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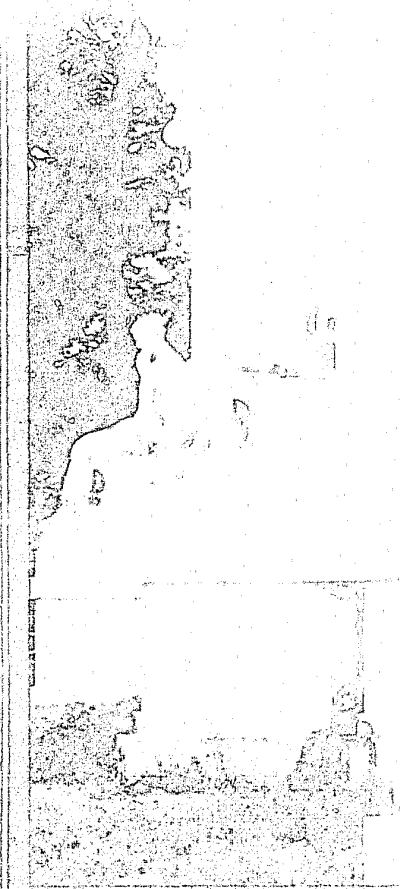

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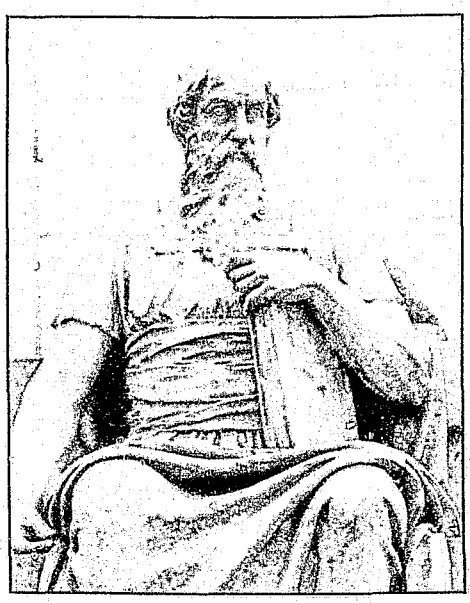
Self-Denial



Wisdom

Truth

On the cover: The three statues shown on the cover and on this page adorn the Superior Court GA 6 facility in New Haven, Connecticut. Known as *The Heroics* and made from Georgia marble, the statues are the work of New York sculptor J. Massey Rhind. *Self-Denial* holds a bridle in her right hand, the bearded figure *Wisdom* clutches a large tome representing knowledge, and the contemplative figure *Truth* bows her head in deep thought. *Photographs courtesy of the Connecticut Judicial Department.*

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Features

Departments

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The artwork on page 4, "The Pawn," is by Scott Fraser. It was part of the Tenth Annual West '85/ART AND THE LAW exhibition sponsored by the West Publishing Company.

Friends of the Court

Alexander B. Aikman
Frederick G. Miller
Mary Elsner Oram

Significant direct and indirect benefits can be achieved by a court with an effective adjunct program.

Most courts can use temporary judicial assistance from time to time. The need may arise from scheduling problems, from waiting for new judicial positions to be created or filled, or because of a new program imposed by the legislature. In some of these situations, it is not possible for the court to create full-time judicial positions, while in others, it is 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 lower priority matters. From August 1983 to September 1986, the National Center for State Courts, with funding from the National Institute of Justice and with the help of an advisory board on the use of volunteer lawyers as supplemental judicial resources, studied whether using practicing lawyers offers courts a practical means of dealing with extra demands.[1]

The advisory board adopted the term *judicial adjunct* to encompass courts' various uses of lawyers to supplement judicial resources, whether or not the lawyers are paid for their services and whether the services are used temporarily, for a defined period of time, or indefinitely.

The study 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 completed with publication of the advisory board's *Guidelines for the Use of Lawyers to Supplement Judicial Resources* in the summer of 1984.

To complete the third component, the National Center for State Courts evaluated six uses of lawyers as supplemental judicial resources and reported its findings in the recently published report *Friends of the Court.* The report contains general findings and conclusions regarding the use of lawyers as supplemental judicial resources and detailed descriptions and evaluations of the six programs.

