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REMARKS BY THE HONORABLE JAMES K. STEWART
DIRECTOR OF THE NATIONAL INSTITUTE OF JUSTICE

TO THE
NATIONAL CONFERENCE ON COURT TECHNOLOGY

DENVER

APRIL 26, 1988

NCJRS

OCT 14 1988

ACQUISITIONS

[REMINDER: MENTION JUDGES/POLICE BROWN BAG LUNCH]

THANK YOU, LARRY [POLANSKY, CONFERENCE CO-CHAIRMAN],

I APPRECIATE THE OPPORTUNITY TO SPEAK TO THIS DISTINGUISHED AUDIENCE. I WOULD ALSO LIKE TO ACKNOWLEDGE:

- o ED McCONNELL (PRESIDENT OF NATIONAL CENTER FOR STATE COURTS)
- o BO TORBERT (CHIEF JUSTICE OF THE SUPREME COURT OF ALABAMA, CHAIRMAN OF THE NCSC BOARD OF DIRECTORS, AND CHAIRMAN OF THE BOARD OF THE STATE JUSTICE INSTITUTE.)
- o DAVE TEVELIN, EXECUTIVE DIRECTOR OF THE STATE JUSTICE INSTITUTE.
- o HARVEY SOLOMON, DIRECTOR OF THE INSTITUTE FOR COURT MANAGEMENT OF THE NATIONAL CENTER.

LAST SEPTEMBER, NIJ HELD A JUDICIAL STATE OF THE ART CONFERENCE IN PHOENIX. WHAT I SAID ON THAT OCCASION IS ALSO APT HERE TODAY. THE STATE OF THE ART IS A STATE OF MIND. IT'S THE

STATE OF MIND OF JUDGES ON THE BENCH AND THE STATE OF MIND OF ADMINISTRATIVE JUDGES AND COURT ADMINISTRATORS,

YOUR INGENUITY AND INTEREST ARE VITAL TO ADVANCING TECHNOLOGY AND ITS APPLICATIONS IN THE COURTS. JUDGE JAMES CHENAULT, CHIEF JUDGE IN RICHMOND, KENTUCKY, WHO LED OUR SESSION ON VIDEO TECHNOLOGY IN PHOENIX AND WHO IS HERE TODAY IS AN EXAMPLE OF WHAT I MEAN. SIX YEARS AGO, HIS COURT BEGAN USING VIDEO RECORDING INSTEAD OF TRANSCRIPTIONS FOR ITS PERMANENT COURT RECORD.

I UNDERSTAND THAT IN SOME KENTUCKY JURISDICTIONS YOU CAN NOW WATCH LIVE COVERAGE OF TRIALS ON CABLE-TV. AND IN ONE CASE -- A MURDER TRIAL THAT HAD BEEN MOVED TO ANOTHER JURISDICTION -- WHEN THE TRIAL WAS LATER BROADCAST IN THE HOME JURISDICTION, IT WAS SO POPULAR THAT VIDEO RENTAL STORES DID A VERY BAD BUSINESS ON THOSE DAYS.

AMONG ITS OTHER ADVANTAGES, VIDEO RECORDING MAY BE ABLE TO SAVE COURTS CONSIDERABLE EXPENSE. IN A 5 WEEK LONG CIVIL TRIAL WHICH WENT TO APPEAL, IT COST \$17,000 TO PREPARE THE TRANSCRIPT

AND WITH A 13 MONTH LONG PROCESS, THE NEXT YEAR THAT COUNTY HAD VIDEO IN THE COURT AND THE SAME TRIAL TRANSCRIPT WOULD HAVE COST \$390 AND WOULD HAVE BEEN AVAILABLE IMMEDIATELY. JUDGE CHENAULT'S WILLINGNESS TO INNOVATE HAS MADE KENTUCKY A FORERUNNER IN THIS NEW APPLICATION OF VIDEO TECHNOLOGY -- ONE THAT MANY OTHER COURTS ARE SHOWING AN INTEREST IN -- IN MICHIGAN, LOUISIANA, PHILADELPHIA, WASHINGTON, AND NORTH CAROLINA. A VIDEO APPLICATION THAT NIJ HAS DONE RESEARCH ON IS THE USE OF VIDEOTAPED DEPOSITIONS OF CHILD SEXUAL ABUSE VICTIMS.

