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*Address before the annual luncheon meeting of The
St. Thomas More Society, May 23, 1957 in Washington, D.C.*

THOMAS MORE — SAINT AND JUDGE

WILLIAM J. BRENNAN, JR.*

ST. THOMAS MORE, one of history's noblest symbols of purest integrity, in his own final words, "The king's good servant but God's first," chose God, and with Him, death, when forced to choose between conscience and life. For this St. Thomas is revered, not by lawyers alone, but by lawyers particularly, because integrity is the indispensable absolute in all who follow our profession.

But lawyers also find reasons to acclaim this exemplar of our craft for the towering intellect, devotion to learning, and steadfast pursuit of justice which richly earned him his awesome reputation as one of the truly great lawyers and judges.

I would speak briefly today of a talent which, while not unnoticed, yet has not always received the attention rightly given to other qualities possessed in such abundance by this great lawyer. I refer to St. Thomas More, the administrative judge. For among the many valuable lessons lawyers may learn from his life, for lawyers of this day none is more valuable than that to be learned from a study of the practical devices he employed to realize his deep felt conviction that the spirit of justice requires a prompt hearing and settlement of suits; otherwise injustice is perpetuated and aggravated.

In America today a ferment is brewing in every jurisdiction to eliminate the causes for the law's delays. A strong boost was given that effort only a year ago when the attorney general of the United States convened his now famous Washington conference to organize a concerted attack upon the problem. The permanent committee which was the result of that conference, under the chairmanship of the deputy attorney general, has already made a vital contribution in its formulation of the standards of any judicial system which boasts it is a modern streamlined system for dispensing prompt, efficient and fair justice.

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All of us know that the only real answer to chronic calendar congestion and many other problems of judicial administration is the revamping of the particular judicial system into an integrated structure of a few courts, administered by an executive head, under rules of practice, procedure and administration formulated by the judges and not by the legislature. Our modern complex economy and society not only need not but cannot longer tolerate systems of autonomous courts free from any sort of control within or without; the judges concerned with their own court only and brooking no interference from judges of other courts, or, indeed from members of their own courts.

Court business is big business, and America's position as the world's greatest productive economy owes much to the techniques that America has developed for running big business. In any large institution, whether court, government agency, or business firm, someone must run the show on the administrative side. Someone must be boss. The ablest students of the problems of judicial administration are in agreement that, along with an integrated system of the fewest possible courts, the most important requirement for increased efficiency along business lines is a centralized supervision under a single head, necessarily the chief judge of the top court. The system must have an administrative director of the courts, to know at all times what business there is, and to keep his pulse on the peaks and valleys of the calendars throughout the jurisdiction. The chief judge must have the power to assign judges whose calendars are current to locations where calendars are congested, and must have other powers sufficient to enable him most effectively to employ the judicial manpower of the system. We are on the threshold of the day when the ad-

ministrative judge — the judge with executive capacity to run a business as large, or larger in many instances, as the business of a great corporation — will be respected as much for his accomplishments in bettering justice through good administration as he will for his judicial accomplishments in the field of substantive law.

Sir Thomas More was not confronted with the complexities of the court structure of the modern day, but the techniques he used to make current the calendars of his court do not differ from those which feature today's programs for administrative reforms. When he took office, said his great-grandson, Cresacre More, in his fine life of the saint, "He found the court of chancery pestered and clogged with many and tedious causes some having been there almost twenty years." But he had no inventory of the causes and immediately did what every modern student recommends as the first step towards reform: he appointed the first administrative director to find out how many cases there were, where they were pending, how long they had been pending. Says Cresacre More,

Wherefore to prevent the like [that is, delay], which was a great misery for poor suitors, first he caused Mr. Crook, chief of the six clerks, to make a docket containing the whole number of all injunctions as either in his time had already past or at that time depended in any of the king's courts at Westminster.

So there you have it — Mr. Crook was the first administrative director of the courts.

