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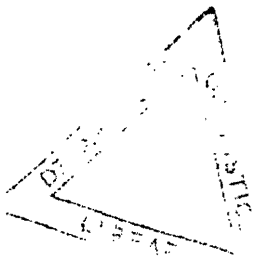

REPORT

OF

THE HONORABLE HERBERT BROWNELL, JR.

ATTORNEY GENERAL OF THE UNITED STATES

TO

THE JUDICIAL CONFERENCE OF THE UNITED STATES

Washington, D. C.

September 19, 1956

This opportunity to meet with the distinguished members of this Judicial Conference and to discuss with them the issues of current interest to the Bench, the Bar, the people and the Department of Justice, is very much appreciated.

Through our continued joint concern over common problems and our joint efforts in solving them, we will together have the satisfaction of forwarding the great American traditions and ideals of justice in our courts.

1. Case Backlog and Delay.

Delay in litigation continues to be the primary problem in the administration of justice in most of our Federal and state courts. We seek a solution to this problem which will wipe out the law's delays without sacrifice of fundamental rights.

There are no pat or easy answers to this problem. Recent experiments in some districts for modernizing judicial machinery and administration have paid handsome dividends. One case involving the Federal District Court for the Southern District of New York--our largest and most congested court--will illustrate the point.

In the fall of 1955 a committee of federal district judges took over control of the calendar. The jury and non-jury parts were placed in charge of two of the judges. These judges required attorneys in every case to appear and discuss these cases informally.

In this frame of judicial interest, guidance and supervision, hundreds of cases that should have been settled, were settled. If a case was not ready for trial, it was removed from the calendar. Those ready for trial were shifted to the ready day calendars, and the attorneys instructed to be prepared to try them at short notice.

The first call of the entire calendar was completed by the end of January. In the next two months there was a second call of cases adjourned for various reasons. By the end of April 1956, this system of special calendars produced the most amazing results. In a period of merely seven months, a calendar load of 5,772 cases had been reduced to 2,384, or a reduction of 60 percent, and further reductions are anticipated in the future. However, even with their present load, and working very hard as all our federal judges do--harder than is good for their health and the adequate consideration of matters--it is not possible for them to handle the increasing load of incoming cases unless Congress authorizes the appointment of additional judges.

That the fault for these delays does not lie with our judges is demonstrated by statistics. These show, not a decrease in output by judges, but an increase in litigation that completely outpaces the number of judges available to cope with it.

Thus between 1941 and 1956, the number of cases filed annually increased 62.2 percent, whereas the number of district judges increased only 26.9 percent. In that period the district judges increased the average number of civil cases terminated annually per judgeship, 38.8 percent, and increased the average number of private cases terminated annually per judgeship, 44.5 percent. But even these marked increases in disposition of cases fell far short of what was required to handle the burden of increased civil litigation.

We know that relief will not come from any reduction in the population. The contrary is the case. As Judge Biggs aptly declared: "The population is not expanding, it's exploding." In addition, our expanding

economy, tremendous increases in automobile and air travel, and many other factors are bound to be productive of mounting litigation.

You have requested, and I have strongly supported, your plea for more judges. Favorable action in both the Senate and House last year on the Omnibus Judgeship Bills almost assures favorable action early in the next Congress. But when we get down to it, this is merely an emergency stop-gap measure. It does not suffice for our fast growing country. We must set our sights on the long-range problem of an effective and adequate system of justice in the federal courts. If we are not to be bogged down in the future we must be ready with something more than patchwork plans now, where it is always too little, too late.

What we need in my opinion, if we are to avoid a real crisis in the federal court system, is a comprehensive study and report of our anticipated needs at least for the next ten to twenty years.

When Congress is fully apprised of the facts, it will not be reluctant to act. Give the Congress documentary proof of the peoples' needs in the Federal courts and it will not fail to respond to them. And when the people learn in detail what the crying needs of the Federal judiciary are, it will go all-out to support worthy measures enacted by Congress to help the Courts discharge their public responsibility.