*Approximately 300
Police Deposition records
statements... a group
number are video
custodial interviews.
Immediate transcripts*

OVER 80 YEARS AGO ROSCOE POUND SUGGESTED THAT PUBLIC DISSATISFACTION WITH THE LAW AND THE COURTS IS INEVITABLE. THE GREATEST SOURCE OF DISSATISFACTION, ACCORDING TO POUND, WAS IN THE AREA OF JUDICIAL ORGANIZATION AND PROCEDURE. THAT IS PROBABLY STILL TRUE TODAY. BUT SOME OF THOSE DISSATISFACTIONS CAN BE REMEDIED.

[FEDERAL SPEEDY TRIAL -- JOEL GARNER STUDY, PRESS RELEASE
APRIL 24, 1988]

RECENT STUDIES BY BARRY MAHONEY AND DALE SIPES (BOTH

HERE TODAY) ON CASE PROCESSING, (FUNDED BY NIJ AND BJA) SUGGEST THAT JUDGES HAVE A SIGNIFICANT AMOUNT OF CONTROL OVER COURT DELAY, AND THAT TRIAL LENGTH CAN BE SHORTENED WITHOUT SACRIFICING FAIRNESS. SOME COURTS HAVE SUCCESSFULLY DEALT WITH THIS PROBLEM AND THEIR TECHNIQUES CAN CERTAINLY BE ANALYZED AND ADAPTED TO THE NEEDS OF OTHER COURTS.

THE TYPE OF STUDY I'VE JUST MENTIONED IS SURVEY RESEARCH. IT TELLS US ABOUT A PROBLEM IN A DESCRIPTIVE SENSE. THE MAHONEY AND SIPES STUDIES SURVEYED THE OFFICIAL RECORDS TO DETERMINE THE PACE OF LITIGATION IN NUMEROUS TRIAL COURTS.

BUT THERE IS ANOTHER KIND OF RESEARCH WHICH CAN BUILD ON AND ADVANCE THE DESCRIPTIVE WORK -- THAT IS, EXPERIMENTAL RESEARCH, WHICH SCIENTIFICALLY TESTS A PRACTICE THROUGH RANDOM ASSIGNMENT TO VARIABLE OPTIONS. WE'RE NOT ACCUSTOMED TO THINKING ABOUT EXPERIMENTAL RESEARCH IN THE COURTROOM. IN FACT, THE VERY IDEA MAY SEEM LIKE AN ATTACK ON THE PRINCIPLES OF JUSTICE AND FAIRNESS.

BUT WE NEED EXPERIMENTAL RESEARCH IN JUSTICE FOR THE SAME

REASON WE NEED IT IN SO MANY OTHER FIELDS, SUCH AS MEDICINE. WE
NEED TO BE ABLE TO TEST SOLUTIONS TO PROBLEMS.

THERE ARE SPECIAL DIFFICULTIES INVOLVED WITH JUDICIAL
EXPERIMENTS. BUT THEY ARE NOT ALWAYS INSUPERABLE ONES. FOR
EXAMPLE, NIJ RECEIVED AN INTERESTING PROPOSAL FOR A
CASE-PROCESSING EXPERIMENT. IT INVOLVED RANDOM ASSIGNMENT OF
MISDEMEANOR CASES -- EITHER TO MEDIATION, OR TO THE REGULAR
MISDEMEANOR ROUTE THROUGH THE COURTS. THOUGH IT WAS NOT YET
FULLY DEVELOPED ENOUGH TO FUND, IT DID NOT, IN MY VIEW, PRESENT
ETHICAL PROBLEMS -- SINCE WE WERE NOT CONSIDERING RANDOMLY
EXPERIMENTING WITH THE "IN/OUT" DECISION -- THIS COULD BE
IRRESPONSIBLE AS WELL AS UNJUST -- BUT WITH CRIMINAL MISDEMEANOR
SANCTIONS THAT DO NOT INCLUDE THE DENIAL OF ONE'S FREEDOM.

