FUTURE TRENDS IN STATE COURTS

2012

Special Focus on Courts and Community
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Justice Edward C. Moore was charged with finding artwork for the new 4th District Court of Appeal building in Santa Ana, California with no budget. He contacted the school superintendent and the probation department got involved. Students read court cases and depicted them in murals. This year’s Trends cover was created by a 17-year-old at Juvenile Hall. The case involved gang violations and disfiguring a public place and the young artist had also been charged with graffiti crimes. The resulting mural hangs in the courthouse, along with more than a dozen other paintings depicting Orange County, California cases.
FUTURE TRENDS IN STATE COURTS 2012

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The *Future Trends in State Courts 2012* editorial staff also recognizes LexisNexis for their ongoing provision of online legal resources and research support.

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**Defining a Trend for the Purposes of this Publication**

*Future Trends in State Courts 2012* takes a somewhat broad view of what a trend is. This peer-reviewed publication highlights innovative practices in critical areas that are of interest to courts, and often serves as a guide for developing new initiatives and programs, and informing and supporting policy decisions.
Future Trends in State Courts 2012 articles have been through a rigorous review process. The members of the 2012 Review Board have contributed countless hours to providing valuable feedback on each submission. The patience and commitment of the review board and authors as they work through this process is greatly appreciated:

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During these tough economic times, courts have trimmed their budgets with a variety of measures, such as furloughing staff, closing courtrooms, and reducing operating hours. Each of these measures jeopardizes public access, making it all the more important for courts to reach out to the communities they serve. While it is critical that legislatures, executives, and the public understand the role of the Third Branch of government, courts must continually strive to improve awareness of how the justice system makes a difference in people’s everyday lives.

This year’s edition of the National Center for State Courts’ *Future Trends in State Courts* series focuses on “Courts and the Community”—not only how courts are presenting themselves to lawmakers and the public, but also what courts are doing to confront social problems in their jurisdictions. It’s inspiring to read articles about how courts have responded to social issues, such as:

- Blighted housing and real estate in Cleveland due to questionable “flipping” practices involving depressed properties;
- The plight of returning combat veterans, both men and women, in Orange County, California;
- Coordination between state agencies and tribal courts on issues involving children; and
- Intensive monitoring for child support cases in Virginia.

*Future Trends 2012* confronts other topics, as well—a number of which also feature “Courts and the Community” as an essential component. For example, “Better Courts” features articles about the work of the American Bar Association’s *Task Force on Preservation of the Justice System* and how to effectively present court budgets to legislatures by stressing concrete results over abstract concepts. “Court Education” discusses generational differences among those who work in the courts—and what needs to be done to improve their commitment to court administration as a career. “Leadership in the Courts” includes the perspectives of judges and state court administrators on where the courts need to go next. A special section examines what courts are doing to ensure the privacy of personal data.

*Future Trends in State Courts 2012* is essential reading for those who work in the courts, study the courts, or are interested in pursuing a career in the courts. This year’s collection of articles offers a comprehensive overview of what courts are doing nationwide to reach out to their communities and improve their service to the public.
KEYNOTE ARTICLE

CHIEF JUSTICE WALLACE B. JEFFERSON

Supreme Court of Texas
RECOGNIZING AND COMBATING THE “SCHOOL-TO-PRISON PIPELINE” IN TEXAS*

Hon. Wallace B. Jefferson
Chief Justice, Supreme Court of Texas

Criminalizing kids for minor misbehavior in our schools unnecessarily exposes them to our justice system and increases the likelihood they will drop out of school and face later incarceration. Involvement of all stakeholders, including judicial leaders, is imperative to developing collaborative, multifaceted solutions to this “school-to-prison pipeline.”

We have all heard the stories: a boy issued a dozen misdemeanor tickets by school police for cursing, wearing baggy pants, and refusing to follow teachers’ instructions; an honor student expelled and charged with violent criminal conduct and possession of a weapon for shooting spitballs at fellow classmates; and a girl, age 12, ticketed for using perfume after her classmates claimed she had body odor. These extreme examples reflect a growing problem: the criminalization of children for nonviolent offenses that result in a trip not to the principal’s office, but to a courtroom.

A 2005 study by Texas A&M University’s Public Policy Research Institute concluded that, of the risk factors associated with future involvement in the juvenile justice system, the single greatest predictor is a history of disciplinary referrals at school (cited in Texas Appleseed, 2007: 2). Some have tagged this phenomenon—that school discipline serves as a gateway to the juvenile justice and adult criminal justice systems—the “school-to-prison pipeline.” Nowhere is this more evident than in Texas, where one-third of all youth in a locked-down facility have already dropped out of school and more than 80 percent of Texas adult prison inmates are school dropouts (Texas Appleseed, 2007: 1-2).

Identifying the Problems
Two extensive studies of Texas public-school students shed light on the relationship between school discipline, dropout rates, and involvement in the justice system. The first study—Texas’ School-to-Prison Pipeline, a series of three reports by Texas Appleseed—examined disciplinary data self-reported by school districts and courts. The second study—Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement by the Council of State Governments Justice Center and Public Policy Research Institute—tracked all Texas public-school seventh graders in 2001, 2002, and 2003 (nearly one million students) for at least a six-year period.

The studies’ findings are troubling.
Suspensions and expulsions are common in schools today. Nationally, nearly 4 percent of all students were suspended in 1974. In 2006 that figure rose to 7 percent. Of the one million students studied in Texas, nearly 60 percent were suspended or expelled at least once between seventh and twelfth grade, and 15 percent received 11 or more suspensions or expulsions during that same period (Council of State Governments, 2011: x, 5, 36).

Ticketing is also common, used most often to punish students for low-level, nonviolent offenses like disruption of class, disorderly conduct, and truancy. Texas Appleseed conservatively estimates that more than 275,000 non-traffic tickets are issued to juveniles as young as six in Texas each year, 120,000 of those for truancy (2010c: 1, 18, 76). One municipal court judge in Houston estimates that he sees approximately 150 juvenile ticketing cases per day during the school year (St. George, 2011).

Most disciplinary actions occur at the discretion of school officials and are not the result of behaviors mandating discipline. Only 3 percent of the disciplinary actions reviewed in the Breaking Schools’ Rules study were for conduct mandating suspension or expulsion under Texas law, including, for example, use of a firearm on school grounds or sexual assault. All other
disciplinary actions were discretionary and most commonly involved violations of a school’s code of conduct rather than criminal behavior (Council of State Governments, 2011: 38).

**Students who are suspended or expelled are more likely to repeat a grade or drop out of school, especially when disciplined repeatedly.** Of the students disciplined at least once in the Breaking Schools’ Rules study, 31 percent repeated a grade at least one time and nearly 10 percent dropped out of school. Of the students disciplined 11 or more times, nearly 60 percent did not graduate from high school during the study period. By comparison, only 5 percent of the students not disciplined repeated a grade and only 2 percent dropped out (Council of State Governments, 2011: 55-58).

**School discipline increases exposure to the justice system.** Almost one quarter of students disciplined between seventh and twelfth grade, and nearly half of those disciplined 11 or more times, had contact with the juvenile justice system. In contrast, only 2 percent of nondisciplined students had contact with the juvenile justice system. The suspension or expulsion of a student for a discretionary school violation nearly tripled the likelihood of juvenile justice contact during the subsequent academic year (Council of State Governments, 2011: 66, 69, 70).

Ticketing also leads to involvement in the justice system. Receipt of a ticket in Texas requires that the student appear with a parent in a municipal court or before a justice of the peace (Texas Appleseed, 2010c: 69). While the Texas legislature mandated that courts immediately issue a nondisclosure order upon the conviction of a child for a misdemeanor offense punishable by fine only, Texas Appleseed asserts that the nondisclosure law is not working in practice, leaving these misdemeanors on a student’s record (2010c: 5, 71).

Adolescents are more likely than adults to engage in risk-taking behavior and are less able to understand the consequences of that behavior because critical areas of the brain have not yet fully matured. As the brain develops, there is an increased ability to control reckless, high-risk behavior. Therefore, arrests drop off substantially after adolescence, and the vast majority of adolescents who commit a crime do not reoffend as adults (Wisconsin Council on Children and Families, 2006: 4, 7-9, 12, and 15). This research demonstrates a need to reconsider subjecting adolescents to adult consequences in our courts for minor misbehavior in the classroom.
Recognizing and Combating the “School-to-Prison Pipeline” in Texas

But the problem is not limited to Texas: nationally, 50 percent of students with mental illness age 14 and older drop out of high school, and 73 percent of those who drop out are arrested within five years (Texas Appleseed, 2010b: 65).

Finding a Solution

These invaluable studies add important numbers to anecdotal evidence of needed reforms. Texas officials are confronting this troubling data head on. For the past several years, school and juvenile-justice officials, legislators, and the judiciary have been exploring ways to evaluate and revise the current system.

To bring light to the issue and the need for improvement in school disciplinary policies, I pled for action during my 2011 State of the Judiciary speech:

Charging kids with criminal offenses for low-level behavior issues exacerbates the problem. Among those suspended and expelled, minority and special education students are heavily over-represented. Of course, disruptive behavior must be addressed, but criminal records close doors to opportunities that less punitive intervention would keep open. Let us endeavor to give them a chance at life, before setting them on a path into the adult criminal justice system.

The Texas legislature took this message to heart. State Senator John Whitmire, chairman of the Senate Criminal Justice Committee, agreed that Texas must address issues raised in my State of the Judiciary speech and by other advocates for juvenile-justice reform. In that regard, he and his colleagues made key changes to the law that specifically target issues identified in these studies. For example, the legislature eased the state’s “zero-tolerance” law by requiring school districts to consider mitigating circumstances, including self-defense, intent, disciplinary history, and a student’s disability, before making a disciplinary decision. The Texas legislature also repealed a statutory provision that allowed school districts to charge students with a Class C Misdemeanor for any code-of-conduct violation, eliminated “persistent misbehavior” as a reason for expulsion, eliminated ticketing of young students for nonviolent misbehavior and truancy, and reserved ticketing of older students as a last

School disciplinary policies disproportionately affect minority and special-education students. Though African-American students represented 14 percent of the Texas public-school population in 2008-09, they accounted for 33 percent of out-of-school suspensions, 24 percent of in-school suspensions, and 25 percent of all expulsions. White students represented 35 percent of the student population but accounted for only 18 percent of out-of-school suspensions, 27 percent of in-school suspensions, and 21 percent of expulsions (Texas Appleseed, 2010a: 7; 2010b: 44).

While African-American, Hispanic, and white students were removed from school for mandatory disciplinary violations at rates comparable to their respective proportions of the school population, minority students were disciplined for discretionary violations and had contact with the juvenile justice system at an alarmingly disproportionate rate (Council of State Governments, 2011: 42, 67).

The same holds true for students who qualified for special-education services: nearly 75 percent were suspended or expelled at least once. But a student’s involvement in the disciplinary system varied depending on disability. While students with a physical disability, autism, or mental retardation were less likely to experience suspension or expulsion, students diagnosed with a learning disability or emotional disturbance had a 24 percent higher probability of being suspended or expelled for a discretionary disciplinary action (Council of State Governments, 2011: 49-53).

Minority and special-education students likewise received a disproportionate share of tickets—in some school districts more than double their representation in the student body (Texas Appleseed, 2010c: 6-7, 89, 95-96).

Resources are not available to help those who need it most. In 2008 only 18 percent of Texas children eligible to receive public mental-health services actually received them (Texas Appleseed, 2009: 3; 2010b: 64-65). And only 28 percent of Texas public schools employ a licensed mental-health professional (Texas Appleseed, 2010b: 64).
resort to be used only after the school has tried other internal disciplinary measures (Council of State Governments: 9). These efforts are in addition to those the Texas legislature has enacted to significantly reform the state’s juvenile-justice system. It created a unified juvenile-justice agency, pumped additional funds into community-based programs, and amended the law so that children convicted of misdemeanors are no longer sent to state lockups (New York Times, 2011).

Last fall, the Texas Judicial Council, the state judiciary’s bipartisan policymaking body, formed a Juvenile Justice Committee to tackle these issues. The council—composed of judges, legislators, and citizens—charged the committee with (1) assessing the impact of school discipline and school-based policing on referrals to the municipal, justice, and juvenile courts and (2) identifying judicial policies or initiatives that (a) work to reduce referrals without negatively impacting school safety, (b) limit recidivism, and (c) preserve judicial resources for students who are in need of judicial intervention. The committee met for the first time in February 2012.

At the local level, a growing number of Texas school districts have adopted Positive Behavioral Interventions and Supports systems (Council of State Governments, 2011: 11). This is an evidence-based disciplinary model targeted at reducing disciplinary actions and dropout rates while improving academic performance by modeling and reinforcing positive student behaviors (Fowler and Rose, 2011). The Austin Independent School District says the program has “changed the schools,” and that while disciplinary referrals have gone down, attendance rates and academic performance have gone up (Smith and Auber, 2011). And in the Amarillo Independent School District in-school suspensions have significantly decreased since the program began three years ago.

Similarly, the Waco Independent School District has created a program aimed at reducing disciplinary actions and ticketing on middle- and high-school campuses. The program includes increasing the number of students trained to offer peer support and mediation services, offering additional training for teachers in classroom management, and establishing a Parent Education Diversion Program, which provides parents instruction and information on adolescent development, positive discipline, anger management, and community resources (Council of State Governments, 2011: 11).

In Williamson County, school officials are referring students with a low number of unexcused absences to the Neighborhood Conference Committee in lieu of sending the students to court. Youth who are referred to the committee meet with their parents and volunteers to evaluate the root of the truancy problem and develop a positive action plan, which may include community service, tutoring, mentoring, or referrals for support services. The program served over 230 students this past year (Osborn, 2012).

Bexar County created Children’s Crisis Intervention Training, a program that trains school district police officers on de-escalation techniques; mental, learning, and developmental disorders in children; substance abuse; and

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**Teen Courts**

*Judges across the state are also presiding over teen courts, a voluntary alternative to our regular court system for juveniles ticketed both inside and outside of school. Teen court allows students to receive a sentence from their peers. While participation requires a student to plead guilty or no contest to a Class C Misdemeanor, students may complete community service, educational classes, and teen-court jury service in lieu of paying a fine. Benefits of these teen courts include alleviating the strain on our regular courts, allowing students to successfully complete their sentence without a permanent record, teaching youth about the court system, and promoting community service.*
available community resources (Council of State Governments, 2011: 11). This program has succeeded, in part, due to the support of local judges and the Bexar County Judge’s Children’s Diversion Initiative.

Texas is not alone in its efforts to combat these issues. Last summer, United States Attorney General Eric Holder and Secretary of Education Arne Duncan launched the Supportive School Discipline Initiative to address the disciplinary policies and practices that push students out of school and into the justice system and support disciplinary practices that foster safe and productive learning environments. Goals of the initiative include building consensus for action among federal, state, and local education and justice stakeholders; collaborating on necessary research and data collection; evaluating alternative disciplinary policies; and promoting awareness and knowledge about promising practices among state judicial and educational leadership (Department of Justice, 2011).

Other states have taken the initiative to combat these problems as well. For example, a Colorado task force drafted legislation seeking to ease zero-tolerance policies, limit the use of suspensions and expulsions, and provide mediation to limit police referrals. West Virginia’s Department of Education recently approved a new code of conduct creating more in-school options for addressing misbehavior. In Maine, legislators are considering a bill that would require school districts to establish a reentry plan for students before expelling them, develop positive disciplinary policies, and refer truant students to intervention teams. In Connecticut, the Juvenile Probation Department of Court Support Services is screening all police summonses to determine whether court intervention is necessary. And North Carolina adopted legislation requiring a revamp of school disciplinary policies, prohibiting zero-tolerance policies, and giving school leaders discretion to consider mitigating circumstances before imposing long-term suspensions.

Chief justices and other leaders from around the country will address these issues at the upcoming National Judicial Leadership Summit on School-Justice Partnerships: Keeping Kids in School and out of Court, hosted by the New York State Permanent Judicial Commission on Justice for Children. The summit will cultivate school-justice partnerships to promote practices and policies that promote safe, respectful, and supportive learning environments; hold students accountable for their behavior; reserve the use of punitive measures, such as suspension and arrest, for the most egregious cases; and address the disproportionate discipline of minority and special-education students.

Conclusion

The two Texas studies and our state’s efforts to combat these problems should encourage other jurisdictions to collect similar data on the effectiveness of their school disciplinary policies and begin collaborative discussions on systemic change. The Breaking Schools’ Rules study was possible, in part, due to bipartisan support from the state’s legislators, and the strong support of the state’s juvenile justice system leaders, the executive branch, and the judiciary. Similar studies in other states will require the same wide-based support to effect meaningful change.

No one system or entity is responsible for creating the current challenges, and no one system can solve these problems unilaterally. We as judicial leaders must collaborate with educators and other stakeholders to develop disciplinary systems that address misbehavior in our schools, promote good behavior, maintain the safety of our students, increase graduation rates, decrease students’ exposure to the court system, refer students to proper community and mental-health resources when needed, and apply consistently across schools and student bodies. Achieving these goals is imperative to keeping kids in the classroom and out of the courtroom.
ENDNOTES

* The author would like to thank Jennifer L. Cafferty, general counsel, Supreme Court of Texas, for her invaluable assistance in preparing this article.

RESOURCES


LEADERSHIP AND THE COURTS

CHIEF JUSTICE RANDALL SHEPARD

In March 2012, Indiana’s Chief Justice Randall Shepard officially retired from the Supreme Court, making history not only through his actions, but through his longtime commitment. Being inaugurated into the role of Chief on March 4, 1987, his 25 years of service as Chief makes him the longest serving Chief Justice since the formation of the Conference of Chief Justices in 1949.
After decades of increasingly harsh penalties for those who commit misdemeanor crimes, a nationwide groundswell of support for criminal justice reforms may refocus law enforcement and court resources toward more serious offenses and more effective rehabilitation, and have the effect of saving money for our courts.

In October 2011—Domestic Violence Awareness Month—the city of Topeka, Kansas, debated a sobering problem. According to news reports from a variety of national outlets, the Shawnee County district attorney decided to pass the cost of prosecuting misdemeanors, including several pending domestic violence cases, to its largest city: Topeka (AP, 2011). Citing inadequate financial resources as well, the city also declined to prosecute some misdemeanors, but took the additional step of actually decriminalizing domestic violence (Guarino, 2011). This bizarre episode rightly shocked the public and served as a focusing event that resolved the interplay between money, law enforcement, and justice. It also drew attention to a growing crisis that, if left unattended, threatens the operation of state courts.

While the Topeka domestic violence situation may appear to be an extreme example of how inadequate judicial resourcing can impact the community, it is in fact a distressing feature of what has become the new normal. Chronically underfunding state court budgets has a well-documented, deleterious impact on our justice system.

The New York State Bar Association (NYSBA) released a report in January 2012 that examined how courts and the public fare under judicial austerity. The report provides evidence that inadequate funding is leading to less efficient and expeditious decision making, higher barriers to entry for the indigent, and—critically—a weakening in “the courts’ ability to protect and serve the public.” The authors concluded that “funding for New York State courts during the 2011-2012 year has been substantially harmful and far-reaching.” The report further stated that “imminent investment in the state court system is necessary” (NYSBA, 2012: 1).
In Alabama a judge asked the charitable arm of a local bar association to donate money to the court to help pay juror stipends.

A municipal court in Ohio announced that no new cases could be filed unless the litigants brought their own paper to the courthouse (ABA, 2011c: 3). The court simply had no money for office supplies. This is a reoccurring theme across the country. In Georgia, the state judicial budget is so lean that some courts actually solicit pen and pencil donations from vendors like LexisNexis and Westlaw (Podgers, 2011). A local bar association in North Carolina ran an office-supply drive to collect paper and copier toner because shortages meant that parties could not exchange documentation, even in serious criminal cases.

In Sacramento, California, the lines at the courthouse are often so long that people actually bring lawn chairs to use while they wait. Additional budget cuts could mean waits as long as five years for civil cases to go to trial and more than a year for divorces (McKinley, 2011).

The presiding judge in San Francisco, Katherine Feinstein, has warned that “the civil justice system in San Francisco is collapsing,” and that “the future is very bleak for our courts.”

That sentiment is echoed by Oregon Supreme Court Chief Justice Paul De Muniz, who has likened withered court budgets to “a dying tree that you prop up in your front yard so that the landscaping looks okay, but it’s a facade, because behind that are layoffs, furloughs and elimination of all kinds of services.”

As Court Funding Diminishes, Criminal Law Continues to Grow

At the same time that state courts are coping with record caseloads (106 million in 2008), governments have expanded the definition of what is “criminal” with alacrity (LaFountain et al., 2010: 19). The ABA published a landmark report in the late 1990s that addressed the federalization of criminal law—a trend of expanding crimes traditionally under state purview into federal jurisdiction. Ultimately, the commission studying over-criminalization concluded that the wild expansion of federal criminal law “represents an unwise allocation of scarce resources needed
The 1.4 million incarcerated in state facilities in 2008 cost an average of more than $23,000 per inmate that year (ABA, 2011c).

All levels of our justice system bear the burden of swelling criminal rolls. In some states, fish-and-game violations, dog-leash violations, and feeding the homeless are offenses punishable by time in jail. Minor infractions of the law result in jail time and are a serious drain on court and law-enforcement resources. Heavy caseloads mean that in Lancaster County, Nebraska, a defense attorney spends an average of only 1.1 hours on misdemeanor cases (ABA, 2011d). In 2008 an average of 2,400 cases per Atlanta public defender meant each case was afforded approximately 59 minutes (ABA, 2011d).

While some may argue about whether we incarcerate criminals too long and too harshly, there can be no disagreement about the staggering cost to do so. At a time when states are straining to provide basic services and even court copying machines are treated like an extravagance, it is incumbent on lawyers and judges to find additional ways to save money through criminal justice reform in the states.

### Trending Toward Commonsense Criminal Justice Reform

The ABA has identified many reforms that keep communities safe while lessening costs to already overburdened state criminal justice systems. In five areas in particular—pretrial release of accused low-risk offenders, the decriminalization of minor offenses, reentry support programs, expanded reliance on parole and probation, and community corrections—states can make commonsense changes to their process of jurisprudence and rehabilitation that will provide significant savings opportunities.

Stories in states across the nation demonstrate that these reforms merit serious consideration. In the Southern District of Iowa, a case study of the effectiveness of releasing individuals before trial found that, when courts released 15 percent more individuals pretrial, the overall percentage of individuals whose release was not revoked because of rearrest and new alleged criminal activity increased from 95.6 percent to 97.3 percent (ABA, 2011f). As a result, the district saved $1.7 million in fiscal year 2008-09.
Florida has seen substantial benefits to public safety and to its bottom line by decriminalizing minor offenses (ABA, 2011d). Between 2004 and 2005, 95,254 juveniles were referred to the juvenile justice system in that state. Of the offenses that were referred, 26,990 were for school-related offenses. After implementing an alternative, civil-citation system that avoided criminal records and jail time for juveniles, Miami-Dade County reduced juvenile arrests by 46 percent, and reduced the first-time offender rate of reoffense within the first year by 80 percent. More important, the average costs associated with civil citations is $386 per juvenile compared to the $5,000 it costs to process a juvenile through the criminal justice system.

Brooklyn’s Community and Law Enforcement Resources Together (ComALERT) prisoner-reentry program is a model for other jurisdictions (ABA, 2011h). In 2010 it cost Brooklyn over $6,000 to process a single rearrest. With significantly fewer arrests, Brooklyn saved almost $450,000 on rearrest costs alone. And this does not reflect the money saved on re-incarceration, which costs over $53,000 per inmate, per year. Since 2004, the program boasts more than $2 million in rearrest savings, over $8 million in re-incarceration savings, and more than $600,000 in increased tax revenues.

In Kentucky, the Pretrial Services Agency has saved the state millions of dollars in incarceration costs through early, managed release and subsequent dismissal of charges (ABA, 2011g). Between 2006 and 2007, Kentucky’s Social Work Pilot Project saved almost $1.4 million in reduced incarceration costs. Recidivism rates improved. When this program is implemented statewide, savings are projected to be $3.1-$4 million per year.

Each of these reforms is a proven way to save precious tax dollars, just at a time when our courts are in desperate need of additional resources. All opportunities to save the states needed money must be on the table. These reforms bear no resemblance to the decision in Topeka to decriminalize domestic violence. Whereas in Topeka the objective was to ignore violence and its victims, sensible criminal justice reforms have the opposite effect by freeing up resources that can be used to improve public safety and protect victims of crime.

The ABA has advocated for such reforms for some time, but more recently our prolonged national economic stagnation has caused legislators and district attorneys to take note. In part as a result of the ABA Criminal Justice Section’s ongoing work with states, district attorneys, politicians, and organizations across the ideological spectrum—from the ACLU to the Heritage Foundation—are embracing what can only be called “smart on crime” policies.

Of course, just because we save money in one area of our justice system, it does not necessarily mean that family courts will automatically see an influx of funding. Some states allow a portion of money saved by judiciaries to carry over into the next fiscal year; that is a sound policy. But even in states where the carry-over rule does not exist, saving money in court operations must continue to be a priority.

The Essential Role of Our Courts

The New York State Bar Association began its report on court funding with a quote from Supreme Court Chief Justice Warren Burger’s address to the ABA’s annual meeting in 1970. Justice Burger’s words encapsulate why access to justice and the confidence that access breeds is critical:

A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society: that people come to believe that inefficiency and delay will drain even a just judgment of its value; that people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching; that people come to believe the law—in the larger sense—cannot fulfill its primary function to protect them and their families in their homes, at their work, and on the public streets.
Inadequate state court funding can cause each of the deficiencies of which Justice Burger forewarned.

The crisis of state court underfunding will not be solved in one fiscal year. Sustainable, adequate funding is a multigenerational goal that requires a comprehensive strategy that integrates advocacy, public education, and cost-saving measures such as a reprioritization of our criminal justice objectives. Our state courts are the most direct connection communities have to our model system of justice. It is critical that we nurture public confidence in the institution of our justice system so that we can maintain the fabric of ordered liberty of which Burger spoke.
Criminal Justice Reforms Enhance Public Safety and Strengthen Our Courts

RESOURCES


To achieve excellence, our courts need strong leaders, and authentic leaders do not fear failure, but solve problems by creating initiatives and taking risks. Through leadership without fear, they motivate and engage those around them, create a culture of trust, and build legitimacy for the institution as a whole.

In 1906 Professor Roscoe Pound gave his now infamous speech “The Causes of Popular Dissatisfaction with Justice.” Pound spoke when there was little thought about professional court administration. Curiously, among Pound’s “causes” of the dissatisfaction with our courts was the popular assumption that the administration of justice is an easy task for which virtually anyone is competent. There have been enormous improvements in courts since Pound spoke, but for those of us who are in the field of judicial administration, we know how painfully complex the judiciary as an organization has become.

The malaise that has captured too many court leaders is driven in part by a sense that not enough people care if courts have to do more with less. Courts are no different than the rest of government, and, after all, everyone wants less government anyway. Naturally, those of us who work in the courts interpret tighter funding to really mean that our work is valued less and less. Moreover, there is a lack of trust in our public institutions which, although not focused specifically on courts, is troublesome. Studies of the courts show that the objective quality of the justice system has improved over recent decades. Yet these objective improvements in the delivery of justice have not been matched by significantly higher levels of trust and confidence among Americans (see GfK Roper Public Affairs and Corporate Communications, 2010; Jones, 2011; Sherman, 2001: 1, 5-7). This is especially true of minority group members (Sherman, 2001: 8, 9).

Then there are the political barbs tossed at the “activist judiciary.” The barbs have reached such a decibel level that the legitimacy of judicial decision making is threatened. For example, 75 percent of the public now think judges’ decisions are to a significant or moderate extent influenced by the judge’s political or personal views. Virtually the same percentages of people believe judges make their decisions influenced by a desire to be appointed to a higher court (Annenberg Public Policy Center of the University of Pennsylvania, 2007). As troublesome as underfunding of courts is, erosion of the public’s perception of the legitimacy of decisions that judges make may prove to be far more damaging to the courts than underfunding.

The bright promise of the field of professionally trained court administrators is harder to envision when graduate-degree programs are in decline. Tight budgets and limits on pension portability restrict job options for the next generation of professional court administrators. Membership in professional associations, like the National Association of Court Management and the American Judges Association, has declined. Webinars are great, but no matter how well done, the opportunities for professional exchange and growth are limited for a myriad of reasons.

Not everyone suffers from malaise. There are many vibrant and inspiring court leaders throughout this country, but it is undeniable that some administrators feel that they are in a losing battle with judges for control. Some judges feel their courts are rapidly becoming bureaucratic cesspools of rules, regulations, and policy...
initiatives that are foreign to what type of institution the judiciary should be. There are a lot of judges, administrators, and court employees who feel a bit under siege and a bit underappreciated.

In a crassly simplistic way, management thinking says, “Find the source of the pain and stop it.” Leadership without fear calls for a deeper understanding of things. While managers will do an effective job of fixing problems, authentic leaders stay in the chaos long enough to discover chronic patterns. Dr. Warren Hoffman, a noted leadership coach, puts it this way:

Management is responsible for managing the manageable, fixing the fixable, securing the securable and protecting resources. That’s not very risky. Authentic leadership, however, is dealing with surprises, describing the unknown, predicting the unpredictable, anticipating the nameless and anonymous, organizing chaos, and stepping in places where angels fear to walk, speaking with authority from a dusty crystal ball, staying positive and hopeful while everyone else is going insane. Now that’s risky.

Courts desperately need risk-taking leaders. Whether they are public or private, organizations that thrive have one common bond: they are spirited and not afraid to take calculated risks. It is not always easy to be a leader of public institutions and take risks. Courts face problems for which there are no simple painless solutions. Not every new court initiative will be a success. However, fear that a failed initiative will generate bad news coverage or, worse yet, public criticism from the other branches of government is chilling. Fear inhibits courts from learning and trying new ways to serve their communities. Limiting initiatives to the sure thing may be the cautious thing to do, but it is not always the right thing to do.

Courts that are, in fact, well run and are perceived to be well run are funded. The rest are told to do more with less. Calculated risk taking is, therefore, an inherent part of being a well-run organization. Court leaders who are skilled at listening, who afford respect, and who can effectively communicate build legitimacy not just for their own work, but for the institution as a whole (Sherman, 2001: 14, 19). To survive in this political environment, court leaders need to create dynamic courts, courts that are open, transparent. To do that, court leaders cannot fear failure. Fear of failure too often paralyzes everyone, and it is our greatest obstacle to judicial independence and excellence.

There are multiple reasons why courts find it hard to take calculated risks. Debate within courts about alternatives is not always as vibrant as it should be. Power relationships between judges over the rest of the courthouse staff can inhibit creativity. The training for lawyers, which is steeped in a commitment to precedent, does not help. For a judge, looking to the past for guidance on the present legal issue is almost always wise; looking to the past for guidance in how to deliver judicial services is a far more debatable strategy. Logical debate based upon the best evidence available within the courthouse is imperative. Al Gore asked in another context:

Why has America’s public discourse become less focused and clear, less reasoned? Faith in the power of reason—the belief that free citizens can govern themselves wisely and fairly by resorting to logical debate on the basis of the best evidence available, instead of raw power—was and remains the essential premise of our democracy. This premise is now under assault. We often tend to romanticize the past, of course, and there was never a golden age when reason reigned supreme, banishing falsehood and demagoguery from the deliberations of American self-government (Gore, 2007: 2).

Fear is the most powerful enemy of reason. Both fear and reason are essential to human survival, but the relationship between them is unbalanced. Reason may sometimes dissipate fear, but fear frequently shuts down reason. As Edmund Burke wrote in England 20 years before the American Revolution, “No passion so effectually robs the mind of all its powers of acting and reasoning as fear.” Our Founders had a healthy respect for the threat fear poses to reason. They knew that, under the right circumstance, fear can trigger the temptation to surrender freedom.
A colleague is a fellow worker in the same profession. It is important, but not as important, as collegiality, the sharing of authority and power among colleagues. Sharing power is often not easy and for some uncomfortable. Court leaders need to ask, is our goal to be an effective branch of government or are we satisfied with being an office-sharing arrangement of lawyers who happen to be judges? To be an effective branch of government court leaders need to see the value and efficacy of sharing power. They then need to convince everyone else of the value and efficacy of sharing power.

Courts are in an era of rapid change. Some of the change is good. There is more equality and diversity in courts today than at the time of Pound’s speech. Technology enables us to do things that in Pound’s era were fantasies. The typewriter was first patented in 1868. Even by the time of Pound’s speech, more court docket entries were handwritten. Today, with e-mail, every court employee can be in the loop. Computers can provide access to legal research and management analysis that the people of Pound’s era could not imagine. Twitter can remind people they have a court appearance, and Facebook can inform the community of what the court is doing to enhance justice. Yet technology for some is threatening. It means you may lose your job, or you are afraid you will lose your job. The process of change in any organization is not easy. Courts are no different. People frequently prefer a bad known to a good unknown. Changing courts can at times be a monumental task. Leadership without fear focuses on relationships, motivation, and the ability to engage colleagues and employees around a shared vision. Leadership without fear cases the trauma of change.

Values are part of any organization. Discussion about the values that are present in a court frustrates some, but every organization has values.

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Everyone subscribes to lofty values and that, in part, explains the impatience with the “values discussion.” Court leaders need to foster discussion about whether the actions of the court reflect the stated values or something else. Building a strong set of healthy values in the courthouse may be the most important legacy any leader can have. Loyalty is an important value. Trust is an essential value for a courthouse. Author Stephen Covey says, “Simply put, trust means confidence. The opposite of trust—distrust—is suspicion” (Covey and Merrill, 2006: 5). Judges need to trust colleagues, managers need to trust staff, line staff needs to understand the direction of the court and have a sense of participation in it and trust that court leaders care about their welfare too. Trust allows us to share power and information. Trust is a prerequisite for those who are asked to follow.

Trust is not a given in a courthouse. Trust is earned, there can be a reservoir of it, and it can be dashed. Trust in part is a willingness to be vulnerable to the actions of others. Trust requires some degree of faith that positive expectations will be met, and trust is a belief in the goodwill of the people with whom you work. For court leaders to achieve courthouse trust, they need to perform competently. They need to communicate honestly and openly. They need to share and delegate control. Above all, they need to show genuine concern for others. Trust enhances loyalty.

Leadership without fear requires an understanding of the continuum of trust to accountability. As trust declines, the demand for accountability increases. There is absolutely nothing wrong with accountability. Accountability is essential. But the absence of trust can feed on itself. If the demand for accountability is warped, it becomes stifling oversight. People who function under stifling oversight perform sluggishly, so trust continues to stagnate. Evidence of monitoring or the stagnation of trust can be as simple as “when we are apart, I ask this person what he or she has been doing.” There is nothing wrong with a call to the office so long as the call is not implicitly accompanied by the suggestion that “I need to check up on you.” Accountability taken to an extreme results in ineffective court leaders leading by a plethora of formal controls, court policies, professional standards, or written agreements to govern everyone’s behavior. Leadership by fear does not work.

Leaders without fear honestly ask questions. How do we promote a climate of risk taking, innovation, and honesty? How do we formalize and support experiments within the court?

Law firm management is an art that in many respects is easier than court leadership. At least the law firm gets to pick their partners. Courts do not have that luxury. The metaphor “court leadership is like herding cats” arguably may underestimate the challenge. Some of these cats are not cute kittens, but feral cats that bite. Mark Twain once said “the inability to forget is infinitely more devastating than the inability to remember.” Dealing with colleagues and staff that disappoint you is a challenge for any court leader. Court leaders whose lives are paralyzed with fear frequently suffer from Irish Alzheimer’s Disease, which is that you forget everything else but the grudge. Learning from experience is good. Naiveté is not desirable, but carrying grudges is impossible if the goal is leadership without fear.

There are court leaders who fear virtually any conflict. A leader who unnecessarily stirs up conflict is doomed to failure, but court leadership is not always about managing conflict. In group situations sometimes people suppress their real desires and feelings for a variety of personal reasons. Fear of “what happens if I speak up” being a classical reason. The result is that the groups appear to agree when they really do not, and bad decisions are made and actions are taken that are contrary to everyone’s desires. Some refer to this as the Abilene Paradox. Theories of social conformity and social influence suggest that human beings are often very averse to acting contrary to the trend of the group. The crux of the Abilene Paradox is
that groups have just as many problems managing their agreements as they do their disagreements.

Group think is minimized by trust. As Robert Shaw said,

A high level of trust allows people to say what is on their minds and not feel that it will come back to hurt them. A sufficient level of trust ensures that lines of communication are open and that no one is hiding information or wasting time trying to decide the political implications of his or her views (Shaw, 1997).

No matter what part of the courthouse troika they are in, people who work in our courts want a chance to be involved and they expect to have their talents and skills utilized effectively. The questions are: How do we achieve that for judges? How do we achieve that for staff? Ideas start the discussion: stay involved. If you find yourself pulling away, ask yourself why. If you sense a colleague pulling away, ask the same questions. Apply the Golden Rule. Show commitment to helping others in their time of need. Hopefully, others will reciprocate when you get bogged down and could use some help. Be open. By challenging the “that’s-the-way-we’ve-always-done it” mindset, leaders can encourage calculated risk taking.

Communication is key to being a leader without fear. Messages being sent are sometimes not the same as those being received, which can result in conflict and mistrust, ambiguity, confusion, and inconsistency—exacerbated by today’s environment with e-mail, voice mail, virtual meetings via conference calls and video, and cell phones. The list goes on and on. Leaders without fear have a common message based on the vision and priorities of the court, and they are great at communicating that vision.

Leaders without fear show people the future. They emphasize the positive vision of a better future. They make it real. They highlight the values they are fighting for. Answering the why question increases people’s willingness to endure hardships that come with improvement. It is not always easy to work with those who are uncommitted but wary. Leaders without fear accept responsibility for their piece of the mess. They model behavior and, yes, at times, accept casualties. The best leaders have the capacity to deliver disturbing news in a way that people can absorb and prod them to take up the message rather than ignore or kill the messenger. They build curiosity. They do things to create urgency.

We live in times far more complex than the era that Roscoe Pound spoke of. In the words of Robert F. Kennedy, “There is a Chinese curse which says, ‘May he live in interesting times.’ Like it or not, we live in interesting times.” To be a part of the judiciary during these times gives each of us, regardless of our role, a unique opportunity to serve the community and to leave a personal legacy. The question is: What kind of legacy do you want? A court leader without fear seizes the opportunity to leave the courts better for future generations and leaves a legacy well worth remembering.

The goal of court leaders must be to create a healthy, open, and honest court where everyone can be candid about their views and experiences and take greater responsibility for their own actions.
RESOURCES


How has the role of the state court administrator changed over the years? In addition to handling their day-to-day administrative responsibilities and other duties that come their way, state court administrators must also have a vision of how the justice system could be improved.

So, What Is a State Court Administrator?
When I was asked to examine the role of the state court administrator for this edition of Future Trends, I agreed immediately before realizing what I had gotten myself into. What seemed a painless exercise at first became much more difficult when I delved into documents such as the A History of the Conference of State Court Administrators (Fetter, 2005), COSCA’s “Position Paper on Effective Judicial Governance and Accountability” (2001), and Dan Becker’s and Hon. Christine Durham’s excellent “A Case for Court Governance Principles” (2011). These works do an excellent job of describing the history of our profession, the need for court governance, and the ways in which court governance can be most effectively used.

Therefore, what purpose is there to my writing if these works are already out there? In searching for that purpose, I decided that my article could not add much to the discussion of governance. I began to think simply about the job itself and what I do every day, or as the colorful former Colorado state court administrator Harry O. Lawson said in his 1978 remarks to the Conference of State Court Administrators, “Why the hell do you do it?”

I hope that this exploration of what state court administrators do and why we do it will help anyone at any level of court administration to glean something, even if it is simply a nod of acknowledgment. Perhaps you have had a similar experience to one I had during my first week on the job, when a senior staff member—knowing my background to be primarily legislative and not administrative—provided me a list of 33 things for which I was ultimately responsible. I believe he thought I would find the list daunting, and he was right, but in hindsight I think the list was both too short and too long. The list was too short in that the number of items I am responsible for approving or signing greatly exceeds 33; but the list was too long in that—when evaluating the role of the position as opposed to the governance structure—the fundamental roles of state court administrators across the nation are really rather quite similar, despite many disparate structures.

Upon reviewing the history of court administration from 1950 to the present, it is clear to me that despite our various governance structures, we are leaving behind our “Pre-Cambrian” explosion, as described by Mr. Lawson and further detailed in Fetter (2005), wherein the various roles of a state court administrator were tried on, removed, regrown, and finally perfected. We are now entering a period where state court administrators work with each other and other justice system stakeholders—especially our counterpart trial court administrators—to perfect performance in the common roles we all share, regardless of governance. In short, we must be visionaries, we must manage basic functions, and we must be prepared to manage the unforeseen because it has nowhere else to go: vision, function, and the kitchen sink.

**Vision**
When it comes to the long-term health and success of a state judiciary, few, if any, are as well positioned as a state court administrator to assess needs and develop ideas on how to meet them. Unlike other positions in any state judiciary—including supreme court or judicial council members, who, of course, must also do their day jobs—a state court administrator’s position is a global one. As such, state court administrators must be strategists and project managers, if for no other reason than it is not anyone else’s job to think in those terms. Without
a vision of how to improve long-term service to the state’s citizens, grounded in
the reality of a well-thought-out project plan, state court administrators will be
left in a reactionary mode, attempting to put out fires rather than guiding future
development. And as anyone who works in court administration knows, there are
plenty of fires to put out without creating new ones internally.

The Strategist
In every job, someone has to ask the tough questions. In a statewide judiciary, this
is the job of the state court administrator perhaps more than anyone else. State
court administrators may not have the authority to take these tough questions and
turn them into new policy answers. But a state court administrator should be
making the statewide judicial decision-making body (either the supreme court or
the judicial council) aware of what is possible by showing what has been done and
learned in other states. Across the United States, state court administrators have led
reinvention efforts, instituted innovative best practices, and used data to improve
services throughout state judiciaries. The recent reinvention efforts in Vermont, as
well as the statewide reorganization done in Utah several years ago, are just two of
many such examples. Particularly in areas such as technology projects, collection
of costs, and use or categorization of nonjudicial personnel, where judges will
more likely defer to a state or local court administrator due to that administrator’s
knowledge and experience, state court administrators are well positioned to lead
and should not hesitate to do so.

A state court administrator—or a trial court administrator for that matter—is only
allowed to implement a vision if one’s court or council allows it. And depending
on structure, the speed of implementing such a vision statewide may vary greatly.
Getting the “green light” requires that vision incorporate the answers to likely
questions on implementation, particularly with regard to the issue of change
management associated with the vision one is proposing. While certainly not true
in all cases—many judges have initiated bold administrative reforms on their own
initiative—most judges by their nature are likely to be risk averse. The reason may
be that judges believe it is always better to import the philosophy of the medical
profession, “first, do no harm,” when rendering judgment. While this approach
is also valuable in administrative matters, it does not translate as well when one
is seeking to improve services or implement new ones; for example, judges do
not pilot a judgment, it is final, but courts must pilot new initiatives to determine
potential successes.

Since entering this profession I have constantly been amazed at the amount of detail
that some of my successful, longer-serving colleagues possess; their instant recall
of knowledge in areas as diverse as automation, probation, statistical reporting, and
problem-solving courts makes it clear that they have developed this knowledge by
putting it in place, not by reading it. In short, by developing and implementing a
vision for their systems, they have balanced the appropriately risk-averse nature of
judges with their own vision for the future, and in so doing they have fulfilled the
core role of a state court administrator as strategist. The growth of problem-solving
courts, as well as the increased acceptance by judges of trial court performance
standards, are but two examples of how collaborative strategies between state court
administrators and their judges have produced such success.

The Project Manager
Perhaps one might find it odd that a state court administrator’s role as project
manager would be considered under the category of vision. To understand this, one
must consider the proper role of a state court administrator on statewide projects.
The state court administrator should have a staff that is prepared to take on the
direct role of project management, but a state court administrator should not leave
the setting of broad goals to that manager or to the executive team. In particular,
all state court administrators are responsible for defining the need for the project
in terms of improvement of service to the end user. These goals and end-user
benefits must be articulated by the state court administrator in a way that the state
judicial decision-making body can understand and support; in a way that staff can
understand the need for the priority (thus increasing their motivation to work on
it); and in a way that end-users in the courts sees the benefit to them and accept the
need for expending resources on the project.