2. The Attorney General's Conference on Court Congestion in 1956.

With these objectives in mind, during May of this year I invited to Washington leaders of the bench and bar to discuss the problem of court congestion and delay in litigation, and to plan its solution. Representatives of state and local bar associations, and other organizations from all over the country participated actively in this conference. It fulfilled our highest expectations. I think a course has

been charted which will materially help provide the machinery to bring about needed reforms.

A Steering Committee chaired by Judge Herbert F. Goodrich, of the Court of Appeals for the Third Circuit, rendered a Report which represented the conclusions reached by the Conference.

It was decided that the Conference would not undertake research but would serve solely in an advisory capacity. It will encourage, on a nationwide basis, programs to help eliminate delays in the trial and decision of cases. It plans to coordinate, to the extent possible, by voluntary action, the various activities being undertaken by many organizations, groups and individuals in this field. In the forthcoming year the principal function of the Conference will be to receive and correlate information, and to discuss and report on various projects designed to improve the administration of justice.

Among other matters, areas of inquiry to be covered in the Conference study are:

1. The need for adequate judicial statistics in each state and their accurate appraisal;

2. The flexibility of judicial systems, and the extent to which judges of one community whose workloads are light are permitted to serve in areas where calendars are heavy;

3. The extent to which discovery procedures, pre-trial conferences and other pre-trial techniques are employed and their success in relieving court congestion;

4. The procedures for handling court calendars so that the most efficient use is made of judicial time, courtroom space and court officers;

5. The extent to which the progress of litigation must be controlled by the judge, and the extent to which cooperation by bench and bar can be made most effective;

6. The professional responsibility of the bar in assisting to accomplish these objectives.

It was recommended that an Executive Committee should be formed including a chairman appointed by the Attorney General. This Executive Committee has been charged with the function of carrying into effect the recommendations and conclusions of the conference; of preparing an agenda for further conferences; and soliciting the assistance of other individuals and organizations, both professional and lay, who may be likely to make helpful contributions in the matter.

It is my pleasure to announce at this time the members of the Executive Committee who have graciously agreed to serve. They are:

Mr. William P. Rogers, Chairman
Deputy Attorney General, representing the Department of Justice

Judge John Biggs, Jr., Chairman of the Subcommittee on Judicial Administration of the Judicial Conference of the United States

Congressman Emanuel Celler, Chairman of the Judiciary Committee of the House of Representatives

Senator James O. Eastland, Chairman of the Judiciary Committee of the Senate

Chief Justice Edmund W. Flynn, Chairman of the Conference of Chief Justices

Mr. Jenkins Lloyd Jones, President of the American Society of Newspaper Editors

Governor Arthur B. Langlie, President of the Council of State Governments

Mr. Arthur Littleton, Chairman of the National Conference of Bar Associations

Mr. David F. Maxwell, President of the American Bar Association

Mr. Philip Mechem, President-Elect of the American Association of Law Schools

Judge Arthur T. Vanderbilt, President of the Institute of Judicial Administration

3. Other Aspects of Department Cooperation to Reduce Congestion in the Courts.

The Department of Justice has been doing its share in other respects to cut down court delays.

As you know the Department is the Federal Court's best customer. It is plaintiff in 27 percent and defendant in 7 percent of all civil litigation in the District Courts. This alone amounts to 20,000 new cases each year. In addition, the Government prosecutes about 28,000 criminal cases annually. Excluding the Customs Court and Court of Claims, this means that the United States is a party to approximately 50 percent of all the cases in the Federal District Courts.

Because of our great concern and responsibility in enforcing federal laws, the Department has asserted every effort to cooperate with the courts in clearing up case backlogs.

I am proud of the remarkable results achieved by United States Attorneys and their staffs for the fiscal year ending June 30, 1956.

As of June 30, 1955, our caseload was 29,979 cases. As of June 30, 1956, our caseload was 24,253 cases. This was a reduction of 19.1 per cent or 5,726 cases. It is by far the largest reduction in the pending caseload for the past twenty years.

