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GEORGIA INDIGENT DEFENSE COUNCIL



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Eric G. Kocher
Director

February 19, 1993

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Mr. Eli Segal
Director
Office of National Service
O.E.O.B., Room 145
Washington, D.C. 20500

Re: Domestic Legal Peace Corps

Dear Mr. Segal:

Congratulations on your selection to head what I believe will be one of the most important and long lasting projects of the new administration.

I am enclosing a copy of a letter I sent to R. William Ide, III, President of the American Bar Association regarding the creation of a "Domestic Legal Peace Corps" suggested by Steven Brill, President of American Lawyer, in an open letter to then President-Elect Clinton. This idea would tie in directly to what I understand the Clinton administration is planning for its National Service Program.

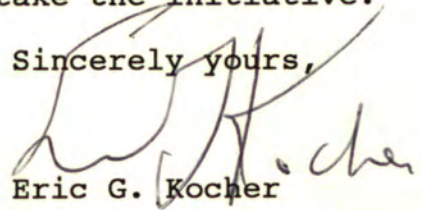
As envisioned by Mr. Brill, law school loans would be offered to law students willing to spend two or three years as prosecutors or legal aid lawyers in urban criminal justice systems (this should also be extended to rural areas also). The greater the commitment, the more of a loan would be forgiven. Even though he suggests government loans, a Domestic Legal Peace Corps could at least be initiated without government support by having law schools, large law firms, and the business community provide the necessary support through a variety of innovative ways. It seems to me a reasonable target date for implementation would be May 1994 for law school graduates to participate and September 1994 for incoming first year law students to make a commitment.

A very successful example of a similar pro bono program is **1000 Lawyers for Justice** the private-public partnership of bar associations and the Georgia Indigent Defense Council which has provided free representation to over 700 felony defendants in Atlanta in the last 10 months and which has trained over 1000 civil lawyers in how to handle a criminal case. I am enclosing a Report for your information.

I hope that you will consider a Domestic Legal Peace Corps as part of the National Service Program. I am sure the American Bar Association can be instrumental in helping to develop, implement and even manage such an effort.

Please let me know if I can be of assistance to your office in this area. I plan to continue to urge the American Bar Association to examine this proposal and to work with them on it if they are willing to take the initiative.

Sincerely yours,


Eric G. Kocher

THANKS
LAW +
NAT.
SERVICE

Dear President-Elect Clinton: You assume office at a time when the rule of law in the United States is a metaphor for everything else about our country: Things are bad, even terrible, yet we continue to be a beacon of hope for the rest of the world. And, as with everything else you said in your campaign about the need for self-sacrifice and to do things differently rather than continue to divide ourselves along the same old liberal-conservative, poor-versus-middle class lines, so it is with crime, the courts, and the role of law and lawyers in our society.

In cities across the country, children in poor neighborhoods go to sleep worried that this will be the night a drive-by bullet tears through the wall and their bedsheets. There is a terror akin to that of the children of Beirut or Sarajevo, so much so that, as you said in your campaign, only the most hopelessly dated politician still sees crime as an issue pitting the middle class against the poor or white against black.

Meantime, middle-class children are growing up learning that it's not okay to stroll neighborhood streets the way we did. In many cities they're learning that the only answer we now have to basic crimes like larceny is a sign affixed to the window of a parked car announcing that the car doesn't have a radio. (I've always seen that as the ultimate 1990s symbol of surrender to the futility of the current war on crime.)

Yet our courts, rather than being where the action is for those eager to solve our single most fearsome domestic crisis, have become grimy, sullen bureaucracies. Plea-bargaining mills. Places where indifference, mismanagement, and a just plain "what difference does it make?" attitude produce a system that starts late most days, rarely operates a full day, and even on a good day in most urban courtrooms dispenses justice with all the majesty of a third-rate motor vehicles bureau.

Three years ago I followed one young Manhattan assistant district attorney around for a few weeks and watched as she struggled against that system. In the midst of the supposed crisis, there was a torpor that would remind Ross Perot of General Motors. Court officers read the sports pages waiting for the judges, who said they were waiting for the defendants (whose bail they rarely revoked) or for the lawyers (whom they never sanctioned). Victims, thinking they were

A Time For Sacrifice

Nine unconventional ways Bill Clinton can revitalize the rule of law in America.

about to get their day in court, sat next to cops (being paid overtime) and waited to testify in hearings or trials that typically never happened. Everybody blamed everybody else for the inaction. In all, a study we did accompanying the column I wrote found that the typical courtroom in that city actually operates about 4.5 hours a day.

Against that backdrop, simply calling for more judges and more courtrooms, as most liberal politicians now do, or blaming it all on that guy named Miranda the way conservatives do, is idiotic. You should shout from the rooftops that fighting crime isn't a liberal or conservative issue any longer. And that the current system needs fundamental change. And fundamental sacrifice.

On the civil side, public confidence in the system is now so bad that when your opponents made the civil justice system a scapegoat for everything from

the balance of trade, to the economy, to health care, to the decline of Little League baseball, you clearly seemed afraid to rebut them. Somehow, a nation once proud of its unique commitment to solving disputes and protecting people with laws applied equally has become ashamed of its devotion to due process and equal justice.

That's right—ashamed of precisely what has made us the greatest nation on earth.

But now you have a chance to fix things, and I think you can—based on your own themes of self-sacrifice and an end to the old-style liberal-conservative way of gauging things, and based on yours and Mrs. Clinton's own training and experience as public-minded lawyers.

Here are nine ideas, all likely to be met with skepticism from those who don't understand what you do: that it's time for some real change coupled with

a new spirit of sacrifice.

1. Establish a domestic legal Peace Corps.

This would be akin to your call for an urban Police Corps (which is a great idea but one which, if implemented without some of the stuff suggested below, will only get more criminals into a system that can't handle the few now getting caught).

