

IMPROVING THE ADMINISTRATION OF JUSTICE

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No more important duty confronts the American lawyer than that of improving the administration of justice. The development of the law in all its branches is, of course, his concern; but he has already done a fairly good job in the development of the substantive law. This he has done because the substantive law arises out of the life of the people, and changing conditions of life are quickly mirrored in statutes and court decisions. The procedural or adjective law, however, dealing with the functioning of the courts, is the creation of more or less arbitrary rules or statutes; and change in this is dependent upon conscious effort on the part of courts and lawyers. Those who understand the existing system of procedural rules are inclined to be satisfied with it because anything seems simple to one who understands it, and any change involves effort and disturbance of habit; and those who do not understand it are generally lacking in the ability to suggest improvements. The result is that court procedure in most of our States has not kept pace with the progressive age in which we are living. Where technical common-law procedure has been abandoned, codes of procedure have been overloaded with statutory rules, resulting generally in a procedure more complicated and cumbersome than that of the common law itself.

Improvements in Federal Courts

Forward looking lawyers have advocated for years that something should be done about court procedure; and in the Federal jurisdiction they have finally succeeded in getting something done. Under the Rules of Procedure Act of 1934, the Supreme Court of the United States has proceeded to abolish the old distinction between actions at law and suits in equity, with all the complicated and useless learning that accompanied it, and has put into effect a simple and efficient Code of Procedure, which is beyond comparison the best procedure that the lawyers of the world have so far been

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able to achieve—a procedure so comprehensive that the most important litigation can be handled under it without difficulty and so simple withal that a mere novice at the law can master it in a few hours—a procedure that is expeditious as well as simple, that enables the court to reach at once the heart of any controversy before it and makes a trial what it should be, i.e., an effort to ascertain truth and administer justice, and not a mere game of skill between opposing counsel. Under the Administrative Office Act of 1939, the Federal judiciary has been unified and judicial manpower has been made available as needed; adequate supervision over administrative methods has been vested in judicial councils composed of the judges of the circuit courts of appeals; provision has been made for obtaining information as to the functioning of the courts; and judicial conferences, in which bench and bar can discuss problems affecting the administration of justice and take action looking to the improvement of such administration, have been set up in every circuit. Under the recent Criminal Rules Act, the Supreme Court has been given power to simplify the procedure in criminal prosecutions; and we have every reason to hope that the court will soon adopt a simple and efficient code of criminal procedure, which will expedite and improve the administration of the criminal law in the Federal courts and will serve as a model for action by the States.

Importance of State Procedure

Important as are these reforms in Federal procedure and administration, however, their attainment there is not to be compared in importance with attaining them in the several States of our Union. It is in the State courts that the great volume of our litigation is handled; it is by the State courts that most offenders against the laws must be punished; and it is from the functioning of the State courts, rather than of the Federal courts, that the average citizen derives his ideas of the administration of justice. If, therefore, we lawyers wish to make the administration of justice in this country efficient—if we wish to demonstrate that, in this most important branch of government, the institutions of democracy are superior to those of the totalitarian powers—if, in short, we wish to do our part in upholding the free institutions of the country and in making democratic gov-

ernment so strong in the hearts of our people that it can withstand the attacks of foreign ideologies, it behooves us to set our house in order. We must restore respect for law by making its processes command respect from those who come in contact with them. We must make the administration of justice really efficient in those tribunals which affect most intimately the life of all the people.

