Department of Justice

REPORT OF

THE ATTORNEY GENERAL OF THE UNITED STATES

TO

THE JUDICIAL CONFERENCE OF THE UNITED STATES

BY

THE HONORABLE WILLIAM P. ROGERS

Attorney General of the United States

Washington, D. C.

September 21, 1960

Mr. Chief Justice, members of the Judicial Conference of the United States.

It is a privilege again to meet with the members of the Conference and to discuss briefly a few matters of mutual interest.

Omnibus Judgeship Bill

We are, of course, deeply concerned by the failure of Congress to create the judgeships recommended by the Conference. We believe, as you do, that each of the new judgeships is necessary if the federal system is to cope with the increased litigation arising from our expanding population.

The judgeship bill was among those designated by the President for special consideration at the regular session and again at the August session of Congress. To remove the bill from political considerations, the President assured Congress early in the year that if the bill were enacted he would make nominations from qualified candidates drawn from each of the two major political parties on an equal basis. Later, we requested that Congress enact the bill supported by the Judicial Conference, effective January 20, 1961. However, as you know, despite the fact that most of the recommendations for new judgeships had been pending since 1954, and despite the detailed justification of need made as to each judgeship, no action was taken on the bill.

Vacancies

In these circumstances the necessity to maintain the existing judge power of the Judiciary at full strength becomes all the more important.

At the present time, eleven vacancies exist. Needless to say we were most disappointed that the nominations made for four district court judgeships, one each in Hawaii, Massachusetts, Eastern Michigan and Texas, were not confirmed by the Senate. As to the other seven, most of them are fairly recent, all but three having come into existence since the end of May.

Caseload

Every effort has been made to continue to reduce the backlog of cases in which the United States is a party. Overall, our status today as compared to when we instituted this program in 1954 is most favorable. In total cases and matters pending, we have effected a reduction of 30,363 items or 41.8 percent.

The Civil Division again had an excellent year. At the end of fiscal year 1960, it had reduced its caseload of pending cases to 13,342, the lowest number in the history of the Division. It closed 9,085 cases in 1960 as compared with 7,984 in the previous year. The Division terminated 4,479 suits against the United States. In these cases a total of $17,600,000 was recovered by plaintiffs. In the 4,606 cases on behalf of the Government which were closed, a total of $41,097,000 was recovered.

On the other hand, a marked increase in other areas, particularly in tax lien and land condemnation cases has resulted in a slight upturn over a year ago in total pending criminal and civil cases.

Protracted Cases

Over the years the trial of protracted cases has been the subject of much study and discussion. We therefore have received with much interest the Handbook approved last Spring by this Conference which sets forth recommended procedures for the trial of these cases. We share the view of the Conference that many obstacles can be met and overcome by the early identification of the protracted case and its assignment to one judge for pre-trial and trial. We welcome this comprehensive treatment of the subject and we wish to assure the Conference that the Department will continue to cooperate fully with the courts in seeking the means to expedite the trial of departmental cases of a protracted nature.

In this connection, the Conference may be interested in our recent experience in the trial of antitrust cases. During fiscal 1960, thirteen antitrust cases were tried requiring a total of 223 trial days. In the preceding year, twelve cases were tried requiring a total of 146 days. Accordingly, for a two-year period the actual trial days excluding time for pretrial in antitrust cases in which the Government was involved total 369.

Public Defenders

Legislation to provide a public defender system for the federal court system passed the Senate but unfortunately was not reported by the House Judiciary Committee (S. 895). However, the status of this legislation is such as to give hope for favorable action in the next Congress.

We were, of course, pleased by the enactment of legislation to provide for a public defender's office in the District of Columbia. The $75,000 annual appropriation will not provide for legal assistance to all indigents, a program which it was estimated would have cost in the neighborhood of $200,000 a year. However, it is contemplated that the office will conduct investigations, aid in location of witnesses and provide other substantial assistance to counsel representing indigent defendants.

Commitments of Defendants for Study and Observation Under 18 USC 4208(b)

We have now had two years of experience under the statute which provides that the courts may commit adult offenders to prison for study and observation prior to the fixing of sentence.

During the period October 7, 1958, when the first commitment was ordered, and August 8, 1960, the courts made a total of 393 commitments under the Act. It has been used in each Judicial Circuit and in a total of 46 Judicial Districts.*

That the courts are apparently satisfied by the way in which this act is being administered is indicated by the fact that during the calendar year 1959 there were an average of approximately 15 defendants committed for study each month; in the months of June and July 1960 the figure exceeds 30 per month.

