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STATEMENT

By

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On

PROPOSED LEGISLATION

CREATING ADDITIONAL FEDERAL JUDGESHIPS

Before the

House Judiciary Committee

87th Congress, First Session

March 1, 1961

I appreciate this opportunity to appear before the Committee today in support of H. R. 2226, a bill sponsored by Chairman Celler, which provides for the creation of additional circuit and district judgeships in the United States Courts.

The bill embodies -- with certain additions -- the recommendations of the Judicial Conference of the United States which were approved at its most recent session, September 21-23, 1960. The recommendations of the Judicial Conference have the full support of President Kennedy, and the Department of Justice.

There are at present 68 circuit judgeships. The Judicial Conference recommends 9 additional circuit judgeships which, if approved, would bring the number of circuit judgeships to 77.

There are now 245 district judgeships. The Conference recommends 50 district judgeships which, if approved, would bring the total number to 295. In addition the Judicial Conference would change three temporary District judgeships to permanent judgeships.

The last bill creating additional judgeships was enacted by the 83d Congress, February 10, 1954. Thirty judgeships were approved. The Committee reports published at the time stated that "the legislation was intended to take care of the minimum requirements for alleviating the most urgent needs of the Federal judiciary." [Senate Report No. 997, May 4, 1953], and it was recognized that "in many instances the need for additional manpower will shortly become so acute as to require additional legislation to provide judges." [House Report No. 1005, July 28, 1953]

The Congressional awareness of this manpower problem was a key factor in the passage of the 1958 Jurisdiction Bill. While this

law resulted in a decrease of 14 percent in the number of civil cases filed in 1959, there is evidence that the respite was temporary and inadequate to affect any reversal in the trend of increasing judicial business. In 1960 there was an increase of about four percent in number of cases filed. Moreover, there seems to be little hope that this increasing trend will be reversed without the creation of more judgeships.

The Department of Justice has a particular interest in doing everything it can to insure that the business of the Federal Courts is disposed of promptly, because 35 percent of the cases filed in these courts involve the United States as a party litigant.

In the courts of appeals, the government is a litigant in over half of the cases which are disposed of after hearing or submission.

In fact, in every 8 cases disposed of by the appellate courts, the government is represented in one criminal case, one administrative agency review, and two civil actions.

Thus, it is obvious that the efficiency of the Department of Justice (1) in protecting the interest of the United States in civil cases; (2) in prosecuting criminal actions, and (3) in insuring the most economic use of the personnel and resources provided by the Congress, depends to a very real extent upon the ability of the courts to receive, handle, and dispose of the judicial business.

Unfortunately, at the present time, the district courts and courts of appeals are not sufficiently manned to keep pace with the rapid increase in litigation.

The civil business of the courts has sky-rocketed in the last twenty years. Since 1941, the number of cases filed annually in the 86 district courts which have Federal jurisdiction exclusively has increased more than 60 percent. The backlog of cases has risen almost 130 percent. But, in contrast, during this entire 20 year period there has been but a 25 percent increase in the number of judgeships in these districts. Where there were 150 civil cases

pending per judgeship in March 1941, there are now 260 civil cases per judgeship.

If we just compare the demands upon the courts this year with those of a year even as recent as 1950 -- the contrast is striking:

In 1950, private civil cases -- which by far are the most burdensome -- accounted for 22,600 of the total cases filed in the 86 districts; by 1960 this number had risen to 30,048 an increase of 33 percent. This increase would have been still larger except for the effect which the Jurisdiction Act of 1958 had on private case filings. In fiscal 1958, the last full year before the Act became effective, 37,725 private cases were filed in the 86 districts.

On June 30, 1950, there were 27,771 private civil cases pending; by June 30, 1960, the backlog of private civil cases had climbed to 40,932, an increase of nearly 50 percent.

But -- between the years 1950 and 1960 -- the number of all district judgeships only increased from 221 to 245, an increase of only 11 percent, for an increase of only 24 judges for the entire nation.

During 1941 the average number of cases terminated by each district judge was 196. By 1960, the average number of cases disposed of had risen to 252.

If we look at the Courts of Appeals, we find that in 1950 they received 2,830 cases; by 1960, they received 3,899 cases, an increase of over 37 percent. The cases pending in the courts of appeals on June 30, 1950 were 1,675; by June 30, 1960, the cases pending totalled 2,220, or an increase of 32 percent.

But, during this ten year period, only 3 circuit judgeships were created for the entire nation, making a total of 68, or an increase of less than 8 percent.

That, very briefly, is the account for a decade -- the 1950's.

But, I believe that for your purposes, the Committee will be more particularly interested in what has happened in the last six months -- July through December.

District Courts

The district courts had 61,251 civil cases pending on July 1, 1960. During the next six months 28,425 civil cases were filed, but only 25,928 terminated. Thus, filings outstripped terminations and, as a result, the total number of civil cases awaiting action on January 1 was 63,748, or an increase of 2,497 over July 1.