For example, the ongoing centralization of court technology has led state court
administrators and trial court administrators to develop project management skills
by necessity. State court administrators do not have to know the answers to all the
technical questions anyone might have but, rather, must be able to ask the right
questions to IT staff and business staff to determine the viability of a project. A
forward-thinking state court administrator must have enough skill to recognize whether the answers being provided are consistent or inconsistent with the statewide vision in terms of one’s business users. In addition, central office projects like e-filing must be described to users in a way that shows a direct benefit to trial courts when compared to other needs such as increased staff. If this is not done in the early stages of project planning, such projects may end up halfway completed or shelved permanently no matter how valuable their long-term potential might be.

**Function**

In my relatively short tenure, it has been my experience that all court administrators, state or local, like to talk about vision. I do not think many of us would have gotten into this profession if we did not. The good news is that, if as a state court administrator’s vision is frustrated for whatever reason, there is still plenty of job security in just getting the daily work done. State and trial court administrators alike, in some sense, all make widgets (manage case calendaring, deploy computers, run human resources systems, etc.), crunch numbers, and manage budgets. As stated in the Conference of State Court Administrators’ “Position Paper on Effective Judicial Governance and Accountability” (2001):

> Certain administrative functions are essential to effective judicial governance. These include assignment and calendaring of cases, management of court personnel (including hiring, firing and deployment), management of court and administrative records and judicial branch education. In core areas such as these, the courts should be afforded the capacity to manage their own affairs, as court administrators are closest to the issues and best qualified to make the policy determinations necessary to ensuring the highest level of service to which the public is entitled.

While many of these functions may more properly be said to rest with trial court administrators, their statewide application always involves the state court administrator. State court administrators must make it their business to understand how the daily functions listed above are done in trial courts, and they must ensure they are properly and consistently done in the most efficient manner statewide.

We are now entering a period where state court administrators work with each other and other justice system stakeholders—especially our counterpart trial court administrators—to perfect performance in the common roles we all share, regardless of governance.

**The Widget Maker**

The statewide management of the specific duties described by COSCA in 2001 makes up a large part of the core of a court administrator’s role, regardless of state structure. For the most part, the courts do control these functions as COSCA had hoped; in most cases, courts delegate these roles to the state court administrator to ensure proper coordination with trial courts on all such matters. For example, in case calendaring and records management, statewide standards developed by the state administrative office will ensure that whatever local systems of calendaring or records management are used, they are done efficiently.

Weighted workload studies, statewide personnel regulations, and either statewide funding or statewide staffing standards developed by the state administrative office ensure more efficient allocation of human resources, which, in turn, increase credibility with legislatures who insist on easily understood empirical measures to prove the value of the funding decisions they must make. State court administrators must master the task of developing such standards using empirical data such as time studies, as well as national best practices, without forgetting the all-important step of validating and codeveloping them with relevant trial court stakeholders.

A state court administrator’s role in managing human resources becomes increasingly important when, as is the case with many of the Baby Boomer generation retiring, a state experiences sudden turnover in leadership. In short, a state court administrator’s bosses expect the trains to run on time—and by the way, to do so in a way that does not offend the sensibilities of the trial courts. If a state court administrator can manage this task, success with function might, in turn, after some years yield the ability to get back to that “vision thing.”
The Number Cruncher

All state court administrators and their offices generate data, data, and more data. No area is more likely to be the subject of scrutiny and potential derision from trial courts and legislators alike, but no area is more likely to be requested by both trial courts and legislators to answer any number of questions, many of which cannot be systematically answered by existing reports in the case management system. And, by the way, the fact that the existing system is not readily capable of producing the requested ad hoc report is not likely to generate much sympathy from the data requestor, who expects all this stuff that is put into the case management system to mean that one can in turn get anything out of it that one can dream up.

While state court administrators certainly do not need to know the ins and outs of how to get those numbers out of the system, an understanding of the art of the possible is required. State court administrators need to know in general terms what systems are capable of producing and why—because if the administrator does not, one can be sure a judge or legislator will find out at the most inopportune moment. State court administrators must also challenge staff and even the vendors who create the systems to identify the gaps in reporting that have become more readily apparent when the same unanswerable data question continues to reveal itself. A shared responsibility must also be borne by state court administrators and technical staff in preparing statistical reporting systems for future systemic enhancements that all parties know will be required, such as improved federal criminal history reporting from all levels of the state justice system and improved treatment-court data to quantify program impacts and successes. So while state court administrators may not crunch the numbers or the data, there is certainly a need to know what is being crunched, and, more important, why it is being crunched.

The Budget Manager

Even though state judicial budgets are done more than 50 different ways, there still remains no more common a role among all state court administrators than that of budget manager. It is in this role that the honesty and integrity of state court administrators are most critical, since court administrators generally know the budget far better than the judges for whom they work (once again, there is that pesky issue of the judges’ day job). Our supreme courts and judicial councils rely heavily on state court administrators to be budget experts and to present options for every known budget scenario with full knowledge that at any moment the governor or legislature may require the pulling of nonexistent rabbits out of the collective hat of the judiciary. Nevertheless, state court administrators must create and present such scenarios and have the data to support them, lest the judiciary be left to the whim of the other two branches to “fix” the judiciary’s problems for them.

In addition to creating budgets, all state court administrators are responsible for managing spending and fiscal policy. Blue Oyster Cult may have said “Don’t Fear the Reaper,” but I guarantee no state court administrator has ever said “Don’t Fear the Auditor.” It is right to fear the auditor, and the image of the entire judiciary is at stake if state court administrators do not create sound processes to alleviate such fears. Thus, especially in difficult budget times and in times when politicians are seeking notoriety for uncovering government waste—be it real or perceived—all who serve as state court administrators must constantly review purchasing processes, travel policies, and ongoing expenses, all in the hope of staying one step ahead of the man with the scythe, which in this case has ten keys and white ribbon paper on it.

The Kitchen Sink

When it comes to the kitchen sink, state court administrators share a bond not only with each other and with trial court administrators, but also with any chief executive or chief operating officer in the corporate world. As with any executive position, when something needs doing and one’s board wants it done, the state court administrator is the one who has to find a way to get it done. In the world of state courts, this most commonly leads to court administrators acting as intermediaries, program managers, and legislative liaisons. As system leaders, court administrators are often asked to take on these roles, since they do not belong...
logically anywhere else in the judiciary. At least one in this profession can take comfort that our “other duties as assigned” do provide some measure of job security.

The Intermediary

As any good management book will state, communication is the key to success. In the world of the state court administrator, one must speak the language of the trial courts to the state body, and the language of the state body to the trial courts. This role becomes even more critical when proposing or implementing new initiatives or determining ways for reducing budgets. To fulfill the role of intermediary, state court administrators know that one must seek first to understand, rather than to be understood. State court administrators must know and deeply care how the trial courts do business, so that they can understand the challenges and difficulties being faced on the front lines of the judiciary—and present those challenges and difficulties to decision-making bodies in a cohesive, statewide context to ensure that informed decisions are made.

One way in which many state court administrators have dealt with this tension is to live by yet another management book axiom: “The more power you give away, the more you get back in return.” Throughout the nation, state court administrators, in collaboration with their governing bodies and trial courts, have developed committee structures, staffed by the administrative office, to assist in making difficult decisions. Including trial judges, circuit clerks, court administrators, juvenile supervisors, and other trial court leaders on statewide committees affords the court administrator the opportunity for others to see both the local and statewide implications of decisions—and helps to turn potentially difficult situations into well-managed, long-term solutions. When state court administrators recognize and promote the growth and expertise of trial court managers through collaboration, training, or any other method possible, the state as a whole only stands to benefit.

The Legislative Liaison

Like it or not, governors and legislators are a necessity in implementing effective judicial administration. But, as COSCA noted in its 2001 white paper, questions asked by legislatures and governors as to how the judiciary does business—when properly framed by state court administrators who are prepared to answer such questions—are not to be feared, as they can present opportunities to the well-positioned court to define the ways in which courts have sought to improve the administration of justice even without the assistance of the other branches of government. State court administrators spend a great deal of time measuring their own performance and evaluating potential statutory changes that might enhance that performance. By being proactive in proposing such solutions to the other branches, or when applicable implementing them internally or in consultation with the other branches, court administrators gain the credibility that may be needed when it comes time to tell either the executive or legislative branch that their proposed solution may not be the best choice.

To be sure, any state court administrator dealing with the legislature must be prepared to inoculate the state’s courts against those who would use the legislative process to undermine the courts. Fortunately, most of the steps one would take to create a proactive agenda should also prove useful with those who seek to “help” state courts without asking first. The preparation of well-reasoned impact statements, coupled with local court decision makers who stand ready to engage with legislators who may not have the courts’ best interests at heart, may be able to keep such legislative well-wishers at bay—at least until next year.

It almost goes without saying that intergovernmental relations with the legislature, governor, and (perhaps, in many cases, more importantly) the heads of the various executive agencies with whom state court administrators must invariably work, are all critical—and state court administrators cannot and do not neglect these relationships. As with many of the roles of a state court administrator, it is certain that if the state court administrator is not doing this outreach, the void will nonetheless be filled, but perhaps in a way that does not present a full statewide
picture of the impact of any potential policy decision, thus losing the valuable impact a state court administrator can offer.

**The Program Manager**

As every state court administrator knows, modern courts spend more time now managing cases than has ever been required before. Much of that hands-on management is required in the ever-increasing realm of court programs. Be it treatment court, domestic violence, juvenile delinquency, or child abuse and neglect, a case is no longer just a case, and court administrators must evaluate and understand how to manage such programs efficiently. As with technology projects, court administrators cannot be expected to have all the answers, but we must be able to assess risks, determine needs, and avoid the pitfalls of mismanagement that any fast-growing program might experience.

In addition, these areas often require coordination with partners well beyond the usual scope of justice system partners. Court administrators in recent years have had to begin understanding the ins and outs of state mental health programs, the scope of state-provided social services, and even the proper roles of public-private partnerships and nonprofit corporations in providing services to those under the jurisdiction of the court. It is not likely possible for a state court administrator to follow all of the changes in this still-growing area of the law, but state court administrators, by experience or by necessity, all have the role of assisting trial courts with managing them in a way that will poise them for future success.

**Conclusion**

So, now that we have taken a tour of what it is a state court administrator does, are we any closer to the answer to Mr. Lawson’s question, “Why the hell do we do it”? Perhaps not, but I do think that his answer is one that anyone who has served in the role of state court administrator could understand. Although I have only served in this role for four short years, I have come to know that my colleagues and I all likely share, as Mr. Lawson so aptly put it, “A belief in the importance and integrity of the judicial process; reformist zeal tempered by pragmatic realism; probably, pure cussedness; and later a desire to protect and nurture what had been created.” I only hope those of us who will serve in the next generation of court administration can live up to those colorful and lofty goals.

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**RESOURCES**


COURTS AND THE COMMUNITY

Amos serves in the Canine Advocacy Program in Novi, Michigan. In many instances the introduction of a highly trained dog can reduce anxiety in a stressful court setting. Children, who have come to court refusing to testify, have successfully testified because of the intervention of Amos. A successful program needs a firm commitment from all involved, as well as a professionally trained dog, and the buy-in of those in the criminal justice system. (Contact Dan Cojanu in Novi, Michigan for information on how to set up a Canine Advocacy Program: www.capmich.com.)
This article relates the efforts of the Superior Court of Arizona in Maricopa County to deliver effective community outreach. Ultimately, no single standing program can successfully maintain community outreach; rather, courts are challenged to pursue and coordinate a project-based approach, fostering both public education and citizen input.

Outreach as a Component of Court Management: A Historical Perspective

With the continuing emphasis on community outreach by courts, it is ironic that our nation began with what were, in essence, community courts. However, the relationship between courts and their communities became weaker as our nation developed and urban courts expanded. Our court systems centralized as urban areas required new types of specialized courts (Rottman, 1996). From the 1940s through the 1960s, state legislatures adopted court reform agendas that created single, urban downtown courthouses or rural, multicounty court districts (Rottman, 1998). While this centralization brought operational efficiencies, it also resulted in less court visibility within the community. For example, in 1931, 556 courts were serving the citizens of Chicago, but, 65 years later, a single court with a main courthouse and 10 satellite locations served the city (Rottman, 1996). Our communities did not respond positively to this change. As a result, our nation’s courts have focused once again on strengthening ties between communities and courts.

Origins of Community Outreach

While court outreach into the community may seem like a relatively new focus, the need for such outreach has existed for quite some time. Even in 1906, Roscoe Pound bemoaned the need for improved public understanding and confidence in the courts in his famous speech on public dissatisfaction with the administration of justice. However, this sentiment took time to gain acceptance as a principle of court administration. It was not until the 1960s that we began to see widespread literature focused on communication and outreach.

During the 1960s and 1970s, as national commissions focused on community involvement in the criminal justice system, ideas such as citizen participation, court-watching programs, judicial disciplinary commissions, and permanent court advisory committees flourished (Rottman, 1996). By the 1980s, development of polling technology provided the ability to reliably ascertain the state of public attitudes toward legal institutions, and opportunities for citizen participation in the justice system were expanding and arguably plentiful.

Development of Modern Problem-Solving Courts

The focus on citizen participation and access to justice merged with heightened concern about the kinds of cases reaching the courts. Problems such as substance abuse and domestic violence overwhelmed the capacities of our justice system. This resulted in the creation of problem-solving courts to address public offenses committed by specific groups of defendants, such as the homeless, mentally ill, veterans, or substance abusers. In 1993, the first community court, a subset of problem-solving courts, opened in midtown Manhattan with the goal of combining punishment and help. Then, in 1994 with Bureau of Justice Assistance funding, the National Center for State Courts (NCSC) began an ambitious program to examine community-focused courts as a mechanism to strengthen the court-community relationship. In 2006, 26 community courts were operating in the United States (Toomey, 2006).

Early Studies on Public Perceptions of the Court

Early research on trial courts in the 1950s through early 1970s reported five main findings: (1) the public was generally supportive of the courts, (2) public awareness and knowledge of courts was very low, (3) the more people knew about the courts the less supportive they were, (4) attitudes toward courts were linked to attitudes toward government in general, and (5) the public believed that courts treat some people better than others (Warren, 1998). From this research, public trust and confidence became accepted key measures of court performance, as reflected in the NCSC’s Trial Court Performance Standards.

28 FUTURE TRENDS IN STATE COURTS 2012
Dimensions of Community Outreach: The Conventional Wisdom

Courts stand to gain from community outreach: an informed and engaged constituency, broad public support, and access to needed public resources. The public appreciates a more open and transparent court system that provides an improved quality of justice. To achieve this outreach, courts must bear in mind the public’s three core expectations of the courts: protection of society, equality/fairness, and quality performance (Yankelovich, Skelly and White, Inc., 1978).

Current State of Community Outreach

Community outreach has developed into a fundamental tenet of the court management profession. The significance of community outreach by courts is such that it is now a rubric within the National Association for Court Management’s (NACM) Core Competencies, as well as the NCSC’s CourTools performance management program. The 2010 NACM Media Guide for Today’s Courts demonstrates that community outreach has expanded even further to include use of social media and court Web sites to provide newsletters, press releases, virtual tours, historical information, kids’ pages, high-profile-case subscription services, blogs, and resources that ensure compliance with federal Limited English Proficiency (LEP) and Americans with Disabilities (ADA) laws.1

The escalation in priority of community outreach can be attributed to many factors. It may be due, in part, to funding-agency demands that the courts show concrete performance improvements to justify resources, even though the delivery of justice remains difficult to measure (Borys, 2003). Or it could be said that matters were worse in the 1800s and early 1900s, but we no longer automatically accept the customs and social mores of those eras (Yankelovich, Skelly and White, Inc., 1978). Irrespective of the reasons, community outreach is now engrained in our court management culture.

Effective community collaboration requires planning, goals, judicial sponsorship, committed stakeholders who are invested in the process, incorporation of existing infrastructures where possible, and identification of financial resources. The stakeholder groups include victim advocates, representatives of the ADA community, state and local social-service providers, prosecutors and defense counsel, the school system, and the bar. Presiding judges and court managers play a critical leadership role in the executive sponsorship of these community outreach efforts and courtwide coordination of supporting activities.
These collaborative efforts can be aided by setting easily attainable short-term goals to ensure success, as well as broader goals requiring long-term effort (Rottman, 1998). Once implemented, outreach initiatives should be evaluated and enhanced as well. Collaborations growing out of a single narrow project—such as community courts—may not necessarily have the flexibility to garner a broader systemic collaboration (Rottman, 1998).

Lessons Learned: A Multifaceted Approach in an Urban Court

Over the last two decades, the Superior Court of Arizona in Maricopa County has undertaken a number of interrelated community outreach efforts, some continued to this day and others of more limited duration. In retrospect, some of the short-term initiatives were “personality-driven” under the leadership of a strong presiding judge, while others were responsive to particular community needs at a given time. Other outreach and education programs have endured over the years, with varying levels of participation and continuing program enhancements.

Serving a diverse population of 3.8 million residents, the Superior Court of Arizona in Maricopa County has struggled to define the meaning of “local community” and to develop a cohesive communications strategy. The county encompasses approximately 9,800 square miles, which is home to 25 independent municipalities ranging from small towns such as Gila Bend (pop. 1,922) to metropolitan Phoenix (pop. 1,445,632). Until the current economic downturn slowed its growth rate dramatically, Maricopa County also experienced tremendous annual population growth; nonetheless, the county has nearly doubled in size since 1990. The population growth has spurred the development of countless new neighborhoods, schools, town centers, and a highly mobile workforce.

Historically, the court’s formal community outreach programs have included a business leaders’ forum, a religious leaders’ forum, and, most recently (from 2007 to 2009), community open-forum meetings held at schools and community centers. The superior court recently hired a multimedia journalist (“backpack reporter”) to promote public education. In addition, current standing community-education/outreach programs include:

- Extensive Web-based public information and court services, as well as increasing use of social media, such as issuing daily announcements and high-profile-case updates via Facebook (facebook.com/pages/Phoenix-AZ/Superior-Court-of-Arizona-in-Maricopa-County/324889836882) and Twitter (http://twitter.com/courtpio). Longer public information videos are posted on YouTube (www.youtube.com/user/SuperiorCourtAS/videos).
- “View from the Bench”: An Arizona Supreme Court initiative that pairs legislators with judges for a day at the legislature and a day at court.
- “Courthouse Experience”: High-school and middle-school students visit the court for a half day, with tours led by volunteer attorneys. In 2010, some 1,578 students visited the court.
- Hosting mock trials for law schools, high schools, and the National Mock Trial competition.
- Litigant and citizen assessments of overall court performance through the National Center for State Courts’ CourtTools survey, other surveys, and biannual judicial performance review (JPR) of individual judges.
- Volunteers serving the court in the Court Appointed Special Advocates (CASA) and the Probate Court’s Guardianship Review programs.

Citizen Input

In recent years, some of the superior court’s most effective engagement with the community and stakeholder groups has occurred in tightly focused, one-time planning sessions for specific court projects such as problem-solving courts. These project-based exchanges have provided a purpose-driven opportunity for genuine stakeholder input regarding constituent needs, identification, and leveraging of community-based resources and candid feedback on the quality of

Superior Court of Arizona, Maricopa County’s Twitter page
court services. In Maricopa County, some of the joint initiatives have resulted in strong court-community partnerships, lending credibility to court programs and supporting funding requests.

Recent examples of these ad hoc, program-based community-involvement projects include:

- Extensive involvement of victim advocates, media representatives, persons with disabilities (ADA), and law-enforcement officials in the programming and design of the criminal court tower, which opened in February 2012.
- Victim and social-service-provider involvement in problem-solving and therapeutic courts programs, including restitution court, family drug court, the integrated mental health court, and juvenile drug court.
- Participation of the Veteran’s Administration and community groups in the development of the veteran’s court.
- Involvement of the county’s Lodestar Day Resource Center campus, city courts, prosecutors and defense counsel, and the board of supervisors in expansion of the regional homeless court program.
- Extensive involvement of the community service providers, the medical community, and the Arizona Department of Child Protective Services (CPS) in the planning and development of the “Cradle to Crayons” program for dependency cases heard by the juvenile court.

From an organization management standpoint, the emergence of such ad hoc court-community outreach opportunities requires a high degree of courtwide communication, cross-department coordination, and integration with the long-standing outreach programs.

A framework for community outreach planning and coordination is set forth in the figure on the next page. This is an iterative, planning, and continuous improvement process involving periodic needs assessment; inventory and integration of outreach efforts and public information education; and dialogue with community stakeholders. Absent such coordination, the court is prone to duplication of staff efforts, “mixed messages” to the public, overreliance on certain friends of the court, and missed opportunities.

For the needs-assessment component of the planning process, the superior court relies on trend data from several sources: CourtTools public-satisfaction surveys; CourtTools and county-employee-satisfaction surveys; a bench-satisfaction survey regarding court administration services; juror exit surveys; and feedback from various standing committee meetings (e.g., bench-bar, civil study, Hispanic media quarterly meetings, and Juvenile’s Tinker Toys, renamed the Children’s Coalition of Maricopa County, which currently meets on an ad hoc basis).

To coordinate these efforts, the superior court is reconstituting and bolstering various judge-led standing committees—Public Access to Court Services, Specialty Courts, Media Relations, Education and Intergovernmental Relations—which report monthly to the court’s Judicial Executive Committee. Concurrently,
supporting administrative staff regularly convene for project updates, coordination of outreach efforts, and identification of target community populations.

These measures notwithstanding, the court has much work ahead to consolidate these gains and expand capacity for future community partnerships.

**Final Thoughts**

The superior court’s judicial leadership and administrators conclude that no single, formal community outreach program can fully address the pressing need for public education and citizen input. As a consequence, the court’s outreach strategy can now be described as a series of loosely coupled standing/ongoing community-outreach programs, along with a situational, opportunistic approach engaging ad hoc stakeholder groups for specific court initiatives. This approach may be viable in other jurisdictions, building upon a strong local court message and project-based opportunities for meaningful citizen involvement.
ENDNOTES


2 Two examples are the District of Columbia’s nonprofit, nonpartisan Council for Court Excellence (www.courtexcellence.org) and New York’s public/private partnership, the Center for Court Innovation (www.courtinnovation.org/topic/community-court).

RESOURCES


Conference of Court Public Information Officers. www.ccpio.org/links.htm


National Association for Court Management, Court Community Communication. www.nacmnet.org/CCCG/court-community.html


The Reynolds National Center for Courts and Media. www.courtsandmedia.org


DELWARE’S SUCCESSFUL STRIDES TOWARD LANGUAGE ACCESS IN THE COURTS

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Ashley Tucker
Staff Attorney, Delaware Administrative Office of the Courts

Delaware’s Court Interpreter Program is a state-funded, centralized program that coordinates all the Delaware courts’ language service needs. Detailed records of all interpreter services used permit Delaware to focus on adequate funding for this program and to anticipate current and future needs of Delaware’s limited-English-proficient population.

Court Interpreter Program and Language Access
In the 1990s, Delaware, the “Small Wonder,” faced a big problem with improving the interpreter services provided to those with special language needs in the Delaware courts. In its 1996 report, the Delaware Supreme Court’s Task Force on Racial and Ethnic Fairness found that “court interpreters have not always been available to limited-English-proficient (LEP) individuals when needed and interpreters who have been used sometimes have not provided effective interpretation or have acted in an unprofessional manner.” Although the supreme court issued Administrative Directive 107 earlier in 1996, which promulgated policies and procedures related to the use of court interpreters in the Delaware courts, the combination of the directive and the task force’s work represented important first steps in the long process of developing a strong court interpreter program. Administrative Directive 107 also created the Court Interpreter Program (CIP) in the Administrative Office of the Courts (AOC) to administer the standardized policies and practices related to providing interpreter services in the courts, as well as to overseeing credentialing, scheduling, and payment of court interpreters in languages other than English, including American Sign Language (ASL) for court users who are deaf or hard of hearing.

In response to the sustained growth of Delaware’s LEP population, and consistent with U.S. Department of Justice guidelines, 67 Fed. Reg. 41445 (June 18, 2002), the Delaware judiciary, through the AOC, remained true to its commitment to language access by developing a formal language access plan to govern efforts in support of ensuring meaningful access to all who enter the Delaware courts.

Identifying and Meeting Language Needs
Delaware uses census data and AOC records to identify the most prevalent language needs and build its language access program accordingly. The 2010 United States Census revealed that Delaware’s Hispanic or Latino population makes up 8.2 percent of Delaware’s total population. AOC records, which track court requests for court interpreter services, confirmed that Spanish services were the most

<table>
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<th>Languages Spoken at Home for Population 5 Years and Older for Delaware</th>
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<tr>
<td>Language</td>
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<tr>
<td>-------------------</td>
</tr>
<tr>
<td>Spanish</td>
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<tr>
<td>French (Patois, Cajun)</td>
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<td>Chinese</td>
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<td>German</td>
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<td>Italian</td>
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<td>Tagalog</td>
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<td>Arabic</td>
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<td>Hindi</td>
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<tr>
<td>Kru/Ibo/Yoruba</td>
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<tr>
<td>Gujarati</td>
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<tr>
<td>Swahili</td>
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<tr>
<td>Haitian/French Creole</td>
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<td>Polish</td>
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<td>Korean</td>
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<td>Greek</td>
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<tr>
<td>Vietnamese</td>
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<tr>
<td>Telugu</td>
</tr>
<tr>
<td>Pennsylvania Dutch</td>
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<tr>
<td>Urdu</td>
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</table>

Source: U.S. Census Bureau
frequently requested language services. In fiscal year 2011, a total of 2,374 court events required 6,189 foreign-language-interpreter hours and provided language assistance to an estimated 8,939 LEP litigants. Of these 8,939 LEP litigants, 89 percent were Spanish speakers. Haitian Creole, the second most frequently requested language, is a distant second with 211 litigants. Spanish is, by far, the predominant language of LEP individuals accessing the Delaware courts.

Based upon this statistical information, Delaware has tailored its language services program to address geographic exigencies, the number of certified/qualified interpreters available, and court demands. Delaware has three counties—New Castle, Kent, and Sussex—of which New Castle is the most populous. Not surprisingly, New Castle County has the largest LEP population and saw 60 percent (1,427 of the 2,374) of the interpreting events in fiscal year 2011. Furthermore, courts of first instance, consisting of the justice-of-the-peace court, family court, and the court of common pleas (a misdemeanor limited-jurisdiction court), requested language services most frequently. For example, in fiscal year 2011, justice-of-the-peace courts used 22 percent, family courts used 34 percent, and courts of common pleas used 41 percent of the total interpreter hours. CIP has focused on responding to each court’s needs and specific requirements. One successful tool developed to this end is the coordinated Spanish interpreter calendars prearranged by the CIP.

Interpreters for coordinated Spanish interpreter calendars for New Castle County’s court of common pleas and family and justice-of-the-peace courts are scheduled in advance for three-month increments. The calendars are posted electronically (public folders in the state’s Outlook e-mail application), allowing access by all courts. Along with New Castle County’s coordinated Spanish interpreter calendars, individual interpreter calendars, including interpreter services secured for languages other than Spanish, are posted electronically for all courts statewide. This system has proven valuable by standardizing access to Spanish interpreters for all courts; enabling any court staff to easily determine if there is an interpreter already scheduled to provide services in that court on a given day and which interpreter is available; and serving as confirmation to the court that requested interpreter services have been scheduled.

A second successful tool used to meet the needs of the courts and LEP individuals is evening calendars. The justice-of-the-peace courts historically see the largest numbers of litigants, English speaking and LEP. To address these numbers, the justice-of-the-peace courts schedule “Hispanic Arraignments,” where calendars are scheduled specifically for Spanish-speaking defendants charged with motor vehicle violations and other misdemeanors. These calendars are scheduled on set days per week, depending on the demand. Two interpreters and two judges are assigned to these calendars, and up to 30 Spanish-speaking LEPs may be scheduled.

In addition to these two specific tools, the CIP administers standard general procedures to secure interpreter services. Every court in each county has two staff members responsible for receiving requests for interpreter services from within their court, state agencies, the Delaware Bar, or other sources. These staff members schedule and post the secured language services. Court staff have been trained by the CIP coordinator on these general procedures. Preference is given to securing in-person, certified, or duly qualified interpreters from the Delaware Interpreter Registry for all hearings. The coordinator provides support to court staff to address requests for rare languages or those for which there are no certified/qualified interpreters in the registry, or if an unusual circumstance arises.

### Table: Percentage of All Households in Delaware Which are Linguistically Isolated, by Select Languages

<table>
<thead>
<tr>
<th>Household Type</th>
<th>Percentage</th>
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</thead>
<tbody>
<tr>
<td>All Households</td>
<td>4.7%</td>
</tr>
<tr>
<td>Spanish-Speaking Households</td>
<td>27.1%</td>
</tr>
<tr>
<td>Other Indo-European-Speaking Households</td>
<td>16.4%</td>
</tr>
<tr>
<td>Asian- and Pacific-Island-Speaking Households</td>
<td>27.6%</td>
</tr>
<tr>
<td>Other Language Households</td>
<td>16.4%</td>
</tr>
</tbody>
</table>

Source: U.S. Census Bureau
Additional procedures are in place for unanticipated needs for language services. The initial step is to secure an in-person interpreter through the electronic calendars. Absent the timely availability of an in-person interpreter, CIP offers two types of telephonic interpreter services. One service is manned by Delaware registry interpreters and permits judges to access the more frequently used languages at reasonable rates; the other service is offered through an outside-language-services vendor. Telephonic services are usually reserved for nonevidentiary hearings, such as arraignments and capias returns.

**Data Collection and Analysis**

A third important tool helps track and quantify the demand for language services to forecast future needs and projected costs. The request-for-payment form was designed by the CIP coordinator and the AOC’s fiscal department for use with all foreign language and ASL interpreter assignments. Interpreters complete the form immediately, which includes all pertinent information about the services rendered, such as in-person or telephonic service; county and court; interpreter arrival and departure time; number of litigants receiving service; whether LEP was a defendant, litigant, parent of juvenile, witness, or victim; and type of hearing. Data collected from each RFP form is compiled electronically (using an Excel format) and tallied, along with expenditures, for all events. A summary captures the total number of events for each language, the total number of litigants served in each court and for each county, and expenditures per language.

At year’s end, the CIP coordinator issues a report including the total number of interpreting hours provided broken down by court and county; the number of LEP litigants receiving services by court and county; number of LEP litigants who were defendants/litigants, parents of juveniles, witnesses, or victims; types of hearings; number of interpreting events by language; and total expenditures for the fiscal year. These data are used for fiscal projections, to calibrate the number of interpreters needed, and to confirm that appropriate language services are being provided.

**Program and Funding**

Delaware’s Court Interpreter Program is centrally managed by the AOC under the direction of the Court Interpreter Program Advisory Board. The board is composed of five judges, a certified interpreter, and the AOC’s CIP coordinator. The coordinator’s position is full-time and currently held by a certified interpreter. The coordinator is responsible for overseeing the entire program, ranging from performing daily administrative tasks; developing appropriate policies and guidelines; conducting recruiting, education, and training; and maintaining a registry of court-approved interpreters. The registry is updated once a year and distributed to the courts and relevant agencies, such as the Delaware Department of Justice and the Public Defender’s Office.

The Court Interpreter Program was initially started with grant funds but is now state funded through a separate budget appropriation within the judicial branch budget. Budgeted monies pay for interpreter services received, as well as for other program needs such as candidate orientation, training, and certification exams.

All of Delaware’s court interpreters provide services on a contractual basis, and those on the registry have, as independent contractors, entered into service agreements with the AOC. To date, there are no full-time or part-time staff interpreter positions.

**Training and Educational Outreach**

To communicate the Delaware judiciary’s language access plan to all the Delaware judges and court staff and to standardize practices in all courts, the CIP coordinator has made presentations on the plan and general and court-specific procedures to judges and court staff in all courts and counties. All relevant materials, such as procedures, the language access plan, the registry, and required forms, are available through the Delaware judiciary’s “intranet” page.
The judges are also provided with bench cards on “Best Practices for Working with Court Interpreters in the Courtroom.” The bench cards explain how judges can evaluate the language proficiency of those who appear in their courtroom and determine whether interpreter services should be provided. Judges are also provided with guidelines to evaluate an interpreter’s credentials and qualifications, and an overview of the interpreter’s role, duties, and responsibilities to the court and the parties.

Educational outreach extends to other agencies, such as the Public Defender’s Office and the Office of Conflict Counsel, as well as members of the Delaware Bar. Materials, such as the “Best Practices for Attorneys Working with Foreign Language and ASL Interpreters,” are disseminated through the state bar association. Presentations on best practices by the CIP coordinator have been sponsored by courts and agencies.

Pilot Programs and Future Initiatives
In line with language-access-plan goals, and in conjunction with court-sponsored initiatives, such as the Delaware Courts: Fairness for All Task Force, efforts are underway to expand the range of services that will ensure fair access to the courts for all individuals. As a result of a 2009 pilot project, non-bilingual court staff can access telephonic interpreter services to assist LEP individuals at the point of first contact with the court. First contact often occurs when an LEP individual makes an unscheduled appearance at court and has questions or wants to pay a fine. Court staff have been provided with materials to help determine the LEP individual’s native language before they access telephonic interpreter services.

The CIP translation initiative has asked each court to identify their most frequently used critical documents and has translated those documents into Spanish. Spanish information brochures and complaint forms are available online, and additional efforts are being made to promote the availability of the court educational materials to the public through their distribution to community centers and other means. A Spanish video illustrating the civil processes in the justice-of-the-peace and the family courts is currently in production.

Finally, efforts are underway to identify current bilingual (English/Spanish) employees and affirmatively hire bilingual employees. The courts are stepping up their efforts to reach out to diverse communities through outreach programs so that the different communities’ needs can be better understood and served in the future.

Conclusion
Delaware’s Court Interpreter Program is now in its 15th year, and great strides have been made in turning what once represented a big problem in providing qualified court interpreters to LEP individuals in court, into a more manageable, if still demanding, one. The CIP’s framework and goals are guided by the Delaware judiciary’s language access plan, and it is a state-funded, centralized program with a dedicated staff that coordinates all the courts’ language requirements. By focusing on gathering statistical data, the Court Interpreter Program can help quantify which language services are needed, which courts require the most services, the types of services used by each court, the number of interpreters required, and the overall cost of the program. This information helps the program better judge the individual language-access needs of each court and anticipate the projected costs and future needs for language services in Delaware courts.
1 An event is defined as a court proceeding involving one or more LEP litigants requiring interpreter services. An event may also encompass one or several types of hearings: arraignments, pleas, and violations of probation or mediation, for example.

RESOURCES


Empire Justice Center, Model LEP Plans. http://onlineresources.wnylc.net/ph/orcdocs/LARC_Resources/LEPResources/ModelLEP/ModelLEP.htm


A MENTOR IN COMBAT VETERANS COURT: OBSERVATIONS AND CHALLENGES

Hon. Eileen C. Moore
Associate Justice, California Court of Appeal

Mentoring is nothing new, but mentoring in a combat veterans court by fellow combat veterans is new. This article comments on the role mentors play in a veterans court, mentor training, and the need for the development of mentor training specific to women.

Orange County, California’s Combat Veterans Court, now in its third year, is presided over by superior court judge Wendy Lindley in a defunct department store. A sign in the hallway has Mickey Mouse saluting the American flag, reminding all that Disneyland is only a few miles away. Unlike any other veterans’ court in the country, and the nine other veterans courts thus far in California, this veterans’ court accepts only combat veterans, a concept put into effect due to the wording of a prior California law. All veterans are eligible in other collaborative courts, such as drug court, homeless court, and mental health court. Combat veterans court survives despite the fact the law no longer limits veterans courts to combat veterans, quite simply because it works.

My involvement is peripheral. I sit on the California Court of Appeal and have absolutely nothing to do with the operation of veterans court. Because I served as a combat nurse in Vietnam and am a member of a chapter of Vietnam Veterans of America, Judge Lindley asked me if I could round up some Vietnam vets to serve as mentors in her court. While doing that, I volunteered myself should the court ever have any women defendants. It was not long before there were women vets and I became their mentor. When they have court appearances, I run over to veterans court for an hour or two about once a month. It provides me with a unique opportunity to view how justice is dispensed as a member of the public.

How Combat Veterans Court Works
California Penal Code section 1170.9 permits courts to specially handle any veteran who was a member of the military forces and suffers from post-traumatic stress disorder, traumatic brain injury, substance abuse, military sexual trauma, or psychological problems as a result of that service. Previously, the statute required combat service, but as of January 1, 2011, it no longer does.

Judge Lindley’s program centers on the specialized needs of combat veterans. Their families observe that each time they return from a deployment, their problems are worse. They demonstrate more and more hopelessness and disillusionment. The judge accepts those who had no problems during school and no contacts with the criminal justice system before joining the military.

A collaborative team decides which veterans will be admitted to veterans court. One does not see a typical array of career criminals in combat veterans court as the team selects those who demonstrate a commitment to reform themselves as soon as possible. Three simple rules must be followed. The veterans must be honest, show up, and try hard. It is a four-phase, highly structured program lasting a minimum of 18 months. While the veteran must plead guilty to the charges at the outset, upon successful completion, many walk away without a criminal record.

Observations About the Collaborative Process
Before a court session begins, numerous professionals meet in a cramped room behind the courtroom. The group includes the judge, two probation officers, a deputy district attorney, a public defender, a Veterans Administration representative,
members. The judge lowered his head a little as if to ward off an inclination to follow his intuition and give the young woman another chance. When he raised his head, he announced the team had decided she would go to jail.

These incidents drove home the differences between the traditional courts and collaborative courts that follow evidence-based practices. The judge still has the final say, but it is the team, not just the judge, that makes almost all the decisions. A judge is concerned about letting the team down in deviating from the collaborative team’s decision. It appeared it was very difficult for the second judge to go against his intuition, but he did, apparently realizing that evidence shows success if there is an immediate consequence for every deviation.

That is not to say a judge’s intuition is gone forever in collaborative courts. As it turned out, Judge Lindley’s was right on. The caged Vietnam vet she permitted into veterans court now shows up with a neatly trimmed beard, wearing a corduroy jacket over a turtleneck and looking much like a college professor. On that first day, I went up to the holding cell and told him there were many Vietnam vets sitting in the courtroom and we all believed he could do it. Later, when he was promoted into the fourth and final phase of the program, he told me he could not let a nurse down.

The other incident concerned a pretty young woman vet who drove while under the influence of alcohol. An alcohol test revealed she had a low creatinine level, and she was afraid she would be sent to jail. (Some people flood their systems with water to produce an artificially negative test. The creatinine level is checked to catch cheaters.) Judge Lindley was not presiding the day the vet tried to explain to the court she routinely drinks a lot of water and that she was not trying to beat the test. Another judge, a man, presided. The young woman told the judge how concerned she is about her health and that she drinks many glasses of water each day to keep her system cleansed and was not cheating. As the judge asked her questions, it looked as if he believed her. Just as Judge Lindley did, he looked around the team members. The judge lowered his head a little as if to ward off an inclination to follow his intuition and give the young woman another chance. When he raised his head, he announced the team had decided she would go to jail.

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What I find fascinating about the process, from the viewpoint of a judge, is the effect a collaborative court using evidence-based practices appears to have on a judge’s discretion. I will discuss two of my observations.

While most defendants are veterans of Afghanistan or Iraq, my first observation involves a Vietnam vet’s case. Looking scrubbed and happy, he displayed an A+ grade on his college paper. With tears in his eyes, he thanked Judge Lindley for giving him a chance. At that point, some rattling could be heard from the prisoners’ cage in the courtroom holding in-custody defendants on non-veterans-court matters. Inside the holding cell was another Vietnam vet. The caged Vietnam vet looked pitiful and bedraggled, and he begged the judge to allow him into veterans court, too. As Judge Lindley talked with him, it appeared she was looking over at the collaborative team for reactions. The judge told him the team had already decided not to permit him into veterans court due to his many years of drug use and other crimes. After he begged her to change her mind, she relented and said she would give him the opportunity. I think I heard some clearing of throats from team members, and I believe I saw Judge Lindley’s face redden as she overruled the team’s decision.

The Select U.S. Veteran Statistics, 2011

<table>
<thead>
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<th>Description</th>
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<tr>
<td>Iran/Afghanistan War Amputees</td>
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<td>VA Education Beneficiaries</td>
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<td>Compensated for Post-traumatic Stress Disorder</td>
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<tr>
<td>Receiving VA Disability Compensation</td>
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</tbody>
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Source: U.S. Veterans Administration
Training of Mentors
A strong sense of caring and giving exists among the mentors, all of whom are Vietnam veterans. This is not surprising, since the motto of Vietnam Veterans of America is “Never Again Will One Generation of Veterans Abandon Another.”

Several professionals talked about the program and how mentors who had been in combat too would help the defendants. We were told that people with addiction issues are surrounded by both professional and peer addiction personnel, and what these vets need in a mentor is a healthy human being. Mentors should be good and optimistic people who are focused on their mentees. They told us not to act in authoritarian or judgmental ways, and that when a manipulative mentee is deceptive, the mentor should try to contain personal reactions. We are to use our experiences and be supportive.

How Mentors Are Used
Mentors try to be in court when their mentees appear. Between court dates, each relationship just depends on the two individuals. Some communicate once a week by telephone. Others send e-mails or text messages. I occasionally meet for lunch or coffee with my mentees.

There appears to be a correlation between what happens in court with how much the mentee seems to lean on the mentor. If the judge has been very lenient, the mentee sometimes appears to “shine on” the whole proceeding, including the mentor, acting as if it is all a big waste of time. But if the judge sanctions a defendant with an overnight in jail, for example, the mentee wants to communicate more and takes the matter more seriously.

One of my mentees, who has numerous tattoos and ever-changing hair color (sometimes pink, sometimes orange), might as well have “arrest me” written across her forehead. So that is just what happened to her one Sunday morning. She told me about it when we had coffee a few days later. She swore to me she had not taken any drugs for 54 days. I believed her. When she got to court, we saw the police officer had written in the report that she was under the influence, her pulse was 125, her eyeballs were shaking, her pupils were constricted, and she kept interrupting the officer when he spoke. A drug test was performed, but the results were not back when she appeared in court. Because of the officer’s report, she was put in handcuffs and told she was going to jail. I was shocked as I assumed nothing would happen until the test results were seen. When the judge left the bench, I asked the bailiff if I could approach my mentee. I told her I did not know how things would turn out, but that I believed her. I waited in the courtroom with her until they came to take her to jail. After about 20 minutes, the judge and the team returned. The judge announced they were able to locate the test results. No drugs were found in her system. As soon as she got home, my mentee wrote me, “Eileen, I just wanted to tell you, thank you for going to court with me and being there and believing in me.”

Comments on the Mentoring Program and Some Suggestions on How It Might Be Improved
I see three places for possible improvement of the mentor program in combat veterans court. They all have to do with mentor training.

As background for my first suggestion, I experienced great ambivalence when I thought I smelled alcohol on a mentee. She had been arrested for driving under the influence and ordered to refrain from all alcohol and drugs. Around the same time, another mentor told me he knew his mentee, who had been ordered not to leave the county, spent a weekend in San Francisco. Both of us were in a quandary regarding how to handle the situations. As mentors, we are not supposed to act

Interaction in the Hallway
Each time I have attended combat veterans court, the mentors and mentees stand outside the courtroom in the hallway waiting for the team collaboration to conclude. Serendipitously, these times genuinely expand the esprit de corps of the mentors and mentees. Healing and soothing occurs as faces become familiar and people chat. There are smiles and “attaboys,” and encouraging pats on the back. These hallway interactions seem to tap into the military sense of pride and camaraderie.
judgmental or authoritarian; yet neither of us wanted to be enablers, either. Mentoring under circumstances where court orders are involved is different from typical mentoring, and mentors need to be trained for such situations. They do not want to report the person they are supposed to be mentoring to the court. Nor do they want to feel responsible for someone driving under the influence or otherwise defying a court order.

Second, practically all the combat veterans got into trouble because of drug or alcohol abuse. But few of the mentors have had problems with drugs or alcohol. While I understand why it might be preferable for defendants to have healthy people mentoring them, I can also see some value to having a mentor who has some experience with drugs. Phase four of the combat veterans court program states as a requirement: “Become a mentor to a new Combat Veterans Court participant as approved by your treatment plan.” Richard, the Vietnam vet defendant who displayed his A+ paper, graduated and headed the mentor program for a short time. Thus far, he is the only graduate who has mentored, which is not surprising because the younger ones are in school or starting careers. Mentors who are not graduates might do a better job if their training included something about drugs and alcohol.

Third, almost 200,000 female members of the military have served in Iraq and Afghanistan. Some trauma-inducing events are either unique to or more common among women. It may take years for a woman who was sexually abused in the military to reach out for assistance. Mentoring of women veterans can be very different than mentoring men. Some sort of training specifically designed toward mentoring women needs to be developed.

