Department of Justice

ADDRESS

BY

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DELIVERED BEFORE

THE JUDICIAL CONFERENCE OF THE
DISTRICT OF COLUMBIA CIRCUIT

MAYFLOWER HOTEL
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9:30 A.M.

I. INTRODUCTION

I would like to thank the District of Columbia Circuit for its gracious invitation to attend this meeting.

As you know, your Circuit has always had a close working relationship with the Department of Justice.

In the last 10 years, but especially since Gideon and its subsequent case law, I can think of no District or Circuit Court Judges who have worked under more enormous legal and psychological burdens than the judges of this Circuit.

In large measure, it has been the efforts of the judges of this Circuit that has insured for the District of Columbia citizens the rights that you and I know they must have if we are to claim "equal justice under law" in this country.

2. THE FACTS

In the last decade , we lawyers and judges have tended to concentrate on the development of our substantive law while perhaps paying too little attention to the procedural problems in our federal courts.

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A great deal has been done in an effort to establish uniformity and coordination, particularly the establishment of the Federal Judicial Center, the operations of the Administrative Office of the United States Courts and the expanded role of the Judicial Conference of the United States.

Chief Justice Warren, I know, has done much to lead us and to warn us that the increasing volume of judicial business is, in many ways, beginning to paralyze the ability of our courts to function effectively.

Perhaps Washington is an unusual example. But in Washington, the median time from indictment to the disposition of a criminal case is now 9.5 months; or more than twice the median of 4.5 months of two years ago.

In the Southern District of New York, the civil caseload is now at 11,000 and increasing.

In the Eastern District of Pennsylvania, 22 per cent of the civil cases have been pending for three years or more; and in the Eastern District of Louisiana, 13 per cent have been pending for three years or more.

In the Eastern District of Louisiana, the average weighted caseload per judge is 317, which is a relatively high disposition rate per judge; and yet it is lower than the 455 weighted cases processed by the judges of the Southern District of Georgia; or the 372 weighted cases processed by the Northern District of Alabama.

I do not mean to imply by these figures any particular criticism. What I am trying to show is that our federal courts demonstrate enormous disparities in the same circuits. In the Annual Report of the Administrative Office, these disparities are largely unaccounted for. I am sure there are good and sufficient reasons for differences based on the geographical location and the kind of business that each of these courts is concerned with. However, in any effort to help our federal judges expedite their dockets, I think we need more information so that we may help our federal courts adjust to this explosion in case filings which we are now witnessing all around the country.

Because of the crime problem, the tendency seems to be to concentrate on the disposition of criminal cases. But even with this concentration, it distressed me to

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learn, recently that the Department has more than 800 organized crime cases awaiting trial.

3. NEED FOR MORE INFORMATION

The difficulty is, that under current conditions, we keep jumping from concentration on civil cases to concentration on criminal cases and back again. Of course, we are more concerned with the rights of a man under a criminal indictment -- and perhaps even imprisoned because he has been denied pretrial release -- than we are with a civil case. But our country is based on property rights as well as individual rights. In our great cities, it seems to me inexcusable to say to a ghetto resident -- we will give you a fair and expedited criminal trial, but we will not worry too much if you must wait three or four years to collect an automobile insurance claim.

I think the time has come to stop reacting -- to stop patchwork solutions and to start being realistic about our federal court system.

The simple fact is that we don't have enough judges. To remedy this problem, we are strongly supporting the Judicial Conference recommendation to create 62 new

District judgeships outside the District of Columbia, together with funds for clerks, marshals and other supporting personnel. But I don't think that more judges, and more judges, is the only answer. It is an answer based, in large part, on an obvious solution, frequently unsubstantiated by any detailed studies on how our courts operate.

The tendency has been for everyone to blame everyone else. Prosecutors claim that the defense bar wastes too much time filing frivolous motions and demanding irrelevant discovery. Courts complain about a proliferation of motions in both civil and criminal cases.

The defense bar claims that the prosecutors bicker over every reasonable demand.

The judges claim that prosecutors and defense counsel request delays because they have been assigned too many cases. Defense counsel and the prosecutors have, in certain cities, argued that the judges do not work hard enough.

Few of the accusations and counter accusations are really based on hard facts. It would seem to me that,

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as a first step, we should try to establish a highly centralized and computerized system for determining problems in our federal courts.

INFORMATION RESULTS

A. Let me give you some examples. In Wayne County, Michigan, despite an increase in judicial manpower, four months was the average time from a preliminary hearing to a formal arraignment. A detailed study showed that the delay was attributable to the court reporters who were so over-worked that they could not transcribe the preliminary hearings. Since 93 per cent of the cases were disposed of by a guilty plea, the transcription of preliminary hearings was eliminated except in those cases where a trial was demanded. Now, I am informed, that in Wayne County, the period of time has been reduced to about a month.

B. The United States District Court in Philadelphia has instituted an experimental computer program. This study showed that Longshoremen compensation cases are highly concentrated in several law firms so that lawyers are unavailable to appear on schedule.

C. In the Southern District of New York, which has the largest civil docket in the country, a computer

analysis has shown that 55.3 per cent of the cases are maritime related claims and that 10 law firms have 75 per cent of these cases.

We have always proceeded under the theory that a lawyer may waive his client's right to the expeditious disposition of his claim. But when a court calendar situation reaches the point where the public and the bar begin to lose confidence in our courts to promptly settle criminal and civil suits, I think that the courts have the obligation to demand changes. The convenience of an attorney should not be the sole standard for scheduling. The court has an obligation to the individual claimant and to the public at large.

