THE EIGHTH CIRCUIT—A LOOK AHEAD

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This is hardly the place to expand upon the rich heritage provided the midlands by various judges and lawyers who have played significant roles in the administration of justice within the federal courts that comprise the Eighth Judicial Circuit. It has recently been well described in a history of the Eighth Circuit.[1] My prefatory reference is made to ensure my remarks are not in any way considered as disparagement of the tremendous contribution made by those who have labored so earnestly in the past. These precedents serve, of course, as a valuable premise for future action.

However, since I came on the court of appeals in 1966, I have witnessed first hand the litigation explosion which has occurred not only in our particular circuit but throughout the United States. In 1966 the Eighth Circuit could afford the luxury of holding court with one panel a month without any real concern for internal processing of cases. Generally, each month the clerk would assign fifteen cases to the three judges who were to sit during that month. The trial dockets throughout the circuit were relatively current. The concept of speedy trial and all its ramifications in the criminal field were not problems, and no remedial measures were necessary. On appeal the luxury of a full written opinion in every case was never doubted. The first judicial conferences which I attended were composed solely of the few district and circuit judges, and at times some United States Attorneys were invited to participate. We now emphasize bar participation in our judicial conferences and have acquired the administrative problem of handling over 300 to 400 registrants at each conference. More significant, however, has been passage by Congress of diverse legislation that required expanded judicial action. Dockets in local trial areas have quadrupled, as have our appellate calendars. Instead of processing 265 cases a year, as we did in 1966, the Eighth Circuit now processes over 1,200—with approximately the same number of judges available.[2] Our concern is magnified by our recognition that this is simply the prologue for future inundation of court dockets. Rather than approach this phenomenon with undue pessimism it seems to

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1. T. FETTER, THE HISTORY OF THE EIGHTH CIRCUIT (1977).

2. In 1980, Congress provided our court of appeals with a ninth judge.

me the judiciary must realize the future is now, and assume immediate responsibility for making certain judicial processes are provided expeditiously and with the same quality as in the past. Recognition that institutions and individuals have and do look upon the judicial system of the United States as the chief means to secure their basic rights should not cause concern. It should serve as a source of gratification that a sovereign people has continued to entrust to the judiciary power to resolve conflicts through legal processes.

In the past decade we have learned that more than ever before the stability of the judicial process greatly depends not only upon the quality of judicial decisions, but as well upon internal operating procedures of the courts. We have long known deficiencies in internal processing of cases directly cause delay. If people lose faith in the judicial process because of problems caused by a weakly structured system, there exists grave danger that they will turn away from the courts to artificial forms of conflict resolution which could and would lead to dangerous instability. It is within the quality and efficiency of the internal operating rules of a court, whether on the trial or appellate level, that we must realistically approach in 1980 the problem of expansive jurisdiction created in the 1960s and 1970s. The goal of continued stability of the judicial system, as realized by and through awareness of the importance of effective administrative processes, is my topic here. It is not a problem for the judiciary alone; the lawyer shares it as well.

Passage of the Speedy Trial Act,[3] which requires trials in criminal cases within sixty days from the date of indictment, was viewed with great dismay. Concern was expressed that it would do nothing more than turn the federal courts into a forum for criminal trials. Unfortunately this has happened in some areas. The Act furnished fuel for those who argued diversity of citizenship should be abolished as a basis of federal jurisdiction. Many lawyers in busy federal districts have already turned to the state courts for their entire civil practice, simply because they are no longer able to get to trial within a reasonable period of time in federal district court. This is not the forum in which to debate the pros and cons of diversity jurisdiction; the point is, as long as it exists as a jurisdictional base, federal courts should provide access for all litigants to receive an expeditious trial.

In view of the expanded jurisdiction and the tremendous burden placed upon district judges, Congress saw fit in 1979 to expand

3. Pub. L. No. 93-619, 88 Stat. 2076 (1975) (codified in scattered sections of 18, 28 U.S.C.).

the jurisdiction of magistrates. For the first time magistrates now, by consent of the parties, can try civil cases, jury and nonjury, and appeal for the first time can be made directly to the circuit court of appeals, thus circumventing the district court completely. Similar legislation has given the bankruptcy courts expanded jurisdiction. An appeal from the bankruptcy court, with the consent of the parties, can go directly to the circuit court without review by the district court. This expanded jurisdiction should be approached cautiously, not only by lawyers but by the courts themselves. A federal magistrate's range of powers and duties, without a consideration of those newly provided by the 1979 Act, is so great that it is almost inconceivable that any busy magistrate who is presently performing his or her duties could afford the time to try civil cases.[4]

