The original documents are located in Box C53, folder "Presidential Handwriting, 12/11/1976 (1)" of the Presidential Handwriting File at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

December 11, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: PHIL BUCHEN

FROM: JIM CONNOR JEC

SUBJECT: Justice Department Report
"The Needs of the Federal Courts"

The President reviewed your memorandum of December 6 on the above subject and approved the following:

(1) Release report by the Department of Justice in response to his call for a comprehensive review of the needs of the Federal courts.

(2) Favorable reference should be made to the report in the State of the Union message and that he particularly endorses the proposed Commission on the Judicial Appointment Process and the Federal courts planning agency.

Please follow up with appropriate action.

cc: Dick Cheney
Bob Hartmann

THE WHITE HOUSE

WASHINGTON

December 9, 1976

MR PRESIDENT:

Justice Department Report:
"The Needs of the Federal Courts"

Staffing of the attached memorandum prepared by Phil Buchen resulted in the following comments and recommendations:

Doug Bennett - "I recommend approval of both recommendations 1 and 2. During the course of my service in this office, it became very clear to me of both the need for additional judgeships as well as the structuring of a new approach to the selection of nominees. On occasion the actions of the Senate, without regard to the merit of the candidate, preempted the President's choice of nominee. A Commission on the Judicial Appointment Process with the attendant notice and visibility that it would rightfully receive could serve to invalidate the so-called "senatorial courtesy" practice. By removing the selection of candidates from the Congressional political process, the objectives of Presidentially selected quality jurists would be substantially achieved."

Max Friedersdorf - Recommends Option #1.

Bob Hartmann - "Recommendation #1 - approve
Recommendation #2 - This has to be considered in conjunction with the Peterson Report and how it is handled in SOTU."

OMB (Daniel Kearney) -

- "OMB has no objections to the report of the Justice Department on "The Needs of the Federal Courts". We recommend, however, that added emphasis be given to improving court administration and management techniques, which receives only cursory treatment under the report section titled: "Continuing Educational Requirements."

Jack Marsh - " 1. Approve generally, but not all of memo. President may take exceptions to part.
2. Concur in reference in SOTU on those parts which he agrees.
3. Suggest an issue by issue breakdown."

Jim Connor

THE WHITE HOUSE

WASHINGTON

December 6, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP W. BUCHEN P.

SUBJECT: Justice Department Report: "The Needs of the Federal Courts"

This memorandum seeks your acknowledgment and general endorsement of a report recently prepared by the Department of Justice on the comprehensive needs of our Federal court system.

BACKGROUND

In your speech to the Sixth Circuit Judicial Conference on July 13, 1975, you called for an effort within your Administration to find ways to improve the Federal judicial system. You emphasized that respect for law is inevitably diminished by the overburdening of the Federal courts' capacity to administer justice effectively. In response to your initiative, the Department of Justice formed the Attorney General's Committee on the Revision of the Federal Judicial System, with Solicitor General Robert Bork as chairman. That Committee, subject to the review of the Attorney General and Counsel's Office, has now completed its report.

OVERVIEW

A draft of the report (at Tab A) points to the virtual explosion of Federal litigation in recent years. It identifies the major themes of the statement: (1) the crisis of the Federal courts must be overcome not only for the sake of the court system, but because the courts' crisis raises a threat for litigants who seek justice, for claims of basic human rights and for the rule of law; the problem must therefore be of concern to the nation; and (2) our responses to this problem must be vigorous enough to give the courts what they need, but moderate enough to preserve their excellence.

The report, which is subject to change in relatively minor respects, proposes a comprehensive package of solutions

to the growing needs of the Federal courts, including:

- o Judgeships. A modest increase in the size of the Federal judiciary is recognized as a necessary immediate response to the problem. Therefore, the report supports enactment of pending legislative proposals to create additional Federal judgeships. It is also recognized, however, that in the long run we cannot go on expanding the size of the judiciary indefinitely.