Efforts of the American Bar Association

A movement to improve the administration of justice throughout the country was inaugurated by the American Bar Association six years ago during the presidency of Mr. Vanderbilt; and seven committees were set up in the Section of Judicial Administration charged with this responsibility. These were not ordinary committees. They were composed of experts and were headed by men nationally recognized as such in the field of procedural law. Chairman of the committee on court administration was Judge Edward R. Finch of the Court of Appeals of New York, who had served for years on the appellate division of the Supreme Court of that State. Chairman of the committee on evidence was Dean Wigmore of Northwestern University; of the committee on trial practice was Judge Chestnut, of Baltimore; of the committee on juries was Judge Dempsey of Cleveland; of the committee on pre-trial practice was Judge Moynihan, of Detroit; of the committee on appellate practice was Professor Sunderland of the University of Michigan; of the committee on administrative agencies and tribunals was Mr. Ralph Hoyt of Milwaukee. To each committee was added 49 advisory members, one from each State and the District of Columbia. The committees made comprehensive reports. They were not the ordinary theoretical reports of reformers but embodied the best thought of the country on the subject of procedural reform and crystallized into procedural standards the best practices of the various States. Our forty-eight States and the Federal jurisdictions had served as laboratories, as it were, in which various procedural reforms had been tried out and found effective. Most of these reforms, however, had not extended beyond the jurisdictions in which they had been evolved; and the chief value of the work of the committees consisted, not in visualizing theoretical improvements, but in bringing together and presenting in one

body of rules or standards the improvements in practice which had been tried and tested in American courts in different sections of the country.

The standards thus embodied in the reports of these committees were approved by the Section of Judicial Administration, the Assembly and the House of Delegates of the American Bar Association in 1938. Their adoption was made a special program of the association in the following year, and many of them were adopted in different States as a result of that effort. This year, the effort is being renewed and committees have been set up in all of the States of the Union to advocate their adoption. What I seek to impress upon you today is that they are worthy of adoption in their entirety, not because of the character of the distinguished men by whom they were formulated, not because they are advocated by the American Bar Association and leaders of the profession throughout the country, but because they represent the minimum advance in judicial administration with which the people of any forward looking State should be content. In almost all of the States some of them are already in effect. The difficulty is to secure the adoption by a State of those which it does not already have, but which are just as important to a proper and efficient administration of justice as those that it does have. They may be summarized under five heads as follows: (1) Improvement in judicial organization; (2) improvement in administration of the jury system; (3) improvement in procedure and evidence; (4) improvement in practice of administrative agencies; (5) improvement in appellate practice.

Judicial Organization

One of the first steps in achieving efficiency in judicial administration is to unify the courts under a competent administrative head, to the end that judicial man power may be assigned as needed to the relief of delay and congestion and that administrative practices may be properly supervised and regulated. The lack of any such unity and supervision is the outstanding characteristic of the courts of most of the States. To Supreme Courts or Courts of Appeals we have given power to review decisions of lower courts, but no power to control administrative practices, which may thwart justice and bring it into contempt quite as effectively as erroneous

decisions. I do not advocate, of course, any supervision over the exercise of the essential judicial function vested in the judge; but if the judicial establishment is to function efficiently, there must be authority somewhere to assign judges to duty so that those with a light burden of work in their districts may help in districts where the burden is heavy, and to supervise such matters as the calling of dockets, the assignment of cases for hearing, the use of pretrial practice, etc., and to direct judges to proceed with trials and render decisions in cases submitted. That is what the Administrative Office Act has done for the Federal courts through the setting up of the judicial councils in each circuit. Similar provision should be made for unifying the work of the judiciary of the States.

Vital in the matter of judicial organization is the creation of judicial conferences or councils. Such conferences serve a three-fold purpose: (1) They help unify the judiciary of the State by bringing the judges together for the discussion of common problems; (2) they provide for the discussion of these problems a forum which is in effect a school of jurisprudence for the judges; and (3) they crystallize the thought of the bench and bar with respect to proper standards of procedure and evolve practical solutions for difficulties facing the courts. In many of the States such councils or conferences are already provided by statute; but if the judiciary is properly alive to its responsibilities, no statute is really necessary for their creation. All that is necessary is that the chief justice of the State ask the other judges to confer with him for the purpose of improving the administration of justice and invite leaders of the bar and of the legal teaching profession to the conference. We had such a conference, functioning effectively in our circuit eight years before the passage by Congress of the Administrative Office Act. The Superior Court judges of my State, without the aid of any statute, have set up such a conference which in the short space of two years has already done much to improve the administration of justice for the people of North Carolina.