ANOTHER EXPERIMENT WE'VE DONE INVOLVES THE TEMPORARY USE OF
LAWYERS AS VOLUNTEER JUDGES. THEY HELP DEAL WITH CASE BACKLOGS
OR OTHER SHORT-TERM JUDICIAL NEEDS. (ALEX AIKMAN, WHO I
UNDERSTAND IS HERE TODAY, DIRECTED THIS RESEARCH EFFORT.) THESE
PROGRAMS CONTRIBUTED TO AN OVERALL DELAY REDUCTION PROGRAM, AT

LITTLE OR NO FINANCIAL COST, AND ATTORNEYS REPORT NO DISCERNIBLE DIFFERENCE IN THE QUALITY OF ADJUDICATION,

TODAY I'D LIKE TO SPEAK IN SOMEWHAT MORE DETAIL ABOUT THREE NEW TECHNOLOGIES WE'VE BEEN WORKING ON AT NIJ. THEY ARE NOT EXPERIMENTS PER SE, BUT THEY MIGHT WELL PROVIDE THE FOUNDATION FOR EXPERIMENTS IF YOUR COURT WERE SO INCLINED. I HOPE YOU'LL KEEP THAT IN MIND AS I SPEAK -- BECAUSE NIJ WOULD LIKE YOUR HELP IN DEVELOPING EXPERIMENTAL RESEARCH PROPOSALS, WHETHER THEY RELATE TO SENTENCING, CASE PROCESSING, OR ANY OTHER ASPECT OF THE ADMINISTRATION OF JUSTICE THAT COULD BE IMPROVED.

ALL THREE OF THE TECHNOLOGIES I'M GOING TO DISCUSS ADDRESS THE URGENT PROBLEM OF CROWDED JAILS AND PRISONS, BY PROVIDING ADDITIONAL SENTENCING OPTIONS.

FIRST, LET'S LOOK AT PRETRIAL DRUG TESTING. DRUG ABUSERS NOW CONSTITUTE THE MAJORITY OF ARRESTEES. A NEW NIJ RESEARCH PROGRAM HAS FOUND THAT BETWEEN 53 TO 79 PERCENT OF THOSE BEING ARRESTED IN MAJOR CITIES AROUND THE COUNTRY ARE USING ONE OR MORE DRUGS.

EXTENSIVE RESEARCH HAS DOCUMENTED THE CORRELATION BETWEEN AN INDIVIDUAL'S DRUG USE AND HIGH CRIME RATE. CLEARLY, KNOWING WHETHER SOMEONE USES DRUGS OR NOT COULD BE A VERY VALUABLE PIECE OF INFORMATION IN JUDICIAL DECISIONMAKING. UNTIL NOW, THE QUESTION HAS BEEN, HOW CAN YOU OBTAIN THAT INFORMATION?

WITH THE COOPERATION OF THE D.C. SUPERIOR COURT, NIJ-SPONSORED RESEARCH HAS CREATED A SYSTEM WHICH IDENTIFIES DRUG USERS. I'D LIKE TO SAY THAT THE NATIONAL INSTITUTE OF JUSTICE IS INDEBTED TO THE LATE CHIEF JUDGE H. CARL MOULTRIE AND THE PRESENT CHIEF JUDGE FRED B. UGAST OF THAT COURT. WE GREATLY APPRECIATE THEIR COURAGE AND FORESIGHT IN ADOPTING THE PRETRIAL DRUG TESTING PROGRAM.

LET ME BRIEFLY DESCRIBE HOW IT WORKS. WHEN AN INDIVIDUAL IS ARRESTED, THE D.C. PRETRIAL SERVICES AGENCY ASKS HIM OR HER TO GIVE A VOLUNTARY URINE SAMPLE. MOST ARRESTEES AGREE TO DO THE TEST, BECAUSE THEY'RE ASSURED THAT THE RESULTS ARE ONLY USED TO DETERMINE RELEASE CONDITIONS -- NOT TO BRING CHARGES.

