

NYSBA; January, 1997

Goals and Standards*

The cries of reform in the judicial field are not always greeted with delight among lower court judges. Delay may deny justice, but so may excessive speed. Where should the line be drawn? Judge Saxe has some candid thoughts about that.

Judge Orange, an Acting Supreme Court Justice in Manhattan for the past seven years, was understandably concerned when twice during the last few months, two distinguished court administrators paid unexpected visits to his courtroom to see for themselves what factors were responsible for the judge's lower-than-average number of case dispositions. The judge's concern became even more pronounced when a plain brown envelope arrived by hand from the Office of Court Administration ("OCA") of the State of New York at his courtroom containing a booklet entitled "Settlement Techniques for Trial Judges."

Month after month, Judge Orange had examined the monthly statistics routinely supplied to all jurists operating within the Individual Assignment System ("IAS") by OCA. This statistical compilation, much like a detailed record of the achievements of major league baseball players that appear in Sunday newspaper sport sections, contained the most up-to-date analysis of judicial efficiency ever devised and it was widely rumored that keen minds were at work attempting to come up with even more startling measures of judicial productivity.

Judge Orange gulped nervously when, upon examining the most recent monthly statistical report, he noted the unusual number of

calendared cases in his inventory that had yet not been disposed of.

"Three hundred sixty two cases on my trial calendar," he roared to his law secretary, who knew well enough to avoid the judge during such heightened periods of tension. "Listen," he growled to his secretary, "let's get a printout immediately; I want to find out how many of these cases are over goals and standards."

The judge was well aware that cases that remained on the court trial calendar for more than fifteen months were deemed to be over the efficiency goals that had been established by court administrators responsible for implementing the IAS system.

In a matter of hours, a clerk from the bowels of the courthouse arrived at the judge's chambers with a computer printout listing all the cases on the judge's inventory that were beyond goals and standards. The judge quickly turned to the last line.

"One hundred seventy-three cases over goals and standards," he yelled.

Sweat poured from his forehead. Judge Orange knew that some of the younger carnivores at the Civil Court building at 111 Centre Street were only too eager to impress upon Judge Orange's administrators that they were more than ready to end these excesses.

"We better do something about this quick," said the judge to his secretary. "Start calling all the lawyers in for conferences. I'm going to run a blockbuster part like the ones they used to have in the old days."

The judge's law secretary looked puzzled.

"Judge, you've always been admired by lawyers for being a reasonable man," said his secretary. "You didn't get so well liked by pushing lawyers around," she said.

"Look what I've got to show for it," said the judge. "I've got OCA breathing down my neck. Who knows...I might even be sent back down."

"Back down?" said his secretary with a puzzled tone, apparently never having heard this strange argot before.

"Yeah, if the administration thinks I'm not producing like I used to, then they might send me back to Civil Court," said the judge.

Judge Orange was distinctly aware of the prerequisites attendant to having ascended, by administrative fiat, to an Acting Supreme Court status; a \$9,000.00 increase in salary, more interesting cases and a courtroom at the majestic Supreme Court building at 60 Centre Street. The judge thought for a moment and then, glaring at his secretary, said

"I'm not going to pay the price for being a nice guy anymore. No more adjournments. That's it. Day after day, these attorneys come into my courtroom with all sorts of unbelievable excuses. I'm not going to take it anymore."

So, over the next six months, Judge Orange and his staff went to work. Letters went out to all attorneys representing parties in all cases on the judge's calendar; a special letter was sent in all cases that exceeded goals and standards.

* Copyright © 1991 by David B. Saxe.

The conferences took on an eerie similarity:

"Good morning, Your Honor," the plaintiff's attorney would say as he walked into the judge's robing room, holding the yellowish card issued for all trial ready cases.

"Good morning, Your Honor," chorused the various defendants as they too walked into the robing room and took seats at the other side of the table.

"Judge," said the attorney for the fourth-party defendant, "we've all stipulated to hold a physical in three weeks and after that there are two EBTs that need to be taken. Then, I think we will be ready to try the case."

"You've stipulated, you've stipulated," the judge whined. "Did you bother to ask me if I consent to this stipulation?" he asked sarcastically.

"Your honor, we meant no disrespect," said the attorney.