Let me make two or three suggestions as to such a conference. In the first place all of the judges of courts of general jurisdiction and all the appellate court judges should be asked to attend. The Attorney General of the State, rep-

representatives of the bar to be designated by State or district bar associations and the deans or other representatives of law schools of good standing should be invited also. The program of each meeting should be carefully arranged and should be confined strictly to matters affecting the administration of justice, leaving alone substantive law and matters of general interest. You will be surprised to find how quickly such a conference will revolutionize the whole attitude of bench and bar towards the subject of procedural reform. And, in this connection, let me add one thought: The reform of procedure depends primarily upon the judges. The judicial conference will call the attention of the judges to reforms that are needed and will point out practical methods of attaining them.

With the judiciary of the State thus unified and organized, the next important step is to obtain legislation, where needed, vesting in the courts the power to regulate procedure by rule of courts as has been done here in Indiana. That is where the regulation of court procedure belongs. The legislature has neither the time nor the experience to give proper attention to the matter. Legislation, not infrequently, is based upon occasional hardship observed by a legislator without any adequate appraisal of what would be general effect of the rule enacted into law. Legislative rules, moreover, are rigid and difficult of amendment at the best. The judges, on the other hand, are engaged in the administration of justice as an everyday business. They know by actual and wide experience where the machinery of justice works smoothly and where it creaks and fails. They know what an injustice results from an unwise rule and when it results from a situation that no rule could remedy. If permitted to make the rules to govern the procedure of their courts, they will not only make them wisely and change them when they need changing, but they will also interpret them liberally in furtherance of justice. Often do we see a court excuse an injustice resulting from a legislative rule of procedure with the argument that the legislature has so written the law; but seldom or never do we find a court permitting one of its own rules to stand in the way of substantial justice. The argument then is that the rule was never intended to be applied in such way as to result in injustice.

I might make an argument from constitutional principle

and say that the rule making power belongs to the courts as a matter of constitutional right, since the separation of powers requires that the courts determine for themselves the manner in which the judicial function shall be exercised. Courts of high authority have so decided. There is high authority to the contrary, however, and the power of the legislature to regulate court procedure is so well established in many States that it would be futile to argue against it. I take my position, therefore, not on the ground of constitutional right, but on the more fundamental ground of inherent right, and say that wherever the right of regulation be vested under the State constitution, it rightfully belongs with the courts and that the legislature should vest it in the courts; for there can be no question as to the power of the legislature to thus delegate the details of rule making. Wherever this has been tried the results have been most gratifying. In no State where procedure is regulated by statute have I heard anything but criticism of the statutory procedure; and in no State where the rule making power has been conferred on the courts have I heard anything but praise of that system.

Improvement of Jury Trials

I am a firm believer in trial by jury. My experience on the bench and at the bar of more than 30 years convinces me that no better method of trying ordinary issues of fact, particularly in criminal cases, has ever been devised. But this is not all; no stronger bulwark, in my judgment, can be devised for protecting the innocent from oppression at the hands of the powerful. The jury system means that the people themselves sit in judgment when the State attempts to deprive an individual of life or liberty. To legislators they have delegated the making of laws. To the executive they have delegated enforcement. But the important matter of judging the guilt or innocence of a fellow citizen whose life or liberty is at stake, they have delegated to no one but have reserved to themselves, the jury not being elected or appointed, but chosen by lot from the body of the citizenship. The great importance of this in ordinary times is not readily appreciated; but when there is abuse of authority on the part of those in power, the value of this appeal to the conscience of the people is incalculable. History is replete with instances where political persecutions have failed because a

jury of the people would not lend itself to tyranny, the case of John Peter Zenger, tried in New York in 1769, being an outstanding example.

