

Vanderbilt Law Review

Volume 24
Issue 6 *Issue 6 - Symposium on Legal
Paraprofessionals*

Article 4

11-1971

Parajudges and the Administration of Justice

Tom C. Clark

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [Administrative Law Commons](#), and the [Judges Commons](#)

Recommended Citation

Tom C. Clark, Parajudges and the Administration of Justice, 24 *Vanderbilt Law Review* 1167 (1971)
Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol24/iss6/4>

This Symposium is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Law Review by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

Parajudges and the Administration of Justice

*Tom C. Clark**

I. INTRODUCTION

The structures of at least two American professions have recently been altered to include an additional class of functionaries, the so-called "paraprofessionals." In the medical profession this has involved the delegation of numerous functions, traditionally performed by doctors, to persons with specialized skills, but without formal medical training. Likewise, a number of law offices have created positions that are neither "legal" in the usual sense of authorized law practice nor strictly clerical. These paralegal personnel assist lawyers in myriad ways, often performing research tasks once thought to be solely the lawyer's responsibility. In addition, persons with an interest in poverty law programs have advocated the use of paralegal personnel who could act as intermediaries between the lawyer in a neighborhood law office and his prospective clientele, thereby making the technical aspects of law practice intelligible to those in need of legal services.

The judicial profession also has undertaken some experiments in the use of paraprofessionals. This article describes some of these experiments and speculates about their potential value to the administration of justice in America. Before considering "parajudges" in some detail, however, two preliminary questions would appear to be in order. First, what has prompted the recent influx of "para's" in the professions? Secondly, do the same considerations involved in the utilization of paraprofessionals in doctors' and lawyers' offices, or in legal aid bureaus, apply to the judiciary? These questions give us some perspective on our central task, but the answers given here are, in fact, highly tentative and speculative.

One of the facets of our continuing effort to upgrade the quality of American life has been a desire to make the best professional services available to the largest number of people. Yet, this goal contains within it a potential self-contradiction: How can we ensure professionals the independence and time necessary for them to undertake the specialized and demanding task of developing fully their skills in today's complex technological society and, concurrently, increase their availability to the

* Retired Associate Justice, Supreme Court of the United States.

public? The tentative answer, in medicine and law, has been to create a body of persons who can free professionals for more demanding study or work and, at the same time, respond to the needs of those entitled to professional services. At its best, this system directly services those whose needs are general enough to be met by paraprofessionals and gives the client or patient with specialized problems access to professional help after a preliminary overview at the paraprofessional level. At its worst, the system may cause duplication of functions, delays, and some service inequities. Despite these potential problems, however, it seems to be at least a reasonable response to the dilemma inherent in our attempt to provide the best possible help to the greatest number of people who need it.

If the dual desire for professional competence and expanded professional services is a central reason for the increased use of paraprofessionals in lawyers' and doctors' offices, does the same rationale suggest a need for parajudicial personnel? It does appear that similar considerations are operative in this area. First, we desire a competent judiciary because an individual ought to receive as full, fair, and expert a consideration of his case as possible. Secondly, to ensure that an individual will not be denied his right to come into court to protect himself or to secure a right to which he is entitled, we must have as open-ended and accessible a system of administering justice as can be produced. Again, we are confronted with the problem of providing the independence and time that judges need to master the skills of their profession, without in some way limiting their availability to the public at large. If we do impose limits, one legitimately might ask whether we are doing justice to the full extent of our powers.

At this point, some special features of the judiciary must be given consideration. A striking feature of the judicial process in America, especially in recent years, is the paradoxical function played by time. On the one hand, judges and legal scholars remain convinced of the importance of careful, measured, and unhurried deliberation of judicial issues—doing justice often requires “thinking through” very complicated and troublesome problems.¹ At the other end of the system, however, time delays produce great hardships—potential incarceration of defendants, expense, frustration, and even a sense of futility among those

1. See, e.g., *New York Times Co. v. United States*, 403 U.S. 713, 752-53 (1971) (Harlan, J., dissenting): “These are difficult questions of fact, of law, and of judgment; the potential consequences of erroneous decisions are enormous. The time which has been available to us, to the lower courts, and to the parties has been wholly inadequate for giving these cases the kind of consideration they deserve” (footnotes omitted). *Id.* at 755.

involved in the litigation process. How can we reduce the time lag for some individuals involved in the American court system and yet ensure ample time for others? One answer, which is the same as that of the medical and legal professions, would be to create a class of persons with the dual functions of facilitating access to the system by those in need of its services and of giving the system's professionals opportunities to increase and fully exercise their skills. In a variety of ways, this solution is now being attempted in American courts.

