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CONGESTED DOCKETS IN THE FEDERAL COURTS MENACE TO JUSTICE

By HARRY M. DAUGHERTY, *Attorney-General of the United States*

Congestion of the Federal courts of the country, due to increase in our population and development of commercial and industrial America, has brought about a serious weakness in the machinery of federal justice. It is no uncommon thing for a district court docket to be from six months to two years in arrears. This naturally means loss of evidence, death of witnesses, defeat of justice and expense to taxpayers. Many cases can never be tried. Large and small business interests lose heavily by this delay. Steps are now being taken to remedy this condition of affairs in the selection of twenty-four additional trial judges, and the Department of Justice hopes soon to complete its investigations into the qualifications of those being considered for these judge-ships.

All through our history federal judges have established enviable records of loyalty and devotion to duty and country that has sustained for all time the wisdom of our constitutional fathers. Never swayed by popular passions, but always true to the ideals of justice, law and order, these judges have carried on their work with the sole purpose of affording that protection to government and the American people to which they are so rightfully entitled. Individuals, labor and capital, and Congress itself, have felt the weight of their sound judgment and the influence of their opinions. Restraining even the Government, and society generally in its restless, somewhat impulsive and sometimes impatient course, but always true to the constitution they have sworn to support, these federal judges are a living monument to separate and distinct judiciary. Their decisions constitute a sound record of the social, economic and political history of our country. Often we do not agree with them, but no man dares challenge the fact that their judgments always have been in accord with the highest conceptions of constitutional government. They have been philosophers and historians, viewing popular opinions and prejudices of the moment with understanding and patience but never swerving from their duty to interpret the law as it is written, and not as the temporary wishes of a people might dictate.

I have no patience with those who flaunt and scorn a judge

because he has remained true to his oath and upheld the law contrary to selfish, social, economic or industrial interests. The growing disrespect of the constitution and the law which the federal judiciary has so faithfully protected and interpreted, must sooner or later be brought to an abrupt halt if Government is to survive the assaults of all the vicious elements which revolt against law and order.

Naturally we might expect a reaction from the idealism, unselfishness and restraints of war times. But the individualistic idea of freedom has led many to believe they themselves can violate the law, but others should remain straight-laced. A government can survive only as long as wise laws are passed and *all* laws are obeyed by *all* people.

Shortly after coming into office I found that the Federal Government was unable to secure the trial of many important civil and criminal cases, because dockets were so congested it was impossible to get the prompt action necessary for law enforcement. There had been no real increase in the federal judiciary for a quarter of a century, despite our strides in industry and commerce and our enormous increase in population and wealth. Federal police laws had been passed, immigrants of questionable moral standards and vicious leanings had crowded through our gates, state governments had been apathetic, and business was resorting more and more to the federal courts. The war, it would seem, had temporarily suspended civil business, but now there was every indication of enormous increase. Criminal proceedings jammed court dockets all over the country, justice was being cheated and violators of federal laws were escaping punishment due to loss of evidence and other attendant conditions. Most serious of all, however, was the loss of prestige by the federal courts.

In a government by law it is necessary that the law be enforced, and that trials be prompt and speedy, otherwise forced delays promote disrespect of the law.

One hundred forty-two thousand cases were pending and undisposed of on July 1, 1921, and conditions were critical the country over. Congress was asked for relief, and suggestion was made at the same time that provision for an annual conference be made at which the Chief Justice of the Supreme Court of the United States, each of the Federal Circuit Judges, and the Attorney-General could consider ways and means of

perfecting the administration of justice and relieving congestion. Recommendation was made also that a greater elasticity was necessary so that judges could be assigned to handle temporary congestion without the expense of a permanent judge.

After some delay, twenty-four new judges were authorized, but in the meantime congestion had increased to a point where there was an excess of 172,000 cases pending and undisposed of on July 1, this year. The new trial judges authorized by Congress just before adjournment are now being appointed, and I want to say here that no man, no matter what his ability may be, will ever be endorsed by the Attorney-General unless he is 100 per cent American in every shape and form. For the federal judiciary is the backbone of our Government, and in these times of discontent and vicious radicalism, these judges must stand between the Constitution and the blind gropings of those who are swayed by violent and unscrupulous leaders.

If we are to be spared domination by organized minorities, then we must proceed in the selection of our judiciary with our eyes open and our vision unclouded by partisan views or principles. In the hands of the federal judiciary rest the treasures of freedom, the liberties of our people, and there cannot be too much care exercised in their selection. Temporary officers of the Government who serve the people for only a brief period, can of necessity have but a limited share in the upward climb of our country, which it might be said, incidentally, has not yet reached its full development nor attained its maximum of world influence and power.

When the entire list of new Judges is completed, and they get down to work, the congestion in all the courts will be speedily whittled down. But it is not alone in the trial of cases that law enforcement is handicapped. Congress has enacted numerous police laws as well as extended the scope of criminal jurisdiction in interstate commerce. New revenue laws have been passed which have afforded new temptations to the criminally inclined. Smuggling, bootlegging, robbery, forgery, conspiracies in restraint of trade, frauds and corruption exist everywhere and yet federal enforcement officers, with the exception of the customs officers and United States Marshalls, are clothed with little more power than a private individual.

It is futile to pass laws without giving the Federal Government power to enforce them. Although the States possess police powers, the same powers are denied to the Federal Government. The Federal Government must have the power to enforce all federal laws, for responsibility without power is indefensible and can only result in disrespect for the law.