The government would offer law school loans for students who pledge to spend two or three years working as prosecutors or legal aid lawyers in urban criminal justice systems. (The government also would assume the loans already made to students who take the pledge after they graduate.) The loans would then be paid back based on a sliding percentage of the corpsman's future earnings; if he continues in public service and earns modestly, the loan would be reduced, but if he goes on to prosperous private practice he would pay more.

What's needed in our urban courts—to put an end to the plea-bargaining mills that now don't punish the guilty enough while often punishing the not guilty—is more qualified, committed people. With this new corps, cases could actually be tried, or at least get hearings without the numbing delays that now come when overextended, beaten-down lawyers (choreographed mostly by judges who can't or won't manage) are supposed to be at two or three hearings at the same time on the same day.

2. Call on every lawyer and judge in the country and everyone else involved in the legal system (including unionized court guards, etc.) to work one extra hour a day at their jobs (not on pro bono projects) for free.

In effect, what I'm suggesting is that every judge, public defender, prosecutor, probation officer, or bailiff who now works a routine eight-hour day (I know that many don't) would work nine hours, with no extra payment. Thus, they'd instantly become 12.5 percent more productive. Also, you should call on everyone working in the criminal justice system to forgo any overtime premium payments for night work and the like. (Didn't we keep our munitions factories working around the clock when we faced an external war crisis?)

Similarly, all private lawyers who bill by the hour would add one free hour for every eight they bill. This would

(continued on page 60)

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(continued from page 5)

instantly make them more cost-effective (and competitive in the global economy) while reducing legal costs. You could even offer to certify lawyers and law firms that have taken the pledge, much the way some European governments are now certifying companies that have met Total Quality Management (TQM) standards.

3. *Call for every lawyer to work 20 hours a year on pro bono projects. More important, give this call to sacrifice some glitz by building a monument of sorts on the grounds of the Supreme Court building that lists the names every year of every member of the bar who fulfills the commitment.*

We need these lawyers in all areas of our system. You and Hillary probably agree with me that they should be required to contribute as a condition of getting a license to make a living off of our system. But if *pro bono* is not going to be made mandatory by the local officials who hand out those licenses, you can use your bully pulpit to inspire thousands of lawyers to do more public service.

You could even point to places and projects as models of the kind of commitment we need. In Atlanta, for example, 1,000 lawyers in private practice are now involved in a *pro bono* project handling criminal cases. They're proving that civil lawyers, properly supervised by *pro bono* criminal specialists, can truly make a difference. And they're getting lots of satisfaction out of the work to boot.

Again, our system for defending (and prosecuting) indigents is awful, which not only results in the not guilty going unprotected, but also in the guilty getting sweeter plea bargains than they deserve. On the civil side the resources available to the nonrich are even more meager, making the idea of equal justice under the law a near-mockery for the poor family about to be evicted or the abused wife seeking protection and a divorce. A new president dedicated to change and to being a "different kind of Democrat" should cry out for unconventional change.

4. *Back up these calls for change and for sacrifice by refusing to let a single federal aid dollar continue to go to any aspect of any local criminal justice system that does not meet new standards of productivity.*

These standards would not be mere numerical benchmarks of cases processed through the mill, but would be sophisticated assessments of how well resources are used and how well justice is dispensed. Sure, they'd be hard to define, and cynics will, therefore, dismiss this plan as unrealistic. What's truly unrealistic is what we're doing today to the idea of the rule of law. New York's performance that I observed—courts actually in session about four-and-a-half hours a day—is not an aberration, and it clearly meets no decent standard of productivity. It just as clearly makes any argument for aid to that city and state to build new courtrooms absurd.

5. *Make treating guns like cars an early legislative priority.*

You're on record favoring waiting periods so that people who want to buy guns can be checked out for histories of crime or mental disorder the way we now make sure that people who want to drive cars are qualified. You should push ahead on this quickly. It's no longer a divisive issue; police groups

and liberals alike now favor this kind of moderate firearms control.

6. *Speak up for lawyers and their special role in our society; but also urge legal reform, including an English Rule.*

As a former state attorney general, law professor, private lawyer, and student at law school (Yale) that worries more about public policy than about narrow statutes, no one has to convince you that the law and lawyers are more often the solution than the problem. And I know that you've got more than enough people around you who understand that the so-called litigation crisis isn't what the conservatives have made it out to be. (The numbers aren't as horrendous as the cliché-peddlers claim; besides, having a "crisis" in which people are, in effect,

You should offend Ralph Nader and a lot of other natural friends of yours (and mine) and propose a federal English Rule that requires the loser to pay the winner's legal fees in a civil suit.

overconfident about the ability of their legal system to resolve their disputes isn't the worst thing in the world.) But you must know, and Hillary—who's done much more private practice and has served on a bunch of corporate boards—must know, that there's a lot about lawyers and litigation that has to be changed.

Indeed, the legal reform package advocated by the Bush administration probably got a bum rap because it was fronted by Dan Quayle and became a tool of one-sided business interests. It was actually conceived mostly by Solicitor General Kenneth Starr, a smart non-kook who put his finger on a lot of real problems.

For example, Starr may have gone too far in proposing that punitive damages be limited to the amount of compensatory damages, but his overall idea of limiting punitive damages, which you opposed during the campaign, is not all bad. Specifically, his notion that judges be allowed to apply some kind of reasonableness standard makes sense.

More important, ask any of the leaders of those growing small businesses you like to point to in Arkansas and they'll tell you that the cost of being a defendant in abusive suits arising from completely necessary laws, such as those having to do with race and sex discrimination, is not only unfair but often runs counter to the intention of the laws. For example, some managers might now hesitate to hire a minority worker for fear of the inevitable suit that some lawyer will be willing to bring if the minority gets fired, no matter how justified the firing. Fixing that would be another example of a change that often helps both the poor (the probable minority who would not get hired because of the employer's fear of even groundless lawsuits) and the middle class (the probable employer now victimized by such groundless suits).

