Department of Justice

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ADDRESS

BY

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BEFORE THE

JUDICIAL CONFERENCE OF THE SECOND CIRCUIT

EQUINOX HOUSE

MANCHESTER, VERMONT

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1. INTRODUCTION

I would like to thank the Second Judicial Circuit for its gracious invitation to attend this meeting.

As you know, your Circuit has always had a close working relationship with the Department of Justice.

In the last 10 years as our legal problems have increased, I can think of no district or circuit court judges who have worked under heavier burdens than the judges of this circuit. For example, of the 10 circuits, plus the District of Columbia, the district court judges here had more than 25 percent of the civil and criminal trials which tied them up for 20 days or more--that is 14 trials out of 58 in the federal system.

This included the two longest criminal trials, one of which lasted 59 days and the other 39 days; and two of the three longest civil trials, one of which lasted 103 days and the other 60 days.

2. THE FACTS

In the last decade, we lawyers and judges have tended to concentrate on the development of our substantive

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law while perhaps paying too little attention to the procedural problems in our federal courts.

A great deal has been done in an effort to establish uniformity and coordination, particularly the establishment of the Federal Judicial Center, the operations of the Administrative Office of the United States Courts and the expanded role of the Judicial Conference of the United States.

Chief Justice Warren, I know, has done much to lead us and to warn us that the increasing volume of judicial business is, in many ways, beginning to paralyze the ability of our courts to function effectively.

Permit me to remind you of the facts.

The volume of all criminal cases pending in the U. S. District Courts rose from 13,541 on June 30, 1967 to 14,763 on June 30, 1968 -- a rise of 9 percent in fiscal 1968. As of December 31, 1968, the pending criminal caseload stood at 16,777. I believe that is an all-time high. It represents an increase of almost 14 percent during the last half of 1968 alone.

Concurrently, in some districts the time interval has typically lengthened between the filing of an indictment

or information and disposition. For example, during fiscal 1968, the median time interval from filing to disposition increased by approximately three months in the Eastern District of Pennsylvania, the Southern District of Florida, and the Southern District of Indiana. At the end of fiscal 1968, approximately 27 percent of all criminal cases then pending in U. S. District Courts were cases that had been pending for over one year.

A comparable picture emerges on the civil side of the calendar, where the United States in fiscal 1968 was a party in 27.5 percent of all civil cases that came before the U. S. District Courts. Civil actions pending on December 31, 1968, climbed to a record high of just under 85,000, up 2,500 since the middle of 1968. The median time interval from filing to trial of civil cases rose from 18 months in fiscal 1967 to 19 months in fiscal 1968; it rose to over 40 months in the Southern District of New York and in the Eastern District of Pennsylvania, and to no less than 77 months in the Southern District of California.

As the principal litigant in federal courts, the

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Department of Justice is acutely aware of how the ends of justice would be better served if the backlog of pending cases could be significantly reduced and the time to resolve new suits shortened. However, the justification for action extends beyond the needs of the Department of Justice and the United States as a party litigant. Justice either delayed or denied in a lawsuit between private litigants in courts of the United States is a matter for legitimate concern to Congress under its constitutional authority to ordain and establish inferior federal courts.

The figures I have quoted reveal only part of the problem. What has been happening in recent years, I would suggest, is not simply an increase in the volume of pending cases, but an increase in the proportion of individual cases that make heavy demands upon the time of judges and of litigating attorneys. The number of criminal cases commenced by grand jury indictment has been rising steadily, and waivers of indictment have been decreasing. Pleas of guilty are less frequently heard; the number of trials in criminal cases is on the rise -- 25 percent more in 1968 than in 1967.

It is not surprising that the average number of hours per month spent by each United States Attorney in courtroom work rose from 27.5 percent in fiscal 1967 to 30.9 percent in fiscal 1968--an increase of 12 percent--and that total man-hours spent by all United States Attorneys in court rose in that period by nearly 17 percent--from 182,750 hours to 213,750 hours. Comparable increases in courtroom time could certainly be documented for trial court judges as well.

Even here the facts are confusing.

