

New Jersey's Supreme Court in conference. From left: Justices Heher, Burling, Oliphant, Chief Justice Vanderbilt, Brennan, Jacobs and Wachenfeld.

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New Jersey Puts its Judges to Work

By *ROGER BUTTERFIELD*

Too often a damage claim costs more to collect than it's worth—but this dilemma is being banished from New Jersey. There, Chief Justice Vanderbilt has shaken up the courts, made sleepy judges wake up and hustle.

[I]NE day when the Hon. Arthur T. Vanderbilt was still a practicing lawyer he emerged from his home in suburban Short Hills, New Jersey, at 7:05 A.M. to find a valued client of his fidgeting beside the front door.

"I'd like to drive you to the station," explained the client. "I have something I want to ask you about right away."

"(Sure, George," said Vanderbilt, climbing into the car. "What's on your mind?"

"I'm understanding you, but the client, that you are going to become chief justice of the new state supreme court next September?"

"That's what the governor tells me," replied Vanderbilt.

"What are they going to pay you?"

"The salary is twenty-five thousand a year, and my first appointment is for seven years," said Vanderbilt. "Why?"

"I'll write you a check for two hundred and fifty thousand today," blurted the client, "if you'll stay in practice and continue to be my lawyer!"

The offer was rejected, to the lasting benefit of 150,000,000 Americans. New Jersey's Chief Justice Vanderbilt today is something more than an eminent ex-president of the American Bar Association or the top judicial officer of a busy industrial state. He is the symbol and spearhead of a movement which is rescuing justice from the doldrums all over the country. Americans who live in crowded areas have been hearing for years that their courts were clogged with unfinished cases, burdened by antique methods of procedure and administered with such thorough inefficiency that any private business which tried to run its affairs in the same way would soon go bankrupt.

The result has been an increasing disrespect for law and a feeling that justice is only for those who have plenty of money and time to wait for it.

What has happened in New Jersey during the last four years is proof that this unhealthy trend can be completely reversed, without adding any new courts or judges, and with no large added expense to the taxpayers.

To state the facts bluntly, New Jersey's 110 higher-ranking judges did a little better than twice as much work as 132 judges did in 1947. They reduced the length of time which it took them to dispose of an ordinary lawsuit from around a year to less than five months. They decided all the appeals that came to them in an average of twenty-two days each instead of 109. During the same period they disposed of some 6600 old cases which had piled up under the previous regime, and brought their calendars as nearly up to date as court calendars can possibly be. And, mostly, they were the same judges.

Small wonder that the New Jersey system is now being studied as the basis for court reforms in Michigan, Illinois, Ohio, Connecticut and a dozen other places. A team of experts from postwar Japan made a pilgrimage to Trenton and carried back ideas which were incorporated in their new national courts. Chief Justice Vanderbilt himself, despite a heavy load of duties at home, has made nearly 100 out-of-state trips in the past four years to preach the gospel of judicial efficiency from Maine to California.

