119 Ed. VII Chap. 11, p. 80.
1222 Mich. L. Rev. 293.
conclusions to the legislature and among other things recommended legislation to provide for a judicial council.\textsuperscript{14}

In advocating the passage of such an act, the commissioners stated

"It is not a good business arrangement for the commonwealth to leave the study of the judicial system and the formulation of suggestions for its development almost entirely to the casual interest and initiative of individuals. The interest of the people for whose benefit the courts exist calls for some central clearing house of information and ideas which will focus attention upon the existing system and encourage suggestions for its improvement. Some central official body is needed for the continuous study of questions relating to the court."\textsuperscript{15}

In conformity with this recommendation, in 1924, the Massachusetts Judicial Council was established.\textsuperscript{16} The Massachusetts Council is composed of the chief justice of the supreme judicial court, the chief justice of the superior court, the judge of the land court, one judge of the probate court, one justice of the district court and not more than four members of the bar; all to be appointed by the governor with the advice and consent of the executive council. The chief justice of the supreme court and of the superior court, and the judge of the land court may designate some other judge or former judge of their respective courts. It is provided in the Massachusetts act that the judicial council shall report annually to the governor "upon the work of the various branches of the judicial system," and that the council may, from time to time, "submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable." It is provided also, as is true of all judicial council acts, that the members of the council shall not receive any compensation for their services, but section 34C provides for an appropriation for the purpose of "such expenses for clerical and other services, travel and incidentals, as the governor and executive council shall approve."

The report of the Massachusetts Judicature Commission and the resulting creation of the judicial council in Massachusetts may be said to be the culmination of a series of investigations and reports of various commissions in the state of Massachusetts starting with the year 1798. Some of these reports were on special matters such as compensation for industrial accidents, et cetera,

\textsuperscript{14}Second and Final Report of the Judicature Commission, p. 28.
\textsuperscript{15}Ibid., p. 26, 27
\textsuperscript{16}Mass. General Acts 1924, chap. 244, sec. 34, A-C.
but during the period of time from 1798 to the first report of the Judicature Commission in 1920 there were at least thirteen previous commissions and committees reporting upon matters of a general nature affecting either the entire judicial system of Massachusetts or one of its major branches, such as criminal law or equity practice. None of these commissions or committees was permanent; nor did its work, except in matters of detail, accomplish any major procedural reform.

In Oregon, the legislative assembly of 1919, at the urgent request of members of the bar association, authorized the chief justice of the supreme court to appoint a commission on law reform, including judges, lawyers and a member representing other callings. The chairman of this commission was Charles Henry Carey, one of the leading lawyers of the West. In a concurring supplemental report Judge Carey, with one other member of the commission, recommended a thorough revision of the judicial system on the one court plan with an executive council. The recommendation was evidently based on the English Rule Committee. This feature of the report was not acted upon until 1923, when the legislature passed an act "providing for the administration of the courts through a judicial council."

The Oregon Judicial Council is composed of the chief justice of the supreme court who appoints an associate justice of the supreme court and three judges of the courts of record to serve as members of the council for the term of one year. The chief justice, who is chairman of the council, has the "power to invite the president of the State Bar Association, the president of the State Attorney's Association, or other members of the bar, to attend the meetings of the council and advise it in the performance of its duty."

The purpose of the Oregon Council is substantially the same as in Massachusetts, though the act also gives the council the power to administer oaths and to require the attendance of witnesses and the production of books and documents. Judges of all courts, including courts not of record, are required to report to the chairman of the council at such times and in such manner as he shall prescribe, respecting the condition of the judicial business.

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19 Oregon General Laws, 1923, chap. 149, p. 211.
20 Ibid., sec. 1.
(whether civil or criminal) in their respective courts. This provision, in practice, has not been broad enough and the Oregon Bar Association, on September 26, 1925, recommended the passage of an amendment compelling the secretary of state to furnish information which in turn would be compiled from the clerks' reports.

The weakness of the Oregon Act and the reason for its failure to operate until 1925 was, according to an article written by Judge Carey in the Oregon Journal, largely "owing to lack of an appropriation to cover expenses." This defect was remedied by an act of the legislature in 1925, providing for the traveling expenses of the judges attending the meetings and for clerical expense.

The establishment of the judicial council in Oregon, as in Massachusetts, was the culmination of a long series of unsuccessful attempts to get action in matters of judicial reform, there having been, in 1911, an Oregon Commission authorized by the legislature which made a report in December, 1913, on which no action was ever taken.