The evidence of this kind of abuse is everywhere. (This summer *New York* magazine published a primer on what to do if you expect to get fired; it blithely but realistically instructed all women, minorities, and people over age 40 that they probably could sue or threaten to sue and collect something for at least the nuisance value of the potential suit.) Abuses in these laws have long played into the hands of those who opposed what the laws were intended to achieve; you're the perfect representative of those who care enough about the purpose of these laws to take the heat for fighting to fix them.

All of which is a long way of saying that you should offend Ralph Nader and a lot of other natural friends of yours (and mine) and propose a federal English Rule that requires the loser to

pay the winner's legal fees in a civil suit. (You could call for federal legislation to deal with federal litigation and ask states to follow your lead.)

I'd tinker with the traditional English Rule notion, however, by saying that there will be a presumption that the loser will pay the winner but that the judge can overrule the presumption. Also, I'd limit legal fees paid back to the winning defendant to 5 percent of the amount claimed as damages in the suit or (as Starr suggested) the amount of the loser's legal fees, whichever is higher.

Finally, you should use your bully pulpit (and the implicit power of appointment) to encourage judges to use Rule 11 and other authority to level heavy sanctions for litigation abuse. (Judges have been markedly inconsistent in applying Rule 11, with some entire circuits, such as the Ninth, being notoriously weak-kneed.) Also, so that Rule 11's effect goes well beyond a one- or two-thousand-dollar fine (typically passed on to a client), you should urge bar disciplinary panels to make the assessment of Rule 11 sanctions against a lawyer automatic grounds for a disciplinary investigation.

7. *Fix laws that lead to litigation abuse.*

You ought to appoint a task force that will quickly review various laws and have the guts to propose amendments to streamline them and sharpen them to eliminate abuses. (For example, the new Americans with Disabilities Act is, as now written, a litigation Vietnam about to happen.) I'd even pick Hillary to run it: with her liberal credentials she could make this her Nixon-goes-to-China effort.

8. *Establish a foreign law corps.*

Around the world, the rule of law, both in terms of human rights and private commerce, is replacing state tyranny as the wave of the future. This can, and should be, a uniquely Ameri-

cane export. We shouldn't be ashamed of our law-based society, and you ought to make that clear at every opportunity.

So you ought to fund (or ask a consortium of law firms to fund) a group of several hundred lawyers who would work at Peace Corps-like wages to help developing countries set up criminal and civil law systems and to help private lawyers build an economic structure based on the protection of private property. These would not simply be law professors helping to write constitutions; they would be practicing, get-their-hands-dirty lawyers, who could work for newly privatized businesses as well as national and local governments, using skills typically for hire only to blue-chip businesses. One of the major obstacles to investment in places like Russia and Eastern Europe (investment that could help us as well as them) is the lack of lawyers who can write and implement contracts, environmental law, intellectual property law, and the like.

9. *Use your executive powers vis-à-vis the law and litigation to heal divisions.*

One good example: For the same reason (the appearance of a partisan payoff) that President Bush should not pardon Caspar Weinberger for his alleged involvement in an Irangate cover-up, you should pardon him and put this issue behind us.

An example of what not to do: Don't reignite the Clarence Thomas debate by appointing the scantily qualified Anita Hill to some important position. We might agree that Thomas should not have been confirmed by the Senate even before Hill made her allegations, let alone after; but unlike the American Bar Association (which gave her an award last summer at its convention in a ceremony at which Hillary was the headline speaker), you should not come down one way or the other on the unresolvable question of which of the two committed perjury at Thomas's confirmation hearings by giving her a job.

Similarly, you should retain more than a few of the Bush administration's best U.S. attorneys.

Of course, there are all kinds of more conventional moves you need to make to redeem the federal government as the guardian of our rights and of the rule of law. For starters, you need to set an early example and make your first judicial appointments the absolutely best people around. But, again, to help heal what divides us, you should choose them without regard to whether they have come from some identifiable ideological base or constituent group. You also need to make the Justice Department more than a contradiction in terms by filling it with people obsessed with justice and eager to reverse some of its horrible current litigation postures (such as defending the gag rule on abortion counseling at any federally aided family planning services). And you ought to take a look at some of the more controversial federal law enforcement policies that clearly need fixing (such as the mandatory sentencing guidelines critiqued by Stuart Taylor on the opposite page).

I expect you'll do most of this more conventional stuff. What I'm hoping for, though, is that you'll do more. That you'll be true to your campaign theme. That you'll lead a real call for real sacrifice. And for real change. □

1000 Lawyers for Justice

985 Ponce de Leon Avenue, NE
Atlanta, Georgia 30306

404-894-2595 • FAX: 853-4193

January 7, 1993

Mr. Steven Brill, President
American Lawyer Media, L.P.
600 3rd Ave.
New York, New York 10016

Dear Mr. Brill:

I commend you on your Open Letter to President-Elect Bill Clinton. Thank you for mentioning the 1000 Lawyers For Justice Program that many of us have been working on in Atlanta over the last year. Trisha Renaud of the Fulton County Daily Report has played a key role in informing the legal community of the importance of this pro bono effort.

I was particularly impressed by your call for a domestic legal Peace Corps. This is an excellent idea and I am very interested in helping to make it a reality. I have substantial experience in pro bono programs. Besides implementing the 1000 Lawyers for Justice Program, I created a Legal Clinic for the Homeless 10 years ago that is still providing advocacy for the homeless in metro Atlanta, and I was the first Director of the State Bar of Georgia's Pro Bono Project.

