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ADDRESS

BY

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I have been asked to discuss today what is unquestionably the most serious problem currently confronting our profession, the problem of congestion in the courts and delays in the administration of justice.

The trial of any civil case, generally speaking, should take place not later than six months from time of filing of the case. In other words, if the judicial machinery was doing the job it should, and allowing a period normally needed for pre-trial preparation, a case should be reached for hearing and adjudication six months after the complaint is filed. This situation prevails in England today although not long ago a delay of one year was viewed with such alarm that steps were immediately taken to correct the situation.

Statistics recently compiled by Mr. Sheldon Elliott, the Director of the Institute of Judicial Administration, New York Law Center, disclose that in America, the nationwide average, based on findings from some 97 state courts representing all states and larger cities, is one year from at issue to trial for jury cases and approximately 5 months for non-jury cases. I emphasize at issue because that time often has little relation to the time of filing a suit. These statistics further show that in metropolitan areas where the courts have jurisdiction of county populations in excess of 750,000, the average time throughout the nation from at issue to trial in jury cases is 22 months, ranging from a high of 53 months to a low of 4.5 months.

In the Federal courts, the picture was equally bad if not worse. Statistics of the Administrative Office of the United States Courts compiled in 1955 disclosed that the median time for disposition of the normal civil case terminated by trial in the 86 districts having solely Federal jurisdiction was 14.6 months. In some districts a delay of four years was the norm and in others a delay of two or three years was common. However, I am glad to

note Texas, and specifically the Northern District here at Dellas, has the best record in the nation with a median interval of only 4.4 months for the trial of any civil case!

But most encouraging are the figures just compiled by the Administrative Office of the United States Courts for the year ended June 30, 1956. The number of new civil cases filed during that period were over 62,000 but terminations totaled just under 67,000. In fact, 3,000 more cases were filed during that 12-month period than during the corresponding period a year earlier, while terminations exceeded those of fiscal 1955 by 8,000.

Of the civil cases filed during fiscal 1956, more than 21,000 involved the Federal Government, either as plaintiff or defendant. Terminations of these types of cases totaled more than 24,000. Most encouraging was the situation in the Southern District of New York which accounted, according to the Administrative Office, for a great deal of the decrease. The number of cases filed in that District, both Government and private, totaled more than 5,000 but terminations totaled more than 7,000. Speaking solely of Government cases there, 975 were filed while 1,400 were terminated.

Nevertheless, a big job still lies ahead in the attack on backlog. Just what do the figures mean?

Every citizen is a potential litigant. Few, however, have occasion to participate in a law suit more than once. To that litigant his case is unique and vitally important; it may have far-reaching consequences on his life. An inordinate delay may be the decisive factor in his appraisal of the administration of justice and the faith he reposes in the law to do justice. It is therefore essential, if we are to maintain the confidence of the people in our courts that we find the means of eliminating delay which in some cases may result in a deprivation of justice. And it must be done

without sacrificing in the interests of promptness any of our procedural and substantive safeguards which are essential to our system of justice. Moreover, unless the legal profession accepts the responsibility of putting its own house in order we will find the job being done by others for us, and in a manner that may not be entirely to our liking.

The Department of Justice has been deeply concerned about the delay in getting a case disposed of in some districts. This special concern arises from the fact that the Government is a party to approximately 60 percent of all cases, civil and criminal, that are tried in the Federal district courts each year.

Our all-out backlog drive actually began moving under full steam in September of 1954, although plans were laid from the day we assumed responsibility for Government litigation. We have had the active cooperation of the organized Bar, the Judicial Conference of the United States, Federal judges, court administrators, the Congress and others.

First, we joined in the successful effort to secure an increase in the number of Federal judges and adequate salaries and pensions for all Federal judges. Enactment of the pay raise bill has made it possible to interest as judges leading members of the bar, outstanding lawyers who heretofore could hardly be expected to accept appointment to the bench unless they had independent means.

Second, the prior practice of permitting United States Attorneys to engage in the private practice of the law at the same time they were holding public office was abolished. Then there were recruited in the United States Attorneys' offices outstanding young lawyers from leading firms in their communities and top men in their law schools. Salaries of the United States Attorneys and their assistants were satisfactorily increased.

Third, in order to give the same benefits to the home office in Washington, we instituted in 1954 an honor program of recruiting outstanding young law graduates from all the leading law schools in the country. Initially we made 30 positions available for this program, but it has turned out so successfully that this year we expect to employ about 50 of these young graduates.

This program has two main objectives: first, the Department needs the service of young top-flight lawyers, and we are confident that many who come with the idea of staying only a short time will recognize the importance of Government service, its many opportunities, and will elect to make a career of it. We recognized, too, that the legal profession as a whole will benefit by the intensive training and specialized knowledge of Government practices and procedure that these young people will carry with them if they elect to enter the private practice of law.

