MISSIONS OF JUDICIAL ADMINISTRATION IN ASIA AND THE PACIFIC

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CAUSES OF CONCERN

According to the guidelines formulated long ago by an eminent American jurist,[1] the general causes of concern and satisfaction with the administration of justice are grouped under four (4) categories: (1) the causes for dissatisfaction with any legal system; (2) causes arising from the pecularities of particular legal systems; (3) causes arising from the particular judicial organization and procedure of any given country, and (4) causes arising from the environment of the particular judicial administration adopted.

Common to all legal systems are two precise causes for dissatisfaction, namely, (1) the necessarily mechanical operation of rules and therefore of laws, and (2) the somewhat inevitable difference in rate of progress between law and public opinion.

One of the necessary consequences of the mechanical operation of legal rules is uniformity. The pendulum has continued to swing since time immemorial from wide judicial discretion on the one hand and strict adherence by the judge to the rules upon the other hand. The problem has always been how to strike the correct balance. Too much discretion results in uncertainty. And too much rule may result in unreasonable inflexibility. The striking of the correct balance is the conern as well as the function of judicial administration.

Legal history has demonstrated that problems arise from the discrepant time tables in the evolution and progress of law and public opinion. The ideal situation is that law should mirror the sentiments and conscience of the community and should formulate rules to which the operation of tribunals must accordingly conform. That ideal situation would preclude corruption, exclude personal prejudices of judges and minimize individual incompetence. But these rules, being formulations of public opinion cannot exist until public opinion has become fixed and settled. Neither can these rules be altered until a change of public opinion has become stable and complete. But the process of evolution is slow and gradual, and the law usually lags several steps behind. This same jurist thus observed that "law is often in very truth a government of the living by the dead." Indeed, very often, the law does not respond quickly to new conditions and does not change until undesirable effects are evident and already felt acutely.

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QUESTIONNAIRES

With the kind assistance of the Asia Foundation, I formulated ten (10) questions relevant to this Conference after consultation with Justice Dennis Mahoney of the Supreme Court of New South Wales, Australia, and Ms. Edith Coliver, Philippine Representative of the Asia Foundation. These questions were presented to the countries of *Lawasia.* It must be emphasized that the answers are not official government data. But they were supplied by knowledgeable sources and information coming from public officials and private persons. Besides those of the Philippines, answers were given by informants for nine (9) countries, to wit: Bangladesh, Singapore, Malaysia, Korea, Pakistan, Thailand, United States, Brunei and Papua New Guinea. The written answers sent in by our correspondents[2] were quite interesting and revealing.

Let me restate the questions and summarize the responses.

Questions On Judicial And Legal Systems

Question No. 1

Is the judiciary unitary or dual (e.g., there are two (2) systems, one on the federal and one on the state or provincial level), or a combination thereof?

Seven (7) of the responding countries answered that their system is unitary, two (2) countries said that their system is dual, and one (1) country[3] stated that in one sense, it is some "combination thereof" and in another sense, "it is now neither." This was explained by the fact that the court system of this particular country has recently been decentralized, and that "the separation of the Supreme Court into four regional high courts leaves the nation with no genuine Supreme Court."

Question No. 2

Is the system civil (Roman), common (Anglo-Saxon), indigenous, or a combination of one or several of the above?

Of the responding countries, three (3) identified their system as common law, and one (1) as civil law. Three (3) countries stated that their respective law systems were intermingled with Muslim religious law administered by Shari'a Courts. Two (2) countries, the Philippines and Thailand, follow the civil law system in their substantive laws although their procedural laws have been influenced by the common law system.

Brunei describes its system as "an admixture of both" with written laws enacted by the Legislature supplemented by common law and equity.

The Need for Correlation

Whether the court system be a unified system or a dual (federal and state) judiciary, it is submitted that there should be a close correlation within the system. The chief judge in each system should have authority to oversee the total judicial process and should have (1) a general power to require periodic statistical reports that delineate the business of each court, to conduct studies

on the needs of the system to improve judicial performance and to implement plans for these improvements; (2) a broad power to draft and promulgate uniform rules for the whole system; (3) the authority to transfer trial judges from one court to another within the jurisdiction as docket loads may require, and (4) a medium for communiation with the legislature on matters of legislation that create new responsibilities for the judiciary.[4]

Questions on Court Administration

Question No. 3

Is there a system of court administrators? If so, what is their function? Do they have any administrative responsibility or do they merely serve as clerks of courts?

This is one question that elicited more extended and varied types of replies. Only two (2) countries frankly conceded that they have no system of court administrators. Eight (8) countries affirmed the existence of court administrators but their respective systems varied from country to country. Some described a unified administration under the chief justice. Others stated that every court has its own administrator. Still, others said that judicial administration is in the hands either of the Ministry of Justice (or Ministry of Law) or an official under the supervision and control of the Minister of Justice (or Law). Most characterized their administrators as being responsible for administrative matters, the personnel system, budget preparation and administration, accounting and auditing, records control and training programs. Worthy of note is the case of Korea whose courts are administered by a Ministry of Court Administration. The term "Ministry," however, connotes a special rank equal to that of a Cabinet Ministry but its incumbent official is not a part of the Cabinet.

Question No. 4

What agency administers the courts?