IN THE D.C. PROGRAM, ARRESTEES WHO TEST POSITIVE FOR DRUGS

CAN BE RELEASED ON CONDITION THAT THEY REMAIN DRUG-FREE PENDING TRIAL. TO ASSURE COMPLIANCE, THEY MUST UNDERGO REGULAR DRUG TESTS DURING THE PRETRIAL PERIOD. IF CONTINUED DRUG USE IS DETECTED, SANCTIONS MAY BE APPLIED (FOR EXAMPLE, SEVERAL DAYS IN JAIL).

THE D.C. COURT HAS ACHIEVED SOME VERY POSITIVE RESULTS WITH THIS PROGRAM. DEFENDANTS WHO COMPLIED WITH THE DRUG-TESTING PROGRAM WERE LESS LIKELY TO BE REARRESTED BEFORE THEIR TRIALS. IN FACT, THE RATE OF PRETRIAL ARRESTS FOR THOSE INDIVIDUALS WAS VERY CLOSE TO THAT FOR DEFENDANTS WHO DID NOT USE DRUGS AT ALL. THOSE WHO DID NOT COMPLY WITH REGULAR MONITORING WERE REARRESTED AT A HIGHER RATE THAN THOSE WHO STAYED IN THE PROGRAM.

IN SHORT, THE PRETRIAL DRUG TESTING PROGRAM ALLOWED THE COURT TO REDUCE THE AMOUNT OF PRETRIAL REARRESTS, AND ALSO REDUCE THE DEMAND FOR DRUGS ON THE PART OF ARRESTEES WHO KNEW THEY HAD TO STAY CLEAN PENDING TRIAL.

PROGRAMS SIMILAR TO D.C.'S ARE BEING ESTABLISHED IN INDIANAPOLIS, TUCSON, PORTLAND AND SEVERAL OTHER CITIES. THERE

IS ALSO CONSIDERABLE POTENTIAL FOR THE USE OF DRUG-TESTING WITH POST-RELEASE OFFENDERS, TO REDUCE CRIME AND THE DEMAND FOR DRUGS.

INCIDENTALLY, THE SAME DRUG TESTING INFORMATION WHICH ASSISTS JUDGES CAN ALSO HELP POLICE, PROSECUTORS, AND DRUG TREATMENT FACILITIES. IN D.C., FOR EXAMPLE, THE TESTING PROGRAM ENABLED OFFICIALS TO DETECT A GROWING USE OF COCAINE, AND HIGH LEVELS OF PCP USE.

CURRENT DRUG TESTING RELIES ON URINALYSIS. BUT OTHER TESTING TECHNOLOGIES ARE IN THE RESEARCH STAGE, INCLUDING HAIR ANALYSIS. NIJ IS CURRENTLY FUNDING A PROJECT TO HELP REFINE THIS TECHNOLOGY. IF IT PROVES FEASIBLE, HAIR ANALYSIS MAY BE ABLE TO PICK UP WHERE URINALYSIS LEAVES OFF. IT CAN DETECT DRUG USAGE FOR AS LONG AS FOUR MONTHS PRIOR TO THE TEST -- IN CONTRAST TO 48 HOURS FOR URINALYSIS.

HAIR ANALYSIS WOULD ALSO BE A BOON BECAUSE IT WOULD LIMIT THE LEGAL AND OPERATIONAL PROBLEMS OF URINALYSIS -- PROBLEMS LIKE THE CLAIM THAT "SOMEBODY PUT SOMETHING IN IT" OR "THAT'S NOT MINE." OR THE POTENTIAL FOR SUBSTITUTING A DRUG-FREE SAMPLE.

AT LEAST ONE ENTREPRENEUR, IN TEXAS, SELLS POWDERED URINE BY MAIL ORDER. IT IS GUARANTEED TO BE DRUG-FREE. "ALL YOU DO," SAYS THE ENTREPRENEUR, "IS ADD WATER, PREFERABLY DISTILLED WATER, AND YOU'RE PREPARED TO MEET ANY UNANTICIPATED URINE DEMAND."