I am presently the Director of the Georgia Indigent Defense Council which is working to improve Georgia's criminal justice system for its poorest citizens. I believe my knowledge and experience in developing and operating pro bono programs can be valuable in the creation of a domestic legal Peace Corps.

If you plan to pursue your ideas further or know of interest from others I would be happy to work with you to make a Legal Peace Corps a reality.

Best wishes for the new year.

Sincerely yours,

Eric G. Kocher

1000 Lawyers for Justice

1992 Report

Supporting Organizations

**Atlanta Bar
Association**

**Gate City Bar
Association**

**Georgia Association of
Black Women Attorneys**

**Georgia Association of
Criminal Defense Lawyers**

**Georgia Indigent
Defense Council**

**State Bar
of Georgia**

January 1993

1000 Lawyers for Justice

985 Ponce de Leon Avenue, NE
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INTRODUCTION

1000 Lawyers for Justice is a historic *pro bono* project designed to assist with the Indigent Defense crisis in Fulton County (Atlanta), Georgia.

1000 Lawyers for Justice has recruited over 1000 attorneys, who have agreed to represent indigents charged with felonies in Fulton County *pro bono*. This project began on January 9, 1992 after three months of planning and preparation.

1000 Lawyers for Justice is a joint project of the Atlanta Bar Association, Gate City Bar Association, Georgia Association of Black Women Attorneys, Georgia Association of Criminal Defense Lawyers, the State Bar of Georgia and the Georgia Indigent Defense Council -- the state agency responsible for improving the criminal justice system for indigents in Georgia.

PROGRAM STATISTICS THROUGH JANUARY 31, 1993

Total volunteer attorneys	1009
Total volunteer mentors	137
Total volunteer law students	56
Total cases assigned in Municipal and Superior Court	706
Total cases dismissed, NPGJ, dead docketed, or nolle prossed	79/246
Percentage of cases dismissed, etc.	32%
Total attorneys assigned cases	598
(Numerous attorneys have accepted more than one case)	
Total mentors assigned	109

HISTORY AND DESCRIPTION

PROJECT IMPLEMENTATION

A Planning Committee, which began meeting in October of 1991, developed the plan for implementing the project. The project was implemented in five steps:

(1) Mentor Recruitment -- experienced criminal defense lawyers were recruited by the Georgia Association of Criminal Defense Lawyers from its membership to serve as mentors,

(2) Volunteer Recruitment -- a letter from the heads of the supporting organizations was mailed to every lawyer in the Atlanta area,

(3) Press Conference -- a press conference was held contemporaneous with the mailing to all attorneys,

(4) Training -- free training, complying with requirements for Mandatory Continuing Legal Education credits, is provided for all volunteers,

(5) Case Assignments -- cases are assigned at the Fulton County Jail to volunteer attorneys two days a week (10-15 cases a week are assigned) at this time.

MENTOR RECRUITMENT

On December 8, 1991, the President of the Georgia Association of Criminal Defense Lawyers sent a letter to criminal defense attorneys in Atlanta with five years or more experience, asking them to volunteer to be Mentors to the volunteer attorneys. 131 Mentors responded favorably to this request. GACDL paid the entire cost of this mailing.

VOLUNTEER RECRUITMENT

On January 9, 1992, a letter signed by the heads of the six sponsoring organizations was mailed to all attorneys in the metropolitan Atlanta Area, asking each attorney to volunteer to accept at least one criminal case *pro bono*. Enclosed with the letter was a list of Supporters and Mentors, a Fact Sheet on "The Indigent Defense Crisis in Fulton County" and a Volunteer Sign-Up Form. The entire cost for this mailing was paid by the State Bar of Georgia.

In addition to this mass mailing, members of the Planning Committee distributed information about 1000 Lawyers for Justice at seminars and Bar Association meetings in the months of December and January.

PRESS CONFERENCE

A press conference was held on January 9, 1992. Present at the press conference were Ed Garland - Chair of 1000 Lawyers for Justice, Calvin Graves - President of Gate City Bar Association, Jack Martin - President of the Georgia Association of Criminal Defense Lawyers, Charles Lester - President of State Bar of Georgia, Terence Walsh - President of Atlanta Bar Association, and Eric Kocher - Director of the Georgia Indigent Defense Council. The day after this press conference, the State Bar winter meeting convened and recruitment continued.

TRAINING

Four one-day seminars on "Basic Criminal Defense" were held on March 6 and 7, June 26, and on November 13, 1992. Through these training seminars, distinguished criminal defense attorneys have made presentations to well over 600 volunteer attorneys.

Each seminar was available free of charge to all volunteer attorneys. Attorneys wishing to receive Continuing Legal Education (CLE) credits paid nine (\$9.00) which was sent to the State Bar of Georgia. The seminar will be presented again in March of 1993.

Specialized training for attorneys accepting cases in Municipal Court was held on April 21, 1992 from 2:00 to 5:00 pm. This training, "Preliminary Hearings and Representing Defendants in Municipal Court," was presented at Mercer University, Atlanta Campus, by City of Atlanta Public Defenders.

FULTON COUNTY JAIL -- CASE ASSIGNMENTS

Currently, cases are assigned to volunteer attorneys on Wednesdays and Thursdays at the Fulton County Jail at 9:00 in the morning. The Volunteer Coordinator conducts a mini-lecture on initiating the case, and answers any procedural/administrative questions. A mentor is provided to the volunteers to answer any questions about representation.

The day before the cases are to be assigned, Pre-Trial Services identifies indigent defendants who have just arrived at the jail and are charged with felonies and have high bonds or no bonds. The goal is to assign defendants within 24 hours after their arrival in the jail.

After the cases are selected, files on each defendant are prepared for the volunteer attorney. Each file contains a police report (if available), bindover sheet, indigency affidavit, client information sheet which explains to the defendant about 1000 Lawyers for Justice and how to contact the volunteer attorney, a sample bond motion and notice of appearance, procedures for scheduling a bond hearing, general instructions for the volunteer attorney, and a follow up and closing form. Each attorney is assigned to a defendant and immediately interviews the client.