There is now much criticism of the jury system, however; and if it is to be preserved, we must rid it of certain evils that have grown up in recent years and must make it operate more efficiently. In the first place we must get better jurors than are now being selected in many States. Professional jurors who hang around courts and are called to service by bailiffs or deputy sheriffs—unemployed men who seek jury service for the small fee involved, who have little or no experience which would qualify them to pass upon the rights of their fellow men, and who not infrequently are prejudiced and biased—all too frequently make up the juries which are called to pass upon questions of the utmost importance. Wherever this situation exists it must be remedied. Jurors should be selected from the whole body of the citizenship, but the names only of those who are qualified by character and intelligence for jury service should be placed on the jury lists. Men of strict probity and high intelligence should be appointed by the courts as commissioners to make up the lists. Jurors should be chosen from the lists by lot, and, when chosen, they should be required to serve as a high civic duty. Terms of service should be arranged in such way as not to be a burden, and no man should be required or permitted to serve more than once in two years, and then for only a short period. The Cleveland system inaugurated by Judge Dempsey and adopted in a number of cities, shows what can be accomplished along this line even in the metropolitan centers. In rural communities provision for the appointment of jury commissioners by the courts and a determination on the part of the judges to rid the jury box of professional jurors would very largely solve the problem of personnel.

But there is an even more serious problem in connection with making the jury system efficient and that is to restore the function of the judge in jury trials. When adequately guided and directed by a judge, the jury is a most satisfactory agency for deciding questions of fact. Without such direction, a jury trial may well be a mere gamble. And yet in a large number of states, the function of the judge in jury trials has been practically destroyed. As recently

pointed out by Judge Otis (21 J. Am. Jur. Secs. 105, 106) "that means that in 22 states the charge must be given *before* the arguments of counsel, that in 27 States charge must be *written out and read* to the jury, that in 28 States the judge in the charge cannot even *state the issues and sum up the testimony*, that in 43 States he cannot *comment* upon the evidence or is otherwise restricted."

The judge who presides at a jury trial is the only disinterested lawyer connected with the proceedings. He is not only learned in the law, but he is skilled in weighing evidence and is not easily imposed upon by false logic or appeals to prejudice or emotion. He has no interest in the case except to see that justice is done; and to deprive him of the function, which was his at common law, of arraying the evidence before the jury and declaring and explaining the law applicable thereto is to invite miscarriages of justice. We give him the power to decide issues of fact in equity and admiralty causes, we give him the power to set aside a verdict if in his opinion it is contrary to the weight of the evidence or against good conscience. Why he should be forbidden to assist the jury in reaching a correct conclusion, which he will not have to set aside, is a matter which the profession will never be able to explain satisfactorily to any intelligent layman.

This does not mean, of course, that the judge should become an advocate. If he does he should be reversed. It means merely that he should be allowed to help the jury apply the law to the facts. As the evidence is received, he should, where occasion requires, point out to the jury the relevance of what is being received; and after the trial is concluded and the lawyers have had their say, he should, calmly and dispassionately, sum up the testimony and point out its bearing upon the issues that are being tried. As the jurors retire to make up their verdict, what should be ringing in their ears is, not the impassioned pleas of counsel, but the dispassionate analysis of the judge. This is the way that jury trials are conducted in the courts of England and in the Federal courts; and you do not hear complaint of miscarriages of justice in jury trials in either of these jurisdictions. It is in those States that have stripped the judge of the power to charge the jury as it existed at common law, that the failures of justice in jury trials occur. The practice of

those States, as some one has said, is just as though we should put to sea with an experienced mariner as captain and a crew of 12 inexperienced seamen, and should forbid the captain to give any advice or assistance to the crew in the navigation of the vessel. Under such an arrangement it is not surprising that shipwreck should frequently result.