The Federal Judicial Center, under the directorship of former Associate Justice Tom C. Clark, is providing valuable assistance. The Center, in a joint venture with the Department of Justice, is seeking to help the Eastern District of Louisiana in New Orleans, to obtain a computer programming operation. This project has been unanimously supported by the judges of the District. If successful, the Federal Center plans to extend its system to other large city districts.

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I do not say that computers and studies are the only solution. I do point out that they may be extremely useful tools in providing the information required for action to streamline our court system.

4. MORE MANPOWER

In Washington, where intense studies have been conducted, President Nixon, in his District of Columbia message of January 31, recognized that more manpower is an immediate necessity. To help the courts, he proposed the creation of additional judgeships. To help the prosecutor's office, he proposed 20 additional prosecutors and suggested a plan for the priority handling of serious criminal cases.

He also proposed a 33 per cent increase in the Legal Aid Agency staff,to make it permanent, and an additional increase in the staff of our federal bail agency to supervise defendants who obtain pretrial release.

As the National Legal Aid and Defender report pointed out recently, no one wants "assembly line justice." Both in the civil and criminal field, we want intelligently processed cases. It is futile to increase the number of judges but to permit the prosecutors and defense counsel to remain overburdened. Any increase in manpower must be distributed among all three sections.

For example, in the appointment of defense counsel for indigents, most courts use a random selection basis. Some volunteer attorneys, inexperienced in the criminal law, are given cases of great complexity. Here the need for coordination is more important than the need for manpower.

That is why I support permanent legal aid defender establishments. Even in small districts, where there might only be one or two men in an office, they can help the court coordinate and they can provide guidance and information to the volunteer bar.

As you know, under the federal act, the volunteer bar now is paid for its representation. We hope to increase these payments and expand their coverage next year.

I personally believe that the volunteer bar in Washington has done an outstanding job. Its bail project and its Miranda experiment are known all over the nation.

I also understand that many volunteer attorneys in Washington have graciously refused any federal payments -- even out of pocket expenses.

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The Presidential message on the District of Columbia, previously referred to, also called for major court reorganization. Since that time, a task force from the Justice Department, the District of Columbia Government, and the courts, has been at work drafting a proposal. The task force has consulted widely with various experts in the field and has prepared a comprehensive court reorganization plan which will be forthcoming very shortly.

The new court system envisioned would be a greatly expanded and substantially upgraded local trial court of general, civil, criminal, and juvenile jurisdiction.

Because of increasing juvenile problems, we contemplate a Family Division embracing both domestic relations and juvenile jurisdiction and empowered to utilize new and equitable procedures to relieve the Criminal Division of the considerable volume of intrafamily cases which often are -- and should be treated as -- domestic relations matters, not crimes.

In addition, the proposal would provide for a strong court administrator and increased social services.

Along these lines, the District of Columbia Court of Appeals would also be expanded and upgraded to deal with the increased jurisdiction given to it.

The United States District Court and United States Circuit Court of Appeals will thus be freed of a great part of the volume -- largely non-federal -- with which they are presently overburdened and will be better able to perform their role as true Article III federal courts. The cause for tensions that now exist between the United States Courts and the General Sessions Courts arising from the anomaly of concurrent jurisdiction in criminal cases would be removed.

In our deliberations on court reform, we have been well guided and greatly helped by the excellent work of the Judicial Council Committee on the Administration of Justice, formerly headed by Judge Gerhard Gessell and more recently by Newell Ellison.

Another Presidential proposal greatly affecting the administration of justice in the District of Columbia is that of bail reform. The Department of Justice has prepared a draft bill, which will be forthcoming very shortly, to permit the federal courts to consider dangerousness in addition to likelihood of flight as a factor in setting pretrial release conditions on criminal defendants.

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The bill would also permit the judge, after a hearing, to order temporary pretrial detention of the defendants charged with certain violent crimes and for whom no condition of release would assure safety to the community.

In proposing to increase the size of the District of Columbia Bail Agency and to authorize it to supervise defendants on pretrial release, it is hoped that pretrial release will be more widely utilized since conditional release will be made meaningful with supervision by the Bail Agency.

On top of all our other problems, I would point out to you that we are extremely concerned about the enormous increase in habeas corpus petitions. They have gone from about 1900 in 1960 to more than 11,000 in 1968. More than half of these petitions are filed by prisoners convicted in state courts. The United States Supreme Court appeared to tell us several weeks ago in the Kaufman case that we can expect even more petitions.

Habeas corpus is a serious writ and we believe it should be treated in a serious manner. But I do not know how our overburdened federal courts can pretend to give sufficient

time and attention to habeas corpus under the present statistical and legal circumstances.

I believe that some legislation may be needed in this area to limit the use of the writ, certainly to eliminate duplicate claims which have been refused two and three times before. At the same time, we do not want, in any way, to infringe on this ancient prerogative. As you know, Mr. Gideon filed a handwritten petition and I do not believe that any judge here can quarrel with the results.

These are some of the ideas being considered by me as a new Attorney General just learning his job. Some of my initial plans may not be as well thought out as they might be. But I am doing my best to work with the Department of Justice experts to learn your problems which, as you know, are our problems too.

I want you to feel free to visit me and to send me your own comments which may prove helpful to us. We are anxious to support your requests for more funds and more supporting personnel in all fields. We are anxious to know when the problems lie and how they

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can be solved. We are very aware of our obligations toward an independent judiciary. But we know that this must be a joint effort and we are hopeful that you will invite us to join you in your requests for much needed reforms.

Thank you.