RECOGNITION

1000 Lawyers for Justice and the five sponsoring Bar Associations were nominated for the American Bar Association's Harrison Tweed Award. 1000 Lawyers and the Georgia Indigent Defense Council were also nominated to receive the National Legal Aid and Defender Association's Arthur von Briesen and Clara Shortridge Awards.

1000 Lawyers For Justice has received recognition from Georgia's Governor Zell Miller, the Chief Justice of Georgia's Supreme Court, Harold G. Clarke, in both his State of the Judiciary address to the Georgia General Assembly and in a Supreme Court opinion and in various news media stories.

Governor Zell Miller, Statement of Support, January 9, 1992:

"In this time of limited public resources, I support these voluntary efforts to help ease the burden on the taxpayers of defending the indigent. I commend the Georgia Indigent Defense Council, the Atlanta Bar Association, the Gate City Bar Association, the State Bar of Georgia, the Georgia Association of Criminal Defense Lawyers and the 1000 Lawyers for Justice for their efforts."

Chief Justice Harold G. Clarke, State of the Judiciary Address to the Georgia General Assembly, January 17, 1992:

"Georgia lawyers and courts have begun programs to boost indigent defense. These involve free service by lawyers and infusions of more money. The Atlanta One Thousand Lawyers For Justice project shows a willingness by lawyers to give free time and effort representing indigent defendants. Similar problems take place throughout the state. The substantial portion of the funds generated by interest on lawyers trust accounts will flow into the pool for defense of indigents."

SUPREME COURT OF GEORGIA OPINION:

Chief Justice Harold Clarke mentioned 1000 Lawyers for Justice in a concurring opinion in Sacandy v. Walther, S91A1428, decided February 27, 1992: "I applaud the professionalism of those lawyers who participate in the Atlanta One Thousand Lawyers for Justice project. I hope this activity will spread around the state."

TELEVISION

WSB - Channel 2 - Press Conference

WGNX - Channel 46 - Press Conference, Press Day at Fulton County Jail

WXIA - Channel 11 - "Survival & Success" weekly story on people performing community service

RADIO

WSB Radio AM 750 - Press Conference

V103 Radio FM - Press Conference

WGST Newsradio 640 - Press Conference

NEWSPAPER ARTICLES

The American Lawyer

"Basic Training for Civil Recruits," by, Trisha Renaud, January/February 1993

Fulton County Daily Report

"Commentary on Legal Reform Strikes Chord with Local Lawyer,"
by David MacDougald III, December 31, 1992

The American Lawyer, (reprinted in the Fulton County Daily Report)

"Don't Stop Thinking About Tomorrow: Nine Suggestions Give Clinton Options for Saving
Justice System," by Steven Brill, December 1992

Fulton County Daily Report

"1000 Lawyers for Justice Getting Results," by Paul Kvinta, November 25, 1992

Georgia Courts Journal

"Pro Bono Project Eases Fulton County's Overburdened Indigent Defense System,"
September 1992

New York Times

"Indigent Defendants, Overworked Lawyers," by Peter Applebome, May 17, 1992

Gwinnett Daily News

"Attorneys Team Up To Aid Fulton Indigent," by Gina Gassert, March 15, 1992

Fulton County Daily Report

"1000 Lawyers Lining Up To Help Indigent Defendants," by Trisha Renaud, March 3, 1992

Atlanta Journal - Constitution

"Metro Lawyers Volunteer To Handle Indigent Cases," by Charles Salter, January 10, 1992

Fulton County Daily Report

"Lawyer Enlists Legion To Aid Indigent Defense," by Charles Griffin, November 7, 1991

Atlanta Bar Association Newsletter

"1000 Lawyers For Justice," May 18, 1992

Georgia State Bar News

"Attorneys Sought To Help With Indigent Defense Crisis," February 1992

NACDL The Champion

"Affiliate News," April 1992

State Bar Georgia Pro Bono Project Newsletter

"Other News From Around The State..." January/February 1992

American Bar Association, ABA Public Defender Forum

"1000 Lawyers for Justice," by J.D. Dolby, April, 1992

LAW STUDENT VOLUNTEERS

1000 Lawyers for Justice has added a law student volunteer component that provides law students from Emory and Georgia State Universities to assist volunteer lawyers at the jail. As of December 23, 1992, 54 law students have volunteered.

FUND RAISING

1000 Lawyers for Justice has received several generous donations. Both the Georgia Association of Criminal Defense Lawyers and the State Bar of Georgia absorbed the cost of mailing recruitment information to Mentors and Volunteers. The Georgia Bar Foundation has made the largest single grant and the Atlanta Lawyers Foundation has provided a grant for training materials.

Monetary Contributions have been made by both organizations and individuals. 1000 Lawyers for Justice continues to seek contributions and grants to fund its activities.

STAFFING

Staff of the Georgia Indigent Defense Council are administering the volunteer effort. The Council's Director, Eric G. Kocher provides overall management and coordination. Aimee Maxwell, Council Staff Attorney, organizes training seminars. Tracy Johanson Katz is the volunteer coordinator and makes the case assignments at the jail.

CORPORATE INFORMATION

1000 Lawyers for Justice was incorporated on December 10, 1991. The Board of Directors are as follows:

Lynne Y. Borsuk

L. Burton Finlayson

Edward T. M. Garland

Calvin S. Graves

James K. Jenkins

Eric G. Kocher

Nicholas A. Lotito

Jack Martin

Joan Martin

Bruce Morris

John A. Pickens

Donald F. Samuel

Rees R. Smith

Roy M. Sobelson

Some of Louisiana's indigent defenders don't know much criminal law.