Five (5) responding countries stated that their supreme court administers the judiciary. Two (2) replied that their Ministry of Justice (or Law) acts as administrative agency. Two (2) others said that each court administers its own affairs. The correspondent from one (1) country said he was not sure. It was conceded by and large that the question is closely related with the issue of independence of the judiciary. It seemed clear that most countries considered judicial independence to be most safe and secure when the chief administrative agency is the supreme court.

Court Organization and Management

In most countries, the supervision of the business aspects of judicial administration of the whole court system is committed to the Chief Justice who is made responsible for the effective use of the whole judicial power of the State. Quite commonly, he has authority to make reassignments or temporary assignments of judges to particular branches or divisions or localities in accordance with the amount of work to be done and the number of available judges. By and large, decentralization of the courts has been frowned upon. In instances when this decentralization was effected, mere clerks became independent func-

tionaries not only beyond effective judicial control but even independent of superior administrative supervision. It seems clear that unification of the courts is the ideal set-up. But the central administrator must be supported by judges equal to their tasks and with sufficient courage to perform them. Hence, the mode of training, selection and tenure must be so implemented as to insure appropriate choices.

In the centralized system, the Chief Justice is usually designated as the executive head of the judicial system whether it be unitary or dual. In practice, he is assisted by an administrator of the courts who performs such duties as the Chief Justice may assign to him. These may include the preparation and submission of the annual budget requests to the legislature.

The complexities of judicial administration would also vary, depending upon the number of tiers or levels that make up each particular judicial system. In this region, some smaller countries have only two tiers – a trial court and an appellate court. The two-tier system has some modifications, whereby the individual members of the Supreme Court at the same time undertake trial court duties. Another modification is the existence of a large appelate court with a smaller number of its members acting as the "highest court," being, in effect, "a court within a court." Others have three tiers – one trial court level stratum and two appellate courts, one intermediate, and the other, supreme. Another three-layer system would have two trial court levels, one inferior, and the other, superior, with the appellate court as the highest tier.

In the Philippines, we have a four-tier system, with two trial court levels (the Municipal Trial Court and the Regional Trial Court), and two appellate courts (the Intermediate Appellate Court and the Supreme Court).

The State of Texas gives us a distinct example wherein two court systems operate side by side with two separate hierarchies of judicial institutions, one for criminal cases, and another for civil cases, with their respective tribunals from the lowest trial court up to two separate supreme courts, one civil, and the other, criminal.

The selection of administrative judges and court administrators is a matter of extreme importance. One American jurist says that "any method of selecting an administrative judge on the basis of seniority, or imminence of expiration of term, or periodic rotation, is not calculated to recognize and utilize needed administrative talents for the good of the court system. To place a judge who lacks the aptitude and appetite for administration in an executive position in the judicial establishment guarantees its mediocrity and is a disservice not only to the bench, the bar and public alike, but also the individual so placed."[5]

The administrative head is charged with responsibility for the overall operation of the courts under his authority. What usually happens, however, is that his responsibility includes non-judicial functions, as well as a variety of judicial and quasi-judicial functions. Indeed, it is difficult at times to draw a clear-cut line between what is purely judicial and what is purely administrative.

Although qualifications for the position of court administrator are in most cases left to the administrative judge with whom or for whom he works, experience has shown that those who have sat as judges become better court administrators since they know the nature and parameters of the work.

Court management would be ineffective without proper calendaring management programs for both civil and criminal cases. Such programs should include: (1) judicial responsibility for controlling the progress of cases from filing to disposition; (2) establishment and enforcement of time standards and rules to govern the processing of cases; (3) strict enforcement of a restrictive continuance policy; (4) case-setting policies which realistically reflect the availability of judges and average disposition rates per judge; (5) an effective information system which will enable the courts to measure their performance against the stablished norms to evaluate new policies and procedures; and (6) systematic planning which includes consultation with everyone directly affected by proposed modifications and close monitoring of operations under new procedures.[6]

Since the court executive must be first and foremost a manager, he should be sensitive to the perceptions of lawyers, judges, litigants, bar associations, government authorities and the news media.

Institutionalization of Court Administration

More and more studies in judicial systems show the need for the institutionalization of court administration. The United States has made great strides in this direction. We have followed suit. Towards the end of 1975, the President of the Philippines, upon recommendation of the Supreme Court, established the Office of the Court Administrator in the Supreme Court. The office was created to assist the Supreme Court in the exercise of its powers of administrative supervision over all courts and their personnel as provided in the Philippine Constitution.

The Court Administrator is the Chief of the Office and has the same rank, privileges and compensation as those of the Presiding Justice of the Intermediate Appellate Court, the second highest court of the land. He is assisted by three Deputy Court Administrators who have the same rank, privileges and compensation as those of Associate Justices of the Intermediate Appellate Court and must have the same qualifications. They are appointed by the Supreme Court and serve until the age of 65 years. They may be removed or relieved for just cause by a vote of at least eight (8) Justices of the Supreme Court. The Supreme Court is empowered under this law to create such offices, services, divisions and other units in the offices of the Court Administrator as may be deemed necessary.[7]

Functions of Court Management

Like any other organization, a court must be properly administered and managed. Optimum performance requires that court administrators should give proper and continuing attention to five (5) main activities, to wit: (1) planning; (2) organizing; (3) staffing; (4) directing and leading, and (5) controlling.

