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CONGESTION OF NATIONAL COURTS AS A WORLDWIDE PROBLEM*

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Are the national courts of the world overburdened by the case dockets they are called upon to manage? The answer apparently depends upon how such courts — with particular reference to collegiate appellate tribunals — are expected to function: as deliberative bodies, as collegial institutions for the exchange of juristic ideas, or as forums for debate upon the nature and the application of the law.[1] The attitudes in turn depend upon subjective opinions on whether existing conditions afford appellate judges adequate time and opportunity to deal with the questions presented to them for resolution.

About a decade and a half ago, Justice Douglas of the United States said that "the idea that the (U.S. Supreme) Court is overworked" was a "myth". Agreeing with him were Justice Goldberg, Chief Justice Earl Warren, and Justice Brennan who opined that the U.S. Supreme Court was "fully capable of mastering its work load."

Upon the other hand, Justice Stewart took issue with Justice Douglas and believed that the work load during that period did not afford enough time "for the reflective deliberation so essential to the judicial process". Of that same belief in contemporary times are Chief Justice Burger and Justice Blackmun.[2] Justices Powell and Rehnguist feel that "there is a problem".[3]

In 1971 it was generally conceded that U.S. Federal Courts of Appeals were "afflicted with an illness" which while "not malignant"

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[1] P.B. Kurland, Jurisdiction of The U.S. Supreme Court: Time For A Change? Cornell Law Rev. 59: 616, 622, April '74.

[2] P.B. Kurland, ibid., 59: 616, 620, April '74.

[3] E.N. Griswold, Rationing Justice — The Superior Court's Caseload And What The Court Does Not Do. Cornell Law Rev. 60: 335, 338, March '75.

called for a "potential prognosis of chronic incapacity or partial paralysis." This "illness" was caused by the number of new appeals filed, which was increasing each year at an "alarming rate", since the number of appeals terminated were less than the new matters filed. From 3,031 pending appeals in 1962, the number had increased to 9,232. To stem the rushing tide the number of Federal appellate judgeships was augmented from 78 judges in 1962, to 88 in 1966 and to 97 in 1968.

In 1971 the problem before the U.S. Senate Committee on the Judiciary was: "How to restructure an intermediate federal court system so that it can accommodate, efficiently and fairly, an increase in manpower from 97 to 250 judges by 1990."[4]

The same controversy would arise as to the existence or actual state of delays in appellate adjudication. In his time Chief Justice Earl Warren said: "Interminable and unjustified delays in our courts are today compromising the basic legal rights of countless thousands of Americans and, imperceptibly, corroding the very foundations of constitutional government in the United States."[5]

In our own Philippines, the Supreme Court disposed of 2,571 cases in 1976. In that year, 3,086 Petitions For Review, Special Civil Actions, and Ordinary Appeals were filed. As of December 31, 1976, 3,798 cases were pending adjudication.

In 1976 the Philippine Court of Appeals disposed of 5,703 cases, while only 5,313 were filed. Notwithstanding the gain of 390 cases, 6,502 cases were still pending at the close of 1976.

Problems

To keep the court's dockets within the limits and capacity of the judges who manage them, the courts use the device of hearing only a portion of the pending cases. This device is what Judge Learned Hand of the United States termed "rationing justice". Indeed the efforts of the American Bar Association and the Integrated Bar of the Philippines to make counsel available to indigent litigants through Legal Aid are of no avail in a situation where the Courts are unable to hear the bulk of their cases.[6]

The most commonly accepted system in the world is to have four tiers of courts — two trial courts and two appellate courts. The inferior trial court, usually on a "municipal" level, is often assigned cases of lesser categories in point of money value for civil cases and of imposable penalties in criminal cases. The superior trial court, usually a "district" court, is often assigned cases of greater importance on the basis of the

[4] Q.N. Burdick, Federal Courts of Appeals: Radical Surgery or Conservative Care. Ky Law J. 60: 807, 808 (1971-72).
[5] American Bar Association, Special Committee on Court Congestion. Ten Cures For Court Congestion. (1959).
[6] E.N. Griswold, op. cit., Cornell Law Rev. 60: 335, March '75.

self-same criteria and usually accorded appellate jurisdiction over inferior trial courts.

Of the two appellate courts, one is invariably an intermediate appellate tribunal and the other is the highest court of last resort.

It is generally felt that the appellate process must not be so unduly prolonged as to involve all four tiers of courts in every given case.[7] In most jurisdictions, therefore, appeal may be availed of only *once* as a matter of right, and further review is a matter of limited privilege.

One other commonly accepted cause of congestion and delay in appellate adjudication is the lack of applicable precedents. Intermediate courts of appeals can adjudicate faster whenever they have a supreme court decision directly in point which they can follow. But the astonishing fact is that usually very few desicions of courts of appeals are reviewed on the merits by the supreme court — less than one percent in the United States.[8] Hence, in many fields of law, very few supreme court decisions will stand on all fours in regard to the issues raised before intermediate appellate courts.

