

Judging: An Occupation and Skills Analysis *Implications for Educators*

Livingston Armytage

Just as it may be true that the judicial "art" that distinguishes the great judge from the ordinary one cannot be taught, so also the education of judges cannot fully be reduced to scientific method. Some measure of mystique may always separate the exemplary from the pedestrian. This does not, however, diminish the need for effective judicial education.

Educators should undertake an occupation/skills analysis of the judging role. Sometimes described as a competency analysis, it is an integral element of any training needs assessment and will identify what judges actually do in day-to-day practice. It provides the means for educators to design services that are useful for judges at a transactional level.

If we accept that the mission of judicial education is to promote improvements in the professional performance of judges through learning, we will also recognize that the role of judicial education is to develop the competence of judges to do their job—judging. In this way, judicial education contributes improvements to the equality of justice.

Judicial competence can be defined in various ways, but, in essence, it is the ability to perform a range of tasks through the application of knowledge and skills to the resolution of particular problems according to certain standards of

conduct and ethics. Competence can imply minimal benchmarks of capability across which base-level education programs aim, or it can be seen as an aspirational career-long continuum along which even the most experienced judges continually traverse.

Recognition of this distinction is useful because it delineates between the two broad approaches to education. On the one hand, judicial education can help judges do their job better, which is the behaviorist or competency approach to occupational training; on the other, judicial education can help judges be better judges through facilitating personal awareness and critical self-reflection on attitudes and values, which is the dispositional approach to learning.

This distinction presents two challenges: the challenge for judges is to embrace demonstrably the pursuit of juristic excellence as a means of providing social accountability, thereby preserving judicial independence; the challenge for judicial educators is to design programs that integrate these behavioral and dispositional goals in a way that delivers practical, recognizable benefits for judges.

Undertaking an occupational analysis of judging provides a means of meeting both of these challenges through identifying the

tasks that make up the judicial role and creating an inventory of the knowledge, skills, and disposition that are required to perform that role competently.

While I believe that the competency approach to the judicial function fails to provide an adequate explanation of exemplary judging—that is, consummate judging comprises many intellectual and dispositional aspects that make it much more than the sum of the observable tasks that are performed, it is, equally, no longer adequate to assert that good judges are born as good judges or alternatively that they evolve through some mystical process to that state. Both good judges and good judicial educators learn their crafts on-the-job through observation, practice, reflection, and refinement. This process can be, and often is, facilitated through educational support.

Thus, the analysis of lawyering skills known as the "McCrate Report," which was undertaken by the American Bar Association in 1992, has immense practical value in demystifying outmoded notions of the lawyer's art being intuitive and thereby somehow beyond the attainable realm of effective training.

McCrate identified ten fundamental

continued on page eight

Livingston Armytage is a consultant in judicial education and author of Educating Judges, a monograph on judicial education published by Kluwer Law International (Boston and London).

In This Issue . . .

Judging: An Occupation and Skills Analysis

Strategic Planning: A Training Curriculum for Judges

Site Inspection for Accessibility

Conference Highlights

PRESIDENT'S COLUMN

Kay S. Palmer



We are legal! This year NASJE turns 21—a time to celebrate and a time to reflect as we enter our adult years. We have accomplished much during our short time as an organization, and we have much left to accomplish. We truly are at a place in our development where we are faced with significant opportunities for growth.

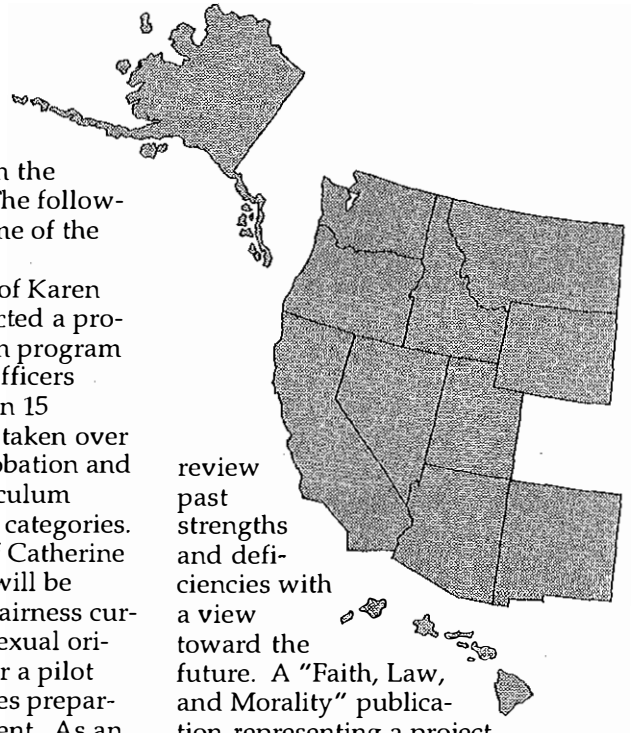
It does not seem possible that I have been NASJE president for one year. As you know, I am the second one-year president under the new NASJE bylaws. I am also the first president to have become president by automatic succession, from vice-president to president-elect to president. The NASJE board will reassess the questions of presidential term length and succession during Karen Thorson's term.

This year our association accomplished two significant goals. Thanks to the work of Karen Thorson and the committee chairs, we now have in place a policies and procedures manual. More and more members are interested in serving their profession by participation in NASJE's committees. The manual will be a living document that can be used to guide NASJE's business for some time to come.

Major among our accomplishments has been securing the services of a secretariat. Partners in Justice will begin serving as

continued on page 7

WESTERN REGIONAL NEWS



What are we doing in the Western Region? The following are updates from some of the states.