The study finds that judicial adjunct programs, when well managed and especially as part of a broad effort to attack civil case delay and growing case backlogs, can

- increase the number of dispositions in a court over previous years;
- reduce the time to disposition of cases handled by adjuncts;
- improve bench-bar relations; and
- 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, significant direct and indirect benefits can be achieved by a court with an effective adjunct program.

EDITOR'S NOTE: *This article and the research on which it was based were funded by the National Institute of Justice, Office of Justice Assistance, Research and Statistics, United States Department of Justice (Grant No. 83-IJ-CX-0021).*

Alexander B. Aikman is the director of the National Center for State Courts' Western Regional Office and directed the "Friends of the Court" project. He has worked for the National Center for 14 years on numerous local and national projects. Frederick G. Miller is a senior staff attorney at the Western Regional Office. During his eight years with the National Center, he has worked on projects involving delay reduction, records management, indigent defense, court reporting, and automation. Mary Elsner Oram, a senior staff associate in the Western Regional Office, has focused on court statistics and court program evaluation. In addition to the judicial adjunct program, she has served on projects evaluating the extent and source of pretrial and trial stage delay.

The evaluation

Six jurisdictions, each using adjuncts in a different way, participated in the evaluation effort.

JUDGE PRO TEMPORE PROGRAMS

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

OTHER PROGRAMS

- Superior Court of the State of Connecticut Trial Referee Program: use of trial referees to conduct civil court trials, write a memorandum of decision, and recommend to regular judges that judgment be rendered accordingly.
- Fourth Judicial District Court (Minneapolis), Minnesota: mandatory, nonbinding, court-annexed arbitration for civil cases using a single arbitrator.
- King County (Seattle, Washington) Superior Court Early Disposition Program: settlement program for civil jury cases awaiting a trial date in which pairs of lawyers sat on panels 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 per hearing, but few have asked to be paid. The judicial adjuncts in the other four programs participate without compensation.

The Tucson, Portland, and Seattle programs were operating prior to the National Center's evaluation. The National Center worked with the three other jurisdictions to design an evaluation plan before their programs started. The general approach to the evaluation was similar in each of the six sites, however. Project staff members visited the court to explain the National Center's interest in the use of judicial adjuncts and to explore the court's willingness to participate in the project. Each court was asked to state goals for its program and, in conjunction with National Center staff, to establish evaluation procedures.

It was agreed that the evaluation would have three components: a quantitative analysis of caseload data, a qualitative analysis of participants' opinions and attitudes, and a fiscal analysis of the courts' estimated direct and indirect program costs. The qualitative analysis was undertaken through interviews with judges, judicial adjuncts, litigating attorneys, and court staff. In Seattle and Connecticut, the interviews were supplemented by written questionnaires sent to judges, judicial adjuncts, litigating attorneys, and clients. In Seattle, Phoenix, Tucson, and Minneapolis, National Center staff also observed proceedings in which judicial adjuncts presided or participated. The time frame for each evaluation differed.

No site provided unambiguous statistical measures of success—real-world evaluations in environments that shift and change can seldom produce clear answers to all the questions asked initially or raised subsequently by the data. On key issues, however, there is sufficient consistency among the sites to cause us to share our conclusions with a measure of confidence. When more data might affect a conclusion, that fact is noted in an individual court's evaluation report.

Findings

The main conclusions of the National Center's 30-month study are outlined below.

1. Judicial adjuncts are useful in a wide range of programs.

2. The statistical improvement observed in some 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 presence of the Hawthorne effect does not detract from the value of the adjunct programs. They were the catalyst that brought together a number of positive factors and were the focus that produced improvement. The incidental improvement in bench-bar interactions remain a unique by-product 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 could 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 expressed the opinion that 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 either not manifested in practice in programs studied or, when they appear, are identified quickly and resolved so as to avoid affecting either the quality or the appearance of justice. Nor were instances found of adjuncts using their positions for economic advantage.

7. Judicial adjuncts increase their support of the bench as a result of their fresh perspectives on and respect for judges' tasks and problems. Adjuncts also gain insight that makes them more effective advocates.