Proposed Solutions

The first obvious remedy for congestion and delay in the disposal of cases is for countries with only three tiers of courts to add one more judicial forum to the system and, create intermediate appellate courts. Circuit Courts of Appeals were established in the United States as early as in 1891.[9] In the Philippines, our own Court of Appeals was first organized in 1936. Originally constituted with only eleven members, its composition was increased to 36 Justices in 1973.

Secondly, appellate jurisdiction should be assumed on a discretionary basis. The principle that litigants should not be accorded more than one appeal as a matter of right means that the second review must be discretionary by the forum to which application for that relief is brought. The concept of certiorari was introduced in the United States in 1891, and discretionary review by the U.S. Supreme Court was considerably extended in 1925.[10]

Thirdly, there should be prior administrative exhaustion of remedies or fact-finding. Appellate Courts decide cases with greater dispatch whenever justiciable controversies arising from regulatory statutes are first taken cognizance of by executive and administrative agencies. Where the findings of fact by these agencies are accorded some degree of finality,

[7] Ibid., 60: 335, 337.
[8] Ibid.
[9] Ibid., 60: 335, 336.
[10] Ibid., 60: 335, 339.

the adjudication of rights by the appellate tribunals on the basis of their construction of the statute involved becomes easier.

A fourth proposed remedy is the increase of appellate judgeships. The continued proliferation of judicial business provoked a widespread agitation for the creation of additional positions in appellate courts in the United States.[11] But this is not, by any means, just a mathematical formula. Increased business in the appellate courts cannot be met by just a steady increase in the number of appellate judges if quantity does not go hand in hand with quality. Better judges administer better justice.

The fifth remedy is to foster increased output by appellate judges in their case dispositions. It is true that courts are not mere factories, that impalpable factors in the former are not as easily solved by mental deliberation as production problems are by the computerized projections of the latter. But even in adjudication, there can be system, since it is a science, and should even be an art. In jurisdictions wherein extended opinions are not mandatory for the validity of decisions, one way of expediting case disposals is to cut down on opinions, since the writing thereof is time consuming. In the Philippines, however, our Constitution provides in Section 9 of Article X that "every decision of a court of record shall clearly and distinctly state the facts and the law on which it is based."

An alternative, however. may be found in the writing of *"memorandum decisions."* To expedite appellate rulings over judgments proceeding from our Courts of Agrarian Relations, President Ferdinand E. Marcos issued Presidential Decree No. 946, which explicitly authorized "memorandum decisions" in Section 18 thereof, the pertinent portion of which reads:

> "All cases of the Courts of Agrarian Relations now pending before the Courts of Appeals shall remain in the Divisions to which they have been assigned, and shall be decided within sixty (60) days from the effectivity of the Decree: Provided, however, that if the decision or order be an affirmance *in toto* of the dispositive conclusion of the judgment appealed from, then the Court of Appeals may, instead of rendering an extended opinion, indicate clearly the trial court's findings of fact and prouncements of law which have been adopted as basis for the affirmance."

A sixth workable device that can reduce both hearing-time and decision-making time is the adoption of "pre-argument" procedures akin to pre-trial hearings before trial courts with a view to probing into the possibility of amicable settlements, of simplification of issues, and of obtaining stipulations or admissions of facts and of documents (Rule 20, The Revised Rules of Court in the Philippines).

[11] C.A. Wright, The Overloaded Fifth Circuit: A Crisis In Judicial Administration. Texas Law Rev. 42: 949, 954. Oct. '64.

Controversial Solutions

It has been suggested in some quarters that the answer to the problem of clogged court dockets could lie in the addition of several more law clerks or legal researchers in the chambers of each Justice. The acceptability of this proposed remedy depends upon what function an appellate judge is expected to serve. One view accepts the proposition that a justice should decide the questions presented but may leave to his law clerks the writing of opinions in support of his judgement. The other view consider the writing of adjudicative opinions as a nondelegable judicial task and responsibility.

I am a firm believer in the second view, since the stature and credibility of an appellate tribunal can stand only upon the premise that the men who sit thereon are so peculiarly situated as to be competent not only to judge men, but even to judge judges.

The growing belief in some jurisidictions where law clerks' memos are avowedly relied upon is that "the putative author of an opinion is not in fact the author of that opinion."[12] This impression should be eschewed as not in keeping with the exalted place that appellate courts should occupy in our governmental systems.

Another debatable question is whether the problem of congestion and delay may be solved by the creation of specialized appellate courts or divisions of appellate courts, each to devote exclusive attention only to specialized areas of litigation. The Spanish and Texas State Supreme Courts are prototypes of this system.