Under the leadership of Karen Thorson, Arizona conducted a probation officer certification program in which 250 probation officers completed the program in 15 months. They have also taken over training for intensive probation and developed training curriculum packages for thirteen job categories.

Under the direction of Catherine Lowe, CJER (California) will be offering its first judicial fairness curriculum on the issue of sexual orientation. It will also offer a pilot program for retired judges preparing to return on assignment. As an addendum to the Retired Judges Institute, CJER will provide training for the newly appointed thirty-member "Three Strikes Strike Force." This group will be assigned to reduce calendar backlog resulting from the "three strikes" legislation.

Annabel Chotzen of Hawaii is busy conducting education in the area of domestic violence. Hawaii has also conducted a program on judicial skills and literature, both of which were a success. Staff are also beginning to look at educating judges on alternative sentencing options due to prison overcrowding.

Under the direction of Paul Biderman, New Mexico is planning a regional teleconference on hate crimes for which it has State Justice Institute funding.

Mary Frances Edwards of the National Judicial College is very busy this year. The college recently concluded a conference on "Media and the Courts," and in the area of Master of Judicial Studies it has ninety-two candidates and fifty graduates. Jim Toner from the National Council of Juvenile and Family Court Judges has the new "Janiculum" project involving commemoration of the 100th year of existence of the juvenile court in the United States. The project will

review past strengths and deficiencies with a view toward the future. A "Faith, Law, and Morality" publication representing a project of the same name was recently published and a major national conference is planned for March 1997, focusing on "Making the Case for Juvenile Justice."

Under the direction of Nori Cross, the Oregon AOC is consolidating judge and staff education into a single education division. Nori will oversee the judges' education. By the end of the year, two individuals from the Oregon AOC personnel department will join her and be responsible for staff education. Nori has also received a JERITT grant for technical assistance with Maureen Conner. Maureen will facilitate a planning session to design a development and growth plan for the division. Nori would love any good advice from those of you who have already consolidated these functions. ■

Mark Your Calendar Now . . .

. . . for the 1997 annual conference, October 5-8, at the Cal-Neva in Lake Tahoe, Nevada. ■

Magic in Orlando: 1996 Annual Conference

The Legal Affairs and Education Division of the Florida Office of the State Courts, under the able leadership of Dee Beranek, hosted a twenty-first birthday celebration for NASJE in Orlando, Florida, October 13-16. The opening reception featured a disc jockey, who led the festivities. Members and guests on hand will never forget Blan Teagle and Susan Leseman's rendition of Meatloaf's "Paradise by the Dashboard Light"! The Royal Plaza, the conference hotel, was located on Disney property, so the Magic Kingdom and Epcot were only a quick shuttle ride away. The annual banquet was held at the elegant Maison et Jardin, one of Orlando's most acclaimed restaurants.

At the business meeting, NASJE members elected new officers: Karen Waldrop Thorson (Arizona), president; Ellen Marshall (District of Columbia), president-elect; Blan L. Teagle (Florida), vice-president; Franny Maguire (Delaware), secretary; and Elizabeth L. Hodges (New Hampshire), treasurer; John Meeks (Ohio) director, Midwestern Region; and Michael Pack (Kentucky), director, Southeastern Region. Richard Saks (New Jersey), director, Northeastern Region, and Judith Anderson (Washington), director, Western Region, complete the 1996-97 board.

The Education Committee, under the leadership of chair Blan Teagle, put together an excellent educational program. A day-long curriculum for new judicial educators and a refresher for veterans was coordinated by Franny Maguire and Kenneth Miller. This well-attended program had about thirty participants, and, surprisingly, the veterans outnumbered the new educators. This, of course, provided for a rich exchange and fruitful cross-pollination of ideas. Franny and Kenny wisely selected Karen Thorson, the incoming president, to be the faculty team leader. Karen started off the morning with a very important session on creating presence within the judicial education organization. She was followed by

Gordon Zimmerman and Alayne Casteel, who offered a presentation on curriculum planning and instructional design. Mary DeCarlo, Pamela Bullock, and Franny formed a helpful panel of experts on seeking and securing judicial education funding.

Kenny Miller offered an early afternoon session on the nuts and bolts of effective meeting planning, hotel and facilities negotiation, and program management. Then Rich Reaves provided a thought-provoking session on ethical considerations for judicial educators and offered several hypothetical scenarios for consideration in small group discussions. Throughout the day, faculty continually referenced Karen and Maureen Connor's excellent monographs (JERITT Monographs IV and V) on curriculum planning and program management.

Following these new sessions was the traditional orientation to NASJE provided by outgoing president Kay Palmer. Kay conducted an intimate roundtable discussion with new judicial educators and made them feel welcome to the organization. She also reminded them of the unique contribution all members make with our diverse professional backgrounds. The outgoing president closed the day much as the incoming president began it, by encouraging involvement in the organization and by demonstrating the mutual care and collegiality that are the hallmark of both Kay's and Karen's professional life and a primary reason for their success. Blan Teagle extends a special thanks to Karen, Kay, Franny, and Kenny for their hard work and for providing just the right degree of challenge and support so critical to the development of new and veteran judicial educators in beginning what the Education Committee



Karen Thorson



Arthur Teitelbaum

hopes will be established as an annual event.

Fear, Alienation, and Hate

The opening education session featured Arthur Teitelbaum, director of the Anti-Defamation League (ADL) of B'nai B'rith in Miami, Florida, who spoke about conflict, fear, hate, stereotypes, and alienation. He claimed those emotions and behaviors have been the taproot of every generation throughout time. As part of a moving stream of humanity we are likely to repeat all the errors of previous generations. Every generation has to learn the lessons over again.