In 1922, after years of effort by leaders of the bar and legal educators, Congress passed an act by way of amendment to the judicial code in which a federal judicial council was created, composed of the chief justice of the United States and the nine senior circuit judges of the nine circuits. The declared purpose of the federal judicial council is to "advise as to any means in respect to which the administration of justice in the courts of the United States may be improved and to submit such suggestions to the various courts as may seem in the interest of uniformity and expeditiousness of business." This act was passed largely on account of the active aid it received from Chief Justice Taft, one of the foremost advocates of the Judicial Council idea.

On the 6th of April, 1923, the general assembly of the state of Ohio passed an act providing for a judicial council. By the terms of the Ohio act the council is composed of the chief justice of the supreme court and two associate judges of the supreme court selected by the judges of the supreme court, the chief justice of the court of appeals of the state, one common pleas judge, to be selected by the common pleas judges of the state, one municipal judge to be selected by the municipal judges of the state, and three practicing attorneys at law, to be appointed by the gover-

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21Ibid., sec. 3.
The council is required to report biennially to the general assembly upon "the work of the various branches of the judicial system with its recommendations for modification of existing conditions." The act includes the provision omitted from the Oregon Act requiring the "clerks of the various courts and other officers to make to the council such reports on such matters and in such form periodically from time to time as the council may prescribe." Otherwise the purpose and powers are the same as in Oregon except that the act contains allowance from the treasury for expenses "for clerical and other services, travel and incidentals, as the council and the governor shall approve."

For several years a board of circuit judges has operated in the state of Wisconsin in somewhat the same manner as contemplated by judicial councils. This board consists of the several circuit judges of the state and the judge of any court having unlimited jurisdiction concurrent with the circuit court. Chapter 251, Section 252.08, 1923 Wisconsin Statutes, provides that these judges shall meet at least once in each year and make such rules and regulations as they shall deem advisable, not inconsistent with the statutes or the rules of practice advocated by the justices of the supreme court, "to promote the due and prompt administration of the judicial business of their respective courts." The chairman of this board has rather broad powers in that he may request judges whose calendars are not congested to assist those judges whose calendars are congested, and every circuit judge is required to report monthly to the chairman such information as the latter shall request respecting the condition of judicial business in his circuit. The act also provides that the board may employ a secretary and fix his compensation. This board has met regularly and has printed reports of its proceedings and has been very successful in the administration of judicial business in Wisconsin.

In North Carolina, the 1925 legislature created a "Judicial Conference" with the same purpose as outlined in the above mentioned acts. The complexion of this conference or council differs somewhat from the other acts in that it is composed of the "judges of the supreme and superior courts, the attorney general, and one practicing attorney at law from each judicial district, to be appointed by the governor." The conference is to meet twice a year and may hold public meetings and, in practical working, may be reduced to "not less than two of the justices of the supreme

23 Ohio, Laws 1923, sec. 1.
court, six judges of the superior court and six of the attorneys at law who are members of the conference." Appropriation is made for actual expenses incurred for clerical help and incidentals.

In the state of Washington, with the combined efforts of the judges and the bar association, a judicial council bill was passed early in December, 1925.24 This act is similar, in its general provi-

24 An Act establishing a judicial council and prescribing its powers and duties and the duties of other officers in respect thereof.

Be it enacted by the Legislature of the State of Washington

SECTION 1. There is hereby established a judicial council, which shall consist of the chief justice and one other judge of the supreme court, two superior judges, two members of the legislature, and three members of the bar who are practicing law and one of whom is a prosecuting attorney. The judge of the supreme court other than the chief justice shall be chosen by the court. The two superior judges shall be chosen by the superior judges through their association, if they have one, but if not, then in such manner as the judges of the supreme court shall prescribe by rule. The members of the legislature shall be the persons last appointed chairman of the judiciary committees of the senate and the house. The members of the bar shall be appointed by the chief justice of the supreme court with the advice and consent of the other judges of the court.

SEC. 2. The term of a member of the council who is a judge, a chairman of a judiciary committee of the legislature or a prosecuting attorney shall be for the rest of his term in the office that qualified him to become a member. The term of a member chosen from the bar, except the one who is prosecuting attorney, shall be two years. A vacancy shall be filled for the rest of the term by appointment as in the first instance.