8. Lawyers will volunteer time—sometimes substantial amounts—without compensation to help courts address identified and recognized problems. Nonetheless, courts must be sensitive to the matter of not asking for too many uncompensated hours from individual attorneys.

9. Few judges or lawyers expressed concern that using adjuncts might make it harder to obtain needed full-time judgeships in the future. There is no evidence to date that the adjunct programs in the six sites have reduced the chances of adding full-time positions.

10. Orientation and training of judicial adjuncts should receive more attention from courts, regardless of the skill and number of years at the bar of the adjuncts.

11. The support and interest of the presiding judge is important in assuring acceptance and successful implementation of a judicial adjunct program.

12. Judicial adjunct programs involve additional and new administrative re-

sponsibilities, normally assumed by court staff and the chief or presiding judge. Both direct and indirect costs are associated with judicial adjunct programs. The direct, out-of-pocket costs are relatively small, covering such items as copying and postage (in two programs, they also included adjuncts' fees for service). The indirect costs are the salaries, fringe benefits, and associated overhead of staff and judges. These indirect costs 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.

Quantitative analysis of adjuncts' use

The six programs had a similar aim: to introduce judicial adjuncts into the civil adjudication process. A number of factors specific to each site helped determine the scope of the program and the design of its evaluation. These were the procedure assigned to the adjuncts, the program's expected capacity, the state of the court's caseload, the program's goals, the quality and quantity of historical caseload statistics, and the ease with which new evaluation data could be collected.

Number of Dispositions Increased

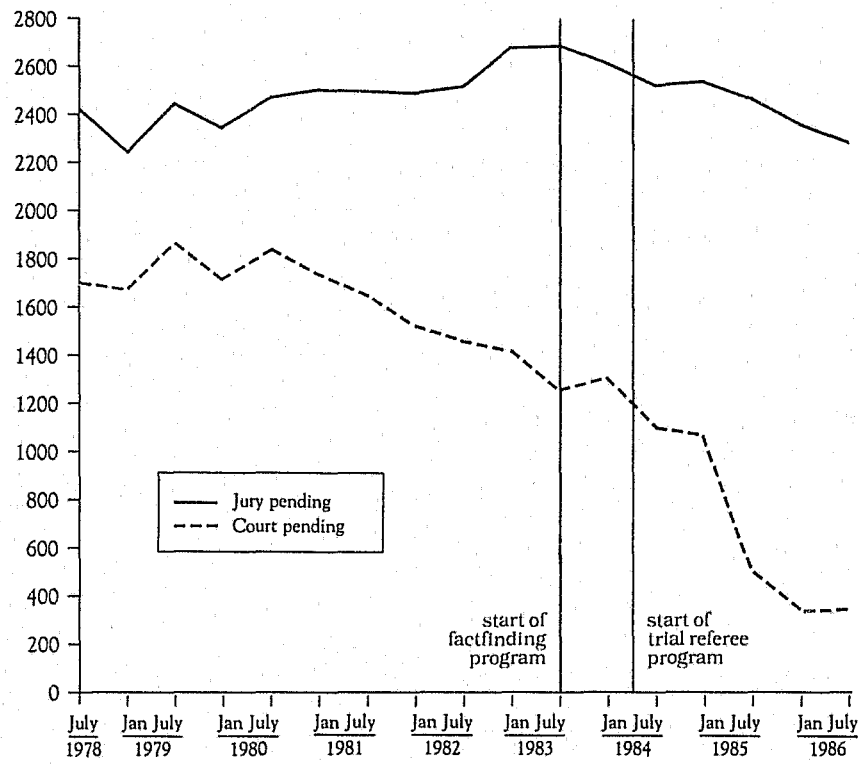
The primary strategy of judicial adjunct programs is to increase the court's judicial resources. In most instances, this ensures an increase in the number of cases the court disposes, although precise quantification of the adjuncts' contribution to the increase is not always possible.

The Pima County Superior Court disposed more civil cases during the first year of its expanded use of pro tem judges—an increase of 6.5 percent, or 419 cases, from 1983 to 1984. Pro tem judges contributed about 200 of these dispositions. (Between January 1984 and March 1985, pro tem judges conducted 240 civil court trials.) Civil filings increased almost 10 percent during the same period, however, so the civil pending caseload rose 11 percent from the previous year despite more dispositions.