One cause of failure in jury trials results from burdening juries with matters that they are not qualified to determine. Cases involving complicated accounts, questions of boundary, etc., are much better decided by a judge or master who can have before him the books and documents upon which the rights of parties depend. In the complex conditions of modern life, such cases are becoming more and more numerous. We should provide for waiver of jury trial in such cases; and judges should not hesitate to assume the responsibility of decision, where the parties are willing to waive a jury. In States where this has been tried, trial by the judge without a jury has been found eminently satisfactory, and jury trial is asked only in those cases for which it is best suited. Where it is insisted upon in complicated cases, specific issues, directed to the precise questions involved, instead of the broad general issue, should be submitted to the jury. Even the best of juries with the best of assistance from the judge should not be expected to bear in mind all the rules of law applicable in a complicated case. They should make findings as to the ultimate matter of fact, and the judge, applying the law to their findings, should enter judgment accordingly.

Improvements in Trial Practice and Evidence

I shall touch but briefly on the improvements of trial procedure and the law of evidence. What I visualize with respect to procedure here is covered by the new Federal rules. A simple statement of one's claim or defense, instead of complicated common law or code pleadings—in criminal pleading, a simple statement of the crime charged, with sufficient certainty to enable the prisoner to prepare his defense and protect against further prosecution—provision for discovery and for taking testimony either of witnesses or adverse parties in advance of trial—pretrial hearings, at which the issues may be narrowed and simplified with unnecessary proofs dispensed with—elimination of necessity for exceptions—sim-

plification of the rules of evidence with standard provisions for proof of documents and foreign laws and for the production of expert testimony—provision that admission or rejection of testimony shall rest largely in the discretion of the trial judge and not be ground for new trial in the absence of abuse of discretion or unless error has affected substantial rights of the parties—all of these are elementary and are essential to any program of procedural reform. They are covered by the reports of Judge Chestnut and Dean Wigmore contained in volume 63 of the American Bar Association Reports and to a very large extent, they are embodied in the new Federal Rules. I have not the time to cover them adequately here. I should like to recommend to you, however, the serious study and consideration of the model code of evidence prepared by the American Law Institute. While you may not agree with some of the provisions, you will find that most of them could be adopted with advantage to the practice.

There is one practical suggestion that I wish to make with respect to trial practice, and that is the desirability of having the Federal rules adopted by the States. These rules were not formulated by Federal judges for the peculiar practice of the Federal courts. They were formulated by outstanding members of the American Bar as an ideal code of procedure. They represent the best thought of the country on that subject, and they are infinitely superior to the practice of any State, for they represent what is best in the practice of all the States. They are so simple that any lawyer can get a good working knowledge of them in a few hours' study, and they furnish a *vade mecum* of procedural law, well indexed, which the busy lawyer can carry with him into court, and in which he can find in a moment's time the rule applicable to almost any procedural question that may confront him. They have been liberally construed by the Federal Courts, and any fear of pitfalls or technicalities in them has been found to be a mere delusion. They have already been adopted as the code of practice in a considerable number of States, and the lawyers of such States have a great advantage over others in that they are thus required to carry in mind only one system of practice for both State and Federal courts. Furthermore, they at once find themselves familiar with the practice prevailing in an increasingly large number of other States of the Union.

Courts ought not waste time on questions of practice, and my prediction is that when the Federal rules are generally adopted, law practice will lose its technical character entirely and trials will become an inquiry into truth, in which the machinery of justice will operate so quietly and efficiently that it will be noticed no more than the running of a motor in a well-equipped automobile. The purpose of a trial is to arrive at justice, and that purpose is largely frustrated if too much attention must be paid to the way in which the wheels go round.