The very first night I was in Vietnam, two drunken officers, stating their illicit intentions in filthy language, tried to break into the nurses’ transient quarters. Thus, I am quite aware of how frightening it can be for a woman amid hundreds or thousands of battle-hardened soldiers. Young women soldiers, who are very patriotic and want to serve their country in a meaningful way, experience fear, disappointment, and sometimes fury when they are sexually attacked or harassed.

Sexual trauma is now on the list of maladies for a veteran to qualify under the California statute. Today all separating military personnel are screened for military sexual trauma, a term that refers not only to sexual assault but also to sexual harassment or unequal treatment of any kind based on gender. Military sexual trauma, like combat stress, can lead to PTSD, depression, and suicide.

When a woman reports an assault to military medical personnel, military police, or even a military chaplain, those persons must report the assault. The incident is filtered through several layers within the chain of command before actually reaching the commanding officer. A woman must often continue to serve with and show respect for the perpetrator. Victims may even be required to salute their rapist.

Conclusion
Veterans courts have emerged as a vital form of therapeutic and collaborative justice with proven efficacy. When focused upon the unique challenges and trauma that afflict combat veterans, and drawing upon mentors, who themselves have been in combat and understand the frame of mind and spirit resulting from putting one’s life in harm’s way, veterans are able to again become contributing members of society. Having risked their very all to secure our liberties, they deserve nothing less than the opportunity to heal that these courts provide with superior force and effect. As the mentoring model grows it would behoove the courts and its constituents to share notes on best practices in training and utilizing mentors.
RESOURCES

Administrative Office of the Courts (n.d.). “California Veterans Courts: The Power of Mentors.” Available by e-mail from Michael Roosevelt, senior court services analyst and staff to the Veterans Court Working Group, michael.roosevelt@jud.ca.gov.


Orange County Superior Court (n.d.). “Combat Veterans Court Mentor Guide.” Available by e-mail from Kimberly Parsons, collaborative court coordinator, Kparsons@occourts.org.

— (n.d.). “Combat Veterans Court Participant’s Handbook.” Available by e-mail from Kimberly Parsons, collaborative court coordinator, Kparsons@occourts.org.


CLEVELAND HOUSING COURT—A PROBLEM-SOLVING COURT ADAPTS TO NEW CHALLENGES

Hon. Raymond L. Pianka
Judge, Housing Division, Cleveland Municipal Court

Since 1980, the Cleveland Housing Court has been developing unique solutions to Cleveland’s many and ever-changing housing challenges. It provides a model both for dedicated housing courts and for general courts seeking a problem-solving approach to nuisance abatement, foreclosure, vacancy, and abandonment.

Background and Formation

Over the past several decades, many courts have recognized the value of creating specialized housing or environmental dockets to address the unique challenges posed by these cases. Such dockets allow courts and judges to develop expertise in the applicable law, produce consistent results, and, most of all, adopt a problem-solving approach to cases. The Cleveland Housing Court takes this specialty approach one step further. As a legislatively established special-purpose court, its very mission is to adjudicate cases and solve problems comprehensively and holistically.

The journey to the housing court’s creation began well before its establishment in 1980. Clevelanders began calling for a special court to address housing issues as early as the 1950s. The years that followed brought a flurry of housing-related activity, both locally and nationally. The Ohio legislature enacted a comprehensive landlord-tenant law in 1974 (O.R.C. Ch. 5321). Northeast Ohio saw a wave of housing advocacy, as numerous groups fought for fair housing and lending practices. Congress passed the Community Reinvestment Act in 1977 as a response to the chronic red-lining and disinvestment of inner-city minority and racially diverse neighborhoods. Neighborhood advocates called out for greater code enforcement as housing crumbled from neglect. At the same time, serial offenders and absentee landlords avoided consequences by exploiting weaknesses in the enforcement system. By early 1980, as a result of the extensive efforts of committed housing advocates and local officials, Cleveland had its court (O.R.C. Ch. 1901). In that first year, the Housing Division of the Cleveland Municipal Court handled 6,452 eviction cases and 599 criminal-code-compliance cases (Jacquay, 2005).

The Cleveland Municipal Court and its housing division has territorial jurisdiction over the city of Cleveland and the adjacent village of Bratenahl. The housing division, often referred to as the housing court, has exclusive subject-matter jurisdiction over all landlord-tenant civil actions (R.C. 1923 and 5321), as well as over municipal, state, or common-law claims involving housing, environmental, or other land-use matters. It has ancillary jurisdiction over all claims or issues arising in any case over which the housing court has original subject-matter jurisdiction. In any case properly before it, the housing court’s powers to issue orders are the same as that of the state of Ohio’s constitutional courts. In all of these matters, the housing court is free from the monetary jurisdictional limits applicable in the general division of the municipal court. All appeals from the housing court go directly to the Ohio District Court of Appeals.

The housing court, along with the rest of the Cleveland Municipal Court, the state trial courts for the county, and city and county law-enforcement agencies, are housed in the 23-story Justice Center in downtown Cleveland. The housing division of the municipal court is a single-judge court; the general division of the same court has twelve judges. The housing court uses two courtrooms located ten floors apart—one for evictions on the third floor and the main courtroom for criminal and civil cases other than eviction on the thirteenth floor. Magistrates and staff directly involved in cases work from a few small offices and desks in a hallway on the thirteenth floor, while bailiffs and administrative staff occupy space elsewhere in the Justice Center. With more than 11,000 civil and nearly 7,000 criminal cases filed in 2011, the housing court is one of the busiest single-judge courts in the state. The limitations imposed by its working space present an ongoing challenge for the court.


There has not been a time in the memory of most people now living in this nation when the stability and fabric of neighborhoods and communities have been so threatened in so many places all at once.
The Mortgage Crisis and Its Impact on the Court

When I took the bench as housing court judge in 1996, the Cleveland housing market already was being destabilized through the failure of many absentee investor-owners to keep their properties up to code. The court began to see the same owners repeatedly on building- and housing-code violations. As the market began to come apart and foreclosures rose, investors purchased dilapidated properties at sheriff’s sales. Once they acquired the properties, many investors failed to maintain them. These properties often ended up mortgaged for far more than their actual value (Paynter, 2000: 1A; Perkins, 2000; Lind, 2008: 239; Kotlowitz, 2009). As the owners were cited for code violations, it became apparent that the problem was not just the failure to comply with housing codes, but also speculative investment and irresponsible flipping practices. These schemes not only kept properties in substandard condition, but eventually landed them with inexperienced property owners without the knowledge or ability to perform needed repairs.

The wave of foreclosures leading up to the mortgage crisis of 2008 struck early in Cleveland and struck hard (Mallach, Levy, and Schilling, 2005; Lind, 2008; Kotlowitz, 2009). In many cases, loan failures followed quickly from the flipping schemes of the late 1990s and early 2000s. By the time the mortgage crisis reached the rest of the country in late 2008, the court already was hearing repeated cases against global banks and post-foreclosure owners for serious code violations. These cases often involved extensive code violations at bank-owned REO (real-estate-owned) properties purchased at sheriff’s sales, or investor-owned properties acquired in bulk transactions from lenders or other investors.

These new investor-owners, often organized as out-of-state LLCs, were difficult to identify and notify when their properties were cited. Many invested in the worst of the housing stock, hoping to profit from the quick resale of vacant nuisance properties without making repairs. Many of the investor-owners neglected to file deeds, hiding their ownership by keeping their deeds out of public records, making it difficult for the city to hold these owners responsible for nuisance conditions.

Even when identified and served, a good number of these organizational owners simply refused to appear in court. It had become “cheap and easy” to speculate in blighted housing in Cleveland (Mallach, Levy, and Schilling, 2005: 14). While the city spent more on nuisance abatement and demolition, residential property values and tax receipts were falling (Weinstein, 2008: 27). Blight spread like a disease from individual properties, infecting whole city blocks and, in some areas, entire neighborhoods. As the foreclosures increased, so did the number of abandoned and vacant houses feeding into this cycle. These houses threatened well-established and largely successful neighborhood-recovery investments made by nonprofit developers and responsible owners throughout the city.

The increase in foreclosures brought another challenge, as homeowners who had left their property after foreclosure found themselves summoned to court for code violations at their former homes. These defendants discovered that their lenders had abandoned foreclosure cases or refused to purchase the properties at sheriff’s sales, leaving legal title to the property in the foreclosed owners’ names.

As the complexity of cases before the court increased so, too, did their sheer number. In 2010, its 30th anniversary year, the court’s caseload reached an all-time high with the filing of 11,104 civil cases and 6,813 criminal cases—more than ten times the number of criminal cases filed in the court’s inaugural year. The steady volume of evictions over the years and the rise in criminal cases are all the more remarkable in light of Cleveland’s loss of over 80,000 residents, a full 17 percent of its population, over the prior decade (Smith and Exner, 2011: A6).

Institutional and Jurisdictional Features

The people of Ohio placed a great responsibility on the court some 30 years ago, but they gave it unique tools as well. The court’s broad jurisdictional grant and uniquely specialized mission require special staffing roles critical to the court’s ability to respond to the ever-evolving challenges facing this city. The court’s [jurisdictional authority] to resolve completely all claims raised by the parties, greatly increases the likelihood of a comprehensive solution and furthering the court’s holistic, problem-solving mission.
employs nine persons as housing specialists, a statutorily created position essential to the problem-solving mission of the court. They work with first-time defendants in a diversion program, conduct special inspections ordered by the court, monitor compliance of defendants both before and after sentencing, and work with community organizations to increase education and awareness of code-enforcement issues. The specialists operate the housing clinic, as well, where landlords and tenants can receive information free of charge regarding landlord-tenant law and housing court procedure. There are also six magistrates, two staff attorneys, two judicial clerks, and twelve bailiffs, who oversee evictions, serve papers, and provide security, along with administrators, clerks, and interns. This year the court is implementing budget cuts, which will most likely result is some staff reorganization and reduction.

The Cleveland Housing Court is the largest of three specialized housing and environmental courts in Ohio; the others are the Environmental Division of the Franklin County Municipal Court and the Housing and Environmental Division of the Toledo Municipal Court (O.R.C. §1901.011). Ohio’s statutory housing courts have original subject-matter jurisdiction limited to state and local land-use laws. The Cleveland and Toledo courts have exclusive jurisdiction in eviction and other housing-related civil actions; all three courts have exclusive jurisdiction in misdemeanor criminal actions for violations of local building, housing, air-pollution, sanitation, health, fire, zoning, or safety codes (O.R.C. §1901.181). This exclusive subject-matter jurisdiction enables the court to develop expertise in its subject area and to interpret the law consistently.

While at first glance, this subject-matter jurisdiction might appear quite limited, the statute also provides for extensive ancillary jurisdiction—if a claim is properly filed in the housing court, the court has the power to resolve all related claims and issues in the case. To do so, it may exercise all the power of a common-pleas court to make findings, render judgments, or issue orders, including injunctive relief (O.R.C. §1901.131). The Cleveland Housing Court has an additional jurisdictional asset: its unlimited monetary jurisdiction (O.R.C. §1901.17). This jurisdictional feature prevents parties from moving cases out of the housing division by raising counterclaims or cross-claims on matters not within the original jurisdiction of the housing division. Perhaps more important, it permits the housing court to resolve completely all claims raised by the parties, greatly increasing the likelihood of a comprehensive solution and furthering the court’s holistic, problem-solving mission.

Another specialty tool employed in the housing court is the nuisance-abatement-receivership action of Ohio Revised Code 3767.41. Championed by many of the same people and organizations who had pushed for the creation of the housing court, the statute permits a city, a neighbor within 500 feet, tenant, or housing-related nonprofit corporation to file a lawsuit against the owner of a nuisance property, seeking as relief an injunction to remedy the nuisance, the appointment of a receiver to manage the property and resolve the nuisance conditions, or both. The receiver, upon completion of the abatement, receives a super-priority lien for the costs incurred. The statute grants authority to the housing court to hear these cases, which have been used by nonprofit community-development corporations to demolish or rehabilitate nuisance properties.

Recognizing the unique nature of housing cases, both civil and criminal, the drafters of the housing court’s enabling statute created a special staff position to help the court—and the people it serves—in a number of distinct ways (O.R.C. §1901.331). The court’s housing specialists have become a critical resource in the court’s problem-solving toolkit. They bring a wide variety of professional experience to their position, with backgrounds in social work, banking/finance, real estate, property management, urban and regional planning, and consumer affairs. Every specialist is well versed in the city’s building, housing, and zoning codes.

In criminal cases, the specialists work with defendants, in particular first-time offender owner-occupants, to help them access community-based financial assistance or home-repair services. Specialists also serve as probation officers, supervising community control sanctions and reporting to the court on the defendant’s progress in complying with the terms of the sentence.

In civil cases, the court offers assistance to property owners, landlords, and tenants through its housing clinic. Landlords and tenants can appear without an appointment to obtain information about their housing rights and responsibilities. The clinic provides standardized forms for many common motions and case-related
filings, as well as information on rent deposit and eviction procedures and related mediation. The clinic assists Cleveland residents in resolving landlord-tenant disputes involving illegal lockouts, utility shutoffs, and other housing conditions requiring immediate attention. The specialists are not attorneys and cannot give legal advice. However, they do help people understand court procedures, notices, and processes. More than 6,000 people seek information or assistance through the clinic each year.

**Key Procedures and Programs of the Court**

The legislature provided the Cleveland Housing Court with special tools to carry out its mission. The court, particularly in recent years, has developed additional processes and resources of its own to meet the dynamic nature of Cleveland’s housing challenges.

While Cleveland’s ordinances permit the city to name corporate officers as defendants in code-violation cases against properties owned by an organization, the city routinely charges only the organization. When a corporation or other business entity fails to respond to a summons, the law does not provide a means for the court to arrest the organization and compel its appearance.

In response, the court developed its corporation docket. When an entity, having been properly served, fails to appear in a criminal matter, the case is referred to this special docket, and a series of notices are issued to its official address, as well as to corporate officers. If the entity again fails to appear, further notices are sent. The case then proceeds to hearings at which the entity must show cause why it should not be held in contempt of court for ignoring the order to appear. If the entity still fails to appear and is found in contempt, the court can impose substantial daily sanctions, typically $1,000 per day.

These contempt sanctions continue to accumulate until the entity appears to answer the charges against it. As of March 2012, the court has levied more than $108 million in sanctions for contempt of court and ordered them converted into civil judgments. Unfortunately, a large percentage of the contempt penalties have gone uncollected. Neither the clerk of court nor the city’s law director, both of whom have the authority to do so, have undertaken vigorous collection efforts. Despite the lack of collections thus far, however, this program has increased the proportion of organizational defendants who appear in court, and recently was upheld by Ohio’s 8th District Court of Appeals in *Cleveland v. Paramount Land Holdings*, 2011 Ohio 5382.

The court also has been able to compel criminal defendants to appear through the “clean hands” program. The court routinely reviews its civil eviction docket to identify property owners with outstanding warrants who have filed eviction actions. In these situations, the court imposes the equitable doctrine of “clean hands” and requires the plaintiff-owner to appear and enter a plea in the pending criminal cases before that same person or entity can invoke the court’s jurisdiction in eviction actions.

Through late-night infomercials and other media attention, the real estate market has attracted individuals with promises of great wealth to be made with little effort or capital. Individuals involved in real estate investment and rehabilitation often may have a dozen or more other properties falling into disrepair; the single property
for which a defendant has been cited by the city may be only the “tip of the iceberg.” As a result, the court often includes in plea agreements and sentences solutions that address all problem properties owned by the defendant in the city of Cleveland. The court encourages the defendants to make a realistic assessment of their capabilities and, if necessary, begin to transition the properties to responsible, beneficial owners. In extreme cases, it may be necessary for an individual to transfer the properties to beneficial owners to remain out of jail.

Abandoned properties are quick targets of vandalism, graffiti, and scrapping. To help keep homes occupied and intact, the court sends informational letters to foreclosure defendants in Cleveland, encouraging them to remain in their homes as long as possible and informing them that their responsibility for code compliance continues until the property is sold to a new owner. The court tracks the letters returned because of vacancy and forwards that information to the court of common pleas, which determines whether the properties are appropriate for its expedited foreclosure docket for abandoned properties.

The court also uses the Court Community Service (CCS) program to multiple ends. Not only does it provide a valuable sentencing option for misdemeanors, but also serves as a resource for addressing some property issues, lessening the impact of blighted properties on the surrounding neighborhood. Through CCS, the housing court can order community service workers, i.e., misdemeanor offenders sentenced to perform community service hours, to clean up vacant lots, perform yard work, secure vacant structures, and make minor repairs at properties that are the subject of pending cases in the court.

Housing court also has implemented a placard program to connect neighbors with information about abandoned properties that are the subject of pending court cases. When a property under the jurisdiction of the court is identified as vacant and abandoned, bailiffs post notices on the premises forbidding trespassing and providing contact information for the person or entity responsible for the property, as well as the assigned housing specialist. This enables neighbors to contact the responsible parties about any issues with the property and to track the progress of the court case.

Reflections and Lessons Learned
I have learned a great deal in my nearly 17 years on the bench. Nothing I have done or could do to serve my community is more important or more fulfilling than being the housing court judge. I came to the bench after working as an executive director of a community-development corporation and then as a member of the Cleveland City Council. These experiences—where I developed firsthand knowledge of housing and land-use issues at the neighborhood level—were great preparation for my role with the court. As with other specialized courts, the housing court needs judges and staff members with subject-matter expertise and passion for the issues heard here. The quality of service provided by this housing court is a result of the dedication and expert knowledge of the court’s staff and is reflected in the number of people who look to the court as a source of informed and just public service.

It is a surprise that there are not more housing or environmental courts in Ohio and elsewhere. We have hosted delegations from other cities and counties—many on more than one occasion—who were interested in establishing a special-purpose court under Ohio’s enabling statute. While others have taken ideas for programs or techniques, none have established new housing or environmental divisions. The hurdle, apparently, is political. Cleveland’s housing division was established over opposition from powerful political figures, including judges, because of public demand for better housing conditions by a coalition of neighborhood organizations,
along with the persistent determination of city council members and a few state legislators. Given the urgent needs at this time, it is unfortunate that there is so little success against the political barriers to new housing and environmental divisions.

In cities in which statutory housing courts are not in place, courts nevertheless have been able to use many of the procedures, programs, and policies profiled in this article. In turn, this court has benefited from the examples of prosecutors and courts around the country—from Buffalo to Memphis, from Baltimore and Boston to San Diego and Los Angeles. There has not been a time in the memory of most people now living in this nation when the stability and fabric of neighborhoods and communities have been so threatened in so many places all at once. Never have we seen so many powerful, external man-made forces spreading disruption in housing and the residential environment. I find that the “broken window” theory attributed to the work of the late John Q. Wilson is more relevant than ever in the face of the breakage so many local courts are now seeing on their dockets.

Of course, like all other courts, the housing court can only adjudicate cases that are brought before it. The agenda for a court in many ways is set by the decisions made by the executive branch and prosecuting attorneys in deciding which cases to bring. Preparation and planning by the prosecution in those cases is necessary to enable the court to address the merits of the cases and, often, to reach the underlying reasons why a property is out of compliance with city codes. Without these solid foundations, it can be difficult, if not impossible, to reach the court’s ultimate goal in most cases—safe, habitable housing and commercial structures.

The Cleveland Housing Court’s deep commitment to the goal of code compliance for safer, healthier, law-abiding neighborhoods keeps us looking for even more ways for the law to protect people where they live. The proper perspective for a special-purpose, remedial court is to solve problems using all the tools at its disposal. And where new tools are needed for new problems, the court can, and should, take an active role to develop the necessary mechanisms to meet that need.

RESOURCES


Smith, R. L., and R. Exner (2011). “396,815; Cleveland’s Population Drops 17% to Fewer than 400,000 for the First Time Since the 1900 Census,” Plain Dealer (Cleveland), March 10.

Problem Solving for Support Enforcement: Virginia’s Intensive Case Monitoring Program

Hon. A. Ellen White
Judge, Campbell County Juvenile and Domestic Relations District Court

Craig M. Burshem
Senior Assistant Attorney General

Virginia’s Intensive Case Monitoring Program uses a unique collaboration between the juvenile courts, the Division of Child Support Enforcement, and various community agencies to overcome barriers to consistent compliance with child support orders, to reduce jail overcrowding, and to promote the involvement of noncustodial parents with their children.

Scope of the Problem and Traditional Approach

The traditional approach to enforcement of a child support order involves the noncustodial parent appearing in court to show cause why he or she has failed to comply with the order. If the respondent is found in contempt of court, he or she is required to pay the support or be incarcerated for nonpayment. While such orders are sometimes effective in obtaining an immediate payment as ordered by the court, they are ineffective in obtaining long-term compliance and consistent monetary support for children and families. Obligors who become incarcerated for failure to pay support add to localities’ incarceration costs and contribute to the overcrowding problem in some jails. The same obligors may be seen repeatedly in court, with these enforcement actions dominating the courts’ support dockets.

It has been reported that noncustodial parents pay less than 60 percent of their current child support obligations in the United States, and approximately one-fourth of custodial parents who are owed child support receive no support at all (Legler, 2003: 6). Of the 2.5 million obligors who do not pay, experts say half are “deadbeat” and the other half are “dead-broke” (Sorensen, 1999; Zingraff, 2007: 2). For many parents who do not pay support, there are myriad barriers to compliance, such as substance abuse or addiction, mental health issues, arrest records, lack of education and training, and extensive unemployment histories. The traditional approach to enforcement is insufficient for such individuals to become consistently compliant with payment of their child support. In addition, many noncompliant obligors have little to no involvement in their children’s lives, leaving these children without either the emotional or the monetary support they need.

The Value of a Problem-Solving Approach

Problem-solving courts, such as drug courts and mental health courts, have become well known and have proven effective in bringing together resources to address specific social issues. In 2004 the Conference of Chief Justices and Conference of State Court Administrators passed Resolution 22 supporting the use of problem-solving principles in all courts. These principles include a collaborative approach between the courts and treatment services, dedicated dockets for frequent monitoring of compliance by the courts with the use of rewards and sanctions, and case plans tailored to meet each individual litigant’s need for services.

History of Virginia’s Program

Virginia has adopted a problem-solving approach in child support enforcement cases through the implementation of the Intensive Case Monitoring Program (ICMP). In 2008 the Virginia General Assembly enacted legislation authorizing the Department of Social Services to establish pilot programs in four judicial districts. The pilot provided for intensive case monitoring for noncustodial parents referred to the program by the courts upon a contempt finding for failure to pay child support. The purposes of Virginia’s program are to reduce jail overcrowding, provide less costly enforcement alternatives to incarceration, maximize the potential for consistent child support payments by breaking the cycle of noncompliance, and promote the involvement of noncustodial parents in their children’s lives.

Following the success of the initial pilot, the use of ICMP has expanded across the state. At present, 17 courts in Virginia offer this program to litigants.
**Problem Solving for Support Enforcement: Virginia’s Intensive Case Monitoring Program**

The coordinator provides technical assistance to the local DCSE offices monitoring and evaluating each local ICMP, identifies services and programs to enhance the program across the state, and fosters communication and the sharing of best practices among participating localities. The coordinator also analyzes program data and provides monthly statistical reports to DCSE and the participating courts. These reports track the number of participants and completion rates and provide information on compliance barriers, demographics, program compliance, and collections information.

Judicial leadership is key in convening DCSE representatives and other community partners to obtain the initial commitment and then pursue the necessary steps for ICMP implementation. Generally, the clerk’s office is responsible for calendaring child support enforcement actions on dedicated dockets so the ICMP case manager can attend. Once in court, the judge makes a case-by-case determination of each respondent’s suitability for participation in the ICMP program and orders appropriate individuals to participate. The court may set specific requirements as a condition of participation, i.e., obtaining substance abuse treatment, participating in a parenting course, or applying for a certain number of jobs. The court schedules review hearings at appropriate intervals to monitor program compliance. At each review, the case manager updates the court on a participant’s compliance, and the court determines whether he or she should remain in the program. The court continues to monitor compliance until the participant establishes a consistent ability to comply with the support order. Participants who are not compliant may be removed from the program by the judge and incarcerated for contempt as deemed appropriate by the court.

In addition to DCSE providing the ICMP program coordinator at the state level, the local DCSE offices play an important role in the program. These offices hire and train the ICMP case managers, identify community partners and services, identify individuals who may be ICMP candidates, and initiate appropriate child support case actions. The attorneys providing legal services to DCSE likewise provide key assistance. They review court dockets in advance with the ICMP case managers to identify appropriate ICMP referrals. The DCSE attorneys ask the court for ICMP referrals in lieu of jail in appropriate cases and introduce evidence of ICMP progress during court review hearings.
Another key role is played by the community partners in each locality. These partners may be state and local governmental agencies, as well as nonprofit agencies. While the specific organizations vary from one community to another, it is critical to involve organizations specializing in job placement, job training, educational services, housing assistance, transportation, rehabilitation services, parenting and co-parenting education, mediation, substance abuse, and mental health services.

**Barriers to Compliance**

<table>
<thead>
<tr>
<th>Barriers Identified</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Job Search Issues</td>
<td>22%</td>
</tr>
<tr>
<td>Parenting Issues</td>
<td>18%</td>
</tr>
<tr>
<td>Employment Issues</td>
<td>15%</td>
</tr>
<tr>
<td>Health/Personal Issues</td>
<td>14%</td>
</tr>
<tr>
<td>Support Issues</td>
<td>12%</td>
</tr>
<tr>
<td>Prisoner Reentry Issues</td>
<td>11%</td>
</tr>
<tr>
<td>Attitude Problems</td>
<td>8%</td>
</tr>
</tbody>
</table>

During ICMP orientation, participants answer questions that correlate to one of seven possible barriers identified in the chart above, which also reflects percentages of participants with these barriers based on ICMP’s 2011 report.

Not surprisingly, unemployment is the number-one barrier, but often the participant does not have a job because of other barriers, such as lack of education, difficulty with the English language, or substance abuse problems. Often, the case manager must spend a lot of one-on-one time with the participant to identify multiple barriers and work on a comprehensive plan to overcome them.

“Job search issues” can include a lack of knowledge about how to conduct a job search, respond during an interview, or write a resume. “Parenting issues” can include problems with child access or visitation or lack of information about appropriate parenting skills. “Health/Personal issues” can include medical issues or such problems as lack of transportation or lack of proper clothing for job interviews. “Support issues” can include such problems as lack of personal or financial support, or substance abuse, which is typically the most difficult barrier for ICMP case managers and community partners to address. “Prisoner reentry issues” include problems participants might have obtaining employment because of their criminal background. “Attitude problems” may include issues such as frustration, anger management, depression, or low self-esteem.

**Participant Demographics**

The vast majority of the participants are male, which mirrors the DCSE caseload as a whole. Almost two-thirds of the participants are between the ages of 25 and 40.

<table>
<thead>
<tr>
<th>Gender</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>86%</td>
</tr>
<tr>
<td>Female</td>
<td>14%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Age</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>20-24</td>
<td>12%</td>
</tr>
<tr>
<td>25-29</td>
<td>18%</td>
</tr>
<tr>
<td>30-34</td>
<td>25%</td>
</tr>
<tr>
<td>35-39</td>
<td>17%</td>
</tr>
<tr>
<td>40-44</td>
<td>14%</td>
</tr>
<tr>
<td>45-49</td>
<td>8%</td>
</tr>
<tr>
<td>50-54</td>
<td>4%</td>
</tr>
<tr>
<td>55-59</td>
<td>2%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Highest Level of Education</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did not graduate High School</td>
<td>35%</td>
</tr>
<tr>
<td>Graduated High School</td>
<td>28%</td>
</tr>
<tr>
<td>GED</td>
<td>19%</td>
</tr>
<tr>
<td>Some College</td>
<td>15%</td>
</tr>
<tr>
<td>Graduated College</td>
<td>3%</td>
</tr>
</tbody>
</table>
It appears from the education chart that those with less education experience more difficulty in paying child support.

**Results**

ICMP has enrolled 979 participants since its inception.

- 326 have graduated from the program. Participants graduate when the judge releases them from ICMP after they have complied with program requirements, obtained and kept employment for a period of time, and are paying their child support obligation.
- 376 have been dropped from the program by the judge for noncompliance.
- 277 are currently active.

Total ICMP collections through December 2011 are $3,087,560.

Total monthly average paid by all participants before and after ICMP enrollment shows a significant increase regardless of participant type.

Average monthly amount paid by active, graduated, or dropped participants before and after ICMP enrollment shows increased post-enrollment payments by all three participant types.

Projected collections if participants had not been in ICMP (based on average pre-program collection of $63 by all participant types multiplied by the number of participants each of the months) show that ICMP has dramatically increased collections.
In addition to the standard programs that each participant is automatically referred to through the Virginia Employment Commission, Goodwill, Salvation Army, and other organizations, ICMP has paid for these services and training programs:

- 1 barber’s license
- 1 licensed practical nurse
- 1 certified nursing assistant
- 4 GEDs
- 2 completed computer classes
- 1 current enrollment in barber’s apprentice training
- 1 current enrollment in fork-lift-operators certification training
- 10 pairs of work boots purchased for participants employed on construction jobs
- 17 sets of interview clothes upon completion of employment-preparedness-skills class

ICMP Success Stories from Case Managers

A participant who was very eager and enthusiastic about starting the ICMP program was able to find a job at a Sonic restaurant in Roanoke in January 2010 and is still employed there. He now has custody of his daughter and says that the parenting class he attended while participating in ICMP assisted him tremendously. He has paid off the arrearage balance on his case. Even though he is no longer an active ICMP participant, he continues to contact his case manager periodically just to say thanks for helping him turn things around.

Another participant was an older man with very little training. Through a referral to Goodwill Industries, he attended classes and training and obtained employment with Standard Parking, where he is still employed after 15 months. He recently paid off all the debt on his case.

A participant completed an air-conditioning-technician course from which he graduated with honors. He has perfect attendance at the Fatherhood Mentoring Initiative Program meetings, through which he made contacts that led to an interview with the Portsmouth Shipyard apprentice program. The interview resulted in the promise of a job placement at the beginning of this year.

One participant did not want to be in ICMP and would probably not have been there at all if his father had not provided transportation. After his case manager talked with him, encouraged him, and connected him with area resources, he found a job. He has been at the same job for almost two years and still calls from time to time to let his case manager know how much he appreciates her for believing in him.

Summary

Through the Intensive Case Monitoring Program, Virginia has helped noncustodial parents facing incarceration overcome the barriers that prevent them from paying child support. This program gives judges another tool to help parents and to avoid having to incarcerate them. It also gives participants a chance to support their children financially and be more fully involved in their children’s lives. Based on significantly increased child support collections from ICMP participants and the achievements many participants have attained in obtaining education, training, employment, and parenting skills, ICMP has been a great success. In fact, it has been such a success that Virginia plans to expand the program by adding more fatherhood resources and co-parenting activities for ICMP participants to further strengthen family relationships.
RESOURCES


Child Support and the Court Web site. www.childsupportandthecourt.org


The U.S. Supreme Court’s decision in Turner v. Rogers (2011) stresses the due-process rights of self-represented litigants. Courts should see this decision as an opportunity to improve their services and programs for such litigants.

On June 20, 2011, the United States Supreme Court, in its first trip to the self-represented courtroom in 25 years, issued a groundbreaking opinion in Turner v. Rogers (2011) about the due-process rights of the self-represented and what courts must do to ensure that they are given true access to justice. The decision challenges judges and court administrators to build consensus around innovations and improvements. This article briefly summarizes the core holding of Turner, including its broader due-process elements, suggests the approaches that courts and access-to-justice institutions might consider to deal with the broad implications of the decision, and offers concrete resources to assist in that process. The good news is that many of the needed access innovations are already being deployed and have now been effectively endorsed by the Supreme Court in this decision.

The Turner Decision
Significantly, the case as it came to the Supreme Court was in a posture that did little to suggest the ultimate broad reach of its holding—one very different from that sought by either of the parties. In the South Carolina Supreme Court, a child support obligor sought reversal of his civil-contempt-incarceration order on the grounds that he had lacked counsel. (The party seeking the incarceration order was not the state and also did not have counsel.) After South Carolina had rejected the claim, certiorari was granted. During briefing of the case, the solicitor general, representing the United States, urged rejection of both the self-represented litigant’s right-to-counsel claim and the respondent’s urging of affirmance. The solicitor general urged that although there was no categorical right to counsel in such cases, the failure of the trial court to follow available alternative procedures that would have protected the litigant’s due-process rights required reversal.

And we consequently determine the “specific dictates of due process” by examining the “distinct factors” that this Court has previously found useful in deciding what specific safeguards the Constitution’s Due Process Clause requires in order to make a civil proceeding fundamentally fair. Mathews v. Eldridge, 424 U. S. 319, 335 (1976) (considering fairness of an administrative proceeding). As relevant here those factors include (1) the nature of “the private interest that will be affected,” (2) the comparative “risk” of an “erroneous deprivation” of that interest with and without “additional or substitute procedural safeguards,” and (3) the nature and magnitude of any countervailing interest in not providing “additional or substitute procedural requirement[s].” . . .
Turner’s incarceration violated the Due Process Clause (Turner v. Rogers, 2011: slip opinion at 11, 14, 16).

There are a number of important points about the opinion as a whole that should be emphasized:

• While the decision itself focuses on incarceration (and, indeed, states the importance of the private interest at stake in such situations), it relies on the due-process clause, which is implicated in every case dealing with the potential deprivation by a court of a constitutionally protected interest—which means almost every nontrivial self-represented-litigant case.

• Moreover, since the case discusses the needs of the party seeking the deprivation, the decision supports the idea that due process applies to the person seeking the deprivation as well as the party potentially subject to it (Turner v. Rogers, 2011: slip opinion at 13-14).

• The touchstone for whether procedures satisfy due process is whether they provide sufficient fairness and accuracy—in this case in determining the capacity to pay (Turner v. Rogers, 2011: slip opinion at 14-15)—thus potentially raising that key question in every self-represented litigant case.

• The Supreme Court explicitly approved—indeed in some cases required—the use of forms in self-represented-litigant cases, thereby putting to final rest any claim of their inappropriateness (Turner v. Rogers, 2011: slip opinion, 14-16).

• The Supreme Court similarly approved, and in some situations required, engaged judicial questioning, also shutting off any objection that such neutral questioning is forbidden (Turner v. Rogers, 2011: slip opinion, 14-16).

• The Court reached out to endorse the concept of neutral court staff providing assistance to litigants, even though the facts did not include such staffing (Turner v. Rogers, 2011: slip opinion, 14-15).

• The Court made clear that, notwithstanding its decision in Turner, there might well be situations in which there was a right to counsel. The court gave as possible examples situations similar to Turner, but in which the other side had counsel, or was the state itself (Turner v. Rogers, 2011: slip opinion, 15).

• Moreover, in what may be of greater immediate day-to-day significance for trial courts, the Court acknowledged that there might well be particular factual situations in which appointment of counsel is required to ensure fairness and accuracy (Turner v. Rogers, 2011: slip opinion, 16).

Some state court systems might respond to the decision by a cursory review of their procedures and conclude that since a) they do not use civil-contempt incarceration in child support cases, b) they provide counsel in such cases, or c) provide the notice, forms, questioning, and fact finding required in Turner in such cases, they do not need to pay attention to the case.

In the opinion of this writer, such an approach would be seriously flawed. It would fail to recognize the broad legal import of the decision, particularly its groundbreaking application of the due-process clause to the rights of the self-represented, and would fail to embrace the opportunity for expanding the already launched systemic access-to-justice improvements upon which the decision implicitly relies. Moreover, the Supreme Court’s effective endorsement of innovations that are already being broadly deployed—such as greater judicial engagement and user-friendly forms—should reassure the states that their access-innovation efforts will find support at the highest judicial levels.

Implications for Judges and for Judicial Education

The decision, and its endorsement of an engaged role for judges in self-represented cases, provides clear permission for judges to continue on their current path of experimenting with ways to make sure that the self-represented are fully heard. Those who have felt inhibited in doing so for fear of being perceived as non-neutral should be reassured that they have received both Department of Justice (DOJ) and Supreme Court imprimatur for such engagement, provided, of course, that it is neutral and consistent with ethical rules. Those who have believed that their lack of engagement is required by the Constitution would be advised to reconsider their position.

It may be that part of the reason that DOJ felt able to support, and the Supreme Court endorsed, such judicial questioning is that there are now extensive research-based protocols for such neutral engagement. In any event, these protocols
demonstrate that questioning, particularly when carefully structured in an engaged context, runs little if any risk of being, or even appearing, non-neutral. Examples of such best practices are making clear in the “framing” of the case that questions are likely, but not an indication of sympathy or leanings, as are follow-up questions that elicit the detail needed to decide the case on sufficiently full information.

More generally, judges might be wise to bear in mind the teaching of Turner that in self-represented cases the procedures of the case as a whole must be sufficient to provide the accuracy and fairness appropriate to the stake and situation. Turner encourages judges to consider how their discretion in applying governing procedural rules can be used to ensure that there is such sufficient accuracy and fairness. Implicit in Turner is the perhaps obvious point that the many court opinions reiterating that the same rules must be applied, regardless of whether someone has a lawyer, do not and cannot mean that those rules have to be applied without taking into account the representation status of the parties. It must always be remembered that to refuse to consider an exercise of discretion is an abuse of discretion.

Moreover, judges might decide to remain alert in all cases to the possibility of insufficiency in meeting due-process standards. Moreover, to the extent that they viewed this (with good reason) as placing an impossible sua sponte burden on them, they might wish to ensure that the court has in place services and procedures sufficient to ensure that such standards are met, thereby freeing them of the ongoing review obligation.

Finally, they might find it constitutionally advisable to take appropriate action when they find, as suggested by Turner, that the facts, circumstances, and required procedures are such that without counsel it is not possible for them to manage the case in such a way as to provide the sufficient fairness and accuracy required by Turner. In such cases an appointment of counsel, using whatever inherent or other authority, and whatever financing mechanisms are available, is called for, and surely will be given deference by the rest of the system.

Judges and others responsible for judicial education might well regard Turner as an opportunity for a renewed focus on the many challenges involved in self-represented cases and for a sustained and multicomponent initiative on helping judges deal with those challenges. Such an initiative might, building on model resources already available, include developing state-specific bench books on the topic, presenting customized judicial educational programs, making videos about best practices, performing educational role playing of problems and best-practice solutions, and establishing judicial support networks for further discussion of these issues.

Implications for the Management of Cases in the Courthouse

While Turner identifies as “available” only two specific nonjudicial procedures that were desirable but absent in the facts of that case—notice of the key issue and forms—the analysis is clear that the totality of the procedures are to be considered in the due-process fairness-and-accuracy analysis.

Thus, the good news for court administrators is that there is already available and tested a wide range of effective innovations that can enhance fairness and accuracy. Many of these can be implemented at low or zero cost. Turner provides an opportunity to analyze court operations and to assess whether such innovations could enhance accuracy and fairness of outcomes in accordance with the requirements of the decision. Specifically:

- The deployment of plain-language forms, including easy-to-use, interactive online versions of those forms, can help ensure that needed information is provided to the court. This is far cheaper, both to deploy and maintain, if forms are standardized statewide. (In a time of financial crisis, statewide nonuniformity of such forms should be among the first casualties.)
- The provision or expansion of neutral, court-based, informational self-help services, already provided in some form in most states, can give litigants the kind of information and forms-completion assistance envisioned by Turner as helping ensure access and fairness. Such systems are most cost-effective when provided statewide through phone hotlines supplemented by online tools, as in Minnesota and Alaska.
- Courtroom-based services, integrated with the flow of the case, can help litigants focus on what is needed to move the case forward and provide the additional information needed by the court. Such assistance is now routine in states such as California and New Hampshire.
The provision of unbundled or discrete task representation can be facilitated by the courts, in cooperation with the bar, through rules changes, training programs, and general promotion. The effect is low-cost representation for those cases in which it is most critical, responding to the concern of Turner that there may be cases in which attorney assistance is needed. Such programs cost the court nothing. Such programs are routine in Massachusetts and Maine, among many other states. New York is one state that has been effective in facilitating pro bono representation using this model.

Many of these innovations could easily be built into the reengineering programs that many courts are now starting. Indeed, they would help ensure that these reengineering efforts improve access as well as efficiency. (See the “Resources” section.)

**Implications for Justice System Coordination and Innovation**

The process of review and innovation envisioned by this article will not occur without leadership. For states with access-to-justice commissions, the choice of who should lead the process may be simple. The commissions have the credibility of being creatures of the court system, but also the leverage that comes from having members from a wide variety of constituencies. Moreover, they may be found to be more appropriate review vehicles than the state supreme court, given that the Court might ultimately be asked to rule on the sufficiency of the state’s procedures under Turner due-process standards.

In such states, indeed, the state supreme court might find it appropriate to formally ask the access-to-justice commission to work with the state administrative office of the courts to conduct such a comprehensive Turner review of key case types for the self-represented, with a particular focus on those in which the stake for the litigants is greatest, such as loss of home or family integrity. In states without a commission, the court might find it appropriate to create a special body, one which might indeed evolve into a commission.

**Conclusion**

*Turner v. Rogers* may turn out to be a highly significant decision for the day-to-day operations of the courts, one that plays a major role in fulfilling the core promise of courts as institutions that offer access to justice for all. Court leaders and staff at all levels have the opportunity to participate in giving life and meaning to this vision and these values.
RESOURCES


www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice.html


www.selfhelpsupport.org/library/item.223550-2008_edition_of_Best_Practices_in_CourtBased_Programs_for_the_SelfRepresent (requires a free membership for access)

www.selfhelpsupport.org/library/folder.208521-2008_Court_Solutions_Conference (requires a free membership for access)

www.selfhelpsupport.org/library/folder.177582-National_Bench_Guide (requires a free membership for access)

www.selfhelpsupport.org/library/folder.169512-CURRICULUMRESOURCE_MATERIALS (requires a free membership for access)


Meaningful and Ongoing Engagement of Tribes and State Courts in Child Protection*

Alicia K. Davis  
Principal Court Management Consultant, National Center for State Courts  

Gina Jackson  
Model Court Liaison, National Council of Juvenile and Family Court Judges

The Indian Child Welfare Act of 1978 requires states to “protect the best interests of Indian children.” Many states are collaborating with tribal courts and leaders in innovative ways to ensure permanency and safety for Native American children.

Theresa Pouley, chief judge of the Tulalip Tribal Court, and Indian law and order commissioner, testified before the United States Senate Committee on Indian Affairs last September:

Some state court systems are beginning to recognize that tribal courts can and should be important partners in the administration of justice in this country. . . . [T]ribal courts are being recognized for their often innovative and effective operations.

Collaboration and authentic engagement with tribal communities is a best practice. It needs to happen at federal, state, and local levels to ensure compliance with the Indian Child Welfare Act (ICWA) and eliminate the disproportionate representation of Native American children in the child welfare system. Congress passed ICWA in 1978 in response to the alarmingly high number of Indian children being removed from their homes by both public and private agencies. Congress declared it is the policy of this Nation to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families” (25 U.S.C. § 1902). Each state court is charged to work diligently and creatively to collaborate meaningfully with the state child welfare agency, as well as with Indian tribes, to ensure safety, permanency, and well-being for children. This article considers recent policy and program developments that support state-tribal collaboration in child welfare with examples that demonstrate meaningful and ongoing collaboration with a commitment to respect and mutual learning.

It’s about our children and our cultures. If we listen to our young people they will lift us out of darkness (Judge Deloresa Cadiente, former chief justice of the Central Council of the Tlingit and Haida Indian Tribes of Alaska).

State Court Improvement Program Requirements
In 1993 Congress created the Court Improvement Program (CIP) in each state to improve the handling of child abuse and neglect cases. State courts are required to demonstrate “meaningful, ongoing collaboration” between the courts, social services, and Indian tribes as applicable. “Meaningful, ongoing collaboration” means that courts and agencies will identify and work toward shared goals and activities to increase the safety, permanency, and well-being of children in the child welfare system. Courts must also form a statewide, multidisciplinary task force, which should include tribal representation. The 2010 Census Briefs report that 78 percent of Native American people live outside of American Indian and Alaska Native areas (Norris, Vines, and Hoeffel, 2012). In cities or states without tribes, there are often Native urban organizations that can bring tribal voices to the table.

For the first time since the creation of CIP, limited funding will be available to tribes through a competitive process. In support of tribal CIP, the National Council of Juvenile and Family Court Judges (NCJFCJ) stated that “building tribal court capacity is an important component to ensure that American Indian and Alaskan Native children are served in their own communities.” The development of tribal CIP, in conjunction with state CIP mandates, can lead to a cross-pollination of ideas, from government to government and court to court, creating a learning community that encompasses state and tribal court colleagues and changing the causal factors that bring children, youth, and families into child welfare systems.