- o Judicial Excellence. The report proposes the creation of a Commission on the Judicial Appointment Process which would conduct a fundamental reassessment of the current practice governing judicial selections, loosely referred to as "Senatorial courtesy", and recommend: (1) standards to be utilized in the selection of candidates for judicial appointment; (2) the proper roles of the various individuals and institutions concerned with the selection of judicial candidates; and (3) procedures and structures to attract and retain the best qualified judicial personnel. This recommendation carries forward a view which you recently expressed to the American Judicature Society.

- o Reducing the scope of Federal jurisdiction. Four proposals are advanced to reduce the numbers of cases coming before the courts. These call for:

  1. the elimination of most of the remaining areas of mandatory appellate jurisdiction of the Supreme Court;

  2. the reduction of diversity jurisdiction;

  3. a requirement that prisoners exhaust available state remedies prior to filing civil rights petitions attacking penal conditions; and

  4. a requirement that Federal collateral attacks on judgments of convictions be grounded on alleged constitutional defects that affect the integrity of the truth-finding process and thus may be causing the punishment of an innocent

person, although this no longer is particularly significant because this principle has been largely established by the recent Supreme Court decision in Stone v. Powell.

- Promoting judicial effectiveness. Four principal points are made regarding the effective use of judicial resources:

  1. The report recommends the creation of a small agency to plan for the future needs of the Federal court system.

  2. Support is given to the necessity for increased educational and training requirements for court personnel.

  3. Until such time as the relief prescribed in the report is given an opportunity to work, we should postpone active consideration of proposals to create a National Court of Appeals.

  4. The report generally supports the concept of special administrative tribunals to hear routine regulatory matters currently heard by the District Courts.

RECOMMENDATIONS

(1) The Attorney General, the Solicitor General, the Domestic Council and Counsel's Office recommend that you approve the release of this report by the Department of Justice in response to your call for a comprehensive review of the needs of the Federal courts.

Approve MRC Disapprove _____

(2) The Attorney General, the Solicitor General, the Domestic Council and Counsel's Office also recommend that you make favorable reference to the report in your State of the Union message and that you particularly endorse the proposed Commission on the Judicial Appointment Process and the Federal courts planning agency.

Approve MRC Disapprove _____

Draft 12/3/76

REPORT OF THE ATTORNEY GENERAL"S COMMITTEE ON REVISION OF THE FEDERAL JUDICIAL SYSTEM

The Attorney General's Committee on Revision of the Federal Judicial System was established [at the request of President Ford] to study the serious and immediate problems facing our federal courts. The Committee consisted of the Attorney General, the Deputy Attorney General and the Assistant Attorneys General within the Department of Justice and was chaired by Solicitor General Bork.

I

This report concerns a serious threat to one of our priceless national assets: the federal court system. What makes the threat serious is that it imperils the ability of the courts to do justice of the quality that is the people's due.

The central functions of the federal courts established under Article III of the Constitution of the United States are to protect the individual liberties and freedom of every citizen of the nation, give definitive interpretations to federal laws, and ensure the continuing vitality of democratic process of government. These are functions indispensable to the welfare of this nation and no institution of government other than the federal courts can perform them as well.

Our federal courts have served us so well for so long that we have come to take their excellence for granted. We can no longer afford to do so. The court system and the administration

of justice in this nation need our attention and our assistance. Law and respect for law are essential to a free and democratic society. Only a strong and independent federal judicial system can maintain the rule of law and respect for it.

In this century, and more particularly in the last decade or two, the amount of litigation we have pressed upon our federal courts has skyrocketed. In the 15-year period between 1960 and 1975 alone, the number of cases filed in the federal district courts has nearly doubled, the number taken to the federal courts of appeals has quadrupled, and the number filed in the Supreme Court has doubled. Along with the sharp inflation in the volume of cases has come an increase in the complexity of a growing proportion of them.

Despite this rising overload, judges of the federal courts are being asked to perform their duties as well as their predecessors did with essentially the same structure and essentially the same tools. They are performing wonders in coping with the rising torrent of litigation, but they cannot do so forever without assistance. Congress must give high priority to legislation that will redefine the responsibilities of our federal courts and enable them, now and in the future, to continue to carry out their essential mission.