Planning involves the proper selection from among possible alternatives the purposes and objectives of the organization. *Organizing* activity consists of the grouping of these activities necessary to obtain the objectives, the assignment of authority to appropriate individuals, the coordination of all the component parts of the organization, and the communication and dialogue with all those involved in the system. *Staffing* involves the proper selection, appraisal and

development of the personnel that perform vital roles in the organization. This includes pre-service and in-service training. *Directing and leading* involves the proper supervision of the work of the subordinates by the supervising staff towards the efficient attainment of the objectives of the court system. The managerial function of *controlling* consists of the measurement and correction of the operations of the organization to ensure that the court system's objectives are attained and the plans duly implemented. This requires the establishment of proper criteria and standards of quantity and quality of performance. This, in turn, requires efficient channels of management information.[8]

Computers

The modern vehicle for efficient management is computerization. Let it be emphasized that there certainly are limitations in the role of the computer in judicial administration. The computer does not take the place of judges or lawyers but acts as an ally to speed up processes. The computer does this by identifying the backlog and bottlenecks that can be eradicated by intelligent managerial techniques.

The contribution of computerization and automatic data retrieval or computer technology consists in the identification of the case inventory in the judicial warehouse and makes available to the administrative judge the total number of cases in the backlog, their classifications and their various components. In much the same way as an industrialist would know the type and quantity of goods in his warehouse, the chief judge should know the nature of his own case inventory. Changes do occur in the inflow of cases. For instance, in one court, tort actions may increase as compared to breach of contract cases in a given period. In courts of general jurisdiction, the proportion of criminal to civil cases may vary and the trends in case inflow may shift from time to time. With the knowledge of this varying growth or changing rates in the inflow of cases, without any increase in the rates of termination, the chief judge would be able to pinpoint the problems of congestion in reference to specific lawyers or prosecutors and specific judges.[9]

Questions on Budgeting

Question No. 5

What percentage of the national budget is allotted to the courts?

Six (6) of the responding countries said that their judiciary is allotted less than one percent (1%) of the entire national budget.

Our correspondents from one of these countries stated that they believed that the budget for the judiciary was "miniscule," that its "judiciary is not considered to be a wise investment – there is no immediate economic return," and "animal husbandry commands a far higher percentage of the budget." Three (3) correspondents said that their judiciary receives 1% of the total budget. One (1) responding country was not sure of its statistics. My own country, the Philippines, is among those whose judiciary receives at least 1% of the total budget, 1.06%, to be exact.

Question No. 6

Who prepares and presents court budgets?

Of the responding countries, four (4) replied that the court budget is prepared by the Supreme Court. Two (2) answered that it is prepared by the Ministry of Justice (or Law). One (1) said that it is prepared by the judges themselves for their respective courts. One (1) country's informant was not sure. Two (2) replied that theirs is a mixed system. In the mixed system, that of Papua New Guinea requires the Supreme Court to prepare its own budget and the Justice Department prepares the budget for all other courts; and that of Pakistan requires the provincial governments to prepare the budget for the provincial courts, and the Ministry of Justice for the Federal Supreme Court and Federal Shari'a Courts.

In instances where the Supreme Court is the agency that prepares the court budget, a staff official is usually charged with the responsibility, to wit: in Korea, it is the Minister of Court Administration under the Supreme Court; in Malaysia, it is the Financial Accounts Minister of the Office of the Chief Justice, and in Brunei; it is the Chief Registrar who prepares the budget although it is presented to the legislature by the Permanent Secretary of the Ministry of Law.

The Need for Funding

If the premise is accepted that the courts themselves have an obligation to deal with the problems of the justice system, then, the judges presiding over these courts and their administration must have both the power and resources to deal with those problems. To adequately deal with the responsibilities of administration, there must be sufficient funding available. The cost of maintaining the justice system has, in general, been limited to about one percent (1%) of the state or country's budget. Some jurisdictions do not even receive that amount. It is clear, however, that this is hardly adequate to maintain the ideal standards that we are all aiming at. If we admit the assumption that any work or sacrifice requires incentives, then, we must likewise concede that the inadequacy of funding and resources cannot accord a full measure of motivation to make the system work.[10]

Liaison with the Legislature

It is quite patent that the needs of the judiciary can be serviced by the State only if these are made known to its lawmakers in a palpable way.

Again, in these area, the United States government has pioneered towards institutionalizing the liaison between the judiciary and the legislature. It has created the Judicial Conference of the United States in 1942 by federal statute. This agency is composed of the chief judges of the eleven circuits of the United States Court of Appeals and the Chief Justice of the United States Supreme Court who makes reports to the United States Congress twice a year. These reports are made the basis for funding requests upon which appropriation measures may be initiated. The work of the Conference is carried on by Committtees, of which three are very important, namely, the Committee on Court Administration, the Committee on Judicial Statistics and the Committee on Pre-Trial Procedures.[11]

Questions On Training And Research

Question No. 7

What training (pre-service and/or in-service) exists for judges and/or court personnel?

Five (5) responding countries replied that they provide only in-service training. Four (4) countries answered that they provide neither. Only one (1) country, namely, Korea, stated that it provides both pre-service and in-service training, with continuing education for its judges.

Question No. 8

Who (assistant judges, law clerks, legal researchers, or others) performs researches in and on the courts, and at what levels?