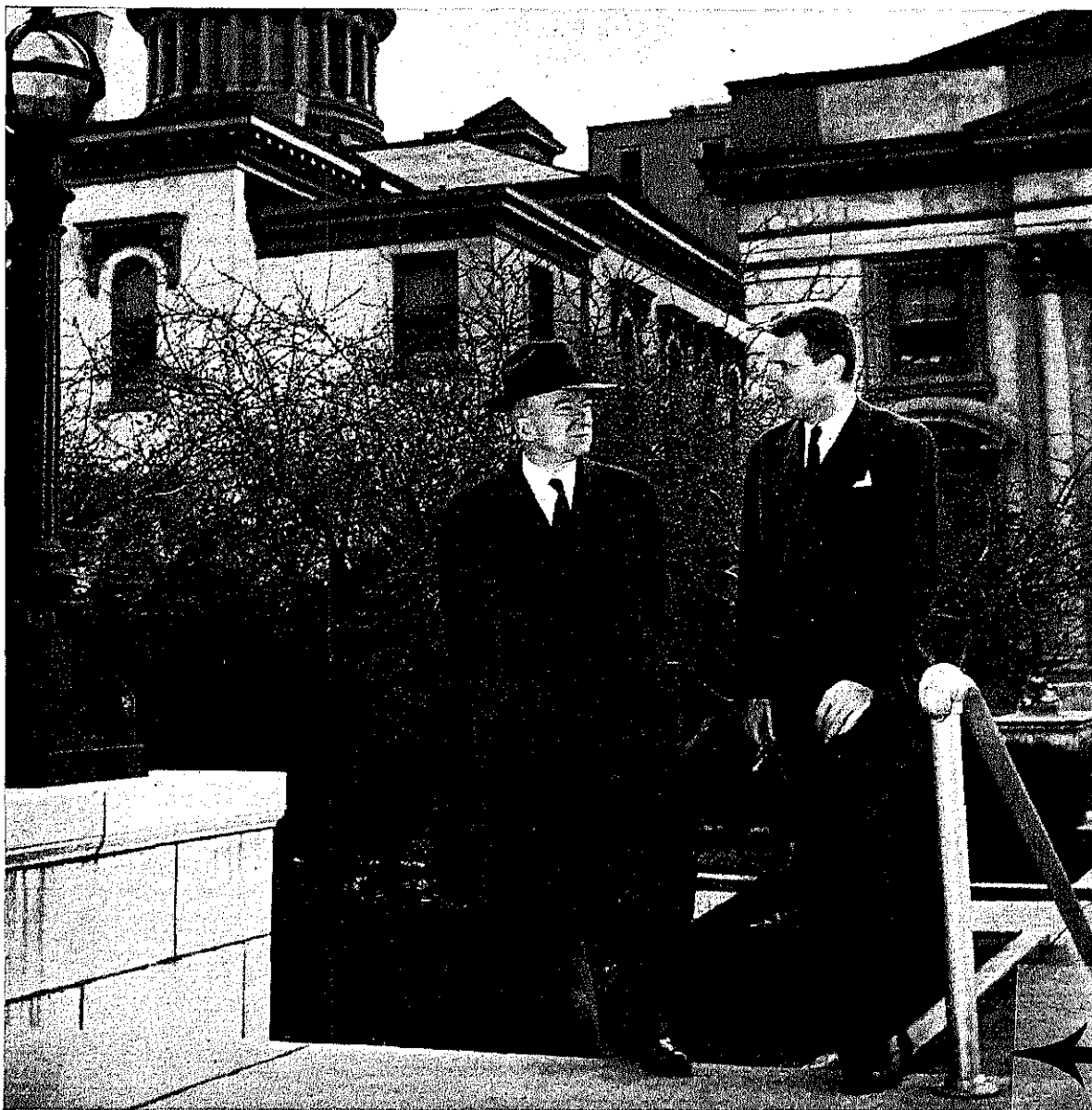


At the heart of the New Jersey system is a ruled sheet of paper which every judge in the state must fill out at the end of each week. On it he is expected to list how many hours he sat on the bench during each of his five working days, how many cases he heard or presided over, what their outcome was, what motions he heard and disposed of and any other business he attended to. At the bottom of this judicial score card he must also state the number of cases which are still pending in his court, and he must give the date of the oldest case which he has heard, but not yet decided.

"That last line is the one that hurts," says the "Chief" with a smile. (In New Jersey we have a rule that every case, once it has been submitted to trial, shall be decided within four weeks after it is submitted. If it runs over this time limit the judge gets a letter from the administrative director asking for an explanation. Under the old system he had no one to answer to. He never has to write more than three or four such letters a year. Judges are like other human beings; they don't like to fall behind in their work. But there are always some whose temperaments run toward delay and cogitation. The system we have in New Jersey does one very simple but all-important thing—it makes the judges make up their minds.")

What New Jersey has accomplished was strikingly illustrated by two incidents which occurred early this year on opposite sides of the Hudson River. Over in New York a prominent judge disclosed that the courts of his state were 30,000 cases behind in auto-accident-damage suits alone, and that a New York City resident who became involved in a legitimate suit of this kind would have to wait nearly four years before he could have a day in court. Just across the river, the courts in New Jersey's busiest counties announced that similar cases were being given a pretrial hearing within six or seven weeks after they were filed.