THE GROWING JUDICIAL WORKLOAD

The federal courts now face a crisis of overload, a crisis so serious that it threatens the capacity of the federal system to function as it should. This is not a crisis for the courts alone. It is a crisis for litigants who seek justice; for claims of human rights; and for the rule of law. It is therefore of great concern to the nation.

Overloaded courts are not satisfactory from anyone's point of view. For litigants they mean long delays in obtaining a final decision and additional expenses as procedures become more complex in the effort to handle the rush of business. We observe the paradox of courts working feverishly and litigants waiting endlessly. Meanwhile, the quality of justice must necessarily suffer. Overloaded courts, concerned to deliver justice on time insofar as they can, begin to quicken their steps, sometimes in ways that threaten the integrity of law and of the decisional process.

District courts have delegated more and more of their tasks to magistrates, who handled over one-quarter of a million matters in fiscal 1975 alone. Time for oral argument is steadily cut back and is now frequently so compressed in the courts of appeals that most of its enormous value is lost. Some courts of appeals have felt compelled to eliminate oral arguments altogether in many classes of cases. Thirty percent or more of

all cases are now decided by these courts without any opportunity for the litigants' counsel to present the case orally and to answer the court's questions. More disturbing still, the practice of articulating reasons for decisions is declining. About a third of all courts of appeals' decisions are now delivered without opinion or explanation of the results.

These are not technical matters of concern only to lawyers and judges. They are matters and processes that go to the heart of the rule of law. The American legal tradition has insisted upon practices such as oral argument and written opinions for very good reason. Judges, who must be independent and are properly not subject to any other discipline, are required by our tradition to confront the claims and the arguments of the litigants and to be seen by the public to be doing so. Our tradition requires that they explain their results and thereby demonstrate to the public that those results are supported by law and reason and are not merely the reflection of whim, caprice, or mere personal preference. Continued erosion of these practices could cause a corresponding erosion of the integrity of the law and of the public's confidence in the law.

The problems addressed so far are but a few of the most visible symptoms of the damage being done to our federal court system by overloading it with more and more cases. There are others. Courts are forced to add more clerks, more administrative personnel, and install more depersonalized procedures. They are

losing time for conferences on cases, time for deliberation, time for the give and take and the hard thinking that are essential to mature judgment. They are, in short, encountering a workload that is changing the very nature of courts, threatening to convert them from deliberative institutions to processing institutions, from a judiciary to a bureaucracy. It is this development, dangerous to every citizen in our democracy, that must be arrested and reversed. And it must be done in ways that will not lower the quality of justice received by any citizen of this country.

Our courts must be reasonably accessible to the American people at a price within reach. Justice must be dispensed evenly and decently within a reasonable time. In moving to ensure that these goals are met, we must employ methods which are vigorous enough to give the courts what they need but moderate enough to sustain their excellence. The proposals presented here accomplish that: they will at once preserve our federal courts for their central task of guarding human rights and democratic government while improving the quality of justice and cutting the time and cost of securing it, for every person who goes to federal court.

ADDITIONAL FEDERAL JUDGESHIPS

One traditional response to the crisis of overload lies in the appointment of more judges. A bill creating more judgeships for our District Courts and Courts of Appeals (S.)

has been pending in Congress for approximately four years. Certainly this measure should be enacted as an immediate measure for relief of our judicial system. Moreover, the Committee proposes that additional measures be taken to upgrade the quality of our federal judges.

The quality of federal justice depends directly on the quality of federal judges. There are currently 596 judgeships in the various Federal court systemsunder Article III of the Constitution,including the Supreme Court, the Circuit Courts of Appeals, the District Courts, the Court of Claims, the Court of Customs and Patent Appeals and the Customs Court. Although the quality of the Federal bench is in fact high and is perceived to be high, few would deny that there is room for improvement on both the trial and appellate levels. We must bend our efforts to assure the greatest excellence in judicial appointments.