The Right To A Probate Lawyer



By Miriam Rozen



On his display ad in the Shreveport, Louisiana, yellow pages, Robert Booth, Jr., touts a suspiciously lengthy list of specialties: "Personal injury, probate, real estate, corporate law, divorce, adoptions, bankruptcy, and other general legal matters." But the solo practitioner, who works out of a one-room office, notably does not claim that he can defend criminal cases.

So it's something of a paradox that every year or two, for more than 20 years, the Louisiana courts have compelled Booth to represent an indigent felony defendant. In December 1990 he was even assigned a capital murder case.

Booth's appointments are a standard part of Louisiana's indigent defense system, which—like those in at least three other states and in some federal district courts—relies, in part, on conscripting private lawyers to handle criminal cases that the state's public defender offices cannot handle, either because of a conflict of interest or an excessive caseload. In Louisiana there is no requirement that the assigned lawyers have any criminal law training or experience.

Putting civil lawyers like Booth in charge of criminal defense is one of the issues now before Louisiana's highest court in three consolidated motions challenging the state's indigent defense system. The motions, which were argued last September 14, include the Sixth Amendment claim that the state's indigent defenders cannot give effective

counsel—because they are inexperienced, inappropriately experienced, or overloaded with cases—and the Fifth Amendment charge that the state's meager compensation for handling indigent cases constitutes an improper taking.

At the heart of the dispute is money: Though Louisiana's constitution calls for a "unified system for securing and compensating qualified [indigent] counsel," the primary mechanism designated by the state for funding that commitment is traffic tickets. When the proceeds from the tickets run thin, the individual parishes (the equivalent of counties) that administer indigent defense are often caught short.

In Booth's parish, things have been particularly severe: For the past two years the local indigent defense board has opted not to compensate con-

scripted private lawyers at all. (According to a report by criminal justice system consultant Robert Spangenberg, in 1990 Louisiana provided the fewest resources for indigent defense among 19 similarly sized states, at \$100 per case.) But even in previous years, when Booth was being paid—at a peak of \$50 an hour—it is difficult to see how the level of advocacy he provided could have been good.

After all, Booth's criminal law training consists only of the courses he took at Louisiana State University Law Center in the early 1960s and of his annual one-hour CLE seminars on the subject required by the state bar. The only paying criminal clients Booth says he has ever represented faced misdemeanors. His few felony cases were those assigned him by the court.

Perhaps it is not surprising, then,

that all but one of Booth's court-assigned clients have plea-bargained. In the one case that didn't, the capital murder case, Booth was excused on the eve of trial. "I don't particularly like handling criminal matters," says Booth, 52, who seems to see providing indigent defense as something of a burden. "I'm already spread so thin."

Booth's pre-trial performance in the capital murder case indicates the feeble level of defense Louisiana's system permits—and, indeed, encourages. Apparently believing that his client, Anthony Brown, would plead guilty, Booth spent a mere 50 hours on the case in the two years following his appointment, did not interview several key witnesses, and filed only two motions, one a standard request for discovery and another seeking a court-sanctioned test of Brown's competence to stand trial. In contrast, Booth's successors in the case, two experienced criminal defense lawyers, filed 26 motions in their first six months.

So how did Booth manage to get a capital murder case in the first place? His name was next on the alphabetical roster of lawyers in the parish, says state judge Eugene Bryson, Jr., who adds that he "had seen [Booth] around a criminal courtroom" in the past. Never mind that Booth's appearances had only been for court-assigned clients and those facing misdemeanors.

Judge Bryson let Booth out of the case after Booth submitted an affidavit attesting: "I . . . have not done any specific preparation or investigation in order to defend against a sentence of death." Brown was ultimately convicted of second-degree murder and sentenced to life in prison; his lawyers have filed an appeal.

Meanwhile, Booth has received another criminal defense assignment from the court, this one a cocaine possession defendant. "It could be an interesting case," Booth says. "I don't mind doing these things if someone's life isn't hanging in the balance." □

Basic Training For Civil Recruits

Just because Robert Booth was unprepared to try a death penalty case doesn't mean civil lawyers can't competently represent criminal defendants in less complicated cases. The trick is, they have to be taught how. Lynne Borsuk and Edward Garland have founded a program in Atlanta dedicated to doing just that.

Last March Borsuk, a former public defender, and Garland, one of Atlanta's top criminal defense lawyers, launched 1,000 Lawyers for Justice, a *pro bono* project dedicated to recruiting local civil lawyers to take less serious indigent cases at no charge; training the lawyers in the basics of the criminal justice system; and giving them a mentor to keep an eye on their lawyering.

As of late October, 4,000 Lawyers had become just that: 967 volunteer civil attorneys with 137 seasoned criminal defense lawyers serving as mentors. Together, they took on 607 cases in the first eight months of the program. Case dis-

position reports from 165 of the volunteers show that those lawyers have already succeeded in getting 39 percent of their cases dismissed.

The word back from the civil lawyers, says Borsuk, is overwhelmingly positive. She cites a letter she received from one participant as evidence: "I was pleased that I did a little to help the court system with its overload of cases. The experience was sobering, to say the least."

Says Borsuk: "The more the civil bar is aware of the problems and intricacies of the criminal justice system, the better."

As for the clients, "most are thrilled out of their minds," says Borsuk, whose own unsuccessful legal challenge of the county's indigent defense system two years ago helped prompt changes reducing public defender caseloads. "Clients feel more secure because they have a lawyer dedicating time . . . and then staying with them," Borsuk notes.

—Trisha Renaud

1000 Lawyers for Justice Getting Results

BY PAUL KVINTA
Staff Reporter

When commercial litigator Charles T. Lester Jr. represented an alleged car thief last July through the 1000 Lawyers for Justice project, he did not realize it would be just the beginning of his relationship with the defendant.

