

August 28, 2002

Senator Russ Feingold  
506 Hart Senate Office Building  
Washington, DC 20510-4904

Dear Senator Feingold:

A few months ago I spoke at one of your Milwaukee meetings about the difficulty Americans have accessing the federal courts. When I spoke, I offered to join you in an inquiry into how citizens might be better served by a judiciary that is understaffed, overworked, expensive, slow and, to most, mysterious and intimidating.

I had just a few moments to pique your interest, and I later received a call from one of your staff following up on the issue.

Some of my suggestions included:

- Giving public libraries free access to Pacer and other legal resources, such as Westlaw or LexisNexis;
  - People must know what their rights and the laws are in order to exercise their rights.
- Providing criminal or civil penalties for individual officials who violate civil rights;
  - Currently, municipal league risk-management insurance pools and the like protect officials who violate civil rights, and taxpayers end up defending the officials who violate such things as public records laws and First Amendment guarantees. If a plaintiff wins a case, the official does not pay and is not accountable. The damages come from the public treasury.
- Providing government-paid counsel for some civil rights claims in civil litigation;
  - Government officials frequently exceed their authority in small matters that go unresolved because citizens have little recourse unless a private attorney can reduce the case to monetary damages. Yet there are some violations that are not about money, and a cadre of federal attorneys paid to advocate for individuals in such cases would be a quantum leap in eliminating arbitrary exercises of authority by officials who understand they have no personal accountability or liability.
- Establishing a fund for civil rights defense costs:
  - A potential plaintiff may be unable to approach the court even when an attorney is willing to gamble on the outcome because the costs themselves are excessive. While a municipality has the general fund at its disposal to defend, investigate, photocopy and depose, seeking

justice can destroy a victim. The system now allows government entities to use public money to defend individual acts by officials, enabling them to simply out-brief, out-investigate, out-depose their opponents.

- Civil plaintiffs should have access to court records and photocopies at cost rather than 50 cents or \$1 a page. The court should not be a revenue center.
- The courts have a monopoly on transcription costs. Parties to a case should not be forced to pay a court reporter \$3 a page – often in advance – in order to appeal a decision. This is a financial obstacle that has as a consequence the chilling of parties who support the courts through tax dollars in the first place, then find they are stopped from approaching it by the courts' own devices.
  - For example, I know of an instance where a court reporter demanded a sum in advance to begin transcribing a transcript needed for appeal. The amount demanded was an estimate and greater than the actual cost of the work once it was completed, and the difference was refunded. Yet in such cases, individual litigants funding their own cases against government entities have to come up with the cash, and this is difficult when the cost is \$1,000 or more just for a transcript. In cases where the reporter demands more than the actual cost for transcriptions, even if the money is later refunded the effect is to deny access to the courts for those who might be able to come up with the actual cost but can't get the extra, arbitrary amount.

Senator Feingold, the way the federal courts interact with the public is a great problem. The equitable administration of justice is an essential component of a free society, and I propose to work with you to evaluate the status of the federal judiciary at this time, and to work to reconfigure the administration of justice so that individuals are not swept away like gnats off crème brulee.

Sincerely,

[Geoff Davidian](#)

Editor and Publisher

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