Mr. Teitelbaum went on to state that people have choices and often choose poorly. He asked us to think about what people do when they're scared: they become convinced that "others" will harm them. They label people and call them names (one of the first signs of hate). The notion of separation has value to those who fear. In 1994 the ADL produced *Armed and Dangerous*, a publication about militias. Separation provides energy for the militia movement. Mr. Teitelbaum warned us not to underestimate the power of language, the power of rhetoric. Ruby Ridge and Waco became tools for the larger ideology.

What can we do? We need a continuity of information over time, an accurate understanding of the past. Our challenge, paradoxically, is to minimize the danger separatists represent and to exaggerate that danger.

continued on page four

Magic in Orlando: 1996 Annual Conference, *continued*



Mary Frances Edwards



Judge Ernest Borunda

How can we take the broader topic of hate, alienation, and fear and apply it to the courts? We must first become educated and then inform players in the judicial system, the court personnel. We must relearn the lessons of what built democracy to begin with.

Jurists who are afraid think differently from jurists who are not afraid. This has a tremendous potential effect on the courts. We must teach the problems of extremism and hate and their effects. We must teach both institutionally as well as personally. The first line of defense is at the dinner table. Family members need to discuss the problems of extremism and hate. If we do not, our silence will speak volumes.

Ethics for Educators

Dee Beranek, of the Florida Legal Affairs and Education Division, facilitated a session on the role of judicial educator and whether it is appropriate for educators to promote and encourage curriculum development in areas of cultural diversity, ethical growth, and moral development. Discussion also focused on who should decide the focus, scope, and direction of judi-

cial education. Dee recommended three books to us: Benjamin Cardozo's *The Nature of the Judicial Process*; Robert Keegan's *The Evolving Self: Problems and Process in Human Development*; and *Responsible Judge: Readings in Judicial Ethics*, edited by John T. Noonan and Kenneth L. Winston.

For the remainder of the education program, participants could choose from three tracks.

Track I: Guns and Gavels

This session was highly informative regarding the history and development of common law courts, militias, and white supremacy groups, and how their current tactics are to target court systems. Devin Burghart and Patricia McGuire, of the Coalition for Human Dignity, provided an understanding of the basic rationale of these groups, although they freely admitted that we might not be able to understand their logic! Religion is usually a component of these groups, the largest segment being the "Christian Patriot" movement, which is an anti-Semitic and racist version of Christianity that promotes "constitutional fundamentalism." They believe in a conspiracy against white Christians and are anti federal government. They have a very narrow definition of "citizen" and use their own court system to prosecute charges against noncitizens (which is pretty much everyone else but them). These common law courts have entered charges and sentences

against judges and court personnel in a number of states. Additionally, these groups are filing bogus documents in county courts, and in California, one court clerk was physically abused because she refused to allow an individual to file his documents. The facilitators provided sample documents used by these groups, as well as other resources.

The session divided into three groups to design curricula using the Presentation Proposal on page 208 of the JERITT monograph *Curriculum, Program, and Faculty Development: Managing People, Process, and Product*. Some of the group learnings were to:

- Have protocol and procedures for handling individuals in place before designing curriculum.
- Avoid creating fear in people; don't demonize separatists, but strive toward providing access to all.
- Identify all audiences needing information and train staff as well as judges (don't forget the staff at the AOCs).
- Explore alternative approaches to incorporating the issues in educational programming. For example, in law and literature courses use the play *God's Country*, which is based on the Silent Brotherhood and is an excellent vehicle for discussion.
- Seek opportunities for cross institutional education, looking beyond the boundaries of judicial education.

Track II: Diversity Curricula

Developed by facilitators Catherine Lowe and Judge Ernest Borunda, this session provided curriculum development approaches and sample curricula applicable to the needs of judicial educators in their respective states. The goals of the session were to enable us to (1) better understand the basic terminology of diversity education; (2) know how to create a supportive organizational climate for diversity education; (3) examine our own attitudes toward the delivery of diversity education in our home states; (4) acquire tools for increasing learner receptivity; (5) become acquainted with



L. to r.: Phil Schopick, Mary Frances Edwards, Kent Wagner, Jim Kelley, and Janet Toussaint.

national and state models for diversity education; (6) discuss elements of diversity curricula that do and do not work; (7) participate in the development of model curricula, and (8) take home a partial list of diversity faculty/consultants.

Richard Reaves, director of the Institute of Continuing Judicial Education of the University of Georgia School of Law; Louis Kelly, of the Education and Training Office of the District of Columbia Courts; and Mary Frances Edwards, academic director of the National Judicial College presented model curricula. We also participated in group exercises to check our own fairness quotients and to identify the preferred elements of a diversity curriculum.

Track III:

A Practicum in Critical Thinking

After his previous presentation on "Fear, Alienation, and Hate," Arthur Teitelbaum continued his

engaging and challenging presentation. While this session was on critical thinking, Mr. Teitelbaum described how the human animal is the only logical and illogical animal in the animal kingdom. We are able to use ideas, abstract thinking, clear, precise, accurate, profound and fair thoughts, as well as an array of exactly the opposite adjectives. Humans are "awash with such contradictions," Mr. Teitelbaum reported. It is these contradictions that he termed "paradoxical dichotomies." We should not believe without question what spontaneously emerges in talks or even in our minds. We should not accept everything that we are taught as necessarily being true, but should cultivate habits and traits to incorporate informed decisions in our lives.