Since then, however, the Sutherland, Asbill & Brennan partner has chosen to continue his pro bono work for the man, scurrying to traffic court, municipal court or whichever court his former criminal client requests of him.

"[Lester's client] constantly has his tail

in a crack," says Sutherland, Asbill associate Ann G. Fort. "That's turned out to be a lifelong relationship between those two."

Lester, the immediate past president of the State Bar of Georgia, says his work for the client mostly involves traffic problems and relatively minor misdemeanors.

"He's not a bad person, he just needs a helper," Lester says.

Organizers of the pro bono defense project say Lester's enthusiasm seems to be the rule among volunteers, many of whom, like Lester, are heavy-hitting

civil attorneys with little or no criminal experience. But that enthusiasm is translating into some positive results, project officials say, such as long hours dedicated to cases and a dismissal rate of almost 40 percent for the project.

And some organizers say the success of the program, which now includes 967 volunteer lawyers and 137 criminal-defense lawyers serving as mentors, lends support to long-held criticisms about the way indigent defense has been

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Charles T. Lester Jr. says the man he represented pro bono in July keeps calling, and Lester has represented him four or five more times.

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Our commentator takes a look at a happier time in Hiss' troubled life — clerking for Oliver Wendell Holmes.

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Pro Bono Project Has Impressive Dismissal Rate

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provided by the city and county public defender offices.

Zealous Representation

Since the program's inception in early March, volunteers with 1000 Lawyers for Justice have taken on 607 cases. They have reported back on only 165 of those cases, but those figures indicate a 39 percent dismissal rate.

Lynne Y. Borsuk, the former Fulton County public defender who co-founded the program with Edward T.M. Garland of Garland & Samuel, says the impressive dismissal rate stems from the early and "zealous" representation the volunteers have provided.

"That's a very high dismissal rate, and we're thrilled with it," Borsuk says. "I think it shows how important it is to have early representation."

Lester, for instance, says he was able to get the auto theft charge against his client dropped early after meeting with assistant district attorneys and explaining the circumstances of the alleged crime to them. Lester says his client took the car of the woman for whom he had worked for years, but later returned it.

"I told one of the DAs that maybe there was some crime committed, but not car theft," he says. "My client returned the car."

W. Stell Huie, another prominent civil attorney and a partner at Long, Aldridge & Norman, says that like Lester, he too was able to help his client by



Lynne Y. Borsuk, co-founder of the 1000 Lawyers for Justice project, says its impressive dismissal rate stems from "zealous" representation.

getting involved in his pro bono case early.

Huie—a former State Bar president and current chairman of the American Bar Association's Committee on Judicial Selection, Compensation and Tenure—says he requested lab tests of the alleged cocaine his client was accused of possessing and intending to distribute. And while the municipal court awaited results of the tests, Huie says he persuaded the court to hold his client in the city jail rather than bind him over to the county jail.

"The next thing I knew he called me and said they dismissed him and he was out on the street," Huie says. "My client was quite a character. He knew a hell of a lot more than I did. He was a seasoned veteran of the court system."

And both Lester and Huie say their clients keep calling for more free help.

Lester says he has represented his client four or five more times. He adds that he even has joined the Georgia Association of Criminal Defense Lawyers so he and the 23 other lawyers in his firm involved in the project can use the organization's extensive data base.

Huie says his client called and admitted he had originally used an alias when the two first met because he had broken his probation in Florida and fled that state. Now, the man claims to have found religion and wants to start a new life, Huie says, so the attorney is helping him straighten out his situation in Florida.

"He 'bout drove my secretary crazy with all the phone calls," Huie says. "He even called me collect once from the DeKalb County Jail."

'Very Reasonable'

At least one prosecutor says for the most part she has tolerated the volunteers' enthusiasm.

"They're discovering they're getting guys with [criminal] histories, but [the volunteers] have been very reasonable," says Carole E. Wall, a Fulton assistant district attorney. "The ones that want to come in and argue issues are the ones we can't tolerate."

Ann G. Fort, Lester's colleague, says her volunteer case went to trial not necessarily because she wanted to argue issues with anybody, but because her client, an alleged purse-snatcher, insisted.

"He was offered several very attractive plea bargains, none of which he would accept," Fort says. "I wanted to be sure he knew I had never tried a criminal case before, but he wanted a trial."

Fort says she put about 150 hours into the case from May until October, learning criminal law and conferring with criminal-defense attorneys. She lost the case, she says, but she argued her client's sentence down from 10 years in prison to five.

"Apparently, my client bragged about me in jail," Fort adds. "I've gotten calls from other inmates, but I've had to turn them down."

The Importance of Continuity

Borsuk, who left the Fulton County



W. Stell Huie says one client "bout drove my secretary crazy with all the phone calls. He even called me collect once from the DeKalb County Jail."

Public Defender's Office in 1991 after calling attention to the whopping case-loads individual attorneys had to carry, credits much of the project's significant dismissal rate to the fact that one attorney stays with one case from beginning to end.

"One of the things we're proving is that by providing representation from the start, from the arrest, and carrying it through, the defendant receives representation that is tremendously more valuable," Borsuk says.

She says one of the key problems with indigent defense has been that two different offices—one city and one county—handle cases. She says a gap in representation exists when cases are bound over from Municipal Court to Superior Court.

"We need a unified system," she says.

But Harry Gardner, director of the Atlanta Public Defender's Office, says his office has closing that gap over the last year and a half.

"We send information over [to the county public defender's office] and assist them in cases and hold conferences," Gardner says. "Defendants are not really left out in the woods."

And Gardner adds that while the 39 percent dismissal rate for the pro bono program is impressive, he figures that his office probably has a similar rate, although he does not keep such statistics because of the court's high volume.

Vernon S. Pitts Jr., director of the Fulton County Public Defender's Office, did not return calls for comment.