No process of judicial selection can completely ensure the appointment of highly qualified judges. However, despite the fact that there are no magic formulas in the area of judicial selection, it is certainly appropriate to question whether the method of selection that currently exists moves in the direction of achieving optimum results.

As a matter of law, Federal judges are appointed by the President, "by and with the advice and consent of the Senate." However, in point of fact there has developed over the years a process of judicial selection under a practice which has

come to be known as "Senatorial courtesy." This term refers to a veiled selection process which is heavily political and grounded in outdated notions of Senatorial patronage. This system is not consistent with the interests of the American public and the needs of the federal judicial system. A greater degree of public visibility would enhance the process.

In order to provide an independent working basis for a fundamental reassessment of judicial selection procedures, there should be created a Commission on the Judicial Appointment Process. This group should include representatives from diverse segments of the legal community and the public at large. It should recommend: (1) standards to be utilized in the selection of candidates for judicial appointment; (2) useful roles for the various individuals and institutions concerned with the selection of federal judicial candidates; and (3) procedures and structures to attract and retain highly qualified judicial personnel.

Although it is clearly essential today that Congress increase the number of judges to cope with the rising tide of litigation, and that they be judges of high quality such an approach does not promise a long-term solution.

An effective judiciary, as Justice Felix Frankfurter once observed, is necessarily a small judiciary. Large numbers swelling the size of the federal judiciary indefinitely not only dilutes the attraction to first-rate men and women of a career on the federal bench but damages collegiality, an essential

element in the collective evolution of sound legal principles, and diminishes the possibility of personal interaction throughout the judiciary. Thus we need to do more than add new judges: we must also reexamine the responsibilities with which our courts are charged to ensure that this precious and finite resource can continue to function in the best interests of all our citizens.

REDUCING THE SCOPE OF FEDERAL JURISDICTION

Another hopeful response to the problem of overload lies in reform of the jurisdiction of our federal courts. This has been done on several occasions in our history, always with beneficial results. It is now necessary again.

The solutions offered here are broad in concept and in effect because remedies of smaller scope, remedies that tinker here and there for the sake of minor and temporary relief, are simply not adequate to meet a problem of the dimensions presented. Caseloads will continue to increase dramatically according to almost all predictions. The solutions offered, therefore, are designed not only to afford immediate relief to the courts and the public but to provide for the future.

A. Supreme Court: Elimination of Mandatory Appellate Jurisdiction.

The business of the Supreme Court, like that of the other federal courts, has expanded significantly in recent years. After growing steadily for three decades, the number of filings in the Supreme Court began to accelerate ten years ago, increasing from 2,744 cases in the 1965 Term to 4,186 in 1974. Fortunately,

Congress has given the Court discretionary (or certiorari) jurisdiction over much of its docket, enabling the Court to keep nearly constant the number of cases (from 150 to 160) decided on the merits after oral argument. These are the cases that necessarily consume the bulk of the Justices' time. Nevertheless, despite the broad scope of its discretionary jurisdiction, the Supreme Court is needlessly burdened by appeals the Court has no power to decline. The Committee therefore recommends that the remaining mandatory appellate jurisdiction of the Supreme Court be abolished.

During the past several years Congress has taken significant steps to reduce the burden of the Supreme Court's mandatory docket, most importantly by eliminating in large part the cases heard by three-judge district courts and appealed directly to the Supreme Court. The Court is still required, however, to consider on the merits cases from the state court systems in which a federal law has been invalidated or a state law upheld in the face of a federal constitutional attack. In addition, the Court must consider on the merits appeals from federal courts of appeals and, more importantly, from district courts where a federal statute has been held to be invalid.

This mandatory Supreme Court review of appeals from the state courts and the federal courts of appeals should be eliminated, as the Federal Judicial Center's Study Group on the Caseload of the Supreme Court concluded four years ago. While these cases have typically accounted for only a small percentage of the Supreme Court's business, the number of cases appealed from

the federal district courts and court of appeals will increase as a result of the virtual elimination of three judge district courts. The Committee believes there is no reason why they should be subject to special treatment.