Four (4) responding countries answered that their judges conduct their own researches. Two (2) replied that certain private or public institutions conduct these researches. Four (4) countries described various mixed systems. In the Philippines, the staffing pattern of the judiciary has positions for researchers (appointed under varying designations) assisting the supreme court justices, appellate court justices, and judges of regional trial courts. But municipal court judges do their own research.

In Papua New Guinea, the Supreme Court has a "research officer." Statistical research is conducted by (1) the registrar, (2) the judges, (3) the Magisterial Service, (4) the Institute of Allied Social and Economic Research, a government-funded body, and (5) the Institute of National Affairs, a research body funded by the business community.

In Thailand, trial judges make their own researches. In their appellate courts, "assistant judges" help in research work. Assistant judges in the Court of Appeals have the same rank as Judges of First Instance, and those in the Supreme Court have the same rank as Court of Appeals Judges.

Training Programs in the United States – Seminars for Appellate Judges, Trial Judges and Court Administrators

I have been fortunate to get first-hand information on some training programs for the Judiciary in the United States. In 1964, I was a participant of the Appellate Judges Seminar in New York City. In 1976, I attended as observer the Seminar for newly Appointed Federal Judges in Washington, D.C. and the Conference of State Chief Justices and Court Administrators in Philadelphia.

A very prestigious and time-honored institution for in-service training for judges of appellate courts is the Appellate Judges Seminar. Each year since 1956, in late July and August, approximately twenty-five (25) to thirty (30) judges from various State Supreme Courts and Appellate Courts and United States Court of Appeals have gathered at New York University where the participants in a unique seminar for advance specialized legal studies have "returned to school." With them have been a group of other judges and law professors to lead and develop the subjects of discussion. These high-ranking judges surrender part

of their summer vacations and gather from all sections of the country in New York City.

The Appellate Judges Seminar is conducted in New York University by the Institute of Judicial Administration founded in 1952 by the late Arthur T. Vanderbilt, Chief Justice of New Jersey. From its beginning, the aims and purposes of the Institute have been:

(1) To promote judicial, procedural and administrative improvements in the courts;
(2) To conduct a systematic and continuous study of the structure, operation and manpower of the courts, both state and federal;
(3) To offer educational programs for appellate and trial judges and court administrators;
(4) To coordinate the efforts of bar associations and judicial councils;
(5) To assist all organizations interested in the courts; and
(6) To publish the results of research in the field of judicial administration.

I was fortunate to attend the Appellate Judges Seminar of 1974 as guest of the United States Government and upon invitation of the Director of the Seminar. At that time, I (then a Justice of the Philippine Court of Appeals) was the first participant from outside of the United States and Canada. The format was explained by then Dean Robert McKay of the New York University School of Law and Director Paul Nejelski of the Institute of Judicial Administration, thus:

> "Since most of the sessions will be in seminar form, all judges attending the meetings will in a sense be members of the faculty."

The members of the faculty led the discussions followed by the participants' sharing of experiences, exchange of impressions, and collation of ideas. No lecturer, discussant or participant ever forced his views upon any other participant. Each was left unto himself to think out and draw his own conclusions.[12]

I also joined about twenty (20) newly appointed Federal trial judges during the seminar held for two weeks at Dolly Madison House in Washington, D.C. that same year of 1976. The faculty was composed of a group of old and experienced trial judges. It goes without saying that too often, and quite unfortunately, many of our judges start their judicial careers without the initial guidance of tried and tested hands in the art and craft of adjudication.

In that year, I was also privileged to participate as observer in the Conference of State Chief Justices and Court Administrators at Philadelphia. I was then the Judicial Consultant to the Supreme Court headed by the late Chief Justice Fred Ruiz Castro. The annual conference has had far reaching and salutary effects upon the concerns of judicial administration.

Training and Research Programs in the Philippines

Systems are only as good as the men who run those systems. In the Philippines, programs in the assistance and training of those concerned in the operation of the court system were started in 1975 in the closing months of the tenure of Chief Justice Querube Makalintal, and were continued by the late Chief Justice

Fred Ruiz Castro who succeeded him. In-serving training was provided for those assigned as "executive judges" performing administrative functions over designated territorial jurisdictions. Classes, each composed of sixty (60) judges, were conducted at the Development Academy of the Philippines in Tagaytay City for executive development training. The two-week course of study was aimed at providing the judges with a system that would ensure a steady work flow in the matter of calendaring cases, their trial and disposition. I had the privilege of being the Director of those Seminars.

The latest mechanism for in-service training in the Philippine court system is the Institute for Judicial Administration. This was established on September 1, 1983 under a joint memorandum between the Supreme Court and the University of the Philippines (U.P.). This Institute is under the supervision of the Supreme Court and is provided with technical and administrative resources as well as physical facilities by the U.P. Law Complex. The objectives of the Institute for Judicial Administration are as follows:

> "(1) To conduct, encourage and coordinate research and study of the operation of the court system in the Philippines and to stimulate and coordinate such research and study on the part of other public and private persons and agencies;
>
> (2) To develop and present for consideration by the Supreme Court recommendations for the improvement of the administration and management of the Philippine courts;
>
> (3) To assist in the provision of research and planning aid to the Supreme Court;
>
> (4) To develop and conduct programs of education and training of the judicial branch of the judiciary and its personnel in, among others, the following fields: orientation of new judges; continuing judicial education; decision-making; communications; judicial perceptions and judicial stress; technology in the courts; management of delay; judicial and court docket management."