Meaningful Collaboration Between State Courts and Tribes
State courts across the country are beginning to involve tribes in state CIPs, developing relationships built on mutual respect, learning from one another, and acknowledging the historical trauma experienced by Indian people. Acknowledging
Future Trends in State Courts 2012

Many tribes have welcomed visits from CIPs and their state court counterparts. In August 2011, the Colorado CIP took a team of representatives to meet with leaders from the Ute Mountain Ute Tribe, Navajo Nation, and Southern Ute Tribe to foster greater respect and understanding regarding child welfare in the state and tribal courts. The CIP team learned about historical trauma, the creation of reservations, and the removal of Indian children to be placed in boarding schools. They also learned about the Navajo Nation Peacemaking Court, which is a renowned restorative justice program. Participants said that the visit helped the state move beyond the legal requirements of ICWA to an awareness of the trauma generated by earlier policies and an understanding that respecting ICWA is as important as applying ICWA. The Colorado CIP also witnessed the importance of family and culture within the Native American communities and the importance of building relationships that build strong communities.

The court becomes a community—less punitive, a place for healing, for repairing, and for peacemaking. The greatest lesson that we took away from the visit was the importance of community and the development of community on a systems level (Bill DeLisio, Colorado Family Law Programs Manager).

Collaboration Through Forums and Consortia

Collaborative forums and consortia can promote resolution of jurisdictional conflicts and interjurisdictional recognition of judgments. Many of these consortia...
Meaningful and Ongoing Engagement of Tribes and State Courts in Child Protection

Collaborative Training
Many issues of noncompliance with ICWA can be significantly addressed by cross-training and communication. There are a number of examples of states and tribes collaborating to provide ICWA training.

- In 1997 the New Mexico Supreme Court created the statewide Tribal-State Judicial Consortium to facilitate communication and collaboration between state and tribal judges. Rich collaborative training has been developed on court orders, IV-E funding, and the tribal best practice of traditional adoptions. Last year, the Pueblos of Laguna and Jemez hosted regional meetings on the rights of incarcerated parents of Indian children involved in the child abuse/neglect system. Through presentations by the Children’s Law Center; tribal and state judges; staff of the New Mexico Children, Youth and Families Department, Department of Corrections, and Navajo Department of Justice; and national tribal advocates, a report was published to clarify policies, procedures, and culturally appropriate services.
- Several states have strong collaborative judicial groups, such as Wisconsin and California. New groups are emerging in other states, such as Nebraska and Washington.
Future Trends in State Courts 2012

Indian Children,” presented by Anita Fineday, former chief judge of the White Earth Tribal Court. The presentation helped improve state-tribal court relationships and outcomes for Indian children.

• Last year, the Indiana CIP invited Chief Judge Michael Petoskey of the Pokagon Band of the Potawatomi Tribal Court to speak at the annual meeting of juvenile court judicial officers. Judge Petoskey spoke about common judicial ground and the band’s desire to develop strong, positive, and cooperative relationships with those working in the child welfare and juvenile justice system.

Tools for ICWA Performance Improvement

As states and tribes move toward increasing ICWA compliance, it is imperative that tools and resources are available to collect baseline/ongoing data. Wisconsin established an ICWA review instrument after completing numerous focus groups with tribal representatives about the types of issues that arose in cases involving Indian children. This consultation with focus groups was instrumental in establishing a state-specific requirement for proof of notice to be included in the court files. These reviews have been tremendously beneficial in encouraging ICWA compliance in Wisconsin.

The QUICWA Compliance Collaborative is a national consortium of Indian tribes, urban organizations, and advocacy groups who work on Indian child welfare issues using ICWA compliance data to advocate for change in the behaviors, practices, and policies of individual child welfare agencies throughout the country. The QUICWA Compliance Collaborative uses the data to identify ICWA compliance trends across individual agencies and uses those local trends to influence ICWA policy at the national level. QUICWA has been integral in the development of ICWA compliance work and tools. Along with QUICWA, the following organizations have made great strides in capturing ICWA compliance:

- NCJFCJ has developed an ICWA Compliance-Court Readiness and Implementation Continuum based upon the innovative work of Tribal STAR and the American Indian Enhancement Project’s Implementation Toolkit, which helps courts assess their current level of “readiness” for implementing provisions of ICWA and for assessing compliance.
- The NCJFCJ, in collaboration with QUICWA, has updated an ICWA checklist to be used by judges, attorneys, caseworkers, tribes, and system stakeholders to provide baseline data as to improve ICWA performance in courts across the nation.
- Casey Family Programs is working with QUICWA and Michigan State University Law School’s Indigenous Law and Policy Center to collect data. Other states such as Washington may be sites for similar projects.
- The University of Minnesota at Duluth will have students use the QUICWA tool and observe court hearings in the Minnesota state courts.

Collaboration Using Technology

State court systems with a statewide case management system can and should share child welfare information with tribal courts in their states. Tribal courts have not had the same access to funding for developing case management systems. Many states are including tribal court contact information on their Web sites to encourage communication. California posts a Tribal Courts Directory, which provides descriptions and contact information. They are also working to pilot an innovative ICWA e-noticing project with the National Center for State Courts to provide electronic notice in lieu of registered, certified mail in ICWA cases. This project will focus on expediting notice to tribes and reducing costs for states.

Resolutions in Support of State-Tribal Collaboration to Protect Children

The Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) unanimously adopted “Resolution 5: To Encourage Greater Collaboration Between State Courts and Tribal Courts to Protect Native American Children” last year. NCJFCJ, in partnership with tribal judicial leaders, resolved that tribal courts should be treated as equal and parallel systems of justice. The National Association for Court Management (NACM) resolved last year to “work with the tribal courts, tribal councils and other tribal authorities to ensure

Successful collaborative efforts built on respect, cooperation, and mutual responsibility will ultimately light a path toward better outcomes for Native children.
Meaningful and Ongoing Engagement of Tribes and State Courts in Child Protection

WHEREAS, tribal courts serve the children and families of sovereign nations with the same authority and responsibility as state courts; and

WHEREAS, collaboration between state courts and agencies responsible for child protection and education has greatly contributed to the improvement of the process and outcomes of child protection cases around the country; and

WHEREAS, the federal Indian Child Welfare Act (ICWA) requires close communication and cooperation between state and tribal courts when a Native American child not residing in Indian Country is removed from her/his home or is offered for adoption; and

WHEREAS, close communication and cooperation between state and tribal courts have been inhibited by: the lack of contact information for tribal judges in many states; the difficulty in electronically exchanging information regarding child protection cases between tribal and state courts; the lack of information regarding the requirements of ICWA, the reasons for those requirements, and the relationship of ICWA to other federal legislation on child welfare such as the Adoption and Safe Families Act (ASFA) and the Fostering Connections Act;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices encourages each court system in states that include Indian Country to:

(1) Encourage the state court judges who hear child protection and adoption cases to communicate and collaborate with their tribal court counterparts when a Native American child or family may be involved in a case;

(2) Provide a brief discussion and description of the state’s tribal courts in new judge orientation programs and materials;

(3) Include on the state court website contact information for each tribal court in the state;

(4) Offer each tribal court in the state the case management system module(s) on child protection used by the state; and

(5) Present training on the requirements of ICWA and the relationship of ICWA to other federal legislation on child welfare such as the ASFA and the Fostering Connections Act for state court judges and invite tribal judges to participate in that training.

CCJ/COSCA Resolution 5 (January 2011)

Conclusion
There is a tremendous opportunity for state courts and tribes not only to collaborate but to learn from one another to meet the needs of children and families in a culturally appropriate manner. The federal mandate that state CIPs engage in meaningful and ongoing collaboration with tribes is a solid beginning, a foundation to build upon. These examples of innovative state-tribal collaboration require working together to develop a common vision of safety, permanency, and well-being that can lead toward improved relationships and compliance with ICWA. Successful collaborative efforts built on respect, cooperation, and mutual responsibility will ultimately light a path toward better outcomes for Native children.
ENDNOTES

*This article is dedicated to Judge Deloresa Cadiente (1947-2011), former chief justice of the Central Council of the Tlingit and Haida Indian Tribes of Alaska, a champion for honoring tribal sovereignty through unity and advocacy. You have challenged us and inspired us to move forward with vision.

RESOURCES


California’s Center for Families, Children and the Courts, Tribal Projects Unit. www.courts.ca.gov/programs-tribal.htm


National Council of Juvenile and Family Court Judges. www.NCJFCJ.org

National American Indian Court Judges Association. www.naicja.org


National Resource Center for Tribes. www.NRC4Tribes.org


Native American Rights Fund. www.narf.org

Navajo Tribal Courts. www.navajocourts.org


Limited-Jurisdiction Courts—Challenges, Opportunities, and Strategies for Action*

Janet G. Cornell
Court Administrator, Scottsdale City Court, Arizona

Courts of “limited jurisdiction” present interesting issues and challenges and have great potential to be innovative role models for the justice system. This article reviews traits of limited-jurisdiction courts in local governments or municipalities, shares issues and challenges, and suggests strategies for these courts to consider.

Sometimes courts of limited jurisdiction, which may be smaller and in rural or suburban areas, are obscured in favor of large, bustling metropolitan courts. These larger courts may receive greater visibility for the significant or high-profile cases they handle. By contrast, limited-jurisdiction courts deal with such cases as traffic tickets, local violations, or very narrow case issues. Media interest, funding visibility, and recognition of the court’s place in the community may be limited.

In fact, courts of limited jurisdiction process over 60 percent of all the cases coming before the courts in the United States (Schauffler et al., 2011:3). Limited-jurisdiction courts, therefore, have a platform to demonstrate court performance excellence and innovations while promoting the court’s role in the community. This article reviews common issues in limited-jurisdiction courts and shares recent observations about those issues, as well as opportunities and suggestions for those who manage a limited-jurisdiction court.

What Is a Limited-Jurisdiction Court?
A court of limited jurisdiction has legal authority over very specific subject matter, cases, or persons for the imposition of limited jail times or limited financial sanctions. Examples of such cases include small claims, lower-value civil matters, lower-severity criminal charges (e.g., misdemeanor), traffic violations, or municipal or ordinance violations (see Schauffler et al., 2011). There are some 14,000 to 16,000 courts in the United States. According to the National Center for State Courts’ (NCSC) Court Statistics Project, in calendar year 2009, 66 percent, or about 70 million of the 106 million incoming cases in the state trial courts, were processed in courts of limited jurisdiction (Schauffler et al., 2011: 3).

Forty-six states have clearly identified limited-jurisdiction courts (Court Statistics Project, n.d.). Only the District of Columbia and four states (California, Illinois, Iowa, and Minnesota) lack distinctly identified limited-jurisdiction courts.

The case subject matter in these courts can vary from adoption and juvenile cases, to foreclosure and land cases, to such narrow litigation as tax or probate. Some specialty courts are, in fact, courts of limited jurisdiction, based upon the particular caseload focus. Cases heard in these courts are authorized by state and local court rules specifying the authority. Attributes or characteristics of a limited-jurisdiction court include being smaller in size and locally funded, handling a high volume of cases, and being placed in the community.

Selected Characteristics—Limited-Jurisdiction Courts

- Smaller in size and operation
- Limited experience—judges and staff
- Smaller/limited case sanctions—financial, jail
- Remote court locations
- Standalone court operations
- Part-time, short-duration, at-will judicial terms
- Specific and diminished focus for court operations (e.g., “inferior” or “lower” court)
- Subject to local and regional influence, direction, and control
- Varying operational structures
- Locally funded
- High-volume caseloads
- Specific types of cases/special focus calendars
- Embedded in local governments (e.g., in a city or municipality)
- Immature or incomplete court visibility or presence in community

These traits may not be present in all types of limited-jurisdiction courts, or reflected differently in states with “unified” court systems—whereby court operations are consolidated, simplified, or centralized—whether structurally or by budgetary support.
Funding for limited-jurisdiction courts may vary. They may be funded by the state within state unified systems, by a county, or by a combination of state and county monies (these courts may have an extra level of coordination due to the dual funding source). Finally, limited-jurisdiction courts may be funded solely by the local government, for example, the town or municipality. State and county authority over these courts may be minimal or limited.

It is these differences in role, funding, and authorities that lead to challenges and opportunities for limited-jurisdiction courts to excel in operation and performance. Local courts, or courts funded by a local government, have the opportunity and challenge to excel.

**Common Issues in Limited-Jurisdiction Courts**

In recent years, conferences or publications have identified issues and challenges for those working in limited-jurisdiction courts. Attendees at the 2003 National Association for Court Management (NACM) annual conference were offered a session on “The Top Ten Issues in Limited Jurisdiction Courts” (National Association for Court Management, 2003). The session’s premise was that certain issues presented themselves to court managers in limited-jurisdiction courts. Attendees noted that limited-jurisdiction courts can excel in certain areas: processing large volumes of cases; having heavy public contact; specializing on a specific type of case; absorbing caseload increases; deploying and using of various technologies; and using various sanctions for case adjudication (financial sanctions, electronic monitoring, tax intercepts, and reporting for holds on licenses or vehicle registration).

In October 2008 in Phoenix, Arizona, the National Center for State Courts’ Institute for Court Management offered a course on “Effectively Managing Limited Jurisdiction Courts.” The course included information leadership, collaboration, and how to be more effective and innovative.

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According to a 2010 survey, ten areas of concern were noted by municipal court administrators in New Jersey (Del Preore, 2010). These results also focused on funding, perceptions of the court, and implementation of change.

Among the common themes from these three benchmark events: the budget and funding for courts, the importance of relationships and leadership, and the role of the courts.

**A Call to Action**

There is a clear call for limited-jurisdiction courts to be leaders. Courts, chief judges, and court managers can accomplish this by being visible and by becoming involved in local, regional, and national committees and initiatives. Through these outreach channels, the court can demonstrate its role and exemplify a collaborative approach. Court managers and leaders should talk about the work that a court performs through performance metrics and operational statistics.

What if a limited-jurisdiction court does not have performance statistics? A court should start somewhere, create ways to count court operational performance, and then publish the information. An example is creating ways to count customers and their interactions with the court, beyond the typical caseflow management statistics. These are the points at which the users touch and seek court resources; a court can use these to talk about their work and justify resources. Court managers can also consider administering customer and staff surveys to obtain valuable information.

Limited-jurisdiction court judges and staff can and should be highly professional, demonstrate higher performance expectation for court operations, and practice good court governance. Those familiar with the NCSC’s Court Statistics Project, High Performance Courts Framework, or CourTools should apply them to local court operations. Likewise, court managers should apply the National Association for Court Management Core Competencies and should review and strive for items noted in the NACM National Agenda.

Ultimately, limited-jurisdiction courts should focus on what they can accomplish. These courts should not wait for change to be imposed upon them. Leaders in limited-jurisdiction courts should continually ask: How can we add value to court operations? What can we make better for the litigant?

**Limited-Jurisdiction Courts—Varying Names**

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<td>County Court at Law</td>
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<td>District Court</td>
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<td>Housing Court</td>
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<td>Judicial Bureau</td>
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<td>Justice of the Peace</td>
<td>Village Court</td>
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<td>Juvenile Court</td>
<td>Worker Compensation Court</td>
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<td>Land Court</td>
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**In Conclusion**

Limited-jurisdiction courts are a key player in the overall judicial system and have a critical role due to their high-volume, direct customer interaction. These courts also have high-quality judicial and nonjudicial personnel and court leaders who desire to make a difference—as a high-caliber court with professional operations that can continually improve.

Additional review and study should occur based upon these preliminary comments about limited-jurisdiction courts. Such a study should include the following: review of the direct linkage of caseflow management to the operation of these courts; examination of these courts for pilot tests of innovative programs—perhaps using adaptive change to implement new ways of conducting court business; publication of innovative and expansive programs in place in these courts; and further evaluation of how these courts can more visibly demonstrate the role of courts as the third branch of local government.
RESOURCES


Why Establishing a Center for Law and Civic Education Matters

Mark A. Cunningham  
President, Louisiana Center for Law and Civic Education

Civics education is no longer stressed in our nation’s schools. It is up to the bar and the judiciary to reach out to students and teachers to ensure that new generations understand the role of the third branch of government. The Louisiana Center for Law and Civic Education was honored with the 2011 Sandra Day O’Connor Award for the Advancement of Civics Education by the National Center for State Courts.

With our school systems under financial stress and national testing standards focusing on English, mathematics, and science, civics is increasingly taking a back seat to other subjects in our public and private schools. If we want civics to remain or, in many cases, become a core subject in the curriculum of our elementary and secondary schools, lawyers and members of the judiciary will need to take up the mantle. These professionals are the natural constituents of civics education and have access to an existing infrastructure of organizations, such as bar associations and judicial conferences, through which they can promote the teaching of civics.

In Louisiana, members of the bar and judiciary have answered the call to promote the teaching of civics through a model partnership: the Louisiana Center for Law and Civic Education (LCLCE). Formally organized by the New Orleans Bar Association and Louisiana State Bar Association in 1992, LCLCE is a nonprofit organization, which coordinates, implements, and develops civics and law-related education programs. LCLCE trains educators and assists in the delivery of these programs throughout the state of Louisiana. The lesson plans and programs are interactive, transforming instruction in civics and law-related education into a fun experience for both students and teachers. In a nutshell, LCLCE makes law and civics education come alive in the classroom. The programs implemented by LCLCE include:

*Lawyers in the Classroom/Judges in the Classroom.* This program matches volunteer professionals from both the bench and the bar with social studies classrooms throughout the state to enhance civics instruction. The volunteer professionals work with teachers to implement grade-specific lesson plans to teach students about the courts and the rule of law. The volunteer lawyers and judges also attend classes throughout the year and take an active role in the teaching process. Since its inception, the Lawyers in the Classroom/Judges in the Classroom Program has reached over 11,000 students.

*Annual Summer Institute for Social Studies Educators.* LCLCE also annually conducts a two-to-seven-day short course for social studies teachers from throughout the state. Participants receive training in interactive teaching strategies that enhance their existing curriculum and activities. Educators receive practical assistance, lesson plans, and in-depth instruction from a distinguished faculty, including members of the bench and bar. Graduates of this program often participate in other LCLCE programs and become committed LCLCE volunteers.

Students wore wigs they made of cotton balls for this Lawyers/Judges in the Classroom presentation, which culminated in a visit to the Louisiana State Capitol. Attorney Jessica Braun and Louisiana State Rep. Steve Carter were presenters.
**Order in the Court.** This LCLCE workshop program provides teachers with instructional materials and lesson plans on the role of the judiciary and the way cases are processed and is taught by a faculty composed of Louisiana state and federal judges, administrative law judges, and hearing officers, who generously volunteer their time.

**Law Signature Schools.** In this program, LCLCE works with public and private high schools interested in establishing a dedicated track of study for students who want to pursue a career in the law. LCLCE helps these schools design and implement a pre-law curriculum, identifies volunteer lawyers and judges who are willing to serve as ongoing resources for the school, and seeks financial assistance for the school to build a moot court classroom. Schools who successfully implement a dedicated pre-law track of study are certified by LCLCE as a Law Signature School, a designation the schools use to promote themselves and recruit students.

**Open Doors to Federal Courts.** A partnership between LCLCE and the United States District Courts in Louisiana, this program affords high-school students in Louisiana an opportunity to participate in an all-day, interactive workshop about the structure and function of our federal courts. After a guided tour of the courthouse and informal meetings with attorneys, judges, clerks, and other courthouse professionals, the program culminates in a mock trial to provide students with a firsthand account how cases are tried in the federal courts and what roles attorneys, judges, and juries play in the federal court system.

**We the People: The Citizen and the Constitution.** LCLCE also operates as the state coordinator for this nationwide program, which is designed to promote a deeper understanding of the United States Constitution and Bill of Rights. LCLCE provides teachers with program resources, such as teacher’s guides and lesson plans, and sponsors statewide competitions among schools in which teams participate in simulated congressional hearings.

LCLCE promotes its programs and reaches out to educators through traditional and nontraditional channels. LCLCE publishes a quarterly newsletter, which reaches over 13,000 school superintendents, teachers, legislators, judges, and attorneys. LCLCE also is a common fixture at state and local educational conferences and in state and district education. More recently, LCLCE has started to promote itself through social media such as Facebook. Its central marketing strategy, however, has always been the strength of its programming.

Through its programming efforts, LCLCE has garnered the reputation among educators as the “go-to” organization for civics-related-education resources. These efforts also have led to real changes in the core curriculum of Louisiana schools and in the ability of LCLCE to affect future changes. In 2010, at the urging of the LCLCE, the Louisiana legislature passed legislation increasing the civics credit requirement for high-school graduation from a half-credit course to a full-credit course. LCLCE also has been granted a permanent seat on the state’s Commission on Civic Education in further recognition of its programming. On reviewing the programs implemented by the LCLCE, U.S. Supreme Court Justice (ret.) Sandra Day O’Connor wrote via letter that she was impressed. “With the development...
of the programs and its training of educators, LCLCE, along with its volunteer professionals, have benefited numerous students throughout the state of Louisiana. This is exactly what I envisioned would happen throughout the country.”

In considering how to promote civics in your state, it is important to keep in mind that the LCLCE model is not unique to Louisiana. Centers for Law and Civic Education also exist in Alabama, New Jersey, Michigan, and in many other states. These organizations share a common mission. They also have shared a common path to success. To be effective, these organizations have learned that buy-in from the leaders of their legal community is paramount and that nothing is possible without the support of volunteer lawyers and judges. They also have learned that success comes from inclusion. The board of directors of LCLCE, for example, includes not only lawyers and judges, but also prominent educators and public officials without whom the LCLCE would have been unable to accomplish much of what it set out to do. Inclusion also is essential to fundraising, which is a constant challenge to the long-term stability of many centers. Finally, and perhaps most important, resources and strategic support are available through the National Center for State Courts and existing Centers for Law and Civic Education to anyone in the legal community considering the establishment of a center.

In sum, Centers for Law and Civic Education matter because they ensure that a respect and understanding of the rule of law remains a priority in the education of our children. The centers also represent a project that bar associations and judicial conferences can pursue knowing that a roadmap is available to them. We should be hopeful that, in the years to come, Justice O’Connor’s vision of centers in all 50 states will become a reality.

## RESOURCES

iCivics. Online curriculum for civics education. [www.icivics.org/About](http://www.icivics.org/About)


BETTER COURTS

Maricopa County (Arizona) Superior Court
“Criminal Tower”
IS THERE A MARKET FOR LEGAL DECISIONS?

Thomas M. Clarke
Vice President, Research Division, National Center for State Courts

From an economic point of view, courts act in some ways like they are part of a market for legal decisions and in other ways like they are not. There is a surprisingly large variability in both the supply and demand for legal decisions across states, but courts currently understand neither the reasons for such variability nor the forces driving any supposed market for such decisions.

Courts are used to perceiving themselves as having a monopoly on legal decisions. That monopoly is preserved by state constitutions and statutes. If literally true, that would suggest that courts should only strive for maximum quality and never worry about efficiency or competitors. Of course, it is not literally true. Even before the current financial crisis, courts were pressured by increasing competition from private agencies claiming to be able to resolve cases more efficiently. Competitors have taken some case types, such as complex civil cases and some divorce cases, from traditional courts because of lower cost and superior convenience.

The evidence for such competition is scarce. Case filings continue to increase overall for many courts. On the other hand, trial rates have famously decreased over the last several decades. Numerous mediation and arbitration services now operate outside the formal courts and even online. These organizations sometimes offer potential litigants nonadversarial forms of legal resolution. That approach is attractive in certain case types to litigants who would prefer to avoid the institutionally adversarial processes of the courts.

On the other hand, the metaphor of a free market is not entirely accurate, either. Courts still do retain a monopoly on legal decisions for many case types. In that situation, the only recourse a potential litigant has is a decision not to seek a legal decision. There may be other less formal ways of still resolving their issues to their satisfaction, or they may just forgo the benefits of a real legal resolution due to cost or other barriers.

It may seem strange to even think about a market for legal decisions. First, economists make a distinction between underlying demand and effective demand. You may want to take your case to court, but if you cannot afford the legal fees or the long time to disposition, then you will not file a case. Second, we are conditioned by our culture to think about the courts as the only place where legal decisions can be obtained, but the commercial world commonly includes contract clauses that drive legal disputes to arbitration forums outside the courts. Third, private citizens may decide it is better overall to resolve their legal disputes using more informal mechanisms, even though we would not consider those decisions legal in the same sense that a court would.

These choices between legal forums are certainly complex and involve more than simple cost. Litigants often cite convenience, predictability of outcome, simplicity, and privacy as reasons for seeking (or not seeking) alternate forms of dispute resolution. Of course, courts have tried to cater to these customers by offering processes with lower costs like small claims or voluntary mediation. Business courts are a different kind of attempt to satisfy customers by guaranteeing a level of expertise not found in an average court.

Whether or not there is an erosion of demand for certain court services is debatable. Filings in some case types have flattened, and trials have almost
disappeared. If such a trend is valid, it may be occurring in response to market pressures instead of as a thoughtful, policy-driven transition. While courts are primarily focused on outcomes like fairness and due process, they have to be efficient enough to continue attracting adequate funding and public support, while not creating significant barriers to access. The admittedly anecdotal evidence suggests that courts may be facing actual direct competition in some areas or at least being required to take considerations of efficiency more seriously.

The concept of “legal decision” used here is broad and informal. If certain types of enforcement are desired for such decisions, then courts are often the only place where that can be done. If we consider a looser definition where litigants merely want a decision that the parties will likely abide by, then competition definitely exists for certain types of civil and domestic-relations cases, and it is likely to increase in the future. From this perspective, many forms of private and online mediation and arbitration would qualify as competition. Organizations that facilitate negotiations on estates or divorce settlements would qualify, even if a court decree is still required. Even decisions by prosecutors to criminally charge or not, or by litigants to file or not, would affect the supply and demand for legal decisions in courts.

Judges and courts are not used to looking at the justice system as a market for decisions, but various incentives and disincentives constantly raise and lower the attractiveness of state and local courts. In criminal cases, prosecutors may decide whether to charge an offender partly based on the past behavior of the court. Corporations may seek private arbitration to obtain more specialized expertise, a less costly disposition, or a more predictable outcome. If indeed such a market at least partially exists, a significant question for court researchers is why states differ so much in the demand for court services. State per-capita-litigation rates in virtually every major case type vary across a surprisingly wide range. Why is this?

To appreciate the extent of the variability, consider data collected by NCSC on case rates per 100,000 population at the state level. The table reports the ranges for 2007, the last year before the Great Recession. For example, the incoming case rates per 100,000 juveniles in the state population varied from a low of 1,287 cases per 100,000 juveniles in Montana to a high of 6,334 cases in Ohio. Based on the population of juveniles, Ohio sees almost five times as many juvenile cases as Montana does. The case rates vary from factors of 3 to factors as high as 80. This would be like one state consuming toothpaste or dental visits at 80 times the rate of another state. Economists almost never see that kind of market variation.

NCSC staff spend significant time ensuring that cases are counted in equivalent ways across the sample states. Unfortunately, NCSC is unable to obtain a complete sample for any case type, and some samples are significantly smaller than others (see Examining the Work of State Courts, 2007, and Examining the Work of State Courts: An Analysis of 2007 State Court Caseloads for the sample sizes and other details).

For a few of the case types reported in the table below, the end points constitute outliers and the range would be significantly smaller if they were removed (New Jersey for traffic, Puerto Rico for traffic and paternity). For most case types, the range is smooth, with no gaps from end to end. The actual range of variability for each case type is certainly understated here. The sample of states for each case

### Variability in Case-Type Demand Across States  
(incoming cases per 100,000 population)

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Lowest Case Rates</th>
<th>Highest Case Rates</th>
<th>Range Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traffic (no parking)</td>
<td>Puerto Rico 311</td>
<td>New Jersey 67,624</td>
<td>217.4</td>
</tr>
<tr>
<td>Visitation</td>
<td>Utah 5</td>
<td>Delaware 402</td>
<td>80.4</td>
</tr>
<tr>
<td>Real property</td>
<td>Oregon 8</td>
<td>Washington 339</td>
<td>44.9</td>
</tr>
<tr>
<td>Probate</td>
<td>West Virginia 51</td>
<td>New Jersey 2,253</td>
<td>44.2</td>
</tr>
<tr>
<td>Paternity</td>
<td>Puerto Rico 12</td>
<td>Maryland 521</td>
<td>43.4</td>
</tr>
<tr>
<td>Civil appeals</td>
<td>Wisconsin 0</td>
<td>West Virginia 6</td>
<td>32.0</td>
</tr>
<tr>
<td>Felony</td>
<td>Massachusetts 121</td>
<td>Florida 2,762</td>
<td>22.8</td>
</tr>
<tr>
<td>Small claims</td>
<td>Missouri 264</td>
<td>Indiana 4,437</td>
<td>16.8</td>
</tr>
<tr>
<td>Protection order</td>
<td>North Dakota 166</td>
<td>West Virginia 2,331</td>
<td>14.0</td>
</tr>
<tr>
<td>Child support</td>
<td>Colorado 557</td>
<td>New York 6,315</td>
<td>11.3</td>
</tr>
<tr>
<td>Adoption</td>
<td>Puerto Rico 31</td>
<td>Iowa 280</td>
<td>9.0</td>
</tr>
<tr>
<td>Mental health</td>
<td>Ohio 44</td>
<td>West Virginia 362</td>
<td>8.2</td>
</tr>
<tr>
<td>Torts</td>
<td>Utah 100</td>
<td>New Jersey 800</td>
<td>8.0</td>
</tr>
<tr>
<td>Contracts</td>
<td>Minnesota 700</td>
<td>New Jersey 5,600</td>
<td>8.0</td>
</tr>
<tr>
<td>Juvenile</td>
<td>Montana 1,287</td>
<td>Ohio 6,334</td>
<td>4.9</td>
</tr>
<tr>
<td>Child custody</td>
<td>Michigan 79</td>
<td>Colorado 327</td>
<td>4.1</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>Puerto Rico 1,742</td>
<td>Washington 6,481</td>
<td>3.7</td>
</tr>
<tr>
<td>Divorce</td>
<td>New York 419</td>
<td>Florida 1,354</td>
<td>3.2</td>
</tr>
</tbody>
</table>
type is a subset of all the states. The actual samples range from around 10 states to a maximum of about 30 states. Since the rates are also state averages, the rates for individual courts within a state will be more variable than the state averages.

The large variability in case-type demand across states is striking and could be due to a variety of reasons. Courts in some states, at least for some case types, may be significantly less expensive, thereby increasing the apparent demand for their services. Conversely, states with unusually low demand may be doing something that prevents access to justice (although there are many other possible explanations for the variability). Another obvious possible driver of differences in case rates might be case-type definitions or counting rules. These possibilities cannot be completely discounted as a partial explanation, even though the data have been scrubbed extensively by NCSC to ensure comparability.

Another possibility is substantive differences in state law. For example, some states exclude many lower-value estates from any requirement to obtain court orders, while other states force all estates through their probate system. Another potential cause might be cultural differences. Puerto Rico has the lowest rate for paternity, adoption, and misdemeanors, and for several of those case types, there was a significant gap between Puerto Rico and the state with the next lowest rate. Something unique is definitely going on there. In the case of criminal case types, states do vary in their underlying rates of crime. Finally, the range of filing fees charged by state courts differs considerably. Complexity of process, cost, timeliness, unpredictability of result, and perceived low quality could contribute to low demand.

Some case types may not be validly comparable using population rates. Rates of crime may be higher in poorer states. Rates of foreclosures may vary by the structure of the local economy. Divorce rates will be higher in “no fault” divorce states and lower in states that erect significant barriers or delays as a matter of policy. These are all valid possible factors in differences between state markets for court decisions. The extent to which each one affects the results shown in the table is currently unknown.

Note also that no state seems to be consistently at the top or bottom of the rates across all case types. That suggests that no simple explanation will work across all case types. Whatever the explanations, courts and judges have traditionally viewed the demand for their services as a given they cannot influence. This may be true for some causes and some case types, but it is unlikely to be universally valid. Courts can certainly influence demand by the level of their fees, the timeliness of their decisions, the complexity of their processes, the quality and predictability of their decisions, and other factors under their control.

The supply of decisions is also highly variable. State averages for incoming non-traffic cases per judge in general-jurisdiction courts ranged from a low of 360 in Massachusetts to a high of 4,374 in South Carolina—a 12.2 variability factor. The number of judges per 100,000 population ranges from a low of 1.1 in South Carolina to a high of 6.7 in Oklahoma—a smaller 6.1 variability factor.

The variability in cases per judge is higher than the variability in judges per population because judicial districts and courts tend to be established by constitution using a geographical basis instead of a demand basis. Small courts in rural areas may require a full-time judge by constitution, even though that judge only has a caseload requiring part-time coverage. If venue constraints exist to prevent underused judges from hearing cases out of their district routinely, then the supply of decision-making resources is suboptimally distributed. Statistics about judges per population ignore these practical constraints, so the apparent variability is lower.

These figures suggest that the current supply of judges could potentially do more work if those decision makers were distributed in a way that was more proportional to the actual incidence of cases. The idea here is to distribute judges like Walmart or McDonald’s site their stores. Venue and districting alone create significant inefficiencies. Of course, rural judges also increase access and convenience for those living in less populated areas. They do so for a relatively small proportion of total litigants in most states and at the cost of access for those living in more populated areas. The data also suggest that a greater use of magistrates or quasi-judicial officers, especially in limited-jurisdiction courts, might be cost-effective.
The observed degree of variability in demand and supply is unusual, compared to other markets for services. It would be astonishing if the rate for hip surgery were ten times greater in one state than another, even though some states attract concentrations of retired people. Further, courts exhibit the same wide range of variability in almost any operational indicator chosen. For some perspective, courts often benchmark to health care and particularly hospitals for administrative best practices, since both types of organizations tend to be loosely coupled and doctors play a role similar to judges. Yet hospitals certainly show less variability in their fundamental operating characteristics. Why is this?

One reason may be the pressure from insurance funders and the federal government to standardize their practices and control costs. Another reason may be the establishment of medical best practices for treatment. A third reason is that most doctors now are employees and not independent entities. Contrast this situation to courts where many judges are independently elected and few explicit best practices exist or are recognized. The only real pressure for standardized or improved business practices comes from funders in tight times.

The traditional argument by judges against best practices is that cases are unique and too variable. Each case demands special treatment. At one time doctors made the same arguments for the same reasons, but objective and comparative data eventually showed that best practices were not only possible but necessary. No one would argue that doctors do not still exercise their best medical judgment in each unique case, but there are bounds to what is considered permissible or desirable. Some may say that judicial conduct commissions exist to ensure the same kinds of preferred behavior, but it is very difficult to do so when there are few objective standards for competent court administration.

The health-care analogy is not a perfect one for several reasons, but it is clearly inadequate when talking about adult criminal cases. For example, when courts operate in problem-solving modes, they are not trying to lower case-processing times or costs. Instead, they are trying to use evidence-based practices to apply the program or treatment most likely to prevent future recidivism. Moreover, criminal-court judges are also required to take into account a number of other considerations, not least of which is appropriate and fair punishment.

The issue of variable court demand and supply is not just an interesting academic puzzle. Courts are struggling now to maintain or recover adequate operational funding. Some courts believe they are now unable to fulfill their basic constitutional missions. The question of what constitutes the essential functions of a court is at the forefront of every conversation between court leaders. Both the breadth and size of functions offered by a court certainly influence the overall demand for court services. After all, no service, no demand.

The effect of services offered is complex and not easy to tease out. For example, what is the impact of a court offering probation services in contrast to probation being an executive-branch function? What is the impact of shifting some criminal cases from traditional adversarial dockets to problem-solving dockets? We do not really know what the impacts on demand or supply are. In the former case, the necessity of maintaining probation services might reduce the supply of decision-making judges in tight budget times. In the latter case, increasing the supply of problem-solving judges might reduce timeliness as the average case takes longer to dispose and requires more of the decision-making resource.

Barriers to demand are also probably important and variable. Such barriers may include cost, complexity, physical access, and timeliness. The reader can easily add to the list. In the United States, cost has traditionally been considered a valid screening barrier for court cases. In contrast, most other developed countries have unbundled their legal services in a way that has dramatically lowered the cost of litigation on the low end and removed a significant barrier to effective demand. To the extent that some states and courts do the same in our country, it will be interesting to see the effect on demand, if any.
Of course, a lower cost for court services may increase demand in a way that is self-defeating for a court in a funding crisis. Just as new highways make traffic congestion worse, more efficient courts might lead to a higher case demand that puts case quality under pressure. Without having a meaningful debate about the extent of legitimate unmet legal needs, there is no way to know what an adequate level of court funding should be.

The current budget crisis has caused several state court systems to ponder, for the first time, a reduction in the supply of judges. Since such decreases in decision makers are unprecedented, there is usually no recognized process for doing so. At best, it requires formal redistricting and a reduction by attrition as current judges retire. At worst, it requires a constitutional amendment. Removing venue constraints or expanding areas of concurrent jurisdiction offer more feasible ways to improve judicial productivity without actually reducing the supply of judges themselves. Replacing judges with quasi-judicial officers is another strategy being used by several states now.

There is much anecdotal evidence from judges that the supply of decision makers has not kept pace with the demand, causing an increase in average times to disposition, a decrease in the quality of justice, or both. Data from NCSC show that the overall demand for litigation in state and local courts did increase by 10 percent from 1997 to 2006. Note that the general population also increased by 10 percent over the same period, so the rate of litigation remained the same. Criminal and civil caseloads increased slightly faster. Traffic and domestic-relations caseloads followed the average increase. Juvenile caseloads were flat.

Informal and anecdotal comments from judges suggest that they have been working ever harder over the last several decades. It is hard to comment on changes in the supply of judges over the same period, since several changes in the categorization of California judges skew the data. Taken at face value, limited-jurisdiction courts saw an increase of 13 percent in cases per judge, while general-jurisdiction courts saw a decrease of 8 percent in cases per judge from 1997 to 2007. If accurate, lower-court judges may be working slightly harder, and higher court judges may be working a bit less hard. Of course, these statistics date from the period before the current recession and budget crisis, which has caused some courts to delay filling judicial vacancies and significantly increased caseloads in some case types. Either way, it is to legally difficult to either increase or reduce the supply of judges in the short run.

The causes of variation in the demand for litigation also factor into a related discussion on the economic impacts of state court systems. In theory, case fees should be set at some level that clears the market at the point where the supply and demand for judicial decisions in general and trials in particular intersect. It would be more correct to say that case costs, including fees for legal representation and the cost of time to appear in court, are the appropriate measures. Still, court fees are a significant proportion of total litigation costs, especially for case types where self-representation is common. Some states may have set fees too low and induced a higher level of cases and trials than the market would expect. Other states may have set fees too high and seen the opposite problem.

Understanding what the economically appropriate level of case fees should be is an issue that the courts currently know nothing about. Research in this area would not only benefit public policy, but also help courts better understand their impact on the larger economy. Rationalizing such fees across states would smooth out inequities in the demand for court services between states and also stabilize more consistently the markets for other solutions for legal decisions outside the
A final significant problem with the court market for legal decisions is the lack of consumer information. In a series of papers on case triage, Flango and Clarke argued in part that consumers need information on case costs, timeliness, complexity, and predictability to make better decisions about whether to file cases, in which types of courts to file, and which types of case management processes to use. In particular, litigants often cannot now make rational decisions between civil cases using the traditional adversarial process and extensive due process versus a less onerous version of civil case processing when both queues are available. As economists know, no market operates efficiently when insufficient information is available about it. The market for legal decisions clearly operates in a very inefficient way now, partly due to the almost total absence of useful market information.

Toward that end, some courts have begun to regularly publish results for the ten *CourTools* performance measures. Data on case timeliness and cost per case are certainly helpful to potential litigants, even though the costs reported are only for the court. Adding some measures for litigant costs, average hearings per case, and transaction times would be even more beneficial for improving market efficiency. The last two performance measures have already been proposed by some court practitioners and could be practically measured. Litigant costs would be harder to measure, but a sampling approach might provide a set of initial estimates. Again, true litigant costs are important to understand for studies of court economic impacts, barriers to access, and the demand for legal decisions.

We have not even talked seriously about a fuller set of incentives and disincentives affecting the supply and demand for legal decisions. We have also ignored most court competitors in that market. These are subjects beyond the scope of the current article, but still of utmost interest if courts are to maintain themselves as viable social institutions in the future. Until then, courts would do well to begin the work of understanding their market and better positioning themselves to be successful within it.

**A Research Agenda**

If one accepts that the courts do operate within a broader market for legal decisions and that market can significantly affect at least the demand for court services, then it may be both useful and important to answer the following questions:

1. How many different markets for legal decisions do the courts participate in?
2. What are the incentives and disincentives affecting supply and demand for court services in each of these markets?
3. Who are the competitors with the courts for legal decisions in each of these markets?

We are used to thinking about a court as a court and due process as due process. However, a traditional criminal court is very different from a drug court, and even more different from a court hearing juvenile-dependency cases or uncontested divorces. Some litigants participate involuntarily. Others vary greatly in available resources to litigate. If the courts ever operated using relatively uniform processes across all case types, those days are probably gone forever. Acting as if the typical litigants in different case types are all the same is probably equally mistaken.

Understanding those kinds of differences would help the courts determine how potential litigants trade off quality (due process), cost, timeliness, and predictable outcomes when deciding whether to use the courts to reach legal decisions. That kind of knowledge would help courts take steps to improve their services to litigants and maintain public trust and confidence.
RESOURCES


National Center for State Courts, Budget Resource Center. www.ncsc.org/brc

Scottsdale City Court FY2011/2012 Operating Budget.

Crisis in the Courts: Reconnaissance and Recommendations

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The courts are still in peril as a result of the nationwide economic crisis. The ABA Task Force on Preservation of the Justice System has put the issue of state court underfunding in the spotlight, and with its report has defined the crisis and offered recommendations to assist in dealing with it.

On August 8, 2011, the House of Delegates of the ABA voted unanimously for a resolution declaring that our state justice systems are underfunded and urging state and local governments—working together with the bar—to address that crisis. The resolution, in turn, rested on a report of a task force organized the year before by ABA president Steve Zack. Working under the co-chairmanship of David Boies and Theodore B. Olson, the task force members held hearings, during which they took testimony from judges, court administrators, attorneys, and other stakeholders throughout the country.

In their report, “Crisis in the Courts,” the task force documented the extent of judicial underfunding, its costs to our economic and political systems, and the broad outlines of systemic changes many have proposed. The task force found that, unlike other elements of state government, which fared relatively well in the better economic times before 2007, the nation’s courts and related services were already being curtailed even before the current recession, and that since 2008, the courts of most states have been forced to make do with 10 to 15 percent less funding. The task force commented that, because the budgets of the judiciary and related support systems (juvenile counselors, drug diversion programs, probation officers) are typically 90 percent personnel expenses—as opposed to other agencies tending our highways, parks, or hospitals, which devote a far greater percentage of their budgets to capital projects, where expenditures can be deferred without immediately impacting essential services—those cuts to judicial budgets have had a debilitating impact on available court days and all of the other functions that require people to work immediately on burgeoning caseloads.

In their report, the task force documented four different types of harm resulting from this underfunding.

1. The Adverse Impact on Public Safety
The task force agreed with many commentators that there can be little doubt that budget cuts so adversely affect the courts’ ability to resolve cases in a reasonably prompt manner that the courts cannot fulfill their traditional role in maintaining societal order and public safety. Most obviously, many states have experienced delays in resolving criminal dockets to the point where judges and prosecutors are faced with the choice of warehousing untried defendants in local jails (at additional expense to other government agencies) or releasing potentially violent offenders simply because further pretrial detention is either constitutionally impermissible or practically impossible.

In Georgia, for example, a capital case was delayed repeatedly—with the defendant jailed for five years—because the state could not pay anyone to represent him. On the other hand, in Washington State a suspect in a violent case was released as a result of speedy-trial concerns, only to rape a woman and then kill a pedestrian in the ensuing high-speed chase.

The more “routine” effects of cutbacks in the courts’ ability to serve public safety are no less troubling. Throughout the country, the added cost in time and money to local police departments in traveling longer distances or spending more time waiting to testify at trials that have been transferred or delayed because of insufficient court time is clear. For lack of funds, DNA data on arrested offenders are not being entered into databases in Nevada for future use. Inadequate funding of mental health and substance abuse programs—and the judicial officers who
must decide which offenders could benefit from medical treatment rather than the polar alternatives of prison or outright release—is likewise endangering public safety and increasing the costs of an overwhelmed prison system.

The adverse impact of reductions in judicial time on public safety, of course, is not limited to delays in criminal proceedings, which are at least given some priority in most states. They extend to sensitive civil matters as well. A delay in providing protective orders in domestic relations cases, for example, can lead to tragic results.

