Department of Justice

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REPORT

OF

THE HONORABLE HERBERT BROWNELL, JR.

ATTORNEY GENERAL OF THE UNITED STATES

TO

THE JUDICIAL CONFERENCE OF THE UNITED STATES

Washington, D. C.

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Mr. Chief Justice, Members of the Judicial Conference:

Once again it is my privilege and pleasure to render an annual report at this meeting of the United States Judicial Conference on matters of mutual concern which relate to the business of the federal courts. Through our cooperative efforts, we are making headway in unraveling common problems and in advancing the American tradition of equal justice under law.

1. Case Backlog and Delay

As in the past, uppermost in the minds of members of the bench, the bar and the people is the difficult matter of cutting down the law's delays without impairment of constitutional rights.

The Department of Justice has been trying to do its share in keeping litigation operations current. As of June 30, 1957, the drive which began on August 31, 1954, had reduced cases pending in United States Attorneys' offices by 31.07% or 10,503 cases. Criminal cases were reduced from 10,392 to 7,376 or 29%, while civil cases dropped from 23,413 to 15,926 or 31.98%. A number of United States Attorneys' offices are now current in their criminal and civil caseloads, and able to handle legal business in the courts without undue delay. These efforts have been reflected by equal success in increasing collections of moneys due to the Government. Collections by United States Attorneys during the fiscal year ending June 30, 1957, amounted to $35,818,490, the second largest amount ever collected in a comparable fiscal year in the history of the Department.

This is the result of an all-out drive among the various divisions of the Department. Merely a few illustrations of what was

done may be cited. We created a number of "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. Thus, for example, a special team in the Tax Division was able to terminate 442 tax refund cases during a ten-month period, compared with 269 cases for the comparable period the year before. We created an Executive Office of United States Attorneys which is analogous in many respects to the Administrative Office of the United States Courts. Through a special IBM reporting system, we were able to single out for timelier action delinquent and other cases which would otherwise get bogged down. In the Antitrust Division, an accelerated program was carried out to dispose of cases by the use of consent decrees. Efforts are now being made to cut down the burden of the courts in protracted antitrust cases. We also eliminated the red tape which contributed to delays in disposition of cases by greatly enlarging the discretion of the United States Attorneys to settle thousands of matters without referral of them to Washington for approval. We advised federal judges of our readiness to try cases in the summer months wherever the judges believed such a program to be feasible. We improved the administration of the Immigration and Naturalization Service with a noticeable drop in the backlog of Government cases.

This campaign by the Department to bring the Government's legal business to a current status could not have been accomplished without the splendid cooperation by the federal judiciary throughout the country. The increasing assignment of additional judges to districts

where the problem of crowded dockets was most critical, setting up special terms for disposition of selected groups of cases, such as tax cases, the holding of court throughout the summer months, frequently in non-air conditioned court rooms, effective calendar control and extended use of pre-trial techniques, are but typical of the many ways in which our federal judges have responded in the national drive to reduce unnecessary delay in litigation.

But however great their efforts, it is clear that many additional federal judgeships are still critically needed, not only to assist in the current drive to wipe out congestion and delay, but to fill the need of handling the ever-expanding business of the courts caused by the continuing growth of our population and development of our economy. For example, there was an increase of 11,675 bankruptcy cases filed in 1957 or 18.8% over 1956. Although satisfactory progress has been made, in some areas it still takes 2-1/2, 3 and even more than 3 years from issue for a civil case to be tried. The caseload per judgeship in civil cases is increasing and the need for the additional judgeships recommended by the Judicial Conference is most urgent. This congestion in litigation will not be eliminated until the new judgeships are created and all vacancies are filled.

2. <u>The Attorney General's Conference on Court Congestion and Delay in Litigation</u>

You may remember that last year I reported on the initial results of a conference which I called in Washington of leaders of the bench and bar to discuss the problem of court congestion and delay in litigation, and to plan its solution. An Executive Committee was formed at the time composed of distinguished members of the Congress, the judiciary, and

the bar. Its Chairman has been Deputy Attorney General William P. Rogers. This Committee wasted no time in getting to work. Following various meetings, the Committee submitted its report in which it limited its recommendations to those proposals which would have an immediate and direct impact on the congestion and delay which exists in the courts.