"Look," the judge said, ignoring the attorney and looking sternly around at all the gathered legal talent. "Do you know how old this case is? It's been on my calendar for over two years. Two years on the trial calendar and you guys haven't bothered to take a physical yet or even done your depositions."

"Your Honor, it's really not anyone's fault," said the lawyer for the fourth-party defendant. "Everyone just kept bringing in another defendant."

"Well, why didn't you name all of them in the beginning?" said the judge, looking menacingly at the plaintiff's counsel.

"Judge, it certainly is not my fault. I named the parties I knew about."

"Listen, I don't care about your discovery, your third-party practice or anything else. All I know is that this case has been on my calendar for two years; it's nine months over goals and standards and you guys are screwing around. I'm going to send it up to select right now."

"Judge, Judge, that's not fair," the defendants attorneys said in unison.

"Then, I'll mark it off the calendar."

"I'm ready," said the plaintiff's counsel. "Why should the case be marked off? My client is a construction worker who hasn't worked in three years."

"To hell with all of you," roared the judge. "Out to pick, right now."

Settle or pick seemed to be the menacing order of the day.

But just before the startled lawyers were about to leave the judge's robing room, the judge's law secretary approached him and in a low voice engaged him in an earnest conversation.

"Judge," she whispered. "If you knock it off the calendar, it stops the time from running on the goals and standards statistics."

"No kidding," said Judge Orange who was unaware of this interesting maneuver.

"Sure," said the secretary. "You just mark it off and that will stop the clock and when the attorneys finish their discovery, they can 'stip' it back on the calendar."

"That's really a great idea," said the judge admiringly.

"All right, you guys," the judge growled at the lawyers. "I'm going to show what a reasonable person I am. I'm going to mark the case off the calendar, give you 60 days to complete discovery and then the plaintiff can put it back on the calendar without having to buy a new calendar number. This serves everyone's purpose—yours too," he said looking directly at the plaintiff's lawyer. "So big deal, you have to wait 60 days. You've waited five years anyway to put the case on the calendar. This way the defendants will get their discovery and it might help settle the case, too. And most important, I get this case off my calendar until it's trial ready."

"But Judge," said the trial lawyer, still uncertain over the effects of this procedure, "when the case gets back on, will it be put on the bottom of the trial calendar?"

"Of course not," said the judge admiring his own perspicacity. "You'll go right to the head of the line."

The plaintiff's lawyer was reluctantly convinced.

"O.K., your honor. But please mark on the card that the case will be restored to its original place on your calendar."

"Sure, sure," said the judge as he pushed the lawyers out of his room, surprised at how easy his new discovery could be effectuated.

And, for the next few months, lawyers saw a new Judge Orange. Cases disappeared from his calendar with frightening rapidity. Many which had languished on the trial calendar due to missed discovery opportunities were marked off; others were forced to select juries and not surprisingly, when that moment of truth arrived, the matter was settled. Word of Judge Orange's statistical success spread throughout the courthouse and many of his envious colleagues took peeks through the windows of the courtroom doors to get a glimpse at this new superstar. Judge Orange, by all accounts,



▲ David B. Saxe is a Justice of the Supreme Court, First Judicial District. This article was conceived and written before the advent of the "TAP" system in Manhattan.

was moving into the realm of the big hitters of the court system—those judges who regularly disposed of the greatest number of trial ready cases.

One Monday morning about six months to the day after Judge Orange began his assault on his trial calendar and especially those cases over goals and standards, he entered his courtroom and said to his part clerk:

"Well, let's see what we have today. I've been drinking a quart of blood every day. Maybe today I can let up a little."

"Here's today's calendar, Judge," said the clerk, as he handed the judge a computer printout of all the important matters that would appear before the learned jurist that day.

"There's nothing on here," said the startled judge.

The clerk quickly came over to where the judge was sitting and glanced over his shoulder at the empty page.

"Joe," growled the judge. "Call the trial support office. See what's on my calendar for tomorrow and next week."

The clerk quickly involved himself in these important tasks and in about ten minutes returned and reported to the judge.

"Judge, you'll be pleased to know that you have totally cleared up your trial-ready

calendar. According to the computer search, you have no calendared cases; everything, I mean everything has been disposed of. Not only all those old cases, the ones over standards and goals, but *all* the cases on your trial calendar."