The parajudge idea, like the paramedical and paralegal proposals, has met with opposition. Many persons have objected on the ground that since the judiciary's work has become increasingly complex and specialized, it is foolish to expect a nonprofessional with less training to handle it properly. On the other hand, many persons have raised more pragmatic objections based upon the argument that past parajudge systems have, regardless of the reasons, led to inadequate adjudication without reducing the strain on the judiciary. To evaluate these criticisms, we must first understand both the desperate condition of our judicial system today and the most recent plans and programs for using parajudges.

II. THE STATE OF THE JUDICIARY

In the last decade, 1960-1970, we permitted the backlog in our federal courts to reach crisis proportions. The number of civil and criminal cases filed increased 43 percent from 89,112 to 127,280.² Dispositions rose 28 percent from 91,693 to 117,254, but by the end of the period, the number of cases pending had grown from 68,942 to 114,117 for a 66 percent increase. In other words, "the hurrieder" the courts went, "the behinder" they got.

As these caseload burdens continue to grow, more judge-time must be set aside for court administration and other non-case-related activities. One study reports that district judges now spend more than one-fourth of their working hours on these matters.³ Of this time, two-thirds is spent on court administration,⁴ with activities ranging from managing the court's calendar to swearing in the clerks of the court.

These increasing demands for judge-time inevitably result in greater delay in the disposition of a case. In 1970 the mean interval between issue and trial of a civil case was twelve months,⁵ and almost nine percent of

2. SENATE COMM. ON THE JUDICIARY, THE FEDERAL JUDICIAL SYSTEM, S. REP. NO. 134, 92d Cong., 1st Sess. 29, table 16, at 37 (1971).

3. Statistical Reporting Service of the U.S. Dep't of Agriculture & the Dep't of Agriculture Graduate School, The 1969-70 Federal District Court Time Study, table IV (June 1971).

4. *Id.* table VI.

5. SENATE COMM. ON THE JUDICIARY, *supra* note 2, at 36.

the cases pending on June 30, 1970 had been in this category for three years or more.⁶ In metropolitan areas the delays are much worse than the average. In the Southern District of New York, as one of the worst examples, over twenty percent of the cases pending on June 30, 1970 were at least three years old.⁷

While criminal cases fared better, 30 percent of those pending on June 30, 1970 had occupied this status for one year or more.⁸ The following chart shows the trend over a recent three-year period:⁹

CRIMINAL CASES PENDING, BY LENGTH OF TIME, AS OF JUNE 30, 1968 TO 1970

Fiscal year June 30	Total	Under 3 months	3 to 6 months	6 to 12 months	1 to 2 years	2 years and over	Cases pending 1 year and over with fugitive defendants, etc.	Percent pending 1 year and over excluding cases with fugitive defendants
1968	14,763	5,298	3,028	2,408	2,055	1,974	1,495	19.1
1969	17,770	6,252	3,152	3,521	2,625	2,220	2,218	16.9
1970	20,910	7,008	4,001	3,722	3,595	2,584	3,215	16.8
Percent increase over 1968	41.6	32.3	32.1	54.6	74.9	30.9	112.0

As dismal as these statistics are, they do not fully convey the truly dire predicament of the federal trial judge. During my recent experience as a trial judge in the Northern District of California at San Francisco, I was overwhelmed by the caseload that these judges carry, the avalanche of state prisoner habeas corpus applications that they receive, and the truckload of motions, pretrial orders, and post-trial petitions that each case seems to produce. Furthermore, as if these burdens were not enough, the judges are confronted by picket lines, demonstrations, sing-ins, and watch-outs that would test the patience of Job.