With respect to state courts, the Committee recommended the following:

1. The establishment of centralized administrative supervision of all courts in a single head, preferably the chief judge of the state system, with authority to promulgate uniform court rules, and to assign judges to places where congestion is acute.

2. The maintenance in all jurisdictions of uniform and up-to-date judicial statistics.

3. The adoption of modernized rules of procedures such as pretrial conferences and discovery procedures to promote the orderly and expeditious trial of cases.

4. The adoption of businesslike methods for supervising court calendars so that the most efficient use could be made of the judges' time.

5. Frequent conferences of members of the bar and judges to encourage cooperation in efficient judicial administration.

Similar proposals were recommended for federal courts in jurisdictions where they are not in effect. In addition, special recommendations were made concerning the federal courts. These I shall discuss in a moment. At the same time, I shall indicate how the recommendations compare with those of the Judicial Conference and how they have been

implemented as a result of unusual coordination among all branches of the Government and representatives of the bar and public.

1. Chief Judges to relinquish administrative duties at seventy-five

The Executive Committee on Court Congestion and Delay recommended that legislation provide that the chief judge of a federal court of appeals or of a federal district court shall relinquish his administrative duties upon reaching the age of 70. In this proposal, the Committee gave recognition to the difficulty of the daily administrative problems of the court, and concluded that senior judges should not be called on to handle these onerous duties in addition to normal duties.

This recommendation followed a similar recommendation previously made by the Judicial Conference. Legislation was introduced in the Senate and House to carry out the proposal, and was supported by the Department. H.R. 985 was passed by the House on May 23, 1957, with an amendment changing to seventy-five the age at which a chief judge should be required to relinquish his administrative duties. This bill and a related bill, S. 1339, are pending with the Senate Judiciary Committee.

2. Chief Justice to address Congress

Another recommendation of the Committee was that Congress invite the Chief Justice of the United States to appear personally before a joint session at the beginning of every Congress and report on behalf of the Judicial Conference of the United States on pending urgent requirements of the federal courts and on long-range programs to meet future needs before they become critical. It was felt to be essential that the courts be represented by a spokesman who directly and effectively could

bring to the attention of Congress proposals which would advance the proper administration of justice.

As you know, for several years the Department has been urging the enactment of legislation authorizing the Chief Justice to address a joint session of Congress either annually or at the beginning of each session. The Department has given its support to H.J. Res. 46 which provides for the Chief Justice to address Congress annually.

3. Additional Judgeships

The Committee also recommended enactment by Congress to effectuate the recommendation of the Judicial Conference for the creation of 35 additional federal district judgeships, 2 additional judgeships for the courts of appeals, and making permanent the 4 temporary judgeships.

Here again, marked progress has been made. Omnibus judgeship bills as well as numerous individual bills are pending with the respective Judiciary Committees. The Department has vigorously supported creation of the additional judgeships before these Committees. On August 30, 1957 the Senate passed a number of individual bills which would authorize the appointment of additional judges for the Court of Appeals for the Second Circuit, the Districts of Kansas, Maryland, Connecticut and Nevada, the Southern District of Mississippi, the Southern and Eastern Districts of New York, the Eastern, Middle and Western Districts of Tennessee, two in the Northern District of Illinois, one to serve all three Districts of North Carolina, Eastern, Middle and Western, one for both the Eastern and Western Districts of South Carolina, one for the Southern District of Florida, two for the Eastern District of Pennsylvania, and one to serve both the Northern and Southern Districts of Iowa. In addition, the Senate passed a bill

to make permanent the temporary judgeship in Utah, and to create a temporary court of appeals judgeship for the Eighth Circuit.

We must continue to enlist the aid of the Congress and the people in giving full support to recommendations for these and other judgeships so that the courts may effectively and expeditiously discharge their public responsibility.