Nor is there sufficient reason to require the Supreme Court to review on the merits all cases in which the highest possible state court invalidates a federal law or upholds a state statute in the face of a federal constitutional attack. Mandatory Supreme Court review in these circumstances implies that we cannot rely on state courts to reach the proper result in such cases. This residue of implicit distrust has no place in our federal system. State judges, like federal judges, are charged with upholding the federal constitution. Indeed, the Supreme Court itself now summarily disposes of nearly all these state cases, deciding them without briefing or argument. In effect the Supreme Court is exercising discretionary jurisdiction although the statute makes review mandatory. It is time that we conform the law to the reality.

Congress should, therefore, eliminate those sections of the United States Code imposing mandatory review jurisdiction and make the certiorari practice applicable throughout the Supreme Court's jurisdiction. There is no basis for a conclusive presumption that issues raised on appeal are more important than issues raised on certiorari. We now trust the Supreme Court to decide important issues; we should trust it to decide which cases are most in need of review.

B. NATIONAL COURT OF APPEALS

The considerations that demand relieving the Supreme Court of its mandatory appellate jurisdiction do not support creating a National Court of Appeals such as that proposed last year by the Hruska Commission and now under review by a Senate subcommittee in the form of two bills (S. 2762, S. 3423). The need for such a new, national tribunal between the courts of appeals and the Supreme Court simply has not been demonstrated and the additional burdens it would create for litigants and the Supreme Court cannot be justified.

Although the Supreme Court's workload is heavy, the National Court of Appeals is not intended to - and would not - provide any relief. It is aimed instead at increasing national appellate capacity in order to decide cases that involve conflicts in the circuits and significant issues that the Supreme Court, at least for a time, would not address.

While the Supreme Court has doubtless left some intercircuit conflicts unresolved, there is little evidence that these involve recurring issues or questions of general importance. A high proportion of the cases deemed suitable for the National Court of Appeals involve specialized areas of tax or patent law. But if more nationally-binding decisions are needed in these fields the proper approach is to create national courts of tax and patent appeals. This not only would increase national appellate capacity for tax and patent cases, but also would remove

such cases from the courts of appeals and thereby give those courts some much-needed relief. The remaining cases, while not insignificant, could be handled under the existing system if - as we recommend - the Supreme Court were given certiorari jurisdiction over cases presently brought by appeal.

On the other hand, the National Court of Appeals almost surely would place an increased burden on the Supreme Court. The Justices, experienced at simply granting or declining cases for review, would have to decide whether cases should be accepted for review by the Supreme Court, referred to the National Court of Appeals, or denied outright. The problems inherent in that process are considerable and the large increase in Supreme Court filings would become substantially more of a burden than it now is.

Moreover, each decision on the merits by the National Court of Appeals would have to be scrutinized very carefully by the Supreme Court, to ensure than an issue had not been definitely resolved, or even dicta pronounced, in a manner contrary to its own views. The necessity of granting plenary review of a decision of the national court might arise frequently, particularly if the judicial philopsophies of the two benches should differ to any significant degree. That would impose upon many litigants four separate tiers of federal adjudication, and the result might be a still further increase in the burden upon the Supreme Court.

In light of these dangers, a new, national court should be created only if the need is clear and compelling. It is not. The modest advantages of the National Court of Appeals are insufficient to overcome its disadvantages and Congress should reject it.

B. The District Courts and Courts of Appeals

In order to provide essential relief to the lower federal courts, it is proposed that (1) diversity jurisdiction be abolished; (2) state prisoners be required to exhaust their state remedies before starting a federal suit to attack prison conditions; and (3) new tribunal be established to handle routine cases arising under federal regulatory programs.

1. Elimination of Diversity Jurisdiction

The vast majority of lawsuits in this country are based on claims under state law. When the litigants are residents of the same state, these cases are decided in state tribunals, and no one objects to that. However, when the litigants are citizens of different states, such suits have long been allowed to enter the federal courts, even though they involve only questions of state law. These diversity cases account for a large part of the federal district courts' caseload.