The consequences of overloaded courts and trial delays are, of course, not visited solely upon the judges. An authority on court delays recently summarized the detrimental consequences for the parties in personal injury cases:

Initially, if a plaintiff is not satisfied with the settlement offered by the defending insurance company, he is given to understand—if not by the insurance company, then by his own lawyer—that if he refuses the offer he will have to wait years, a hardship few litigants are rich enough to bear. Delay, therefore, seriously weakens the bargaining power of the injured. The remote trial date forces him to accept less than his due.

6. *Id.* table XIII(A), at 31.

7. *Id.* table XIII(A), at 31, table XIV, at 36.

8. *Id.* at 38.

9. *Id.* table XVIII, at 38.

Furthermore, if the case finally comes to trial, witnesses—if they are still available—will be asked to testify about remote events, for example, exactly what happened one hazy evening at 5:35 at the corner of Wabash Avenue and Randolph Street, five long years ago. Thus, delay renders the careful rules of evidence and the precision of our laws of substantive law a mockery.

Finally, court delay generates a variety of secondary evils. Pressure on the litigants to settle often creates an atmosphere in which insisting on trial becomes almost an impropriety. Additionally, proposals emerge to reform procedures and substantive laws for the sole (and therefore insufficient) reason that they might reduce the workload of our courts. In the end, delay corrodes further a commodity that is always in precariously short supply: the citizen's respect for the courts.¹⁰

Analogous delays in criminal cases work special hardships on the accused. Despite efforts at bail reform, many federal prisoners remain in jail while they await trial. Even those released on bail are rendered virtually incapable of leading normal lives due to the uncertainty of the time remaining before trial; consequently, their mobility is strictly limited and job opportunities are scarce. When the case finally gets to court, the quest for justice for the individual defendant still feels the effect of the long delay. The best example of this is that witnesses are hard to find and, even if found, are somewhat ineffective because their memories may have blurred. It is no surprise, therefore, that the Supreme Court recently has given greater attention to the constitutional right to a speedy trial.¹¹

III. A SIMPLE SOLUTION: MORE JUDGE-TIME

Court delay has been with us too long, and it seems so futile to continue writing and talking about it.

It is hard to understand why the United States, with its great resources, continues to allow the ground floor of its judicial system to remain in such disrepair. We go to the moon and our managerial abilities are unrivalled; yet we are either unable or unwilling to secure for an injured plaintiff his right of a prompt trial.¹²

The problems of the trial courts present no major mysteries and no riddles without answers. The possible solutions are really quite direct, if not simple. Backlogs remain with us, threatening the collapse of our federal judicial system, only because we fail to take the obvious and necessary steps to eliminate them. In other words, we have been overwhelmed by the magnitude of the problem, but underwhelmed by the simplicity of the solution.

There are, obviously, only three ways to eliminate backlogs and, thus, keep our federal courts current. We can reduce the number of cases handled (restricting diversity jurisdiction is an ever-popular proposal),

10. Zeisel, *Courts for Methuselah*, 23 U. FLA. L. REV. 224 (1971).

11. *See, e.g.*, *Dickey v. Florida*, 398 U.S. 30 (1970); *Smith v. Hooey*, 393 U.S. 374 (1969).

12. Zeisel, *supra* note 10, at 224.

reduce the time required to try a case (although actual trial time constitutes only a small portion of the judge's day), or increase the amount of judge-time available for trials.¹³ Although the remedy suggested here—increased use of parajudicial personnel—will have a beneficial effect in all of these areas, it is primarily a means to increase judge-time.

The appointment of more district judges is the simplest and sometimes most appealing method to create additional judge-time. Yet, surprisingly, this method is not particularly effective. From 1960 to 1970 the number of federal judgeships grew 69 percent from 226 to 382. In the same period, however, dispositions increased only 28 percent. Although the actual judge-time spent on case-related activities would offer a better basis for analysis, it is apparent, even from this somewhat misleading numerical comparison, that the addition of more judgeships does create a proportional increase in administrative worries.

