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PRELIMINARY FINDINGS
EVALUATION OF THE USE OF LAWYERS
AS SUPPLEMENTAL JUDICIAL RESOURCES

Programs using lawyers as supplemental judicial resources, here referred to as judicial adjunct programs,¹ when well-managed and especially as part of a broad effort to attack civil case delay and growing case backlogs, can:

1. increase the number of dispositions over previous years;
2. reduce the time to disposition of cases handled by adjuncts;
3. improve bench-bar relations; and
4. provide attorneys new understanding and appreciation of judges' duties and problems.

While using lawyers as judicial adjuncts is not a panacea for either delays or backlogs, there are significant direct and indirect benefits achievable by a court with an effective adjunct program.

Almost all courts can use temporary judicial assistance from time to time. The need may arise from inevitable scheduling problems, while waiting for new judicial positions to be created or filled, or because of a new, legislatively imposed program. In some of these situations it is not possible for the court to get full-time judicial positions created, while in others it would be inappropriate; the need is real but not sufficient to justify full-time judicial resources. Many courts in these circumstances struggle as best they can, devoting their limited resources to the highest priority items and postponing lesser priority matters to another day. Since August

¹ The term "judicial adjunct" encompasses courts' myriad uses of lawyers to supplement judicial resources, whether or not the lawyers are paid for their services and whether or not the lawyers are used temporarily, for a defined period of time, or indefinitely.

1983 the National Center for State Courts, with funding from the National Institute of Justice and with the assistance of an Advisory Board on the Use of Volunteer Lawyers as Supplemental Judicial Resources,² has studied whether the use of practicing lawyers offers courts a practical means of dealing with these extra demands for resources.

Although the National Center's study is continuing, preliminary findings have been released. A final report, entitled "Friends of the Court: Lawyers as Supplemental Judicial Resources," will be released in December 1986.

The study has had three components: 1) an initial survey of some existing judicial adjunct programs; 2) the development of guidelines for the use of judicial adjuncts; and 3) the evaluation of several different uses of judicial adjuncts. The first two parts of the study were accomplished with publication of the advisory board's

² The Advisory Board was chaired by former Chief Justice of Connecticut John A. Speziale. Its members were: Honorable William D. Blue, Judge, Lancaster County District Court, Nebraska; Edward A. Dent, III, Washington, D.C.; Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota; Honorable Pat Irwin, Magistrate, U.S. District Court and former Chief Justice, Oklahoma Supreme Court; James R. Larsen, Court Administrator, Supreme Court of Washington, representing himself and then-Chief Justice William H. Williams; Honorable H. Carl Moultrie, Chief Judge, Superior Court of the District of Columbia; Robert D. Myers, Esq., Arizona; Kenneth Palmer, State Court Administrator, Supreme Court of Florida, representing then-State Court Administrator Donald P. Conn; Peter J. Rubin, Esq., Maine; Alan Slater, Executive Officer, Orange County (California) Superior Court.

Guidelines for the Use of Lawyers to Supplement Judicial Resources in the summer of 1984.³ The advisory board concluded:

- Court systems should consider using lawyers in a variety of capacities as supplemental judicial resources when full-time judicial resources are inadequate to meet demands. Such use should not be a permanent alternative to the creation of needed full-time judicial positions.
- Except for serious criminal trials and child custody proceedings, most types of cases are appropriate for assignment to judicial adjuncts.
- All judicial adjunct programs should have carefully defined objectives, be subject to court control, involve lawyers in planning as well as implementation, and include evaluation and monitoring.
- The court should maintain control over the selection of judicial adjuncts; the quality and background of lawyers selected should be appropriate for the task assigned.
- Assignment of cases to judicial adjunct programs should not be subject to the consent of the parties or their counsel, but appropriate mechanisms should be established to provide the parties an option concerning the particular judicial adjunct before whom they will appear.

³ Williamsburg, VA., 1984.

- The court and adjuncts should be sensitive to identifying and resolving actual and possible conflicts of interest affecting the provision of justice or the appearance that justice is being done.

It was discovered in the first phase of this study that very few courts have attempted to evaluate the impact of judicial adjunct programs. Accordingly, project staff worked with six jurisdictions over the past 24 months in an effort to evaluate a variety of judicial adjunct programs to see what impact, if any, the programs had on the court and what problems, if any, are associated with the use of adjuncts.

Following is an outline of the key conclusions, beyond those above, of the National Center's 24-month study.

1. Judicial adjuncts are useful in a wide range of programs.
2. The improvement in statistics observed in some of the evaluation sites cannot be attributed solely to the use of judicial adjuncts; there also was evidence of a "Hawthorne effect"--the phenomenon that positive results are achieved because attention is being paid to a problem, almost regardless of the solution adopted. But the existence of the Hawthorne effect does not detract from the value of the adjunct programs: The adjunct programs were the catalyst for the coming together of positive factors and the focus that produced improvement. The incidental positive aspects of the bench-bar interaction remain a unique byproduct of these programs.