Mr. Teitelbaum then used examples including the *Movius Loop*, wherein we should "expect the unexpected." "What one sees is not

always what one gets." Other exercises included "thinking outside the lines" and the "six" exercise. Touching on discrimination, prejudice, bigotry, stereotypes and generalizations, and ethnic humor, Mr. Teitelbaum amplified his main point about the nature of human nature, and how human beings are "filled with surprises." Keeping this in mind should inspire us to be more understanding, objective, and analytical in our understanding of behavior and human actions.

Where Do We Go From Here?

The conference ended with a general session where participants briefly discussed educational program changes and what NASJE needs to do administratively in the coming year.

If you were unable to attend this year, please join us next year in Lake Tahoe, Nevada, October 5-8, 1997. ■

Person on the Street Interview

Roving *NASJE News* reporters continued the tradition of conducting "person on the street" interviews at the annual conference. This year's question: What are some of the things that should be taught now that might be needed 10 to 15 years from now?

Susan Leseman, of Tallahassee, Florida, responded that "courtrooms will change. The dynamics of controlling the courtroom will change since the courtroom will be in the home. More litigants will be at home using the television set as a means of communication. We will provide pro se learning via TV. How do you handle contemptuous conduct vis-à-vis the home? We will be teaching demeanor in front of the television camera [and] optic cable/use of the Internet. Others' lives will be impacted by the information, resources, budgeting, court facilities, planning.

"For training judges, there'll need to be more emphasis on mediation, communication skills with litigants and attorneys. There will be a need to teach the sense of community with the courts being a part of

community with all the functions and aspects that that entails.

"The legal implications of the ownership of or access to genetic information will have to be addressed. With an aging population, the philosophical reasons for and against the practice of euthanasia need to be discussed."

According to **Lansford W. Levitt**, of Reno, Nevada, judges will increasingly need more management skills, including courses in strategic planning and organizational structure. The role of the judge continues to broaden, so judges also need education in collaborative problem-solving techniques as they

interface with other agencies in the justice system.

Alanna Moravetz, of St. Paul, Minnesota, believes that both judges and court personnel should be taught the skills they need to adapt to an ever-changing world in two strategic areas: technology and diversity. In addition, it is important to teach judges skills for stress management and self-renewal. In the past lawyers who had practiced for years ended their careers with five to ten years on the bench. Now, young lawyers are appointed to the bench and can spend twenty-five years as judges handling increasing caseloads and difficult decisions. ■

NASJE Secretariat

The NASJE Board of Directors has chosen Partners in Justice to serve as the association's secretariat beginning January 1, 1997. Partners in Justice is a con-

sulting firm; its principals are Dennis Catlin, Anthony Fisser, Barbara Hollembaek, and Esther Bauman. ■

Strategic Planning: A Training Curriculum for Judges

John A. Martin, Brenda J. Wagenknecht-Ivey, and Steven Weller

During the past three years, the authors of this article have helped nine courts and court support agencies from diverse jurisdictions across the nation develop long-range strategic plans for their organizations and institutionalize ongoing strategic planning and management. Working under the auspices of the Center for Public Policy Studies, with funding from the State Justice Institute (SJI), these organizations have used an eight-step planning approach.

Each of the nine groups overcame numerous obstacles when implementing successful strategic planning and management efforts. Collectively, their experience provides many important lessons for other trial courts, state court systems, state court administrative offices (AOCs), and judicial education organizations committed to providing high quality services in rapidly changing and increasingly challenging justice system environments.

This article outlines a training curriculum in strategic planning for judges based on the general lessons about court strategic planning and management revealed in the collective experience of the nine jurisdictions.

The Eight-Step Planning Process

Step 1: Initiating and Agreeing on a Planning Process. The planning process must be structured to include appropriate participants who share a common understand-

ing of the value, purpose, scope, benefits, mechanics, and potential implications of long-range strategic planning.

Steps 2 and 3: Defining Purpose and Direction. Developing an Organizational Mission and Vision.

A mission statement and the process of creating a mission statement help provide that sense of purpose. A vision statement describes what an organization desires to become.

Step 4: Shaping the Justice System Future: Examining Trends and Trend Implications. Trends analyses identify the nature, magnitude, and sources of demands likely to be placed on the courts and court support organizations in the future and the potential implications of the demands on the structure, organization, and operations of the organization.

Step 5: Conducting an Organizational Assessment. An organizational assessment describes the structure and operation of an organization and identifies its strengths and weaknesses.

Step 6: Identifying Strategic Issues and Developing Strategies. Strategic issues are the trends, events, or policy choices that affect the basic mission, values, and activities of an organization and the organization's capacity to respond to service demands. Strategies encompass the policies, programs, actions, and decisions that define how a court or court support organization can position itself to respond to strategic issues.

Step 7: Implementing Strategic Planning and Management.

Successful implementation of the strategic plans prepared in the demonstration projects requires movement in each jurisdiction from strategic planning to strategic management.

Step 8: Institutionalizing Strategic Planning and Management. Successful implementation of the strategic plans pre-

pared in the demonstration projects requires movement in each jurisdiction from strategic planning to strategic management.

Implementing the Planning Process

The discussion below outlines the topics that should be included in any judicial training curriculum on strategic planning to help judges assess what approaches might work best for an individual jurisdiction, based on what was most and least successful in the nine demonstration projects. The following topics will allow participants to (1) benefit from the experiences and perspectives of the demonstration projects and adapt their planning processes accordingly; and (2) consider the lessons learned from each phase of the planning process to avoid pitfalls and enhance the process and the ultimate outcomes.

1. Initiating the Strategic Planning Process

It is critical to set up the planning process to ensure that it is structured to include appropriate participants who share a common understanding of the value, purpose, scope, benefits, mechanics, and potential implications of long-range strategic planning.