There is another practical suggestion in connection with the Federal rules. If you cannot succeed in having them adopted in their entirety, you can, at least, obtain the benefit of one of their most valuable features, and this without the benefit of a statute, if you can get the trial judges of your State interested. I refer to the pretrial practice prescribed by rule 16. Pretrial practice simply means that in advance of trial, the trial judge goes over the case with counsel to find out what is in it and to simplify the issues. No statute or rule is needed to enable a judge to do this, and the judge who inaugurated the practice and brought it into vogue, Judge Moynihan of Detroit, had no statute to guide him. When the lawyers are called in, the judge has them state their contentions and what they expect to prove. The matter is conducted informally and it almost invariably appears that, as to a large number of matters, there is no dispute at all. Admissions, as to these are dictated into the record. If amendment of the pleadings is needed, the amendments are made. The issues are formulated and are embodied in an order which is drawn up and signed by the judge, and the case is then ready for trial, unless the parties agree on a settlement, which they do in a large number of cases when they find what is really involved and what their adversaries are prepared to show. In Detroit, in Cleveland, in Boston, in Washington, in Richmond, and in a number of other cities this practice has been tried with results which have been most satisfactory. Dockets have been cleared, trials have been shortened and the saving to litigants in time and money has been beyond calculation. The practice is just as helpful in the rural districts, as experience in my circuit has demonstrated. There is no excuse for its not being used successfully in any locality, if the judge whether State or Federal, is

a man of sense and industry and the members of the bar show the cooperation that may reasonably be expected of them.

Administrative Agencies and Tribunals

One of the outstanding developments of recent years has been the growth in the executive departments of our Governments, State and Federal, of administrative agencies combining with their executive functions powers which are essentially legislative or judicial in character. There are more than 150 such agencies in the Federal Government alone. Every State government has a large number of them for dealing with such matters as taxes, public utilities, insurance, securities, workmen's compensation, and social security. To my mind it is utterly futile to inveigh against the growth of these tribunals. That growth has been perfectly natural. Under the conditions of modern life it is absolutely necessary that the State regulate economic life. *Laissez faire* is gone. The conflict is not between *laissez faire* and regulation, but between regulation and some form of State socialism. If socialism is to be avoided, the State must regulate economic life. The courts cannot furnish this regulation. The legislature cannot furnish it. It can only be furnished by these administrative agencies combining, as they do, certain executive, judicial and legislative functions. And, if government is to exercise the control over economic life essential to the preservation of free enterprise, some such form of administrative agency is absolutely necessary to the proper and efficient exercise of government power. The problem is, not to prevent their growth, but to preserve in their processes the fundamental principles of freedom which have come down to us from the fathers.

I shall not deal in detail with the important problems which the proper development of administrative law presents to the lawyers of this country. Sufficient is it to say that the preservation of our free institutions as well as the justice and efficiency of our governmental processes depend upon the committees of the American Bar Association and its Section of Judicial Administration, as well as of the Department of Justice, are at work upon them. But we need more than that. We need the sympathetic understanding and cooperation of lawyers throughout the country. And we must not be satisfied with a solution in the National field. Every State faces the same questions with respect to its administrative

tribunals, and their solution within the States depends upon the local bars.

Appellate Practice

Nowhere is simplification of procedure more needed than in appellate practice. Appeals are necessary, not only that justice may be done individual litigants who feel that they have not received justice in the trial courts, but also to preserve uniformity of decision throughout the State. They should not involve undue expense and should be simply and expeditiously handled. Although this would seem to be obvious the appellate practice of most jurisdictions is unbelievably complicated and expensive. Bills of exceptions, or formal statement of case on appeal, with perfectly useless assignments of error, must be specially prepared for presentation to the appellate court. In some jurisdictions, the testimony must be reduced to narrative form. In others, while the record as made below may be filed, a narrative statement must, in addition, be prepared and filed with the appellate court. In practically all, the record must be printed, and the parties must bear this needless expense, which may well be prohibitive of the appeal if the record is a large one.