Then, knowing how often it is true that frivolous causes clutter the docket, the chancellor

took order with all the attorneys of his court that there should no subpoena go out whereof in general he should not have no-

tice of the matter, with one of their hands unto the bill; and if it did bear a sufficient cause of complaint, then would he set his hand to it, to have it go forward. If not, he would utterly quash it, and deny the subpoena.

Now we hear much troubled comment among lawyers and judges who oppose reforms that administrative supervision of the judges' work may be a long step toward dangerous intrusion of outside pressure into that first essential of judging, independence to render decisions as conscience and disinterested analysis ordain. The fallacy of that idea has been fully exposed by the overwhelming evidence that has not happened under systems providing such supervision. The plain fact is that judges should be no more free of supervision to see that they promptly dispatch their work than are all personnel, high and low, of any business organization. We must frankly admit that some judges do not always spend full time on the bench and some do go on overlong vacations. And it cannot be denied that at least a few judges are lazy. Why should not the top court be empowered to adopt and enforce administrative rules which prescribe fixed court hours and court days throughout the state and require the judges to file weekly reports of how they spend their time on the bench on each court day. Some judges are more effective in their work than others; some give more satisfaction to the bar and the public than others; some are more diligent, more conscientious, more devoted to their work, than others. These individual differences cannot be changed administratively, but there should and can be equality in the number of hours each judge of the same court spends in the courtroom. These simple administrative procedures operate to assure that there will be no inequalities in the burden of judicial work

among the judges. And that weekly report may also be a device to minimize any reason for complaint of delays by judges in deciding upon matters to be decided by them and not by a jury. The report can make provision that the judge list thereon every reserved decision, and list it again on every subsequent weekly report until the matter is decided. Where the same matter appears on a series of reports and it appears that the decision may be reserved an undue length of time, the administrative director can usually accomplish the disposition of the matter merely by an inquiry of the judge for a reason for the delay. I do not speak idly in this connection, because the procedure I have described is followed in New Jersey with productive results hailed alike by the bar and the litigants.

But St. Thomas More anticipated New Jersey by four hundred years. He was troubled, he told his son-in-law, William Roper, about the practice of the judges of the king's courts of refusing to discharge their responsibilities, "for they think that they may by a verdict of a jury cast off all scruple from themselves upon the poor jury, which they account their defense. Wherefore I am constrained to abide the adventure of their blame." Being the good executive that he was, he did what I was to see done many times in my own state — he brought the judges together to bring an end to the abuse. Listen to Cresacre More:

. . . Bidding all the judges to dinner, he in the presence of them all showed sufficient reason why he had made so many injunctions that they all confessed that they themselves in the like case would have done no less. Then he promised them besides, that if they themselves, to whom the reformation of the rigor of the law appertained, would upon reasonable considerations in their own discretion, as he thought they were in con-

science bound, mitigate and reform the rigor of the law, there should then from him no injunctions be granted. If they refused to condescend, then, said he, for as much as yourselves, my lords, drive me to this necessity you cannot hereafter blame me if I seek to relieve the poor people's injury.

That, of course, was the technique of every adroit executive — to point out the error and make clear that a continuance of bad habits would result in the ignominy of having the boss do their job for them. I was to see that technique adroitly used in my own state, with handsome dividends in improved administration.

But Sir Thomas also knew the service to more efficient administration of the example of good work habits shown by the boss. What he did is reminiscent of the hard and fast rule followed by the New Jersey Supreme Court of scheduling enough cases for argument to keep the court occupied on the bench during every minute of the work day from 10 a.m. to 4 p.m. "For which purpose," Cresacre More tells us, "he used to sit in his open hall, so that if any person whatsoever had any suit unto him he might the more boldly come unto him and there open to him his complaints." Indeed, Saint Thomas did better than we, for also "he took great pains to hear causes at home as is said, arbitrating matters for both party's good."