Fourth, Congress responded to our request for funds to enlarge our staffs in the United States Attorneys' offices and in some of the Departmental Divisions.

Fifth, we created a number of so-called "task forces", composed of experienced attorneys from the Department, who have been sent out to assist in those districts where the regular complement of lawyers was seriously overloaded with work. The result has been that substantial inroads have been made into the backlog problem where it was most acute.

To illustrate the effectiveness of the task force system, a special team in the Tax Division was able to terminate 442 tax refund cases during a period of 10 months ending on June 30, 1956, as compared with the termination of only 269 such cases during an equivalent ten months period the year before. In the Civil Division, we were able to close in the Court of Claims alone, 226 cases involving $235,000,000.

Sixth, we created an Executive Office of United States Attorneys which is analogous in many respects to the Administrative Office of the United States Courts. By a special IBM case reporting system, each United States Attorney is now provided with the current status of every item under his jurisdiction. In this way we have been able to single out for special action delinquent cases, as well as other matters which might otherwise tend to get bogged down. It has also provided us with the information necessary to determine whether additional personnel or special task forces was required. This system similarly provides the same information to each Division in the Department. For the first time in the history of the Department we now have a complete picture of where we stand and what must be done.

Seventh, in the Antitrust Division, an accelerated program is being carried forward to dispose of cases by the use of consent decrees. Literally thousands of dollars of court work is being saved by our being able to negotiate consent settlements before trial. The public interest, both in the prompt disposition of cases and in the early correction of restraints of trade, is not only fully insured by this procedure but is promoted.

Eighth, we have greatly enlarged the discretion of the United States Attorneys to settle thousands of cases without the necessity of referring the matter to Washington for approval. This has eliminated much of the red tape which contributed to delays in the disposition of cases, as well as in keeping out of court many matters which might otherwise have needlessly added to the congestion in the courts. We are currently studying to see if a further enlargement of discretion in this area would be justified.

Ninth, last fall and again this spring, the Department advised the Federal judges through the Judicial Conference that it was prepared to try cases during the summer months in those courts where the judges believed such

a program would be feasible. We recognize, of course, that there are practical difficulties to be overcome. However, recent appropriations to permit the installation of air conditioning will be most helpful in this regard. Already a number of Federal courts have held summer sessions and others are planning to reconvene earlier in the fall than in the past.

Tenth, our legislative program has contained a number of proposals which would materially assist in expediting the trial and disposition of cases. I regret to report that the three principal bills were not passed by the Congress:

First, creation of a second group of additional judgeships. Second, creation of a Commission to study means for the codification and unification of foreign and domestic procedures relating to the examination of witnesses, the introduction of foreign documents into evidence and the proof of foreign law. The unprecedented flood of domestic litigation since 1945 with international ramifications has posed baffling and sometimes insoluble problems with resultant impediments in both civil and criminal cases. Third, legislation to curtail the abuse of the writ of habeas corpus by narrowing the area in which applications can be made to lower federal courts to review commitments under final decisions of state courts.

Eleventh, improvements in the Immigration and Naturalization Service in the Department of Justice have been so widespread and effective as to cause a noticeable drop in the backlog of Government cases. The chief pertinent changes are the successful drive to stop the illegal entry of wetbacks across the Mexican border to a point where a scandalous breakdown of law enforcement has been corrected; and a humane change in procedure whereby deportation inquiries are started by an order to show cause instead of arrest, and a more liberal detention policy has emptied the old detention centers such as

Ellis Island of all but a handful of cases, composed chiefly of subversives and bail-jumpers and deserting seamen.

In fact, the Administrative Office of the United States Courts reports that during fiscal 1956, the number of new criminal cases instituted totalled 28,739, as contrasted with the approximately 35,000 filed in fiscal 1955. And the Administrative Office says that practically the entire decrease results from the reduced number of immigration cases.

When we first began this all important drive on the backlog, there was a staggering total of 74,972 cases in court and legal matters not actually in court, civil and criminal, pending in the United States Attorneys' Offices. As of June 30, 1956, just 22 months later, this total has been cut by 23,552 cases and matters, a reduction of slightly over 31 percent. The number of civil cases actually pending in court has decreased by 6,390, or over 27 percent, leaving the offices with approximately 17,000 civil cases. This is the smallest number of pending civil cases since June 1946. Pending criminal cases, during the same period of time were reduced by 3,030 cases, approximately 29 percent. This means that as of June 30, 1956, the United States Attorneys had fewer criminal cases pending in court than at any time in the last 20 years.

There has been another spectacular development which has resulted from this case backlog drive. This has been the substantial increase in the amount of money that has been collected through the United States Attorneys' Offices. During fiscal 1954, prior to the drive, $21,217,000 was collected. In the fiscal year just ended the figure was almost doubled, and set an all time record for the Department of $41,785,000. In operational costs this means that for every dollar spent the return increased from $2.61 in fiscal 1954 to $3.75 in fiscal 1956.

