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## Opinion hits on American truism: Justice delayed is justice denied

Today the word “bully” as a noun or verb has entirely negative connotations. But it is easy to forget that a century ago “bully” was also used as an adjective meaning “superb” or “wonderful.” And that is exactly how Theodore Roosevelt commonly used the term.

His most famous use of the word was in describing the White House as a “bully pulpit.” He saw the office of the presidency as providing an excellent opportunity to speak out and be listened to on a range of issues.

I thought of this recently when I read the opinion in *People v. Dailey*, 2018 IL App (1st) 152882 (filed Sept. 4, 2018). On the surface, it was a run-of-the-mill drug case. But the opinion written by Justice Aurelia Pucinski turned it into something much more significant.

The 1st District, 2nd Division, affirmed Dailey’s conviction for possession of a controlled substance and his sentence of 30 months in prison. But before closing, the opinion then alluded to “a troubling delay in this case.”

Dailey was sentenced in August 2015. With credit for his pretrial custody, he was released in August 2016. His mandatory supervised release expired in August 2017.

Yet the one-volume record in this case was not delivered to the State Appellate Defender’s Office until May 2016. Consequently, the opening brief was not filed July 2017, that is, 11 months after Julian Dailey’s release from prison and one month before the end of his supervised release period. By the time the reply brief was filed in April 2018, Dailey’s supervised release had been completed eight months before.

The opinion’s conclusion?

A very terse one: “This is not justice.”

Yet instead of excoriating the easy targets of court reporters, court clerks, state’s attorney’s office and state appellate defender, the opinion refreshingly points the finger where it belongs: On the elected government officials who have failed to provide these offices with the financial resources necessary to process criminal appeals in a timely fashion.

The court notes that it usually takes about a year for the court clerk to transmit the record on appeal to the appellate court. The major source of this problem is the length of time it takes to get the transcripts from the court reporter.

Thus, the court urges that lawmakers provide the financial resources the court reporters need to efficiently prepare transcripts.

It then “respectfully suggests” that the governor review the budget of the state appellate defender to make sure that it has the

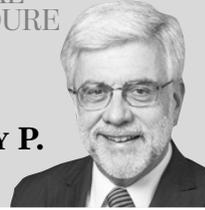
*On the elected government officials who have failed to provide these offices with the financial resources necessary to process criminal appeals in a timely fashion.*

proper level of staffing to expedite the process of reviewing cases, drafting and filing motions and orders and preparing for and handling oral argument.

(It also suggests that the state appellate defender might create a procedure to insure that defendants serving short sentences might have their cases be considered out of order. This would solve the problem of defendants

CRIMINAL  
PROCEDURE

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learning that they have obtained appellate relief long after they have served their sentences.)

But the court also insists that Cook County, and not just the state of Illinois, must also increase funding for its lawyers. The court characterized the Cook County State’s Attorney’s Office as an office that is “clearly stretched” and in serious need of better funding and staffing.

And it is the deadly combination of staffing and funding levels in all these state and county offices that causes what the court calls “[T]he slippery slope we see all too often. Once it becomes acceptable for every deadline to slide, the avalanche of missed dates [is] inevitable at every level.”

The opinion ends with some thoughts that deserve to be quoted

at length: “Let us reiterate the core principle of our democracy: That justice requires a speedy resolution. Delaying appeals causes hardship on the defendant and his family; burdens the appellate court with the unenviable task of deciding cases after the defendant has served his time; may impact unnecessarily on the Illinois Department of Corrections headcount, resulting in unnecessary costs to taxpayers; and, in cases where the appealable issue leads to a reversal or remand, may deny the defendant of his most fundamental protected right: his liberty.”

Everyone wants to get “tough on crime,” but no one wants to pay for it. And the division of responsibilities in our criminal justice system between county and state can create its own set of problems. John Pfaff, a law professor at Fordham University School of Law, pointed this out last year in his book “Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform” (Basic, 2017).

He noted that a county prosecutor’s decision to charge a felony is essentially cost-free to her employer because prison beds are provided “free” to the county by the state government.

And to add to the irony, a prosecutor’s decision to seek leniency through a misdemeanor charge actually redounds to the detriment of her employer because beds in the county jail come out of the county budget.

One way or the other, law enforcement costs money. The 1st District in *Dailey* offers a challenge to both government and taxpayers: If you want an effective criminal justice system, you have to provide the necessary financial support.