The Institute is administered by a Governing Board composed of the following:

> "(i) The Chief Justice of the Philippines – who shall be the permanent Chairman of the Board;
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> (ii) The President of the University of the Philippines – Vice-Chairman;
>
> (iii) The Presiding Justice, Intermediate Appellate Court;
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> (iv) The Dean of the College of Law, University of the Philippines;
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> (v) One (1) Associate Justice, Intermediate Appellate Court, to be designated by the Chief Justice for a term of three (3) years;
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> (vi) Two (2) Judges of the Regional Trial Courts appointed by the Chief Justice; the first appointees to serve for one (1) and two (2) years, respectively, and thereafter, the appointees to serve a term of two (2) years;
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> (vii) The President, Integrated Bar of the Philippines;
>
> (viii) The Director, who shall be a member of the Board, to be appointed by the U.P. President and who shall serve for a term of three (3) years as an 'ex-officio' member of the Governing Board."

Pursuant to its functions, the Institute has been conducting seminars on such subjects as "judicial writing" and "case flow management in the trial courts." These seminars are intended to equip the participants with the basic tools of clear

and comprehensive written communication, and to develop skill in the preparation of judicial opinions.

Questions On Trial Procedures And Expedition Of Case Dispositions

Question No. 9

Does your court system function on continuous trials or continuances?

Seven (7) of the responding countries characterized their court systems as usually functioning on continuances. Our informants from the United States and Papua New Guinea stated that their courts function on the continuous trial system. Singapore appears to be the only responding country with a mixed system wherein the proceedings in criminal cases are continuous, and their trials in civil cases function on continuances.

Question No. 10

What percentage of cases are settled before coming to trial?

A. How many cases are settled amicably before trial?

B. How many are partially settled with only the outstanding questions being tried?

C. How many cases are not settled at all?

To this question, one of the responding countries stated that it has no pre-trial settlement procedures. Four (4) countries asserted that they have pre-trial settlement systems. Our informants from five (5) countries either did not have available statistics or were not sure of their figures. Korea stated that in 1984 and 1985, 94% of the cases were settled before coming to trial. Malaysia reported that 25% of the cases are settled amicably and 75% end up in court. Our correspondent for the Unites States said that a total of 90 to 95% of civil and criminal cases in both state and federal courts are terminated or otherwise disposed of without trial, and of this total number, about 60 to 70% are amicably settled by the parties. In the Philippines, the percentage of cases settled is between 40 to 60%.

Continuances

Delays in the administration of justice are sometimes classified into court-system delays and lawyer-caused delays. Court-system delays are more importantly reckoned not from the time the lawsuit is commenced, but from the time the case is already "at issue," through the period when it reaches trial and is finally decided. Lawyer-caused delays may be due to the tardiness of the attorneys in the filing of their papers with the court, and, after the case is ready for trial, by the continuances that lawyers wont to pray for.

Antidotes for delay should set certain minimum standards and principles, among which are: (1) the measure should not warp the results of the litigation process for the parties; (2) the measure should operate *simply* as an administrative matter and *inexpensively* as a financial matter in comparison to the saving that it produces; (3) the remedy should not involve the custodians of justice in merely doing by indirection what the courts are unable or unwilling to do

directly, and (4) the remedy should not breed disrespect for the courts by giving the public a cause for nurturing lack of credibility in the fairness or good faith of the courts.[13]

Continuances are both a cause and an effect of the setting of too many cases on the trial calendar. The extra cases are put on the calendar to ensure that at least one or two cases may be tried. Upon the other hand, precisely because there are too many cases on the calendar, the court is constrained to be liberal in granting requests for continuances. A trial calendar is as credible as the judge presiding over these cases. But the policy of oversetting to ensure the trial of enough cases is actually self-defeating. With such a policy, calendar management becomes quite casual. It becomes difficult then for the court to require preparedness for trial and adherence to rules. In order to develop a realistic and balanced case-setting policy, certain factors must be determined. The court, first of all, should determine the average number of cases that are disposed per week or per month. And, secondly, the court should determine how many cases can be expected to be disposed of short of trial.[14]

Continuances are also occasioned by the many "decision points" that occur during trial. In the analysis of the problem of court delay, a lawsuit has been regarded as a unit of court time. The unit is, in turn, made up of a series of sub-units. Each sub-unit is a "decision point." These decision points are regarded as "cells" within the total physical structure. The total time required for the termination of the case is the sum total of the time devoted to all the decision points.[15] The typical decision points would come up at various situations. For instance, when an issue is raised as to whether service of process was properly made to confer jurisdiction, or whether the case should be summarily dismissed because the complaint states no causes of action or because the allegations of a controversy are not within the competence of the court. Decision points likewise arise in countless junctures when objections are raised to the propriety of direct or cross-examination questions. Another decision point may come after the proponent rests his case, when it must be resolved whether it is yet necessary for the respondent to present his own evidence. Hence, the decision point that arises when all the parties have already rested their respective evidence is only the last chapter in a long series of decision points, which may yet find an aftermath in another issue – another decision point – as to whether an appeal should be allowed or not.

