purposely at a time when some of our scholars load the bottom of their pages with names and titles of a great number of foreign authors and works, which they have never read and which their reader would in vain try to procure."

**Stefan E. Riesenfeld***

* Research Associate, University of California School of Jurisprudence.

---


In 1929 the National Commission on Law Observance and Enforcement appointed an advisory committee to investigate “the administration of law in the Federal courts, through a scientific analysis of case records, both civil and criminal, the general purpose of the study being to test the efficiency of the administration of justice in these courts.” After June 30, 1931, the American Law Institute, in co-operation with the Yale School of Law, assumed responsibility for the direction of the study.

In the progress report, published in 1931 and based on work begun in October, 1930, the advisory committee stated that the data being sought were in general of three kinds: (1) the statutes, laws and parties involved in each case coming before Federal courts; (2) the several procedural devices employed in the courts to expedite the trial of cases or otherwise dispose of them; and (3) the various dispositions made of the cases.

Since it was impracticable, because of financial limitations, to attempt a study of all Federal courts, only thirteen districts, out of eighty-four in the United States, representing urban, semi-urban and rural conditions, were selected. The study includes an analysis of 35,671 criminal cases in addition to 37,065 dealing with prohibition enforcement under the Eighteenth Amendment, and 9,852 civil cases. Of the civil cases 10 per cent entered the federal courts by the removal process and of these 92.6 per cent were diversity cases. The criminal cases, in general, cover a period for the fiscal years ending June 30, 1928, 1929, and 1930; while the civil cases cover a period for the fiscal year ending June 30, 1930. Eleven law schools, in addition to the Yale School of Law, assisted in the project. This plan made possible local supervision by a law school representative in each district studied.

The data secured under the first group, as pointed out in the progress report in the chapter on the aims and purposes of the study, were gathered to furnish statistics showing the distribution of the load of Federal court business by types of cases. This information, it was hoped, would throw light on the controversial issue as to whether the civil dockets of Federal courts were congested because of cases based on diversity of citizenship jurisdiction.

The second type of data was intended to aid in formulating a more simplified and uniform system of practice and to aid, when combined with the data of the first group, in understanding whether the problem of congestion in the Federal courts, if it exists, is due to faulty judicial administration rather than to the number of cases of a particu-

---


2 For references to the periodical literature on this controversy see: Limiting Jurisdiction of Federal Courts—Comment by Members of the University of Chicago Law Faculty, 31 Mich. L. Rev. 59 (1932); Yntema, Jurisdiction of the Federal Courts in Diverse Citizenship Cases, 19 A.B.A.J. 265 (1933).
lar class. The third type of data, according to the progress report of 1931, was being gathered in order to show the extent, if any, to which the uncontested case, both civil and criminal, is giving rise to summary judicial administration in Federal courts.

What answer does the final report give to the question set forth in the progress report as to the distribution of the load of Federal court business by types of cases and time consumption? The report states that liquor cases were the principal business of the Federal courts from 1920 to 1930. In support of this it appears that criminal cases occupied an average of 43.8 per cent of the total time of the federal courts and that of criminal cases, liquor cases constituted 80.1 per cent. Moreover, of the 9,852 civil cases examined 4,342 or 44.1 per cent were of a quasi-criminal nature and of these 4,342 quasi-criminal cases, involving the enforcement of criminal laws by injunction or seizure and destruction of equipment, 3,845 or 88.6 per cent involved liquor law enforcement.

As concerns the often assailed diversity of citizenship jurisdiction, the report states that about 60 per cent of the civil litigation in the federal courts consists of government cases, about 20 per cent deals with federal questions and about 20 per cent is based on diversity of citizenship. Fifty-six and two-tenths per cent of the total court time was spent on civil cases; of this 32.3 per cent was devoted to government civil cases, 11.3 per cent to cases involving federal questions and 10.3 per cent to diversity of citizenship cases. The remainder of the time devoted to civil cases was spent on naturalization and other cases, not included in the report.