This tremendous difference cannot be attributed to New York's greater population—in fact, the



Vanderbilt (left) and Gov. Alfred E. Driscoll. Under Driscoll, New Jersey adopted a new constitution abolishing ten older courts and remodeling the remaining seven into a compact hierarchy of justice.

statistics run in the other direction. New Jersey is the second-most crowded state in the Union, with 64.28 persons per square mile as compared with New York's 309.3. Wedged between the metropolitan areas of New York City and Philadelphia, and containing large chunks of both within its borders, New Jersey's location is especially conducive to an abundance of lawsuits. It has more lawyers per capita than forty-six other states, which is certainly a good indication that it has its full share of legal business.

Five years ago the New Jersey courts were bogged down as badly as any in the country. At that time New Jersey could boast—if "vast" is the proper word—no fewer than seventeen different kinds of courts, most of them dating back to colonial times, and all jealously maintaining their different rules and jurisdictions. There were district courts and circuit courts, courts of common pleas and courts of quarter sessions, small-cause courts and surrogate courts, justice-of-the-peace courts, recorder's courts, orphans' courts, juvenile and domestic-relations courts, courts of mayor and recorder, a large and flourishing Court of Chancery, a Prerogative Court and a Supreme Court—which was not supreme.

All this, as a matter of fact, did not differ too much from what existed, and still exists, in many of the older states.

At the top of its judicial jumble, however, New Jersey really had something special. This was the celebrated Court of Errors and Appeals, to which appeals from all the others eventually found their way. This unique tribunal was composed of the chancellor of the Court of Chancery, the chief justice and eight other justices of the Supreme Court and six private citizens who were appointed as lay judges, making a total of sixteen members.

A lawyer who argued many appeals before this assembly once described it "as a little bigger than a jury, and a little smaller than a mob."

To carry an important case through these assorted courts and obtain a final decision often took a New Jersey resident from two to ten years, and sometimes twenty. The interminable lawsuit of Jarndyce vs. Jarndyce, so amusingly described by Charles Dickens in *Bleak House*, was, after all, a fiction. But in New Jersey they tell the true story of a learned vice-chancellor who pondered over a case for a great many years and finally sent word through his clerk to the surviving lawyer that he would make known his decision on the following Monday.

The clerk reported that he thought the lawyer had said that the vice-chancellor could go to hell. Whereupon the vice-chancellor himself got on the phone to request an explanation. "No, sir, I didn't say that," replied the lawyer. "I said that all my clients are dead, and so far as I know, everyone else who was interested in the case is dead, and I suspect they have gone to hell for what they said about you."

Another authentic instance is known in which a New Jersey judge delayed so long in handing down an opinion that he got all his papers bearing on the dispute, then borrowed and lost all the papers of the plaintiff's attorney, and finally lost the papers lent to him by the lawyer for the defendant. No decision at all was ever reached in that case.

Disgust at the dawdling pace of Jersey justice was rampant among ordinary citizens for years. But it was not until 1947 that they were able to do something about it. In that year, under the leadership of their progressive-minded governor, Alfred E. Driscoll, the voters adopted a new state constitution which abolished ten of the older courts and remolded the remaining seven into a compact hierarchy. The Courts of Chancery and of (Continued on Page 143)

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Errors and Appeals were among those discarded. The state Supreme Court became supreme in fact as well as name, and was reduced to seven members.

Most important of all, the new constitution set up an Administrative Office of the Courts, under direct charge of an administrative director appointed by the chief justice. It gave the chief justice power to regulate the assignments of every judge in the state. Such a businesslike arrangement has been in effect in the Federal courts since 1939. But New Jersey was the first state to adopt it. Early this year Virginia became the second.

The New Jersey system got under way in September, 1948. Not long afterward two of the state's veteran judges happened to meet on their way to court and fell to chatting about things in general. "I'm tired," one of them confessed. "I was at two funerals yesterday, one in the morning and one in the afternoon. They were both for old political associates of mine, and I felt I ought to go."

"You needn't worry about that any more, judge," remarked the second. "The chief justice is going to put a stop to all this funeral going."

"He can't do that!" exclaimed the startled judge. But he did. Today a New Jersey judge is excused for funerals only within his own family circle. Or for close personal friends. "You'd be surprised," adds the Chief, "at the amount of time a judge can waste just going to funerals."

New Jersey has other rules which are well calculated to conserve judicial energies. For one thing, New Jersey judges are really out of politics. Theoretically, this has been the case for a long time, but during Mayor Frank Hague's ascendancy politics crept into the courts in various ways. Since 1947 has been quashed utterly. No judge or even magistrate may belong to a political club, make a political speech or contribution, or even attend a party dinner or victory celebration.