This program which I have outlined primarily concerns steps taken within the framework of the Department of Justice with respect to Government litigation in the Federal courts. However, in searching for the solution, and as our program was being developed, it soon became apparent that the problem of delay must be attacked on all fronts if the optimum currency in litigation is to be achieved.

The basic problem is to overcome inertia. Perhaps the foremost cause of delay is a state of mind; lawyers and judges have come to expect delay; they take it for granted, and have adjusted their work habits accordingly. Even clients have reluctantly resigned themselves to the situation. It is therefore necessary that such fundamental attitudes and concepts be changed, even though there may be some disagreement as to the means, or even the ends to be served.

A second cause for delay has been the lack of coordination and cooperation between the many groups who have been independently working on this problem for years. Sporadic efforts here and there have resulted in some good, but they have been overshadowed by the magnitude of the national shortcoming which has become almost chronic.

A third failure has been the inability, through lack of publicity and knowledge of the facts, to solidify public opinion and to obtain public support for changes which are necessary if the problem is to be solved. I am firmly convinced that solutions would soon be forthcoming if the spotlight of public opinion, so much a part of our democratic system, was focused on the judicial branch and the legal profession so that both their accomplishments and weakness were matters of public knowledge. Once the facts and the problems were exposed, corrective action would undoubtedly follow.

In May of this year, upon my invitation, a Conference on Court Congestion and Delay was held at the Department of Justice. We invited the Presidents of the Bar Associations of all the states and larger cities, many of whom are here today, and the heads of other bar, judicial and research organizations. Ninety leaders of judicial, legal and research organizations from every part of the country gathered to pool their knowledge and resources. For two days the subject was discussed in open forum and a definitive program was adopted whereby the Conference, operating on a continuing basis, can prosecute a nationwide, all-out attack on delays in litigation. The Conference will conduct its continuing work through an Executive Committee to be selected by the Attorney General.

The Conference is unique in that it assembles together for the first time a large segment of the bench and bar in a coordinated program aimed at eliminating delays in litigation. During the ensuing year, the Conference will receive, correlate and report on the need for uniform state and Federal judicial statistics; the possibility of rotating judges to congested areas; the extent to which discovery procedures and pretrial conferences can be employed to shorten trial time; whether maximum efficiency in calendar procedures is being employed; the extent to which the judge must exercise control over the progress of litigation; and last, but perhaps most important, the professional responsibility of the Bar to assist in accomplishing these objectives.

I stress this final point because the Conference, in recognition of the importance it attached to cooperative action, unanimously adopted a resolution stating in part that "a cooperative, hard-working joint venture, participated in by all members of our profession in a resclute manner, and carried forward on a day-to-day basis, can materially reduce congestion in our courts

in the very near future, with substantial improvement in the administration of justice."

In a very real sense each of us plays an essential working part in the procedures by which justice is administered. Individually, and certainly as a group, by action or inaction, we greatly affect the character of the operation of the courts. Our conduct, collectively and individually, both in and out of court, must be directed to the end of expediting the disposition of cases and not to delaying or impeding their disposition.

While understandably we all have a professional pride in the cases we handle or the clients we represent, we must be ever-mindful of the fact that ours is a public service profession and that our responsibilities as officers of the court transcend our own private or pecuniary interests. We must not condone the docketing of cases when there is no intention of ever bringing them to trial--cases which are merely filed for harrassment or other obstructive reasons. Stalling tactics, such as abuse of pretrial, discovery and motion practice and the seeking of adjournments designed solely to wear down opponents, cannot be justified. Recently a study made in the Southern District of New York showed that of 10,735 cases in backlog, over 5,100 were inactive. Of 6,000 cases on the trial calendar, only in 800 did the lawyers on both sides say they were ready. This is not an isolated situation and it is only reasonable to assume that much of the backlog is attributable to dilatory tactics.

Another contributing fact has been the tendency of some lawyers or firms to assume responsibility for more litigation than they can attend to on a current basis. This problem became so acute in the District of Columbia that it became necessary for the court to pass a rule forbidding adjournment to any lawyer when it appeared that he was handling more than twenty-five cases

on the calendar. As lawyers, we should assume the lead in cutting the back-log and should not wait to be prodded into action by the courts.

The task we have set for ourselves is by no means a simple one. Delay is not new in the law and had there been a ready solution it would undoubtedly have been adopted long ago. But just as the present system resulted in part from lack of attention, it follows that constant attention may well be an effective counter-measure. If this organization, and the others which have pledged their cooperation, will devote their time and energy, their organized skill and imaginative approach to the solution of this problem, then substantial inroads into the law's delay will inevitably follow. I am confident that this drive will acomplish its objective for as lawyers and leaders of our communities we recognize that the strength of America lies in the preservation and strengthening of our institutions of freedom of which the impartial, effective and prompt administration of justice is the cornerstone.