Summary Procedures

In consequence of the proliferation of cases brought about by the exigencies and complexities of modern living, procedures and means of expedition in the resolution of disputes have been the increasing concern of court managers. In the Philippine court system, in addition to the summary procedures adopted in minor controversies in civil, as well as in criminal cases, pre-trial proceedings have been made mandatory for all actions.

The Rules of Court provide:

> "In any action, after the last pleading has been filed, the court shall direct the parties and their attorneys to appear before it for a conference to consider:
>
> (a) The possibility of an amicable settlement or of a submission to arbitra-

tion;

(b) The simplification of the issues;

(c) The necessity or desirability of amendments to the pleadings;

(d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;

(e) The limitation of the number of witnesses;

(f) The advisability of a preliminary reference of issues to a commissioner;

(g) Such other matters as may aid in the prompt disposition of the action."[16]

The pre-trial can be delayed by various causes, the most common of which are: (1) the increased caseload of courts; (2) the lack of resources involving all elements, human as well as physical; (3) pre-trial procedural devices adopted to protect the rights of defendants; (4) difficulties connected with the scheduling of cases brought about by various problems such as bringing the litigants to the same place at the same time, conflicting commitments of lawyers, and the like; (5) delays caused by requests for postponements or adjournments by either side, or by lack of preparation; (6) inadequate funding for the judicial system.[17]

Summary Procedures in Civil Cases

Summary procedures have been prescribed in special civil cases before the inferior trial courts of the Philippines. These procedures govern in – (1) cases of ejectment not exceeding ₱20,000.00 by way of damages or unpaid rentals, and (2) all other civil cases falling with the jurisdiction of these inferior courts where the total amount of the claim does not exceed ₱10,000.00, exclusive of interests and costs. The procedures allow only basic pleadings to be filed – the complaint and the answer, which must be verified. Upon filing of the complaint, the court shall consider the allegations and (1) may dismiss the case outright for lack of jurisdiction, improper venue or failure to state a cause of action; (b) if the dismissal is not ordered, then, the court shall determine whether the case falls under summary procedure and if so, shall let summons issue.

After the pleadings are complete, a preliminary conference is scheduled within thirty (30) days. In that conference, the court shall attempt an amicable settlement between the parties, and, if none is arrived at, the court must clarify and define the issues of the case. Thereafter, within ten (10) days from receipt of the order issued after the conference, the parties shall submit the affidavits of their witnesses and other evidence on the factual issues, together with their respective position papers on the law and facts relied upon by them. If the court believes that on the basis of the pleadings and statements submitted no further formal hearing is required, it shall render a judgment not later than fifteen (15) days from the submission of the position statements. If the judge deems it necessary to hold a hearing to clarify factual issues, he shall then set the case for hearing and the witnesses whose affidavits were submitted may be asked clarificatory questions by the proponent and by the court, and may be cross-examined by the adverse party, after which the court will render judgment.[18]

Summary Procedures in Criminal Cases

Summary procedures are provided for in the Philippine criminal justice system in the following cases:

> "(1) Violations of traffic laws, rules and regulations;
>
> (2) Violations of the rental law;
>
> (3) Violations of municipal or city ordinances;
>
> (4) All other criminal cases where the penalty prescribed by law for the offense charged does not exceed six months imprisonment, or a fine of one thousand pesos (₱1,000.00), or both, irrespective of other imposable penalties, accessory or otherwise, or of the civil liability arising therefrom: Provided, however, that in offenses involving damage to property through criminal negligence, this Rule shall govern where the imposable fine does not exceed ten thousand pesos (₱10,000.00)."[19]

The prosecution of criminal cases falling within the scope of this Rule on Summary Procedure shall be either by complaint or by information filed directly in court without need of a prior preliminary examination or preliminary investigation. However, in Metropolitan Manila and Chartered Cities, such cases shall be commenced only by information. When the offense cannot be prosecuted *de officio*, the corresponding complaint must be signed and sworn to before the fiscal by the offended party.

The complaint or information must be accompanied by the affidavits of the complainant and of his witnesses in as many copies as there are defendants, and two (2) more copies for the court's files.

On the basis of the complaint or information and the accompanying affidavits, the court makes a preliminary determination whether to dismiss the case outright for being patently without basis or merit, or to require further proceedings. In the latter case, the court may set the case for immediate arraignment of an accused under custody, and, if he pleads guilty, may render judgment forthwith. If he pleads not guilty and in all other cases, the court shall issue an order, accompanied by copies of all the affidavits submitted by the complainant, directing the defendant to appear and submit his counter-affidavit and those of his witnesses at a specified date not later than ten (10) days from receipt.

Failure on the part of the defendant to appear whenever required, shall be ground for the issuance of a warrant for his arrest if the court shall find that a probable cause exists after an examination in writing and under oath or affirmation of the complainant and his witnesses.

If the court, upon a consideration of the complaint or information and the affidavits submitted by both parties, finds no cause or ground to hold the defendant for trial, it shall order the dismissal of the case. Otherwise, the court shall set the case for arraignment and trial.

Before conducting the trial, the court may call the parties to a preliminary conference during which a stipulation of facts may be entered into, or the propriety of allowing the defendant to enter a plea of guilty to a lesser offense may be considered, or such other matters may be taken up to clarify the issues and

to ensure a speedy disposition of the case. However, no admission may be used against the defendant unless reduced to writing and signed by the defendant and his counsel. A refusal or failure to stipulate shall not prejudice the defendant.