The report of Professor Sunderland's committee points the way to elimination of this technicality and expense. We have adopted the practice recommended by that committee in our court in the Fourth Circuit, and I know, from experience extending over two years, that it works and works well. We hear appeals on the typewritten transcripts of records certified by the lower courts. No narration of record or statement of case is necessary. The points relied on are stated in the briefs, and counsel are permitted to print as appendices to their briefs such parts of the record as they desire the court to read. No agreement of counsel is required as to this. If counsel for appellant fails to print something to which counsel for appellee desires to call attention, the latter prints it as an appendix to his own brief. In this way the burden of narrating or agreeing upon the record is dispensed with, and the attention of the court is called to those parts of the testimony which are really material. If anything is overlooked, the entire record in typewritten form is before us and our attention can be called to it. The result is a great saving of time to the court. In 119 records before us during a given period, the expense of printing the entire record would have been approximately \$69,000. The cost of

was saved the reading of a great mass of wholly irrelevant and immaterial matter, and counsel were saved the burden of narrating the testimony or preparing a statement of the case. In addition to this, the court had the satisfaction of knowing that it was dealing with each case exactly as it was presented in the court below, and the necessity of selecting the material parts of the record, for printing in the appendices of the briefs, brought the minds of counsel to focus upon what was really important in the case. The arguments were better, the briefs were better and I believe that the decisions were better than under the old system; for all of us were getting away from technicalities and getting down to reality. I am glad to say that the same practice has been adopted in the Third Circuit and in the District of Columbia. It had already been adopted in a number of western and midwestern States. In my judgment it ought to be adopted in every jurisdiction.

Summary of Objectives

To sum up, I think that the procedure of the courts should be improved in the following respects: (1) That there should be better judicial organization, with provision for proper administrative control in the courts themselves of the judicial machinery, with the setting up of judicial councils and conferences and with the vesting in the courts of the rule-making power for the regulation of procedure; (2) that trial by jury should be improved by the selection of better jurors through jury commissioners appointed by the courts, by restoring the common-law power to the judge to aid and assist the jury, and by eliminating the general verdict in complicated cases; (3) that trial practice should be simplified after the pattern of the Federal rules and that, where possible, those rules should be adopted as the practice of the State, and that the rules of evidence should be simplified and the admissibility of evidence left largely in the discretion of the trial judge; (4) that the practice of administrative agencies and tribunals, with the method of reviewing their decisions, should be simplified with a view of preserving in their processes the principles of fair play and equal justice which are the heart of our free institutions, and (5) that the technicalities and burdens of appellate practice should be abolished with provision for review on the record made in the court below. Some of

these objectives have been attained in most of the States. The objective of the committee of the American Bar Association is to see that all of them, or as many as possible, are obtained in all of the States.

I conclude with two thoughts. The first is that, if the lawyer wishes to preserve his place in the business life of the country, he must improve the administration of justice in which he plays so important a part and bring it into harmony with that life. If he imagines that the present functioning of the courts is satisfactory to the people, he is simply deluding himself. Workmen's compensation commissions were established very largely because the courts were not handling efficiently the claims arising out of industrial accidents and it was felt that they would not administer the compensation acts as efficiently as administrative bodies. Business corporations are willing, as all of us know, to suffer almost any sort of injustice rather than face the expense, the delay, and the uncertainties of litigation. Arbitration agreements are inserted in contracts with ever-increasing frequency, and every such agreement is an implied affirmation of the belief that lay agencies for attaining justice are more efficient than the courts. Let me remind you that the administration of justice is the business of the lawyer as well as of the courts, and that if he does not wish to see his business slip away from him, it behooves him to go about it in an efficient and businesslike way.

But there is a higher ground upon which I would base my appeal. If democracy is to live, democracy must be made efficient; for the survival of the fit is as much a law of political economy as it is of the life of the jungle. If we would preserve free government in America, we must make free government, good government. Nowhere does government touch the life of the people more intimately than in the administration of justice, and nowhere is it more important that the governing process be shot through with efficiency and with commonsense. We lawyers must help in every way that we can to meet the force of totalitarian states and to refute the slavish philosophy on which they are founded; but nothing else that we can possibly do or say is so important as the way in which we administer justice. The courts are the one institution of democracy which has been intrusted in a peculiar way to our keeping.