In each of the three sites studied in Connecticut, the number of cases disposed from the court-trial list the year after the trial referee program was implemented in 1984 was larger than the number disposed the previous year. This increased level of dispositions continued through 1985. Fewer cases were added to the court-trial list for this same period, so the increased dispositions reduced the size of the pending caseload. The trial referees' contribution to this trend is apparent and seems to be significant, but is hard to quantify because dispositions began to increase and pending court-trial cases began to decrease before the trial referee program went into effect (see figure 1).

FIGURE 1

Pending trial list history, 1979-1986
Bridgeport (Connecticut) Superior Court

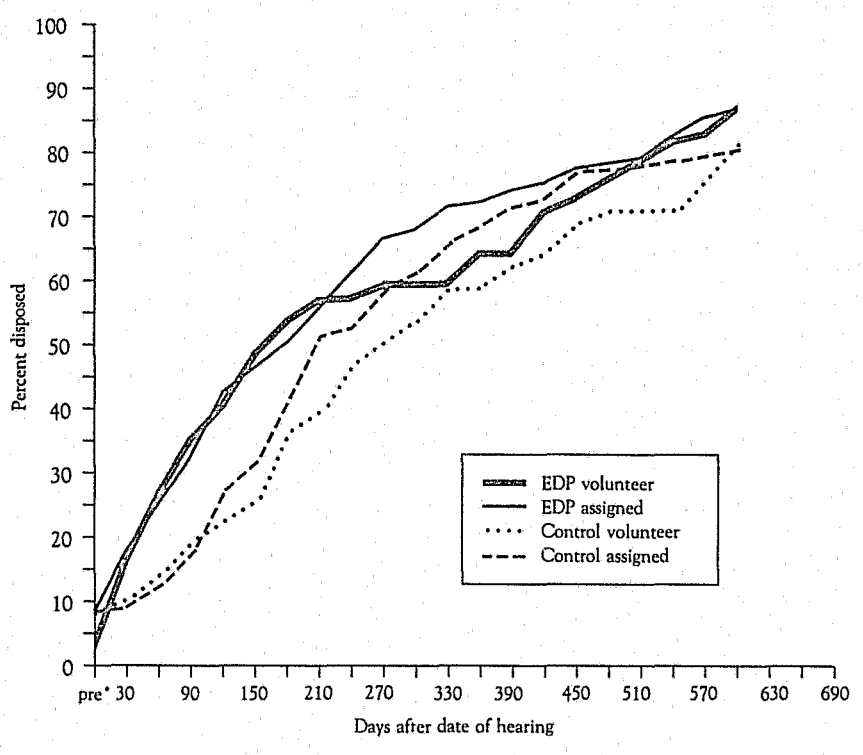


Division One of the Arizona Court of Appeals began its pro tem judge program in September 1984. This was the second year in a row that the division's civil and total dispositions exceeded filings, despite a 9.4 percent increase in civil filings and a 6.7 percent increase in total filings. In 1985, with the pro tem judges' assistance for a full year, 10 more civil cases were disposed than in 1984, but total civil dispositions fell 10 short of total civil filings. The court issued 30 more memorandum opinions in 1985 than in 1984, but its 274 memo opinions were seven less than the 1983 total. Although the pro tem judges' contribution to this improvement is discernible, it is less than might be expected from changes in the time from at-issue to oral argument and from oral argument to decision.

The Hennepin County District Court switched from a master calendar system to an individual calendar system at the same time the arbitration program began in July 1985. Increased dispositions since that date cannot be attributed to the new calendar system or the arbitration program individually. Nevertheless, in its first year the arbitration program has been credited with disposing of 685 cases. (Dispositions through arbitration occur if an arbitration award is accepted or if the case settles during the arbitration process.) The

FIGURE 2

Early Disposition Program (EDP) and control cases disposed in 1984, 30-day periods, all cases



*Some cases were disposed after assignment to the study but prior to EDP hearings.

685 dispositions are equivalent to the number that would be reached by 2.8 of the 14 judges currently hearing civil cases in the Hennepin County District Court.