More than 30,000 diversity cases were filed in the district courts during fiscal 1975, constituting almost one-fifth of the total filings. During the same year, diversity cases accounted for more than 25 percent of all jury trials and, notably 68 percent of all civil jury trials. Appeals from diversity cases constitute slightly more than 10 percent of the filings

in the court of appeals.

The burden diversity jurisdiction imposes on the federal courts can no longer be justified. State courts, not federal courts, should administer and interpret state law in all such cases. Federal judges have no special expertise in such matters, and the effort diverts them from tasks only federal courts can handle or tasks they can handle significantly better than the state courts. Federal courts are particularly disadvantaged when decision is required on a point of state law not yet settled by the state courts. The possibilities both of error and of friction between state and federal tribunals are obvious.

The modern benefits of diversity jurisdiction are hard to discern. The historic argument for diversity jurisdiction - the potential bias of state courts or legislatures - derives from a time when transportation and communication did not effectively bind the nation together and the forces of regional feeling were far stronger. As the Chief Justice has remarked, "[c]ontinuance of diversity jurisdiction is a classic example of continuing a rule of law when the reasons for it have disappeared." Other Justices of the Court, as well as prominent legal scholars and practitioners, agree. Diversity cases involving less than $10,000 have been left to the States for many years without noticeable difficulty and admission to the federal courts should no longer be a matter of price. The additional burden on the state courts would be small since the cases would be distributed among the fifty state systems.

These changes should permit federal judges to give greater attention to tasks only federal courts can handle or tasks to which they bring special expertise.

2. Require Exhaustion of State Remedies in Prisoner Civil Rights Act Cases

The consideration of prisoner cases now constitutes a significant part of the district courts' job. In fiscal 1975, prisoners filed 19,307 petitions, approximately 16 percent of the new civil filings or 12 percent of the total filings. Of these, 11,215 were habeas corpus petitions or motions to vacate sentence. The remainder consisted primarily of civil rights actions which normally attack the deficiencies of prison conditions.

Most civil rights actions of this type are filed by state prisoners. The 6,000 filings by state prisoners are more than triple the number filed five years ago and 27 times the number filed in 1966. Only a small percentage go as far as an actual trial, but the burden on the federal courts from these cases is significant and it appears to be growing.

H.R. 12008, introduced on February 19, 1976, authorizes the Attorney General of the United States to institute suits on behalf of state prisoners, after notice to prison officials, and to intervene in suits brought by private parties upon a certification by the Attorney General "that the case is of g neral public importance." The bill also provides that "[r]elief

shall not be granted" in individual actions under 42 U.S.C. 1983 "unless it appears that the individual has exhausted such plain, speedy, and efficient State administrative remedy as is available. An exception is made when "circumstances [render] such administrative remedy ineffective to protect his rights."

When prisoner complaints are based on allegations of system-wide problems, representation by the Attorney General should correct the situation. Exhaustion of state administrative remedies would eliminate from the federal courts at least the cases decided favorably to the prisoner. Unsuccessful litigants might continue to press their claims in federal courts, but the court should then have the benefit of a more complete record and more focused issues. The bill will also encourage the states to develop more responsive grievance procedures. It is the responsibility of the states to provide adequate penal facilities and treatment for state prisoners and the administrative process is, at least in the initial stages, far better suited than a federal court to handle typical prisoner complaints. Indeed, new procedures insitituted by the Federal Bureau of Prisons seem to be supplying a useful grievance mechanism for federal prisoners and reducing the number of federal suits.

3. New Tribunals

We need new federal tribunals to make justice prompt and affordable for average persons with claims based on federal laws.

Perhaps the proposal with the most significance for the future of our federal court system is that we create new tribunals to shoulder the enormous and growing burden of deciding the mass of uncomplicated, repetitious factual issues generated by federal regulatory and other agency-administered programs, e.g., welfare claims.

Few changes in our government during the past 50 years have been so remarkable as the growth of federal welfare and regulatory programs. Federal legislation now addresses our most basic needs.