4. Roster of "Senior" judges

Consistent with recommendations of the Judicial Conference, the Committee also recommended amendment of section 371(b) of title 28, United States Code, to designate as a "senior judge," rather than as "retired," a judge who takes advantage of the retirement provisions. It also recommended that provision be made for a "Roster of Senior Judges" who are willing and able to undertake special judicial duties upon assignment by the Chief Justice. This proposal would tend to mitigate the feelings of many judges that by retiring, they mark themselves unfit for public service even on a limited basis. The recommendation would make systematic provision for the utilization of the services of mature, experienced and respected senior judges who are willing and able to work. By keeping the assignment on a special basis, the judge will be protected from committing himself for more than he can effectively do as a public service. At the same time, the Court is protected in event the judge should become ill or disabled.

Identical bills to carry out this recommendation were introduced in the House and Senate, passed by both Houses and signed by the President.

5. Expanded use of pretrial procedures

The final recommendation by the Committee dealing with federal courts was also in complete concurrence with another important resolution

of the Judicial Conference. It provides that pretrial procedures and techniques should be used in every civil case in the federal courts except in extraordinary cases where the district judge expressly enters an order otherwise and finds that the ends of justice would be better served without resort to these procedures.

The Committee recognized the early reluctance on the part of many judges to employ novel procedures before their effectiveness had been tested and established. But, as the Committee noted, "the salutary experience with pretrial now justifies its adoption by all district courts as a recognized means for providing better and more expeditious trial of cases."

The Committee also made recommendations of general applicability which included a recommendation that law schools adopt as part of their curriculum the teaching of methods and principles to reduce delays and dilatory tactics; a recommendation that as a guide in determining whether trial calendars are current, delay in the final disposition of the average civil case beyond 6 months after commencement of action be considered excessive; that decisions on appeals be rendered within 6 months after entry of the judgment appealed from; and finally a recommendation that more publicity should be given to both the accomplishments and the shortcomings of the judicial system.

It is hoped that the Conference on Court Congestion and Delay will continue its splendid work, and that it will now set its sights on the long-range problems of an effective and adequate system of justice in the federal courts.

There are a number of other matters of concern to the Judicial Conference as to which time will permit only brief comment.

Appointment of additional judges under certain circumstances.

The Congress enacted legislation to provide that whenever a judge appointed to hold office during good behavior becomes eligible to retire for disability under Section 372 of title 28, United States Code, and fails to do so, the President shall be authorized to appoint an additional judge. As a condition of this appointment, a certificate of disability must be presented to the President by the members of the Judicial Council of the Circuit in which the District or Circuit judge sits, and the President must find that such judge is unable to discharge efficiently the duties of his office and that appointment of an additional judge is necessary (Public Law 85-261, approved September 2, 1957). In this event, the vacancy subsequently caused by the death, resignation or retirement of the disabled judge shall not be filled.

The Judicial Conference recommended this bill. The Department went on record as favoring enactment of it.

Habeas Corpus; review by Federal courts of State court convictions.

At its March 1957 meeting, the Judicial Conference reaffirmed its earlier recommendation that legislation be enacted to curtail 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. Two bills, S. 1011 and H.R. 8361, to carry out these recommendations were

pending with the respective Senate and House Judiciary Committees when the session ended.

Public Defenders.

At its March 1957 meeting the Judicial Conference renewed its earlier recommendation that legislation be enacted to provide public defenders in the federal courts or authorize payment of compensation to counsel appointed by the federal courts to represent indigent defendants. H.R. 108 would carry out this recommendation. The Department has strongly favored this bill as well as H.R. 3791 which is different somewhat in text but identical in substance.

Appeals by United States in Criminal Cases.

The Department has transmitted proposed legislation to the Congress which would permit appeal by the Government from a judgment sustaining a motion to suppress evidence, even though an indictment had been returned or an information filed. At present such a decision rendered after an indictment or information has been filed is regarded as an interlocutory one in the criminal action, from which no appeal lies on behalf of the Government. The bill would also authorize appeals by the United States from decisions dismissing prosecutions during trial upon defendant's motions raising issues of law. This proposal, introduced as H.R. 4753, is pending in the House Judiciary Committee.