SEC. 3. The chief justice shall be chairman of the council, and one of the other members may be appointed by the council to be executive secretary. The state law librarian shall be the recording secretary, and he shall keep in his office records of the proceedings and acts of the Council. The council may make rules for its procedure and the conduct of its business, and may employ such clerical assistants and procure such office supplies as shall be necessary in the performance of its duties.

SEC. 4. A meeting of the council shall be held at the seat of government on the second Monday of September of each year. Other regular meetings may be provided for by rule. A special meeting may be held anywhere in the state at any time upon call by the chairman or five other members of the council and upon notice given to each member in time to enable him to attend.

SEC. 5. It shall be the duty of the council

(1) Continuously to survey and study the operation of the judicial department of the state, the volume and condition of business in the courts, whether of record or not, the methods of procedure therein, the work accomplished, and the character of the results,

(2) To receive and consider suggestions from judges, public officers, members of the bar, and citizens as to remedies for faults in the administration of justice;

(3) To devise ways of simplifying judicial procedure, expediting the transaction of judicial business, and correcting faults in the administration of justice;

(4) To submit from time to time to the courts or the judges such suggestions as it may deem advisable for changes in rules, procedure, or methods of administration,

(5) To report biennially to the governor and the legislature on the condition of business in the courts, with the council’s recommendations as
sions, to the other acts but the complexion of the council differs somewhat from any council thus far created, in that the chairmen of the Senate and House judiciary Committees are included as members of the council, together with two justices of the supreme court, two superior court judges, and three lawyers, one of whom must be a prosecuting attorney. It was thought that through inclusion of representatives from the legislature, greater cooperation could be secured between the legislature and the judges and lawyers. The act also provides that the state law librarian shall be recording secretary and one of the members of the council shall be an executive secretary. An appropriation for expenses for clerical help and travel is provided for in the act.

The 1925 session of the California legislature passed a resolution proposing to the people of the state of California that the constitution of the state be amended to include a provision for a judicial council. The original amendment, Senate Constitutional Amendment No. 15, proposed to give to the Judicial Council the rule making power, that is, that the Judicial Council might adopt or amend rules of practice and procedure for the several courts, provided, that such rules shall not affect substantive rights and shall be subject to amendment or repeal by the legislature." It is probable that the inclusion of this provision is responsible for submitting the judicial council to the people as there would seem to be no legal question as to the constitutionality of an advisory judicial council. However, when the resolution came up on the floor, the legislature struck out the provision giving the council rule making power, leaving for submission to the people an advisory judicial council. This act will be voted upon in 1926 by the people of California and is the most complete in its provisions of to needed changes in the organization of the judicial department or the courts or in judicial procedure; and

(6) To assist the judges in giving effect to section twenty-five of article four of the constitution.

Sec. 6. Judges and other officers of the courts, whether of record or not, and all other state, county and municipal officers shall render to the council such reports as it may request on matters within the scope of its duty to inquire.

Sec. 7. The council may hold public meetings and hearings, and shall have power to require the attendance of witnesses and the production of books and documents. Every member of the council shall have power to administer oaths and to issue subpoenas requiring the attendance of witnesses and the production of books and documents before the council, and the superior court shall have power to enforce obedience to such subpoenas and to compel the giving of testimony.

Sec. 8. A member of the council shall not receive compensation for his services but shall be allowed his actual necessary expenses when traveling on business of the council.
any act thus far proposed (except possibly the Missouri article), including as it does reference to the assignment of judges and certain provisions for terms of office.

In 1922-23, the Missouri constitutional convention prepared for submission to the people a judiciary article providing for a judicial council with rule-making powers. The article also contained a provision for court reorganization, in that Section 27 provided:

"The Judicial Council, when the business of the court requires, may call to the aid of the Supreme Court, or any of the courts of appeal, one or more judges of the circuit courts for such time as may be necessary. Such judges, while so acting, shall possess all the powers of judges of the court in which they are called to sit."

This article was submitted to the people of Missouri on the 26th day of February, 1924, together with twenty-one amendments to the Missouri constitution. All but six were rejected by the voters and among those defeated was the above-mentioned judiciary article.

Herbert S. Hadley, chancellor of Washington University, St. Louis, Missouri, in a letter to the writer, says that the opposition to the judiciary article "was chiefly due to the provision for the inclusion of two circuit judges as members of the judicial council, and for calling circuit judges to aid the Supreme Court and courts of appeals in disposing of their business."

It will be noticed also that the Missouri article gave the rule-making power to the judicial council and the inclusion of this section undoubtedly had a great deal to do with the opposition which might not have been met in the case of a purely advisory council.