Special federal programs provide assistance for the poor, the jobless, the disabled, and other needy citizens. These crucial matters deserve special attention. Yet this vast network of federal law has been entrusted, in large part, to a judicial system little changed in structure since 1891. Review of agency action, and lawsuits arising directly under federal statutes, now constitute as much as one-fifth of the business of the federal courts and litigation under new legislation could make the effect even more substantive. For example, the Mine Safety Act potentially could generate more than 20,000 full jury trials each year in the District Courts, a burden that would overwhelm the courts and defeat the very rights that the new legislative programs are designed to extend.

We can hope that this process of adding new federal programs that create unnecessary masses of cases will end. However, regardless of one's view of this trend and the consequent steady accretion of power in the hands of the federal government, we should at a minimum take care that we do

not swamp the federal courts and with them the needs of the litigants. It can only be disheartening for a litigant whose claim requires no more than a thoughtful and disinterested factfinder to be placed in competition with a lengthy docket of civil and criminal cases, all competing for the limited time of a District Court judge.

Serious thought should now be given to the creation of a new system of tribunals that can handle the 20,000 or so routine claims under many federal welfare and regulatory programs as well as the Article III courts, and with greater speed and lower cost to litigants. The shifting of these cases to the new tribunals could also preserve the capacity of the Article III courts to respond, as they have throughout our history to the claims of human freedom and dignity.

Specialized courts and boards already play an important role in our governmental system. The Tax Court, for example, has provided a useful alternative to suits in federal District Courts. The Armed Services Board of Contract Appeals and other similar boards resolve the great majority of contract disputes involving the government. The Board of Immigration Appeals provides valuable service in the specialized matters within its jurisdiction. Administrative tribunals have long been used in countries abroad, with excellent results.

This proposal holds the potential for providing prompt, affordable justice for the average person and at the same time avoiding a crushing burden on the federal courts. It is essential that litigation under future federal programs be directed to the tribunal in which it can be handled most effectively. For too long, Congress has ignored the effect of new federal programs on our overworked judicial system.

This proposal is simple in concept and may prove to be necessary. However, implementing it will require developing the specifics and testing them carefully before they are put into effect. For that reason, the concept should be referred to the planning agency for the judicial system that has been proposed. As it monitors the impact of the other measures proposed in this message, the agency will have in view the possibility of creating new tribunals.

PROMOTING JUDICIAL EFFECTIVENESS

We must strive to ensure that the nation receives maximum efficiency from its judicial resources. In this regard, we should review programs to strengthen the continuing educational programs for Federal court personnel and the development of a strong planning capability within our judicial system. Within the context of a program to explore the future needs of our Federal courts, we should continue to probe the utility of various proposals on court reorganization.

A. Continuing Educational Requirements.

The Federal Judicial Center, the Judicial Conference of the United States, the Law Enforcement Assistance Administration, the American Judicature Society and the Institute for Judicial Administration and other public and private organizations have made notable contributions in the development of programs to ensure that the continuing educational and training requirements of the judicial branch are met. These programs have covered substantive and procedural law as well as court administration and management.

The utilization of innovative technology and advanced management techniques is essential to the prompt resolution of disputes before our courts. Study institutes and advanced instruction for court personnel increase both the quality and speed of delivery of justice in the United States.

Under the inspiration and guidance of the late Chief Justice Warren and Chief Justice Burger, the wholesome trend toward continuing education for judges and other court personnel has accelerated. This trend should be encouraged.

B. A Planning Capability for The Federal Court System.

The experience of recent decades teaches that the work of the federal courts will continue to change rapidly and substantially, as in the past. If we are to act responsibly to meet the new problems that will arise, we must alter our approach from a fire-fighting and crisis-managing strategy to a strategy of anticipation, one that will develop suitable remedies before the

difficulties confronting the courts reach an advanced stage. We could then pursue consistent and constant policies and programs.