Upon a plea of "not guilty" being entered, the trial shall immediately proceed. The affidavits submitted by the parties shall constitute the direct testimonies of the witnesses who executed them.

Witnesses who testified may be subject to cross-examination. If the affiant fails to testify, his affidavit shall not be considered as competent evidence for the party presenting the affidavit, but the adverse party may utilize it for any admissible purpose.

No witness shall be allowed to testify unless he had previously submitted an affidavit to the court in accordance with these summary procedures.[20]

Diversions From The Court System

A very important principle that has been adopted for efficiency by modern court systems is the rule that only justiciable controversies appropriate to the regular courts must be brought before them. Some controversies by reason of their highly specialized or technical nature should be expected from that court system. The precise situations that should be diverted from the court system must be recognized and identified by proper methodology. Exclusion and diversion may come in the form of preliminary procedures that prevent these excepted cases from being brought to court or by process that settle these claims even before they are filed or tried in court. In the Philippines, the mechanisms to expedite resolution of disputes are many and varied. Examples are "compromise" and "arbitration."

Conciliation Procedures: "Village Justice"
("Katarungang Pambarangay")

There has been established in the Philippines a system loosely termed the "Village Justice System" *("Katarungang Pambarangay").* I hasten to emphasize that the bodies, panels of committees that dispense this so-called "Barangay Justice" are not "courts" in the true sense of the term. Certainly, they do *not* form a fifth tier in the Court System. But they do form part of the justice system.

On June 11, 1978, Presidential Decree No. 1508, "Establishing A System Of Amicably Settling Disputes At The Barangay Level" was issued, intended to "promote the speedy administration of justice and implement the constitutional mandate to preserve and develop Filipino culture and to strengthen the family as a basic social institution," and "to help relieve the courts" and "enhance the quality of justice dispensed by the courts."

This decree created in each village *("barangay")* a body known as *Lupong Tagapayapa* ("committee for peace and order") composed of the village chief (*punong barangay*) as chairman and not less than ten (10) nor more than twenty

(20) members who are residents of the village. The committee is constituted every two years.

The *Lupon* ("committee") exercises administrative supervision over the "Conciliation Panels," and meets regularly once a month "to provide a form for the exchange of ideas among its members and the public on matters relevant to the amicable settlement of disputes."

The "Conciliation Panels" (known as *Pangkat ng Tagapagkasundo*) for each dispute, consist of three (3) members chosen by agreement of the parties to the dispute from the membership list of the *Lupon*.

The three (3) members elect from among themselves the chairman and the secretary of the *Pangkat* ("panel").

The *Lupon* of each barangay has authority to bring together the parties actually residing in the same city or municipality for amicable settlement of all private disputes of natural persons (not corporations), except where the party is the government or a public official, and in criminal cases where the offense is punisable by imprisonment exceeding 30 days, or a fine exceeding ₱200.00.

Any individual who has a cause of action against another individual involving any matter within the authority of the *Lupon* may complain orally or in writing, to the Barangay Chief.

The *Pangkat* (Panel) convenes to hear both parties and their witnesses, simplify issues, and explore all possibilities for amicable settlement, and for this purpose, the *Pangkat* may issue summons for the personal appearance of parties and witnesses before it.

From the day it convenes, the *Pangkat* must arrive at a settlement or resolution of the dispute within fifteen (15) days, extendible by the *Pangkat* for another period of fifteen (15) days.

Proceedings for settlement are public and informal.

The parties must appear in person without the assistance of a lawyer, except minors and incompetents who may be assisted by their next of kin who are not lawyers.

The amicable settlement shall have the force and effect of a final judgment of a court upon the expiration of ten (10) days, and may be enforced by execution within one (1) year from the date of the settlement, after which the settlement may be enforced by action in the appropriate municipal trial court.

Conciliation is a condition precedent to the filing of a complaint. No complaint, petition, action or proceeding involving any matter within the authority of the *Lupon* may be filed or instituted in court for adjudication unless there has been a confrontation of the parties before the *Lupon* Chairman or the *Pangkat* and no conciliation or settlement has been reached.

During the period of four (4) years from 1980 to 1983, a total of 260,388 disputes were submitted to the Village Court, of which 229,200, or 88.02% were settled. 18,044 cases or 6.93% were elevated to the court, leaving pending only 13, 144 cases or 5.05%. In the year 1984, 63,359 disputes were submitted to the Village Court, of which 56,834 or 89.7% were settled. 4,141 cases or 6.5% were forwarded to the court and only 2,384 cases or 3.77% were left pending. During the first three (3) months of this year from January to March of 1985, 20,328 disputes were submitted, of which 27,573 cases or 90.9% were settled, 1,422 cases or 4.6% were forwarded to the court and 1,333 cases or 4.3% remained pending.

Administrative Law

Another method of diversion is the creation and establishment of "administrative bodies" for the settlement of disputes which call for expertise in their adjudication. A body or agency is "administrative" where its function is primarily regulatory and the settlement of disputes is a means to carry out its regulatory duty. On the other hand, a body or agency is "judicial" if its primary duty is to adjudicate and to decide upon legal rights between two parties affecting their property or liberty. Noteworthy examples of this mode of diversion of cases from the court system are supplied by legislations that have segregated for administrative jurisdiction those cases involving labor and employment, taxation, and organizational disputes affecting corporations.