In this section of the course, participants will learn how to:

- establish commitment, support, and involvement by top leadership;
- introduce long-range strategic planning at the beginning of the process;
- select a strategic planning committee of appropriate size and composition;
- set a meeting schedule of appropriate frequency and duration;
- develop the role of strategic planning coordinator;
- obtain and work with experienced external facilitators; and,
- find appropriate meeting facilities.

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2. Maintaining Momentum During the Strategic Planning Process

Interest, enthusiasm, and momentum are difficult to maintain throughout an intermittent planning process. In fact, interest, enthusiasm, and momentum wanes easily and quickly if a conscious effort is not made to sustain them over time.

We have found that the long-range strategic planning process is a new and difficult process for most committee members. It challenges members to think globally (for the entire organization) and for the long term. They must think beyond immediate concerns and well into the future. They must also function as a productive group in a very short period of time and develop a plan by building consensus. Finally, they must resist moving to "solutions" too hastily; rather, they must be analytical and systematic in their planning efforts. Given the demands placed on committee members, it can be a challenging and trying endeavor.

In this section of the course, participants will learn how to:

- sustain ongoing leadership involvement, encouragement, visibility, and feedback;
- provide continuity between the planning sessions and planning steps;
- inform and involve staff and external stakeholders throughout the process by communicating

progress and soliciting feedback; and,

- promote healthy group dynamics.

3. Implementing the Strategic Plan and Institutionalizing Strategic Management

Completing the initial planning process is only the beginning of a long-range strategic planning effort. Organizations that embark on a long-range planning process must realize that their work does not end after six months. Rather, the "real" work of implementing the plan and institutionalizing strategic management begins after the initial planning effort is completed.

The long-range strategic planning process is useful to the organization only if there is follow-through. However, following through on the plan and ensuring that strategic management becomes institutionalized often yields to immediate pressures and demands and traditional management habits. Experience has shown that it is difficult to remain focused on the long term and be proactive when immediate crises are always present. Further, organizational change occurs slowly and can be tedious and frustrating. Consequently, implementation and institutionalization requires relentless commitment and considerable focus and perseverance.

In this section of the course, participants will learn how to:

- maintain top leadership support, commitment, and action;
- set up work and task groups to involve a wide range of staff in implementing the strategic plan;
- develop the position of strategic planning coordinator;
- plan and conduct annual review meetings;
- assure ongoing development of staff in long-range thinking and managing and working strategically; and,
- assertively implement organizational change.

Conclusion

The nine demonstration sites have shown that strategic planning can result in numerous short-term, intermediate, and long-term benefits for diverse trial courts, state court administrative offices, judicial education organizations. The collective experience of the nine demonstration projects also revealed that completing each of the eight steps in the approach is important, but the particulars for how each step is carried out can, and should, be adapted to meet local court and court support agency needs. The eight-step long-range strategic planning approach is amenable to continuous modification and improvement. This training curriculum for judges is aimed at those goals. ■

President's Column, continued

NASJE's secretariat on January 1, 1997. This is a significant step in our growth as an organization.

I have decided not to attempt to name all of those members who assisted me in numerous ways during this year to accomplish the work of our association. I am indebted to each of those people and stand ready to assist them.

Having served as chair of a NASJE committee, as southeastern representative, as treasurer, as vice-president, and as president-elect, I thought I had an understanding of the responsibilities of being president of your

association. During these past twelve months I developed a new respect for the eleven people who served as president before me. I honor each of them for their contributions to our coming of age.

I extend a very special thank you to Dee Beranek, Susan Leseman, Blan Teagle, and their coworkers for their tireless efforts in hosting this year's conference.

I leave this office with a renewed resolve to assist where I can to further the goals of NASJE. ■

Transitions

Maureen Connor has been named director of the JERITT project. Diane Cowdrey received the Judicial Administration Award of the Utah Judicial Conference. Virginia Leavitt has joined the staff of the AmidEast project in Cairo, Egypt. ■

Membership Information

To receive NASJE membership information, contact Sherry Carson, chair of the Membership Committee, at (706) 542-7403. ■

Judging: An Occupation and Skills Analysis, *continued*

lawyering skills, together with four fundamental values of the legal profession. These skills are problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas. The values are provision of competent representation; promotion of justice, fairness, and morality; improvement of the profession; and professional self-development. Having identified each skill and value, the report then reduces each quality to a series of its component concepts and tasks in a form that is amenable to explicit instruction and external evaluation.

For judicial educators this raises the question: How much of the judge's role is similarly reducible to distinctive skills, values, concepts, and identifiable tasks?

There is considerable synergy between lawyering and judging in terms of fundamental professional competencies. Clearly, certain professional skills and values will be generic to all law professionals. Differences in the role and responsibilities of judges are, however, likely to give rise to the need for distinctive skills of judging. Moreover, fundamental differences in the judge's role give rise not only to differences in the nature of the skills required, but also the identity of the skills and values themselves.

So, what are the fundamental skills and values of judging?

Judges as law professionals clearly require generic skills of legal research, legal analysis and reasoning, and factual investigation similar to those of practicing lawyers. To recognize these needs as being compatible with those of practitioners should not, however, imply to educators that all those who come to the bench, as practitioners, may possess appropriate and adequate skills.

Skills of factual investigation, problem solving, communication, litigation, and dispute resolution will certainly also be required, but, owing to the distinctive role of the judge, these skills are likely to be

different from those normally practiced by lawyers: for example, the judge as investigator of fact operating within the common law adversarial system of justice is not a detective of information in the sense of an advocate searching for supportive evidence; rather he or she is the weigher of relative propositions determined by technical formulas of corroboration and consistency. Equally, the judge as communicator is concerned with addressing diverse audiences: the parties in court, school children visiting the courtroom, the media, the public at large, and perhaps even appellate judges, to name but a few. Evidently, the tasks to be undertaken in communication will not be identical in these respective roles.