While we were reducing the caseload, we were increasing collections for the United States Treasury. For the fiscal year 1956, our collections

reached an all-time high of $42,034,788. This was an increase of 53.02 percent over fiscal year 1955, when $27,470,493 was collected.

You may be interested in one of the ways by which we were able to dispose of many of our cases.

At the 1955 Conference of United States Attorneys, the latter were requested to contact federal district judges and attempt to arrange special tax calendars wherever this was feasible. This was done in a number of districts with the kind cooperation of the judges sitting there. The results were fruitful. Over 600 civil tax cases were presented to the courts in the fiscal year ending June 30, 1956. This was an increase of 183 trials or 44 percent over 1955. With only a few exceptions, the dockets of civil tax cases are now current.

On the basis of this experiment, it is suggested that this plan may be carried out successfully in other district courts as well, not only with tax cases, but in other kinds of cases where similar or related problems are presented.

4. Federal Youth Corrections Act.

We are pleased once again to report the steady increase in the use which is being made by the Courts of the provisions of the Youth Corrections Act. The Act has now been invoked in all but six of the Judicial Districts in which it is now operative. Between January 1954 and June 1956 a total of 819 young men and women were committed under sentence as youth offenders, and an additional 59 youths were received for study and observation prior to sentence. In 1955, thirty percent of the offenders under the age of 22, exclusive of juveniles, received in Federal institutions were sentenced under the Youth Act, and in 1956, the percentage increased to slightly more than 36 percent.

Continued progress has been made during the past year in the development of a sound yet flexible and experimental program of training and treatment for youth offenders at the institution at Ashland, Kentucky.

To June 30, 1956 a total of 226 offenders had been released on authorization of the Youth Division of the United States Board of Parole. The rate of paroles each month is now rising rapidly and it is anticipated that by the end of this year the number of youths under supervision in the community will equal the number receiving treatment in the institution. Of the youths paroled 38 had violated the conditions of their release by June 30. We continue to have excellent cooperation from the United States Probation Service in release planning and supervision for the youth group. We feel confident that through the combined resources of both institutional and probation staffs we may look forward to significant results from this fresh and intensified approach to the treatment of this most challenging group of offenders.

We have, of course, been particularly anxious to extend the operations of the Youth Act to the area of the United States beyond the Mississippi River. This has been delayed, unfortunately, because the continuing high level of population of Bureau of Prisons institutions posed serious difficulties in certifying the availability of additional institutions for the youth program. The need for additional institutions to implement the youth program was presented to Congress in 1955 and again in 1956. At its last session Congress appropriated funds for the establishment of a new youth camp in the West and we are now looking for a site suitable for this unit. Congress also made funds available

for the preparation of plans and acquisition of sites for two additional institutions, one of which will be a guidance center for the youth group. We will have to return to Congress at its next session for the necessary funds to construct these institutions and if they are appropriated it will still require two or three years before the guidance center is ready for occupancy.

Despite the fact that no new institutional facility is yet available, the Director of the Bureau of Prisons has informed me that because of the importance of the youth program, he is taking emergency measures to develop the institution at Englewood, Colorado as our second youth center. He expects to be in a position to certify the availability of that institution within the next few weeks. This will enable us to extend the program to the entire country.

Another important development during the past year has been the activation of the Federal Advisory Corrections Council, which you will recall was established by the Youth Corrections Act. The Advisory Corrections Council, which numbers among its membership Chief Judge Orie L. Phillips and United States District Court Judges Albert V. Bryan and Luther W. Youngdahl, has been active since Dr. Hurst R. Anderson, President of American University, was appointed chairman in May 1955. To date the Council has had three meetings. Following an organizational meeting in September 1955, the meeting in January 1956 was devoted largely to a review of legislation then before the Congress. The Council unanimously endorsed an administration proposal to strengthen and improve state and local programs to combat and control juvenile delinquency. In this connection it was urged that the states give particular attention

to measures which would aid the states in developing their programs for the treatment and training of youthful offenders.

