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Symposium Introduction

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SYMPOSIUM INTRODUCTION

*Norman L. Reimer**

In the American justice system, the judge controls the court. All the trappings of courtroom decorum underscore this power. The judge is usually placed front and center, often on a raised platform. Everyone present is expected to rise when the judge enters the room. The audience is required to be silent. Lawyers are expected to rise when speaking to judges, and to address them with an honorific. Wanton disrespect may result in disciplinary action or contempt proceedings. These protocols of honor and deference are emblematic of the judge's supreme authority and power to control what happens in the court proceedings. Thus, when considering the justice crisis that afflicts the criminal courts in the United States, two unavoidable questions must be confronted. First, to what extent has judicial use or abdication of this authority contributed to the crisis? Second, how can the prudent exercise of judicial authority alleviate the pervasive injustice in the nation's lower courts?

The National Association of Criminal Defense Lawyers ("NACDL") has for the past decade sought to expose and rectify the multitude of problems that afflict the criminal courts: failure to provide counsel; inadequate advice of rights; lack of interpreters for non-English speaking accused persons; inadequate resources and staggeringly large caseloads when counsel is available; the misuse of bail as ransom to procure guilty pleas; the imposition of a litany of fees, which may subject the individual to subsequent sanctions; one-time only plea offers that require accused persons to plead guilty without affording counsel adequate time to conduct an investigation or procure discovery; and the failure to recognize and adequately apprise the accused of a cascade of potential consequences that may result from a guilty plea.

For the most part, NACDL's criminal court reform efforts have focused on advocating for the right to counsel through a concerted effort to ensure independence, funding, and training for the public defense bar. Other efforts have addressed overcriminalization, pretrial justice reform,

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discovery reform, and a more enlightened use of diversion courts. Reform in any of these areas often requires action by the executive and legislative branches, which bear responsibility for the substantive and procedural law that governs criminal practice and for providing the funding necessary to secure meaningful and effective assistance of counsel. Or it may require system-costly litigation. Any of these avenues can take years to bear fruit. For too long, reformers have failed to look at the central role that judges play in the criminal court. They have failed to confront the reality that on one hand, judges may contribute to injustice, and on the other hand, judges can serve as the most effective catalysts for reform.

The Judicial Responsibility for Justice in Criminal Courts Conference convened by the Monroe Friedman Institute for the Study of Legal Ethics sought to change that. With support from NACDL's related foundation, the Foundation for Criminal Justice, and additional support from a Bureau of Justice Assistance grant to promote the right to counsel, NACDL was pleased to sponsor and partner with the Institute, as well as the Association of Prosecuting Attorneys, the New York Office of Court Administration, and the Center for Court Innovation to plan and implement this symposium. NACDL has produced a Conference Report that documents the Symposium presentations and compiles a litany of recommendations designed to engage the judiciary in a wide range of initiatives to help alleviate the justice crisis in criminal courts.¹ Additionally, the thought-provoking Articles and Essays in this Symposium contribute immeasurably to a broad national effort to produce significant and lasting reform.

¹ ANDREA M. MARSH, JUDICIAL RESPONSIBILITY FOR JUSTICE IN CRIMINAL COURTS (forthcoming) (on file with Ellen Yaroshefsky, Distinguished Professor of Legal Ethics and Executive Director, Monroe H. Freedman Institute for the Study of Legal Ethics, Maurice A. Deane School of Law at Hofstra University).