And in consequence of these really simple, yet so potent, devices for furthering justice through proper administration, Cresacre More informs us

shortly began everyone to find a great alteration between the intolerable pride of the precedent Chancellor Wolsey, who would scarce look or speak to any, and into whose presence none could be admitted unless his fingers were tipped with gold. On the other side this chancellor, the poorer and the meaner the suppliant was the more affably

he would speak unto, the more attentively he would hearken to his cause, and with speedy trial dispatch him.

I have considerable pride in the accomplishments in New Jersey from the use of like techniques. In September, 1948, when we started operations under our new court system, trial lists were two or more years in arrears, and some cases actually were pending up to eight years. Within three years, by 1951, all arrears were cleared up and current cases were being tried at least within nine months and more often within six months after the complaint was filed, and that status of the calendar has been maintained. But again St. Thomas More improved upon our performance. We are told

Sir Thomas had behaved himself in his office of the chancellorship for the space of two years and a half so wisely that none could mend his doings, so uprightly that none could take exception against him or his just proceedings, and so dexterously that never any man did before or since that which he did. He had taken such order for the dispatching of all men's causes that on a time sitting as judge there, and having finished one cause he called for the next to be heard, whereto was answered that there was not one cause more depending.

And that feat gave rise to the jingle that has come down to us:

When More some time chancellor had
been

No more suits did remain.

The like will never more be seen

Till More be there again.

Mr. James L. Kennedy, who edited and modernized Cresacre More's fine work, has truly said, "If one should wish to be a just judge, a wise statesman, an honest, able lawyer, or a plain good citizen, let him give his days and nights to the study of Thomas

More." For me, an enthusiast for the cause of administrative reforms, it is a happy privilege to be able to bring so great an authority to the support of the cause. For, as he so conclusively demonstrated, our profession dares never to forget that integrity and efficiency of the judicial process is the first essential in democratic society. The confidence of the people in the administration of justice is a prime requisite for free representative government. The public entrusts the legal profession with the sacred mission of dealing with the vital affairs that affect the whole pattern of human relations and certainly has a stake entitling it to demand not only that judges dispense justice impartially and fairly but also that judicial business shall be handled and disposed of by a modernized process which assures a minimum of friction and waste, for such a process also plays a large role in the achievement of impartial and fair justice for all litigants. There is actually no difference between the business of judicial administration and the business of running an industrial or commercial enterprise in the sense that the efficient and businesslike conduct of each means better service for the public. An inefficient and wasteful judicial administra-

tion actually can and often does result in a denial of justice, however earnestly an honest and upright judge may strive to prevent that lamentable result.

I think it is not difficult to account for today's heightened interest on the part of the general public throughout our nation and, indeed, the free world in the improvement of the process for administering justice. That growing interest is in large measure a product of the tumultuous times in which we live. For these are not only times which have produced a monstrous threat to all freedom, but, by the very reason of that threat, are times which have induced in free peoples everywhere an ever intensifying critical self-examination of the institutions upon which their freedoms depend — an insistence upon exposure of the imperfections of those institutions, a peremptory demand upon those who are entrusted with those institutions to improve and strengthen them the more surely to withstand the onslaught bent upon their destruction. It is but natural then that the judicial process should come under examination, for, even as in St. Thomas More's day, so also is it true today that "Justice, sirs, is the chiefest interest of man on earth."

CATHOLIC ATTITUDE ON IMMIGRATION (Continued)

wounds; but rent and bleeding it still cries out for the rights of all the children of men. Persecuted and reviled itself, it gathers its strength to speak for all those persecuted, reviled and despoiled. Its soul is indeed composed of all men of good will, and it is concerned with the welfare of all. When it teaches the rights of man, in relation now to migration — its teachings protect all men

whose rights have been violated and forgotten. It urges the peoples of the countries of the free world to rescue those who live among us in the bondage of hopelessness, of want and of idleness. It proclaims for each one of us our God-given right to access to the means of sustenance and human development for ourselves and our families. It begs each one of us to maintain a Christian attitude on migration, to act upon it ourselves and to spread this attitude far and wide.