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ADDRESS

BY

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Prepared for delivery  
before  
THE NATIONAL CONFERENCE ON  
CONGESTION IN THE COURTS

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It gives me great pleasure to extend the welcome of the Department of Justice and my own personal thanks and appreciation to each of you for agreeing to participate in this Conference on Congestion in the Courts. Invitations to attend the Conference were confined to the presidents, chairmen and other officials of specific organizations of the bench and bar throughout the country that are most vitally concerned with the problem. We believe that if the combined strength of these organizations is applied to any action that may be decided upon by this Conference, the objectives of this meeting will succeed.

It is particularly significant and, I think, a good omen that so many recognized leaders of the bench and bar are willing to give their time and energy and talents to this worthwhile cause. I am confident that from the vast accumulation of knowledge and experience in this room will come a specific working program which will make a substantial contribution towards eliminating delays in our system of justice. It is my considered opinion that this is the most vital problem confronting the bench and bar of our country today.

The task to be undertaken is by no means a simple one. Had there been a ready solution to our court congestion problem and the other factors that cause delay in litigation, it would have been adopted long ago. The fact that there is no such panacea or magic formula is the reason for inviting judges, lawyers and administrators from all parts of the country to pool their experience and suggestions, in open forum, to the end that a definitive program can be launched to eradicate this shortcoming in our profession.

Delay is not new in the law. David Dudley Field, speaking of the New York Courts in 1839, said: "Speedy justice is a thing unknown; and any justice, without delays almost ruinous, is most rare." But the fact that delay has been with us so long does not clothe it with respectability or give it permanent tenure. Like cancer, it is a malignant growth that must be cut out and destroyed, the sooner the better.

That the problem is not insolvable we know. We need only look to England or to the State of New Jersey to see that once the problem is exposed and the ingenuity of man is put in motion delays in litigation can be and have been eliminated. In England there was such serious concern over a delay of one year that by special effort the situation was speedily corrected. Today, any case can be tried in six months and the appeal decided within three months thereafter. In New Jersey the procedure adopted was as equally impressive. There, a streamlined judiciary was established by constitutional amendment over the opposition of most judges and lawyers. The result, as Chief Justice Vanderbilt has said, was that "the problem of chronic calendar congestion" was resolved "and at the same time the cases were by common consent being better tried than under the old system."

As most of you may know, the Department of Justice has been deeply concerned for some time about the delay in getting cases disposed of in certain districts. Since August of 1954, we have been placing major emphasis on means of cutting down our backlog of litigation pending in District Courts as well as in disposing of other matters which might eventually reach the courts.

As a result of this intensified program, and with the cooperation of judges and administrative officers of the courts, we have been able to cut our backlog by more than 20 percent in 18 months. But while we are pleased with the progress we are making, we know that we still have a long way to go to complete this job.

Our interest and concern in the general problem of congestion arose from these early experiences with Government litigation. As you know, the Deputy Attorney General, Mr. Rogers, and I, have made public statements in an effort to focus the spotlight of public opinion on the problem. We have discussed the subject fully with the Judicial Conference of the United States, whose great efforts have made real inroads into the backlog in the Federal Courts.

The basic problem is to overcome inertia. One of the foremost causes of delays in litigation is a state of mind. We have come to expect delays, to take them for granted, and to resign ourselves to them. Thus our most difficult task will be a selling job - to sell the idea that delay is not a necessary evil which must be borne. It will not be easy to change these fundamental work habits and attitudes. Some lawyers and judges have become accustomed to a modus operandi which takes delay into account. Also, such fundamental attitudes and concepts will not be changed without some disagreement as to the means, or even the ends to be served.

In some areas, delays incident to obtaining judicial resolution of controversies are so substantial that many people have been driven to other means for resolving dispute. Legitimate claims have been settled at a fraction of their worth because there was not available timely

judicial relief. Some of the major litigants, impatient with the failure of horse and buggy justice to cope with jet age problems, have turned to arbitration and other contractual devices and various administrative remedies as alternatives. Although some of these extra-judicial devices may have value we cannot afford to drive people from our courts to other means of settling disputes because judicial relief is so distant and remote as to be meaningless. We know that justice delayed often means justice denied, and that resentment arising from injustice may inflict wounds more lasting and more painful than physical injury. Our task is not to fix blame but to find the cure - to take the "overdue" out of "due process."