"That's really a remarkable achievement, judge," said the judge's law secretary, who had overheard this conversation.

"But, what'll I do?" asked the judge.

"Well I'm sure you could check with some of your colleagues and help them out with their backlog," said the part clerk.

"Or, judge, we still have a pile of motions upstairs," his law secretary said shyly.

The judge, known for his love of trial work rather than the rigors of research and writing, immediately grabbed for the phone and placed a call to Judge Blue, who presided over one of the few conference and assignment parts in the Manhattan IAS.

"Hello, this is Judge Orange. I'm clear. Do you have any juries picked?"

"Judge, thanks for asking," said Judge Blue's confidential clerk, "but we're dry. The judge had done such a great job of cleaning up his calendar that there are no ready cases. But, try Judge Mellow, in the med mal complex. He usually has a few trial-ready cases."

"Good idea," said Judge Orange.

With that, he directed his law secretary to call Judge Mellow's law secretary in order to have a ready case sent down.

"I've always loved med mal cases," Judge Orange explained to no one in particular. "Maybe it's because I'm really a frustrated doctor at heart," he mused.

In a minute, his law secretary returned.

"Judge," she reported, "there are no trial-ready cases in the medical malpractice parts. They're all clear too."

"Hmm. This is an unusual situation," said the judge.

For the next ten or so minutes, Judge Orange called around to his IAS colleagues in New York County to assist them with their backlogs. But to his surprise, they too had no backlogs. In the frenzy of competition that had gripped the IAS judges for the last year or two, each had

outdone the other. Month after month, reading each other's statistics, comparing the number of out-of-compliance cases that each jurist had, only spurred individual jurists to greater heights of calendar achievement. And, on the seventh day in June 1993, the unexpected, the unheard-of, had happened. Not one calendared case existed in the entire Manhattan IAS system except for a smattering of non-jury cases that were being gobbled up by the coterie of upstate judges who regularly joined their New York County brethren for monthly rotation.

Finding that this unusual situation existed throughout New York County's Civil Term of the Supreme Court and not just with him, Judge Orange decided it was about time to go to the regular Thursday Chinese lunch meeting of Manhattan judges at one of the fine eateries in Chinatown. As he glanced around the table, he noticed the concerned look of some of his colleagues as word quickly spread that not one calendared case existed at that point in the entire New York County Supreme Court Civil Term.

"Some pickle we've gotten ourselves into, huh," said Judge Red.

"Yeah, we practically worked ourselves out of a job," said another.

That afternoon, as word of this unusual situation permeated the furthest reaches of the Office of Court Administration, a memorandum was distributed around the courthouse, inviting all justices to an urgent early morning meeting the next day to discuss the situation.

Next morning, at the meeting, the usually talkative, assertive justices were reeling from the news.

"Perhaps we could work on our motions," said one judge.

"Work on our motions? That's really a brilliant idea," said another. "Next thing you know, all our motions will disappear, too."

The discussion continued for an hour or so until a messenger arrived, sent by a senior official at the Office of Court Administration, with a message that was read to the assemblage.

"Tomorrow morning, at 9 a.m., the ten justices named on the attached list will meet at the judge's entrance on Hamill Place and board an OCA juror bus, which will take the first five on the list to the Supreme Court in Hauppauge, Suffolk County; the other five to the Supreme Court in Riverhead. The assigned justices shall be assigned to emergency parts in order to eliminate the huge backlog in their Supreme Civil Term."

But, even before the bus, filled with judges, and festooned with a large red banner reading, "Judges of the Supreme Court, First Department," had reached the outskirts of Queens County, urgent messages were received at the highest levels of the Office of Court Administration from leading local beacons of the Suffolk County Bar concerned that the imminent influx of foreign judicial talent might disturb some of the memorable and time-honored ways of that rural county.

Apparently, the calls had an effect because the bus made an abrupt return and next morning, the New York County justices were again gathered for a meeting much like a football team seeking direction from their coach.

"My printout says I have one ready case on this morning," said one judge.

"Don't let the attorneys get away," another warned ruefully.

But, for the others there appeared to be no let-up from the monotony.