I mention just a few problems as a premise upon which to project planning for the internal administrative operation of all the federal courts within the Eighth Circuit. First, I think it fundamental that each judge must look beyond his or her own personal desires and needs. Judges must continue to be dedicated to public service, but to do so must recognize that longer hours and greater dedication are necessary to maintain our legal system. Any judge who feels public service demands less will be a link in the chain of growing public disrespect. Lawyers must realize now that they have greater responsibility at the bar than they have had before: that within their service to the public is outreach for pro bona

4. Magistrates have all powers and duties of United States Commissioners, the power to administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3146, take acknowledgements, affidavits, and depositions, and conduct trials for minor offenses under and in accord with 18 U.S.C. § 3401. They may conduct removal and extradition proceedings and proceedings pursuant to letters rogatory. In addition, they may, if designated, make proposed findings and recommendations for deposition of many and varied pretrial matters in civil and criminal cases. They may also recommend disposition in review of administrative determinations and default judgments. In addition, they may make proposed findings and recommendations for disposition of applications for post-conviction relief and petitions challenging conditions of confinement. A magistrate may also serve as a special master. Additional authority has been granted to: (1) supervise civil and criminal court calendars; (2) conduct pretrial, settlement and related pretrial proceedings; (3) conduct, to a limited extent, arraignments in cases not triable by a magistrate; (4) receive grand jury returns; (5) conduct voir dire, select petit juries and accept their verdicts in civil cases; (6) conduct proceedings leading to revocation of probation; (7) issue subpoenas, writs of habeas corpus ad testificandum or ad prosequendum, and other orders for production of evidence or presence of parties; (8) order exoneration or forfeiture of bonds; (9) conduct proceedings for collection of civil penalties of not more than $200.00 assessed under the Federal Boat Safety Act of 1971; (10) conduct examination of judgment debtors; (11) review petitions in civil commitment proceedings under Title III of the Narcotic Rehabilitation Act; and (12) perform any other duties assigned them by local rule not inconsistent with the Constitution and laws of the United States.

work, and that material gain should be less of an incentive than ever before. Lawyers must continually strive to increase their excellence and competence. They must view their obligation as first to their clients, but second to the court as its officer, avoiding frivolous litigation and unnecessary pleadings.

Beyond personal dedication, we must set goals for effective internal processing. We should strive to maintain current trial dockets in every federal district court with the goal of holding all civil trials within one year of the date the complaint was filed. I fully recognize that in some complicated cases this aim cannot be reached. I am also aware that in some areas where we have had a lack of judicial resources, this goal cannot be achieved immediately. Nonetheless, I feel each district has the responsibility to strive to achieve it through adoption of improved internal procedures.

I recommend implementation by local rule of a requirement that every judge rule upon an interlocutory motion in any case within thirty days of the time of argument. I suggest that lawyers assist the court in this regard by being prepared to file simultaneous briefs at the time an interlocutory motion is submitted, rather than asking permission to brief the issue following oral argument. I also recomend discovery procedures be studied in each district, with the aim of simplification to reduce excessive expense and time. I make the same recommendation with regard to pretrial procedures: that each district restudy and implement new rules to simplify them. These procedures should not be so burdensome as to require a "paper chase," voluminous filing of testimonial summaries of depositions and proposed testimony of witnesses that results in delay and deters lawyers from coming into federal court. For more expeditious disposition of cases, notwithstanding the fact that magistrates often conduct pretrial proceedings, I recommend every federal judge spend a minimal amount of time with counsel within two weeks immediately before trial, to examine ways to facilitate settlement, or by stipulation, save days of testimony or voluminous documentary proof.

