



REMARKS

BY

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Opening the Meeting  
of the  
Executive Committee  
of the  
Conference on Court Congestion and Delay

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In opening this meeting of the Executive Committee of the Conference on Court Congestion and Delay I wish first to express my very sincere personal thanks to each of you for having agreed to assume this important and far-reaching responsibility. The importance attached to the work of this Conference and its Executive Committee can scarcely be over-estimated. The public reaction and wide-spread interest which resulted from the initial meeting of the Conference last Spring make it abundantly clear that the nation looks with hope to this group to provide the necessary leadership and guidance to solve one of the oldest and most serious shortcomings of our profession. I have noticed a growing confidence that this movement will succeed where the many earnest but localized efforts in the past have failed.

The composition of the Executive Committee certainly justifies this renewed confidence that the law's delays may at last be eliminated. We were fully aware in soliciting the assistance of the organizations represented here -- Congressional committees, the association of chief justices, governors, lawyers, editors, law schools and administrative officers of the courts, all the organizations whose help is absolutely essential if this nation-wide program is to accomplish its objectives -- that we were calling upon a group already heavily burdened with important duties of a public nature. The decision to ask you to take on this additional duty was not lightly made; but we feel it was fully justified by the urgency of the problem that faces us. I believe that delay in the administration of justice in many of our courts, both State and Federal, has become a chronic threat to our system of jurisprudence. Your unanimous acceptance of the invitations to serve in this important capacity leads me to believe that you share this view.

It may be useful to set forth briefly some of the considerations which led us to call a National Conference on Court Congestion and Delay. One of the first things that came to our attention upon assuming office nearly four years ago was the appalling lapse of time between the institution of suits by or against the Government and their final disposition. Many persons with legitimate claims against their Government were not able to have them promptly adjudicated, with the result that there were actual deprivations of justice in some cases. On the other hand, important Government functions were being retarded and impaired by our inability to obtain prompt recourse in the courts.

Being charged with the overall supervision and responsibility for Government litigation, we determined to institute a vigorous program to bring our own dockets up to date. I reported in detail on that program at the recent meeting of the American Bar Association at Dallas and I merely wish to say at this time that it is being pressed to completion as rapidly as possible. A report on our progress will be made later in this meeting. However, as that program was being developed, it soon became apparent that it was not possible to treat delays in the Federal courts as separate and apart from the nation-wide problem in this regard. We found, for example, that congestion in Federal district courts was often directly related to the status of the dockets in State courts, and visa versa. The fact that a Federal court was behind in its work in an area where the State court calendar was current tended to attract diversity cases to the Federal court so that the parties might "benefit" by the delay. This, of course, compounded the problem.

The work habits and attitudes of the bar and in many cases the bench are largely influenced by State court practices. The bar of the state courts constitutes, by and large, the practitioners in the Federal courts as well. The Federal judges are drawn from this same group. Where the State courts refuse to permit unwarranted continuances and delays, lawyers were apt to be ready for trial on time in the Federal courts. But where State court proceedings permitted delay, similar dilatory tactics were found to exist in some Federal courts. But of primary importance was the fact that we discovered a general lack of concern over delays. Apathy was and is a primary factor contributing to delay.

It was against this background that we concluded that only through a nation-wide coordinated national movement could any real and lasting solution to this problem be brought about. Thus while the Department of Justice is primarily concerned with delays in the handling of government cases in the Federal courts, it is clear that there must be a frontal attack in all jurisdictions if we are to achieve the optimum degree of currency in litigation and the development of work habits and procedures which will do away with the law's delay. In this connection, Professor Roscoe Pound of the Harvard Law School wrote on August 20, 1956: "I am rejoiced to see the Department of Justice taking on something of the work of the Ministry of Justice which has long been needed both for state and for nation in this country."

Those of you who attended the meeting of the Conference last Spring will agree, I think, that it was well worth the time, effort and expense involved. That, of course, was the pilot session and it is too soon to assess the beneficial results which may flow from it. But certainly it has already accomplished at least these worthwhile objectives.

First, it served to focus public attention on delays in the administration of justice. The resolution adopted by the Conference was published in newspapers the country over and editorial and other comments indicated not only a national concern but a rising demand for corrective action. This, in itself, is most significant, because public support, as opposed to indifference, is essential if progress is to be made in this area, even though the initial responsibility for action may rest with our profession.