In discussing the attitude of various states towards judicial council legislation, the proposal in the state of New York to establish a "Law Revision Commission" should be examined. Governor Smith in his annual message to the legislature of January 3, 1923, recommended a statute providing for an honorary commission to investigate defects in the law and its administration, and the New York legislature of 1923 acted upon this recommendation and created a commission to report to the legislature of 1924.224

The members of this commission, John Godfrey Saxe, chairman, Chief Judge Frank H. Hiscock, Judge Benjamin Cardozo

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24New York Laws 1923, chap. 575.
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of the court of appeals, various other justices of the appellate division of the supreme court, and of the court of general sessions, together with some legislators and many prominent lawyers, adopted a report of a special committee on plan and scope, recommending the creation of a "Law Revision Commission" for the purpose of examining not only the defects in procedural but also in substantive law. The draft of the proposed legislation provided for the appropriation of $50,000 for personal service and maintenance of the commission and was, of course, much more far-reaching in its powers and duties proposed for the commission than that of any judicial council thus far suggested.

The committee on amendment of the law of the New York City Bar Association approved these recommendations and recommended their enactment to the last New York legislature which, however, did not take favorable action, though the chairman of the commission, John Godfrey Saxe, states that the bill is still "pending" before the legislature. Back of this proposal are to be found many lawyers of national reputation such as Henry W. Taft, Harvey D. Hinman, Milton E. Gibbs, Charles B. Hill, and the general findings of the commission were admirably stated by Judge Cardozo.

The report of the Pennsylvania Bar Association, adopted June, 1925, recommends the establishment of a judicial council consisting of eleven members, to be appointed by the chief justice of the supreme court of Pennsylvania as follows: One of the justices of the supreme court of Pennsylvania, one of the justices of the superior court of Pennsylvania, two common pleas judges, one orphans court judge, the president of the District Attorney's Association, and four other members of the bar.

The other provisions are similar in nature to the acts above set out and follow closely the model statute recommended by the American Judicature Society.25

It is of course too early to give final judgment on the work of the Massachusetts, Ohio and Oregon councils. The Massachusetts council, according to a letter received from its secretary, F. W. Grinnell of the Boston Bar, is proceeding on a conservative basis. Mr. Grinnell says:

"The important thing to remember, particularly at the beginning of such an experiment, is that improvements come about gradually. If too much haste is attempted or too many radical ideas of reorganization, etc., are suggested all at once, the council

Itself and everybody else would get indigestion and nothing would happen at all."

In Massachusetts, the council has begun the study of some of the equity rules, particularly those relating to masters and auditors about which there has been considerable criticism in that state. They are also considering a general revision of their equity rules. The Massachusetts Council has made many suggestions to judges in regard to experiments and practice where no legislation or rule was needed, and some of these suggestions of detail have been followed with apparently satisfactory results. It has dealt with the revision of the system of appeals in civil cases, which has received favorable consideration from the legislature. It has also secured the passage of an act allowing the chief justice of the superior court to call in district judges to sit with juries in certain classes of cases in the superior court which, Mr. Grinnell says, did much to break the congestion of criminal appeals. The council is considering a declaratory judgment act as well as special proposals to assist the courts in their preliminary work of defining the issues and reducing the case in advance to the real points of dispute for trial.

In Ohio the council has not made any specific recommendations upon any particular reform, but has been considering, among other things, the rule making power of the courts, limiting the work of grand juries, legislation designed to discourage preliminary motions and demurrers and for unification of the courts, as well as other proposals which are peculiar to Ohio practice.

In the state of Oregon, on September 26, the Oregon Bar Association approved the proposal of the judicial council to submit to the people, by constitutional amendment, the question of giving to the supreme court of the state the power to make rules of practice and procedure, many of which are now made by the legislature. The judicial council in Oregon has also collected and catalogued much information with regard to the kind and character of actions being brought in their courts, and is attempting at the present time to work out changes which will relieve the congestion in the supreme court where some cases have been held without decision for two or three years.

The functions or duties of the judicial council may be summarized as follows:

1. From time to time to recommend such changes in the law as it deems necessary, to modify or eliminate antiquated and inequitable methods of law and methods of administration, and
to bring the law of the state, civil and criminal, into harmony with modern conditions.

2. To receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in our procedural law and its administration.

3. To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in our civil and criminal procedure and recommending needed reforms.