And of course he cannot be a political candidate and still remain a judge. Such things as happened in Wisconsin in 1946, when Circuit Judge Joseph R. McCarthy ran for senator, was elected without quitting the bench, and was finally "censured" for his action three years later by his state's highest court, could not occur in New Jersey.

Vanderbilt does not feel that this New Jersey ban is unduly puritanical. The canons of judicial ethics of the American Bar Association have prohibited political activity by judges since 1924. Yet in 1948 the then chief justice of Pennsylvania, George Maxey, was elected a delegate to the Republican National Convention, and only this spring a Federal district judge in the same state, Guy K. Bard, campaigned for a Democratic nomination to the United States Senate while still a sitting judge. In many states judges are the active heads of their county political organizations, in direct violation of the ethical code of their own profession.

"There are three Chief complaints which the public makes against the courts," Chief Justice Vanderbilt observed recently. "The first has to do with the very natural demand that judges themselves shall be honest. I take it that there can be no argument against this. Yet one public-opinion

poll has shown that twenty-eight per cent of the American people believed their local municipal judges to be dishonest.

"Leaving aside the question of whether this large group of people is right or wrong, the fact remains that enough judges have behaved in a way which creates a widespread impression of dishonesty. I believe it is largely due to their continuing political activities on the bench. In too many states, judges are elected for limited terms, and if they want to be re-elected, as most of them do, they have to play politics. They attend political rallies, hobnob socially with their political friends, and receive them in their private chambers. Under such influences no judge can be entirely impartial.

"In New Jersey all our judges are appointed by the governor, in the case of magistrates, by the town council or other governing body. If they behave themselves and do a good job, they are reappointed until they reach the retirement age of seventy. This takes them out of politics and frees their minds for the performance of their duties. Our state has a very strong tradition of bipartisanship on the

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bench, and no governor would dare upset the long-standing balance, which usually gives the dominant party a majority of only one judge on any important court. Governor Driscoll, who is a Republican, has set an especially high standard in his appointments of both Democrats and Republicans since the new system went into effect.

The second main complaint which people make against the courts is that too many cases are decided on technicalities. This arises from the fact that most courts are governed by a mass of old and new rules, in which a clever lawyer can often entangle both his opponent and the judge. We have condensed and greatly simplified our court rules in New Jersey, but we have one particularly important rule which takes care of all the rest. This rule provides, in effect, that no other rule may be used to decide a case, contrary to the law—and the facts involved. In other words, we do not permit decisions based on technicalities: We insist that justice in our courts shall be a search for truth, and not a mere battle of wits.

The third grievance which the public holds against the courts has to do with the law's delays: This complaint is a very old one it is mentioned in Magna Charta, and today it has led to a state of crisis in many large cities and counties. In places where cases have gone on piling up for years there is only one remedy—extra judges must be assigned. Our new constitution gives the chief justice the power to transfer judges from counties and courts where work is slack to the spots where they are needed. We have also made a very generous use of pre-trial hearings in almost all types of civil cases, and this has greatly increased the number of suits which are settled without ever being brought to trial.

In New Jersey, under a rule enforced and rigidly observed by the Supreme Court itself, every judge in the state must open his court on time, at exactly

ten A.M. This may seem a minor matter, but the Chief does not think so. "Nothing," he says, "can be quite so irritating to the public as a judge who is always late. He gives the impression that he is not interested in his work and is not willing to conform to the rules of his court, while insisting that everyone else conform. Anyone who has spent much time in courtrooms will remember instances of this kind. The litigants and jury members and lawyers will all be sitting around waiting, many of them giving up time from their business and personal affairs. There will be sounds of muffled conversation and laughter from behind the judge's door, and maybe about a quarter of eleven he will come out, smoothing down his robes. Perhaps something will be said about an 'important conference' in chambers. But you know darned well he has been in there enjoying a last smoke and swapping stories with some of his cronies."