On the criminal side, 7,691 were pending on July 1. During the period 13,703 cases were filed, and 13,283 were terminated by final disposition leaving a total of 8,144 cases pending on December 31, an increase of 453.

As a result, on January 1 of this year, the United States District Courts faced a combined civil criminal backlog of 71,992 cases, for an increase of 3,285 cases in the six month's period.

At this point, I want to mention the attention that is usually given in judicial statistics to the civil cases; and this is so because of

the volume of such cases and, also, the time it takes to dispose of them.

However, I believe we have a definite obligation to give greater attention to the serious delays in criminal matters. The pending criminal caseload per judge is 33 cases, but in 13 districts the average criminal caseload is over 45 cases. In the Eastern District of North Carolina, 242 cases are pending, and in the Southern District of Florida, 657 criminal cases are pending.

Courts of Appeals

The Courts of Appeals I must report are confronted with the largest backlog in a decade. Filings during the period from July 1 through December 31, 1960, increased twelve and one-half percent to 2,182 cases, compared to 1,939 cases filed during the same months a year ago. At the same time, the number of cases disposed of increased from 1,599 to 1,759. Even so, 400 fewer cases were disposed

of than were filed, and the pending caseload rose during the six-month period from 2,220 cases on July 1, 1960 to 2,643 on December 31, 1960. This represents an increase in the pending caseload of 423 cases, or almost 20 percent.

Thus, the increase in judicial business is continuing, and it is the result of the trends which mark a growing nation.

Population Increase

Since 1950, the population of our country has increased from 150 million to nearly 180 million -- an increase of 20 percent -- or 30 million people.

Our gross national product has grown from \$285 billion in 1950 to an estimated \$498 billion, an increase of 80 percent.

Motor vehicle registrations have spiraled from 49 million to 71 million, an increase of 45 percent.

Yet, even these statistics of a Nation bursting at the seams are not entirely revealing -- they do not disclose the full stress which has been put upon the courts.

An increase in our national wealth, of course, carries

with it a proportionate increase in commercial transactions.

However, the litigation growing out of such transactions creates problems disproportionately greater. As our economy increases, commercial transactions not only increase in number, but in complexity. Thus, the burdens upon the courts do not grow at an even rate -- they multiply!

New legislation enacted by Congress also produces increases in the workload of the courts. Legislation enacted by the 86th Congress has already led to additional litigation in the Federal Courts. Examples of such legislation are the "Labor-Management Reporting and Disclosure Procedure Act of 1959," enacted in September 1959 (Public Law 86-257) which established new controls affecting labor unions and their relationships with union members; and the Disclosure of Welfare and Pension Plans.

The Judicial Conference of the United States, and the Department of Justice, is convinced that a minimum of 50 district

judgeships, and 9 circuit judgeships, are required to enable the Federal courts to keep up with the current annual inflow of civil and criminal business.

These recommendations for the creation of new judgeships span the length and breadth of this country, because the problem of congestion and delay is not confined to a few localities -- it is a national problem. The recommendations, therefore, are not concentrated in any one district, in any one state, or in any one circuit.

The greatest number of judgeships for any one district is in the Southern District of New York -- where the recommendation is for 6 new judgeships; but the Southern District is unique in terms of the volume and character of the matters that come before it. Not only does this court handle a greater volume of business than any other Federal district court, but, situated as it is at the hub of the nation's largest economic, shipping and financial center, this court had pending on January 1, 1961, 11,667 civil cases out of the national pending caseload of 63,748 cases. Even so, bare statistical data does not give the

full measure of the judicial workload because there is an unusually large percentage of highly complicated matters, including Government antitrust cases, patent suits, admiralty proceedings, and private antitrust suits, pending in this particular court.

Mr. Chairman and Members of the Committee, this is the evidence as we have found it. The Department of Justice favors the creation of new judgeships as recommended by the Judicial Conference.

H. R. 2226 and other bills before this Committee would provide for new judgeships in addition to those recommended by the Judiciary Conference. I am advised that the Conference is considering some of these additional judgeships. Further, the Senate Judiciary Committee, yesterday, reported favorably on S. 912 which as amended, embodies the Judicial Conference recommendations, plus 10 additional district judgeships.

It is for the Congress to decide whether it wishes to adopt the Judicial Conference recommendations or wishes in addition to create other judgeships as provided by H. R. 2226, S. 912 as amended, or by other bills introduced this year in the House and Senate.

In commenting on this situation, Chief Justice Warren--in May of 1959--told the American Law Institute that "As a Nation, we cannot be proud of the dismal picture federal court congestion presents." And the Chief Justice went on to say that "if democracy is to thrive, it must be made efficient. Nowhere does government touch the life of the people more intimately than in the administration of justice; and nowhere is it more important that the governing process function with efficiency and common sense. Nothing we can do or say is so important as the way we administer justice."