IMPROVED CASE PROCESSING TIMES

Reducing processing times for specific groups of cases was a primary goal at most of the study sites. This was more demonstrably achieved than other goals.

The court of appeals division in Phoenix reduced the median time from at-issue to oral argument by 19 percent for cases handled by the newly created Department E panels (the pro tem judge panels) when compared to the baseline for similar cases decided before the program was implemented. The time from oral argument to decision was also reduced by 28 percent for all the court cases, although the Department E cases alone took longer between argument and decision than the court had taken in the baseline period. This result seems to reflect the extra time some pro tem judges took to write opinions. These data reinforce the conclusion that a significant portion of the improvement in Phoenix is attributable to a Hawthorne effect.

Connecticut showed dramatic improvements in time to disposition for court-trial cases. Here, the improvement probably reflects an adjunct program that is but one part of a multifaceted, well-managed program to reduce pretrial delay. The time from when a case was placed on the court-trial list to its disposition was reduced between 14 and 41 percent for the three Connecticut Superior Court trial referee program sites evaluated. The median age and the size of the court-trial pending caseload were also reduced at each of the three courts. Some of this improvement is probably due to the concurrent fact-finding program that was introduced at two of the three Connecticut study sites shortly before the trial referee program began—it is not possible to separate the effects of these two programs using our evaluation design. Improvement may be attributable to a concerted emphasis by state officials on reducing pretrial delay, with trial referees being an important element in the overall program.

Median time from settlement conference to disposition in the Seattle Superior Court was reduced 55 days for cases assigned to the Early Disposition Program (EDP) in 1983 and 150 days for cases that were volunteered for the program. The savings at the 75th percentile were 105 days and 210 days for these two groups of cases, respectively. Similar reductions were found for cases in the 1984 program. (see figure 2.)

Qualitative assessment

At each site, a qualitative assessment of the program was made. Project staff interviewed judges, adjuncts, litigating attorneys, and, in some instances, participants in the adjunct program. In Connecticut and Seattle, questionnaires were sent to these persons to elicit their opinions about the program. In general, all the adjunct programs were highly regarded. Admittedly, people involved with the program want to see it succeed. Furthermore, at each site, the program itself or certain aspects of it were new, and the assessments were made without an extended period of observation. Nonetheless, the degree to which judges, adjuncts, and litigating attorneys in all sites approved of the programs reduces the risks associated with assessing subjective responses.

A few respondents in some sites were not in favor of the program and did not believe it was providing a significant service to the court. Those who voiced negative assessments of the program seemed generally to favor judges' performing the adjuncts' duties. Therefore, in their eyes, no judicial function performed by extra-judicial persons, however productive, beneficial, or popular, would receive a positive assessment.

The philosophical perspective that underlies this view must be acknowledged. Many judges and lawyers have worked for decades to remove part-time and tempo-

rary judges from the courts in favor of full-time judges. The use of judicial adjuncts is seen as a step back. The philosophical perspectives supporting only a full-time judiciary cannot be fully addressed here. It should be emphasized, however, that in the six evaluation sites and in other jurisdictions examined during the first phase of this study, the temporary and part-time assistance provided by judicial adjuncts was never seen as an acceptable, permanent substitute for full-time help. And the project's advisory board was equally clear when it stated in its first guideline that the use of judicial adjuncts "should not be a permanent alternative to the creation of needed full-time judicial positions."[2] Nonetheless, when a need arises that cannot be met—either immediately or in the near term—by full-time judgeships, as in most of the evaluation sites, the use of judicial adjuncts is supported, in large measure, by both bench and bar.