To satisfy the immense demands on them, the federal courts need the very best structure and the most effective procedures the nation can provide. They need a capacity to respond in a flexible manner as soon as trends in the volume and nature of the courts' work can be identified. To accomplish these crucial tasks, the courts will need a permanent agency that has the responsibility for making proposals to the Congress and to the Judicial Conference of the United States, to plan ahead and design responses before the problems reach critical dimensions.

The concept of creating a planning capability for the third branch of government is by no means novel. Six years ago Chief Justice Burger urged consideration of the idea of creating a Judiciary Council of six members, comprised of two appointees of each of the three branches of Government.

The Council would report to the Congress, the President and the Judicial Conference on the wide spectrum of developments that affect the work of the federal courts.

A slightly different version of the proposal was advanced in 1975 by the Commission on Revision of the Federal Court Appellate System, which supported creating a standing body to study and make recommendations regarding the problems of the federal courts.

The planning capability can be placed in the hands of an agency designed on any of a variety of models. The mechanism, whatever its form, will be responsible for projecting trends, foreseeing needs and proposing remedial measures for consideration by the profession, the administration, the Congress and judicial groups. Among the kinds of problems the agency will consider are those relating to the nature of the business going into the federal courts; the need, if any, to enlarge the federal courts; capacity to settle the national law; the structure and interrelationship of the courts in the system; and the factors that affect our ability to recruit the ablest judges to the federal bench.

Other significant court-related problems that arise from time to time will also fall within the responsibility of the agency. The criterion will be whether the matter is one that involves deficiencies and possible improvements in the functioning of the federal judicial system.

The need has been amply demonstrated for the federal courts to develop an office for planning and programs of the kind other branches of government find indispensable. The role of systematically auditing the functions of the federal courts should not be performed casually, sporadically or haphazardly. It must be an ongoing effort that permits the members of a permanent panel to develop deep, expert knowledge and a sure feel for what the courts need today and are likely to need tomorrow. The judicial planning agency could draw on work down by Committees on the Judiciary of both Houses, the Federal Judicial Center, the Judicial Conference of the United States, the Department of Justice and private groups.

This is not now being done in any coordinated or coherent way. It is imperative that it be done through a responsible agency so that we can discontinue the practice

of reacting instead of anticipating, a practice that obviously cannot provide timely or effective help for the great and changing needs of the federal courts.

Conclusion

In speaking about improving the Federal courts, we are considering how we can make a great institution greater. The plain answer is to give the courts the capacity to do the vital work the country expects of them. This work has been expanding dramatically in quantity during the last 30 to 40 years, and it has also been changing drastically in quality. Both increases -- in volume and in the complexity of the cases -- have come about because of new Federal statutes and programs that affect broad areas of people's lives, and new court decisions that announce additional legal rights or duties.

President Ford has in the past called attention to the fact that we are turning too often to our Federal courts for solutions to conflicts that should be resolved by other agencies of government or the private sector. It is becoming increasingly important for the Congress to consider in some detail the potential judicial impact of new legislation and to minimize the occasions for resort to a full-blown adjudicatory process.

The boom in the business of the nation's courts is in one sense, however, very good and very reassuring. It shows that we as a people believe in the rule of law and trust our courts to give us justice under law. It also shows that in the 201st year of the country's life we are still devoted to the Constitution's basic concept that the judicial branch is an equal partner in our government.

But the Federal courts are now in trouble and urgently need help. They cannot continue to meet the obligations that society has thrust upon them without improving their resources. The crisis of volume has exposed many unmet needs in the Federal court system.

Basically, the American people expect that the courts will be reasonably accessible to them if they have claims they want judged. They also expect that the courts will not be so costly they price justice out of reach. And they expect, too, that the courts will not be so slow that justice will come too late to do any good. People also have a right to expect that when they go into the Federal courts, whether as litigant, witness or juror, they will be treated with decency and dignity. In short, they are entitled to believe that the courts will be humane as well as honest and upright.

To ensure that the Federal court system continues to meet these legitimate expectations, serious consideration should be given to the recommendations made here. They are necessary and will immeasurably strengthen our system of justice.