

Winter 2002

Causes for Alarm and a Call to Action

Every NASJE member who cares about our association and the judicial branch should be alarmed. Thanks to tortured Congressional logic, coupled with the events of last September, the final demise of SJI and JERITT imminently looms. Moreover, far too many states to mention here have cut into their judiciaries' budgetary muscle, thereby eviscerating many essential judicial functions such as judicial branch education.

In the meantime, many judicial branch educators blithely assume all will remain static and comfortable. Take a deep breath before reading further and think again.

Imagine the complete elimination of all grant-funded judicial branch education or adaptable model curricula development. Imagine your inability to conduct routine, on-line inquiries regarding other states' program offerings and potential speakers. If, tomorrow, you suddenly could not use JERITT's list-serve to ask your national colleagues questions, would you feel deprived? More basic indeed, if you had no NASJE member directory to help you make a collegial call for assistance, how would you react? In fact, if you had no convenient way of knowing who a particular state's judicial branch educator was, would you feel isolated? If your only opportunity to communicate, collaborate and create with other judicial branch educators were our yearly NASJE conference, would you feel professionally fulfilled? Would you sense a loss of professional community?

Should JERITT and SJI soon become beloved memories, what should NASJE members do to fill the void?

These are not hypothetical, worst case scenarios. These are likely and imminent realities if SJI and JERITT are disbanded due to Congressional budget cuts. We have every reason to believe this will indeed happen in March of this year. Compounding this dire situation is the fact that budget-strapped state judiciaries are eliminating contributions to the National Center for State Courts, eliminating subsidies for all professional membership fees (such as NASJE membership dues) and are freezing funds for out-of state-travel to, for example, NASJE's annual conference or to national education providers such as the NJC or the NCJFCJ.

Unless we re-commit ourselves to the NASJE community we individually and collectively sacrificed to create, we will witness, in a blink of the eye, the disappearance of basic NASJE related resources, services and capabilities.

Should JERITT and SJI soon become beloved memories, what can/should NASJE members do to fill the vacuous void left by their demise?

First, NASJE must immediately work through its denial and anger stages. We do not, in this unfortunate circumstance, have the collective luxury of wallowing in denial and anger. NASJE members and our leadership must quickly devise strategies for replacing the many instrumental services we now take for granted. If we do not, basic judicial branch education capacities will be lost.

NASJE needs a specific action plan to replace existing services currently provided by JERITT and SJI. At a minimum, we must preserve on-line research inquiries, list-serve communications, and dissemination of updated NASJE membership directories. We need to immediately determine how we can maintain a national community three hundred and sixty five days a year- not merely for a few days during our

national conference. We must also develop a replacement for on-line sharing of curricula information and problem solving.

So what is the answer?

First, and most importantly, NASJE members must comprehend the harsh reality that no other organization will assist us during this difficult transition. NASJE, through its members' individual and collective commitment, must become self-reliant. We have no one but our unique community upon which to rely.

NASJE... must become self-reliant. We have no one but our unique community upon which to rely.

Secondly, NASJE leadership must concurrently work with SJI and JERITT to persuade Congress to restore a modicum of funding. My sources advise me that NASJE should not be optimistic those organizations' funding will be restored. Accordingly, NASJE must seriously entertain other self-help strategies.

Third, NASJE's Board of Directors and NASJE News Editorial Board must demonstrate resolve and creativity. For example, we must contemplate replacing JERITT's list serve capability with a NASJE News discussion board. Otherwise, NASJE members will have no coordinated on-line communication capability. NASJE must undertake, and members must assist with, compiling and updating membership directories. We must devise on-line inquiry capacities to retrieve curriculum and speaker information currently maintained by JERITT. These and other strategies require us to re-think the traditional role NASJE News has performed.

Fourth, NASJE must forge new relationships with foundations and other funding partners who share our mission and are willing to financially assist us in this regard. Moreover, we must become more entrepreneurial in order to become financially self-sufficient. Fortunately, in this effort, NASJE is seeing promising progress.

Lastly, and critically, each of us must invest our valuable time and energies towards rejuvenating our NASJE community. The hottest fires forge the strongest steel. NASJE's feet will be held closely to the fire. We must demonstrate our true character and commitment to endure the trying times about to come. With your help, we will emerge a stronger and more resilient association.

SJI: So Much to Lose, So Much Worth Saving

The news has only slowly begun to sink in as the implications mount. No more state teams at the Leadership Institute in Judicial Education. JERITT struggling-and possibly failing-to preserve even its existing databases and communications links. State and national programs drastically curtailing new initiatives in judicial education. No new monographs, judicial education directories, programs summaries, or Issues and Trends publications. Reduced opportunities for judges to exchange ideas with colleagues at national seminars. Experienced program managers sending out resumes or taking premature retirement. Long, nostalgic goodbyes to them, Dave and Kathy.