In the Eastern District of Louisiana, the average weighted caseload per judge is 317, which is a relatively high disposition rate per judge; and yet it is lower than the 455 weighted cases processed by the judges of the Southern District of Georgia; or the 372 weighted cases processed by the Northern District of Alabama.

I do not mean to imply by these figures any particular criticism. What I am trying to show is that our federal courts demonstrate enormous disparities between circuits and in the same circuits. In the Annual Report

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of the Administrative Office, these disparities are largely unaccounted for. I am sure there are good and sufficient reasons for differences based on the geographical location and the kind of business that each of these courts is concerned with. However, in any effort to help our federal judges expedite their dockets, I think we need more information so that we may help our federal courts adjust to this explosion in case filings which we are now witnessing all around the country.

Because of the crime problem, the tendency seems to be to concentrate on the disposition of criminal cases. But even with this concentration, it distressed me to learn recently that the Department has more than 800 organized crime cases awaiting trial.

The organized crime docket situation is particularly depressing to me in view of the $50 million appropriation we are asking for this year to almost double our financial commitment to prosecute organized crime racketeers. Most of these funds will be used to expand the strike forces which are now in 8 cities and will be in an additional 13 cities by the end of the next fiscal year. Our first

strike force produced 30 indictments. It is disheartening for me to face the future prospect of 20 strike forces which investigate and indict, but are unable to prosecute because of a lack of trial judges.

3. NEED FOR MORE INFORMATION.

It seems to me our main difficulty is, that under current conditions we keep jumping from concentration on civil cases to concentration on criminal cases and back again. Of course, we are more concerned with the rights of a man under a criminal indictment -- and perhaps even imprisoned because he has been denied pretrial release--than we are with a civil case. But our country is based on property rights as well as individual rights. In our great cities, it seems to me inexcusable to say to a ghetto resident--we will give you a fair and expedited criminal trial, but we will not worry too much if you must wait three or four years to collect a tort or contract claim.

I think the time has come to stop reacting--to stop patchwork solutions and to start being realistic about our federal court system.

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The simple fact is that we don't have enough judges. To remedy this problem, we are strongly supporting the Judicial Conference recommendation to create 62 new District judgeships outside the District of Columbia, together with funds for clerks, marshals and other supporting personnel.

The Judicial Conference recommendation is contained in S. 952 introduced by Senator Eastland. It would help you by establishing one additional district judge for the Eastern District of New York and five additional judges for the Southern District of New York.

But I don't think that more judges, and more judges, is the only answer. It is an answer based, in large part, on an obvious solution, frequently unsubstantiated by any detailed studies on how our courts operate.

The tendency has been for everyone to blame everyone else. Prosecutors claim that the defense bar wastes too much time filing frivolous motions and demanding irrelevant discovery. Courts complain about a proliferation of motions in both civil and criminal cases.

The defense bar claims that the prosecutors bicker over every reasonable demand.

The judges claim that prosecutors and defense counsel request delays because they have been assigned too many cases. Defense counsel and the prosecutors have, in certain cities, argued that the judges do not work hard enough.

Few of the accusations and counter accusations are really based on hard facts. It would seem to me that, as a first step, we should try to establish a highly centralized and computerized system for determining problems in our federal courts.

4. INFORMATION RESULTS.

A. Let me give you some examples. In Wayne County, Michigan, despite an increase in judicial manpower, four months was the average time from a preliminary hearing to a formal arraignment. A detailed study showed that the delay was attributable to the court reporters who were so over-worked that they could not transcribe the preliminary hearings. Since 93 percent of the cases were disposed of by a guilty plea, the transcription of

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preliminary hearings was eliminated except in those cases where a trial was demanded. Now, I am informed, that in Wayne County, the period of time has been reduced to about a month.

B. The United States District Court in Philadelphia has instituted an experimental computer program. This study showed that Longshoremen compensation cases are highly concentrated in several law firms so that lawyers are unavailable to appear on schedule.

C. In the Southern District of New York, which has the largest civil docket in the country, a computer analysis has shown that 55.3 percent of the cases are maritime related claims and that 10 law firms have 75 percent of these cases.