Similarly, work skills or organization and management are obviously required, but within the differentiated domains of judicial administration, both trial management and caseload management are now recognized as special skills for which lawyers are not generally well experienced or equipped.

In relation to the values of judging, the capacity to recognize and resolve ethical dilemmas is not only shared but must be consolidated from the bench. The role of preserving the fundamental values inherent in our systems of justice, such as the provision of competent representation and striving to promote justice, fairness, and morality, all call on the judge to play a guardian role with a vigilance that goes beyond what is required of the practitioner.

Depending on role and jurisdiction, skills of counseling and negotiation may not be required by judges in the same measure, or even at all, as they will be needed by practitioners.

So, only some of the professional skills of lawyering are generic to judging. What, then, are the non-generic skills and values that are distinctive to the judicial role?

Most obvious is the need for adjudication skills. These are unique to the role of judging, and yet how explicitly has adjudication method been advanced in training terms? Remarkably rarely!

Equally important are decision-making skills. While decision making is obviously integral to the judicial role, it is clear that this process is far removed in its method from other forms of decision making. Thus, it may be banal to observe that a judicial appointee experienced in managerial decision making may nonetheless be ill-equipped in the skills and methods required for judicial decision making.

So, is the skill of judicial decision making just a matter of "being decisive"? In other words, is it a quality we welcome when we see it displayed on the bench by our favorite judge in a complex and elongated trial and mourn in its absence? Is it either "there" or "not there" like great art and thereby, implicitly, untrainable? Or, alternatively, is it a science reducible to component tasks that are capable of observation and instruction? While any skill may in part be art and science, my analysis of the reasons for appeal courts upholding reviews on the basis of defective decision making by trial judges indicates that much of the judicial decision-making method is reducible to teachable tasks.

What, then, are these component tasks that make up the skill of judicial decision making? In my observation, they consist of the following:

- Task One: Definition of the issue of the case.
- Task Two: Determination of the facts in dispute.
- Task Three: Research of relevant statute and case law.
- Task Four: Application of law to facts.
- Task Five: Formulation of a rule for the case.
- Task Six: Explicit statement of reasons for determination.
- Task Seven: Clear and concise communication of the decision.

Each of these steps composes, in turn, a series of activities amenable to training.

Appellate judges frequently lament how one or more of these tasks are omitted by trial judges leading to defective and thereby reviewable decisions.

Similarly, assessment of credibility is a distinctive skill for judges charged with weighing competing claims within an adversarial system of justice, most particularly in criminal jurisdictions. And, equally, impartiality should be recognized as a fundamental judicial value.

I will not extend these examples in any attempt to exhaustively list the skills, values, concepts, and tasks required of the judicial role. The purpose of this discussion is not to preempt a methodologically sound analysis of the competencies of judging but, on the contrary, to stimulate it.

Analysis that identifies the respective competencies of judging in an explicit manner reducible to their observable component tasks facilitates instructional design and equips judicial educators to narrow the gap between mystique and effective educational intervention. ■

Site Inspection for Accessibility

GUEST ROOMS

- How many available guest rooms have been adapted for persons with disabilities?
- Does the hotel have a space on its registration form where those with disabilities can identify themselves?
- Are guest rooms numbered in consecutive sequence and identified in Braille?
- Are room keys easy to handle?
- If key cards are used instead of keys, does the angle of insertion or the speed/dexterity required to use the system make it difficult for those with limited upper-body mobility?
- Do entry, bathroom, and closet doors have a clear opening of 32" with maximum threshold height of 1/2"?
- Do guest rooms and bathrooms allow sufficient turning space for a wheelchair to move about (60" diameter preferred)?
- Are mirrors mounted within 40" of the floor?
- Is the sink mounted at least 29" from the floor (measure from the bottom of the sink to allow for knee clearance for those in wheelchairs). Is the drain pipe at least 9" above the floor for toe clearance?
- Is insulation or protective covering used on bathroom hot water pipes under the sink to prevent burning persons in wheelchairs?
- Is the toilet seat between 17" and 19" high?
- Are sink and tub controls easy to operate with a closed fist?
- Do shower and tub combinations have curtains rather than glass doors? (Curtains are easier to open and close for a person with limited upper-body mobility.)
- Are grab bars of sufficient length mounted by the toilet and in the tub and shower?
- Are shower benches or chairs available for use in the tub?
- Is a flexible hose with a handheld shower head available?
- Is a telephone accessible from bed?
- Are amplified phones and/or TDDs (Telecommunications Devices for the Deaf, allowing those with hearing impairments to use a standard phone) available in guest rooms?

- Is a visual alert system available in some guest rooms for those who are deaf or hard of hearing?
- Are rooms free of wall-mounted protruding objects (such as televisions, hanging lamps, etc.)?
- Are light switches, heating and cooling controls, drapery and shade controls within reach for use by someone in a wheelchair?
- Are towel and closet racks located at a height below 54"?

MEETING ROOMS

- Is the meeting room centrally located to prevent problems for persons with mobility limitations?
- Do hallways and corridors between rooms have a clearance of 36" to allow for people to pass a wheelchair?
- Do the doors to meeting rooms have a clear opening of 32"?
- Do thresholds of interior doors have a maximum height of 1/2"?
- Are meeting room floors non-slip, level, and independently negotiable by persons in wheelchairs?
- Are temporary ramps available for use with all raised podiums or head tables?
- Are microphones available that can be easily adjusted and are flexible for use?
- Is the lighting non-glare, non-reflecting, and non-blinking? (This will help those with learning disabilities or those watching an interpreter concentrate. Also, bright or blinking lights can cause a seizure in those with epilepsy.)

