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OVERCROWDING OF THE COURTS

A recurrent complaint among eminent jurists calls attention to the overcrowding of the courts and the long delays in getting a legal controversy finally resolved. The delays in bringing criminals to justice are very hurtful to the functioning of a law-abiding society.

The U.S. Supreme Court, in its term recently ended, heard arguments on only 184 of the 5,178 cases appealed to it. Supreme Court watchers have observed that one of the clearest current trends is a limitation of access to the federal courts.

Other court watchers would say that the trend didn't start soon enough and hasn't moved fast enough. Two of the 184 cases involved busing. Many people believe that the courts are simply not the forum in which to resolve such sensitive social issues.

Those who would like to reduce the overcrowding of the courts would do well to look into how much of the problem is caused by federally-financed litigation. It is possible that the government has caused part of the problem by its provision of free legal services on a massive scale.

The American Bar Association Journal for May contained this lawyers association's defense of the Legal Services Corporation program, one of the most controversial of all federal programs. Its author, Roger C. Cramton, described it as "a dispassionate assessment" of the issues involved in the Legal Services program.

Cramton was chairman of the board of directors of the Legal Services Corporation from 1975 to 1978. His ideas appear to reflect those prevalent in a large section of the legal community today.

The ABA Journal article was illustrated by a painting of an elderly woman sitting amid all her worldly possessions in a garbage-strewn alley. It was definitely depression-style, tear-jerking imagery.

Above her shawl-draped head is the graffeti inscription "MAD DAVE." To her left, in what has to be regarded as a heavy-handed attempt at irony, is a Bowery-type bum sitting

beside a trash recepticle bearing a "KEEP AMERICA BEAUTIFUL!" sign.

The painting is apparently intended to illustrate the kind of person who needs the Legal Services Corporation. With no food, no home, no money, it says something about lawyers that the ABA Journal's readers are expected to infer that her most pressing need is a lawyer.

But even the artwork does not prepare the reader for some of the extreme ideas contained in the article. The thrust of the article is that the public should not be indignant at being forced to fund nondiscrimination suits, massive Indian land claims, and fights by illegal aliens to avoid deportation, because, says Cramton, the "well-to-do use members of the private bar to enforce their rights in these cases."

There's a big difference, however. When the "well-to-do" bring enormous, complex lawsuits in order to create speculative new "rights," they have to pay for them. This economic requirement rightly serves as a check on excess, unnecessary, frivolous litigation.

The judiciary is one of our greatest institutions, but it cannot solve all the problems that confront our society. The courts have always refused, for example, to resolve disagreements unless they are being argued by persons who have a real stake in the outcome. The courts also refuse to give advance opinions as to what they might or will rule when a legitimate controversy is presented.

Some controversies are too small to be litigated; and some are too large.

The cost of litigation for the person bringing a lawsuit normally prevents suits involving small controversies. This is healthy because the courts should not be clogged up with litigation when the outcome is of less value than the cost of litigation.

Small claims courts can resolve some of these controversies. Some cities, such as Kansas City, Los Angeles, and Atlanta, have conducted experimental programs to settle small disputes without lawyers.

However, if the litigation doesn't cost you anything, then there is no deterrent to filing suit on any claim, no matter how small. That's where Legal Services comes in. By making lawyers costless to plaintiffs and defendants, Legal Services fosters the proliferation and protraction of inconsequential litigation.

Some issues, on the other hand, are too large for lawyers and lawsuits. These include questions such as whether the major parts of the states of Maine, New York, Massachusetts, and North Carolina "rightfully" belong to the Indians -- battles which are currently being waged with Legal Services (that is, taxpayers') money.

The courts formerly would have avoided questions of this magnitude, in part because of the tremendous costs of litigation.

One way to cut down on the overcrowding of the courts would be to stop taxpayer funding of litigation. Another way would be for the courts to decline to take cases that are better resolved in legislative forums.