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1882 was a very good year. The first electric station to supply light and power -- and the first hydro-electric power plant -- both opened that year. The electric fan was invented, and the electric flatiron was patented. The first Labor Day parade occurred in New York City. The Chicago Cubs became the first professional baseball team to win three penants in succession. The first national law restricting general immigration was enacted, and Roscoe Conkling argued in the Supreme Court that one purpose of the fourteenth amendment was to protect the rights of corporations as persons. And last, but certainly not least, The Lawyers Co-operative Publishing Company was founded for the express purpose of making the United States Supreme Court Reports more readily available to the bench and bar.

In the past 100 years there have been many changes. Endeavors just begun in 1882 -- such as the commercial use of electric power and the publications of the Lawyers Co-op -- have expanded and flourished. Indeed, law itself -- which is this company's stock and trade -- has grown to a degree unimaginable in 1882. Unfortunately, however, the flood of ever-increasing law and litigation also threatens to swamp our civil and criminal justice system. Indeed, the burdens on the courts today are actually effecting a change in the character not only of our federal judicial system, but also of the legal profession and society.

A brief look backwards -- to the year 1882 -- reveals the dimensions of our problem today.

In 1882, there were less than 4000 total criminal prosecutions pending in all United States District and Circuit Courts. One hundred years later, there were nearly 21,000 -- or more than five times as many.

In 1882, there were fewer than 2500 civil cases in which the United States was a party pending in all United States District and Circuit Courts. One hundred years later, there were nearly 60,000 -- or almost twenty-four times as many.

In 1882, there were less than 30,000 total cases pending in the United States District and Circuit Courts. One hundred years later, there were nearly 240,000 -- or more than eight times as many.

In 1882, the United States was involved in less than ten percent of all civil cases pending in the United States District and Circuit Courts. One hundred years later, it was involved in nearly twenty-eight percent.

In 1882, there was no federal bankruptcy act. One hundred years later, nearly 700,000 bankruptcy estates were pending in U.S. bankruptcy courts -- and the United States Supreme Court had found the federal system of bankruptcy courts unconstitutional.

A tremendous acceleration in litigation, leading to these dramatic increases in caseloads, began in the 1960s. As one commentator observed in a recent book:

> "The tide of federal cases has been out of all proportion to any growth in population and reflects the outpouring of Congressional enactments from the mid-1960s on that reach to the roots of private activity."

The Supreme Court's docket itself is now nearly two and one-thirds times what it was in 1960. Even more dramatic and important, however, has been the growth of cases in the lower courts, which cannot control the size of their dockets. Annual civil filings in the federal district courts more than tripled between 1960 and 1981. During the same time, appeals increased seven-fold.

Most significantly, the number of cases per judge has increased dramatically. Despite the Omnibus Judges Bill of 1978, which added 152 judges to the federal bench, the growth of the federal judiciary has not kept pace with the litigation boom. At the district court level, judges today must process fifty percent more new filings each year than in 1960. Judges at the appeals level must hear almost four times as many cases today as in 1960. In addition, litigation is more complex and time-consuming than ever before. In 1960, for example, only thirty-five federal trials took more than one month. In 1981 there were five times that number.

It is unsurprising that expeditious resolutions of civil suits seldom occur. A recent survey found over 15,000 cases in our federal district courts that have been pending for more than three years.

What do all these statistics portend for our federal judicial system? Moreover, what are the effects of this mounting burden on the process of deciding cases and on the quality of justice available from our federal courts?

The probable effects were most clearly and forcefully articulated at the 1976 Pound Conference, which was a gathering of the most distinguished scholars of the judicial process to consider the present and future problems of the federal judiciary. As Robert Bork, then Solicitor General and now a member of the D.C. Circuit noted there:

> "The proliferation of social policies through statute and regulation creates a workload that is even now changing the very nature of courts, threatening to convert them from deliberative institutions to processing institutions, from a judicial model to a bureaucratic model."

As the workload has increased, the attention that each case receives from the court has declined. The incidence of decisions without written opinions increases. The availability of oral argument declines. Judges must rely increasingly on the work of an expanding cadre of law clerks, magistrates, and other court personnel.

The time has long since arrived to improve the efficiency and effectiveness of our courts by reducing their burdens.

The first step must be more judicial resources. In 1978, the Omnibus Judges Bill authorized the President to appoint 152 new federal judges. That act, however, represented the first increase in the size of the federal judiciary in eight years -- and only the second in the past two decades. Already, there is an obvious immediate need for more federal judges to handle the burgeoning caseload. I believe that it is time to recognize that the creation of federal judgeships should be regularized and based upon an assessment of need, not politics.

The problem facing the federal courts, however, is not simply one of too few judges to handle the work. Too great an expansion of the federal judiciary would create its own set of problems. Increasing the number of decision-makers issuing opinions threatens uniformity, evenhandedness, and stability in the application of the law. There were already 25,000 decisions issued by the courts of appeal last year and over 200,000 decisions at the district court level. Doctrinal confusion even within a single jurisdiction has become increasingly difficult to avoid. As former Assistant Attorney General Daniel Meador has noted, we risk creation of a "judicial Tower of Babel." By creating too large a number of additional judges in response to the litigation surge, we risk creating more doctrinal confusion that, in turn, would generate still more litigation.