In order to implement a more efficacious process, responsive to the needs of the court, the bar and the litigants, I recommend that the chief judge of each district within the Eighth Circuit appoint a federal practice committee. The committee will be composed of the chief judge, one other judge of the district and six to eight lawyers actively engaged in the practice of law within the district. The Circuit Executive of the Eighth Circuit will be requested to work closely with each of these committees as an ex officio of-

ficer. The circuit judge residing in the district will be an ex officio member of the committee and serve as a liaison to the Judicial Council of the Eighth Circuit. It is my hope that within each district the judges will benefit from the suggestions of the bar for improvement of discovery and pretrial procedures, motion practice, the handling of cases by magistrates and bankruptcy judges and the trial itself. It is my feeling that the courts within our circuit have too long neglected the bar as a source of constructive suggestions. I do not intend to suggest lawyers should dictate how the the courts are run; the ultimate authority for rulemaking lies with the courts. Nonetheless, the courts are established to provide stable and effective means of conflict resolution for our citizenry, and the people are represented in that process by counsel who are officers of the court. The bar should therefore have greater input in the process utilized to achieve the goals of efficiency and of quality in substantive decision making.

I have restructured committees of the Judicial Council to include district court judges and members of the practicing bar. For the first time, district judges and lawyers will serve on the Rules Committee of the Eighth Circuit. Again, it is my hope that by this means more constructive and informed input from active practitioners and district judges will improve internal procedures in the appeals court that affect the district courts, lawyers and litigants. To promote efficiency, I have also formed a Court of Appeals Committee that has broad authority to oversee the details and procedures for the processing of cases without formal action by the Judicial Council.

The Judicial Council has approved my recommendation to have a District Court Committee to work on improving operating procedures throughout all our district courts. This committee is intended to be the alter ego of each district's federal practice committee. Recommendations for rulemaking or uniform procedures can be made to and from federal practice committees of each district and to and from the district court committee of the Council. On the District Court Committee, chaired by Judge Stephenson, who was a distinguished district judge for many years, will be members of the district bench as well as a representative member of the bar from each district.

We have established as well a Criminal Justice Committee. This committee is composed of federal public defenders, distinguished and experienced lawyers who have participated in the criminal justice system and district court judges. The committee will be asked to formulate rules for improving selection of skilled

and competent lawyers from the trial bar to represent indigent defendants in criminal cases. The committee will investigate the needs of each district and make recommendations regarding a federal public defender system for eligible districts. I have asked this committee to study the question of extraordinary fees in Criminal Justice Act cases. It is my belief that lawyers who are appointed under the Criminal Justice Act to represent indigents on appeal should be reasonably compensated whenever possible, within the confines of the Criminal Justice Act. This committee will also supervise implementation of the provisions of the Speedy Trial Act throughout the circuit.

Because of the expanded jurisdiction granted magistrates and bankruptcy courts, we have formulated a committee in which bankruptcy judges and magistrates shall participate along with active members of the bar, district court judges and members of the circuit court. It will formulate rules and recommendations relating to practice before magistrates and bankruptcy courts.

A committee of our court has studied the duties of the circuit executive for the past year. We anticipate broadening the scope of the circuit executive's jurisdiction so that he or she can more actively assist the district courts in their administrative responsibilities.

Every lawyer and judge is aware of concern over the effectiveness of assistance of counsel in both criminal and civil cases. This concern is reflected in the searching study by our own Edward Devitt, Chief Judge of the District of Minnesota, and recommendations for increasing competent representation by trial lawyers made to the Judicial Conference of the United States. The quality of justice dispensed by both district courts and courts of appeals is contingent upon effective assistance of counsel in every proceeding. To contribute to effective advocacy in our circuit, it is my hope to establish throughout the circuit student intern program under which senior law students, with the aid of law professors and members of the bar, may assist in trial and appellate representation of indigents. In addition, we plan to have panels of the court of appeals hold actual appellate hearings in the law schools on a rotating basis. We would do this approximately four or five times a year throughout the circuit or in such a manner as to insure that each student would have an opportunity to see the court of appeals hearing oral argument at least once within a three year period. Law deans have stated on occasion that the opportunity to observe lawyers and the court in action has tremendous value to law students. If the court can visit with faculty members and hold infor-

mal question and answer sessions before the student bodies, I anticipate an exchange that would be educational for all involved.

There may be some who feel that such a program goes far beyond the normal duties of a court of appeals or district judge. Nonetheless, it is my view at least, that these recommendations will promote the overall goal of achieving both an expeditious and quality process in the courts of the Eighth Circuit. We recognize that achievement of excellence in judicial administration and in the quality of justice rendered is a continuing goal, one that never is finally achieved. However, unless we are all willing to take affirmative steps, I am convinced we will lose ground and find ourselves in a hopeless morass of problems. The future holds great promise if we are willing to experiment and to dedicate ourselves to the furtherance of a stable system for judicial resolution of individual and societal problems in a manner that is both expeditious and just.