The creation of more judgeships is also a time-consuming and often haphazard affair. It usually takes from two to four years to traverse from the first recommendation to the actual filling of the position and the hearing of cases by the appointee. In that period, the area of greatest need may have shifted. Furthermore, the costs are great—approximately 250,000 dollars to make a single judgeship operational and 200,000 dollars per year thereafter for continuing expenses.¹⁴ Thus the ineffectiveness, delay, and expense inherent in attempting to solve the judiciary's problems solely by appointing more judges indicate that this approach is no panacea.¹⁵

Rather than more judges, I submit that we need to change our attitude about the functions that require a judge's attention. "There was a time when we could perhaps afford the luxury of having full-time judges deal with every minute detail of a judicial proceeding; but that moment is gone. We are in a crisis. We have more litigation, the cases are more complex, and the load continues to grow."¹⁶

IV. THE PARAJUDGE CONCEPT

I believe that the full employment of parajudicial personnel is the most effective means to increase usable judge-time. There is nothing new in the parajudge concept; justices of the peace have been sitting in this

13. *Id.* at 226.

14. Kaufman, *The Judicial Crisis, Court Delay and the Para-Judge*, 54 JUDICATURE 145 (1970).

15. "Simply creating more judgeships to cope with increased court business is a long, expensive, frustrating, and often inefficient procedure for reducing court congestion." *Id.* at 147.

16. *Id.* at 148.

country since colonial days and, in fact, played a significant role in early American history.¹⁷ Until quite recently, however, parajudges generally have been considered a part of the problem rather than a means to the solution of shortcomings in judicial administration.

A. *The English Model*

Lay judges have been a part of the English judicial system for six centuries.¹⁸ Although the importance of these justices of the peace has varied substantially over this period, they have consistently played a much larger role than their American counterparts. Moreover, while the American justice of the peace has been on the decline during the last few decades in the face of growing criticism, the English justice has taken on even greater responsibilities.

The magistrate courts, staffed almost exclusively by part-time lay justices, are the foundation of the English criminal court system. There are 16,000 magistrates who serve on England's 1,000 magistrate courts, and fewer than 50 receive any compensation for their work.¹⁹ Magistrates are appointed by the Queen on the advice of the Lord Chancellor, and they serve until age 75.²⁰ No legal training is required, nor is their knowledge of the law—real or potential—a factor in selection.²¹ Local courts may offer some training, but no systematic program has developed.

An unpaid magistrate never determines a case sitting alone. Instead, cases are heard, without a jury, before panels of between two and seven magistrates. These panels are rotated so that a magistrate rarely sits more than four times a month. Each court also has a paid clerk, who is required to be a solicitor or barrister of five years' standing. In addition to performing the administrative work of the court, the clerk acts as legal adviser to the magistrates. Virtually every criminal case begins in a magistrate court, and 97 percent are actually tried there. While the remaining three percent—representing the most serious offenses—are tried in higher courts, even these begin with the magistrates' preliminary inquiries into the evidence.²²

It is quite clear that the British have a somewhat different attitude toward their judicial machinery than do Americans. For one thing, the

17. Ireland, *The Place of the Justice of the Peace in the Legislature and Party System of Kentucky, 1792-1850*, 13 AM. J. LEGAL HIST. 202 (1969).

18. D. KARLAN, *ANGLO-AMERICAN CRIMINAL JUSTICE* 57 (1967).

19. *Id.* at 50.

20. *Id.* at 61.

21. *Id.* at 62.

22. *Id.* at 50.

British appreciate an amateur far more than Americans. Moreover, they view the magistrate as an embodiment of the community's common sense and attach only secondary importance to his knowledge of the law. On the other hand, I believe that Americans would much prefer to have full-time professionals, who are familiar with all aspects of the law, preside at every level of the judiciary. Additionally, the American jury tradition appears to be more deeply ingrained than the English. As the Supreme Court recently emphasized in *Duncan v. Louisiana*²³ and *Bloom v. Illinois*,²⁴ the right to a jury trial—at least in criminal cases—is fundamental to our scheme of justice. In England, however, when given the opportunity to have trial by jury, most defendants choose trial by magistrate instead. Part of this willingness to trust the magistrate is undoubtedly due to the British philosophy that the magistrate represents the views of the community more than the dictates of the law; under this rationale, the jury is almost superfluous.