2. The Adverse Impact on the Economy

The task force was also troubled by the fact that, as serious as the adverse impact of insufficient funding of the justice system can be in terms of public safety, the negative effect on the economy is no less devastating—and far more widespread. Over the past few years, a number of economists have made detailed calculations of the costs, both direct and indirect, of court budget deficits, all with the same conclusion: Those costs to local economies far exceed the supposed “savings.”

For example, the task force heard from one group of economic consultants who had calculated the true costs of state-funding cutbacks that had resulted in annual deficits for the Los Angeles Superior Court projected to range between $80 million in 2009 to $140 million in 2012. They found that the resulting reductions in court time, increasing delays in adjudicating cases, and other related expenses would total many times the projected “savings” to the state.

This last type of damage from underfunding our justice system cannot be overlooked and, of course, is especially problematic in difficult economic times. For it is precisely at those times that the economy is most in need of prompt judicial resolution of such matters as foreclosures, business reorganizations, bankruptcies, related credit problems, and other business disputes that have resulted from the downturn.

Perhaps nowhere is this more apparent than in residential foreclosures. The dramatic increase in mortgages requiring judicial adjustment or termination, combined with reduced staff and courtroom hours, has led to “robo-signing” abuses by some lenders (which can hardly be monitored by judges who have less than a minute per file), as well as undue delay of that essential reorganization of the real-estate markets. Such losses can then have a ripple effect as they deprive small family businesses of ancillary income to make ends meet for their other unrelated businesses.

Finally, in an ironic twist, the reduction in state expenditures for properly functioning courts even harms the state treasury itself. Many of the economic costs noted above—directly lost salaries and indirectly lost business opportunities—result in corresponding tax losses estimated to be as much or more than the “savings” they were intended to create.
3. The Adverse Impact on Those Who Need the Protection of the Courts
Given their historic role as the protectors of the least advantaged in our nation, the courts have rightly been called “Society’s Emergency Room.” And, as the task force repeatedly heard, never is that title so warranted as in times of economic distress. The same recession that has led legislatures to reduce access to our justice system has obviously increased the number of people who need it.

Family relationships ruined by unemployment or foreclosure often need judicial mediation. Yet when family and probate courts are forced to restrict hours or close entirely, the processes of child or elderly custody, legal separation or divorce, and child support orders are delayed or frustrated all together. The rights of minorities also suffer when the courts cannot promptly address actions filed to enforce state antidiscrimination laws.

All of this litigation burden on the courts is then compounded when those needing judicial protection are also denied access to free legal services and hence must proceed (if at all) pro se—thereby requiring even more time of judges and their staffs, who must then provide the additional guidance an appointed attorney would otherwise satisfy. During the recession, legal-aid agencies across the country have seen their budgets slashed as a direct result of both reduced state expenditures and historically low rates now paid on Interest on Lawyers’ Trust Accounts (IOLTA)—a primary source of many legal-aid budgets.

4. The Adverse Impact on Our System of Government
Finally, the task force heard from a number of witnesses who explained that, ultimately, the continuing failure to address the underfunding of our judicial system threatens the fundamental nature of our tripartite system of government. As Hamilton so aptly put it in the Federalist more than 200 years ago—in language just as relevant today—the judiciary is ultimately dependent on the executive and legislative branches for the funding it needs to exist at all as it has “no influence over either the sword or the purse.”

In 2010 that issue was directly addressed by the New York Court of Appeals in an action filed on behalf of the state’s 1,300 judges, seeking their first cost-of-living increase in more than a decade. In Maron v. Silver (2010), the court confronted a situation that is increasingly true around the country, where judicial salaries had been held hostage to partisan disputes to the point where the court concluded the very separation of powers was imperiled.

The Maron court explained that the 1,300 judges had not received any pay increase in 11 years, during which inflation had eroded their salaries in real terms by about 30 percent, while their dockets had increased, coincidently enough, also by about 30 percent to a “staggering” 3,500 cases for each judge. Faced with this growing crush of litigation—and a legislature unwilling even to meet the cost of living—the court was forced to rule that situation a denial of our basic notions of a separate-and-equal judiciary. Although that ruling has lead to some improvement, the task force found that much more needs to be done to redress the level to which court funding has sunk throughout the nation.

Crisis in the Courts: Proposals and Options*
In the first year of its existence, the ABA Task Force on Preservation of the Justice System did not stop at defining the crisis. It researched and sought proposals and ideas from the states. The National Center for State Courts provided references, ideas, and assistance. The committee is grateful to NCSC president Mary McQueen and her leadership and staff for providing many of the tangible ideas that the ABA resolution recognized. The state courts have been facing pressure and funding shortages for decades and have responded creatively. Going forward, these experiments demonstrate not only ways in which to react to a crisis but also methods to make the courts better over the long term.

The task force organized the reform ideas into three categories. First, courts must address funding issues and appropriations limitations. The goal of these reforms is to achieve stability, adequacy, and predictability in the funding of the judicial branch. Second, in the face of funding realities, courts must be as efficient with available resources as possible. The goal is to deliver the fundamental constitutional requirements of justice using modern and effective means. Third, all who are concerned with the justice system should establish better means of communicating the needs and importance of the system to decision makers. Although citizens generally trust the courts, they do not understand the great demands placed on the courts. Raising public awareness will increase the support base for court system
reform and make positive change more possible. Likewise, legislators and other
decision makers become better advocates and supporters for the courts when they
understand directly the functions and needs of the system.

1. Achieving Financial Predictability and Adequacy
The actual examples and proposals emphasize several basic themes in the budgeting
process. As a separate branch, the judiciary should be accorded more discretion
in directing funding among the various functions and needs according to evolving
facts and realities. Exercising such discretion is good management practice as long
as accountability is maintained. Courts can achieve that kind of flexibility only
if legislatures provide less-rigid dictates in appropriations and fewer line items,
eliminate unfunded mandates, allow shifts of funding during budget cycles, and use
funding formulas that reflect realities in the judicial system. Together, these reforms
can meet the twin goals of fostering both flexibility and accountability within state
judiciaries. To gain these reforms, courts must demonstrate a commitment to
efficiency by eliminating waste and streamlining operations.

2. Increasing Efficiency and Reducing Waste
The task force identified efficiency as critical to courts in this era of austerity. As
in some other industries, a major cost in the courts is personnel. To the extent that
less expensive technology can replace personnel, such technology can produce the
double benefit of reducing costs and increasing efficiencies. Examples of beneficial
technological improvements can range from online payment of speeding tickets to
totally Web-based case management systems.

In addition to technology, adopting corporate administrative models can improve
management and business process operations. By corporate administration, the
task force means statewide management of administrative functions such as staffing,
payroll, and recordkeeping, as well as centralized allocation of judicial resources
to the areas they are needed most. A centralized administrative model does not
erode local control over selection of judges and development of case law, but it does
reduce costs and inefficiencies associated with multiple levels of administration.

### Achieving Financial Predictability and Adequacy

| 1. | Provide for flexible management of funding within the judicial branch (ABA Standing Committee on Judicial Independence, 2004: 9). |
| 2. | Establish court system appropriations and budget bills with fewer line items and fewer legislative restrictions on expenditures (ABA Standing Committee on Judicial Independence, 2004: 8). |
| 3. | Develop a judicial workload funding formula that fosters fair and predictable funding (National Center for State Courts, 2003b, 2003a: 12, exhibit 4). |
| 4. | In furtherance of predictable and supportable funding, budget processes must show measurable outcomes, prove fiscal accountability, and deal with long-term goals of the court system. NCSC has developed “principles of judicial administration” that may guide these reforms (National Center for State Courts, 2010; Baar et al., 2010: 8-9). |
| 5. | Establish limits for cutbacks by legislatures or executive branches by recognizing the inherent powers of the judiciary as a separate branch of government (Chiles v. Children, 1991; West Virginia Constitution, art. IV sec. 51 (b)(3); Stumpf, 2004: 107; Boston Bar Association, 2009). |
| 6. | Establish unified funding for courts at the state level (ABA, 1990; Tobin, 1999; Baar et al., 2010: 6). |
| 7. | Identify, pay for, or eliminate unfunded mandates on the justice system (Texas Association of Counties, n.d.). |
| 8. | Eliminate functions that are no longer necessary, have less priority, or can no longer be afforded as part of the budget of the courts (Hall and Suskin, 2010). |

### Increasing Efficiency and Reducing Waste

| 2. | Use business process management principles to evaluate efficiency (Klaversma, Roper, and Steelman, 2003). |
| 4. | Use alternative, more efficient, and less expensive means of resolving conflicts and delivering justice (National Center for State Courts, 2009). |
| a. | Consider the use of specialty courts such as drug court, business court and family court. |
| b. | Foster alternative dispute resolution (Riskin et al., 2005: 22-35). |
| c. | Community resources—Family Centers (Baar et al., 2010: 10). |
| 5. | Reexamine court jurisdictions and consider consolidation or elimination of certain courts (National Center for State Courts, 2003b). |
Further, courts must look for new and creative alternative administrative methods. Specialty courts can develop judicial expertise in certain areas; promotion of alternative dispute resolution can reduce the burden on the trial courts; and community judicial-volunteering programs can increase manpower and awareness. Within the last few years, U.S. courts have been trying new ideas to increase efficiency. Ultimately, however, the courts cannot trade off fundamental values of justice for efficiency. Justice remains the core mission.

3. Communicating and Advocating a Stable and Effective Justice System

Despite the undeniable importance and great needs of the judiciary, those needs are not always clear to the public at large or even to some public leaders. The judiciary has less political support and public outreach than the other branches of government. The lack of political power is a byproduct of the belief that the judiciary must be less political than the other branches. However, communication and advocacy must be part of any plan for protecting and enhancing the courts. The task force realized that communication between the judiciary and state legislatures must occur. Legislatures provide a major component of judicial funding, and programs of familiarization and education can help legislatures understand the problems facing courts. Individual legislators who understand the needs of courts can better advocate for court systems. In addition, reaching out to and educating business leaders, civic leaders, and the public at large can help explain the importance and needs of the court system to legislators who appropriate funds.

Ultimately, the social cost of inadequate funding must be explained to those outside the court system. A systematic approach to better public understanding of the functions of the system is essential to achieving the goals of adequate funding and efficiency.

Communicating and Advocating a Stable and Effective Justice System

1. Include legislators directly in communication, familiarization, and education programs.
2. Develop coalitions that include business groups and general counsels of corporations to help educate and influence legislators (National Center for State Courts, 2009).
3. Enhance education on the role of the courts for the public and in schools (National Center for State Courts, 2009; American Bar Association Commission on State Court Funding, 2004).
4. Establish a communications plan that explains that certain judicial cuts result in more cost to the taxpayer in the long run.
5. Use national media to deliver the message through compelling and specific stories on the impact of justice system cuts.
6. Advocates for judicial funding should consider utilizing polling, paid media, and grassroots advocacy.

Conclusion

The current crisis is beginning to receive more attention. The New York Times, USA Today, and the Wall Street Journal, among others, have found this issue worthy of their ink. For example, the New York Times recognized the crisis and referenced the task force report in an editorial, “Threadbare American Justice.” The conclusion of our task force report, a phrase quoted by the Times, was that “even the most eloquent constitution is worthless with no one to enforce it.” The courts are, in fact, the final guardian of our values and our Constitution, and nothing can be more important to our nation’s future.

The reality of the court crisis is complex. Different court systems will require different solutions, and the recommendations are examples of strategies that have worked before and provide logical options for the future. The task force is continuing to search for answers, and we look forward to working with the courts to ensure that our justice system is protected.
ENDNOTES

* These options and proposals were among the topics discussed in testimony offered by the following individuals at two hearings held by the ABA Task Force on Preservation of the Justice System in Atlanta, Georgia (February 9, 2011) and Concord, New Hampshire (May 26, 2011): Dennis W. Archer, former ABA president; Bert Brandenburg, executive director, Justice at Stake; Linda Dalianis, chief justice, New Hampshire Supreme Court; Paul J. De Muniz, chief justice, Oregon Supreme Court; Don Federico, president, Boston Bar Association; Carol W. Hunstein, chief justice, Georgia Supreme Court; Wallace B. Jefferson, chief justice, Texas Supreme Court; Kim Keenan, general counsel, NAACP; Manny Medrano, reporter/anchor, KTLA and KNBC News; Ron Overholt, chief deputy director, Administrative Office of the California Courts; Richard Samuels, chair, New Hampshire Business and Industry Association; Leigh Saufley, chief justice, Maine Supreme Court; Lester Tate III, president, State Bar of Georgia; Janet Welch, executive director, State Bar of Michigan; and Wayne Withers, general counsel (ret.), Emerson Electric.

RESOURCES


MAKING THE “PAIN OF REAL PEOPLE” PART OF COURTS’ BUDGET ARGUMENTS

Alexander B. Aikman
Former Court Administrator and Consultant to Courts

Stressing the importance of “due process” and other constitutional concepts in discussing the courts’ budget needs is important, as far as it goes. However, courts must drive home the effects of lowered court budgets on the lives of people and on businesses.

“Behind the angst of state budget jargon is the pain of real people” (Baker, 2011). That is the opening sentence in a 2011 California weekly newspaper article about midyear budget cuts on top of the cuts already imposed in June. Courts need to start putting the “pain of real people” in every press release, reporter-generated story, and argument to funding authorities against more budget cuts. The pain of real people, preferably expressed in their own words, offered as representative of the thousands impacted, will help voters and legislators understand why budget cuts for courts are different than budget cuts to the roads department or even law enforcement. Courts need to present a gallery of faces that people can see and voices that they can hear to emphasize why budget cuts for courts are different than budget cuts to the roads department or even law enforcement.

An effective article about the impact of staff cuts in the Sacramento, California, Superior Court made policy arguments against cutting court budgets, but they were woven around the story of Scott Allen and his son. The boy’s mother had legal custody and said she would be moving soon to the Midwest. Allen was trying to file a motion for custody and to block the taking of his son out of state. Allen and his son waited at the courthouse for four-and-a-half hours without getting to the counter to file his papers. The article ends:

With security personnel telling him he had to take his son home, Scott Allen left the courthouse at 3:30 p.m. Monday, a half hour before closing time. He said it didn’t really matter, that his number was so far down the list there was no way he was going to be called Monday anyway. “The tax money that we give should be funding this,” Allen said (Furillo, 2011).

A judge or court administrator saying the same thing would not carry the same weight as Scott Allen.

Retired Supreme Court justice Sandra Day O’Connor told a reporter for the ABA journal at the American Bar Association’s 2011 Annual Meeting: “‘No one, not even lawyers and judges, understands what a financial bind the courts are in.’ . . . As a result, she said, ‘They’re not ready for the political fights’ that may be necessary to assure that legislatures fund the courts at adequate levels. We have to wake them up.” (Podgers, 2011). The Great Recession and the resulting cuts in courts’ budgets have pushed many courts to the edge of viability. Courts need to add to the arsenal of arguments for adequate funding and against further cuts.

In the wake of widespread budget cuts, judicial leaders across the country, both local and national, have used scores of newspaper and magazine articles to make the case urged by Justice O’Connor. The American Bar Association and some state bar associations have appointed special committees to document the impact of cuts and argue for increased funding. The materials available through the American Bar Association’s Task Force on Preservation of the Justice System (2011), in particular, are excellent and make the intellectual case very well. Likewise, the National Center for State Courts has a number of useful materials.

To date, however, this effort has produced limited-to-no restoration of funds or staunched the possibility of more cuts. Part of the reason is that the arguments do not make an emotional connection to the readers or viewers. Courts are fighting for funds and for the public’s attention and sympathy with all other government agencies. They are fighting images of children without food and clothing, of seniors...
without heat, of children’s education being compromised, and of the disabled and mentally ill being denied needed support. They also are competing in a political environment in which judges and courts increasingly are attacked by state legislators and some national political figures for a wide range of perceived transgressions.

To compete with these images, courts offer concepts: access to justice, equal protection, delayed justice, and maintaining the basic guarantees of our state and federal constitutions. All of these are sound and legitimate reasons why courts cannot be weakened below a certain minimum level. These arguments certainly should not be abandoned or minimized in budget requests or ignored in press releases and reports. They should be augmented, however, first, by the type of data generated by the judiciary of Georgia and the Los Angeles Superior Court. Both have done studies showing significant negative impacts on revenue when courts cannot operate at full capacity (Skaggs and da Silva, 2011). Yet many, if not most, legislators do not find these arguments compelling or believe that they are treating a coequal branch of government equally if each branch takes the same percentage reduction. To date, logic has not changed their minds.

There are two difficulties in relying solely on these types of arguments, however. First, many people have a limited understanding of history and the basis for our tripartite government and do not have a good grasp of the subtleties of the role of courts in protecting society and the rule of law. Many have strong opinions about one or two cases, or maybe a judge, and believe that is sufficient to support budget cuts for courts. The implications of those cuts for everyone are not understood or considered.

Second, concepts do not compete well for public concern when placed against undernourished and undereducated children, the disabled, and even potholes in roads. Courts need new ways to help make their case. Two seldom-used approaches need to be added to the arsenal.

The first is a little-emphasized aspect of the policy arguments now being made: Justice degrades with delay. The degradation of the courts’ core responsibility—justice—is a unique consequence of delay in courts that is not found when there is delay in the work of an executive-branch agency. Further, budget cuts of the magnitude being imposed on many courts today inevitably mean staffing reductions, which exacerbate any delay that otherwise exists because of laws, rules, or local practice.

How is additional delay in a court different from additional delay in an executive-branch agency? If someone has to wait longer to talk to staff in the DMV, in the end, the license or vehicle registration that person receives has the same value it would have had if the customer had not waited longer in line. Delay in filling a pothole may be an inconvenience and possibly damage a few cars, but in the end the repair will be the same and as successful as if done months earlier.

When a court is underfunded and case resolution and the concluding paperwork are delayed, the final judgment looks the same, but the justice a litigant receives months later is not the same. The parties’ positions and public safety may be seriously compromised by the delay. Further, statutes and court rules impose firm deadlines for certain actions. Failure to file a document, such as Scott Allen’s problem, may destroy a right that the law provides. A landlord may get the same eviction ruling at the end of six months rather than two months, and the written judgment provided after another two months will contain the same words, but in the meantime the landlord likely will have suffered serious economic damage that cannot be restored by a delayed eviction order. A mother and children who cannot get a timely court hearing to establish their right to support may eventually get the requested order and judgment, but that judgment cannot cure the deprivations or difficulties the family suffered in the meantime. If evicted from a residence or the children are poorly fed for four months, no money can change that. Justice is denied in each of these cases.
The underused approach is associated with the examples just given: Courts need to start featuring individuals and businesses hurt by budget cuts as part of their justifications to either increase their budgets or limit cuts.

Courts have to start looking outward, not inward, as part of their budget justifications. If a press release or reporter-generated article focuses on how a budget cut affects judges or how many staff positions are eliminated or left vacant, the public and legislators will yawn. All of government can issue press releases about the loss of “$X,” or “Y%,” or “Z staff positions” (Schelzig, 2011). Who in the public or even in the legislature has any idea what those cuts mean to the level and quality of court service? Focus on the customer! Talk about the impact on the customer and talk in specific terms, not in generalities such as “cases will take longer to be completed” or “waiting time in line will increase.” These two statements—and others often made—may be true, but they have no impact on the public or on legislators. During cutbacks, people have to wait longer on line at the assessor’s office and the department of motor vehicles, too. Why should a member of the public worry about longer lines at court? So what if a civil case involving two businesses must wait 18 months for a trial when formerly it took only 10 months? Ask a small business owner to explain it by getting specific in a press release or budget justification about the impact on the business and her employees because now she has to wait an extra 8 months to find out if she will be paid by the defendant.

Following are a few examples that illustrate the effective use of anecdotes.

In a *New York Times* article, reporter John Schwartz (2011) wrote:

“The justice system’s funding has been decreasing in constant dollars for at least two decades,” said David Boies, co-chairmen of a commission formed by the American Bar Association to study court budget issues. “We are now at the point where funding failures are not merely causing inconvenience, annoyances and burdens; the current funding failures are resulting in the failure to deliver basic justice.”

Wayne and Kristy Haggie of Nashua, N.H., would agree. In June last year, they persuaded a judge to grant them visitation rights with their two children. Ms. Haggie’s parents had assumed child-raising duties during a financial rough patch . . . and then refused to give the toddlers back. With the judge’s ruling, the Haggies assumed that they would be seeing the children again immediately and regaining full custody before long. They borrowed $500 from Mr. Haggie’s relatives for a trip to Wal-Mart to buy the toddlers clothes and supplies.

“We got everything set,” Mr. Haggie said. “And then we sat there.”

The judge’s order was not mailed for three months—an eternity in the life of a child. . . . Between that delay and others while setting up visitation arrangements, the Haggies say, they have lost precious bonding time and been deprived of important moments.
“We missed our daughter’s first steps,” Mr. Haggie said. “We missed her first day of preschool.”

The article continues with some of the policy arguments and comments by judges and lawyers, but concludes:

Meanwhile, the Haggies are getting more regular visits with their children, now 4 and 5 years old, and are still working through the process of gaining full custody.

But much has already been lost, Ms. Haggie said. By the time they came, the clothes didn’t fit them anymore.

The criminal justice side of courts also is impacted by cuts even though many courts note that criminal cases will continue to get priority as staff positions are cut, clerk’s office hours are reduced or, in a few instances, courtrooms closed. Consider the following from an article about inadequate updating of criminal records (Dolan, 2011).

The criminal records system California relies on to stop child abusers from working at schools and violent felons from buying guns is so poorly maintained that it routinely fails to alert officials to a subject’s full criminal history.

[Dennis Henigan, president of the Brady Center to Prevent Gun Violence, said:] “Every record missing from the system could be someone who is too dangerous to buy a gun.” . . . Last month, California’s inspector general estimated that 450 inmates who had completed their sentences but were still “a high risk for violence” had been released without supervision from parole agents. In some of those cases, prison officials relying on the faulty database didn’t know the inmates had previous convictions and were supposed to be strictly supervised. . . .

[Discussing a recent roundup of 1,200 guns from those who obtained them improperly, the article continues:] officials acknowledge that they know of at least 34,000 guns—1,600 of them military-style assault weapons—still in the hands of people prohibited from owning them.

Everyone in courts knows that the incomplete records are not the sole responsibility of court personnel not keeping up with disposition data entry, but we also know that courts contribute to this problem. Staff cuts exacerbate the problem, and courts have to make that point.

Compare the impact of these stories to “people will have to wait up to an extra hour in line for service” and “trials will be delayed.” There are thousands of stories like these in every court. The stories should be told. The ways to generate them are known but bear repeating.

Give the public and politicians word pictures that show everyday-life impacts. Lots of them! Staff and judges know many of them. They have to flag them as they arise and let the chief judge or court administrator (or the court’s PIO) know about them. In addition, periodically send staff or volunteers out into the clerk’s office and courtrooms to listen and talk to people. Ask members of the public with stories to come to the courthouse for a panel presentation for the media to share their stories. Set up a panel of attorneys to tell their clients’ stories (not theirs). As others have said in a different context, “if not you, who?”

Steer your beat reporter from a court case to looking for these stories. The stories exist; a reporter will find them. Talk to newspaper editorial boards and news directors at local television stations about the issues and solicit their help. Some judges and administrators are sure that their local newspaper editor’s goal is to find or create stories that paint judges and the court in a bad light. Maybe so in some
communities, but even those individuals want government to work well (or better). The response might surprise you.

Ask your local Chamber of Commerce or other business-oriented group to identify members who have been hurt by slowed staff work (e.g., banks waiting for proof of judgments) and delayed proceedings, either in writing or through a series of “hearings,” such as those the California Chamber of Commerce held in 2011 (Miller, 2011a). Concern among the business community may catch a legislator’s ear faster than a young couple’s problem in a divorce proceeding.

Establish or reinstitute an “invite your legislator to court” program, only do not put them in the courtroom all day. Plan at least half of their time in the halls and the clerk’s office and invite them to watch, listen, and talk to the people there.

The judiciary’s share of either a state or local budget normally is somewhere between 1 and 3 percent. Steven Zack, a former president of the American Bar Association, notes the consequences of recent budget cuts: “Without a working court system, our very democracy is at stake” (Miller 2011a). Courts do not need to argue against budget cuts—a foolish attempt in today’s economic conditions—but for not crippling their ability to fulfill their purpose. Personalized stories will lead the public and funding authorities to understand the true cost of the cuts much more effectively than “we can’t provide justice.”
Making the “Pain of Real People” Part of Courts’ Budget Arguments

In my first year of law school, my professors often reminded us that each of the appellate cases we read involved real people and, often, real pain. The lawyers among us have to remember that admonition.

Consider the soup advertisements run frequently in 2011 in which women call a soup company’s chefs to tell them they now can fit into their jeans or dress. That’s the ad! No reference to calories, nutritional information, or price. Only sizzle! I have not seen sales figures, but I would be shocked if sales of that soup brand did not increase materially in 2011.

An effective article in California focused on a staff member who was on maternity leave when she got her pink slip. Talking about her struggles—her former husband also was laid off so her support payments had ceased—effectively personalized the court’s loss by focusing on the staff member’s loss. The article included the following that helped explain why her layoff was important: “The layoffs…primarily affected the unheralded—and yet vital—personnel who comprise the judicial branch’s central nervous system. Staff like [the terminated staff member] do the paperwork at the courthouse, preparing the court calendars and minute orders relied upon by attorneys, and also helping the public understand the unfamiliar procedures of the justice system” (McEvoy, 2011).


Some legislators and legislative staff also want to change the courts’ business model, but that is a topic for another day.

Government accounting, which seems to have such a hard time looking at systemic costs rather than line items and the budgets of one agency at a time, significantly contributes to why this important argument seems so often to be ignored.

“Asked where [California’s] state leaders should cut funding to help reduce the $25 billion budget deficit, 59 percent of registered voters [said]...‘the courts and state judiciary.’...Courts tied with prisons as the most popular budget targets” (Miller, 2011b).

It also would help to mention in press releases and budget requests the thousands—in urban courts, hundreds of thousands—of people and businesses who visit the courthouse each year as litigants, witnesses, jurors, and interested parties seeking information about court cases. In state-funded systems in larger states, the numbers reach the millions.

ENDNOTES

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RESOURCES


REENGINEERING: UTAH’S EXPERIENCE IN CENTRALIZING TRANSCRIPT MANAGEMENT

Daniel J. Becker
Utah State Court Administrator

There has been much serious discussion about reengineering court processes to improve efficiency. Utah’s centralization of the management of court transcripts is a successful example of a court-reengineering project.

Over the last several years, there has been a good deal of discussion regarding reengineering the business of the courts. Defining what that term means for the courts has been somewhat elusive. In some instances, it has meant restructuring the organization of courts; in others, changing jurisdiction to move cases to a different court or even out of the courts altogether; and in still others, altering the work of the court as a result of the introduction of the electronic record. Suffice it to say, a wide array of projects and initiatives fall under the rubric of reengineering.

Many court processes would benefit from creative centralization and automation. For example, in Minnesota accounts payable have been centralized, and New Hampshire has established a centralized call center (see separate discussion at the end of this article). In Utah, we have centralized the management of court transcripts.

Of the reengineering efforts undertaken by the courts in Utah, none have produced a more dramatic, tangible, and immediate improvement in service and savings than the centralized and automated transcript management system. This system has reduced the time from transcript request to transcript delivery from an average of 138 days to 12 days for cases not on appeal and 22 days for cases on appeal. It has allowed the consolidation of the work that previously involved 50 clerks statewide down to a central staff of 1.5 employees. It has produced savings of approximately $1,350,000. And it has eliminated a top cause of delay for our court of appeals.

Background

The impetus for this change was, as so many of the recent reengineering efforts have been, a result of budget reductions. In recent years, our court system has installed up-to-date digital audio and video recording systems in every courtroom in the state. The work done by court reporters had been increasingly limited to serious criminal cases and complex civil cases. With our trial courts already relying on digital recordings for most proceedings, the elimination of the remaining 18 court-reporting positions was one of the first in a series of budget-reduction measures taken by our Judicial Council, the governing body for Utah’s courts.

The loss of court reporters for preparing transcripts prompted a comprehensive examination of how transcripts were ordered, prepared, and delivered. What we found was a process that varied from courthouse to courthouse, characterized by delay, confusion, and inefficiency. Fifty clerks statewide had, as part of their duties, performed the activities necessary for determining how a proceeding was reported; locating and making copies of recordings or determining which court reporter had taken the proceeding; assigning transcription responsibilities; monitoring delivery, docketing, and filing of transcripts; and processing payments. Seldom was it one clerk who handled all these procedures, creating many opportunities for error and delay.

Transcript Management System

The goals for an alternate system were: 1) it should be easy to use, 2) it should provide an effective workflow, 3) it should automate notification and processing, 4) it should be integrated with multiple case management systems, and 5) it should reduce work. It had to meet the needs of multiple users, including attorneys, self-represented parties, judges, official court transcribers, transcript coordinators, court clerks, and the appellate courts. What was envisioned was not merely a file-transfer application, but also a uniform system, which would provide enhanced business processes, improved workflow, automatic notification, propagation of transcript requests, and case management integration. Nothing on the market approached these design needs so it was decided that the Administrative Office of the

Many court processes would benefit from creative centralization and automation.
All transcript preparation is now performed by private transcribers, who are certified and licensed by the state and are on an official transcriber roster maintained by the transcript coordinator. The transcript coordinator remotely retrieves from the system the audio/video recording and all data required for transcription, attaches it to the request, and transmits the electronic package to the assigned transcriber. Requests are processed and sent to transcribers the same day they are received. Nightly processing identifies overdue transcripts; sends an e-mail to the requestor, transcriber, and coordinator; and creates work-queue items for the coordinator. Payment is made directly by the requestor to the transcriber, eliminating billing and accounts-receivable work previously performed by court staff (see chart on the next page).
Our ability to realize the above improvements required that a number of pieces come together, such as making a policy decision to rely exclusively on the digital record, having the right equipment and training in place in every courtroom, performing planning and coordination, and using innovative technology solutions. Ours is a statewide application covering all courts, but such a system could be replicated for an individual trial court. The lessons that we would pass on are:

- It is possible to rely exclusively on a digital record and, at the same time, improve system performance (see Conference of State Court Administrators, 2009). When this system went into place, the Rules of Judicial Administration carved out an exception that allowed trial judges to use a court reporter for capital cases, and a fund was set aside to pay for such reporters. The fact that there have been almost no expenditures from this fund reflects the confidence both the trial and appellate bench have in the digital record.

- A statewide system requires that equipment and system application planning take place in concert. All of our courtrooms have digital or video systems that are compatible, allowing the transcript coordinator to have immediate access to all audio or video records at any location in the state.

- The up-front programming necessary for integrating the transcript management system with existing case management systems was well worth the time. Being able to access the record and all related documents off a single system is key to the rapid turnaround time.

- Because of the ability to assemble the electronic record so quickly, transcripts can be delivered
routinely on an expedited basis. As a consequence, 45 percent of all requests are for expedited transcripts, which, in turn, increases the compensation for transcribers. It should be noted that a number of former court reporters are now providing transcription services.

- The success of the project was due to good planning, coordination, and execution. The project team, with representatives from appellate courts, Administrative Office of the Courts, and the AOC Information Technology Department, was made up of forward-thinking business and technology people.
- Attorneys and others making requests are pleased with the ease of ordering, the fact that the transcript coordinator serves as single point of contact, and the speed of transcript delivery.
- Trial judges appreciate the ease of accessing individual transcripts off the case management system, and court clerks do not miss the transcript work they previously performed.

We believe this transcript management system is a good illustration of what’s possible if you are willing to honestly assess the shortcomings of an existing process, think creatively about centralizing a process, and apply technology with originality. In this instance, reengineering through centralization has been an unqualified success.

“INSOURCING” FOR BETTER SERVICE:
THE NEW HAMPSHIRE COURTS’ “LIVE” CALL CENTER

Laura Kiernan
Communications Director, State of New Hampshire, Judicial Branch

“The phones. The people at the counter. The questions. The courtroom support. The new filings coming in. The orders going out so people can move forward with their lives. Yet, if we had to design it all over again, it probably would not look the way it does” (Laconia District Court, Off-Hours Productivity Project).

The New Hampshire court system was dramatically restructured in July 2011, merging its three busiest jurisdictions—the district and probate courts and the family division—into a single circuit court that now handles more than 80 percent of the court system’s entire caseload. Part of a leaner, more efficient framework for circuit court operations is a new centralized “call center,” which, when up to full speed, will field an estimated 2,600 calls per day from 66 circuit court locations around the state. For court staff, the reprieve from responding to general telephone inquiries means more uninterrupted time to focus on case processing and on citizens who come to the clerk’s office seeking assistance.

New Hampshire is rolling out its “live” call center slowly—expectations are that all 66 locations will be tied in by July 2012. But the early enthusiasm among the staff for this ambitious and unique project is clear. New call center employees were greeted with a standing ovation when they paid a visit to the 6th Circuit Court in Concord, one of the first sites linked to the call center.

“It was just an incredible difference,” said clerk Diane Lane, whose busy staff is used to the distraction of constantly ringing telephones. “It’s quiet.”
Court administrators estimate that call center representatives will be able to answer 70 percent of the thousands of general-information calls that now come to the local courts every day. Each call center employee, wearing a headset, is seated in front of two computer screens for quick access to information from the case management system, the judicial branch Web site, or other sites. Questions that require the physical case file (about 30 percent of all calls) are immediately transferred to a staff member at a specific court location. The call center itself is a large room; the background noise is just a hum of muffled voices. Only the employee hears the sound of a call coming in through an earpiece. No telephones are ringing.

The call center is staffed by 22 employees, including 17 veteran court staff (one of whom is the supervisor). One individual has 32 years of courthouse experience. Five new part-time hires went through four weeks of intensive training on court structure, procedures, and the case management system. Redirecting the telephones to the call center is expected to save $266,000 a year in payroll costs. The total cost for equipment, software licensing, and training time for the call center was $137,500. This relatively low start-up cost was possible through the sharing of an IT infrastructure with the Department of Safety, which established an in-house call center four years ago to handle the high volume of telephone calls to the motor vehicle division.

The circuit court and its new call center are both products of the New Hampshire Judicial Branch Innovation Commission, which the state supreme court established in March 2010 with a mandate to initiate change and bring the state courts into the 21st century. Circuit court administrators embraced the call center project from the start, but others, particularly lawyers accustomed to established relationships and “hand holding” from the clerk’s office, have been skeptical.

“When I call the court, I want to talk to the court,” groused one lawyer recently. To which, the Call Center representative responded, “This is the court.” Increased productivity was the driving force behind the call center. Court administrators calculated a 14 percent improvement in productivity at local court sites if staff were relieved from answering telephones calls and the time spent afterward trying to refocus on the task in front of them, such as processing a court order or an arrest warrant.

“Multitasking is just very inefficient,” said Judge David D. King, the deputy administrative judge of the circuit court.

A weeklong “Off-hours Productivity Project” in August 2011 at one of the state’s largest family division sites revealed the stark difference in productivity when staff was away from the telephones and the front counter. Staff working the day shift for four hours completed 104 case-processing tasks while they were also answering general telephone inquiries and helping people at the counter in the clerk’s office. Staff working the evening shift—when the phones were off and the clerk’s office was closed—completed 256 case-processing tasks, far more than double the productivity of the daytime staff. With that demonstration in hand, lawmakers agreed to appropriate $250,000 in the court budget to hire part-time employees to work off-hours. Those employees also help make up for veteran staffers who were selected to work as call center representatives.

Before the call center’s “go live” date in January 2012, circuit court administrators worked to improve the consistency and quality of the data entered into the case management system so call center staff would have as much information as possible. For example, several new codes were added to the case management system so that the call center could answer questions without having access to a court file; the format for entering information about court orders was changed to make it consistent statewide; and prisoner transfer orders must now include the prisoner’s name. To save time and travel costs, administrators used “Go to Meeting” to link courts statewide to training sessions through the Internet. The result is improved efficiencies, both at the call center and in the courthouses where staff interruptions are reduced.
Court administrators assembled the circuit court call center operation in six months. They visited a private dental insurance provider’s call center and relied heavily for advice and training on the experience gained at the Department of Safety’s call-in center. Checklists were created so that call center “representatives” would have ready answers to commonly asked questions. Software selected for the court call center will supply detailed information about the work process, which will give administrators the hard data they need to assess productivity and make further improvements.

RESOURCES


Minnesota Judicial Branch (n.d.). “Minnesota Court Payment Center.”
www.mncourts.gov/?page=3779

www.utcourts.gov/resources/rules/ucja/

www.utcourts.gov/resources/rules/urap/
Violent acts surrounding court cases have been steadily rising despite the presence of increased courthouse security. What must courts do to counteract this trend?

We live in a time when threats against judges and acts of violence in courthouses and courtrooms are occurring throughout the country with greater frequency than ever before. By their very nature, courthouse operations entail a heightened degree of risk. Every working day courthouses are visited by a large number of citizens, many of whom may be disgruntled and angry to the point of becoming lawbreakers. Individuals and groups have committed acts of violence in courthouses, often attempts to murder judicial officials, escape from custody, and disrupt or delay proceedings. Moreover, courthouses, which represent the ideals of democracy in American society, have become symbolic targets for antigovernment extremists and terrorists (domestic and international).

One only has to spend a little time immersed in social media to see how prevalent courthouse violence has become. Within a matter of minutes we can view videos of a considerable number of violent incidents that have taken place in courtrooms and courthouses across the country. Most of what we see in these videos involves, to one extent or another, unruly prisoners, disgruntled litigants, and upset family members. In addition to shootings, bombings, and arson attacks, there have been knifings, assaults, failed bombing attempts, suicides, bomb plots, murder-for-hire conspiracies, and much more. Often, it is only a matter of opportunity, a fateful decision, or the inability to “wrestle” away a handgun that has prevented a physical confrontation from tragically escalating into a deadly one.

The number of threats and violent incidents targeting the judiciary has increased dramatically in recent years. At the federal level, the U.S. Marshals Service’s Center for Judicial Security reports the number of judicial threat investigations has increased from 592 cases in fiscal year 2003 to 1,258 cases by the end of fiscal year 2011. At the state and local levels, the most informative data about state courts comes from studies conducted by the Center for Judicial and Executive Security (CJES). Their data show that the numbers of violent incidents in state courthouses has gone up every decade since 1970.

In 2010 CJES’s Judicial Counter-Violence Initiative released its study on “Court-Targeted Acts of Violence.” This comprehensive study focused on courthouse shootings, bombings, and arson attacks. It covered incidents occurring in the United States over a 40-year period (1970-2009). Since publication of this study, CJES has continued to research and document courthouse shootings, bombings, and arson attacks, uncovering multiple incidents that had been previously unrecorded during the stated study period.

A breakdown of the CJES research data show that 199 incidents (shootings, bombings, and arson attacks) have occurred in state courts from 1970 through 2009: 20 during 1970-79; 37 during 1980-89; 64 during 1990-99; and 78 during 2000-09. In addition, CJES has documented 11 state courthouse incidents for 2010 and 13 for 2011. Clearly, incidents involving shootings, bombings, and arson are on the rise.

Additionally, CJES began in 2009 to track and record violent incidents in courthouses other than shootings, bombings, and arson attacks. These include knifings and other assaults, bomb plots, and incidents of violence that stop just short
Courthouse Security Incidents Trending Upward: The Challenges Facing State Courts Today

With its 2012 publication “Disorder in the Court—Incidents of Courthouse Violence,” CJES has documented 209 such “other” incidents involving state courts from 2005-11: 10 in 2005; 10 in 2006; 16 in 2007; 24 in 2008; 32 in 2009; 50 in 2010; and 67 in 2011. Again, these types of violent incidents are on the rise.

The CJES research reveals that a majority of all of these types of incidents are “case-related.” This means that the person committing or plotting a violent act was involved in a past or present matter before the court. To commit a violent act in the courthouse, a person must, in addition to having motive and intent, be able to 1) identify the target; 2) determine the incident venue; 3) attempt to circumvent or bypass security; or 4) identify an incident site that either has a lack of security or a recognized vulnerability, limitation, or deficiency that can be readily exploited.

Of note is that arson attacks, through the use of improvised incendiary devices, have increased in number and frequency. This is predominately a result of “Incident Displacement Effect,” in which because of heightened courthouse security measures (e.g., security screening, controlled access, law-enforcement staffing, etc.) some individuals may have to choose locations other than the courthouse to commit violent actions. These “incident-displaced” locations might include security-screening stations and courthouse plazas, parking, and perimeter areas. The concern is that off-site locations, such as judicial residences, will become even more targeted. A few examples of measures designed to counter this effect include residential security and risk-based assessments, protective intelligence and investigation programs, crime prevention through environmental design (CPTED) features, physical security and surveillance systems, identity-protection programs, and sound personal and travel security considerations.

With the advent of courthouse security awareness, heightened security measures, refined policies and procedures, specialized training, and site-specific security measures, one might have expected that the number of incidents would have decreased rather than increased in recent years. However, when one delves further, it becomes evident that because of the environment surrounding court proceedings, normally “good-persons” may resort to doing “bad things.” Those predisposed to violence may also act out on their impulses. This can be attributed to self-perceptions (actual or perceived) of what constitutes a “highly charged emotional event.” High-threat and high-profile proceedings may be considered highly charged emotional events but so might criminal court, family court, traffic court, conciliation court, etc. It depends entirely on what the involved believes—not what you or I do. What does prevent most of us from acting out are behavior or violence “inhibitors,” including strong family support, employment and financial stability, morals, freedom from incarceration, good health and well-being, and respect for authority, law, and justice. If these inhibitors are weak or absent, and if an individual is placed in a “highly charged emotional event,” there is a higher potential or risk of violence. The general rule is the more inhibitors one has, the less the threat or
Minimizing the risks is not necessarily expensive. Much can be done with little or no additional direct costs. Getting organized and getting the word out on security matters can go a long way toward minimizing security risks. Getting organized means first establishing a formal court security committee. The committee should be chaired by a judge and include court staff and stakeholders with an interest in or responsibility for court security—for example, representatives from law enforcement, the district attorney, the county facilities department, human service agencies, and first responders. The committee should meet regularly and be empowered to exercise rigorous oversight on all matters relating to security within a courthouse. Without such a committee, it is difficult, if not impossible, to assess and address properly the large number of security challenges facing court leadership.

Getting organized also means developing a comprehensive and cohesive set of policies and procedures on security. The existence of such policies and procedures signifies that those in authority have given these matters proper thought, that concepts of best practices have been taken into account, and that an effort has been made for consistency with respect to security procedures. Once established and approved by the committee, policies and procedures must be promulgated and be the subject of a rigorous training regimen for everyone who works in the courthouse. Further, every single person who works in a courthouse has the potential to materially enhance the safety and security of their work environment, to be the “eyes and ears” of a workforce constantly alert to risks and threats, especially judges, court administrators, court staff, and other officials who have been well trained on well-publicized policies and procedures.

Of course, not all necessary improvements to security can be achieved without additional direct costs. There can be the need for security equipment, such as magnetometers, wands, x-ray machines, closed-circuit television (CCTV) camera systems, and duress and intrusion alarms. Moreover, there is also often a need for greater security-officer-staffing levels. Security equipment alone will not secure a courthouse. There must be a sufficient number of court security officers (CSO) to staff weapons-screening stations, to be present in courtrooms, to patrol hallways, and to conduct regular external inspections of the building perimeter and parking areas.

Obtaining funding is another challenge for court security. It is often the determining factor when considering whether to install equipment or increase security staffing. Officials around the country have been quite creative and innovative when it comes to funding. Some have gained the required funding through federal and state grants, Homeland Security funds, filing fees, asset-forfeiture programs, and mutual-aid collaborations. Others have had substantially more difficulty when it comes to funding. In that regard, the Bureau of Justice Assistance (BJA) awarded a 2011/2012 grant for the National Center for State Courts (NCSC) and CJES to conduct a 12-month national assessment on court security that includes identifying the current available resources to address the most critical needs. It is expected that when completed the assessment will be an invaluable reference with addressing this issue.

While security threats and incidents are rising in state courts, available funding for court security equipment and staffing is becoming more and more limited.
due to budget constraints. Based on recent security assessments that the NCSC has conducted in approximately 225 courthouses throughout the country, there is ample evidence suggesting that critical needs for security resources are being left unmet. In one state, the NCSC security team assessed over 40 court locations and identified more than $1.5 million in costs needed for additional security equipment.

In 2012 judges and court administrators with responsibility for courthouse security continue to seek guidance and training on how to discharge that responsibility effectively. Specifically, they want to know what measures to take to minimize risks and how best to seek funding to pay for those measures with state or federal funds.