4. To make a continuous study of the organization, rules, and methods of procedure and practice of the judicial system of the common law, the work accomplished and the results produced by that system.

5. To secure statistical information concerning the operation of the courts, keeping an up-to-date record of how the various laws, rules and methods are succeeding, making the same available to the public in convenient form; to survey the condition of business in the several courts with a view to simplifying and improving the administration of justice.

6. To submit such suggestions to the several courts as may seem in the interest of uniformity and the expedition of business.

7. To report to the governor and the legislature at the commencement of each session such recommendations as may be deemed proper.

Some of the advantages of a judicial council may be enumerated as follows:

1. Through the judicial council there is provided, for the continuous, thorough, scientific study of defects in procedure and proposals to remedy those defects, a small, compact, yet representative body whose conclusions, by reason of the personnel of the council and the manner of investigation will carry weight with lawyers, the legislature and the people. It differs from a code commission in that it is a permanent body which can hold public hearings from time to time, and provides a medium for flexible action which could not be secured through a code commission or any body which would make a special recommendation and then be discharged from further action. Furthermore, it is unlike a code commission in that no compensation is allowed to the members of the council, the only appropriation being for necessary traveling and clerical expenses of the members.

2. If the council is composed of a cross-cut of judges and lawyers, a breadth of view will be obtained which, unfortunately,
has been lacking in many previous attempts at judicial reform. Through its operation the judges will become active in measures for improvement of our legal procedure and if the judicial council functions properly the public as well as the judges and the lawyers will coöperate in the solution of our procedural problems.

3. The official character of the judicial council should replace inactivity with action and initiative and, more than that, responsibility. Due also to its official character, leading members of the bar feel appointment on the judicial council desirable, and their appointment naturally gives weight to the council’s findings.

4. The council tends to prevent ill-advised, radical and undigested reforms and piecemeal, spasmodic or ill-advised proposals which have too often been presented, and sometimes adopted, by the legislature. In the place of unscientific action, or no action at all, the judicial council proposes to act upon full information and to secure action from the legislature or from the judges on needed reforms of sound character.

The general testimony of the leaders of the bar and bench with reference to a judicial council is that it is the first step in securing knowledge of and action on the defects in our procedure. William Howard Taft says that the federal judicial council is designed for “expedition and efficiency.”

Judge Charles Henry Carey of the Portland, Oregon, Bar, in speaking of the judicial council, says:

“It will be seen at once that this is the most forward step that has been taken by Oregon in the direction of law reform since the adoption of the first code of civil procedure.”

William A. Klatte, secretary of the Milwaukee Bar Association, says:

“The creation of the Board of Circuit Judges was in itself one of the greatest reforms accomplished in the judiciary in this state. The board is in the nature of a judicial council.”

Benjamin Cardozo, Judge of the New York court of appeals, says:

“We find a widespread agreement that there should be established a permanent agency, continuously functioning, to consider the changes essential to the proper administration of justice and to report its recommendations yearly. One of the anomalies of our legal institutions is that no such agency exists.”

RoscocE Pound, Dean of Harvard Law School, and America’s leading authority on jurisprudence and administrative law, in a recent letter to the writer, says:

“There can be no question of the desirability of a judicial
council. . . . Committees of bar associations can do something. Judiciary committees of the houses of the legislature can do something. But neither is at hand all the time, both have much else to do, each has to act at relatively crowded sessions, and neither is in touch with the everyday difficulties in all their phases as the judges are. . . . Most of all it is important to have a body at hand continually whose function and duty it is to study the machinery of justice in operation and study how to make it as effective for its purpose as is possible. . . . We need to organize intelligent effort. . . ."

An examination of correspondence from practically every state in the Union, the reports of state bar associations, periodicals devoted to reform of procedure, and many other available sources of information indicate that wherever the judicial council proposal has been fairly presented to lawyers and judges it has received enthusiastic endorsement. The limits of this article do not permit the writer to explain specific proposals for judicial improvement which may be presented, and, after all, the passage of judicial council legislation does not depend on outlining the particular defects in procedure and suggesting adequate remedies. Sufficient justification for the enactment of such legislation may be found if the judicial council, after a scientific investigation of the subject, can show the public that there is nothing the matter with our judicial procedure.

However, there are very few who have made a study of our civil and criminal procedure who are not convinced that there is much room for improvement, and that the time has come for the lawyers and judges to get together and take an aggressive stand for a more expeditious and accurate determination of causes.