Despite these obvious differences in attitude, the English experience with extensive use of lay judges suggests a few things about our own judicial system. First, the respect that lay judges enjoy in England indicates that we have overstated the need for full-time, professional judges, including their attendant trappings, to handle all aspects of every case. For our federal judiciary, the English success means that pretrial procedures and most misdemeanor trials can be handled adequately by parajudges without exhausting the time or demeaning the dignity of the district court. Secondly, the English system seems to tell us that we have overemphasized the importance of having a judge, knowledgeable in the law, hear every matter. The obverse of this lesson is that we have understated the advantages of allowing representatives of the nonlegal community to determine certain types of cases. While I do not think that state justices of the peace and federal magistrates should generally be selected from those untrained in the law, nevertheless, the English experience does suggest that trials of misdemeanors and other relatively small matters do not require the district judge's wide experience in all areas of the law. Additionally, it indicates that particular matters—such as juvenile cases—might be better handled by judges not trained in the law. As a result of its use of lay justices, England has largely been spared the problems of American courts; delays are quite short, pretrial incarceration is kept to a minimum, and justice is swift. This success points up our failure to fully appreciate the advantages of relying on a vast system of parajudges to handle almost all minor cases.

23. 391 U.S. 145 (1968).

24. 391 U.S. 194 (1968).

B. *The Commissioner System*

Americans borrowed from the English example when first establishing justices of the peace and federal commissioners. Unfortunately, we copied the worst aspects of the English system and, as a result, these American parajudges have never enjoyed the respect or carried the workload of the English justices.

Before enactment of the Federal Magistrates Act²⁵ in 1968, the commissioners were the federal court's equivalent to justices of the peace. They could issue search and arrest warrants, advise a prisoner of his rights and inform him of the charges against him, appoint counsel and set bail, conduct preliminary hearings, and conduct the trial of petty offenses committed within federal enclaves. By 1966, over 700 commissioners had been appointed by the district courts,²⁶ but, although many served admirably, the commissioner system as a whole was plagued by inherent shortcomings.

One of the most significant weaknesses was the archaic method of remuneration. Commissioners, like most justices of the peace, were compensated by a fee system that raised serious constitutional questions. On practical as well as constitutional grounds, I could not approve of any system that, like the old commissioner system, gives the judge a pecuniary stake in the outcome of the case before him.

Since each district court chose the number of commissioners to be appointed, the workload was unevenly distributed. For some commissioners, the position was little more than a title. Others, however, worked full-time and were grossly underpaid. As a result, it was difficult to attract qualified men to serve in the more important commissioner positions. The existing statutes did not require that commissioners be lawyers, and about one-third of them were not trained in the law.²⁷ In many of their functions, a lawyer's knowledge was not necessary, but the Supreme Court's decisions in *Spinelli v. United States*,²⁸ and *Miranda v. Arizona*,²⁹ required them to apply sophisticated rules of constitutional law, which even properly trained lawyers and judges find difficult to interpret. The commissioner's lack of training most commonly re-

25. 28 U.S.C. §§ 631-39 (Supp. V, 1970).

26. SENATE COMM. ON THE JUDICIARY, THE FEDERAL MAGISTRATES ACT, S. REP. NO. 371, 90th Cong., 1st Sess. 10 (1967).

27. *Id.*

28. 393 U.S. 410 (1969).

29. 384 U.S. 436 (1966).

sulted in the rubber-stamping of police actions, without an earnest inquiry into underlying circumstances such as probable cause. This indiscriminate authorization planted the seed that upset numerous convictions, which, in many cases, could have been obtained if police conduct had been properly supervised.