In addition to the CJES research discussed in this article, there are three premier documents to assist judges and court administrators in developing and implementing effective measures for courthouse security. These documents provide a wealth of information on the best security measures to implement, how to approach implementation in a cost-effective manner, and how to develop strategies to fund those measures that may be costly.

The first of these three documents is the *CCJ/COSCA Court Security Handbook: Ten Essential Elements for Court Security and Emergency Preparedness* (2010). The ten elements are 1) standard operating procedures; 2) self-audit; 3) emergency management; 4) disaster recovery; 5) threat assessment; 6) incident reporting; 7) funding for court security; 8) security equipment and costs; 9) resources/partnerships; and 10) new courthouse design. Each element covered in the handbook features a general discussion of what the element encompasses and why it is so important, a practical guide on what needs to be done to put the element in place, and a list of additional references for more expansive and detailed information.

The second document is “Steps to Best Practices for Building Court Security,” developed by the NCSC (Fautsko et al., 2010). This document sets forth guidelines for best practices in all aspects of courthouse security. It also sets forth steps in phases that can be taken toward achieving these best practices. Recognizing that these measures at the “best practices level” can at times be costly, these steps are presented in realistic phases so any court in its discretion can adopt incremental improvements before reaching the level of best practices. These steps in phases are stepping-stones along an ascending path to court security improvement—improvement that can be achieved thoughtfully and over time.

The third document is “Guidelines for Implementing Best Practices in Court Building Security,” a report produced by NCSC and funded by the State Justice Institute (2010). This report contains four parts: a) an identification of the estimated costs associated with improving security as recommended in the “Steps to Best Practices”; b) a framework of priorities that a court may follow in deciding when and how to make improvements, as recommended in the “Steps to Best Practices”; c) strategies for seeking the funds necessary to make such improvements; and d) a description of performance and accountability measures that a court can use to measure the effectiveness of implementation efforts and to sustain funding for those efforts.

In closing, judges and court administrators should give serious consideration to securing outside experts to conduct a comprehensive security assessment of their courthouses. A careful analysis by an independent third party will provide a fair and objective picture of what is really needed to improve courthouse security. The expertise and objectivity entailed in such an assessment may also provide those who must appropriate funds a higher level of understanding and comfort.
that the assessed need is indeed legitimate and measured. It should be noted that
the assessments discussed here are not simple “checklists” or “inventories” but are
contemporary documents that account for the complete multicomponent process of
court security.

Providing a safe and secure environment for those who work in or visit a courthouse
is a vital responsibility of judges and court administrators. Given the rise in violent
court incidents and the constant threat of future incidents, and based on funding
constraints, providing this type of a secure environment is a daunting challenge.
However, with a careful and measured approach, improved communication, and
access to funding, this challenge can be met in a way that will minimize the risks
inherent in courthouse operations.

RESOURCES


Are summary jury trials a viable forum for dispute resolution? The National Center for State Courts studied summary trials in six state courts to understand how these programs work and to determine the benefits and detriments of this approach to dispute resolution.

Recent court reform efforts have focused on procedures to alleviate backlog and delay, excessive procedural complexity and litigation costs, and the associated uncertainty in outcomes for civil cases. One technique—the summary jury trial—grew out of both alternative dispute resolution (ADR) programs and efforts to provide litigants with sufficient information to make informed decisions about the merits of settlement, but ultimately evolved into a number of different varieties. U.S. District Court judge Thomas Lambros (Northern District of Ohio, 1967-95) is credited with the original idea for the summary jury trial, which he used to resolve two personal-injury cases. In spite of numerous attempts by Lambros, the parties had refused to settle, believing that each could obtain a better outcome from a jury trial. It struck Judge Lambros that if the parties could preview what a jury would do, they would be more likely to settle. The procedure that Judge Lambros developed was essentially an abbreviated, nonbinding jury trial before a six-person jury selected from a ten-person jury panel.

From 1980 to 1984, the Northern District of Ohio selected 88 cases for summary jury trials. More than half ultimately settled before the summary jury trial was held, and 92 percent of the remaining cases settled after trial. Judge Lambros estimated that the procedure saved the court more than $73,000 in jury fees alone. He reasoned that the savings to litigants in reduced attorney fees and trial expenses would be considerably more. In Judge Lambros’s eyes, the summary jury trial was a form of ADR that explicitly incorporated the concept of trial by jury, but eliminated the risk of a binding decision or the expense associated with a lengthy jury trial. The success of the summary jury trial, according to Judge Lambros, depended on its procedural flexibility. He warned that the rules adopted by the Northern District of Ohio were not absolute rules to be followed in every case, much less in every court. He encouraged other state and federal courts to adapt the summary-jury-trial format to comport with local circumstances.

NCSC Study of Summary Jury Trial Programs
Over the next three decades, a number of state courts across the country learned of Lambros’s summary jury trial procedure and implemented variations to improve civil case management. In 2011 the National Center for State Courts (NCSC) visited six state courts that had implemented some version of the summary jury trial to learn how these programs operate, what advantages they offer civil litigants, what challenges they introduce to civil case processing, and how well they have been accepted by the local civil bar. In four of these jurisdictions, the programs have been in operation for a decade or more, providing a solid track record for assessing their respective advantages and disadvantages. The programs in the remaining two jurisdictions were implemented more recently and focused on emerging issues such as ensuring access to the courts, especially for lower-value cases, and bolstering rapidly deteriorating attorney trial skills due to underuse in the contemporary civil justice system.

During the site visits, NCSC staff interviewed judges, lawyers, and court staff who developed and supervised the programs or who participated in cases that were adjudicated under those programs. NCSC staff reviewed program documents, including procedural rules, training materials, marketing information, and caseload statistics. Where possible, NCSC staff also observed one or more summary jury trials in each jurisdiction (see the figure on the following page for a breakdown of key features about the programs).

These programs share a few basic characteristics. They are designed primarily for factually and legally straightforward cases involving lower-value damage awards that require less discovery and are typically trial ready in a short period of time. Live expert testimony is generally not required to explain the nuances of the evidence to
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<tr>
<th>South Carolina 9th Judicial Circuit Summary Jury Trial Program</th>
<th>Maricopa County (Arizona) Superior Court Short Trial Program</th>
<th>New York State Summary Jury Trial Program (Bronx County)</th>
<th>Nevada 8th Judicial District (Clark County) Short Trial Program</th>
<th>Multnomah County, Oregon Expedited Civil Jury Trial Program</th>
<th>California Expedited Jury Trial Program</th>
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<td>Originated in Charleston County in the 1980s. First modeled on the federal summary-jury-trial procedure and designed to adjudicate uninsured-motorist and small-claims cases. Highest summary jury trial volume is in Charleston County, with limited use in Berkeley and Dorchester counties. Statewide expansion is currently under consideration.</td>
<td>Implemented in 1997 by Judge Stanley Kaufman in consultation with Civil Bench/Bar Committee to address dissatisfaction with mandatory arbitration program for cases valued at less than $50,000.</td>
<td>Originated in Chautauqua County by Judge Gerace in 1998. The program spread to surrounding areas, then to Bronx and other NYC buroughs, and is now nearly statewide. The New York State Office of Court Administration appointed a statewide coordinator in 2006.</td>
<td>Implemented statewide in 2000 to address cost of litigation in lower-value cases, the length of time to bring cases to trial. Procedure established an alternative to mandatory arbitration or as trial de novo following appeal from arbitration. Non-arbitration cases can stipulate to STP procedures.</td>
<td>Implemented statewide May 2010. Originated as a parallel effort by the Oregon ABOTA and a Special Committee of the Multnomah County Circuit Court to address the implications of vanishing trials for legal practice. The Multnomah County Circuit Court was also concerned about problems associated with master calendar for civil cases. Multnomah County was first to implement the ECJT. The first trial was held in August 2010.</td>
<td>The Expedited Jury Trials Act, California Rules of Court and Expedited Jury Trial Information Sheet became effective January 2011. The procedure was developed by the Small Civil Cases Working Group composed of members of the Judicial Council’s Civil and Small Claims Advisory Committee.</td>
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<td>6-person jury is selected from a 10-person panel. Verdicts must be unanimous. Parties have 2 peremptory challenges each. Experienced trial lawyers, often with mediation training, serve as “special referees.”</td>
<td>4-person jury is selected from a 10-person panel. Verdict requires 3/4 agreement. Parties have 3 peremptory challenges each. Judge pro tempore oversees trial only; cases remain on superior court judges’ docket for all pretrial management including appointment of arbitrator and/or judge pro tempore.</td>
<td>6-to-8-person jury is selected from a 16-to-18-person jury panel. Verdict requires 5/6 agreement. Parties have 2 peremptories each. 2.5 dedicated judges assigned to summary jury trial docket in Bronx County. Judges facilitate and rule during trial, court attorney supervises pretrial and voir dire.</td>
<td>4-person jury is selected from a 12-person panel. Verdict requires 3/4 agreement. Parties have 2 peremptory challenges each. Judge pro tempore oversees all pretrial management and trial activities.</td>
<td>6-person jury. Verdict requires 5/6 agreement. ECJT trials are assigned to a circuit court judge for all pretrial management and trial proceedings.</td>
<td>8-person jury, no alternates. Verdict requires 3/4 agreement. Parties have 3 peremptory challenges each. Judicial officers assigned by presiding judge; may be temporary judge appointed by court, but not someone requested by the parties.</td>
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<td><strong>TRIAL PROCEDURES</strong></td>
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<td>No formal rules on procedures. Binding decision. Contracted attorney meets with parties 7-10 days before trial to rule on evidence, arguments. Trial is not recorded, no appeal. Parties have 2 hours each to present case; only 1 live witness testifies; all other evidence admitted as deposition summaries, documentary evidence in trial notebook. No appeal except for fraud. Parties have 30 minutes for voir dire (court attorney oversees), judge 15-minute opening, charges on law 20 minutes, 10-minute openings, presentation in 1 hour (includes cross), 10 minute rebuttal; No more than 2 live/video witnesses, medical witnesses limited to reports; 10-to-15-minute closings. Primarily binding decisions (not in statute), no appeal. Parties have 15 minutes of voir dire; 3 hours each to present case; Jury verdict is binding, enforceable judgment, but can be appealed to Nevada Supreme Court; NSTR strongly encourage expert evidence by written report. Jurors given trial notebook with key documentary evidence.</td>
<td>Parties have 2 hours each to present case; only 1 live witness testifies; all other evidence admitted as deposition summaries, documentary evidence in trial notebook. No appeal except for fraud. Parties have 30 minutes for voir dire (court attorney oversees), judge 15-minute opening, charges on law 20 minutes, 10-minute openings, presentation in 1 hour (includes cross), 10 minute rebuttal; No more than 2 live/video witnesses, medical witnesses limited to reports; 10-to-15-minute closings. Primarily binding decisions (not in statute), no appeal.</td>
<td>Parties have 15 minutes of voir dire; 3 hours each to present case; Jury verdict is binding, enforceable judgment, but can be appealed to Nebraska Supreme Court; NSTR strongly encourage expert evidence by written report. Jurors given trial notebook with key documentary evidence.</td>
<td>All trial procedures same as for regular jury trials, although shorter voir dire due to reduced panel size. Parties are encouraged, but not required, to minimize live witness testimony. No time limits. No limits on appeal.</td>
<td>Parties and judge have 15 minutes voir dire; 3 hours each side for presentation of case (witnesses, evidence, arguments). Parties can agree to any modifications, e.g., evidentiary issues, timing of filing documents, fewer jurors needed for verdict, time for voir dire, allocation of time per side. Verdict is binding; very limited appeals or posttrial motions.</td>
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streamlines the pretrial process by offering incentives for litigants (e.g., an early trial date, priority placement on the trial calendar, or at least a firm trial date) in exchange for restrictions on the scope and the length of time to complete discovery. Attorneys therefore focus on the key disputed issues and do not expend more money than the maximum value of the case. Because discovery is distilled down to the most critical factual and legal disagreements, the trial requires less time, fewer witnesses, and less documentary evidence. The Oregon and California programs explicitly adopt this approach. The Charleston County program moves the case off the court’s rolling docket and offers litigants the incentive of a firm trial date. The Nevada program sets the trial date within six months of the parties’ entry into the program, rather than waiting up to four years for a regular jury trial.

The second approach streamlines the trial itself, which indirectly affects the pretrial process. The premise is that trial attorneys will not expend substantial amounts of time and effort to gather evidence that cannot be used at trial given constraints on time, the number of live witnesses, the form of expert evidence, or in the case of the Nevada program, restrictions on allowable attorneys’ and expert witness fees. The Nevada, Maricopa County, and New York programs are all examples of this approach. Of course, several programs adopt elements of both approaches by placing restrictions on both the pretrial and trial procedures.

Meeting a Variety of Different Needs
The most striking aspect of these programs is the variety of underlying problems in civil litigation they were intended to address. Much of the impetus for the Charleston County program was the difficulty litigants faced in securing a firm trial date on the court’s “rolling docket” trial calendar. The Charleston County program allowed litigants to secure the services of an attorney to serve as the special referee, using available jurors and courtrooms to conduct the trial itself.
The Nevada program addressed the problems of excessively high litigation costs due to expert witness fees and long delays in scheduling trials. The Maricopa County program focused on dissatisfaction with mandatory arbitration. The Oregon program addressed complaints about civil case processing identified in a 2009 study of vanishing trials. A unique feature of the New York program is the creation of a statewide coordinator responsible for education and outreach, as well as for support of local implementation efforts. The California program features extensive rules and procedures detailing the steps and offering model versions of motions, orders, and stipulations for use by trial attorneys.

Features of a “Successful” Summary Jury Trial Program

The intent to solve local problems and concerns is no guarantee that a summary jury trial program will ultimately succeed. Looking across the six programs, several factors stand out as fundamental to their success. The first is strong judicial support. Or, more to the point, weak judicial support can cripple a program. Maricopa County’s program provides the most concrete example as its popularity fizzled following the retirement of Judge Kaufman, its founder and most adamant supporter. Similarly, the slow starts for expedited jury trials in California can be partly attributed to the lack of consistent judicial knowledge of and marketing for the program across the state. In contrast, much of the success of the New York program is due to the creation of a statewide coordinator position to provide support to local programs.

Strong judicial support for a program does not have to involve a personal investment on the part of the entire bench. The Charleston program, which relies on attorneys to serve as special referees, garnered approval by the local trial bench by diverting civil cases from the court's trial calendar, allowing the judges to reallocate their time to reducing a longstanding criminal case backlog. The Nevada program, which employs judges pro tempore, relieves trial judges of responsibility for pretrial management while giving them credit when cases are successfully resolved. That program is also financially self-sustaining, allowing the court to allocate scarce resources to other programs.

Several of the programs were initiated in response to broad dissatisfaction by both the plaintiff and defense bars with the fairness of mandatory arbitration decisions. The comparison of arbitration decisions with short-trial verdicts in the Nevada program revealed that juries rarely decided cases comparably to arbitrators. While the majority of jury verdicts in 2011 favored defendants over plaintiffs, the jury returned a verdict that was more favorable than the arbitration decision in approximately 20 percent of short trials. Moreover, the direction of verdicts favoring one side has reportedly shifted from time to time. Consequently, both the plaintiff and defense bars consider their short-trial program an objectively fair option for clients. Over the past four years, plaintiffs have prevailed in 58 percent of the approximately 1,500 trials conducted in the New York program, which also suggests a relatively neutral venue for litigants.

Procedural requirements also affect local bar perceptions of fairness. Several of the jurisdictions had arbitration-appeal penalties providing awards of reasonable expert-witness or attorney fees if the jury verdict failed to improve the appellant’s position. Maricopa County had the most stringent rule, requiring arbitration appellants to better their outcome by at least 23 percent. The arbitration-appeal penalty was less severe in other jurisdictions, reducing the risk for litigants. In addition, the Maricopa County, New York, and California programs greatly restrict the right to appeal. Attorneys in some of those jurisdictions noted that this feature can discourage participation as it necessarily closes off future options. In contrast, the Nevada and Oregon programs permit litigants to appeal a summary jury verdict. It is extremely rare that a litigant does so, but litigants do not perceive that they are entering an arena with no emergency exit.

Finally, many of the programs attributed their success to their recognition and accommodations to various segments of the local civil bar, especially the differing incentives for participation within the defense bar. For example, in-house lawyers...
representing insurance carriers and institutional clients noted the importance of periodically “testing the market”—that is, trying cases to local juries for the specific purpose of establishing the range of reasonable settlements in similar cases. Yet the policies of national insurance carriers frequently differed on the degree of autonomy and discretion granted to in-house lawyers to make judgments about whether to bring the case to trial. For the most part, lawyers with greater autonomy seemed more supportive about these programs, if only because they provided more options for resolving cases. Retained defense attorneys faced a different set of incentives and disincentives. Their clients were more likely to be motivated to keep costs down, so the option of earlier trials that could be completed in a single day generally worked in the programs’ favor. Younger, less experienced lawyers find these programs attractive insofar as they provide an opportunity for professional development, but they are also realistic in that preparing for a summary jury trial involves a great deal more time and effort than doing so for an arbitration hearing. On the other hand, their clients may also be more risk averse and less likely to participate without a clear financial or strategic advantage in doing so.

**Conclusions**

The sheer number of variations on the summary jury trial makes it difficult to draw firm conclusions about its ultimate impact on the civil justice system. Judge Lambros’s procedure was a useful tool for facilitating productive settlement negotiations in complex cases, but the problems confronting civil litigation in the state courts today—disproportionately high pretrial and trial costs, backlogged trial calendars, and declining numbers of lawyers with adequate trial skills—appear more intractable and less amenable to easy fixes. That the summary jury trial concept has proven so adaptable bodes well for its future. Most of the programs were developed as statewide initiatives or are expanding statewide, which speaks volumes about the confidence of state judicial policymakers about their potential merit. Nevertheless, courts considering such programs should undertake their design and implementation with great care.

The first word of advice is to be thoughtful about identifying the specific problems that the program is intended to address. The focus should be placed on problems that contribute to expense, delay, and unjust outcomes for all litigants, not just the pet peeves of one particular segment of the civil bar. In some instances, the problems may be more effectively remedied by fixing the immediate problem rather than creating a program to work around the problem. Nevertheless, some problems may be less amenable to easy fixes—especially those resulting from inadequate court resources to manage increasing caseloads. In that case, a program designed to alleviate those problems or avoid them entirely may be a useful approach.

In designing the policies and procedures, be sensitive to the need for sufficient flexibility to fit into the local legal culture. In fact, it is wise to actively solicit input from the local bar. Engaging experienced and well-respected representatives of all segments of the civil bar can result in a program that will meet their respective needs, avoid introducing new problems, and create an objectively fair venue in which to resolve cases. These individuals can also help market the resulting program to their colleagues as well as their clients.

One issue to which the program organizers should be especially attentive is the extent to which the program provides a venue in which lawyers from both the plaintiff and defense bars can collaborate to streamline pretrial and trial preparation. To various degrees, the six programs examined by NCSC all relied on the ability of lawyers to identify and focus on the key elements of their respective cases and effectively negotiate agreements with their opponents to restrict the evidence related to those elements. Depending on the extent of existing collegiality in the local bar, developing these skills into effective long-term habits may require a substantial amount of time.

A substantial part of the program design and implementation should include planning for the program’s long-term sustainability, especially its ability to adjust to changing conditions. At minimum, the long-term plan should include systematic documentation about the number and outcomes of trials conducted under the program; periodic reviews of the program’s procedures and policies to ensure its continued effectiveness; ongoing training and marketing efforts to keep judges,
lawyers, and litigants aware of the program’s benefits; and succession planning for the program leadership and organizers. Programs that can manage these facets are likely to see the option of a summary jury trial become a valuable tool in the civil justice system for years to come.

ENDNOTES

1 A complete description of Judge Lambros’s summary jury trial procedure is available at 103 F.R.D. 461 (1984).

2 Detailed descriptions of the summary jury trial programs examined in the NCSC study are were published in Hannaford-Agor et al., 2012.

RESOURCES


A recent national survey found that staff and resource limits can hinder probate court monitoring of guardians and conservators. Some probate courts are now considering time standards and new case management strategies and tools to handle expanding caseloads, including differentiated case management (DCM) both before and after fiduciary appointment.

Most guardianship and conservatorship matters in a probate court proceed without contest from case initiation to the determination of the need for and appointment of a fiduciary. Not all such cases are the same, however, and a distinction can be made between cases requiring emergency hearings and those that are not emergencies and are not contested. Moreover, although contested cases may be infrequent, they can involve pleadings, discovery, alternative dispute resolution or settlement conferences before trial, and trial proceedings that can make them very time-consuming.

After appointment, most guardians or conservators carry out their responsibilities in keeping with the trust that has been put in them. Yet a probate court may be unable to limit the risk of harm to the person and property of wards from potential noncompliance by fiduciaries if it waits until a fiduciary report or accounting is scheduled to be filed, especially for cases in which potential risk may be foreseeable. In fact, the U.S. Government Accountability Office (GAO) recently reported on finding hundreds of allegations of physical abuse, neglect, and financial exploitation by guardians in 45 states and the District of Columbia between 1990 and 2010 (GAO, 2010: 2).

Probate courts across the country have traditionally handled cases on a first-in, first-out basis. Now, to help ensure timely appointments of guardians and conservators and enhance their post-appointment ability to monitor fiduciary compliance with available staff and resources, probate courts are beginning to apply time standards and such case management strategies as the use of differentiated management of cases both before and after fiduciary appointment.

Measuring Performance in Terms of Time Standards

It appears that only two state court systems—Michigan and Massachusetts—had time standards in early 2012 specifically addressing the time from petition to fiduciary appointment in guardianship and conservatorship cases (National Center for State Courts, 2012). Until recently, there have been no national time standards for guardianship and conservatorship cases, either in the Conference of State Court Administrators or American Bar Association time standards, the National Probate Court Standards, or the Uniform Guardianship and Protective Proceedings Act. It was only with the publication and approval of the Model Time Standards for State Trial Courts in 2011 that any norms were suggested for how long it should typically take (98 percent within 90 days) for the appointment of a fiduciary after the filing of a petition (see National Center for State Courts, 2011: 32). The Model Time Standards also provide more detail for purposes of case differentiation:

- In 98 percent of cases in which emergency action is required, a hearing should be held within 3 days.
- In 98 percent of uncontested cases, trials/hearings regarding a permanent appointment should be held within 30 days.
- In 98 percent of cases in which there are contested issues, a trial/hearing should be started within 75 days.

For the management of these cases after appointment, few states have time requirements other than to call for guardianship or conservatorship reports to be filed annually. Effective January 1, 2012, Nebraska has begun to provide some measure of more detailed time expectations for guardians or conservators with laws and rules for events after appointment (Hutton et al., 2012: 14-17):
• Within 30 days after appointment and before letters of fiduciary appointment are issued, file an acceptance, inventory, bond, and other information;
• Within 10 days after the issuance of letters, written financial institution acknowledgment that it has received a copy of the letters;
• Within 90 days after appointment, certify completion of a mandatory training course; and
• Within a year after appointment, file a report or accounting and other documents required by the court.

**Differentiated Case Management (DCM) for Petitions to Appoint a Guardian or Conservator**

During a recent NCSC project with the Probate Department of the Arizona Superior Court for Maricopa County (see Steelman and Davis, 2011a, b), a probate commissioner estimated to consultants that about three-fourths of all adult guardianship and conservatorship cases are uncontested on the need for a fiduciary and the suitability of a particular fiduciary candidate. For the remaining cases, differences and conflicts among family members may require further court proceedings before the appointment of a fiduciary.

To ensure timely and just fiduciary appointment decisions consistent with the needs of such cases, and to optimize the use of court resources, the development and application of a differentiated case management (DCM) approach is desirable, akin to what has previously been considered most often in criminal and general civil cases (see Cooper, Solomon, and Bakke, 1993, for suggested implementation steps; see also, Maricopa County Probate Department, 2011a). The figure shows how DCM might be applied in guardianship and conservatorship cases.

**Differentiated Compliance Management After Fiduciary Appointment**

While courts across the country rely on the expertise of their experienced judges and staff to identify cases requiring special attention, highly effective courts have developed criteria to particularize inquiry. For example, a list of risk factors for vulnerable persons has been developed in Arizona.

Hypothetical Scheme for Pre-Appointment Differentiated Case Management in Guardianship and Conservatorship Cases*

To test the impact of such factors as the size of estate or a dispute among family members on the likelihood of a post-appointment problem, an Arizona Supreme Court committee proposed in 2011 that any pre-appointment investigation in a guardianship or conservatorship case include an assessment to guide post-appointment monitoring (Arizona Supreme Court Probate Committee, 2011: 24-35, 139-62).1

* Based on the improvement efforts by the Probate-Mental Health Department of the Arizona Superior Court for Maricopa County (see Maricopa County Probate Department, 2011a, b). This figure does not necessarily represent actual current practices in that court.
Following the recommendation of that committee, the Maricopa County Probate Court Department has developed and piloted a “Probate Evaluation Tool,” which allows court investigators to designate each new adult guardian or conservator case as “low,” “moderate,” or “high” risk. The court uses the tool to manage the caseload and to determine how frequently an investigator or volunteer visitor should be sent to check on the ward. Every month the court holds a “revision” meeting and, based on feedback from court investigators, edits questions and revises evaluation scoring.²

The use of such a “Probate Evaluation Tool” is an innovative technique that might inform any probate court in its case management system design, as well as allow it to focus limited resources on the cases with the greatest need for post-appointment monitoring and scrutiny.

### 39 Risk Indicators for Protected Persons in Guardianship or Conservatorship Cases After Fiduciary Appointment

1. No family members
2. Large estate
3. Unprotected assets—unrestricted or non-bonded assets
4. Dispute among the parties, whether family or professional fiduciary
5. Late or no inventory
6. Late or no accountings
7. Late or no annual guardianship reports
8. Inaccurate record keeping, no automation
9. No record keeping
10. Unacceptable accounting practices
11. Disproportionate or unusual large transactions
12. Checks returned with insufficient funds or late charges
13. Use of ATMs or gift cards
14. Guardianship only appointment but handling assets
15. Health, business or personal problems of fiduciary—professional or family fiduciary
16. Financial difficulty of fiduciary, tax liens, judgments or bankruptcy
17. Difficulty in acquiring bond, especially with a professional fiduciary
18. Failure to renew bond, pay bond premium or bond revoked
19. For the professional, failure to renew license
20. Disciplinary action by a professional licensing agency—family or professional
21. Questionable fiduciary
22. Questionable attorney
23. Fiduciary with limited experience
24. Singular responsibility and control of information by fiduciary
25. Poor or no supervision of staff by professional fiduciary principal
26. Ignore request by court, including orders to show cause
27. Pattern of rebuffing requests for information by parties or attorneys
28. No court appointed attorney
29. Petition to withdraw by attorney
30. Unauthorized gifts or loans
31. Large fees—especially in relationship to overall assets and tasks accomplished
32. No notice to interested parties or lack of documentation
33. Pattern of complaints against the fiduciary
34. Fiduciary exclusively uses one vendor instead of a pool of vendors
35. Transfer between bank accounts, especially near inventory or accounting due dates
36. Professional fiduciary does not maintain written policies and procedures
37. Expenditures not appropriate for client’s level of care and market rate for services
38. Payment of interest or penalties in accounting summaries in addition to bank charges for insufficient funds
39. Fiduciary not visiting client when appointed as guardian

Source: Arizona Supreme Court Probate Committee, 2010: 63-64.
Other Court Management Steps Necessary for Probate DCM Effectiveness
To implement notions of probate DCM, courts are recognizing that they must pay attention to other important issues. Among them are the following:

- **Education and Training.** A national study of best practices for adult guardianships (Karp and Wood, 2007) emphasized the need for training programs and materials for fiduciaries. Such programs should help alleviate inadvertent problems both before and after fiduciary appointment.

- **Effective Staffing.** A recent study (Uekert, 2010) revealed that most probate courts do not have sufficient resources to fund monitoring staff at an adequate level. The Maricopa County Probate Department is considered “light years ahead” of other courts in the use of support staff for this purpose (see Steelman and Davis, 2011a). Court staff members provide audit, investigation, and examination services, and the court has established staffing levels necessary for one of the largest probate caseloads in the country.

- **Use of Information Technology (IT) to Expedite Processing and Monitor Cases.** Courts must monitor the performance of guardians and conservators through regular audits and reviews of accountings and reports. Use of technology, such as an e-filing system with automatic capacity to flag problems, is rare nationally, but is a practice that effective probate courts use to deter misfeasance or malfeasance. Notable among these are the probate courts in Broward County, Florida (see Florida 17th Judicial Circuit Court, 2012); Tarrant County, Texas (see Tarrant County Probate Courts, 2012); and Ramsey County, Minnesota (see Minnesota Second District Probate Court, 2012), all of which have IT applications for adult cases that warrant further inspection.

Conclusion
Any probate court must “guard the guardians” so that wards are protected from possible neglect or abuse by persons entrusted with their care (Karp and Wood, 2007). Although most fiduciaries are faithful to their responsibilities, a probate court must guard against the risk of harm to the person or assets of the wards. With a growing population of aging “baby boomers,” probate courts faced with budget constraints must make prudent use of finite resources to oversee the activities of guardians and conservators. DCM is a strategy that probate courts must increasingly use for this purpose.
ENDNOTES

1 The Arizona Supreme Court probate committee reports using a “risk assessment tool.” That specific designation has caused one social scientist to ask whether there is any documentation as to whether the risk assessment “tool” has been validated for its accuracy—e.g., false positives/false negatives or statistical analysis. The Maricopa County Probate Court Department’s characterization of its instrument as a “Probate Evaluation Tool” avoids that problem, allowing the court to gather critical data on which to base the future development of a rigorous risk assessment tool that could be tested and validated.

2 Electronic mail message, from Elizabeth Evans, court administrator, Maricopa County Probate Court Department, Friday, March 9, 2012, to Alicia Davis, NCSC.

RESOURCES


Tarrant County (Texas) Probate Courts #1 and #2 (2012). "Guardianship." www.tarrantcounty.com/eprobatecourts/cwp/browse.asp?a=766&bc=0&c=43869&eprobatecourtsNav=1


In an effort to expand law-related education, the National Center for State Courts facilitated a Law Day Art Contest. Several students from local public elementary schools submitted drawings depicting this year’s American Bar Association Law Day theme of “No Courts, No Justice, No Freedom.” The winning drawing was created by a 5th-grade student, Maria Vozikis, from Magruder Elementary School in Williamsburg.
Distance learning has become more commonplace in the courts, even though most education is still done in traditional classroom settings. The trend in many states is toward a blended approach, using a variety of education methods, both distance and traditional, to achieve better, more cost-effective results.

This article encourages judicial educators, funding authorities, and policymakers to support the use of blended learning, which is a mix of traditional face-to-face education and distance education, typically provided through a computer link. Many judicial education organizations in the United States have successfully used and often integrated traditional and distance education. The same is true of other professional organizations, such as the American Medical Association (2010), which allows continuing-medical-education providers to conduct a range of live events for which “[p]articipation may be in person or remotely as is the case of teleconferences or live Internet webinars.” The AMA also provides for continuing education, “in which a physician engages in self-directed, online learning on topics relevant to their clinical practice.”

Blended learning is not a silver-bullet solution to limited resources for education, but it does help resolve the ongoing conflict between those who advocate for more distance education and those who believe traditional education is the only way to teach judges and court staff what they need to know and be able to do. Distance education has been touted as a great way to cut costs and make education easier to access, but there are also negatives—developing an infrastructure and staff expertise can be a daunting endeavor for educators; judges and court staff may not want it; and it may not be an effective teaching tool in all cases. On the other hand, traditional education as a sole form of education is expensive and will not always result in judges and court staff doing their jobs better. Blended learning is a way to take advantage of the attributes of both traditional and distance education.

Later in this article we elaborate on why blended learning can be effective, and we offer several examples of blended-learning programs offered by court education organizations. Before we examine blended learning more closely, however, it will be useful to give some background about how court education has been done in the United States and why it has taken many years for blended learning to be seen as an emerging practice.

Reliance on the Traditional Classroom Approach

Education for judges, court managers, and staff was originally similar to law-school education, which consisted mainly of lectures by experts. Lectures can be delivered in large conferences or in small seminars, so they fit the settings for most court education programs. In the 1980s there was a movement to improve judicial education by adopting methods espoused by Malcolm Knowles, David Kolb, and others. These methods were based on andragogy, the study of how adults learn, and they promoted classroom interaction such as group discussions, role plays, and other activities that could enable attendees to learn from each other and to practice using new information and skills in the classroom. By using new ideas and skills in the classroom, judges and court managers could retain new information better and, most important, transfer the learning to the workplace. Judicial education leaders learned these theories and how to implement them from people like Chuck Claxton and Patricia Murrell, who headed the Leadership Institute in Judicial Education.

This summary of court education reform is too brief and simplistic to convey its full impact, but many judicial educators, judges, and court managers were influenced by these reforms, and the quality of court education in the United States increased dramatically as a result. Most of the education being done during this era was in classrooms, and the principles were often based on how to obtain the best learning outcomes as a result of the activities in the classroom. It is no wonder that there has been resistance within the court community to distance learning, which was usually conceived of as a solitary activity.
There have certainly been other reasons distance learning was not embraced wholeheartedly by the court education community, having to do both with the benefits of traditional education on one hand and with the challenges associated with distance education on the other.

Some of the reasons judicial branch educators have relied on the traditional classroom method include:

- People learn from social interaction, not just how to do things, but also why institutional norms and values require certain conduct.
- Judges and court staff need to be able to demonstrate in their work “complex and unique skills in leadership, decision-making, and administration” (National Association of State Judicial Educators, 1991: Introduction). These skills are hard to teach and learn in any environment. Learning with and from peers seems to offer the best hope for success.
- The classroom is what we know from our own educational backgrounds.
- Education is often a centerpiece of judge and court staff conferences.

Some of the reasons judicial branch educators have resisted distance education include:

- Distance learning, especially computer-based education, has usually been seen as one-way communication, limited to “pushing out” information such as new statutes or court rules.
- Distance education often required a substantial initial investment in a “platform” like WebCT or a video-teleconferencing network and either hiring new staff or developing staff expertise, all for uncertain outcomes.

All of these factors led to an “either/or” debate—should judicial education be provided in the traditional way or via distance education? The environment has changed. Despite lingering resistance to adopting distance education methods, most judicial branch education organizations now have courses or resources online. Two factors have contributed most to an increased use of distance learning in court education. The first is the gradual emergence of lower-cost, easier-to-use distance-learning technology and an increased willingness by educators and judges and staff to use distance-learning technology. The second is less funding for and greater scrutiny of judicial branch education.

With respect to the first factor, judges, court staff, and educators themselves are more comfortable using technology, the technology has become easier to use and less expensive, and educators have become aware that they can use different kinds of technology for different purposes. With respect to the second factor, some states have canceled education conferences because of reduced funding, some have cut their education staff, and some have been questioned or even attacked about the value of the education programs they provide. Court education organizations have responded by looking for ways to provide education at a lower cost, especially without the expense of travel and time away from work associated with face-to-face programs. Distance education has been proposed as a solution to the challenges created by reduced funding. A consequence of all these changes has been an environment in which the concept of blended learning can become part of routine course and curriculum planning.

**The Emerging Trend of Blended Learning**

We can now examine more closely what we mean by blended learning and consider how it has already been used in the United States. At its most elemental, blended learning is designing a single education event or experience using two or more delivery methods. These may include the traditional classroom experience, as well as online courses, videos or broadcasts, webinars, conference calls, or self-study.

Rather than relying solely on the traditional classroom experience, states that offer blended education challenge the assumption that effective, high-quality education
can only be provided in the traditional classroom. Practitioners and researchers are finding that developing blended education programs can be beneficial in many regards. The U.S. Department of Education conducted a comprehensive meta-analysis of online learning in K–12 to assess its effectiveness, and had surprising conclusions for those of us who always favor the traditional classroom approach. The study concluded that the most effective type of education program was a blended approach. A program that combined live education with online education was considered superior to either online or traditional classroom teaching on its own (Means et al., 2009).

**Deciding to Use Blended Learning**

Multiple factors must be assessed in deciding to use blended learning. Each factor will have differing weight depending upon the specific situation; however, educators can use some criteria and ask the right questions to come up with the best approach. Bersin (2004) provides eight criteria to use when selecting the right blended approach for a program:

**8 Criteria for Determining a Blended Approach**

1. **Program Type** (What is the overall goal of the program—enhancing skills and competencies, providing information to a large audience, etc.?)
2. **Cultural Goals** (Are there additional subgoals that the program wants to accomplish, such as building relationships or communicating shared values?)
3. **Audience** (This includes factors such as size of the audience, comfort with and access to technology, motivation, and time availability.)
4. **Budget** (What are the available fiscal resources for development and delivery?)
5. **Resources** (What are the staff resources available, and do they have the expertise necessary for certain types of distance education? Are subject-matter experts available?)
6. **Time** (How much time before the education is needed, how much time can learners spend away from their job, and are there completion deadlines?)
7. **Learning Content** (This is the heart of the program—how complex is the content; does it need to include a lot of interactivity in the design [see Instructional Activities Matrix], can it be broken up in segments?)
8. **Technology** (What technology infrastructure is available, are there equipment and/or training needs of the learners, bandwidth issues, security concerns, etc.?)

**Advantages of Blended-Learning Designs**

What are the advantages of blended learning? First, it enables the learner to stretch out the learning and thereby have a richer experience. The study above noted that this was an important factor in the effectiveness of blended learning—it allows learners to have more time with the program material and interact with it in a variety of ways. In addition, one of the primary goals of any education program—transfer of learning—is enhanced when there are multiple methods of delivering the education. Daffron and North (2011) emphasized the importance of using a variety of delivery methods during a course of study to enhance transfer of learning. Daffron, Cowdrey, and Doran (2007) found that even within a traditional classroom approach, using a variety of teaching methods increased judges’ satisfaction with the program. Using multiple methods of delivering education to judges increases satisfaction and effectiveness and elongates the learning experience.

Second, blended learning reduces the cost of education for courts if distance education replaces some portion of the face-to-face component, typically the more expensive segment. Budget limitations are the “new normal,” and educators must be flexible to continue providing education to the judicial branch. For instance, rather than cancel an annual statewide judicial conference, educators should consider if it could be shortened and some of the content offered online or through a webinar. In large states, portions of the program could be conducted regionally rather than as a large, statewide event.

The third advantage to using blended learning is that a blended approach allows educators to use the most appropriate method of delivering the education. For instance, most people would agree that judges should learn about ethics in a setting where they can have interaction and talk frankly with the instructor. Live, face-to-face education would be an appropriate choice for this topic. However, instruction about recent state supreme court cases could easily be conducted via webinar, where participants could listen to the presentation and type questions to the instructor from computers in their chambers or home.

The key is knowing when to use live, face-to-face education, as it is usually the most resource intensive. Once that is determined, states can turn to the distance education technologies available to them to augment and enhance the live program.
### INSTRUCTIONAL ACTIVITIES MATRIX*

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**Complex knowledge/skill building, interactive, preferably smaller audience size.** Acquiring complex knowledge and/or skill building typically requires more formal instruction and/or mentoring with small numbers of learners. Face-to-face classes, live video/Web conferences, and instructor-led online course are best suited for content that requires significant interaction between participants and instructors.

**Basic knowledge, one-way delivery, unlimited audience.** Basic knowledge and information can be learned on one’s own by providing learners access to books, electronic resources, self-directed online courses, job aids, etc. Satellite broadcast and lecture-type methods can also be used to deliver basic knowledge, particularly to large audiences where interaction between participants and instructors is not critical to learning the content.

*Adapted for use by the California Administrative Office of the Courts, from 2001/2002 Distance Education Yearbook, Delivering Instruction at a Distance Using a Blended Approach, by Simone Conceicao-Runlee.*
What delivery method best meets the needs of the audience in each particular situation?

**Using Blended Learning in Two States**

Some examples of states using blended learning will illustrate this process. Washington State wanted to include additional content in their judicial college for new judges and to cover other topics in more depth. It was not possible to increase the length of the program, so the judicial educators decided to focus on one additional topic—search and seizure—and teach it in greater depth via distance education. They created three webinars, using the product Adobe Connect and a retired judge as the faculty. The webinars were lively and interactive, and included homework and outside assignments that the judges sent to the instructor. Webinars were chosen over an online self-study course because they wanted the new judges to interact with each other and with the faculty. At the college that year, participants could participate in a three-hour session on search and seizure, creating a complete blended-learning experience.

Washington State also created blended-learning programs for court staff, one in the area of dealing with difficult people. In this blended program, staff participated in three separate webinars. These were recorded, so individuals could choose to participate live or listen to the recording at their convenience. There was a short online course to illustrate basic concepts of the topic, using Adobe Presenter, and finally there was a four-hour live program, which completed the blended program.

In California, blended learning was used in a program for presiding judges and court executive officers by using two separate distance education segments to more fully cover a topic—the Commission on Judicial Performance (CJP). The CJP is the state agency responsible for investigating judicial misconduct. Distance education provided basic information about the CJP before the live program, using Moodle (an open software program) to create a short online course, and broadcast satellite transmission. These two distance segments preceded the live, face-to-face program, where faculty focused on questions and issues generated by the distance programs. Feedback from participants about including distance components before the live program was positive.

Similarly, in a California program for new supervising judges, a short online course on the basics of caseflow management was created using Moodle. After completing the online course, participants attended a live program, which covered the topic in greater depth. The faculty could quickly move beyond the basics, knowing that basic information had already been covered in the online class.

**Blended Learning for a Multiyear Program**

At the national level, the Institute for Court Management (ICM) Fellows Program provides a robust example of blended learning. The program uses distance education in two ways—first, participants work independently by watching videos, doing assignments, reading, and completing a court project; second, they work collaboratively by participating in webinars or online discussions. ICM uses both asynchronous and synchronous distance education methods. Asynchronous means the participants do their course work independently, at different times; synchronous means the participants learn at the same time, typically logging into a webinar and having a conference call.

**Distance-Learning Phase (Asynchronous)**

- **Videos:** students watch 12 video presentations on ICM’s Web site on various topics; videos are later discussed.
Blended Learning in Judicial Education: Increased Effectiveness, Reduced Cost

During the webinars and at the residential program.

- Reading: students have several reading assignments, provided on ICM’s Web site.
- Writing: students are given six writing assignments.
- Online discussion groups: students respond to questions on a common chat page.
- Court Project Phase: students conduct independent research on court administration policies and procedures. Students also have supervisors for the duration of the Court Project Phase, who review and comment on their work and provide guidance.

Distance-Learning Phase (Synchronous)
Webinars: five one-hour programs, for which students log on to a learning site and call a conference number. Faculty interacts with students over the phone and with slides and other visual aids on the computer.

Residential Phase (Traditional)
Traditional classroom: while instruction takes place in a classroom, the program is highly interactive.

Summary
In conclusion, blended learning is a trend that may enable judicial branch education to fulfill the promises of both traditional classroom education and distance education. The key to using blended learning effectively is to match the best methods to the educational goals and the audience. As judicial branch educators gain more proficiency with distance education technology and with matching the right learning technology to educational goals, we will continue to see more blended learning for judges, court managers, and staff.

RESOURCES


Every year, state judicial systems face an increasingly diverse population grappling with a rapidly expanding and ever-evolving body of law. Our system races to incorporate new technology to provide the instant service the public increasingly expects while state budgets continue to decrease.

Among the effects of our recession-starved budgets is the growing need to equip and educate new judges and judicial staff, as well as those judges and staff overburdened by changing roles or larger workloads. Staffing cuts are taking their toll on both judges and staff. With 34 states having laid off court employees, and 39 states not filling clerk vacancies (Schwartz, 2011), the remaining staff, who must do more with less, need cross-training to maintain services competently. In addition, a growing number of seasoned judges and staff are retiring earlier to secure existing benefits (OPERS, 2011). However, judicial vacancies in 26 states are going unfilled (USA Today, 2011); in some states, the option for help from retired judges sitting by assignment has been eliminated, adding to the strain on judges’ workload (Thomson Reuters, 2012). This downsizing, together with unrepresented litigants, new sciences, changing technologies, and increasing demands on courts, results in overburdened and underequipped judges and staff who strive to carry out the administration of justice efficiently and effectively.

In the best or worst of times, judicial branch education exists to meet the demand of continuously updating knowledge and skills. Specifically, it aims to close or narrow the distance between existing and desired knowledge and skills, so that judges and court personnel are well equipped in their roles to serve the public interest efficiently and competently. The primary means of equipping judges and staff to meet the demands of our times is through effective judicial branch education.

