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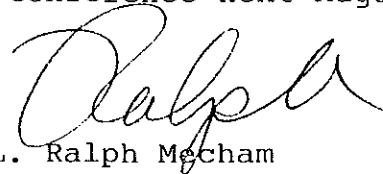
WASHINGTON, D.C. 20544

March 5, 1990

MEMORANDUM TO THE CHIEF JUSTICE

Subject: Biden's Speedy Civil Trial Bill, S. 2027

Attached is further evidence of the almost unprecedented concern coming from the Judiciary about the Biden Speedy Civil Trial Bill. Incidentally, Judge Gerry has already been selected to succeed Judge Nealon on the Judicial Conference next August.



L. Ralph Mecham

Attachment

cc: Executive Committee

bcc: ✓Macklin
Siegel
Burchill
McCabe

A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

BB-LB-10

March 1, 1990

TO: Clarence A. Lee, Jr., Assistant Director
Planning, Evaluation and Statistics

FROM: Chief Judge Garry, District of New Jersey

Pete:

Here are the newspaper materials of which we spoke. Actually it might be argued that the companion article on civil congestion in the New Jersey state courts is an even more effective repudiation of the mechanisms suggested or compelled under the Biden bill for reduction of delay and expense. As you may recall, Biden relies on the Brookings' remedial recommendations which, in turn, relied heavily for support on the New Jersey state courts' experience with differentiated case management, etc., and its purported universal success in reducing civil time and expense. The article clearly indicates that the experiment to this moment was only in two of 21 New Jersey counties and has failed to significantly avoid civil delays and backlogs for reasons that are equally applicable to the federal civil backlog and are ignored in the Biden's and Brookings' considerations; i.e., compelling preoccupation and prioritization with an overwhelming criminal case load, lack of judges to try civil matters, all with resulting disenchantment, irritation and expense and delay to the bar and litigants.

New Jersey Court Administrator Robert Lipscher has apparently indicated that HIS programs and remedies have been universally successful and supported. In fact, there continues to be wide-spread skepticism about them and their effectiveness and/or any real change they achieve from prior practices.

We sure would like to see this article get in the hands of the critical people and hope that you could identify them and pass it on. If we can be of help, let us know.

Thanks once again for your support.

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TWO SECTIONS and Supplement

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U.S. Judges Blast Speed-Up Bill

Bar Leaders Agree Biden Plan Won't Work

By Henry Gottlieb

The Senate Judiciary Committee has accomplished a rare feat: Pushing U.S. District Judge Dickinson Debevoise to the brink of losing his cool.

Normally the model of patriotism equanimity, Debevoise is fighting mad about legislation that Judiciary Committee Chairman Joseph Biden is advancing as a remedy for slow civil justice in federal trial courts. "It's an absolute monstrosity," says Debevoise. And he is not the only judge or lawyer in New Jersey who thinks so.

Chief Judge John Cerry, some of his colleagues on the bench, and leaders of the state's federal bar are so angry about some of the provisions they are declaring their willingness to step to the front ranks of any national effort to kill the bill.

Granted, they say, slow civil justice is a problem in New Jersey's federal courts. The average case that went to trial last year took 26 months to get there, the fifth-slowest pace in the nation's 94 judicial districts. But for the moment, in New Jersey, the cure proposed by Biden is causing more angst than the ailment.

Says Richard Collier, chairman of the New Jersey State Bar Association's Federal Practice and Procedure Committee: "We want to derail it before it zips through." Stephen Orloffsky, another member of the committee, says, "so far, the reaction has been uniformly and resoundingly negative." Deepening the lawyers' sinking feelings is their view that Biden's plan adopts features that reviled them of New Jersey's lightly managed state court system.

What's in the Bill?

The proposal introduced on Jan. 25 by Biden, a Delaware Democrat, was cosponsored by the committee's ranking Republican, Strom Thurmond, of South Carolina, and was based on a Brookings Institution study conducted by a 36-member task force of lawyers, judges, professors, and court professionals.

The bill pays homage to three articles of faith among court managers. The first one says that cases are disposed of most efficiently when deadlines are established for each stage of litigation. Second, speeding cases means speeding discovery, motion practice, and settlements, because 93 percent of federal filings are resolved before trial. Third, hands-on management by judges gets things done.

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PROMISES FIGHT: U.S. District Judge Dickinson Debevoise says a new bill designed to remedy slow civil justice in federal trial courts is "an absolute monstrosity."

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Scrambling for P.I. Clients: Unorthodox vs. Unethical

By Tracy Schroth

Some asbestos lawyers don't get business by ambulance chasing, exactly. Sometimes, it's more like ambulance driving.

Last summer, the Best Brunswick firm of Garruto, Galax & Cantor was offering free chest X-rays to factory workers exposed to asbestos.

Meanwhile, a Philadelphia lawyer who sits on the board of the Deborah Heart and Lung Center in Browns Mills picked up several hundred cases through a free medical screening program at the hospital that he helped coordinate.

And one California attorney went so far as to operate medical screening

units, known as "examobiles," that traveled from coast to coast screening tire factory workers for asbestos exposure.