3. The trial bar generally likes and supports the use of judicial adjuncts in programs that resolve cases more quickly, result in earlier trial dates, or help to reduce a court's backlog.
4. Litigants' attitudes toward the use of judicial adjuncts generally reflect the attitudes of their attorneys; because most litigating attorneys support the use of judicial adjuncts, most litigants do not object to their use.
5. With a few exceptions, neither litigating attorneys nor clients discern any difference in the quality of adjudication in proceedings presided over by judicial adjuncts. In some instances, mainly in domestic relations cases, litigating attorneys indicate the quality of adjudication is improved by using lawyers who specialize in the subject area over which they are presiding.
6. Potential problems in judicial adjuncts programs involving conflicts of interest and violations of judicial ethics are not manifested in practice in programs studied or, when they appear, are identified quickly and resolved so as to avoid affecting either the quality of justice provided or the appearance of justice. Nor were instances found of adjuncts using their position as an adjunct for economic advantage.

7. The fresh perspectives on and respect for judges' tasks and problems gained by judicial adjuncts result in increased support of the bench. Adjuncts also gain insights that make them more effective advocates.
8. Lawyers will volunteer time, sometimes substantial amounts of time, without compensation to help courts address identified and recognized problems. Nonetheless, courts must be sensitive to not asking for too many uncompensated hours from individual attorneys.
9. Few judges or lawyers expressed concern that the use of adjuncts might make it harder in the future to obtain needed full-time judgeships. There is no evidence to date in the six sites that their adjunct programs have reduced the chances of adding needed full-time positions.
10. The orientation and training of judicial adjuncts should receive more attention from courts, regardless of the skill level and number of years at the bar of the lawyers used.
11. The support and interest of the presiding judge is very important in assuring acceptance and successful implementation of a judicial adjunct program.
12. Judicial adjunct programs involve additional and new administrative responsibilities, normally assumed by court

staff and the chief or presiding judge. Direct and indirect costs are associated with judicial adjunct programs. The direct, out-of-pocket costs are relatively small and normally are for copying and postage; in two programs studied they also are for adjuncts' fees for service. The indirect costs are the salaries, fringe benefits, and associated overhead of staff and judges; these can be substantial but normally represent a reallocation of resources and priorities, not new outlays. In all six sites additional administrative duties and costs were accepted and acceptable.

Six jurisdictions, each using adjuncts in a different way, participated in the evaluation effort. The jurisdictions and the uses they tested are:

- Judge Pro Tempore Programs

1. Pima County (Tucson, Arizona) Superior Court: use of judges pro tem to dispose of a block of civil nonjury trials.
2. Multnomah County (Portland, Oregon) Circuit Court: use of judges pro tem to hear and resolve motions for summary judgment.
3. Court of Appeals, Division One, Phoenix, Arizona: use of two judges pro tem sitting on special three-member panels with a regular judge presiding and deciding cases through unpublished memorandum opinions.

- Other Programs

4. Trial referee program in the State of Connecticut, in which trial referees conduct civil nonjury trials, write a memorandum of decision, and recommend to regular judges entry of a judgment.
5. Mandatory, nonbinding, court-annexed arbitration for civil cases in the Fourth Judicial District Court (Minneapolis), Minnesota, using a single arbitrator.

6. Settlement program for civil jury cases awaiting assignment of a trial date in King County (Seattle, Washington) Superior Court, in which two lawyers sat on a panel with a sitting judge to evaluate the cases and make recommendations regarding settlement.

The arbitrators in Minneapolis are paid \$150 for each hearing day in which they participate. Trial referees in Connecticut receive, upon request, up to \$100 per day of hearing, but few have asked to be paid. The judicial adjuncts in the four other programs participate without compensation.

A chart setting out the characteristics of each adjunct program is attached for reference.

When the guidelines were being developed during Phase I of this study, the courts studied reported many positive results and few negative consequences from their programs. These courts, however, seldom were able to document the impact of their adjunct programs. The six evaluation efforts over the past 24 months have confirmed the positive, anecdotal statements from the courts originally visited. The use of judicial adjuncts may not always produce results as positive as desired, or may not have the indirect consequences desired, but it appears that courts can achieve significant improvements in case management through the use of judicial adjuncts. Sometimes the improvement is traceable to the use of adjuncts and sometimes the use of adjuncts is part of a new commitment by the bench to reduce delay and cure backlogs, but in all cases improvement is discernible.

All six evaluations demonstrate with encouraging consistency that courts can benefit, sometimes appreciably but in all cases

positively, from the use of lawyers as supplemental judicial resources.

A full evaluation will be available in the final report in December 1986. More data and specifics of the qualitative findings in the evaluation sites can be obtained by contacting the project director, Alexander B. Aikman, Senior Staff Attorney, Western Regional Office, National Center for State Courts, 720 Sacramento Street, San Francisco, CA. 94108. Telephone (415) 392-7151.

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