RESTAURANTS/LOUNGES

- Do entrances have a door with a 32" opening, single effort door pull, and negotiable thresholds?
- Are tables accessible (27" clearance under the table and 30" in width)?
- Are cafeteria/buffet lines accessible (at least 36" wide with adequate turning space at corners)?
- Does the restaurant have menus in Braille and large print?
- Is the restaurant staff able and willing to make reasonable accommodations (minor menu changes, reading menus, tray assistance)?
- Are all lounges accessible (including tables, aisles, game room, and dance floor)?

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Judges in the Classroom

The Mediation Process in the Primary Grades

Source:

Tarry L. Lindquist, educational consultant, adapted this lesson from another lesson entitled *State of Washington v. Herschel C. Lyon*, which she wrote with Julia A. Gold and Margaret Fisher. Staff at the Washington State Office of the Administrator for the Courts (OAC) edited the lesson. Ms. Fisher updated the lesson in 1995. For more information, contact Judicial Education, Washington State OAC, 1206 S. Quince Street, PO Box 41170, Olympia, WA 98504-1170.

Objectives:

1. Students will be able to list the steps in the mediation process.
2. Students will role-play the mediation process in a variety of situations.

Grade Level: Grade K-3

Time: 30 minutes (this is less than a typical class period of 50-55 minutes)

Materials: None

Procedures:

1. Begin the class by introducing yourself to the students and telling a little bit about yourself, if this is your first class.
2. Ask students if they ever have problems on the playground. Elicit several responses. Ask students how they solve their problems. Listen to several responses. Tell the students that you are going to share with them a special way to solve problems; the special way is called mediation. Write the word "mediation" on the board or on a flip chart.
3. Tell the following story:
Two children were playing catch on the playground at recess. Pretty soon another child came along and asked to play. The two children said, "No! We don't want to play with you." The little child who was left out cried and cried.
4. Ask the students the following questions:
Could this situation ever happen on your playground? How did the children feel? Was this a good thing to happen?
5. Tell the students you're now going to see if mediation would help. Explain that mediation is a process where the people involved in a dispute talk with the help of a third party, called a mediator, who helps them find a compromise or a common ground on which they can agree to a solution to the dispute.
6. Ask for three volunteers to act out the scene as told under procedure 3. When the two children reject the third child, step in as the mediator and coach the children through the mediation process.

Steps in the mediation Process

• Introductions:

"Hello, my name is Judge _____. What are your names? It seems like you have a problem there. Would you like me to help?"

(The goal here is to put the parties at ease. The mediator does not make the decisions; the media-

tor only facilitates helping the parties come to their own agreement.)

• Telling the Story:

Ask each side to tell his or her side of the story without interruptions from the other side. The mediator does not take sides, but listens as each person speaks

• Brainstorming Solutions:

Ask students for ideas about how to solve the conflict. Suggested questions are: "What would have to happen for you to feel better about this? How could we solve this problem?"

Elicit ideas from the whole class at this time, not just the students who acted out the scene.

• Reaching an Agreement:

Help the parties find a solution they can all live with or a compromise to resolve the dispute.

7. Invite other volunteers to role play the steps in the mediation process. Keep coaching. Ask the other children to help you coach each group through the process. Repeat several times, until you feel confident the children understand the process. Primary children learn more efficiently when they involve many modalities. To help the students retain the steps in the mediation process, you might make up a little routine to help them recall each step.

For example:

Introductions—pretend to shake hands

Telling the Story—make talking noises with your hands

Brainstorming Solutions—touch your head

Reaching an Agreement—give a "high five" sign

8. Review the steps in the mediation process by asking the children to tell you what those steps are. Divide the class up into groups of four students each. Have each group role play the same story, taking turns being mediator. Ask students if they understand the assignment. Walk around, coach, and compliment. Stop every three to five minutes and ask for a group to volunteer to show the rest of the class their enactment of the mediation process.
9. If there is time, tell another story or ask the teacher to tell a story that highlights a common class conflict. For example, tell the following story:
The children were all lined up to go to library. Suddenly, one child at the back of the line charged up and got in front. The other children didn't like that at all so they pushed the child out the way. They pushed so hard the child fell down and got hurt.
10. Ask four or five children to role-play the scene of crowding the line; have another student act as the mediator. Coach the children through the process. Solicit advice from the rest of the class using this as a review of the steps in the mediation process.

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Editor's Note: "Judges in the Classroom," featured in the summer 1996 issue of NASJE News, has been extremely effective in Washington state. Developed on the initiative of Chief Justice Barbara Durham, JITC has reached more than 200 classrooms in the past four years. In response to popular demand, we print two of the lesson plans here. Complete lesson plans are available on the Internet at <http://www.wa.gov/courts/educate>.

Drug Testing in Schools - Take a Stand

Source:

Adapted from a lesson written by the National Institute for Citizen Education in the Law (NICEL) by the Seattle University School of Law's Institute for Citizen Education in the Law (ICEL), 950 Broadway Plaza, Tacoma, WA 98402-4470, and updated in 1995. Staff at the Washington State Office of the Administrator for the Courts (OAC) edited the lesson. For more information, contact Judicial Education, Washington State OAC, 1206 S. Quince Street, PO Box 41170, Olympia, WA 98504-1170.