This article builds on the premise that judicial branch education—when based on proven education principles—plays a critical role in the effective administration of justice. Evidence to support this premise is identified through recent evaluation findings regarding the impact of judicial branch education. A model to maximize impact of education is also provided. Finally, a sampling of practical evaluation strategies are introduced for use by court leaders or justice partners at the local, state, or national level.

Purpose of Educating the Court’s Human Capital

A 1996 quote by Livingston Armytage neatly summarizes the goal for judicial education: “The purpose of any program of continuing judicial education is to provide a process ... to improve judicial performance, and thereby, the quality of justice” (p. 7). A similar focus on the importance of the education process for nonjudicial court staff can be found in the National Association for Court Management’s Core Competency Curriculum Guidelines, the seminal document that guides education for court managers. It states that these guidelines “recognize that neither court systems nor their constituent courts can operate efficiently or effectively without competent court leaders, professionals who understand that their and their staff’s continuing personal and professional development is a necessity, not a luxury. Personal and professional development of court leaders and their successors and staff is an investment that pays dividends year after year” (emphasis added).

Judicial Branch Education Is an “Evidence-Based” Practice

So, what evidence exists for the expected positive outcomes of judicial branch education? How do we know that investment in our courts’ human capital through judicial branch education “pays dividends year after year?”
Investments in Human Capital Pay Dividends for Courts

High importance and expectations are often placed on education’s role to help achieve the court’s many purposes (e.g., serve/protect public, guard individual freedoms, interpret and apply law, provide justice, resolve disputes, check/balance). But, unlike in the private sector where educators may measure quality through increased production of widgets or profit margins, judicial branch educators face a much harder task in measuring their impact on the improved administration of justice (Conner, 2002). This challenge of measuring a societal outcome is particularly affected by limited funds for conducting evaluations, together with the growing need for judicial branch education to adapt to increasing or changing workloads of judges and their staff.

Despite the challenges, however, there is a growing body of evidence that judicial branch education offers exceptional dividends in providing needed knowledge and skills. When these positive outcomes can be linked to critical elements of education theory and adult-education principles, support emerges for judicial branch education as an evidence-based practice that enhances the administration of justice.

As a recent example of the impact of judicial education, a 2011 evaluation of the Supreme Court of Ohio Judicial College’s course offerings found that participation in their courses was effective at contributing to changes in knowledge, attitudes, and skills/behaviors of judges and magistrates. This yearlong study focused specifically on professional development for juvenile court judges and magistrates. However, the findings are widely applicable to other jurisdictions and court personnel. The evaluation also found that judges form a strong community of practice through their participation in judicial branch education. That is, judges are clearly invested in their own and their peers’ continued growth and development as judges. They invest in the knowledge bank of their community—by exchanging knowledge and experience—and they draw down dividends—by learning from peers whom they view as the most credible providers of knowledge regarding their roles as judges. Again, the benefit of a community of practice extends to all adult learners, judges and court personnel alike.

**Specific Findings**

In early 2010, the Supreme Court of Ohio Judicial College embarked on a principled approach to understand the impact of their existing judicial branch education courses, information that is critical for identifying promising professional development strategies and improving education programming. Consequently, a partnership was established with the Ohio State University (OSU) to evaluate judge and magistrate education courses; funding to support the evaluation was obtained from the U.S. Department of Health and Human Services’ Court Improvement Program.

The specific aim of this one-year evaluation project was to investigate the impact on juvenile judges and magistrates in Ohio through their participation in the Judicial College’s abuse, neglect, and dependency continuing-education courses. The study sought to determine changes in participants’ knowledge, attitudes, and behavior/skills. The evaluation focused on existing processes and education-delivery structures and was designed to result in recommendations for improvements in course evaluation methods, instructional practice, and educational outcomes for judges and magistrates.

Researchers relied on empirical data as well as participant reflection and self-reporting to investigate the impact of judicial branch education courses on judge knowledge, attitudes, and behavior/skills. The methodology drew on Schrader and Lawless (2004) and Alexander (2003) to provide definitions of three essential aspects of learning and the development of competence. Those areas of impact and OSU’s findings follow:

1. **Knowledge**: Knowledge refers to information that was acquired or actually learned as a consequence of the professional development. Knowledge is often expressed in three forms. Declarative knowledge refers to content; procedural knowledge refers to knowing how to do something; and conditional knowledge refers to knowing when or why to do something. **OSU Finding**: Judicial branch education courses are successful in providing new knowledge and information not previously known by learners. Examples of topical areas in which knowledge change was observed include greater knowledge of case law, legislation, and consequences of child trauma.

2. **Attitudes**: Attitudes can refer to personal and often subjective dispositions, an internal philosophy or belief, and a state of readiness that can then lead to a specific behavior. Thus, attitudes represent a predisposition toward action. **OSU**
Future Trends in State Courts 2012

When the objectives for judicial branch education are linked to a stated court system mission or objectives. For example, a built-in evaluation component, tied to national objectives, was present in national evaluations on domestic violence, hard-core drunk drivers, and court management trainings. Similarly, a more advanced evaluation is often more likely at the state level when there is a state-mandated judicial performance evaluation program.

In the absence of national, state, or local directives for evaluation, however, assessments of judicial branch education gravitate more toward satisfaction evaluations (e.g., rating content, faculty, and facility), rather than toward impact evaluations. A particular challenge to providers and consumers of judicial branch education, then, is to identify practices that any provider can follow to increase the likelihood of a positive impact. In times of economic stress, or when workloads are intense or intensely changing, such a model can help judicial branch educators provide ongoing and effective evidence-based programming.

A Model to Maximize Impact

To ensure long-term, high-quality, and effective continuing judicial branch education, the following is a model to maximize impact. This model is based on the literature and empirical evaluation work and is meant to be a useful adjunct to existing planning and implementation guides for those involved in designing education for judges and court personnel (e.g., NASJE’s instructional design template). The model includes the following strategies.

- **Align** desired courses and curricula with local, state, or national objectives and standards (e.g., court mission statements and strategic plans, Trial Court Performance Standards, CourtTools, NACM curriculum);
- **Customize** and tailor training and assessment/evaluation to individual judges’ and court personnel’s unique jurisdictional demographics and other Research measuring Judicial Branch Education’s Impact

Evidence to support the belief that judicial branch education—when based on adult-learning principles—makes a difference is not limited to Ohio’s experiences. In response to recent calls by the National Association of State Judicial Educators (NASJE) for more rigorous evaluations of judicial branch education, there have been efforts—especially on the national level—to move beyond end-of-course satisfaction surveys. A comprehensive review of the literature on judicial branch education revealed that evaluations focused on measuring impact—improvements in knowledge and consequent changes in behavior and attitudes—are more likely when the objectives for judicial branch education are linked to a stated court system mission or objectives. For example, a built-in evaluation component, tied to national objectives, was present in national evaluations on domestic violence, hard-core drunk drivers, and court management trainings. Similarly, a more advanced evaluation is often more likely at the state level when there is a state-mandated judicial performance evaluation program.

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other relevant factors, such as number of years of experience;
• Design and Deliver professional development courses and sessions to incorporate a variety of teaching techniques (e.g., avoid reliance on lecture), adult-learning principles (e.g., relevant, draws out participant experience, immediately applicable), instructional design principles (e.g., linking needs assessment, stated goals and objectives with content and delivery methods), and opportunities for engaging in and developing a community of practice;
• Assess courses using course-specific and objectives-based methods and assess transfer of learning from course to job; and
• Establish long-term follow-up efforts to measure effectiveness of professional development and establish real-time corrections for optimal professional development outcomes.

Maximizing the Impact of Continuing Judicial Branch Education

Align Curricula With Goals
• Identify objectives and standards
• Match with court needs

Customize Training and Evaluation
• Tailor to local, state or national needs
• Address entry-level, mid-career, experienced staff

Design
• Competency-based, instructional design principles
• Communities of practice
• Measurable objectives

Deliver
• Adult-learning principles
• Varied teaching techniques

Assess
• Assess transfer of learning from course to job
• Objective-based course measures

Follow-Up
• Macro perspectives
• Emphasis on Impact

IMPACT

What You Can Do on a Shoestring or with a Cadillac
If you are a court leader or justice partner who recognizes the benefits of judicial branch education, the findings identified in this article are most likely of interest to you, even if you are not directly involved in education or the evaluation of it. Quality education provides a vital role by equipping judges and staff with the education and training to help them efficiently and effectively carry out the administration of justice. Evaluation is an important tool to ensure that quality education is provided and that judicial branch education contributes to accomplishing the purposes of the court.

There is a range of simple to sophisticated ways to evaluate judicial branch education. Evaluation methods can range from participant reports of their satisfaction on the day of the course, to faculty evaluating participant learning during a course, to a supervisor assessing the degree to which an individual employee changes because of education, to evaluation, at its highest level, that measures the degree of impact on the organization and society.

Most judicial branch education providers already obtain end-of-the-day course-evaluation feedback (i.e., participant satisfaction). While this information is important, especially if tied to stated objectives, other more rigorous methods of evaluation can go beyond simply measuring satisfaction. Not surprisingly, time and resources can increase accordingly with the higher level or efforts of evaluation (especially, transfer of learning and impact studies).

Deciding which type of evaluation is desirable and feasible for your court depends on the answers to the following why, what, and how questions (National Association of State Judicial Educators, 2012).

Why? No matter at what level a court or organization decides to evaluate, clearly articulated reasons for doing an evaluation are needed at the outset. The following are five compelling reasons: 1) to demonstrate the degree of success of a course or program; 2) to justify continued or enhanced funding; 3) to determine whether a course or program should continue, be changed, or improved; 4) to answer cause-and-effect questions; and 5) to focus on whether and what value is derived and what difference the course or program makes. Evaluation of any kind can raise awareness.
of the importance of judicial branch education to help decision makers have a greater understanding of education and how it makes a difference.

**What?** Decisions need to be made to answer the following questions. What is important to this court or organization to evaluate (e.g., impact of one course, one jurisdiction, one audience, or overall impact)? What can be measured? What is most beneficial to be measured? Answers to these questions and more will help determine the scope of the project and the entity evaluated.

**How?** The kind of evaluation that can be done goes from simple to robust, narrow to broad, short-term or long-term, qualitative to quantitative data, local to state to national-based programming. A few examples of evaluation efforts include:

- Enhancements to existing “satisfaction” surveys can be quick fixes with rich returns. The following are a few questions that can be asked at the end of a course day or months later using an electronic survey tool:
  - What have you learned in this session that you did not know previously? What barriers do you perceive, if any, to implementing the information from this session?
  - In what way, if any, do you foresee that today’s experience will affect your performance or thinking as a judge/magistrate/court personnel?
- Use of pre-tests and post-tests, while ensuring anonymity, can reveal some tangible findings and often can be used in real-time to make midstream corrections. This is a common tool used by faculty to assess learning and make adjustments. For example, if faculty have taught content and the learners get an answer wrong, faculty can attempt to reteach or correct understanding.
- Incorporating multiple methods of data collection when evaluating courses or programs can yield support for change due to judicial branch education. For example, Virginia did an in-house evaluation of the impact of a “Calendar Management and Delay Reduction” education program for judges and clerks. They ensured that the course objectives were aligned specifically with the court system’s two-year strategic plan and did a pre- and post-sampling of various types of cases to determine the average length of time to final case disposition. Virginia also conducted exit surveys and face-to-face interviews (Connor, 2002).

- State statistical data and trends can be used to demonstrate the impact of judicial branch education. Changes over time in court statistical data can sometimes be correlated with the increase in or mandate of education, as was the case in Florida. A reduction in reversal rates was linked, in part, to the new Supreme Court of Florida requirement that trial judges complete a comprehensive course on death-penalty cases, according to National Judicial College documentation.
- Documenting spontaneous testimonials (via letters or course evaluation comments) and suggestions/information learned from comments in a focus group are other means that provide useful qualitative data.

Obviously, the scope of an evaluation project, beyond satisfaction surveys, depends on available time and resources (i.e., people and money). A broadly based impact evaluation takes time. Ohio’s experience was relatively modest, but about two years were devoted to this project. This includes searching for an outside evaluator, scoping the project, finding funding, gaining administrative support, assisting with the data collection, and keeping all parties and stakeholders informed about the evaluation. Full implementation of the recommendations is still underway.

Before embarking on an evaluation of judicial branch education, decisions must be made to determine the pros/cons and the feasibility of an in-house evaluation team versus an external consultant. Regarding the latter, it is ideal if you can find an area university department with whom to partner. Many large universities have “service learning” offices and education, public-policy, and criminal-justice departments that might find this kind of project to be a good fit. Grant funds, such as the U.S. Department of Health and Human Services’ Court Improvement Program that Ohio used, can both narrow the scope and, in Ohio’s case, pay for a graduate student to help conduct the research.

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**Quality education provides a vital role by equipping judges and staff with the education and training to help them efficiently and effectively carry out the administration of justice.**
Closing: The Bank of Education and Training

The 2009 image of a plane floating in the Hudson River with passengers standing on the wings awaiting rescue is now imprinted on Americans’ minds.

How was it possible that the plane landed and all were safe? When asked, Captain Chesley “Sully” Sullenberger said, “[F]or 42 years I’ve been making small regular deposits in this bank of experience: education and training. And on January 15, the balance was sufficient so that I could make a very large withdrawal.” When asked about her quick reaction to this very same disaster, one ferry boat operator said “Training, training, and training.”

While a judge does not land planes or drive ferries, judges do make life-and-death decisions. Court managers and other staff affect the lives of individuals and their families who navigate through the court daily. Judicial branch education helps equip judges and court personnel in making the needed deposits into their banks of knowledge and skills so that they can make withdrawals to fulfill their roles. As they continuously improve their competence, the administration of justice is enhanced and public trust and confidence in the judicial system are upheld.
RESOURCES


Faced with increasing scope, complexity, and accelerating proliferation of knowledge about self-governed, well-managed, and operationally efficient courts, court executives around the world must either learn together or risk failing alone. This article outlines the premise and promise of a global initiative to help judicial systems and judicial education institutions provide court executive education, training, and professional development for judges and non-judge managers of courts.

Learning from cross-national study of courts and other legal institutions is not novel. Reflecting on his early experiences, Herbert M. Kritzer, editor of the four-volume *Legal Systems of the World: A Political, Social, and Cultural Encyclopedia*, wrote that he was "impressed by the leverage I obtained in understanding legal phenomenon by the simple crossing of a nearby border" (Kritzer, 2002: ix). Today the forces of globalization and revolutionary advances of information technology (IT) create new opportunities and challenges by an expanding web of connectivity, creativity, and collaboration. Knowledge, skills, and abilities today move freely across national boundaries. Judicial educators in far-flung places can be virtual next-door neighbors.

**Opportunities and Challenges**

As justice systems in both developed and developing countries attempt to define and secure their position in a new order of expanding global interdependence, the institutions charged with education and professional development are being propelled in new directions and toward new partnerships. Today’s globalization and IT present unprecedented opportunities and challenges for collaboration, including sharing of educational programs, methods, and techniques; exchanges of knowledge and expertise in the form of curricula and faculties; and ready access to resources.

As the Honorable J. Clifford Wallace, a scholar of judicial education throughout the world, suggested in his 2003 paper in the *Yale Journal of International Law*, judicial education is no longer local and insular. 1 In critical aspects, like leadership and management of judicial institutions and resources, judicial education is not unique to any one country’s justice system. Issues of self-governance, institutional independence, transparency, accountability, organizational legitimacy, public trust and confidence, and effective judicial administration are more alike than different as one crosses national borders.

In response to these opportunities and challenges, the National Center for State Courts (NCSC) in late 2010 began making plans for an ambitious initiative, the Global Academy for Court Executive Education and Development (Global Academy). The goals of the Global Academy are 1) to raise the status of the discipline of justice system administration, leadership, and management; 2) to help judicial systems and the institutions charged with judicial education throughout the world provide court executive education, training, and professional development for judges and non-judge managers of courts; and 3) to create a cadre of professionally trained court executives around the globe by providing a rigorous program of education and training that meets the highest international standards for what leaders and managers of justice systems should know, understand, and be able to do. The remainder of this article outlines the premise and promise of this initiative.
A Focus on Leadership and Management

The Global Academy focuses on just one important aspect of globalization and advances in information technology: education services for justice system administration, leadership, and management. It does so for two reasons. The first reason is because effective judicial administration is necessary for courts and other justice system institutions to be recognized as public-service organizations that work to meet citizens’ needs in accordance with rule-of-law principles that apply to all countries, regardless of their different social, cultural, economic, and political systems. Judicial systems of all types, including common law, civil law, or Islamic law, whether in the developing or developed world, can improve only when court leaders and professional managers have access to both initial and continuing training, education, and professional development. Just as judges must first acquire initial competencies in the law and then stay abreast of new developments and sharpen their knowledge, skills, and abilities, court executives, including judges with management responsibilities and non-judge court managers, must have access to initial and continuing education in leadership and executive management.

The second reason the Global Academy focuses on education services for justice system administration, leadership, and management is that, except in more affluent countries with a tradition of professional court management, education for judges and court managers in leadership and management is still in its infancy. Judicial administration did not emerge as a recognizable profession until well into the 20th century. In the authors’ experience, most countries consider such topics as people management, resource management, information systems, negotiation, consensus building, and organizational leadership as secondary, mere “housekeeping,” and “soft,” as compared to traditional legal topics of jurisprudence and the interpretation and enforcement of laws.

One of the significant results of the court reform movement in the United States in the late 20th century was that judges started to realize that their responsibility for managing the justice system will determine whether it succeeds or fails as it copes with major changes. Today many justice system leaders throughout the world echo United States Chief Justice Warren E. Burger’s call more than 40 years ago for a cadre of professional administrators to manage the courts.

Today’s globalization and IT present unprecedented opportunities and challenges for collaboration, including sharing of educational programs, methods, and techniques; exchanges of knowledge and expertise in the form of curricula and faculties; and ready access to resources.

Judicial reformers and public-administration scholars agree that high-performing judicial systems require executives devoted to organizational leadership and management. Courts need more than competent jurists who know the law. They need leaders and executives to tackle organizational problems that are sociopolitical, cultural, and human. Court executives who are well-educated and held in high esteem for their expertise are best positioned to lead courts in such activities as budgeting, rulemaking, strategic planning, automated case management, information and communication technology, performance measurement and management, and judicial oversight and discipline. Justice systems that can administer themselves independently, while being transparent and accountable, are most likely to achieve public trust and confidence. The institutional independence that can result from professional and ethical leadership and management can only be established with effective self-governance, and effective self-governance is dependent on judicial leadership and management.

The Vision of the Global Academy

In its initial design, the Global Academy will leverage the resources of NCSC to provide two major services:

- A clearinghouse and library of information focused on the education and professional development of judicial system leaders and executives, including program descriptions, curricula, methods, techniques, and faculties.
- A mechanism—the International Court Executive Development Program (ICEDP)—for the development and delivery of a core curriculum for court executive education and professional development that meets the highest international standards.
The Global Academy’s clearinghouse and library would provide judicial education institutions and individual judicial educators throughout the world a one-stop agency for the collection, classification, and sharing of information and resources focused on education and professional development of justice system leaders and executives. It would serve as a means for sharing of resources, for the cross-pollination of ideas, and for mutual assistance. It would include Web-based information, as well as materials in traditional formats such as print, video, CD-ROM, and microfiche. In addition, the Global Academy would provide access to and facilitate participation in “live” presentations on the Internet (e.g., Webinars presented in various languages) and in-person conferences. Recordings of such presentations would become part of a collection accessible for continued use.

Through the ICEDP, the Global Academy proposes three levels of certification for court executives: a Level I certificate for completing an initial battery of courses designed to provide skills, knowledge, and abilities basic to successful court management; a Level II certificate for completing additional coursework and fieldwork to enhance basic skills while also providing a higher grounding in analytical and leadership abilities; and a Level III certificate designating the holder a graduate of the Global Academy who has completed coursework and fieldwork meeting the highest professional standards of court administration. The holder of a Level III certificate will be certified as a graduate of the ICEDP, an internationally recognized status given to the world’s top court executives.

The goal is that by 2020, court executives in countries throughout the world will be graduates of this cooperative program of training, education, and professional development of the Global Academy and their host countries’ judicial education institutions. This vision for the Global Academy will shape the plans for the future.

**Steps Already Taken**

NCSC has taken initial steps in two areas to build the Global Academy. First, planning has been done based on the capacities, resources, and experiences of its Institute for Court Management (ICM) and its International Programs Division.5 Second, NCSC has invited justice system education organizations from around the world to participate in designing the Global Academy. NCSC’s international outreach is described in the next section of this article. The work that has been done internally is as follows:

- **Preliminary Design of an International Model for the Education and Professional Development of Court Executives.** The preliminary design of the ICEDP consists of three levels of education and professional development. Level I consists of six courses designed to impart the knowledge, skills, and abilities necessary for all court professionals to be effective court managers and leaders:
  - Purposes, fundamental obligations, and governance of courts;
  - Caseflow management;
  - Court budgeting and fiscal management;
  - Managing people;
  - Managing court technology; and
  - Court performance measurement, management, and accountability.
Each of the six courses can be delivered in a classroom or distance-learning environment.

Level II courses combine practical, philosophical, and analytical learning to enhance skills learned in Level I and provide a more solid foundation for court administration and leadership in the following areas:

- Two freestanding courses, “An Orientation to Court Leadership,” one for court managers and one for judges with management responsibilities.
- Law, legal traditions, and their impact on court structure;
- Management and leadership in the courts;
- Organizational structure, design and reengineering; and
- Analyzing and managing change.

Level III consists of major fieldwork leading to a paper of publishable (or equivalent) quality that addresses a local or international challenge in court management or suggests innovations that can be implemented either locally or internationally to improve the administration of justice.

- **Development of a Model International Curriculum.** In addition to the preliminary work on the design of a model program, NCSC has also developed a model curriculum. The model curriculum includes modules for each of the six courses in Level I, as well as a preliminary version of Level II courses. Each module is described in a uniform fashion: 1) a brief overview of the module including its overall purpose; 2) learning objectives (i.e., what participants are expected to be able to do after completing the module); 3) a list of major topics and issues, some of which will be supported with brief annotations; 4) notes on instructional design, including suggestions for activities and exercises; 5) notes on faculty recruitment, selection, and development; and 6) an annotated list of resources and references, some relevant for more than one module.

- **Faculty Development.** In addition to the notes on faculty recruitment, selection, and development that are part of the curriculum modules described above, NCSC will assist in creating a faculty development program adapted for international “train-the-trainer” programs.

In addition, as part of its work in a number of countries throughout the world, NCSC currently is testing, refining, and enhancing the design, the model curriculum, and faculty development of the ICEDP. NCSC is working with local judicial education institutions to enhance their capacity to identify and to deliver educational and professional development programs.

**Next Steps**

Much has been done already, but much more consideration needs to be given to how and where the Global Academy is to be developed, how it can be financed, how it will function, how it will be directed and managed, and how it can best facilitate the exchange of ideas, programs, and methods. Although NCSC has made numerous presentations to international audiences, the design of the Global Academy has not yet fully benefited from the necessary broad participation of international stakeholders in court administration. Such broad participation is necessary before the Global Academy can realize its vision and enjoy the legitimacy necessary for success.

NCSC last year began exploring potential partnerships with international professional associations, an effort that will lead to the creation of a guiding coalition and establishment of a governance structure for the Global Academy. The capabilities and resources of ICM and NCSC’s Library, informed by those of its International Programs Division, will be used to establish the foundation of the Global Academy’s clearinghouse function. Together with international court organization partners, NCSC will establish a certification program for the Global Academy’s International Court Executive Development Program. Once these
preliminary steps are taken, NCSC and international partners will develop the clearinghouse and library, as well as the ICEDP and the certification program of the Global Academy with selected pilot (“lighthouse”) jurisdictions by providing consultation and technical assistance. We hope that lessons learned in these lighthouse jurisdictions, as well as further analysis and refinements, will lead to a permanent home (and perhaps regional satellites) for the Global Academy.

ENDNOTES

1 However, as pointed out by a reviewer of an earlier version of this article, it can be argued that improved institutional capacity and competence to deliver judicial education may actually promote local and insular solutions. The challenge in such a situation is, of course, to convince mature and competent institutions to share what they have learned with less developed institutions.

2 For example, access to justice is provided by competent, independent judges who have adequate resources; government and its officials are accountable under the law; laws are clear, fair, stable, well publicized, and protect human rights; and the process by which laws are enacted, administered, and enforced is accessible, fair, and efficient (see Agrast, Botero, and Ponce, 2011).

3 In countries in which court leadership and management education is available, it tends to be offered to judges as a relatively small part of the curricula of judicial training institutions. Rarely is such education available to court employees other than judges (see Warren, 2001).

4 “The courts of this country need management which busy and overworked judges, with vastly increased caseloads, cannot give. We need a corps of trained administrators or managers, just as hospitals found they needed them many years ago, to manage and direct the machinery so that judges can concentrate on their primary professional duty of judging . . . Such administrators do not now exist.” Remarks to the American Bar Association August 12, 1969 (see Burger, 1990).

5 ICM, through its flagship Court Executive Development Program (CEDP), is widely recognized as the premiere institution for the professional development of court executives. Since its establishment in 1971, ICM has graduated over 1,100 professional court managers in the United States and 12 countries. Formed in 1992, the International Programs Division assists institutions and organizations worldwide that are seeking innovative solutions to justice system problems. It has worked in over 30 countries, engaging in comprehensive rule-of-law projects in Africa and the Middle East, Asia, Eastern Europe and Central Asia, and Latin America and the Caribbean.

RESOURCES


How do different generations view their role in the court workplace? Answering this question, and others, could be crucial for making the courts more attractive as a career and increasing public trust and confidence in the judicial system.

A frequent trend we observe concerning court ethics is how the different generations regard the use of social media. We have noticed how many older court professionals view Facebook and Twitter as odd venues for broadcasting one’s opinions to the entire globe: an electronic billboard to the world if you will. Younger court professionals tend to view the social network as a semiprivate chat room: an electronic version of a local pub where one can express one’s opinion without fear of the conversation leaving the friendly confines.

The gulf between these two viewpoints is wide, and we will return to it later in the article. We started thinking about other areas that might display differences between the generations. Of course, this is well-trodden ground. A late 1980s in-service training called “Who You Are Is Where You Were When,” by Dr. Morris Massey, explored how the different generations looked at work life. We do not presume that this article will uncover any groundbreaking theories, but we thought it would be interesting to look at how the generations approach work in the courts and court codes of conduct.

This article will explore several questions:

• What are the similarities between generations?
• What differences appear to be long lasting?
• What differences appear to be the result of where a particular generation happens to be in time?

Literature on the Generations
There is a mountain of literature describing the various generations. Here is but a snapshot based upon a sampling of articles.

• **Traditionals**—born before 1945 (Morgan and Ribbons, 2006): Traditionals grew up in the aftermath of the Great Depression and during World War II. Dealing with economic hardships made them disciplined and self-sacrificing. Their reward was living the American Dream and enjoying steadily rising affluence.

Most traditionals are now retired. They were (and are) typically loyal, disciplined team members who work within the system; their “word is their bond.” They are patient, respect authority, are detail oriented, and follow the rules. They know an organization’s legacy and embody a traditional work ethic, possess a sense of obligation and fiscal restraint, and like formality and a hierarchical chain of command. Baby Boomers may view them as dictatorial and rigid. Traditionals may be inept with ambiguity and change.

• **Baby Boomers**—born between 1945 and 1964 (Morgan and Ribbons, 2006): Boomers are the largest generation in the United States and typically grew up amid economic prosperity and suburban affluence. Most will reach retirement within the next 25 years. They knew strong nuclear families with “stay-at-home” mothers. Significant events for them included the Vietnam War, the Civil Rights movement, the Kennedy and King assassinations, Watergate, and Woodstock (Pekala, 2001).

Boomers are optimistic, ambitious, competitive, and focused on their personal accomplishments. They believe in working long hours and expect the younger generations to adopt this same approach. They are more accepting of diversity and are reluctant to go against peers and the judgment of others who do not see things the way they do. They believe themselves a “special generation” and possess a sense of entitlement. They are depicted as “workaholics” and equate work with self-worth. Generation X may see Boomers as political, process oriented, and inflexible. Traditionals may see them as self-absorbed and overly forthcoming.
Generations, Courts, and Ethics

The traits described are broad characteristics of the different generational cohorts and lead to new questions. Are some traits a result of a specific generation being younger and expecting to rise up through an organization? Are some traits of older generations the result of being comfortable with current circumstances, thus each younger cohort looks at the next older one as rigid or inflexible? Dr. Jennifer Deal’s (2007) hypothesis is that there is no generation gap. As each younger generation matures it will naturally take on the characteristics of the next older generation.

Are some traits permanent? Certainly the blinding speed with which technology advances is not a transitory trend. Younger generations accept technological change with blasé familiarity; the older generation tends to becomes befuddled and bewildered.

How are these traits exhibited in the court environment? Will we see these common characteristics play out in the courtroom and the clerk’s office, or is the court profession immune to what might be a collection of stereotypes?

The Cohorts

We must start by admitting that the survey we conducted is not a statistically valid random sample. We primarily chose members of the National Association for Court Management (NACM) as the Baby Boomer cohort, then asked Boomer respondents to recommend staff within their own courts as respondents for the Generation X and Generation Y cohorts. Having given that advisement, our survey still raises some interesting questions and describes some characteristics worth watching in the future. We ended up with the following numbers for the different cohorts from a geographically diverse array of respondents.²

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<tr>
<th></th>
<th>Baby Boomers</th>
<th>Generation X</th>
<th>Generation Y</th>
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<tbody>
<tr>
<td>Number of Respondents</td>
<td>23</td>
<td>21</td>
<td>19</td>
</tr>
<tr>
<td>Average Birth Year</td>
<td>1956</td>
<td>1974</td>
<td>1984</td>
</tr>
<tr>
<td>Years Working for Courts</td>
<td>26.2</td>
<td>12</td>
<td>4</td>
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Future Trends in State Courts 2012

We asked the three cohorts variations of the question regarding their decision to make a career out of working for the court system. We asked Boomers if they saw the courts as their career; we asked the Generation X and Y cohorts if they planned to make the courts their career.

Unsurprisingly, almost all Boomers had planned to make the courts their career. The few who said “no” had worked in a previous profession (frequently the military), having come to the courts after retiring from their first careers. Almost a quarter of Generation Y respondents said they were uncertain or did not intend to make the courts their career choice. This statistic may very well be a result of where Generation Y respondents are in the court organization and how long they have been working for the courts.

The Court as a Career Choice

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Why the Different Cohort Respondents Work for Courts

Respondents in all three cohorts said that their principal motivation for coming to work each day was that court work was interesting. After that, Generation X and Y respondents said that pay was the second most important motivator, where
Generations, Courts, and Ethics

Boomers said that cementing their reputation as court professionals was their next most important reason to work. One interesting result was that receiving insurance and retirement benefits ranked low in all three cohorts as a motivator.

Another interesting attribute was whether courts allowed any of the cohorts to refine their skill set, possibly for other lines of work. Anick Tolbize from the University of Minnesota (2008) mentioned that Generation X workers are specifically interested in expanding their skill sets. This might have been an interesting coupling, since over the years the court system has needed an increasing number of nonlegal and semi-legal specialties. Computer experts, facilities managers, media experts, mental health experts, interpreters, evaluators, mediators, conciliators, and security experts are just a few of the many new specialties that now work with the courts. However, this was definitely not a generational characteristic of court work. The opportunity to refine one’s skills came in either last or second to last in every cohort.

Employee Talents, Skills, and Traits
Respondents in all three cohorts said that the most important talent, skill, or trait that either Boomers looked for in employees, or Generation X or Y respondents prided themselves in having, was the ability to be relied upon to get the job completed. After that, Boomers looked for employees who can relate well with others, while Generation X respondents said it was important to be reliable and be counted on when needed. An interesting trait was that all three cohorts said knowledge of how the court operated was a low priority.

Boomers said the skill they looked for in employees was the ability to relate well with others; Generation X and Y respondents said the skill they thought most important was being well organized. Respondents in all three cohorts said that handling multiple projects (multitasking) rated very highly. The ability to speak a second language rated lowest of all skills.

Working a Second Job Outside of the Courts
We asked the cohorts versions of the question on working a second job besides their positions at their courts. Boomers were asked if they had ever held a second job; the Generation X and Y cohorts were asked if they currently hold a second job.

This question could cut in several different directions and is ripe for additional research. Holding a second job might indicate that a respondent is still exploring career options and that the court may not yet be one’s final choice. It could also indicate dedication to one’s career in the face of economic difficulties. One Boomer used to type transcripts for a court reporter nights and weekends; a Generation X respondent used to work retail nights and weekends to make ends meet. A second job could, in fact, demonstrate commitment to the justice system. One Generation X respondent’s second job is teaching at a law school.

Close to half of the Boomers and Generation X respondents have worked a second job while at the court during some period in their careers; fewer than one in three Generation Y respondents work a second job. This might be a trend to watch over time to see if the percentage of Generation Y respondents working a second job increases.

Loyalty and the Role of a Court Code of Conduct
We asked a forced-choice question of the three cohorts on what each thought ought to be the primary role of a court’s code of conduct (eliminating the “all of the above” option). Option one was that the code was primarily to inform employees of the organization’s rules and the possible consequences for violating those rules. This depicted the code as a subset of the personnel rules designed to keep staff from getting into trouble. Option two was that the code was to primarily serve as a vehicle for the court to be sure that employees had viewed and understood the
code if employees got into trouble. There would never be a question of employees saying that they were not responsible for an incident solely because they were unaware of the code or had only briefly scanned it. Option three was that the code was primarily designed to inspire employees to a higher level of activity and to conveying trust and confidence in the courts with the general public. Option four was that the code informed employees of the procedural steps (including the appeals process) in counseling, disciplining, and terminating employees.

Both the Boomers and the Generation Y respondents saw the primary purpose of a court code of conduct as a vehicle to convey the personnel rules and potential consequences for violations. Only the Generation X cohort had a significant number of respondents who thought the code should inspire employees. It is also worth noting that nearly a third of the Generation X respondents and over a third of Generation Y respondents thought the purpose of a code was to ensure that employees knew and understood the rules. Presumably following through on this option would entail the court requiring that employees sign an acknowledgment that they had read and understood the code.

Focus of Loyalty
We asked the cohorts whether they (or in the case of the Boomers, if they thought their employees) were more loyal to the court or to their individual work groups. A majority of all three cohorts (Boomers by 69 percent, Generation X by 60 percent, and Generation Y by 64 percent) thought employees were more loyal to their individual work groups than to the court overall. This perception is understandable, but can this loyalty be used to inspire court employees to devote themselves to the larger principles of the courts as a separate branch of government? Tom Langhorne, past president of the National Association of State Judicial Educators, spoke at the 2012 NACM midyear conference in Minneapolis of how the courts are “the heart and soul of us as Americans.” If that is the case, we may need to work at refocusing the loyalty of court professionals above individual work groups to the broader principles of the court system to enhance public trust and confidence in the court system overall.

Court’s Role Regarding Nonwork Time
We asked the cohorts what was the appropriate role of the court regarding managing employees’ second jobs and other after-hours activities. One opinion was that the court had basically no business telling employees what they could or could not do after 5:00 p.m. or on weekends. The second opinion was that the court can appropriately direct employees to avoid activities that pose a direct conflict of interest. Typical examples of jobs posing a conflict of interest would be working for a process-service company, teaching at a traffic school, or working for an attorney who regularly appears in court. The third opinion was that the court can appropriately direct employees to avoid seriously inappropriate activities even if they do not pose a conflict of interest. One example might be belonging to a club that promotes a racist ideology. The fourth opinion was that the court could appropriately advise employees on types of jobs and activities that are appropriate and inappropriate. This opinion is wide-ranging, but the court might advise on whether an employee can engage in behavior that is distasteful to the community even if not outrageous or a conflict of interest.

Most Boomers saw that the court can appropriately direct employees to avoid seriously inappropriate activities and outside employment. For example, one Boomer commented that although the court should not become some sort of omnipresent parental figure, “Regulation of outside activities must be tightly restricted to those things which have a direct nexus to the code of conduct/employment.”
Over half of Generation X respondents saw the court’s role as only directing employees to avoid conflicts of interest. One Generation X respondent said, “I don’t feel like the court should have a say in what its employees do outside of work, as long as it doesn’t affect the employee’s work ethic, such as attendance.” More than one out of every three Generation Y respondents thought the court had no business telling employees what they could or could not do during their off hours. This attitude might be tempered, however, by the nuanced position within the cohort that more responsibility now falls upon the employee instead of the court. One Generation Y respondent reported, “I think people should understand that, no matter where they work, they are a representative of the agency they work for and should conduct themselves in a manner that would reflect positively on the agency they represent.”

The Social Network
All three cohorts appear comfortable with the social network, with Generation Y being nearly universally involved with the new medium. This is not surprising and may be indicative of the community of the future. All but one Generation Y respondent belonged to a social-network site. Popular sites included LinkedIn, Facebook, Twitter, and Myspace. One Generation X respondent apparently felt compelled to join. She commented that she belonged but was “not a big fan.” On average Boomers have been members of a social-networking site for slightly less than two years; Generation X respondents have been members an average of slightly less than three years; and Generation Y respondents have been members for an average of over five years.

Using the Social Network to Research Candidates
We asked the cohorts whether they thought it was appropriate for courts to research the various social-networking sites when making a hiring decision on a potential new employee. Nearly half of the Generation X respondents and a third of the Generation Y respondents thought it inappropriate for a court to use the social network to research potential candidates.

A typical Generation Y respondent commented, “Social media sites reflect you in your personal life. Though seeing how you communicate/interact in your family and friends would give employers insight into your personality. I believe that candidates should be judged on their interactions with the employer, not the interactions with their family and friends as people are capable of and should keep their professional and personal lives separate.”

Online Education
The contrast is pronounced regarding how the different cohorts accept online education. Only one in three Boomers (36 percent) have enrolled in an online class (although two respondents said that they had taught online classes). Exactly half of the Generation X cohort has taken online classes. One respondent said that she prefers online classes because they are easier to fit into her schedule. Over half the
Generation Y respondents (53 percent) have taken online classes. As more classes are offered online, this is a trend to watch. Educators will soon be teaching how to manage multiple information streams, emphasizing the skills of filtering, analyzing, and synthesizing information (Anderson and Rainie, 2012). Boomers may be just inherently less comfortable with online education but will learn to accept this new medium the way they have embraced the social network.

**Conclusions and Takeaways**

There are a number of implications for court administrators to consider from these initial trend indicators.

*Manage increased professional diversity.* These day courts rely upon a number of professions, many not dreamed of within the justice system three decades ago. Professionals in information processing, telecommunications, courthouse security, interpretation, mental health, mitigation research, and the media are only a part of the larger court family, and many of these professions have a focus that differs from the strict world of law and legal procedure.

*Revisit private-life versus work-life obligations.* The younger cohorts’ view of their after-work time and their use of the social media indicate a rising expectation of increased freedom and autonomy in the work/life domain. We may need to reevaluate how much say courts have institutionally over the lives of young court professionals.

*Prepare for future demands for a more blended work-education paradigm.* The current education levels of the younger cohorts alongside their comfort with innovations such as online schooling and enhanced multitasking could foreshadow an increased demand for work-schooling accommodations in the years to come.

*Encourage younger court workers to look to the courts as a professional goal.* There are indications of a flagging commitment to the courts as a career and that employee loyalty is more narrowly focused on coworkers as opposed to the judicial branch as an institution. We need to energize younger workers to the prospect that working within the judicial branch is a proud profession worthy of their loyalty and as a career choice.

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**Use the Social Network to Research New Hires**

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<tr>
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<th>Yes</th>
<th>No</th>
<th>Unsure</th>
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</thead>
<tbody>
<tr>
<td><strong>Boomers</strong></td>
<td>76%</td>
<td>24%</td>
<td>0%</td>
</tr>
<tr>
<td><strong>Generation X</strong></td>
<td>50%</td>
<td>45%</td>
<td>5%</td>
</tr>
<tr>
<td><strong>Generation Y</strong></td>
<td>47%</td>
<td>37%</td>
<td>16%</td>
</tr>
</tbody>
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ENDNOTES

1 We are defining "cohort" as a group of individuals with shared experiences during a particular time span.

2 Respondents came from Canada and the following states: Alaska, Arizona, California, Colorado, Florida, Georgia, Iowa, Maryland, Michigan, New Mexico, New York, Ohio, Oregon, Pennsylvania, South Dakota, Texas, Utah, Virginia, Washington, and Wisconsin.

RESOURCES


Technology provides us with a way to overcome privacy hurdles without compromising the legitimate concerns of children and families.
Although safety, permanency, and well-being were all established as the three national goals for children in foster care by the Adoption and Safe Families Act of 1997 (ASFA), outcome measurement for courts has heretofore focused on the first two goals. Now the emphasis is shifting toward the third. In some respects, well-being of children in care was the most challenging goal to tackle because it is more difficult to define and to reach consensus on what constitutes well-being. Yet, like safety and permanency, well-being of children in care can only be achieved if all of the agencies with an interest in children share the responsibility, rather than relegating the burden primarily to child welfare agencies. Because courts, schools, hospitals, and other medical and mental health professionals all share with child welfare agencies the goal of improved well-being for children in foster care, the measures of well-being become more complicated, data exchange becomes more difficult, and issues of privacy and confidentiality of records become more salient. Fortunately, technology provides us with a way to overcome privacy hurdles without compromising the legitimate concerns of children and families.

Safety and Permanency Outcome Measures: Need for Data Exchange

The initial focus on developing outcome measures for children in foster care was on child welfare agencies. The data necessary to construct those measures were in Statewide Automated Child Welfare Information Systems (SACWIS), or other data systems under control of the child welfare agency; so, data exchange with other collaborating partners and, therefore, privacy concerns were simply not issues.

Much of the data required to determine the safety, permanency, and well-being of children are available from the child welfare system. Relying exclusively on data from the child welfare system, however, presents an incomplete perspective on how children in care are faring. Consider, for example, the role courts play in the lives of foster children. They determine whether children will be removed from their homes, the length of time children remain in foster care, and where they will permanently reside. Specifically, courts play an important oversight role in terms of reviewing the case plan and deciding on placement, visitation, and contacts with parents. In addition, court scheduling of hearings and periodic review, as well as decisions to grant continuances, affect the timely achievement of permanency. In sum, courts play a crucial role in setting and monitoring child welfare goals—data from both child welfare agencies and courts are needed to provide a complete picture of how children are progressing toward safe and timely permanency.

Court outcome measures were developed to measure the shared goals of safety and permanency, as well as court-specific goals of due process and timeliness of court actions. The Toolkit for Court Performance Measurement in Child Abuse and Neglect Cases, which contains a full set of 30 dependency performance measures, was released in 2009. To entice state courts to use these outcome measures, 9 of the 30 measures were designated as key performance measures, and at least ten states report that they are using at least 8 of the 9 key measures.

Process measures, as opposed to outcome measures, can be gathered by child welfare agencies and courts separately. From a child’s perspective, time spent in child welfare systems is not separate from time spent in the court process. Measuring the time lapse between removal of the child from the home until permanency requires that time spent in processing by child welfare agency staff and court staff be combined to reach a total. Were the children involved kept safe? Was permanency achieved and how? As a practical matter, answers to these outcome questions require data to be exchanged between courts and child welfare agencies.

Although some states exchange data by sharing batch files overnight, near real-time electronic exchange is the most efficient and effective way of sharing information...
Privacy and Technology | Privacy Policy and Technology Solutions: Introduction to the Issues

With support from Casey Family Programs, the National Center for State Courts (NCSC) called together a focus group of distinguished representatives from child welfare agencies, educational and research institutions, the advocacy community, and courts to work on educational outcome measures for courts (Flango and Sydow, 2011). These are currently being field-tested in selected states to determine how well they meet state needs, how realistic they are, and how easy they are to obtain.

Encouraged by the success of the education focus group, NCSC convened another, under the aegis of the National Child Welfare Resource Center on Legal and Judicial Issues, to draft measures for physical and emotional well-being. These will be field-tested, as well. The price for presenting this more comprehensive picture of the well-being of children in care is the added complexity of data sharing and the concomitant concerns with issues of privacy and confidentiality of data.

National Standards also provide some technological solutions that address the challenges of privacy and confidentiality. For example, how can privacy and public-access rules be enforced after the data leave the court and child welfare agency and are transmitted to other agencies? Meta tagging provides one solution.