There is another distinction between the pro tem judge and the trial referee programs evaluated in this study and the use of pro tem judges that some attorneys and judges traditionally have opposed. Traditionally, a part-time judge has been a lawyer or nonlawyer who spends a significant portion of available work time (from a few days a month to half time or more) as a judge, usually on a regular schedule. These part-time judges almost always receive salaries or stipends. The use of judicial adjuncts evaluated and reported on here involves lawyers who normally serve once or twice a year for one to four days at a time. In four of the six sites, all lawyers served without compensation, and in a fifth, many lawyers did not request a fee even though one was available.[3]

In the traditional model, part-time judging is a job assumed by someone who has another, primary job, often the private practice of law. In this study, part-time judging was not seen as a job by any adjunct interviewed, and for a substantial majority, it was seen solely or largely as a public service. A few pro tem judges in each evaluation site served more than the usual amount of time, averaging two or more days a month, but these were exceptions, and even these lawyers did not view their service as a job. The distinction noted here does not moot the policy issues associated with part-time judges, but it suggests a different context in which the issues should be discussed and resolved.

Some variations were found in the qualitative assessment of the adjunct programs from site to site. In those sites which documented quantitative improvement in case processing, the qualitative assessment seemed to be higher. Those who assessed the quality of these programs could point to a statistical basis for their views. Similarly, in project sites where a presiding judge or the judge who administered the program was strongly in favor of the project, the qualitative assessments tended to favor the program more strongly.[4]

Appearance of Justice

There was concern in several sites that criticism would surface that the use of adjuncts adversely affects the appearance of justice. Very little is done on an institutional basis to reassure litigants that judicial adjuncts provide the same justice that would be received before judges of the court. Attorneys may explain to their clients that they will be appearing before a judicial adjunct and express an opinion that the adjunct is competent, but very little conscious "selling" of the program occurs. In some instances, litigating attorneys indicate to clients that their chances of receiving an informed, intelligent, and unbiased judicial officer are the same whether they appear before a judge or a judicial adjunct. Often, though, litigating attorneys simply explain the mechanics of the program.

Interestingly, in the appellate project in Phoenix, most litigating attorneys do not inform their clients that they are appearing before a panel of one court of appeals judge and two judicial adjuncts. It is unknown whether this says something about the acceptance of the use of adjuncts or about the attorneys' view of the appellate process and clients' involvement in that process. Our understanding from other exposure to the adjunct programs in the trial courts in Phoenix suggests the latter explanation, as most attorneys who appear before adjuncts in the general jurisdiction trial court advise their clients that the judge is an attorney sitting as a judge pro tem.

Nature And Quality of Decisions

Some litigators commented on the relative lack of formality in proceedings presided over by judicial adjuncts. Although they claimed that this did not negatively affect their own perceptions of the process, they feared citizens might judge the proceedings less favorably because of the relative lack of formality. No attorney at any site reported that a client expressed displeasure at the courtroom or hearing atmosphere, as opposed to the outcome, but several feared the intangible perceptions these clients would take from the proceedings.

With rare exceptions, litigating attorneys were positive about the quality of decisions by judicial adjuncts. In most cases, they said there was no discernible difference between regular judges' and judicial adjuncts' decisions or courtroom handling of the issues.

Improved Relations With Adjuncts

One significant benefit of judicial adjunct programs is that they improve relations between the court and the attorneys serving as judicial adjuncts. The adjuncts have a much better understanding of the operations of the court, its difficulties, and the limitations it faces. In almost every instance, adjuncts feel increased empathy for the work of judges.

In cases where the adjunct program is designed so that judicial adjuncts and judges work together, such as the Early Disposition Program in Seattle and Department E of the Arizona Court of Appeals, a new basis for understanding is developed between judges and litigating attorneys. They are exposed to each other's practices and concerns as they work together. The program also provides an opportunity for equal footing between the adjuncts and the judges, since they consider themselves colleagues rather than being cast in specific roles of judge and attorney. The result of these improved relations is that the court has more spokespeople for its operation, and the local legal community has more voices able to express the concerns, frustrations, goals, and aspirations of the court.

Litigant and Litigating Attorney Support

The litigants and litigating attorneys who appear before the judicial adjunct programs strongly support the programs. The litigating bar's support is remarkable because it is not uncommon for the bar to oppose procedural changes that require it to change its habits of practice. This opposition was not found in any of the proj-

ect courts. On the contrary, the litigating bar appreciates the fact that the court is attempting to alleviate its backlog, speed disposition of cases, or explore alternatives such as arbitration.