Arthur Vanderbilt, a close friend once remarked, is genius at organization, but the greatest job of organizing he ever did was on himself. This appraisal is borne out by a brief listing of some of the Vanderbilt activities just before he became a judge for the first time, in 1947. He was then fifty-nine years old, one of the nation's leading lawyers, with offices stretching across the entire front of a Newark office building, and a personal income well into six figures. His list of clients ranged from the Pepsi-Cola Company of which he was board chairman for several years to Socialist Norman Thomas, whom he defended without fee in a famous free-speech case.

At the same time he was dean of the New York University Law School, across the river in Manhattan, where he taught night classes regularly for more than thirty years, and where a new \$5,000,000 Law Center has recently risen as a monument to his important influence on legal education.

Simultaneously with these two careers Vanderbilt was the undisputed Republican boss, or "leader," as he or prefers to say, of Essex County, New Jersey's richest and most populous. His enemies might call him "the Frank Hague of Essex" but his political purposes were quite different from those of his powerful Jersey City neighbor. His "Clean Government" organization can claim, with truth, that it is the longest-lived reform movement in the history of American politics; it began in 1919, gained control of the local Republican machinery in 1933. It still runs Essex County, and it has successfully staved off all forms of new taxation, state or local, for more than thirty years. The Chief's aversion to politicking judges, already mentioned, definitely does not extend to politics itself. It is his judgment that most of the ills of the country are due to too few politicians, rather than too many. He is constantly urging young lawyers to go into politics, and he believes every judge should have a good baptism in practical politics before he goes on the bench.

Along with all this, Vanderbilt was national president of the Phi Beta Kappa Associates, president of the trustees of his alma mater, Wesleyan University, a long-time leader in the American Bar Association and chairman of several national commissions with complicated chores to perform, such as drafting new rules of criminal procedure for the Federal courts, and investigating the standards of judicial administration throughout the United States. He was happily married and

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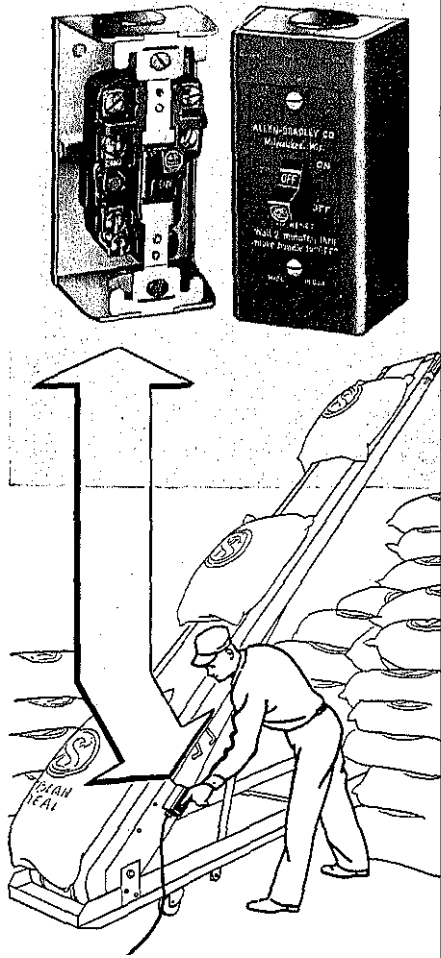
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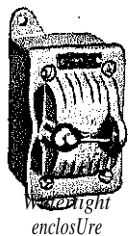


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had raised five children, of whom three, including a married daughter, are lawyers.

Yet he was never a widely known public figure, even in his own home state; Many New Jerseyites assumed that he was related to the wealthy Vanderbilt family in New York, but that was not the case. His father was a railroad man and Western Union executive; young Arthur was born and grew up in the Roseville section of Newark, and earned his way through college by managing an eating club and writing for seven newspapers.

Later on, his face, with its for a- jutting, aggressive nose and deep-set, thoughtful eyes, appeared fairly often in newspaper photographs-but not enough, it would seem, to impress some of his nearest neighbors. Soon after he became chief justice a fellow resident of Short Hills suggested to the local ticket agent that the town ought to be proud of the recent appointment.

"That can't be much of a job," sniffed the agent. "I see he still takes the 7:23 every morning!"

On Mondays, especially, the Chief is careful to catch the 7:23, for that is the morning his own court sits in Trenton, fifty miles away. The old Court of Errors and Appeals used to meet only three times a year, hearing as many appeals as it could cram into a two-week session each time. The members scattered to their regular court or private occupations, reading briefs and writing opinions in their spare time. This chaotic arrangement was one of the chief bottlenecks of the old system.