As inadequate as the system may have been, commissioners were the single factor that prevented district courts from being completely inundated by criminal trials. There was a tendency, therefore, to downgrade certain offenses from felony or misdemeanor to petty offense status so that they could be tried before the commissioner. The downgrading of offenses may have been a worthwhile measure because our present laws are overcriminalized and because when minor offenses are prosecuted in our federal district courts, they lend an unfortunate police court atmosphere to these tribunals. On the other hand, it should not be necessary for Congress or the individual prosecutor to alter the nature of criminal charges merely to accommodate the deficiencies in our system of judicial administration.

In recognition of these shortcomings in the commissioner and justice of the peace systems, two types of reform have been adopted. Sixteen states have abolished justices of the peace.³⁰ Other states have substantially downgraded the system. In Texas, for example, every case tried before a justice of the peace that involves more than twenty dollars can be retried *de novo* in the county court.³¹ This wrinkle, of course, defeats any benefit in the area of increased judge-time. A third approach, embodied in the Federal Magistrates Act,³² is to upgrade the quality and the responsibilities of the parajudge.

C. *The Federal Magistrates Act*

The first step in reforming the federal parajudge system was to upgrade the parajudges themselves. Magistrates are now required to be lawyers in good standing in the state in which they sit. They are selected by the judges in their district, but two restraints have been established to avoid making the position a political or familial payoff. First, the number of magistrates in a district is determined by the Judicial Conference on the basis of a national study. Secondly, no relative of a sitting judge is permitted to be a magistrate. Once a magistrate is appointed, he has the opportunity to obtain additional training in special programs

30. INSTITUTE OF JUDICIAL ADMINISTRATION, *THE JUSTICES OF THE PEACE TODAY I* (1965).

31. Guittard, *Court Reform, Texas Style*, 21 SW. L.J. 451, 480 (1967).

32. 28 U.S.C. §§ 631-39 (Supp. V, 1970).

sponsored by the Judicial Conference, which, to date, have been both highly successful and well attended. To make the position more attractive as well as to increase its judicial stature, the magistrate's term of office has been lengthened from four to eight years and the earlier fee system of compensation has been abolished. Moreover, while the busiest commissioner received only 10,500 dollars, the present Act establishes a salary of 22,500 dollars per annum for full-time magistrates. Full-time magistrates are preferred wherever possible, but the Act retains part-time magistrates to perform the old commissioners' functions in locations that would not justify a full-time position.

The most significant change made by the Act is in the magistrate's functions. In addition to performing the tasks of commissioners—issuing warrants, presiding over preliminary hearings, setting bail, etc.—the magistrate, with the authorization of the district court, may assist in more significant areas. A magistrate may, for example, serve as a special master in civil cases, and may conduct pretrial discovery in both civil and criminal cases. The latter function is of particular importance in criminal cases for two reasons. First, pretrial discovery restricts the prosecution's use of "surprise" witnesses, evidence, or contentions. Secondly, it gives the defense a chance to determine the strength of the prosecution's case, thereby encouraging guilty pleas in appropriate cases.

The district courts have been empowered to assign the magistrates two other functions that are the subject of considerable controversy. A magistrate may review petitions for post-conviction relief and make recommendations to the district judge. Although this procedure has been criticized as an unconstitutional delegation of the judge's responsibility, it is rooted in practicality. Most judges have their law clerks perform this function anyway, and the greater experience of the magistrate will improve the quality of this review. In addition, the district judge is not totally removed by this delegation because he still maintains the final decision on these matters. Magistrates also have been authorized to conduct trials for most minor offenses, which are defined as those punishable by imprisonment for one year or less and/or a fine of up to 1,000 dollars. To avoid the constitutional problem of having non-article III judges try criminal cases, the Act includes several special features. First, the magistrate is made an officer of the district court and may try a case only after special designation by the court. Secondly, the defendant must waive his right to a jury trial and both sides must consent to trial before the magistrate. Thirdly, a conviction may be appealed to the district court. Since the broadened range of potential duties is somewhat experimental, the Act merely sets forth what authority the magistrates *may*

exercise; the actual assignment of duties is left to the discretion of each district court. This arrangement has permitted gradual assignment of responsibilities in areas of greatest need and ease of application. The approach, so far, seems to be slowly yielding favorable results.