Bailiffs, appointment by courts.

Under existing law (28 U.S.C. 755) bailiffs are appointed by the United States Marshal although by nature of their duties they are court attendants. H.R. 3815 would amend the present law

so as to provide for appointment of bailiffs by district judges and place them entirely under the supervision of the courts. Both the Judicial Conference and the Department favor enactment of this measure.

Administrative agencies, record on review.

The House passed H.R. 6788, a laudable measure designed to eliminate unnecessary expenditures of time and money in the review of agency orders by the courts of appeals. This bill was favored by the Judicial Conference and the Department. It would authorize the courts of appeals to adopt, with the approval of the Judicial Conference, rules prescribing the time and manner of filing and contents of the record in all proceedings instituted in the courts of appeals to review or enforce orders of administrative agencies, when the applicable statute does not specifically prescribe the time or manner of filing or the contents of the record. This bill would also provide for abbreviation of such records pursuant to rules of court, stipulation of parties, or court order.

Miscellaneous.

There are several other matters which are the subject of pending legislation which may be of interest.

H.R. 2516 and H.R. 4497 would increase from $3,000 to $10,000 the amount necessary to give the district courts jurisdiction of civil cases, including cases arising under the Constitution, laws and treaties of the United States (28 U.S.C. 1331), and cases involving diversity of citizenship (28 U.S.C. 1332). H.R. 4497 would

also amend the law to provide that a corporation shall be deemed a citizen of the state in which it has its principal place of business as well as of the state of its incorporation. The Judicial Conference and the Department favor this legislation.

H.R. 4642 and S. 1890 would establish a Commission and Advisory Committee on International Rules of Judicial Procedure. The proposal would create an agency to study existing practices of judicial assistance and cooperation between the United States and foreign countries, and to make recommendation for the improvement of international practice and procedure in civil, criminal, admiralty and quasi-judicial matters. This measure has received widespread support by the Department, the American Bar Association and various local and international bar groups.

Special Sessions during a national emergency.

I cannot permit this occasion to pass without stressing once again a recommendation made in my report to the March 1957 Conference. This is to provide authority to permit special sessions of court anywhere within the district during a national emergency.

Uniform sentencing.

Last year at this conference I discussed rather briefly with you problems created by disparities in sentences for similar crimes given to individuals with substantially the same background and prior record. Since that time we have given considerable attention to this problem in the Department. We have held a number of staff meetings to consider alternative plans suggested from time to time for improving

a situation which, as you know, has troubled a large number of Federal judges, as well as the Department.

We have had the advice, among others, of Judge Burdette Daniel of California, who worked with the Chief Justice when he was Governor in drafting the statutes establishing the California sentencing plan and the establishment of the Adult and Youth Authorities of that State. We have also studied the proposal of the American Law Institute that all felonies be grouped according to their seriousness and that the court be allowed to prescribe both an ordinary sentence and an extended term for the habitual or dangerous offender.

Various bills relating to sentencing procedures have been drafted and reviewed by a departmental staff group. Also, the Advisory Corrections Council, established by the Youth Corrections Act, has considered a number of proposals. Chief Judge John J. Parker and his committee on Punishment for Crime met with the Advisory Corrections Council, representatives of the Department, and myself to consider some suggested courses of action.

Among the proposed bills we have had under advisement is one which would make it possible for the courts more widely to share their responsibility with the Executive Branch for determining the amount of time a convicted offender should actually serve. This is accomplished by granting the courts discretionary authority to set a parole eligibility date at less than one-third the maximum sentence prescribed. The minimum sentence, however, could in no case be more than one-third the maximum.