A SECOND TECHNOLOGY THAT OFFERS CONSIDERABLE PROMISE FOR THE COURTS IS ELECTRONICALLY MONITORED HOME CONFINEMENT. THIS IS AN ALTERNATIVE SANCTION THAT HELPS TO FILL THE GAP BETWEEN THE TOO-MUCH-SUPERVISION OF PRISON, AND THE TOO-LITTLE-SUPERVISION OF PROBATION.

THERE ARE SEVERAL ELECTRONIC DEVICES CURRENTLY IN USE. A COMMON ONE IS A CONTINUOUSLY SIGNALLING DEVICE INVOLVING A TRANSMITTER WHICH IS ATTACHED TO THE PERSON'S ANKLE.

A CENTRAL COMPUTER COMPARES THE TRANSMISSIONS FROM THE DEVICE WITH THE PERSON'S CURFEW SCHEDULE AND ALERTS OFFICIALS TO ANY UNAUTHORIZED ABSENCES.

OFFICIALS IN 32 STATES ARE NOW USING VARIOUS KINDS OF ELECTRONIC MONITORING DEVICES TO SUPERVISE SEVERAL THOUSAND PEOPLE ON PROBATION, PAROLE, OR AWAITING TRIAL. AT NIJ WE ARE

CURRENTLY SUPPORTING EXPERIMENTS USING ELECTRONIC MONITORS AS AN ALTERNATIVE SANCTION.

ELECTRONICALLY MONITORED HOME CONFINEMENT PROMISES SIGNIFICANT BENEFITS TO THE COURT AND THE COMMUNITY. IT COSTS FAR LESS THAN INCARCERATION -- AND OFFENDERS CAN HELP PAY FOR THE MONITORS. IT ALSO ALLOWS OFFENDERS TO REMAIN PRODUCTIVE, AND IT IMPROVES PROBATION AND PAROLE OFFICERS' ABILITY TO SUPERVISE. AS OUR KNOWLEDGE BASE GROWS AND THE TECHNOLOGY IS REFINED, I THINK WE WILL SEE WIDER APPLICATIONS OF ELECTRONIC MONITORING. (JUDGES MAY EVEN WISH TO MONITOR THE WHEREABOUTS OF ATTORNEYS WHO ARE SUPPOSED TO BE IN THEIR COURTROOM.)

THE LAST ALTERNATIVE SENTENCE I'D LIKE TO DISCUSS TODAY IS A MODERN APPLICATION OF A VERY ANCIENT SENTENCE. THIS IS NOT EXACTLY HIGH-TECH -- BUT IT IS A VERY UP-TO-DATE EUROPEAN IMPORT. PERHAPS IT CAN BE CALLED A NEW TECHNOLOGY IN THE WIDEST SENSE -- THAT IS, A NEW APPLICATION OF SKILL. THE ANCIENT PENALTY I'VE REFERRED TO IS THE FINE -- AND THE MODERN APPLICATION OF IT IS THE DAY-FINE.

JUDGES ACROSS THE COUNTRY HAVE ACKNOWLEDGED THE ADVANTAGES OF FINES AS SENTENCES. BUT THERE SEEMS TO BE LITTLE RELATIONSHIP BETWEEN THE HIGH OPINION IN WHICH FINES ARE HELD AND THE FREQUENCY WITH WHICH THEY ARE USED. A SURVEY OF JUDGES FOUND THAT THERE ARE TWO COMMONLY PERCEIVED PROBLEMS INHIBITING THE WIDER USE OF FINES. ONE IS THE BELIEF THAT FINES ALLOW THE MORE AFFLUENT OFFENDERS TO "BUY THEIR WAY OUT." THE OTHER IS THAT POOR OFFENDERS CANNOT PAY FINES.