The scramble for personal injury clients — especially in the area of product liability and toxic torts — has propelled lawyers closer and closer to the line that separates what is proper and what isn't.

But that line is blurred, and fierce competition is forcing lawyers to keep pressing the limits.

Many lawyers say they see nothing wrong with the aggressive pursuit of clients, as long as it does not technically

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Judge Shortage Worsens State Civil Backlog

By Elise Rosenblum

Oswald Zashin has been gearing up for trial for the past year and a half. So have his opposing counsel, witnesses, and client, who was injured in a three-car collision in Morris County in 1987. Yet each time a court date is scheduled, the trial is postponed because no judge is available to hear the case.

"Witnesses get disgusted and don't want to come back. Doctors get disgusted and don't want to come back. You lose witnesses, you lose cases," says Zashin, a solo practitioner in Cedar Grove. "It's not the judges' fault. We simply don't have enough judges on the civil side."

A shortage of judges, complicated by the state's failure to add judgeships in keep pace with the growth of litigation, has compounded an already burgeoning civil case backlog, which rose 17 percent in the past year. Ironically, the shortage comes at a time when there are only 13 vacancies among the authorized 321 trial court judges in the state.

In addition to the increasing backlog of cases that are at least 12 months old, the number of new suits has swelled 25

CONTINUED ON Page 4

Shortage of Judges

CONTINUED FROM PAGE ONE

percent in one year, straining an already massively overloaded system. But numbers don't tell the whole story.

Cases are becoming more technical and complicated, and judges can be tied up with one trial for eight to 10 weeks. Although one case is being disposed of, the flat of pending cases grows, continuing the cycle.

In fact, delays have become so commonplace that many lawyers do not take trial dates seriously; they sometimes come to court unprepared and request adjournments when their cases are called. The failure of attorneys to prepare on time further adds to the backlog.

"Many, many, many firms wait until the first trial date before they even take depositions [or] talk to their adversaries," says Paul Thompson, presiding judge of the Civil Division in Essex County. "There's a myriad of excuses. ... You'd be surprised at the number of clients who have had to have another operation or have had another accident."

More Cases, Fewer Judges

In the most recent court year, ending June 30, 1989, 32,967 cases were at least 12 months old, an increase of 7,735 from the previous year, according to figures compiled by the Administrative Office of the Courts. In addition, 107,517 new cases were filed during the same period, an increase of 21,393.

The counties with the greatest backlog were Essex, with 16,900 cases more than 12 months old; followed by Middlesex, with 5,934; Camden, with 3,801; Monmouth, with 3,476; and Bergen, with 3,288. The counties with the most active pending cases — a combination of old and new suits in the 1989 court year — were Essex, with 32,900; Middlesex, with 17,934; Bergen, with 13,778; Camden, with 12,933; and Monmouth, with 11,185.

At the same time, fewer judges were sitting in civil court across the state. In the 1989 court year, about 100 judges were assigned to the Civil Division, a decrease of eight from the previous year. The shortage of judges in civil is worsened by transfers from civil to the family and criminal divisions.

In an attempt to tackle the growing caseload in all parts of Superior Court, bills are pending in the Assembly and Senate that would add 21 trial court judgeships in the state. There would be six added in Essex County; four each in Hudson and Passaic; two each in Bur-

lington and Union; and one each in Somerset, Sussex and Morris.

Brima Byrne, press secretary to Gov. Jim Florio, says that while the governor "is concerned about the backlog and is

they have a couple of judges ... and a judge spends one to 10 weeks on a toxic tort trial, that can kind of bring the system to a grinding halt."

Some civil practitioners see themselves as stepchildren of the system, when Chief Justice Robert Wilentz last year temporarily transferred judges to criminal court to help clear a backlog of drug cases. At one point, 20 judges were sent from civil to criminal in an attempt to clear indictments — some of

creasingly complex.

"It's frustrating," says Bruce Stern, a partner with Stark & Stark in Princeton. "There are four judges one week, two judges the next week. We never know from week to week if there will be judges or no judges. How many times can we get pumped up to go to trial?"

"It's awful. Clients keep hearing [about delays], and they think it's you," he adds. "When I get a trial date now, there are times I don't even call the doctore [who will testify] to see if they're available."

Because civil cases often take a back seat to criminal and family matters, civil practitioners and judges often feel as though they must, by the nature of their work, be given short shrift.

"The usual order of priorities in the courthouse is to deal with family first, criminal second, and civil third," says Superior Court Judge Rocco D'Ambrosio, presiding judge in the Civil Division of Morris County. "Most of the problems in family [court] are very acute and very serious, and affect our basic nature. They require swift resolution."

"The civil court seems to be the least important to those who assign judges to the various parts of the judiciary," says John Blume, a partner with Blume, Vasquez, Goldfaden, Berkowitz & Donnelly in Newark.

Lawyers Are Worst Offenders

Zashin, the solo practitioner in Cedar Grove, says that lawyers sometimes use built-in delays of the system to their advantage, by failing to prepare even when they think their cases will be called.