We have always proceeded under the theory that a lawyer may waive his client's right to the expeditious disposition of his claim. But when a court calendar situation reaches the point where the public and the bar begin to lose confidence in our courts to promptly settle criminal and civil suits, I think that the courts have the the obligation to demand changes. The convenience of an

attorney should not be the sole standard for scheduling. The court has an obligation to the individual claimant and to the public at large.

The Federal Judicial Center, under the directorship of former Associate Justice Tom C. Clark, is providing valuable assistance. The Center, in a joint venture with the Department of Justice, is seeking to help the Eastern District of Louisiana in New Orleans, to obtain a computer programming operation. This project has been unanimously supported by the judges of the District. If successful, the Federal Center plans to extend its system to other large city districts.

I do not say that computers and studies are the only solution. I do point out that they may be extremely useful tools in providing the information required for action to streamline our court system.

Senator Eastland's bill also takes this into consideration. It authorizes each circuit to appoint an executive officer to exercise broad administrative functions over the entire circuit. It also would authorize each district court having six or more permanent judgeships to appoint an executive officer in order to help coordinate and obtain detailed information about the docket problem.

5. MORE MANPOWER.

In Washington, where the most intense studies have

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been made, we came to the conclusion that more manpower was needed.

President Nixon in his message on crime in the District of Columbia recognized that more manpower was the first step. To help the courts, he proposed the creation of additional judgeships. To help the prosecutor's office, he proposed 20 additional prosecutors and suggested a plan for the priority handling of serious criminal cases--especially those cases where the defendant is now on his own recognizance or bond.

He also proposed a 33 percent increase in the Legal Aid Agency staff to make it permanent, and an additional increase in the staff of our federal bail agency to supervise defendants who obtain pre-trial release.

As the National Legal Aid and Defender report pointed out last week, no one wants "assembly line justice." Both in the civil and criminal field, we want intelligently processed cases. To increase the number of judges but to permit the prosecutors and defense counsel to remain overburdened is futile. Any increases in manpower must be distributed among all three sections. No one wants speedy justice at the expense of society's right to intelligently prosecute or society's right to provide an intelligent defense.

For example, in the appointment of defense counsel for indigents, most courts use a random selection basis. Some volunteer attorneys have too many cases and others have none. Some volunteer attorneys, inexperienced in the criminal law, are given cases of great complexity. Here the need for coordination is more important than the need for manpower.

That is why I support permanent legal aid defender establishments even in small districts where there might only be one or two men in an office. They can help the court coordinate and they can provide guidance and information to the volunteer bar.

As you know, under the federal act, the volunteer bar now is paid for its representation and we hope to increase these payments and expand their coverage next year. Also, we may initiate a program to permit a select number of young lawyers to help out as prosecutors on a part-time basis.

On top of all our other problems, I would point out to you that we are extremely concerned about the enormous

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increase in habeas corpus petitions. They have gone, as you know, from about 1900 to 1960 to more than 11,000 in 1968. More than half of these petitions are filed by prisoners convicted in state courts. The United States Supreme Court appeared to tell us a month ago in the Kaufman case that we can expect even more petitions since there is no time limit on a claim of error and no limit in the number of petitions a prisoner may file repeating his previous allegations.

Habeas corpus is a serious writ and we believe it should be treated in a serious manner. But I do not know how our overburdened federal courts can pretend to give sufficient time and attention to habeas corpus under the present statistical and legal circumstances.

I believe that some legislation may be needed in this area to limit the use of the writ, certainly to eliminate duplicate claims which have been turned down two and three times before. At the same time we do not want in any way to infringe on this ancient prerogative. As

you know, Mr. Gideon filed a handwritten petition and I do not believe that any judge here can quarrel with the results.

These are some of my random thoughts as a new Attorney General just learning his job. Some of my ideas are not as well thought out as they could be, but I am doing my best to work with the Department of Justice experts to learn your problems which, as you know, are our problems too.

I want you all to feel free to visit me in Washington and to send me articles or your own comments which may prove helpful to us. We are anxious to support your requests for more funds and more supporting personnel in all fields. We are anxious to know where the problems lie and how they can be solved. We are very aware of our obligations toward an independent judiciary. But we know that this must be a joint effort and we are hopeful that you will invite us to join you in your requests for much needed reforms.

Thank you.