Existing trends do not seem to look with favor upon such specialization.[13] The reason is that the assigned duties become so narrow that they repel the ablest judges or "foster a narrow, slit-viewed approach." And even more important are the misgivings generally felt that the existence of specialized courts motivate special interests to seek control in the selection of judges to sit in such courts.[14]

Conceding the wisdom of creating an intermediate appellate court as a means to ease the burdens of the Supreme Court, jurists are also divided on the question of whether the second highest court of the land should be unified or regional.

The advantages of a unitary structure is that such a court would serve to unify the law for the entire nation; that assuming that this court would assume jurisidiction over conflicts in statutory interpretation, decisional law and constitutional questions of lesser importance for which

[12] P.B. Kurland, op. cit., Cornell Law Rev. 59: 616, 623. April '74.
[13] C.A. Wright, op. cit., Texas Law Rev. 42: 949, 965, Oct. '64.
[14] M. Rosenberg, Planned Flexibility To Meet Changing Needs Of The The Federal Appellate System, Cornell Law Rev. 59: 576, 588, April '74.

the Supreme Court may have inadequate resources or material time, such a court would provide uniformity and predictability in the law.[15]

The proponents for regional intermediate appellate courts contend that regionalization poses less administrative difficulties, that travel time and travel expenses will be less for the litigants, the lawyers, and the Justice themselves; that as long as appellate courts sit in panels, uniformity of decisions is just as difficult to attain in a united as in a divided court; that the increased number of Justices and panels resulting from unification will worsen the problem of "panel-shopping" by adroit litigants.[16]

In the United States, the peculiar situation obtaining has even prompted reformists to advocate the creation of a new National Court of Appeals, below the Supreme Court but above the present Circuit Court of Appeals.[17] It would seem, however, that the resulting five-tier judicial machinery may generate new and more formidable problems.

The distinction suggests itself, that a regional appellate court may be good for the larger countries and a unified one would suit the smaller nations better.

Conclusion

In this disquisition, this paper has attempted to bring into focus some materials for discussion of relevant issues: whether the writing of adjudicative opinions is a delegable or a non-delegable judicial task; whether appellate courts should be specialized or not; and whether appellate courts should be unified or regionalized.

Solutions more specific have likewise been proposed: for the creation of intermediate appellate courts in countries where there are none; for appellate jurisdiction to be assumed on a discretionary basis; for prior administrative exhaustion of remedies or fact-finding to precede appellate adjudication; for the increase of appellate judgeships when the dockets become hopelessly clogged; for the adoption of workable systems to increase the output of appellate judges; and for the utilization of "pre-argument" procedures.

I sincerely hope that these suggestions to enhance the present restricted appellate capacities of most national courts may be accorded a modicum of consideration.

[15] C.F. Haynsworth, Jr., Improving the Handling of Criminal Cases In The Federal Appellate System, Cornell Law Rev. 59: 597, 605, April '74.
[16] Q.N. Burdick, op. cit., Ky Law J. 60: 807, 812 (1971-72).
[17] P. Stolz, Federal Review of State Court Decisions of Federal Questions: The Need For Additional Appellate Capacity. Cal. Law Rev. 64: 943, 944 (1976).

IS SECRECY OF BANK DEPOSITS A THING OF THE PAST? – AN ANALYSIS OF R.A. No. 1405 and P.D. No. 1156

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A bank, being of a quasi-public character, is properly subject to some reasonable legislative regulation under the police power of the state. Because of its nature and the relation which it bears to the fiscal affairs of the people and the revenue of the state, a bank, acting as a depository of the money of the community,[1] is an institution vested with public interest.

One of the primary functions of a bank is to accept deposits from both the private and the government sectors. It is through this process that a bank is able to perform its other functions. It is likewise this power to accept deposits which subjects it to rigid fiscal and administrative measures. The term "deposit" has a well accepted meaning in the banking business, and has been defined as the act of placing or lodging money in the custody of a bank or banker, for safety or convenience, to be withdrawn at will of the depositor or under rules and regulations agreed upon.[2] A deposit has likewise been defined as a sum of money left with a banker for safekeeping, subject to order and payable not in the specific money deposited, but in an equal sum.[3] The legal effect of a deposit, as understood in the light of the foregoing definitions, is to create a debtor-creditor relation between the depositor and the bank, so that when money is left for a more or less fixed period, payment of interest to the depositor-creditor is deemed proper.

* Ll.B. '81.
** Ll.B. '78.
[1] See Vol. 9 C.J.S. pp. 32-33 citing Ex Parte Tennessee Valley Bank, 166 So. 1, 231 Ala. 545 and State vs. State Bank of Moore, 4 P. ed 717, 90 Mont. 539, 80 A.L.R. 1494.
[2] See Black Law Dictionary.
[3] Andrew vs. Iowa Savings Bank, 24 1 N.W. 412.