5. Treatment of Adult Criminal Offenders.

The challenge presented by youthful law violators is given added emphasis by the steady increases in the population of Bureau of Prisons institutions over the past five years. On June 30, 1956 there were 20,374 prisoners confined in our institutions. The average population of the 28 institutions reached 20,209, an all-time peak. Perhaps even more significant than the increase in number has been the marked change in the composition of the Federal prison population over the past five years. Federal prisoners, generally, are younger, are serving longer sentences, and have committed more serious offenses. This has resulted in dislocations in the distribution of the institutional population among the institutions. Thus, while a few of the minimum custody institutions are under capacity, the majority are seriously overcrowded.

The enactment of the Uniform Narcotic Act of 1956, which provides substantially higher criminal penalties for offenses involving importation and sale of narcotic drugs and denies persons convicted of such crimes eligibility for probation and parole consideration, will serve further to swell the populations of overburdened institutions.

We have recognized the vital importance of our continuing to expand our institutional system. This is essential not only to reduce current crowding of our institutions, but we must also provide for a continuing increase in commitments as the general population of the United States continues to grow. It is for this reason that we outlined to the last session of Congress the need for a broad program of future development

of Federal penal and correctional institutions. We are hopeful that there may be an orderly, systematic development of our needed facilities in order that we may continue faithfully to execute the orders of the Courts and protect the interests of society.

6. Uniform Sentencing.

Before we leave the subject of the federal penal system, I should like briefly to discuss the question of sentencing persons convicted for the same or similar crimes.

In imposing a sentence it is recognized that a judge frequently gives consideration, among other things, to the motivation of the crime, the antecedents of the offender, the nature of the personality of the accused, his past record, and many other social, human and individual elements which may be inseparable from the cause of the crime itself. It is indeed, as it should be, the modern trend to fit the punishment to the criminal rather than to the crime.

In those circumstances, however, where the apparent elements back of a crime and a criminal are substantially alike, disparate punishment creates misunderstanding and confusion in the public mind. It presents a troublesome morale problem for prosecutors and their assistants. It also engenders resentment among prisoners, and makes for an undesirable morale problem within the prison.

Those of us who have any experience with the courts know that the duty of imposing sentence is often more difficult than the trial itself. No one of us can minimize the anguish that goes into balancing the scales of justice so that each sentence will be just. Our courts are properly concerned about safeguarding the public against future crime. The

sentence must be adequate to deter other persons from similar wrongdoing. It must be such as will prevent the hardened criminal from continuing to prey on society. It must not be so severe as to deprive the young, the accidental or unfortunate offenders of an opportunity to correct their way of life. Margins of difference in sentences either because of different defendants, different fact situations, or other differences, are to be expected. But if the people are to continue to have faith in the integrity of the judicial process, then at the very least a unified sentencing philosophy must prevail in our courts.

This perplexing problem will be under careful study in the Department of Justice during the coming months.

7. Tribute to Henry P. Chandler.

Finally, on behalf of the Department of Justice, I would like to express our sincere appreciation and gratitude to Henry P. Chandler. After seventeen years as Director of the Administrative Office, United States Courts, Mr. Chandler plans to retire October 31, 1956. We have long valued Mr. Chandler's friendship. He has won the esteem and respect of judges, court personnel, members of Congress and the public at large. His notable service as a true and devoted public servant will be missed by all of us. Under his able, mature and conscientious leadership, the Administrative Office has played an important role in promoting the proper administration and efficiency of the Federal Courts. When organized in 1939, this Administrative Office of the federal judicial system was a pioneer in its field. It has now become a model for the states to follow. Already New Jersey and New York have established similar offices to improve the administration of their courts, and many other states are making rapid progress in this direction.

I know that I express the sentiments of many friends throughout the country in wishing Mr. Chandler the greatest happiness in his well-earned leisure years ahead.