Second, the Conference brought together for the first time a large segment of the bench and bar and other public service organizations and joined them in a coordinated drive. Many of these groups had been working independently on the problem for years. Although these sporadic efforts accomplished good results in some localities, they were over-shadowed by the magnitude of the national problem and made little lasting impact on the total picture. The pledges of wholehearted support which we had received, both before and since the Conference, is most encouraging. The organizations represented in the Conference will provide the means for implementing the recommendations of this Committee.

Third, the reports made to the Conference provide much of the necessary background information required in order to formulate a sound and workable program. Additional information of this nature has come in since the Conference and we will continue to receive up-to-date statistics on calendar congestion and delay. Obviously an estimate of the current situation is the starting point for any action program and this material is now largely available.

Finally, the seriousness of the situation was forcefully brought home as representatives from state after state reported delays in one or more

courts far beyond the generally recognized norm. In this connection, the Committee may well wish to define the optimum condition of currency in court calendars as a goal for guidance of the courts and the lawyers. This will involve the question as to what minimum time must be allowed for the completion of motion practice, discovery and pre-trial; and the question as to the time when the delay between issue and trial should be considered excessive.

As you know, the Conference unanimously agreed that it should be established on a continuing basis. It authorized this Committee to further its work, and delineated the Committee's functions and duties. The Executive Committee is not expected to undertake research itself but will serve rather in an advisory capacity to coordinate by voluntary means the work of bar associations, judicial conferences and other groups which are active in this field and are structurally able to implement the program. The Conference gave specific directions to this Committee to give its attention to the following projects at the outset:

1. The necessity for adequate and informative uniform judicial statistics in each state and their proper interpretation and use when such statistics are collected.

2. The extent to which court systems operate to make possible the services of judges in congested areas when the judges' services are not needed in their own communities.

3. The extent to which discovery procedures and pre-trial conferences are being employed and their success in shortening trial time for the various types of litigation and thus relieving court congestion.

4. The ways and means of handling court calendars so that there is a maximum efficient use of judicial time, courtroom space and court officers. This includes the question of whether a consolidated calendar is the best and most efficient method, or whether the rotation to each judge of cases as they are filed moves the court business more expeditiously. This subject needs objective consideration.

5. The extent to which the judge must control the progress of litigation from the time cases are filed, and the extent to which bench and bar cooperation and responsibility can be made effective.

6. The professional responsibility of the bar to assist in accomplishing these objectives."

The primary purpose for calling this meeting at this time is to discuss the methods and procedures by which this nation-wide attack on court congestion and delay can best be coordinated and put into motion. There will be presented at the session this morning additional and up-to-date material on background and statistics on the law's delay. The available forces to spearhead the attack will be discussed. This afternoon, and again tomorrow, methods and procedures for cutting backlogs will be considered. It is hoped that as the material and recommendations are presented they will be the subject of full discussion and that they can be reduced to concrete conclusions and recommended courses of action.

The final session will be devoted to the formulation of an action program which will utilize to the fullest extent possible the facilities of all cooperating organizations and all procedures which have been employed with success in any area. Means for giving the widest possible distribution to the recommendations and conclusions of this meeting will be considered, as well as methods to ensure that follow up action is being taken by the groups responsible for their implementation.

My sincere hope is that there will be evolved a workable operation plan which each community can turn to as a guide for clearing the congestion in its courts, at least to the extent that they have not already employed such techniques in the past. I assume the Committee will evolve a plan for its

various members to follow the progress in their respective fields, and plans for the future work of the Committee and the Conference.

There is, in my opinion, every reason for optimism. We know, because Justice Vanderbilt and his colleagues and the Judges in the Southern District of New York and other courts have demonstrated, that delay in the administration of justice is not a necessary evil which cannot be eliminated. We have the wholehearted support of a great wealth of organizations which have pledged their complete cooperation in this worthwhile cause. Assembled in this room are the men best qualified to recommend plans and procedures that will justify this support. With these assets at our command, I am confident that our over-all objective, to secure to the people of this nation prompt and effective justice, will soon be a reality.

Before turning the meeting over to your Chairman, the Deputy Attorney General, I wish again to welcome you to this important endeavor, and thank you for being with us.