BUT DAY FINES PRESENT AN ALTERNATIVE THAT ADDRESSES BOTH OF THESE CONCERNS -- ONE THAT COURTS IN EUROPE, PARTICULARLY SCANDINAVIA AND GERMANY, HAVE USED VERY SUCCESSFULLY. UNDER THIS SYSTEM, THE FINE IS CALCULATED IN UNITS. THE SERIOUSNESS OF THE OFFENSE DETERMINES THE NUMBER OR THE RANGE OF UNITS THAT ARE IMPOSED. THEN THE MONETARY VALUE OF EACH UNIT IS SET IN RELATION TO WHAT THE OFFENDER CAN AFFORD. FOR EXAMPLE, IF TWO OFFENDERS WITH SIMILAR PRIOR RECORDS (AND NO PARTICULAR THREAT TO COMMUNITY SAFETY) WERE CONVICTED OF EQUALLY SERIOUS CRIMES, THEY MIGHT EACH BE ASSESSED A 5-DAY FINE. IF ONE EARNED ONLY THE MINIMUM WAGE,

HOWEVER, HE OR SHE WOULD BE FINED \$135. IF THE OTHER EARNED TEN TIMES AS MUCH, HIS FINE WOULD BE \$1,350. IF EITHER ONE FAILED TO PAY THE FINE, THEY WOULD EACH SERVE THE SAME NUMBER OF DAYS IN JAIL -- FIVE.

THE DAY-FINE SYSTEM MAKES FINES A SERIOUS PENALTY -- ONE THAT IS FAIR, BUT SEVERE ENOUGH TO CONSTITUTE REAL PUNISHMENT AND CARRY A DETERRENT MESSAGE. AND OF COURSE, UNLIKE INCARCERATION, FINES ACTUALLY BRING MONEY INTO THE JUSTICE SYSTEM.

NIJ IS CURRENTLY FUNDING A DEMONSTRATION IN APPLYING A DAY-FINE SYSTEM TO THE CRIMINAL COURTS OF STATEN ISLAND, NEW YORK AND THE STATE JUSTICE INSTITUTE IS UNDERTAKING A RELATED EFFORT WITH THE PHOENIX COURTS. I THINK THESE WILL BE SIGNIFICANT STUDIES. UNTIL VERY RECENTLY, THERE HAS BEEN LITTLE SYSTEMATIC EXAMINATION OF FINE USE AND ADMINISTRATION -- AND VIRTUALLY NO ATTENTION TO THE IMPLICATIONS OF THE EXPANDED USE OF FINES. THESE DEMONSTRATION PROJECTS WILL BE A FIRST EFFORT TO TEST THE CONCEPT SCIENTIFICALLY.

IN CLOSING, I WOULD LIKE TO RENEW MY INVITATION TO YOU TO

DEVELOP PROPOSALS FOR EXPERIMENTAL RESEARCH THAT NIJ COULD SUPPORT, WHILE WE ARE NOT THE "NATIONAL INSTITUTE OF COURTS" -- WE DO RESEARCH ACROSS THE BOARD IN CRIMINAL JUSTICE -- AND WHILE OUR BUDGET IS SMALL -- WE ARE SEEKING GOOD PROPOSALS FOR JUDICIAL EXPERIMENTS, AN EXAMPLE MIGHT BE AN EXPERIMENT INVOLVING RANDOM ASSIGNMENT OF MISDEMEANANTS TO ELECTRONIC MONITORING OR TO COMMUNITY CORRECTIONS FACILITIES.

IN THE PAST FEW YEARS, CRIMINAL JUSTICE RESEARCH HAS COME A LONG WAY ON VERY LITTLE FUNDING. A NATIONAL SCIENCE FOUNDATION REPORT ON PER CAPITA RESEARCH EXPENDITURES FOR FY 88 FOUND THAT WE WILL SPEND \$35.83 PER PERSON ON HEALTH RESEARCH, \$7.92 PER PERSON ON ENERGY RESEARCH, AND \$3.33 PER PERSON ON AGRICULTURE STUDIES, BUT ON CRIME RESEARCH, WE INVEST ONLY EIGHT CENTS PER PERSON. THE \$500 MILLION DRUG BILL CURRENTLY BEFORE CONGRESS CONTAINS NOT A PENNY FOR RESEARCH.

UNDER THE CIRCUMSTANCES, WE MUST USE OUR SCARCE RESOURCES WISELY. I HOPE YOU CAN HELP IN THAT ENDEAVOR BY HELPING US DESIGN AND CARRY OUT NEEDED COURT RESEARCH. THANK YOU.