"Maybe we could assign some judges to the Motion Support Office and as soon as a lawyer comes in with a motion or a request for a conference, the judge could start working on the case right then and there—you know, a real hands-on approach."

"Yeah, maybe we should stand in the lobby with a sign around our necks," another jurist snarled.

Other ideas were advanced and disregarded. But, just when the assembled jurists appeared to be in deep despair, a clerk burst into the assembled meeting out of breath with a message of salvation.

"We've got cases; we've got cases again," he exclaimed. "Cases," the jurists sighed, almost in unison. "Where are they coming from?"

"From all over," said the clerk. Apparently, word got around town that calendared cases were drying up and attorneys started coming out of the woodwork with cases for trial that we hadn't given a thought to."

"How many cases are you talking about?" said one interested judge.

"Well, just this morning, we've taken in five hundred ready cases, and we're expecting five times that amount in the next few days."

"All trial ready?" said one judge.

"Yep," said the clerk. "Most of them are the old cases you marked off, and the others are the new ones that lawyers calendared on hearings that we had no work."

"But, that means that we have double or triple the work we had before," said the judge to no one in particular.

"Boy, oh boy!" said another judge. "We are really some bunch of jerks. If we hadn't tried to kill each other, we'd really have been fine. Look at the trouble we've gotten ourselves into now. I'll have two to three times more cases on my trial calendar than I had before. I'll never get out from under this mess."

And as Judge Orange trudged back to his courtroom, where an eager throng of trial attorneys, all waving their freshly issued cards indicating their trial-ready status, awaited his presence, he was handed a memo that appeared to be a new OCA directive. "To all Judges," it read, "Starting immediately, no cases may be marked off the trial calendar without review by the administrative judge."

"Ah, the salad days are over," mused Judge Orange as he once more contemplated his growing caseload and the limited means available for dealing with it.



President's Message

Continued from page 3

generally improve our public relations efforts to garner a more positive public perception of our profession.

It was also suggested that we look once again into the subject of specialization. (Our House of Delegates twice during the last 20 years has emphatically rejected that suggestion.)

In an effort to encourage greater representation of solo and small firm practitioners within the Association, it was proposed that we create a permanent, ongoing committee or section to represent that constituency, and that we designate a solo and small firm delegate to our House. It was also proposed that we call upon each of the Association's sections and committees to take into consideration the concerns identified by attendees of the conference and to advise us how they can best address some of them. (That is precisely what I intend to do so that we may begin to move in those areas before the end of my term.)

It was suggested that we look into the sale of law practices with a view toward amending our Code of Professional Responsibility to allow for it (something we have already begun to do), that we sensitize our membership to the existence of gender bias within the profession (we're trying), and that we increase the participation of minority lawyers in the activities of the Association (we're trying in that area also).

These are but some of the proposals that will appear in the Task Force's final report.

Our conference on the solo and small firm practitioner was the very first of its kind ever conducted in this country on a statewide level. I suspect it will be replicated elsewhere. Nothing would assist us more than a national effort. But how we respond to these expressions of need in New York may well influence others even beyond the conference state. I hope to jump the gun, right here in New York, before I fade away next June.

MEMBERSHIP INVITATION



New York State Bar Association, One Elk Street, Albany, NY 12207

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

PHONE () _____ DATE OF BIRTH _____

LAW SCHOOL _____ GRAD. DATE _____

Original Date of Admission to Bar:

DATE _____ STATE _____

SIGNATURE _____ DATE _____

Annual Membership Dues:

Class based on first year of admission to bar of any state. Membership year runs January through December. From July 1 to September 1, dues are half annual rate.

Regular Membership:

- Sustaining Member\$300
- Members admitted 1984 and prior\$215
- Members admitted 1985-87\$140
- Members admitted 1988-91\$62
- Newly admittedFree
- Law/Graduated Students\$8

Associate Members (out of state residents; no office in New York):

- Sustaining Member\$150
- Members admitted 1987 and prior\$85
- Members admitted 1988-91\$62

TOTAL ENCLOSED \$ _____

Please send information on NYSBA's Dues Waiver Program.

In accordance with Postal Regulation 132 governing second class privileges, membership dues are allocated to pay publication costs as follows: \$7.10 for *New York State Bar Journal*, \$3.15 for *New York State Law Digest* and \$2.50 for *State Bar News*.