The present state Supreme court of New Jersey is perhaps the model of its kind in the country so far as efficient procedure is concerned. Instead of listening to lawyers make their speeches before reading their briefs, each member of the court is expected to read every brief in advance, and to make notes on the points he especially wants to hear discussed. This saves an immense amount of time and back-talking.

Once an appeal has been decided, it is the Chief's job to assign the writing of opinions to members of his own court. What he does may sound almost too obvious to those who are not familiar with behind-the-scenes judicial routine. The justices discuss each case one after another in conference, and then the chief justice assigns the writing of the opinion to the man who seems most interested and fitted for the job.

Strangely enough, this common-sense idea is sternly avoided in about two thirds of the forty-eight states. To suit the Convenience of judges, opinions are usually assigned by alphabetical or some other form of rotation. In some states-Kansas and Oklahoma, for example-judges often vote on one side of the question and write opinions on the other, so rigidly is the rotation system applied.

In one grand old Southern state, where members of the highest court still deliberate in rocking chairs with whittling knives in hand, the court clerk makes six piles of briefs and lets each justice pick his own pile for opinion writing.

Many judges, of course, prefer the rotation system, for it permits a majority of the court to take it easy while one man carries the load of thinking and questioning on each appeal. This opportunity is especially welcome during the first half hour or so after lunch-a period which Vanderbilt himself has described as (<the darkest hour in a judge's day."

"Judges," he says, "have a perfectly natural human tendency to coast, and if they know in advance they are not going to have to write an opinion, they can let themselves go completely. But if they think some mean chief justice may assign them that opinion, they have to stay awake!"

Perhaps it should be observed right here that the Chief works himself at least as hard as any other member of his court. When it comes to assigning opinions, he frequently reserves the toughest for Vanderbilt, C. J.

The rotation system has resulted in many states in what Vanderbilt calls "one-judge opinions," a practice for which he expresses the utmost scorn. "Letting one judge do all the thinking on a case is not only an insult to the litigants and lawyers but a fraud on the taxpayers," he says. "It is just as bad as letting one member of a jury hear all the evidence and bring in a decision while the eleven other members stay home."

In their ceaseless search for new ways to oil the wheels of justice, the Chief and his Supreme Court colleagues have even considered the various kinds of paper which are used for legal documents, and they have decreed that all briefs submitted to their court must be written on "India eggshell, opaque and unglazed," which eliminates most of the eyestrain caused by light reflec-

tion. Since every member of his court receives some 1300 pages of such material a week, this represents a large saving in judicial wear and tear.

Nor has the Chief by any means neglected those humbler dispensers of justice, the traffic courts of his state. He was among the first to grapple with the disturbing fact that one out of every seven New Jerseyites now finds himself on the wrong side of the law each year as a traffic offender. Before the automobile era very few Americans ever went to court at all; today probably a majority of the population have been listed as at least nominal law-breakers.

Because so many people form their ideas of judicial integrity and decorum in the traffic courts, the Chief has been especially watchful of them. In 1948 he introduced into New Jersey the non-fixable" traffic ticket and made it standard throughout the state. This formidable device has four separate copies which must be filed with various court and police officials, and to "fix" any one of them satisfactorily, the offender must fix them all. This is not only difficult but hardly worth the effort. In the city of Newark alone, during the first three-month period after the new tickets were required, the number of persons who ignored traffic summonses decreased from 14,529 to 607. Most of the latter were from outside the state.

If all this makes the Chief sound like a stern taskmaster, it cannot be said he shuns the role. A scholar and thinker, as well as a practical executive, he long ago came to the conclusion that justice is the essential cement which binds society together and makes possible such desirable institutions as American freedom and democracy. The serious task of all who love justice, as he sees it, is to make it more available, to more people, with greater efficiency and a larger share of wisdom. Otherwise it will continue to lag behind science, industry, government, war and the other swarming interests of mankind.

But it must be justice meted out by human brain power and experience, and not an assembly-line substitute. In all his striving to improve the machinery of the courts the Chief has never lost sight of the fact that every case which comes before him or any other judge is a unique problem in human nature and human relations.

"We want speedy justice," he says "We don't want hasty justice."