Another bill embodying the principle of granting to the Executive Branch a more important role in the sentencing process would extend the Youth Corrections Act to include those up to 26 years of age. If this were done, the courts could apply the more flexible principles of that Act to a larger group. As many of you will recall, the model Youth Corrections Act as originally drafted by the American Law Institute provided that it should be applied to all offenders up to 25 years of age who seem to have possibilities of rehabilitation. The present Federal Youth Corrections Act, which has worked so well, as recommended by the House and Senate Committees on the Judiciary encompassed youth up to and including age 23. The age limits, however, were reduced on the floor of the Senate on the suggestion of one of the Senators who thought it wise to proceed more slowly and offered an amendment, which was adopted, to include only those who had not passed their 22nd birth date. Now that we have had so satisfactory an experience with the Act it may be possible to extend it to a larger group.

Another proposal is based on the assumption that an interchange of points of view between the various United States Judges would help to establish more generally accepted standards and policies of sentencing. The proposed bill would authorize the Judicial Conference to sponsor a series of institutes and joint councils for this purpose. These discussions would have as their objective the formulation of principles and criteria for sentencing that would assist in promoting equal administration of the criminal laws of the United States.

The bills embodying these proposals have been forwarded by the Advisory Corrections Council to Congressman Emanuel Celler, Chairman of

the House Committee on the Judiciary, and Senator Thomas Hennings, Chairman of the Senate Sub-committee on National Penitentiaries, for their consideration. Congressman Celler introduced them in the House on July 31, and I understand they have been transmitted for study and comment to the Judicial Conference, to the Federal Judges, to law school Deans, teachers of criminal law, and a number of others who have given attention to this proposal. The Congressman has also invited other suggestions his committee might consider next year.

The Department has not yet reached a final conclusion as to the position we should take with regard to these bills.

Federal Youth Corrections Act.

In October 1956 District Courts west of the Mississippi River were authorized to invoke provisions of the Youth Corrections Act. Thus, nearly six years after this Act was approved by the Congress, it became available to all the Judicial Districts within the territorial limits of the United States. Implementation of this program for the western states, posed numerous problems for the Director, Bureau of Prisons. The continued high level of population in all federal institutions made it difficult to certify the availability of special facilities for persons committed under its provisions. Because of his keen interest in and understanding of the problems of youthful offenders, however, the Director took emergency measures to provide space and adequate staff at the Federal Correctional Institution, Englewood, Colorado. In addition, the Bureau has taken steps to convert the Federal Prison Camp at Tucson, Arizona, from a facility used largely for Immigration Act violators to a center for the treatment and training of selected juvenile and youth

offenders. The staffs at both Englewood and Tucson have been augmented with specialists, particularly interested and skilled in helping young delinquents.

Since the Act was implemented for the Courts east of the Mississippi River in January 1954, more than 1500 youths under the age of 22 have been committed to our custody under its various provisions. During 1956, 387 youths were committed to us as youth offenders; in 1957 this number rose to 627. It is apparent that the Courts are availing themselves of the Act and we can expect an increasing number of youths in this age group to come to us for treatment and training under its provisions. Seventy-three of the 88 Judicial Districts in the United States have invoked the treatment and training provisions of the Act. In the short period between October 1956, when first available to judicial districts west of the Mississippi to June 1957, 25 judicial districts out of a total of 33 had committed youths under the Act. To date, the Courts have committed some 135 young men for 60 days study and observation, at the conclusion of which a full report and recommendation is given the committing Judge. In these reports every effort is made to provide a full and comprehensive view of the offender's background, capabilities, mental attitudes and character traits. We are encouraged and pleased by the comments of the Judges who have availed themselves of these diagnostic services.

We regret that the current session of the Congress did not appropriate funds to begin construction of the Western Youth Guidance Center, which is so urgently needed. With funds appropriated for 1957, preliminary plans were drawn and the Site Selection Committee reviewed a

number of proposals submitted by communities in the area tentatively selected for this facility. We are convinced that the continued increase in the use of the Youth Act by the Courts will impress upon the Congress the need for an additional institution for these offenders, and we expect to make our needs known when the Congress convenes again next year.

Rehabilitation of these youthful offenders requires the coordinated efforts of several agencies. The Probation Service, the Youth Division of the Board of Parole, and the Bureau of Prisons all are striving to improve their techniques in working with these persons. It is most encouraging to report that of about 600 youths authorized for release to June 30 only 125 had violated the conditions of their release.