It is still too soon to evaluate completely the success of the magistrate system because it did not become completely operational until June 1970. Most of the people filling the 546 positions—83 full-time³³—created by the Act have been on the job for too short a time to be assigned all of the possible functions. In five districts which began pilot programs involving 28 magistrates, however, the magistrates have now been assigned virtually all of their enumerated tasks. The preliminary results from two of these programs have been particularly interesting. The Kansas district has experimented with the handling of a tremendous volume of prisoner petitions, mostly from the Leavenworth Prison. For these petitions, the magistrate makes an initial determination of sufficiency, drafts a proposed show-cause order when necessary, conducts evidentiary hearings, and drafts a proposed memorandum disposing of the case. Additionally, these magistrates have greatly assisted the district court by conducting preliminary examinations in criminal cases and pretrial discovery hearings in civil cases. As in most of the other pilot districts, results from the pretrial discovery proceedings in criminal cases have been the most spectacular accomplishment of the system.³⁴ The pilot program in the Southern District of California also has been quite successful. This district has one of the heaviest caseloads in the country due to the large number of criminal cases involving border-crossing violations. Almost immediately, magistrates were assigned trial duties for minor offenses. The volume of this work has been so heavy that the magistrates have not had time to conduct pretrial proceedings, and more magistrates have been requested.³⁵

It remains to be seen whether all the district courts will utilize the magistrate system to its fullest extent. In some districts, the judges have been reluctant to extend the magistrate's functions much beyond those of a commissioner, apparently feeling that every part of the judicial function requires the personal attention of the district judge. Hopefully, the success of the program in other districts will convince everyone that

33. Letter from Joseph F. Spaniol, Jr. to Justice Tom C. Clark, June 24, 1971, on file with the *Vanderbilt Law Review*.

34. See Soule, *The Federal Magistrate Act in Kansas*, 10 WASHBURN L.J. 45 (1970); Committee to Implement the Federal Magistrates Act, Report (Mar. 1970) (report to the Chief Justice, Chairman and Members of the Judicial Conference of the United States).

35. Committee to Implement the Federal Magistrates Act, *supra* note 36.

effective administration of justice is best achieved by full use of the magistrate.

V. CONCLUSION

Every sick person wants a full-time, licensed doctor at his bedside, even if it is merely to give a simple prescription such as, "take two aspirin and drink lots of fluids." We have learned that this type of service is a luxury which neither the individual nor the doctor can afford. For some reason, we have been less willing to recognize that similar demands for full-time judges are also unaffordable and that our judicial machinery is paying a high price for this luxury in delay, backlogs, and loss of the public's respect.

Many current problems of the judiciary can be solved if we are willing to take the necessary steps. For example, I believe that the magistrate system, both as enacted and as implemented, is not only a promising program for the federal courts, but also an excellent model for the states. I also would urge the upgrading of justices of the peace by making the position more attractive and the work more helpful to the state judiciary. Furthermore, other new parajudge programs should be adopted, particularly by the states, to supplement present judicial personnel and the proposed state magistrates. Experiments with lay judges in juvenile and family courts would seem desirable and the use of masters and referees in civil cases also would lessen the burden on the trial courts and perhaps increase the expertise with which complex cases are tried. Greater use of parajudges for pretrial discovery hearings in criminal cases also will aid the system by speeding up the judicial process, by discouraging prosecution surprise, and by encouraging proper guilty pleas. As a complement to federal and state parajudicial personnel, I believe that the courts should make greater use of trained laymen to handle purely administrative matters that do not require the personal attention of a judge or magistrate. A court administrator and his staff could relieve the judge not only of many routine clerical chores, but also of such functions as making up the calendar, calling the docket, jury panel selection, and adjournments. This additional reform would further increase a judge's effectiveness by relieving him of a significant portion of his present workload.³⁶ Although some of these programs will no doubt prove unsuccessful, I firmly believe that a fuller use of parajudges and lay administrative personnel will result in a marked improvement in the quality of justice meted out by our courts.

36. See Statistical Reporting Service of the U.S. Dep't of Agriculture & the Dep't of Agriculture Graduate School, *supra* note 3, at 23.