The litigating attorneys' support for the program is not blind, however. They voiced concern that, in some instances, the court had not effectively screened cases to assure that only appropriate cases are sent to the program. They also indicated that they sometimes desired the court to screen adjuncts more effectively so that the program would be assured of only the highest-quality adjuncts. Litigating attorneys were further concerned that the programs designed to alleviate backlogs should not become permanent programs. If programs were to be expanded and made permanent, some attorneys feared that adjuncts could become overburdened with adjunct work or that the court might be denied permanent judgeships. Some criticism by attorneys of any court program is to be expected; the concerns expressed about adjunct programs were within the range expected, both in number and in kind.

Types of Cases Adjuncts Should Hear

The advisory board's third guideline on the use of judicial adjuncts states that adjuncts can hear all types of cases except serious criminal and child custody cases. All the evaluation programs involved general civil cases, but in Tucson judges pro tem preside over felony jury trials and, for a six-month period in 1984, presided over mental commitment hearings. In Portland, judges pro tem resolve motions affecting child custody.

To test the advisory board's conclusion about appropriate cases for adjuncts and to see if litigating attorneys felt any particular case types should be excluded from the programs, we asked at each site whether any case types should not be included in that particular judicial adjunct program or, more generally, should not be heard by judicial adjuncts. The responses were surprising.

Most fell into two categories: (1) that, as the advisory board concluded, felony or criminal cases and child custody cases should be excluded, or (2) that adjuncts should be able to hear and determine all case types. When those giving the latter answer were asked specifically about criminal and child custody cases, most agreed that there are sound policy reasons for excluding these case types. But they reached that conclusion only after their initial reaction that there is no reason to exclude any case type. Judges more often wanted to exclude criminal and child custody or all family cases than did attorneys.

Adjuncts seemed to focus as often on the number of consecutive days they might have to serve as on the types of cases they might be asked to hear. Two judges pro tem in Tucson indicated adjuncts should be spared "high visibility and high publicity" cases because they might hurt attorneys' practices, but this concern applied whether the cases were felonies, condemnations, or injunction actions. A related concern was expressed by a Connecticut judge, who feels referees should not decide tax or zoning cases because of the potential pressure on adjuncts.

Almost all agreed, either with or without reminder, that felony and child custody cases should not be assigned to judicial adjuncts, but this was a consensus, not a unanimous opinion, and it applied more strongly to felony cases than to child custody cases. No general civil case category was identified by judges, adjuncts, or litigators as inappropriate for adjuncts to hear.

Conclusion

The National Center's study on the use of lawyers as supplemental judicial resources showed that well-managed judicial adjunct programs, especially when part of a larger effort to reduce civil case delay and backlogs, can help increase the number of dispositions and reduce the time it takes for cases to reach disposition. These programs also improve the relationship between the bench and the bar and help attorneys better understand judges' duties and problems.

This article reports only the principal findings of the National Center's study. The full report, *Friends of the Court*, describes each of the six programs and their evaluations in more detail, and contains information on how to develop a judicial adjunct program and the advisory board's guidelines for using lawyers as judicial adjuncts, which are also published separately with supporting commentary as *Guidelines for the Use of Lawyers to Supplement Judicial Resources*. *Friends of the Court* and *Guidelines* may both be purchased from the National Center for State Courts.

NOTES

1. The advisory board was chaired by former Connecticut Chief Justice John A. Speziale. Its members were 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; Pat Irwin, magistrate, U.S. District Court, and former chief justice, Oklahoma Supreme Court; James R. Larsen, former court administrator, Supreme Court of Washington, representing himself and then-Chief Justice William H. Williams; 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 Superior Court, California.

2. *Guidelines for the Use of Lawyers to Supplement Judicial Resources* (Williamsburg, VA: National Center for State Courts, 1984) p. 3.

3. In Minneapolis, all lawyers are offered payment. Virtually all thought *some* payment was an appropriate recognition of the time and effort expended, but several also believe they and others—enough for a substantial panel—would volunteer their time if payment were not offered.

4. In each site, most of the people interviewed by National Center staff were identified by the court. The National Center requested that a cross-section of the bar be included, but there was no independent means of assuring that diversity. In a few instances, we went to court files and called attorneys at random. There was no noticeable difference in opinions of these latter interviewees from those identified by the court.