Objectives:

1. Students will express their opinions about drug testing in schools.
2. Students will examine arguments in favor of, and against, drug testing in schools.
3. Students will consider and discuss consequences of a policy for or against drug testing in schools.

Grade Level: Grades 8-12

Time: One class period (approximately 50 minutes)

Materials: None needed

Procedures:

1. Begin the class by introducing yourself to the students, and telling a bit about what you do, if this is your first class.
2. Tell students they have an opportunity to "take a stand" on the issue of drug testing in schools. Write the following statement on the board: "Drug testing should be allowed in schools." Draw a line underneath, with polar positions printed at each end of the line. For example:

Drug testing should be allowed in schools.

Strongly in favor Strongly against

3. Give students a few minutes to decide individually where their opinion about the statement "Drug testing should be allowed in schools" falls on the spectrum. Ask them to think of at least two reasons why they feel as they do.
4. Ask approximately 10 students to go up to the board and take a stand along the line at the point that corresponds with their opinion. Explain that if they are undecided, they should stand in the middle. (Remind them that even the "undecideds" should have a reason for why they are undecided.)
5. Once students are arranged along the continuum, ask them to clarify their position. Probe them for what exactly they mean. For example, ask those at the "strongly in favor" end whether they think everyone should be tested, or only those who act suspiciously. Do those at the other end think no one should ever be tested, in any circumstances?

As students describe their positions, fill in the positions along the line with more descriptive words. For example:

Strongly in favor		Strongly against	
Test everyone	Random testing of everyone	Test suspicious only	Never test

6. As students clarify and describe their positions, tell them that they are free to move to the point along the line that most accurately describes their opinion, and that it is okay to change positions, as they listen to each other.
7. At this point, ask students to give reasons for their opinions. Encourage discussion from the rest of the class by asking if anyone else in the class supports that position, and if they have any additional reasons to support that view. Again, encourage students to move if they are swayed by arguments given by other students. Encourage a dialogue between students at either end of the continuum, and with students sitting down. To encourage serious consideration of opposing points of view, ask students what argument opposite from theirs is most persuasive or makes them think twice. Spend about 25 minutes on this activity.
8. Ask the students to sit down. Continue the discussion by asking about consequences of different positions along the continuum. For example, what would happen if schools decided to test all students for drugs? Would drug use be reduced?
9. If time permits, have students write a paragraph about their position and reasons.

The most recent U.S. Supreme Court decision in this area is *Vernonia v. Acton*, 63 U.S. L. W. (June 26, 1995). The Court ruled that the Fourth Amendment permitted a school policy that prevented students from participating in interscholastic sports unless they agree to random drug testing. In this case, James Acton, who was a seventh grader during the 1991-92 school year, applied to be on football team. He was given a drug-test consent form for him and his parents to sign. This was done for every student trying out for sports. No one suspected James of using drugs. He and his parents refused to sign the form and he was then suspended from interscholastic athletics. The Actons sued the school district. However, the Supreme Court ruled against the Actons, stating that students have a reduced expectation of privacy and should expect intrusions on their normal rights and privileges when they choose to participate in high school athletics. The Court used a balancing test. It weighed the students' privacy interests against the interests of the school district in providing a drug-free environment. The Court also pointed out the athletes regularly change clothes in front of each other and can expect to have less privacy. Because the Actons had also claimed that the drug testing violated the Oregon constitution, the U.S. Supreme Court send the case back to the circuit court to decide whether the testing program violates the search and seizure protections of the Oregon constitution.

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NASJE Newsletter Evaluation

As a requirement of the State Justice Institute grant that has funded the NASJE newsletter for the past six years, the Newsletter Committee retained the services of Joel Selling, a consultant from Seattle, Washington, to evaluate the *NASJE News*. Mr. Selling spent approximately eleven months reviewing the newsletter and preparing a marketing plan. Detailed below are the recommendations that were presented both to the Newsletter Committee and the NASJE Board of Directors.

Marketing Plan

I. The first phase of developing new funding for *NASJE News* will begin by raising both the awareness and the image of the

newsletter among markets who support it through membership dues and/or use. This will lay the groundwork for increasing distribution, and can be done without increasing costs above the current funding level.

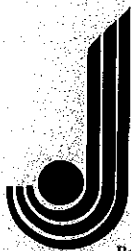
II. The second portion of the program will build upon the results of the first phase, and will focus on broadening distribution and increasing the professional desirability of *NASJE News*. Although the current survey's results prove conclusively that the newsletter is highly respected, some of the results also provide direction to strengthen this opinion.

III. The final step of this three-part recommendation checks

how the readership is responding to the changes implemented in steps one and two, then begins to move the newsletter toward electronic distribution.

The NASJE Newsletter Committee thanks Mr. Selling for his guidance in setting forth a realistic marketing plan and for his willingness to undertake the evaluation at minimal cost. The Newsletter Committee will conduct a strategic planning session during our February 1997 meeting to meet the recommendations set forth in the evaluation report.

A complete copy of the evaluation report is available from any member of the newsletter committee. ■



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The editorial committee encourages contributions to *NASJE News* from judicial educators and other interested parties. Not every contribution will receive a byline. Articles will receive a byline under the following guidelines:

The writing is intended to reflect the opinion of the author; the editorial committee finds it appropriate to give a byline to make clear that the writing does not reflect the opinion of the editorial committee; or the writing reflects a substantial piece of work that occupies a prominent place in the newsletter and is at least one newsletter page in length.

In applying these guidelines the committee will resolve close issues against giving bylines to committee members and in favor of giving bylines to noncommittee members. When noncommittee members make contributions not otherwise credited, their names will be listed as contributing to that newsletter.

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