For the dispensation of "labor justice", the Labor Code of the Philippines established the National Labor Relations Commission (NLRC). Primary jurisdiction, however, falls under the so-called "labor arbiters" who actually serve as trial judges and who man the lower echelons of the labor and industrial dispute settlement machinery of the government. The regional arbitration branches of each regional office of the Ministry of Labor are headed by "executive labor arbiters" who exercise supervision over all "labor arbiters" in their respective regional jurisdictions. Labor arbiters resolve disputes involving workers and employers referred to them for compulsory arbitration by the "regional directors" of the Ministry of Labor or by the Bureau of Labor Relations.

CONCLUSION

In summation, I humbly submit that there are certain basic court management principles that are self-evident:

(1) It is necessary that there be an information system and procedures appropriate and suited to the particular court system;

(2) The system of procedures for data gathering must work adequately and properly (and, if the budget allows it, may include the use of computer machines);

(3) The court system must deal only with disputes appropriate to that system and there should be recognition and identification of those cases which should be excepted and diverted from the court system;

(4) The cases that ultimately come before the court system must be disposed of justly and without unnecessary delay and expense;

(5) There should be, in addition to the procedures and means of expedition, alternative systems such as arbitration, summary informal procedures at lower court levels, conciliation and settlement procedures, and pre-trial processes;

(6) In the keeping of records and information materials, the systems of storage and retrieval should be efficient, whether availing of the computer method or the manual method;

(7) Although trials should be ideally continuous, the system must, in any event, be such as to ensure the expeditious and fair disposition of cases;

(8) Programs should be planned and adopted towards the assistance and training of those concerned with the operation of the court system;

(9) Sufficient incentives must be provided to those who operate the court system.

I offer these conclusions on the basis of our hopeful expectations that the honorable chief justices in conference assembled may arrive at a consensus upon the advisability of developing the management techniques of the courts of their respective countries, and the feasibility of identifying the problems which may be met and should be solved in the management of our justice systems here in Asia and the Pacific.

Conclusions common to the similarly situated systems or countries may possibly be drawn. Those whose court systems are alike in that they have the dual system with federal and state courts operating together may find several identical points of discussion. In like manner, those whose countries have adopted the unitary court system may discover several common denominators. There may be methodologies of one system that cannot be applied to the other court systems in our area. But what is important is that the management principles and techniques found successful in a particular country and the historical and institutional experiences of another can be discussed, shared and compared. It is hoped that this forum will be a rich source of exchange of technology in court management and administration.

In the end, if we cannot complete our inputs at this conference, we hope at least to be able to establish basic principles and adopt guidelines for meaningful discussions in future conferences in the pursuit of our common missions for the administration of justice and the preservation of our liberties in our part of the world.

FOOTNOTES:

[1] Dean Roscoe Pound

[2] Barrister K.M. Hassan, former Supreme Court Justice Syed Mohammed Hussein, Asia Foundation Assistant Representative Catharin E. Dalpino for Bangladesh, Prof. Valentine Winslow and Asia Foundation Program Officer Jennifer Weston for Singapore, Mr. Ronnie Khoo for Malaysia, Asia Foundation Representative Ben Kremenak for Korea, Asia Foundation Representative Frank E. Dines for Pakistan, Judge Pompetch Withchitcholchai for Thailand, Messrs. Paul M. Li and Larry L. Sipes for the United States, Senior Counsel James Chiew Siew Hua for Brunei, and Registrar L.M. Newell for Papua New Guinea. The writer of this paper supplied the answers to his own questions as regards the Philippines.

[3] Bangladesh.

[4] D.W. Nelson, p. 940, Judicial Administration and Administration of Justice.

[5] McConnell, p. 842, D.W. Nelson, op. cit.

[6] D.W. Nelson, pp. 891-892, op. cit.

[7] Presidential Decrees Nos. 829 and 842

"Presidential Decrees" (P.D.) are statutes issued by the President under the decree-making powers granted him by the Philippine Constitution with prescribed conditions and limitations.

[8] L.R. Scott, Responsibility for Preventing Delay, pp. 1-7, Newsletter of the Judicial Service of Sri Lanka, Vol. 4, No. 1, March 1985.

[9] Higginbotham, The Trial Backlog and Computer Analysis, 44 Federal Rules Decisions, 104-13 (1968).

[10] Justice D. Mahoney, "Delay. . . A Judge's Perspective, pp. 31-41, The Australian Law Journal, Volume 57.

[11] Report of Chief Justice Phil S. Gibson to the Governor of California.

[12] R.C. Puno, Back to Class for Appellate Magistrates, pp. 15-20, First Quarter 1975, Vol. 3, No. 1, and pp. 117-122; 105, Second Quarter, Vol. 3, No. 2, Journal of the Integrated Bar of the Philippines.

[13] D.W. Nelson, pp. 537-561, op. cit.

[14] D.W. Nelson, pp. 903-904, op. cit.

[15] John Frank, American Law – The Case for Radical Reform, p. 57, D.W. Nelson, op. cit.

[16] Sec. 1, Rule 20, Rules of Court of the Philippines.

[17] Comments, 71 Columb. L. Rev. 1059-67 (1971).

[18] Resolution of the Philippine Supreme Court Providing for the Rule on Summary Proceedings.

[19] Ibid.

[20] Ibid.