The purpose of this Conference is to get the attention of leaders of the bar focused on this problem and to elicit from them the ways and means of eliminating delay. This problem is of national concern and affects the rights of litigants in both state and federal courts. I am confident that this effort will succeed, but it will take the active participation of each of us, not just today and tomorrow, but continuously from now on and for many months to come to correct this deficiency in the administration of justice.

We have planned four sessions for this Conference, two today and two tomorrow. Each of the first three sessions will be led by a separate panel. The panel members have agreed to speak briefly at the beginning of each session on precise aspects of the problem of delay with which they have gained particular experience. Following their statements, there will be a period of general discussion in which all members are asked to participate and contribute their thinking and particularly any

solutions which have been found workable in your community. This Conference can profit most by suggestions from the floor.

The session this morning will consider the scope and cause of the problem of congestion in the courts, and will include a discussion of the background of the problem, the statistics and the evils resulting from it. It is essential that we have a clear picture at the outset of the causes and extent of the problem we are trying to resolve.

The following two sessions will be devoted to a discussion and evaluation of particular methods and devices for reducing backlogs and delay and getting justice up-to-date. The session this afternoon will lay stress on the Federal Courts, and the one tomorrow morning on the state courts. They will explore the question of whether we have enough judges, whether their services are being effectively employed, and whether we are getting the maximum benefit from pretrial and other procedural devices designed to speed up the trial of cases. Legislative, administrative, and procedural problems will be considered. For example, the District Court for the Southern District of New York has recently made notable strides in cutting into its backlog by the establishment of special calendars. We will have a report on how this was accomplished, as it may well provide a procedure which could successfully be employed in other areas.

This session should also analyze in detail the individual responsibility of the judge, of plaintiff's lawyer and of defendant's lawyer. Any one of these individuals can cause delays and each, in his particular role, can contribute to the more prompt and effective adjudication of cases.

The agenda for the final session will be more flexible. The period will be devoted to general discussion under the chairmanship of the Deputy Attorney General. The recommendations and conclusions reached at the earlier sessions will be summarized and collated. The session will look to the future, and will be primarily devoted to a discussion of the means whereby this Conference can promote, on a nation-wide basis, an organized, coordinated and continuing drive by the courts and the lawyers to eliminate the law's delay. To this end, a steering committee has been appointed to suggest the ways and means of accomplishing these ends.

In my letter inviting each of you to this Conference, I requested that you assemble the data regarding congestion in the courts in your respective areas. Although time limits may not permit oral reports to the Conference from every member, I hope that each of you who have found acute conditions of delay, or who have particular problems or comments, will report on these during the course of the Conference. We have arranged for a Committee on Statistics to assemble the written data that the members have brought to the meeting in the hope that it can correlate this material and report its findings at the last session of the meeting. This material will also be helpful in connection with the coordinated efforts that we anticipate will result from this Conference. The Committee requests that you leave a copy of your material on the front table before the end of the day.

Ours is a public service profession. Both as lawyers and judges we have pledged ourselves to the prompt and effective administration of justice. Although every citizen is a potential litigant, most people

have occasion to participate in a law suit not more than once. To that litigant his case is unique and vitally important; it may have far-reaching consequences on his life. It may be decisive in his appraisal of the administration of justice, and in the faith he reposes in the law to do justice for all.

If we are to maintain the confidence of the people in our courts, we must find the means of eliminating delays without sacrificing in the interests of promptness any of our procedural and substantive safeguards which are essential to our system of justice. This is a challenging task. But it is a task that can and will be done. Our strength lies in the preservation of our institutions of freedom of which the impartial, effective and prompt administration of justice is the cornerstone.