The advisory committee does not set forth any general observation on the highly controversial issue of the burden of diversity of citizenship cases. But in the foreword to the study, written by Mr. George W. Wickersham who was chairman of the National Commission on Law Observance and Enforcement, it is said that the assertion that diversity cases constitute a large portion of the business of the Federal district courts is not supported by the facts. Mr. Wickersham states that with the repeal of the Eighteenth Amendment the Federal courts should not experience further difficulty, at least for the time being, in promptly dispatching their business with the present judicial force. But it seems that the increasing scope of Federal jurisdiction due to the social and economic problems of the day, and the enforcement of the existing liquor laws, may make this observation a questionable one.

In this connection reference should be made to certain observations on the problem of diversity of citizenship jurisdiction by Dean Charles E. Clark, the chairman of the committee in charge of the study. Dean Clark states that diversity cases furnish more litigated hearings and jury verdicts than other cases; that these cases in general are tort and contract claims and thus are not important from the federal standpoint; and that of the diversity cases removed from the state to the federal courts nearly 0 per cent were removed on the motion of foreign corporations. Dean Clark approves therefore, as a reasonable compromise, the denial to foreign corporations of the right to remove on the basis of diversity.3

What is the answer of the report to the possible need of a simplified system of Federal practice and to the extent of summary judicial administration in Federal courts? The general conclusion on criminal law enforcement in the federal courts is that "there is no particular necessity for any procedural reform" and that the use of "the guilty plea technique" is responsible for the prompt and efficient disposition of criminal cases. The use of open compromise of criminal cases is recommended as desirable.

In Federal civil law administration, especially in diversity of citizenship cases, it is suggested that the devices employed in the state courts for efficiently disposing of civil litigation are quite appropriate for the federal courts. The devices pointed out are the summary judgment in simple contract claims, discovery before trial, and efficient methods for securing the waiver of jury trials. It seems that the advisory committee on procedure in Federal courts, appointed by the United States Supreme Court on June 3, 1935, should consider this recommendation.

In 1929, it was stated that the general purpose of the study was to investigate the efficiency of the administration of justice in the Federal courts. While the study does not set forth a categorical answer to the issue of the efficiency of Federal courts as concerns civil cases, a general observation in the report on criminal cases challenges attention. It reads: "The federal criminal courts present a smoothly working system unburdened by the supposed technicalities of a criminal law, which reaches results quickly and efficiently." At a time when the need of reform in the administration of criminal law is a foregone title for bar association addresses or lengthy Sunday editorials such a conclusion should be a bit disturbing to those who have written or spoken unqualifiedly on the matter.

As a result of this general observation by the advisory committee, the reviewer, though not a teacher of criminal law or procedure, examined several case books on those subjects to ascertain to what extent the law student is being made aware, in a comparative manner, of Federal criminal procedure. It was his impression that the Federal system of administration of criminal law is not effectively presented in the books he examined.

It has been said that one of the seven sins of reviewers is the failure to express an opinion of the book reviewed. In view of the pioneer character of this experimental study of mass statistics of court business, personal reactions should be governed by the same spirit of caution and restraint exercised by the advisory committee in drawing conclusions from the data gathered from the thirteen of the eighty-four Federal district courts.

Whatever the merits of this study may be, insofar as it answers the problems set forth by the advisory committee in its initial report, problems materially affected by conditions arising since 1930, certainly the experience gained in such an extensive survey of court business, as a basis for future studies both state and federal, justifies the arduous labors of the committee and its assistants.

Even though this study was made before the repeal of the Eighteenth Amendment and before the enactment of the legislation of the present national administration, it possesses more than historical value. If the recommendation of the committee for a simple and inexpensive system of collecting judicial statistics be followed, this will permit not only a comparison of the operation of Federal courts in the future with those of 1930, but will also furnish data that can be published before changed conditions may render them of slight value in considering current problems. The system suggested for both civil and criminal cases in Federal courts consists merely in having the Federal court clerk file with the Department of Justice an initial and final report on each case. It seems patent that such data, the gathering of which is based on the experience of this study, would furnish Congress a sounder basis than it now has in determining whether changes in the existing Federal judicial system are necessary or even desirable.

Julian S. Waterman*

* Dean and Professor of Law, University of Arkansas Law School.