Although the creation of still more judgeships must unavoidably be part of our answer to the growth of litigation, we must also address the basic underlying cause of this growth and attempt, in Judge Friendly's phrase, to "avert the flood by lessening the flow." The basic cause of the continued growth of filings is the progressive accumulation of new litigable rights and entitlements created by the Congress and by courts themselves.

For many years now, we have attempted, as a society, to regulate by law and judicial processes more and more aspects of society. As Chief Justice Burger stated in his 1982 Annual Report on the State of the Judiciary:

> "One reason our courts have become overburdened is that Americans are increasingly turning to the courts for relief from a range of personal distresses and anxieties. Remedies for personal wrongs that were once considered the responsibility of institutions other than the courts are now boldly asserted as legal 'entitlements.' The courts have been expected to fill the void created by the decline of church, family, and neighborhood unity...."

It is the supreme irony that our use of courts to enforce so many newly created rights may actually erode their usefulness in protecting the most essential

rights of our citizens. Forcing federal courts to do too big a job has jeopardized the effectiveness of the job they have historically performed.

The problem of federal judicial overload is, of course, in large measure caused by the Congress. Each Congress enacts more legislation that gives rise to new litigation. Though Chief Justice Burger has, since 1972, called on Congress to require a judicial impact statement for each piece of legislation affecting the courts, Congress has seldom given adequate attention to the judicial burdens imposed by new legislation. It is difficult to recall any statute in recent years that has eliminated any significant category of litigation. As the burden of government regulation has accumulated, the opportunities and incentives for litigation seem to have expanded geometrically.

In part, however, the judiciary has over the years brought this overload on itself. The judicial activism that has characterized the past two decades has invited far greater use of the courts to address society's ills. Through loose constructions of the "case or controversy" requirement and traditional doctrines of justiciability -- such as standing, ripeness, and mootness -- courts have too frequently attempted to resolve disputes not properly within their province. Other judicially created doctrines, such as expanded constructions of the judiciary's equitable relief powers and the multiplication of implied constitutional rights, have also invited more and more federal litigation.

Ending the expansion of litigation in the federal system clearly requires the Congress and the Executive to re-visit some of the legislative and regulatory schemes that have given rise to large numbers of cases. It also requires greater doctrinal self-restraint by the courts themselves -- a development that the Justice Department is now encouraging in its appearances before the federal courts every day.

It is also time to assess the bases of federal jurisdiction and determine whether some of the cases presently heard by the federal courts either should not be heard there or should be heard in lesser numbers. We believe that there are indeed such cases presently within the federal judicial system.

One quarter of civil filings in the district courts and about fourteen percent of appeals are diversity cases. Over four percent of all civil cases in

district courts and nearly six percent of all appeals are habeas corpus cases filed by state prisoners. To diminish the staggering burden on the federal courts -- and for other substantial policy reasons familiar to all of you -- the time has come to eliminate federal diversity jurisdiction and to place reasonable limits on federal habeas corpus review of state convictions. The Administration is strongly urging these reforms upon the Congress. The elimination of federal diversity jurisdiction alone would very dramatically lessen the federal caseload, allowing swifter justice and more thorough consideration of other cases that truly should be heard by federal courts.

There are also other proposals that we will pursue to reduce the workload of the federal courts even further. Approximately one quarter of the cases argued before the Supreme Court arose from its mandatory jurisdiction. We believe that the mandatory jurisdiction of the Supreme Court should be abolished because the Court could better supervise the development of law in the federal circuits if it had complete discretion over its own docket. We are also considering the proposal to create special tribunals to decide certain types of factual disputes arising in the administration of welfare and regulatory programs. The creation of such tribunals was proposed over five years ago by a Justice Department Committee headed by Judge Bork. The growing caseload of the federal courts makes renewed attention to this proposal particularly appropriate.

All of the ideas I have briefly discussed today are worthy of the Nation's fullest consideration. Judicial self-restraint, regulatory and statutory reform, changes in federal habeas corpus, the elimination of diversity jurisdiction, and the creation of Article I tribunals could improve the effectiveness of the federal judicial system.

It is unthinkable for us to allow the caseload of federal courts to continue to increase at the dramatic rates of the past. Further increases would threaten the important role confided to our federal judicial system. Reform is not only important, it is essential. As Winston Churchill once wrote:

> "Things do not get better by being left alone. Unless they are adjusted, they explode with a shattering detonation."

The fuse is lit. It is up to us to avert the threatened explosion.

Even with the reforms I have outlined today, there will be more than enough law to go around. The Lawyers Co-operative Publishing Company can still look forward to a prosperous second century -- and the American public can enter their third century assured of more effective and efficient justice in the federal courts.