---

* The distribution of commitments by Circuit is as follows: First Circuit, 1; Second, 18; Third, 31; Fourth, 54; Fifth, 64; Sixth, 20; Seventh, 16; Eighth, 4; Ninth, 143; Tenth, 39; District of Columbia, 3.

Of the group committed to date, the courts have taken final action on a total of 283 defendants -- 55 were placed on probation after study; 170 were committed under the new statute which gives the United States Board of Parole authority to establish the parole eligibility date; 43 were sentenced under the regular sentencing statute; and most of the remainder were returned to state jurisdictions for hospitalization. In approximately 80% of the cases, the recommendation of the Director of the Bureau of Prisons as to the appropriate sentence was adopted by the court.

The courts are also making use of the provisions of the statute (18 U.S.C. 4208(a)(2)) which authorize the Board of Parole to fix the parole eligibility date; a total of 642 defendants were committed under this law during the fiscal year 1960. On the other hand, the courts have made less frequent use of 4208(a)(1) under which a judge may himself set minimum and maximum terms. Only 71 defendants were sentenced under this provision during the past fiscal year.

Youth Corrections Act

There has been a continuing and steady increase in the commitment of youth offenders under the provisions of the Federal Youth Corrections Act. The increase in the youth population of federal institutions was an important factor in the Department's acquiring from the Department of Defense the former Disciplinary Barracks at Lompoc, California. This modern, well equipped institution was activated, primarily as a youth center early in August of 1959 and currently has a population of more than

1,000 young men. The Lompoc institution also serves as a study center for adults and youth committed for observation and study under 18 U.S.C. 4208(b) and 18 U.S.C. 5010(e), respectively.

The enactment in August 1958 of the statute (18 U.S.C. 4209) which extends the provisions of the Youth Corrections Act to selected young offenders between the ages of 22 and 25 has contributed substantially to the number of youth offenders in our custody. Since the statute became operative, a total of 518 have been committed under its provisions. During the fiscal year 1960, 280 youths were committed under the provisions of the Extended Youth Act or 21.5% of the approximately 1300 youth offenders committed during that year.

Although there have been some difficulties in the administration of the act, on the whole we believe that the program is fulfilling the objectives contemplated.

Sentencing Institutes

As envisioned in Public Law 85-752, the Department and the Bureau of Prisons have participated actively in the various circuit sentencing institutes held during the past year.

The Department feels that the sentencing institute program is a worthwhile and essential contribution to the administration of justice in the federal system and we will continue to do our part in making this program successful. We have already discussed with representatives of the Judicial Conference and the Administrative Office of the Courts

the mutual interest in another sentencing institute on the national level, somewhat similar to that held in Boulder, Colorado, in the summer of 1959. A national institute serves a very useful purpose in integrating and coordinating the efforts of the several circuits in working toward their objective, as stated by the Congress, of formulating "sentencing principles and criteria which will assist in promoting the equitable administration of the criminal laws of the United States." If the Judicial Conference approves the tentative plan to hold another national sentencing institute in 1961, we, of course, will extend our full cooperation.

President's Conference on Administrative Procedure.

The Department is pleased to note that Chief Judge Prettyman, who so excellently chaired the first President's Conference on Administrative Procedure, has been designated by the President to serve as temporary chairman of the renewed conference. We sincerely hope that the Administrative Conference will attain the stature and usefulness of the conferences which have come to be an integral part of our judicial system. Our office of Administrative Procedure will be pleased to cooperate with the organizing committee and I wish to assure you the full support of the Department in this important undertaking.

Honor Program.

Finally, a word about our Honor Program in which we select outstanding young law school graduates based solely on their records. Since its establishment in 1954, a total of 355 select law graduates from

76 law schools located in 40 states and the District of Columbia have been recruited. As of today, approximately 210 honor recruits or 60 per cent of the total are still with the Department.

As you know, we attempt to provide these young lawyers with a general background in government litigation, with particular emphasis on courtroom experience, and a majority of these lawyers have argued in the courts throughout the country. I am pleased to say that the judges share our enthusiasm for the program and that practically all comments concerning their legal capabilities and demeanor have been favorable.

The program has been most effective in providing the Department with some of the ablest young legal talent in the country. We believe in its long range effectiveness, and we hope that it will continue to be a major and permanent recruiting source for the Department of Justice in the years ahead.