Trend to Well-Being—Privacy Concerns

Court well-being outcome measures were not developed initially as part of the Toolkit. The court’s role in child well-being is perceived as being less direct than court involvement in safety and permanency; therefore, the measures were developed later. More important, tackling well-being involves more partners in addition to child welfare agencies and courts; schools, physicians, and mental health professionals also need to be involved, which means that data exchanges are more complicated and privacy concerns escalated. Yet ASFA does include well-being as a goal, and courts have a responsibility to see that children in foster care have been to the doctor or dentist, have had mental health screenings if necessary, and are doing well in school.

Twenty-four states have implemented data exchanges between courts and child welfare agencies, and 19 more are planning to do so. Nine states transmit data in one direction—from the Adoption and Foster Care Analysis and Reporting System (AFCARS) to courts (www.fosteringcourtimprovement.org). Colorado and Utah are furthest along in implementing comprehensive, two-way data exchanges (Flango, 2011).

Results from child and family service reviews have shown conclusively that states that have the best collaboration between courts and child welfare agencies have better outcomes for children.

Technology provides us with a way to overcome privacy hurdles without compromising the legitimate concerns of children and families.
In the following set of interrelated articles, Judge Anthony Capizzi discusses the key elements of a privacy policy, whereas Thomas Clarke and Diana Graski discuss technology solutions to privacy issues, including a new privacy tool. Surrounding these core articles are satellite pieces discussing the privacy concerns of key partners. Jessica Feierman, Alicia Davis, and Tara Kunkel illustrate how health (HIPAA), education (FERPA), and drug laws can benefit children in care without becoming an obstacle to data exchange.

ENDNOTES

1 These performance measures were originally published in 2004 in Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases (available on the National Center’s Web site, www.ncsc.org/building-better-court). A partial history of the development of court performance measures for abuse and neglect cases is reported in Flando, 2010.

2 Well-being focus group members were Sarah Fox, CIP training specialist, New Hampshire Court Improvement Project; Hon. Robert R. Hofmann, associate judge, Child Protection Court of the Hill Country, Mason, Texas; Sandi Metcalf, director of juvenile services, 20th Judicial Circuit Court, Grand Haven, Michigan; Sandy Moore, administrator, Office of Children and Families in the Courts, Pennsylvania; Ronald M. Ozga, Governor’s Office of Information Technology, Colorado Department of Human Services; and Sonya Tafoya, senior research analyst, AOC Center for Families, Children and the Courts, California. In addition to the author, Resource Center staff included Eva Klain and Scott Trowbridge from the American Bar Association; Dr. Alicia Summers from the National Council of Juvenile and Family Court Judges; and Lisa Fortune, Deborah Saunders, and Nora Sydow from the National Center for State Courts.
WHAT YOU NEED TO KNOW ABOUT PRIVACY, CIVIL RIGHTS, AND CIVIL LIBERTIES PROTECTIONS FOR COURTS

Hon. Anthony Capizzi
Judge, Montgomery County Juvenile Court, Ohio

Are your court personnel, procedures, and the personally identifiable information (PII) you exchange through court processes adequately covered by a privacy, civil rights, and civil liberties policy? If not, privacy resources are available to help you develop and implement privacy protections.

Why Does Your Court Need a Privacy Policy?
“Privacy” refers to individuals’ interests in preventing the inappropriate collection, use, and release of personally identifiable information (PII). A comprehensive privacy policy also addresses civil rights and liberties, which safeguard individual freedom and ensure equal treatment under the law. Thus, a privacy policy is a published statement that articulates clearly your court’s legal requirements and policies for gathering and sharing PII in a manner that protects privacy, civil rights, and civil liberties.

It is important to emphasize that not having a privacy policy can result in negative consequences for all concerned, such as tarnishing an individual’s reputation or causing personal or financial harm; prohibiting courts’ abilities to receive and share the information they need to conduct business; causing lawsuits; paying settlements or judgments; and losing public support and confidence.

Justice regulatory environments and business processes are continually evolving. For this reason, a court should review privacy policies annually to ensure that appropriate changes are made in response to applicable laws, technology, the purposes and uses of the information systems, and public expectations.

Data and PII are among the most important tools judges use to fight crime and administer justice in their courtrooms. Having an accurate and complete picture of the case before me is not only crucial but absolutely necessary to make decisions and judgments in my everyday work as a juvenile court judge. Successful outcomes for the youth and families in my courtroom are predicated upon all of the stakeholders having appropriate access to accurate, timely information. These stakeholders include human-services caseworkers, treatment providers, law-enforcement officials, schools, and health-care providers. A well-rounded privacy policy balances the need for this information with guidance on how to access and handle it in a way that protects the privacy, civil rights, and civil liberties of defendants, victims, and the community. It is also essential to train court personnel on the substance of the privacy policy and the issues that may arise in the gathering and handling of PII. Adhering to a good privacy policy is a vital expression of the court’s most fundamental duty: to uphold the Constitution.

If one surveyed the types of data submitted to courts every day and mapped that information to the applicable federal and state privacy laws, the complexity of regulation would seem overwhelming. Case files can contain highly sensitive information regarding finances, physical and mental health, substance abuse, and education, among other data. These files may affect the recovery of a struggling combat veteran, the civil liberties of a criminal defendant, or the survival of a domestic-violence victim. If protected information is erroneously disclosed, the stakes can be very high. Conversely, if vital information is not shared with court partners, then mutual objectives of protecting the community from crime, promoting compliance with the law, and maintaining transparency and accountability of public programs cannot be achieved. Ultimately, judicial officers and court staff need clear, up-to-date guidance about what information they can share, with whom, and under what conditions—key concepts that should be addressed in a well-drafted, comprehensive privacy policy.

What Resources Can Assist You?
A suite of privacy resources is already available, not only for courts but also for all areas of justice. These have been developed by the U.S. Department of Justice’s (DOJ) Global Justice Information Sharing Initiative (Global) and are specifically designed to support courts in all areas of privacy protections.
DOJ’s Global (www.it.ojp.gov/global) serves as a federal advisory committee advising the U.S. attorney general on justice-information-sharing-and-integration initiatives. Global develops resources to support justice entities in their efforts to develop and implement privacy, civil rights, and civil liberties protections. As a member of the National Council of Juvenile and Family Court Judges Board (one of 30 independent organizations making up Global’s advisory committee), I serve as the chair of Global’s Privacy and Information Quality Working Group. I have had the opportunity to apply the experiences of an elected juvenile court judge, who hears both dependency and delinquency cases that involve highly sensitive (and therefore regulated) information, to the development of many of the Global privacy resources described in this article.

The working group is a cross-functional, multidisciplinary body composed of state, local, tribal, and federal justice and privacy professionals covering critical topics such as intelligence, biometrics, information quality, privacy, civil rights, and civil liberties. In addition to expertise from practitioners from all areas of justice, Global’s privacy products were field-tested in courts, thereby providing a proven suite of products for developing and implementing privacy protections.

Global recognizes that state, local and tribal justice entities, including courts, come in all sizes with a variety of roles and varying degrees of resources. The following illustrates the flexible suite of products designed for every stage of an entity’s privacy program cycle:

1. Educate and Raise Awareness
2. Assess Agency Privacy Risks
3. Develop the Privacy Policy
4. Perform a Policy Evaluation
5. Implement and Train
6. Conduct an Annual Review

**Stage 1: Educate and Raise Awareness**

Court leaders and their information-sharing partners can benefit from awareness and information primers that familiarize them with the importance of having privacy, civil rights, and civil liberties protections. Securing executive-level commitment to the collaborative development of a privacy policy is an essential first step.

The *Executive Summary for Justice Decision Makers: Privacy, Civil Rights, and Civil Liberties Program Development* primer is an awareness resource for justice executives, as well as an informational tool for training personnel. This easy-to-read flyer makes the case for privacy policy development and underscores the importance of promoting privacy protections within justice entities. It includes information on basic privacy concepts and steps to establish privacy protections through a privacy program cycle.
Stage 2: Assess Privacy Risks
A privacy impact assessment is a structured approach for internally investigating court information systems and information-sharing activities for understanding and documenting the potential risks should data be accessed or handled inappropriately. A completed assessment provides leaders with the facts they need to address vulnerabilities (for example, the likelihood of inappropriate disclosure and the magnitude of harm from such a disclosure).

Global’s Guide to Conducting Privacy Impact Assessments for State, Local, and Tribal Justice Entities provides a framework for assessing the privacy implications of information systems and information-sharing collaborations to enable the development and implementation of privacy policies. Privacy policies emerge as a result of the analysis performed during the PIA process.

Stage 3: Develop the Privacy Policy
Once a court has identified the data collection, storage, or sharing activities that pose the greatest privacy risks, the following Global resources offer practical guidance for developing a privacy policy.

Stage 4: Perform a Policy Evaluation
Stakeholders will benefit from evaluating the draft policy language to ensure that it adequately addresses the concepts of a comprehensive privacy policy. The following policy-evaluation tool can help court policy authors answer such questions as, “Have we omitted anything from the privacy policy?”

The Policy Review Checklist is a companion piece to the policy development template. This checklist serves as a self-assessment tool to evaluate whether the provisions contained within draft privacy policies have met all the core concepts recommended in the template. It can also be used during a periodic or annual policy review. Policy authors using this tool will receive a clear picture of whether their policies require revision or additional provisions, or whether those policies are ready to move forward for approval.
Stage 5: Implement and Train
Meeting the privacy educational needs of court personnel and the cultural needs of the community is essential. A substantial collection of implementation and training resources is available through the Global Privacy Resources Web portal, www.it.ojp.gov/privacy (including DVDs, self-paced training, and workshop opportunities). These resources address three areas: the conversion of privacy policies into system language, the liaison of justice entities with the communities they serve, and the training of personnel.

Stage 6: Conduct an Annual Review
“There is nothing permanent except change,” said Heraclitus, and his ancient aphorism is certainly true in privacy protections. Justice regulatory environments and business processes are continually evolving. For this reason, a court should review privacy policies annually to ensure that appropriate changes are made in response to applicable laws, technology, the purposes and uses of the information systems, and public expectations. This will ensure that systems and individuals comply with the most current protections established in the court privacy policy. The Policy Review Checklist is a helpful tool for this purpose.

Call to Action
All of the resources described in this article are available online at www.it.ojp.gov/privacy. Privacy technical assistance is also available in a wide variety of formats. To request privacy technical assistance or hard copies of Global Privacy Resources, please submit requests to global@iir.com.

Sharing PII to improve case management is achievable for courts. Courts are highly encouraged to use these valuable resources to ensure that privacy, civil rights, and civil liberties protections are in place for the information in their justice systems. Such protections will reduce risks to public safety, reduce legal liability of justice entities, and uphold a justice entity’s reputation—they are “the right thing to do.”
Automating the Enforcement of Privacy Policies

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Technology can enable the consistent enforcement of privacy policies, even across diverse organizations. What is needed is a standard way of describing users, data resources, access rules, conditions, and obligations.

Why a Technical Solution for Privacy Policy Enforcement Is Needed

Traditional methods of enforcing privacy policies include interagency agreements, memoranda of understanding, and employees’ signatures on nondisclosure agreements. Controlling access to information systems typically involves a unique user identification and password or token for each log-on screen. The definitions of the types of users who have access to certain types of records are usually hard-coded into each application.

These approaches to privacy-policy enforcement might have been sufficient for a tight-knit, stable group of trusted local partners, but state and local courts are more frequently encountering situations in which their potential information-sharing partners are geographically distant and increasingly diverse. Family, juvenile, and problem-solving courts are at the forefront of these changes, but all courts and case types will be affected. As quickly as the composition of information-sharing partnerships is evolving, so, too, is the pace of change in federal and state privacy protections. In this new normal, the traditional “user id and password” mechanism is too slow, too brittle, and too expensive to maintain.

The good news is that the technologies supporting the enforcement of privacy policies are quickly evolving to meet your court’s business needs. The Global Standards Council (GSC), with support from the federal Bureau of Justice Assistance, has adapted and tested these new technologies in the justice environment, and the judiciary’s partners in human services and health are adopting very similar standards. This article introduces you to Global’s Technical Privacy Framework and encourages you and your court’s data-exchange partners to pursue these solutions.

What Is the Technical Privacy Framework?

Three business capabilities are involved in enforcing privacy policies:

- Authenticating the identity of the user who is requesting access to protected information
- Determining whether the user’s request complies with the requirements of the privacy policy governing the protected information
- Logging the request and the response for auditing purposes

The major components are described in more detail below.

1. Identity Providers: User Authentication

Real-world scenario: To support its paper-on-demand strategy, the court wants to provide electronic access to dependency-case files, but only caseworkers, parents’ attorneys, guardians ad litem, and CASA volunteers are approved users. How will the court ensure that the user “Jane Montoya” is really the Jane Montoya who is employed today as a foster-care caseworker by Washington County’s Department of Human Services, assigned to Baby Renee Z’s case?

Understandably, the court does not wish to manage and maintain an ever-changing list of approved users. The preferred option is to develop an “identity provider” service. The members of the information-sharing enterprise execute an agreement about the user-authentication methods that provide sufficient security for the target data and adopt a standard for describing their users’ identities, roles, organizational affiliations, certifications, contact information, and other characteristics. The governance structure and metadata standards create a trusted network that can add new members who agree to abide by the same terms.

In the scenario above, Washington County’s child welfare agency would agree to maintain an up-to-date directory of caseworkers and would pass Jane Montoya’s
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The court would agree to trust Washington County’s assertion that Jane Montoya is the current caseworker assigned to the case she is requesting to view.

The technical requirement for federated identity is a standard for expressing attributes about users, such as roles. The Global Federated Identity and Privilege Management (GFIPM) team has completed all of the metadata attributes for the highest-priority criminal-justice data exchanges. Even though the values will be different for dependency and neglect cases, the GFIPM’s attributes can readily be adapted for family and juvenile cases.

The Orange County Juvenile Information Content Exchange program (OC JUICE) provides an excellent example of how courts can collaborate with county agencies to implement a trusted network for user authentication (see sidebar).

2. Policy Decisions and Enforcement: Automated Access Control

Real-world scenario: Your court and child welfare agency agree to implement a Web service that automatically updates the court’s case management system with the name and contact information of a new caseworker when the agency reassigns a dependency case.

Coarse-grained access control refers to a system that authenticates and authorizes a user, and then permits the user to access any of the records. Fine-grained access control refers to a system that determines the specific records a user is entitled to access based upon the user’s credentials, the nature of the requested records, and other conditions. Those conditions are as varied as the privacy policies that organizations write, but some typical examples are the user’s asserted business purpose, the day and time of the request, the IP address of the computer from which the request originated, and whether the subject of the record has consented to the disclosure. As courts and their partners develop and implement privacy policies, they are discovering that the “all in or all out” logic of coarse-grained authorization does not fully reflect the desired or required privacy and access policies.

In California, counties administer juvenile dependency (child abuse and neglect) and delinquency (juvenile crime) matters. In Orange County, governmental agencies, including children and family services, probation, health care, education, district attorney, public defender, sheriff’s department, and county counsel, handle these matters under the supervision of the juvenile court. The work of these agencies is supplemented by nongovernmental and community-based organizations. The court and these agencies and organizations agree that coordinated and collaborative electronic exchange of the great volume information each produce is critical to better outcomes for at-risk children and families.

The Orange County Juvenile Information Content Exchange (OC JUICE) program proposes an electronic data-exchange-and-sharing system for the county’s governmental and nongovernmental juvenile-justice agencies. Such an exchange should achieve greater case-handling efficiency and better-informed decision making. Data exchanges make case handling more efficient by reducing duplicate data-entry and paper-handling costs and improving the speed at which justice-partner information is made available. Once fully implemented, OC JUICE will drastically increase the information available to a decision maker from each agency and organization that touches the lives of at-risk children and families—information that may be the key to a successful outcome.

The OC JUICE program acknowledges the fundamental tension between the 21st century’s technological capacity to freely exchange information and the imperative to limit and control what information is exchanged and with whom. OC JUICE proposes to resolve this tension by vesting in each juvenile-justice agency the responsibility for access to its information facilitated by the use of existing technologies, chiefly, the Global Federated Identity and Privilege Management model. This model is expected to permit fine-grained access control by establishing agency- or organization-defined rules articulating the role and responsibilities of the person with whom the agency’s information may be shared. Further, for county agencies interfacing with each other or the court, employee authentication, including role characteristics, will be managed by the Orange County Data Center through an OC-ID number assigned to each county employee, greatly streamlining the matching of each employee to the nature of the information they may access from the court or sister county agency.

—Judge Douglas Hatchimonji, Orange County Juvenile Court

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In our scenario, the data-exchange environment needs to evaluate several key characteristics:

- the identity of the requester (is the request accompanied by the security certificate we granted our county’s child welfare information system?)
- the type of information that is the target of the request (a child welfare case record, and specifically the data elements containing the caseworker’s name and contact information)
- the privacy rule that governs “write” access to the court’s case management system for the target data
- the condition provided in the content of the request that a supervisor with the child welfare agency has approved the new assignment

A national data-markup standard, XACML, can express all of these characteristics in a machine-readable format. Equally important, several commercial and open-source software components are now available that can evaluate and enforce XACML rules. The XACML standard is being adopted by the health-care and justice communities with whom courts need to share information, so its use should become more common.

3. Audit Logging

Real-world scenario: A party involved in a past child abuse case successfully petitions your court to correct a factual error in the final judgment. The court wishes to notify anyone who has viewed the final judgment that they, too, should correct their records.

The concept of creating a log of system actions is not new, but the traditional approach is to embed audit logs inside each application, which has had the unintended consequence of making the appropriateness of access control practically impossible to analyze. In Global’s Technical Privacy Framework, the audit log is placed outside the individual applications, and it collects information about requests and responses for the entire information-sharing enterprise. Using standard markup and centrally collecting audit data offers the potential for exposing the enterprise’s logs for the purposes of generating automatic notifications, as in the scenario described above, and using business analytics software to monitor access control proactively.

What Are the Business Advantages of the Technical Privacy Framework?

- Organizations can automate enforcement of complex and very granular (detailed) access and privacy rules.
- Enforcement infrastructures can be reused in multiple contexts for multiple exchanges.
- Rules can be changed without impacting the underlying agency applications.
- Rules are enforced even when the data “travels” beyond the agencies or agency staff involved in the original exchange.
- These are significant business benefits that were not technically possible just a few years ago. Many off-the-shelf software products include support for the necessary technical standards and capabilities.

Next Steps: Training Resources

The Global Standards Council’s Federated Identity and Technical Privacy Work Group is charged with further developing the technologies that enable the automation of access control in justice-information-sharing enterprises. In parallel, federal and state health-and-human-services agencies are pursuing automated privacy-policy-enforcement capabilities, spurred primarily by their development of electronic health records and the privacy protections required by the Health Insurance Portability and Accountability Act (HIPAA). Family and juvenile courts have information-sharing partners in both the justice and HHS realms, so encouraging the adoption of a consistent standard will be important to achieving interoperability.

With the support of the Bureau of Justice Assistance, the National Center for State Courts has developed a complete technical privacy curriculum:

- Executive Summary: a ten-minute video introducing the business need for technical privacy enforcement
- Technical Privacy Primer: a series of seven 15-minute modules that present the technical privacy framework and its components
- Readiness Assessment: an online tool designed to help your court determine its technological readiness to automate access control and to recommend practical next steps
• Detailed Implementation Guide: a deep dive into the technologies that enable automated access control, including a test environment with a sample implementation

These training resources will be available online, on-demand by the end of 2012. During your next information-sharing governance meeting, you could propose a plan for working through these training materials together, using them as a launching pad for discussions of how to automate access control.
Courts and service providers must be careful in handling sensitive information regarding the well-being of children in three crucial areas: health, education, and substance abuse. What are courts required to do under the Health Insurance Portability and Accountability Act, the Family Educational Rights and Privacy Act, and federal law 42 CFR Part 2?

UNDERSTANDING HIPAA TO OVERCOME CHALLENGES IN CHILD AND FAMILY CASES

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More courts and service providers are sharing information to provide better treatment to the children and families entrusted to their care. At one time, the Health Insurance Portability and Accountability Act’s (HIPAA’s) restrictions on sharing health information were commonly misunderstood, leading to far more restrictive interpretations than actually required. As more courts and partners share information electronically, there is much wider recognition that HIPAA allows for the appropriate sharing of information, which can improve service to children in care. Thus, it is encouraging to see what systems are doing to exchange health information appropriately while meeting the spirit and letter of HIPAA.

What Does HIPAA Actually Say?
The 1996 act has two key purposes. Title I protects health insurance coverage for workers and their families when they change or lose their jobs. Title II requires the U.S. Department of Health and Human Services (HHS) to establish national standards for electronic health-care transactions and national identifiers for providers, health plans, and employers for the security and privacy of patient health data.

Painted in very broad terms, the HIPAA rules for protected health information (PHI) exchanged by “covered entities” often give people heartburn. PHI is individually identifiable information, like Social Security numbers, phone numbers, dates of birth, photos, and, of course, health conditions. PHI is not de-identified data in the aggregate. Covered entities are health-care providers or business associates that do the billing and handle the records for health providers. For example, a mental or physical health-care provider is a covered entity. In addition, any businesses or persons that receive payment for such care and also transmit relevant transactions electronically in their normal course of business are covered entities. Medicaid and Child Health Insurance Programs (CHIP) are covered entities. If a program or entity is not providing health care, billing for it, or transmitting information related to such care or billing via electronic means, it is unlikely to be subject to HIPAA.

Police officers, probation officers, and courts have not been deemed to be covered entities. Public-health and social-service agencies have issued statements on whether or not they deem themselves to be covered entities. Even so, HIPAA actually contains a number of provisions that encourage information sharing for emergencies, for children in foster care, and for government functioning. Some states have sought legislation or policy statements that allow for sharing information in conformity with state and federal privacy laws, including HIPAA.

Authority to Share Information
Even if the privacy rule applies, HIPAA does permit disclosures “made pursuant to court or administrative orders or by subpoena, discovery, or other legal processes.” Information shared is limited to what is essential to be shared, and an authorization must contain 1) specific description of PHI to be shared; 2) names of persons authorized to share PHI; 3) names of persons authorized to receive PHI; 4) expiration date of the event; 5) statement of person’s right to revoke authorization; 6) statement that PHI may be subject to re-disclosure and thus not protected by HIPAA; 7) signature of person/guardian and date; and 8) purpose of disclosure. HIPAA does not specify what a court order should contain, but most of the information above is a good start. Motions seeking a court order need to demonstrate that the applicant has made reasonable efforts to request authorization and that the data will only be used for the reason asserted.

Greater Spirit of Collaboration and Information Sharing
Information sharing is in the air—even information once carefully guarded. A November 3, 2010 memorandum from the Executive Office of the President/Office of Management and Budget to the heads of the nation’s executive
departments “strongly encouraged” agencies to engage in coordinated efforts to share high-value data. Just last year, regulations were amended to expand use of the Federal Parent Locator Service.

However, state laws or an agency’s HIPAA officer’s interpretation may be more stringent. A legal analysis of the applicability of state and federal privacy laws governing transfer of protected health information is an excellent starting point. The California Center for Families, Children and the Courts prepared an excellent series of briefings on sharing information about children in foster care, including health care. These briefs are not an exhaustive analysis of all legal issues, but they do “provide a basis for further discussions about identifying and removing legal barriers that prevent child welfare agencies, juvenile courts, and health care providers from obtaining all the information they need to make informed decisions about health services for children in foster care.” If sharing health information is seen as an issue, it is strongly recommended that the jurisdiction review California’s document and prepare their own. Such documents can create the basis for memoranda of understanding between courts and agencies seeking to share information appropriately.

**Conclusion**
Social services, courts, schools, service providers, and others agree that health information can facilitate the provision of needed services and that electronic information exchange is one of the most efficient ways to do this. Perhaps all that is needed is a solid legal analysis of existing state and federal privacy laws, including HIPAA. Perhaps it is the creation of template court orders or memoranda of understanding. Maybe legislative changes are in order. What is certain is that the trend toward increased information sharing will continue—and will be for the benefit of children and families before the court.

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**INFORMATION EDUCATION AGENCIES CAN SHARE WITH CHILD WELFARE UNDER THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)**

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Excerpted and adapted from Solving the Data Puzzle: A How-To Guide on Collecting and Sharing Information to Improve Educational Outcomes for Children in Out-of-Home Care, a publication of the Legal Center for Foster Care and Education, prepared by the American Bar Association Center on Children and the Law, Juvenile Law Center and Education Law Center-Pennsylvania.

On any given day, there are 510,000 children in foster care in America. Education is a critical, yet often overlooked, issue for these youth—one that deeply affects their stability and well-being. A quality education can help a child in care achieve and maintain permanency. In contrast, a child’s school struggles or failures can undermine the child welfare agency’s ability to find the child a stable and permanent family. Inadequate educational support has lasting effects: it is well documented that poor educational outcomes can result in homelessness, unemployment, and incarceration for former foster youth. By collecting data and sharing information across child welfare and education systems, we can learn why and what needs to change. We can assist individual children and youth to achieve their educational goals, and help systems identify policies and practices that could better meet the educational needs of youth in care.

Data collection and sharing requires compliance with the Family Educational Rights and Privacy Act (FERPA), which protects the privacy rights of students and their parents in a student’s education records (see 20 U.S.C § 1232(g), and 34 C.F.R. Part 99; FERPA has been amended several times since). FERPA establishes which information can be shared, to whom, and under what circumstances. While FERPA is often seen as an obstacle to needed information sharing, a careful look at FERPA clarifies that with the right attention to procedures, useful information about students in care can be shared to improve direct services to individual clients, and to assess programs at a system level—while still protecting the privacy rights of students and parents.
Generally, FERPA requires states to provide for a parent’s right to access their children’s education records, and to keep those records confidential unless the parent or “eligible student” consents to disclosure (20 U.S.C. § 1232(g)(a)(1)(A)). Additionally, FERPA allows parents the right to a hearing challenging what is in the student’s education record (20 U.S.C. § 1232(g)(a)(2)). Education records are defined as those materials maintained by the educational agency or institution containing personally identifiable information directly related to a student (20 U.S.C.A. § 1232(g)(a)(4)(A)).

According to FERPA, education records can be released to child welfare in limited ways. First, records can be released with parental consent. Therefore, the child welfare agency or anyone seeking to access the child’s education records should always first attempt to seek parental consent. Some jurisdictions, including Los Angeles, California, have developed a “parental consent form” that the child welfare agency requests that the parent or guardian sign as soon as a child is placed in out-of-home care.

While FERPA refers to the rights of the “parent” throughout the law, it includes no definition of parent. FERPA regulations, however, define a parent as “a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian” (34 C.F.R. § 99.4; in response to a concern regarding foster parent access to educational records, the federal Department of Education responded, “The regulations already define the term parent in §99.3 to include ‘a parent of a student and includes a natural parent.’”). Because the child welfare agency is legally responsible for the children in out-of-home care, the agency could be considered to be a guardian, or “acting as a parent in the absence of a parent or guardian,” and therefore the “parent” under FERPA. Other jurisdictions, such as New York City, Washington State, and Florida, have overcome the potential FERPA barrier for child welfare agencies by directly including the agency in the state definition of parent by statute or regulation (see McNaught, 2005).

In the absence of parental consent or the agency being considered the parent, agencies may turn to a FERPA exception to obtain the records. The relevant exceptions are discussed below. If records are obtained under a FERPA exception, there is a specific prohibition on redisclosure. In contrast, if a child welfare agency obtained the records by getting parental consent or meeting the definition of parent under FERPA, the agency may redisclose the records.

**Student-Specific Information Sharing**

In the absence of parental consent, the most relevant FERPA exception to child-welfare student-specific information sharing is the release to appropriate persons when needed to comply with a judicial order or subpoena. Because child welfare cases are already involved with the court system, getting a court order or subpoena is often the most feasible FERPA exception. Under this exception, a court order individualized for each child may allow the school to release records to any party listed on the order, including the child welfare agency or caseworker, caretaker, children’s attorney, or court-appointed special advocate (CASA). Although guidance suggests that the court order must not be a “blanket order,” and must be individualized, it is appropriate for courts to have a habit of including language in form orders that indicates to whom school records may be released. The parent and the student must be notified of the court order by the school in advance of the school’s release of the records (20 U.S.C.A § 1232 (g)(b)(2) (A)).

**Statistical Information Sharing**

As a preliminary matter, it is worth noting that some information used for statistical analysis does not constitute an “educational record,” and does not trigger FERPA protections. Education records are defined as those materials maintained by the educational agency or institution, containing personally identifiable information directly related to a student (20 U.S.C.A. § 1232(g)(a)(4)(A)). Therefore, anonymous data (“non-personally identifying”), or information that does not directly relate to a student, or information that was gleaned from a source other than that students’ education record can be shared without triggering FERPA.

Equally pertinent for statistical information sharing, FERPA allows “directory information” to be disclosed without parental consent. Directory information includes the following: student’s name, address, telephone listing, date and place of birth, major field of study, participation in activities and sports, weight and height (for athletic teams), dates of attendance, degrees and awards received, and the most...
recent educational agency attended by the student (20 U.S.C.A. § 1232(g)(a)(5)(A)). A Social Security number or school identification number is not directory information.

In the absence of parental consent, some FERPA exceptions can prove useful for statistical information sharing. First, if the judicial system makes a practice of issuing individualized orders for each child in out-of-home care, the judicial order exception can support this level of information sharing.

FERPA also authorizes "organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction" (emphasis added). However, studies must be conducted to protect personal identification of students (i.e., a small cell size). Also, the information must be destroyed when no longer needed for the purpose for which it is conducted (20 U.S.C.A. § 1232(g)(b)(1)(F)). "Organization conducting studies" includes federal, state, and local agencies, and independent organizations (34 C.F.R. § 99.31(a)(6)(i)). The U.S. Department of Education in letters of guidance has interpreted authorized disclosure to mean a study authorized by the local educational agency or school, rather than one that benefits the local educational agency or school.

Additionally, FERPA clearly allows “authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, or (C) State educational authorities” to access student or other records, which “may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs” (20 U.S.C.A. § 1232(g)(b)(3)). The No Child Left Behind Act (NCLB) expressly authorizes state longitudinal data systems to link student test scores, length of enrollment, and graduation records over time (20 U.S.C. § 6311(b)(3)(B)). The act also vests in states the responsibility to administer assessments required under law and to provide diagnostic reports on individual students to parents, teachers, and principals (20 U.S.C. § 6311(b)(3)(C)(xii)). As a result, a state, without parental consent, may collect and store in a data warehouse personally identifiable information regarding individual student performance on state assessments, enrollment, and graduation, and may share information on student assessment results with schools attended by the students (Winnick, Palmer, and Coleman, 2006).

Based on the NCLB provision, the state may continue to use this data not only to evaluate programs, but also to track individual students and diagnose and address their individual needs and achievements. The state can share this personally identifiable information with schools attended by the student, including postsecondary schools. Collection of the personally identifiable information and its disclosure to schools attended by the students is “specifically authorized by Federal law” (Winnick, Palmer, and Coleman, 2006).

FERPA can be seen as an obstacle, but it also provides an opportunity: an opportunity to think carefully about the best strategies for sharing information to provide better individual services and improved system practices—all while respecting the privacy of students and their parents. By engaging in this work, the child welfare and education agencies can take significant steps toward better educational outcomes, and consequently better life outcomes, for youth in care.

**Update**

As of December 2011, the regulations define “authorized representative” as “any entity or individual” so designated to perform these functions (34 C.F.R. § 99.3).

Comments to the new regulations clarify that the child welfare agency may be an authorized representative:

While we agree that authorized representatives of State educational authorities may generally include child welfare agencies, authorized representatives may only access PII from education records under paragraph (b)(3) of FERPA in order to conduct audits, evaluations, or enforcement or compliance activities (76 F.R. at 75618).

The new regulations also clarify that “education program” has a broad definition, which further expands opportunities for a child welfare or education agency to evaluate a program serving youth in care:
Any program that is principally engaged in the provision of education, including but not limited to early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution (34 C.F.R. §99.3).

**SUBSTANCE ABUSE AND CONFIDENTIALITY: 42 CFR PART 2**

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Protecting confidentiality is critical in substance abuse treatment and child welfare. Both fields need to guard clients’ rights to privacy and protect against the stigma that might cause clients to avoid treatment. Yet while monitoring cases, child welfare professionals regularly need information related to diagnosis and participation in treatment. Child welfare practitioners should be familiar with the rules and regulations that govern confidentiality and the legal methods of accessing otherwise protected information.

In the substance abuse field, confidentiality is governed by federal law (42 U.S.C. § 290dd-2) and regulations (42 CFR Part 2) that outline under what limited circumstances information about the client’s treatment may be disclosed with and without the client’s consent. Determining when 42 CFR Part 2 is applicable and how to legally access information about substance abuse treatment requires practitioners to work through a series of questions.

**What Programs Are Covered by Federal Confidentiality Laws?**

42 CFR Part 2 applies to any program that 1) involves substance abuse education, treatment, or prevention and 2) is regulated or assisted by the federal government (42 U.S.C. § 290dd-2; 42 C.F.R. § 2.11-2.12).

**What Information Is Protected?**

42 CFR Part 2 applies to all records relating to the identity, diagnosis, prognosis, or treatment of any patient in a substance abuse program that is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States.

**How Can Protected Information Be Shared?**

Information can be shared if written consent is obtained. A written consent form requires ten elements (42 C.F.R. § 2.31(a); 45 C.F.R. § 164.508(c)):

1. the names or general designations of the programs making the disclosure
2. the name of the individual or organization that will receive the disclosure
3. the name of the patient who is the subject of the disclosure
4. the specific purpose or need for the disclosure
5. a description of how much and what kind of information will be disclosed
6. the patient’s right to revoke the consent in writing and the exceptions to the right to revoke or, if the exceptions are included in the program’s notice, a reference to the notice
7. the program’s ability to condition treatment, payment, enrollment, or eligibility of benefits on the patient agreeing to sign the consent, by stating 1) the program may not condition these services on the patient signing the consent, or 2) the consequences for the patient refusing to sign the consent
8. the date, event, or condition upon which the consent expires if not previously revoked
9. the signature of the patient (and/or other authorized person)
10. the date on which the consent is assigned

When used in the criminal-justice setting, expiration of the consent may be conditioned upon the completion of, or termination from, a program instead of a date.

Mandatory Disclosures
42 CFR Part 2 allows for disclosure where the state mandates child-abuse-and-neglect reporting (42 C.F.R. § 2.12(c)(6); 45 C.F.R. §164.512(b)(1)(ii)); when cause of death (42 C.F.R. § 2.15(b)) is being reported; or with the existence of a valid court order.

Permitted Disclosures
Programs are permitted to disclose patient-identifying information in cases of medical emergency (45 C.F.R. § 164.506(c); 42 C.F.R. § 2.251); in reporting crimes that occur on program premises or against staff (45 C.F.R. § 164.502(j)(2), 164.512(b)(2); 42 C.F.R. § 2.12 (c)(5)); to entities having administrative control (45 C.F.R. § 164.502(a)(1), 164.506(a), (c); 42 C.F.R. § 2.12 (c)(3)); to qualified service organizations (45 C.F.R. § 160.103, 164.504(e), (c); 42 C.F.R. § 2.12 (c)(4)); and to outside auditors, evaluators, central registries, and researchers (45 C.F.R. § 164.501, 164.506, 164.512; (c); 42 C.F.R. § 2.53 (c)-(d); 42 C.F.R. § 2.52; 45 C.F.R. § 164.512(i)(1)(ii)).

RESOURCES FOR THE PRIVACY AND TECHNOLOGY SECTION

www.americanbar.org/content/dam/aba/publications/child/education/qadatapuzzle2012.authcheckdam.pdf


http://pediatrics.aappublications.org/content/125/1/197.full.html

www.pcsao.org/HIPAA/HIPAAChildAbuse.pdf


www.cehd.umn.edu/ssw/cascw/Publications/cw360.asp


www.ncsc.org/outcomes-for-children

www.ncsc.org/sitecore/content/microsites/future-trends/home/Special-Programs/4-6-Educational-Measures-for-Foster-Care.aspx


NCSC SERVICES AND RESOURCES

Social Media and E-Communications
The National Center for State Courts (NCSC) is reaching out to courts, the public, and those interested in the judiciary through a variety of social-media outlets, e-communications, and blogs, all of which allow NCSC to share important, up-to-the-minute information quickly. In addition to its Facebook account, NCSC currently maintains six Twitter accounts, each designed to provide targeted content:

- @statecourts, the main feed for NCSC
- @GaveltoGavel, which provides a weekly review of legislation affecting the courts
- @NCSC_ICM, which features news from the National Center’s educational division
- @NCSCIntl, which provides updates from the International Division
- @NCSCLibrary, which contains news from the world’s leading collection of judicial administrative titles
- @NCSCNewMedia, which follows the impact of new media on the courts

In addition, NCSC offers a number of e-publications that explore issues relevant to state courts. The current offering includes the following:

- @ the Center, highlighting NCSC’s major projects, publications, and conferences
- Connected, exploring how courts use and are affected by new media
- Federal Funding Report, providing courts with tips about grants from federal and private funding sources
- Gavel to Gavel, reviewing state legislation affecting the courts
- Jur-E Bulletin, containing news about jury management
- NCSC Backgrounder, providing the media and individuals with statistics and facts related to current issues
- State Courts and the Economy, offering insight into how state courts are coping with the economic downturn

To subscribe to any of NCSC’s e-publications, visit www.ncsc.org/Publications/Newsletters.aspx.

For those interested in regular updates and in-depth information on technology and legislative trends, the National Center offers the Court Technology Bulletin blog, located at http://courttechbulletin.blogspot.com, and the Gavel to Gavel blog, located at http://gaveltogavel.us site.

OTHER NCSC RESOURCES

Annual Report 2011: 40 Years of Bringing the Courts’ Perspectives into Focus
NCSC’s 2011 Annual Report, “40 Years of Bringing the Courts’ Perspectives into Focus,” highlights achievements and projects through the 2011 calendar year. The Annual Report takes a fresh approach, showcasing NCSC’s work through short stories, compelling quotes, and telling numbers. The report documents how NCSC became the national voice on the state court funding crisis, helped reengineer courts in more than 25 states, established a blueprint to help courts deal with the impact of an aging population, and hosted the 2011 Court Technology Conference.
NCSC Educational Opportunities to Implement Court Improvements

NCSC’s Institute for Court Management, ICM, has developed a new curriculum on High Performance Courts, intended to help courts improve their business practices as a means to improving access to and the quality of justice. Using many existing court performance measurement tools and new research about how highly performing courts work, the course is designed to help court leaders move beyond measurement to improving court performance. For more information, go to www.ncsc.org, “Education and Careers.”

Budget Resource Center

Courts looking for guidance in tough budgetary times can turn to NCSC’s Budget Resource Center at www.ncsc.org/brc. Features include a Google news feed for up-to-date information, links to NCSC publications related to court budgets, an interactive map of state activities regarding budgets, and resources directed toward more specific topics, such as collecting fines and fees.

NCSC Graphic Novel Series

In July 2012, NCSC releases the fourth in a series of its Justice Case Files graphic novels that educate the public about how the courts work. Justice Case Files: The Case of the Broken Controller, is a narrative coloring book for elementary school students. It tells the story of Tyler, who says his friend Dylan broke his video controller and he wants Dylan punished. Tyler’s mom takes him to the courthouse to show him how to pursue justice.

NCSC Services and Resources

The other books include Justice Case Files 1: The Case of Internet Piracy; Justice Case Files 2: The Case of Identity Theft; and Justice Case Files 3: The Case of Jury Duty. The story lines and content were developed by judges, court administrators, and other legal professionals. Two social studies teachers developed comprehensive lesson plans for each of the first three books.

Review the books at www.ncsc.org. To order, please contact NCSC’s January Serda, jserda@ncsc.org.

Judicial Salary Tracker

NCSC’s Judicial Salary Tracker makes it easier for users to find court salary data and provides the ability to create customized reports. The new interface allows users to get the latest on judicial officers’ salaries and to draw on 10 years of data to compare actual and inflation-adjusted salaries by positions across states. The Tracker also allows users to build custom charts to compare salaries of general-jurisdiction judges in their states to other states. Use the Judicial Salary Tracker at www.ncsc.org/salarytracker.

Center for Elders and the Courts

The Center for Elders and the Courts (CEC) serves as the primary resource for the judiciary and court management on issues related to aging. CEC strives to increase judicial awareness of issues related to aging, provide training tools and resources to improve court responses to elder abuse and adult guardianships, and develop a collaborative community of judges, court staff, and experts on aging. CEC’s Web site can be found at www.eldersandcourts.org.
ICM Fellows Program
The ICM Fellows Program is the flagship educational program of NCSC’s Institute for Court Management (ICM). The only program of its kind in the United States, the Fellows Program is dedicated to developing the leadership skills of those pursuing a career in court administration. Graduates of this rigorous, four-phase program—which challenges participants to develop analytical, administrative, and communication skills—earn the distinction of becoming a Fellow of ICM. Certification is often a requirement for upper-management positions in the state courts. For more information, go to www.ncsc.org, “Education and Careers,” “Certification Programs,” “ICM Fellows Program.”

Court Consulting Services
NCSC’s Court Consulting Services group provides direct consulting services to improve the management and operation of state appellate courts and state and local trial courts. We not only work with courts and judges to promote improvement and streamline justice processes, but also provide consulting services to other agencies engaged in state and local justice services, such as probation and community correction departments, as well as cities, counties, and state governments. Court Consulting Services maintains a team of experts in a variety of disciplines, including:

- Children and Families
- Court Facilities

Online, Interactive Data from the Court Statistics Project
Two of NCSC’s most popular annual publications, Examining the Work of State Courts and State Court Caseload Statistics, deliver more than the most accessible, up-to-date analysis of caseload trends in the state courts. Online, interactive features now allow users to download the data represented in charts, tables, and graphs and navigate to related reference documents on the Web. Users can also query the Court Statistics Project’s database by state or geographic area, as well as download pdfs of CSP’s latest reports. For more information, go to www.courtstatistics.org.

To learn more about Court Consulting Services, please check the National Center for State Courts’ Web site at www.ncsc.org/services-and-experts.aspx; call 800-466-3063; or e-mail Laura Klaversma at lklaversma@ncsc.dni.us.
The Justice System Journal
The National Center for State Courts’ Justice System Journal is a refereed, scholarly journal dedicated to judicial administration that features the latest scholarship on topics of interest to judges, such as “alternative” courts, court administration and management, and public perceptions of justice.

Published three times per year; rates are $40/1 year, $70/two years (international subscribers, except Canada, should add $30 for delivery via air mail PMT). For more information and to subscribe, go to www.ncsc.org/jsj.

NCSC Technology Services
NCSC is dedicated to helping courts make the best and most economical use of the latest technology to improve their operations. Products and services include:

- The Court Technology Framework
- Development of technology standards in cooperation with the Joint Technology Committee, Department of Justice, Department of Homeland Security, and many other justice system partners
- Technical assistance to courts and justice system partners
- Research and information on emerging technologies that may be beneficial to courts
- Technology Vendor List
- Court Technology Bulletin blog
- Technology-consulting services in cooperation with NCSC’s Court Consulting Division

For more information, contact technology@ncsc.org.

e-Courts 2012
December 10–12, 2012
Red Rock Resort
Las Vegas, Nevada

e-Courts features proven examples of court productivity due to technology solutions. e-Courts, celebrating its 10th anniversary, brings together more than 400 court technologists, judges, court administrators, court managers and other court professionals for education sessions and an exhibit show designed for one-on-one interaction with technology vendors.

NCSC International
NCSC International serves institutions and organizations worldwide that are seeking innovative solutions to justice system problems. Efforts abroad include reforming and modernizing the justice sector, including:

- Management and administration
- Education and training
- Justice system organizations and governance
- Judicial independence
CALL FOR ARTICLE SUBMISSIONS

*Future Trends in State Courts* is an annual, peer-reviewed publication that highlights innovative practices in critical areas that are of interest to courts, and often serves as a guide for developing new initiatives and programs, and informing and supporting policy decisions. *Future Trends in State Courts* is the only publication of its kind and enjoys a wide circulation among the state court community. It is distributed in hard copy and electronically.

Submissions for the 2013 edition are now being accepted. Please e-mail abstracts of no more than 500 words by October 15, 2012 to Carol Flango at cflango@ncsc.org. Abstracts received after this date are welcome and will be considered for later editions.

Justice Eileen C. Moore was charged with finding artwork for the new 4th District Court of Appeal building in Santa Ana, California with no budget. She contacted the school superintendent and then the probation department got involved. Students read court cases and depicted them in murals. This year’s Trends cover was created by a 17 year old at Juvenile Hall. The case involved gang violations and disfiguring a public place and the young artist had also been charged with graffiti crimes. The resulting mural hangs in the courthouse, along with more than a dozen other paintings depicting Orange County, California cases.
FUTURE TRENDS IN STATE COURTS

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