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U.S. Department of Justice

National Institute of Justice

Office of the Director

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ADDRESS

BY

THE HONORABLE JAMES K. STEWART, DIRECTOR
NATIONAL INSTITUTE OF JUSTICE

BEFORE

THE COVINGTON & BURLING LAW PARTNERS' LUNCHEON

11:45 A.M.

MONDAY, NOVEMBER 6, 1989

LAW OFFICES OF COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE, NORTHWEST
WASHINGTON, D.C.

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sion of the ~~original~~ owner.

Thanks to Wes Williams ...

Today all of us -- in the public and private sector -- confront problems resulting from an over stressed justice system caused by the sheer volume and complexity of cases being brought to court. I'm reminded of a cartoon I saw last year that shows a lawyer speaking to a skeleton in a prison cell, saying: "See, I told you your trial date would eventually get here."

Unfortunately, it's hard to laugh when you and your clients experience lengthy delays. The lack of resolution in a case can extend for years, result in unnecessary costs, and have an impact on the outcome of cases.

Dissatisfaction with the performance of our courts is high. Of course in civil disputes we usually have a winner and a loser, so it wouldn't be surprising if 50% were dissatisfied with the performance of our courts. And in the criminal area, a recent survey of the public found 82% who thought the courts do not deal harshly enough with criminals.

National Institute of Justice research over the years on the topic of court delay reports that the median time from filing to disposition in a civil trial case ranges from 43 months in the slowest jurisdiction to 17 months in the most expeditious. This latter figure suggests that delay certainly is not inevitable. Here in D.C., even with a number of useful programs that can reduce the backlog of cases, the median time for a civil trial case can average 25 months from filing to disposition and the most complex cases can take 5 years or more. Criminal matters

receive a higher priority and can be resolved within a year from indictment.

Speedy trial laws, court imposed time standards, and programs such as court ordered arbitration have clearly been movements in the right direction. However, as filings continue to increase we risk being overwhelmed by the backlog that may develop over the next few years. The outlook for the next two to five years suggests that pressure on the courts will continue to mount and we may well have skeletons awaiting trial.

Our drug epidemic only exacerbates the problem with murder rates, international extraditions and street buy busts increasing the flow of cases to the courts. In large urban courts, drugs are involved in a majority of the cases. And only now are some jurisdictions setting up special drug courts and expediting the processing of drug cases. Simple models for projecting future court caseloads suggest astronomical increases.

There are a host of seemingly intractable problems in our American system of justice. The National Institute of Justice directs its attention to helping ameliorate problems such as these. NIJ is the primary research arm of the Department of Justice. NIJ searches for answers and innovations, and we encourage constructive change within the justice system.

I'm here today with a proposal for change that is slowly catching on. My purpose is to tell you about an innovation that does work and to ask you to consider the idea. It is an idea

that may not mean more resources, increased government spending and higher taxes.

The idea involves lawyers volunteering their time and abilities to assist the court in hearing and settling cases -- in effect acting in the role of the judge.

A few jurisdictions had used lawyers volunteering as judges prior to NIJ research, but no one had ever taken a hard look at the idea -- at how these programs work and what impact they have. That is precisely what the National Institute did in six jurisdictions.

The programs that were evaluated over a two year period demonstrate the positive effects of the use of lawyers as judges and in other judicial capacities. When these programs are well-managed as part of a court's broader program to reduce backlogs, they can:

- o increase dispositions
- o reduce the time to disposition of those cases handled by lawyers
- o improve relations between the bar and the bench
- o provide attorneys with a better understanding of judges' duties and problems, and
- o offer insights that can make attorneys more effective advocates

Our demonstrations focussed primarily on civil matters, but some criminal matters were also handled by the attorney/judges in

some sites.

In three of the sites lawyers were used as pro tem judges, sitting with the full authority of a judge:

- o in Pima County (Tucson), Arizona, to dispose of 300 civil court trial cases;
- o in Multnomah County (Portland), Oregon, to hear and resolve motions for summary judgment;
- o in the Arizona Court of Appeals in Phoenix where lawyers sat on special panels with a regular appellate judge to reduce the backlog of appeals.

In the other three sites NIJ evaluated programs that use lawyers in other judicial capacities:

- o As trial referees in Connecticut
- o As arbitrators in a court annexed arbitration program in Minneapolis
- o And to evaluate and make recommendations regarding settlement of civil cases awaiting jury trials in Seattle.

These programs often have a very specific, short-term goal such as reducing a temporary backlog in a particular court. They address situations in which the increased workload would not justify the addition of another full-time judge. They are not usually intended to be permanent programs or used in place of a new judgeship position that may indeed be justified by a dramatic increase in filings. Some of the experimental programs that we evaluated (the Arizona Court of Appeals and the Seattle programs

for example) have achieved their goals and are no longer in operation. Others are reactivated as needed.

This report ("Friends of the Court") published two years ago was disseminated to courts throughout the country, and it continues to be requested. The interest in looking at new ways of solving old problems is encouragingly apparent. This particular idea can address several problems in an efficient way. While it is no panacea for a court with a host of difficult management problems, it is a proven approach as a part of a comprehensive case management strategy in a given court.

I've been asked, "How would the bar and a court initiate a program like this?" Well, a number of jurisdictions have simply begun programs planned by a bar/bench committee. The lawyers have served in a judicial capacity for a brief period -- usually less than two weeks.

A volunteer judge may be in a position similar to that of a newly appointed full-time judge on day one. Virtually all judges emerge from lawyers with little or no judicial training and over time they gain on-the-job-training and some brief formal training as well.

I envision strengthening this volunteer lawyer concept along the following lines: State Bar Associations provide continuing legal education for their members, and some require it. A course could address the role of the judge and include judicial conduct and procedures. Attorneys who complete the course could then be listed for courts requesting pro tem judges and the court could

then verify any other selection criteria that a bench/bar committee deems necessary. Some states have judicial education programs. Another avenue would be to include interested attorneys in some of their basic courses.

One lawyer who served as a volunteer judge in a Phoenix program, who is now a permanent judge on the Superior Court, noted that there is still a lot to learn about judging. However, these programs can provide useful information -- both to the individual and to a judicial selection committee -- when a judgeship vacancy occurs. Serving as a volunteer judge leaves a footprint and a record of service that can be information to nomination and selection committees.

Approximately half of the states permit (by statute) programs using lawyers as judges with full authority. Many states also use attorneys as referees, commissioners, masters or arbitrators. In the District of Columbia Court there is no statutory authority to have lawyers sit as pro tem judges, but as some of you may know, about 150 lawyers -- including some from Covington and Burling -- volunteer their time in the annual settlement week here in D.C. These lawyers who contribute a week of their time as mediators are able to resolve 40 to 50 percent of the pending cases.

In regard to the authority for such programs in surrounding jurisdictions, the State of Maryland has no statute or court rule permitting lawyer performance in judicial capacities while

Virginia's laws would permit the use of attorneys as judges and commissioners in their Circuit Courts.

In closing, I would sum up by saying that attorney volunteerism in judicial roles indeed varies substantially from jurisdiction to jurisdiction. But regardless of the type of program, the spirit of volunteerism can serve both the individual lawyer as well as the community. It can help resuscitate our justice system and invigorate the American bar.

These judicial programs that enlist the volunteer spirit among attorneys can better prepare an attorney who is on the road to becoming a judge. And for those who want to stay in the more lucrative private sector, they provide a means of contributing to a need in the community.

Thank you.