"Lawyers are the worst offenders of all. They feel that they're not going to be reached on the first or second trial date, so they put it off," he says. "I've rarely seen sanctions enforced [for unnecessary delays]. If [judges] started sleeping fines, counsel fees, [court] costs, you'd see how fast discovery would be done. You'd have more cases ready to be disposed of, and the judges' jobs would be easier."

Judge D'Ambrosio disagrees, saying sanctions rarely help to move cases. Instead, he and his colleagues, with the cooperation of county bar associations, are using alternate dispute resolution and other programs as a method of keeping some civil cases from further bogging down the system.

The use of masters in complex matters, such as asbestos cases, is on the increase, especially in Middlesex County, to spark settlements and get cases ready for trial. In Morris County, attorneys for plaintiffs and insurance companies involved in suits meet with mediators in settlement conferences. D'Ambrosio says about 125 cases have been settled so far, and he hopes to dispose of about 1,000 a year.

Civil Case Backlog in Superior Court in 1989

County	Active Cases Pending	Cases More Than 12 Months Old	Cases Less Than 12 Months Old
Atlantic	4,219	3,690	529
Bergen	13,778	10,490	3,288
Burlington	4,905	3,294	1,611
Camden	12,933	9,152	3,801
Cape May	925	797	128
Cumberland	2,052	1,373	679
Essex	32,900	16,000	16,900
Gloucester	3,533	2,260	1,273
Hudson	8,511	7,060	1,451
Hunterdon	1,159	771	388
Mercer	8,154	5,013	3,141
Middlesex	17,934	12,020	5,934
Monmouth	11,185	7,709	3,476
Morris	6,076	4,066	2,010
Ocean	6,470	4,331	1,939
Passaic	10,927	9,062	1,865
Salem	495	330	165
Somerset	2,407	1,822	585
Sussex	1,089	714	375
Union	10,069	6,865	3,204
Warren	723	498	225
TOTAL	160,484	107,517	52,967

Source: Administrative Office of the Courts

intent on filling the vacancies," he has taken no position on the creation of additional judgeships.

Meanwhile, the civil caseload continues to grow.

"Constitutionally, we have to provide defendants with a speedy trial, an in civil, we just have to grin and bear it," says Jane Castner, assistant director for civil practice at the AOC, explaining why civil cases must be placed on the back burner. "In a small county, where

which were more than two years old — but as those cases began to move quickly, civil cases slowed dramatically.

In addition, defendants who may have at one time pleaded guilty to drug charges, are choosing to have jury trials, because of mandatory sentencing laws. So judges — and juries — are spending more and more time with criminal matters at a time when civil suits, especially those involving environmental claims, are becoming im-

First IOLTA Grants Help 20 Programs

By Allyson Lee Moore

Faced with a growing number of battered women seeking restraining orders, the Women's Center of Monmouth County realized that it could not manage with just one family court liaison.

So, the center applied for money from the Interest on Lawyers' Trust Account Fund to hire a part-time liaison to advise women on procedures for obtaining a restraining order, and it has been awarded about \$9,900.

"There are well over 900 people coming into family court in Monmouth County within a year seeking restraining orders, and it was just too much for one person to handle," says Marcia Seal,

the center's executive director.

For the first time since its creation in 1988, the IOLTA fund granted \$460,000 in discretionary awards to 20 organizations for projects providing legal aid to the poor and law-related public education, and programs to improve the administration of justice.

IOLTA's funds come from interest earned on money deposited in attorney trust accounts. Before the fund's creation by the state Supreme Court, the funds were held in non-interest-bearing accounts by attorneys.

Because these funds are usually of nominal amounts or are held in trust accounts for limited periods of time, IOLTA officials say it is nearly impossible to figure out the interest on an individual basis.

Under its rules of creation, IOLTA is required to give 75 percent of its net proceeds to Legal Services of New Jersey, which came out to \$1.7 million. Another 12.5 percent, or \$460,000 went to the State Bar Foundation, and the balance to discretionary grant awards.

More than 7,500 attorneys in the state participate in the fund, and IOLTA expects 1989 proceeds to exceed \$3.5 million.

IOLTA Fund Executive Director Ruth Birkhead says her office received about 53 grant applications for the money.

"One of our main constraints was the amount of money we had to give out ... \$460,000 is a lot [of money] but when you're facing \$2.5 million worth of requests, obviously some difficult

choices had to be made," Birkhead says.

One recipient of the one-time only grants was Hyacinth Foundation AIDS Projects, a comprehensive AIDS social service agency in New Brunswick. The organization received about \$47,000, most of which was used to hire a legal services manager.

The manager, Michael Fannon, will be responsible for expanding the pool of volunteer attorneys who offer pro bono services to clients and for providing AIDS-related legal education to people throughout the state.

"We are overjoyed," Nancy Scerbo, Hyacinth's director of development, says about receiving the grant. "People with AIDS have very specific legal needs. Including the preparation of wills, guardianship agreements, and medical and legal powers of attorney. This will help us improve the service and make it an integral part of AIDS service in New Jersey."