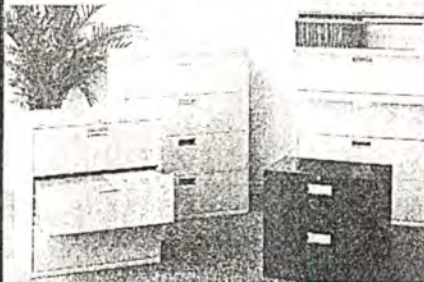
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1,000 Lawyers Lining Up to Help Indigent Defendants



Robert G. Wellon, left, a 1,000 Lawyers for Justice volunteer, interviews a man jailed in Fulton County on charges of sale and possession of cocaine. Wellon usually handles divorce cases or general litigation but has agreed to take the man's felony case pro bono.

The same week a North Georgia lawyer got the state Supreme Court to let her out of a case appointment, eight Atlanta private practitioners from a new pro bono project appeared at the Fulton County jail to help alleviate the indigent defense crisis.

The lawyers who interviewed indigent detainees last week are among the first wave of volunteers from the 1,000 Lawyers for Justice program, sponsored by the State Bar of Georgia, Atlanta Bar Association, Gate City Bar Association, Georgia Association of Criminal Defense Lawyers, Georgia Indigent Defense Council and Georgia Association of Black Women Attorneys.

Robert G. Wellon, who usually handles divorce cases or general litigation, decided to take on a felony case, although he acknowledged, "I haven't kept up with this particular area [of the law] for some time."

Wellon, a former Atlanta Bar president who is of counsel with Wilson, Strickland & Benson, was assigned to interview a man accused of sale and possession of cocaine.

Robert A. Moss, who handles mostly civil work with Moss, Clifford, Moss & Rothenberg, but does take an occasional criminal case, interviewed another inmate accused of terroristic threats against his girlfriend and police.

Fairly quickly, Moss spotted holes in the case against his client. A charge of terroristic threats requires the corroboration of a third party, he noted, but no one else was present at the time the defendant is alleged to have

threatened his girlfriend.

"Lawyers have an obligation to help when they can," Moss said of why he took the case.

And Wellon says, "From what I hear and what I read, the indigent defense program in Fulton County is in utter chaos."

The volunteer effort, designed as a stopgap measure to relieve the county's overburdened indigent defense system, began with a January letter to 11,300 lawyers in the five-county metropolitan area, asking each to take at least one case.

So far, 803 lawyers have volunteered, including 131 who have agreed to serve as mentors and help train attorneys with little or no criminal background. Training for the volunteers begins at seminars Friday and Saturday, after which local lawyers will visit the jail at the rate of about 30 per week.

Georgia Indigent Defense Council Director Eric G. Kocher expects the program to reach its goal of 1,000 lawyers in a few weeks. It will continue indefinitely, he adds, as long as the interest and need are present.

The aim, he says, is early intervention in criminal cases. "It doesn't serve anyone's purposes to have inmates sitting for three and four months in the jail if their cases can be resolved in a few weeks."

Wellon adds that the volunteers' presence should not relieve local and state governments of their responsibility to improve indigent defense. "No one wants to pay for it," he says, "but it's got to be done."

—By Trisha Renaud

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February 25, 1993

Dr. William L. Smith
Asst. Secretary of Education, Acting
OSERS
330 C Street S.W.
Room 3006
Washington, D.C. 20202



Dear Dr. Smith:

We met last Friday evening at a reception in Phoenix, and we briefly discussed the proposed program to allow government service offsets for student loans. You suggested that I send you a letter to be forwarded on to the appropriate office(s).

If my memory is correct, the idea of allowing a government service offset for student loans has been mentioned by several administrations. However, the proposals always seem to contemplate law enforcement-related service. Although a loan offset program has my complete support, I would like to see such a program encompass a broader base of government service such as local/state/federal public defenders offices. Typically, public defender offices are hard pressed to compete in the market. The offices are understaffed and the salaries are low. It is difficult to ask quality lawyers to forego the monetary and other advantages of private practice for government service, when government service offers no perks and impossibly low salaries. When a young lawyer decides to pursue government service, whether long term or short, s/he still bears the staggering law school debt load as that borne by his/her colleagues in private practice earning two to three times the income. Combining the debt load with family responsibilities and the other living expenses (including paying their own professional fees and dues), few can afford to forego their physical needs to pursue such lofty ideals as defending the Constitution.

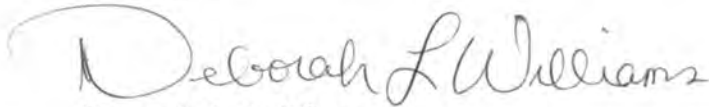
I will look to my own office to illustrate this point. I have been a lawyer for slightly over seven years. Although I have only three more years of law school debts, several of my colleagues still face many years of staggering debt. Nearly all of them are also starting families, and so their responsibilities are increasing with no relief in sight. They are all top notch lawyers and they hope to find a way to continue this career. I am a career public defender. I am proud of my work and I am proud of my colleagues. We do an extremely difficult job despite public vilification and increasingly draconian laws. Our salaries are now frozen but our bills are not. When family responsibilities can no longer be met on our salaries

Dr. William L. Smith
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(which are compensated well below our prosecutorial counterparts), our lawyers must leave us for greener pastures. But for the financial pressure, that decision would never be forced upon them.

Public defenders are absolutely necessary to the continued functioning of our criminal justice system and the protection of our society. We are the flip side of the law enforcement coin. One cannot exist without the other. I strongly urge this administration to include public defender offices when it defines the parameters and scope of the student loan offset program.

Sincerely,

A handwritten signature in cursive script that reads "Deborah L. Williams". The signature is written in dark ink and is positioned above the printed name and title.

Deborah L. Williams
Asst. Federal Public Defender

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