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Introduction

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I am honored to participate in this effort of the Brigham Young University Law Review to bring together scholarly work on various issues of judicial administration and reform, especially in light of the distinguished group of contributors whose ideas are collected here. The importance of such efforts to focus attention on our justice system cannot be underestimated.

Over the past decade, it has become increasingly clear that there is a genuine "crisis in our courts."[1] In recent years, a number of our institutions, including the state and federal judiciaries, the American Bar Association, and the Department of Justice, have devoted significant time and energy to address the problems confronting our justice system. While this attention has resulted in important improvements, in my opinion that crisis remains with us, resistent to quick-fix solutions.

Compounding this present crisis in our courts is the current national economic constriction. The budget imperatives now faced by federal, state, and local governments magnify the existing problems. Over the past decade, these levels of government, with the assistance of other private sector groups, have devoted substantial resources to studying our judicial institutions. These studies have led to experimentation with various institutional alternatives and to significant reform.

However, this steady progress is now in danger of retardation because of the decrease in available resources. For the near future, we must assume that such funds will no longer be available at accustomed levels. Thus, if we are to maintain our commitment to improving the justice system, we must be more thoughtful and more creative, using to better advantage those institutions and processes which are economically available.

Since the units of state and local government are the basic

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1. *See* Bell, *Improvements in the Administration of Justice*, 10 TEX. TECH. L. REV. 533 (1979); Bell, *Crisis in the Courts: Proposals for Change*, 31 VAND. L. REV. 3 (1978).

laboratories of democracy—places where creative experimentation in governing can take place—I am especially concerned that these governments will succumb to the current economic pressures and cease to be a creative force in this important area. Given that prospect, private institutions such as the Bar and law schools must use their local community ties to seize the initiative of such experimentation.

Another problem magnified by the present economic pressure relates to the current delays in many of our courts, both state and federal. In times of high interest rates and rapidly escalating opportunity costs, delays are increasingly punitive to litigants. Under a system of delay, the incentives are great to postpone an otherwise appropriate settlement in order to have the maximum use of money. When Sir Francis Bacon wrote that "fresh justice is the sweetest," he anticipated our present circumstances more than he could know.

On a different level, increasingly prohibitive costs are being imposed on participants in the judicial process. Because of the costs associated with litigation, fewer people can afford to resolve their disputes in the court system. The foreclosure of our justice system to many of our people because of its cost will surely corrode our democratic spirit. The rule of law is deeply threatened if important rights are lost solely because they are too expensive to protect.

These problems confront us now in imposing magnitude, and their solution is a serious business. Our society is impotent in its commitment to "justice for all" if it cannot devise systems to deliver that justice fairly to all its citizens. I do not believe we have failed, but without the creative efforts of men and women such as those who have contributed to this issue, we cannot be optimistic about the future.

It is appropriate that the first article in this issue, written by Judge Tamm and Justice Reardon, recognizes Chief Justice Burger's commendable and tireless efforts to focus attention on our judicial system's problems and to work constructively to improve that system. Not only has Chief Justice Burger sought to shed the light of public dialogue on problems of judicial administration; he has also been instrumental in a number of institutional initiatives in that area, such as the Federal Judicial Center, which has been a great source of creative thought and effort.

In the federal system, the Justice Department has been an

additional positive force for constructive change. Professor Dan Meador, one of the contributors to this issue and the first Assistant Attorney General for the Office for Improvements in the Administration of Justice, contributed to a number of legislative initiatives and creative experiments. One proposal that has been before the past several Congresses is to eliminate diversity jurisdiction, either in whole or in situations where the plaintiff is a resident of the forum state. The original justification for diversity jurisdiction has, for the most part, disappeared, and such legislation would return to the state courts cases which involve matters of state law. Another important item on the federal legislative agenda is reform of the federal criminal code, which the Justice Department has supported for the past five years.

An additional matter currently receiving significant attention is the general problem of discovery abuse and delay. Articles in this issue address many of these discovery issues, particularly in the context of the Report of the ABA's Special Committee for the Study of Discovery Abuse. For some time, we have been cognizant of the large discovery conflicts that exist in complex civil cases involving major discovery components. These complex cases have developed a discovery life of their own, frequently entangling the judicial system in protracted proceedings solely on that phase of litigation. The degree to which those cases occupy or preoccupy our judicial system is of increasing concern. Moreover, the disease of discovery delay has begun to infect cases of moderate size, imposing costs on both the court system as referee and upon the parties. The articles in this issue look to several solutions to these discovery problems.

The diversity of topics in this issue reflects the breadth of problems on our national agenda. However, a number of topics are necessarily left out of this collection. I would like to note two issues of particular concern. None of the articles discuss the need for, or current development of, alternative dispute resolution processes. Both the Justice Department and several state systems have experimented with such alternatives as Neighborhood Justice Centers and mandatory, nonbinding arbitration. Opportunity for bold creativity exists in this area, and I hope that future issues of this Review will consider the use of these processes.

Second, greater emphasis must be placed on the role of the legal profession itself in reducing costs and delays in our justice system. Such emphasis should begin in law school and continue

throughout practice and Bar activity. Studies involving an expansion of Rule 11-type procedures are just one facet of that effort. I am glad to see that our law schools, such as Brigham Young University, are adding their institutional support to the study and administration of justice. Justice Oliver Wendell Holmes observed: "[T]he business of a law school is not sufficiently described when you merely say that it is to teach law, or to make lawyers. It is to teach law in the grand manner, and to make great lawyers."[2] In the coming decades, "great lawyers" will not only be those who are technically proficient in their chosen specialities, but those who in addition devote their professional talents to improving the processes in which they participate. We cannot expect our new lawyers to have such perspective and institutional commitments unless the schools that train them embody such a commitment to the system of justice.

It is my hope that those involved with this issue and those in other law schools in our country will accept a challenge to devote their resources to these areas of concern. Our law schools, our other legal institutions, and the legal profession all share the hope expressed by Dean Roscoe Pound in his famous speech *The Causes of Popular Dissatisfaction with the Administration of Justice:* "[W]e may look forward to a near future when our courts will be swift and certain agents of justice, whose decisions will be acquiesced in and respected by all."[3]

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2. O. W. HOLMES, *The Use of Law Schools*, in SPEECHES 30 (1913).

3. Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 35 F.R.D. 273, 291 (1964) (address to the American Bar Association, Aug. 26, 1906, at St. Paul, Minnesota).