These are only some of the many impacts that state judicial branch education programs and judicial branch educators will suffer if Congress proceeds on its path of ending support for the State Justice Institute. Indeed, so many of today's state and national judicial education resources display the boxed-in

graphic of SJI that we may not even realize just how much we will lose until those products begin to age and disappear from our shelves, never to be replaced.

While there are countless products and invaluable experiences we owe to SJI-not a few of our programs owe their very existence to seed money grants-perhaps the single word that best encapsulates SJI's contribution to judicial education is vision. Through their decisions on projects to fund, the criteria of their grant programs and identification of special interest areas, the annual national symposia, the "think pieces" and national curricula they have supported, SJI has helped us focus not only on what we are, but what we are yet to be. The visionary jurists who have comprised its successive boards, and the expert and invariably helpful staff, have coaxed us ever to look ahead. With their help, we have begun to develop our own vision of state judiciaries that anticipate the demands of the future, and to educational programs that foster smooth transitions to those new models.

"...Perhaps the single word that best encapsulates SJI's contribution to judicial education is vision."

All of these valuable contributions are now more than jeopardized; they are in the process of elimination. Notwithstanding the conference committee's wistful idea of substituting funds from other sources, no private funders or cash-strapped combination of states are likely to step forward to fill the gap the Congress now proposes to leave. The responsibility for developing public institutions rests primarily on public funding sources, and the introduction of innovation and collaborative planning by and among courts of different states can only be adequately supported by the federal government.

Ironically, one outcome of ending SJI could well be a greater... expenditure of federal funds.

Ironically, one outcome of ending SJI could well be a greater, or at least less coherent, expenditure of federal funds. State judicial systems still have access to their congressional representatives, and are likely to seek appropriations for many of the same kinds of court reform projects now funded by SJI. The difference would be the haphazard and uncoordinated nature of any such appropriations, and the lack of an experienced and knowledgeable agency to oversee those expenditures for quality, priority and efficiency.

NASJE, as an organization and through its individual members, must stand in support of refunding this vital agency. State judicial branch education is so much more than it has been because of SJI; yet there is much more for us to do. As the budget process for FY 2003 gets underway, we should prepare, in coordination with sister state court organizations, to let our elected officials know the importance of what they seek to take away, and the great dividends paid by this modest investment. Congress should continue its support for this outstanding and vital program.

Exploring New Horizons in the 2001 NASJE Western Regional Conference

by William Brunson

Sponsored by the Nevada Administrative Office of the Courts, the National Council of Juvenile and Family Court Judges and The National Judicial College

Questions or comments about the 2001 NASJE Western Regional Conference can be referred to: Michael Bell or Vicki Elefante at (775) 684-1707, or William Brunson at (775) 784-6747.

Summary

The National Association for State Judicial Educators, 2001 Western Regional Conference was a great success. Taking place over three days and conducted on the campus of The National Judicial College in Reno, Nevada, the event brought together 32 state judicial educators from eight states. The event's theme, Exploring New Horizons, was realized in events ranging from creative presentation ideas to distance education and from certification programs to faculty development. Participants agreed that attendance benefited them personally and professionally. All looked forward to taking what they had learned back to their own state programs and to next year's conference. The schedule for the event was filled with a variety of subject matters and opportunities for social interaction.

On the evening of Wednesday, October 17, 2001, Jim Toner of the National Council for Juvenile and Family Court Judges (NCJFCJ) led the participants on a tour of one of the offices of NCJFCJ. Next, the participants were led across the University of Nevada, Reno campus to The National Judicial College (NJC) where they enjoyed tours of the new building and of the state-of-the-art model courtroom. President William Dressel welcomed the participants in a hosted reception in the foyer of NJC.

On Thursday, October 18, 2001, Chief Justice A. William Maupin of the Nevada Supreme Court, President Dressel and Dean Toner welcomed the participants to the conference. Next, Dean Ernest Borunda of NJC led participants in introductions designed to help everyone get to know each other, to determine goals participants hoped to accomplish during the conference and to ensure that good ideas were shared during the conference. During the remainder of the conference, the participants engaged in the following substantive sessions:

Creative Presentation Ideas

From "Cultural Bingo" to "Ethics Jeopardy," Academic Director William Brunson of NJC introduced a myriad of creative presentation ideas for teaching substantive and sometimes sensitive topics like race and cultural fairness. Through the use of game show themes and simple games like bingo, the participants discussed creative methods. Harriet Cummings of the Nevada Public Defender's Office introduced a sophisticated game of jeopardy that is used to explore judicial ethical issues in a fun and interactive way. Next, Mary Frances Edwards, the Director of NJC's Office of Future/Special Projects, suggested several creative presentation ideas ranging from field trips to interactive games like cultural bingo, several of which participants had a chance to participate in themselves. Program attorneys Robin Wosje and Verdene Johnson each explored different ways that the theme "Who Wants to Be a Millionaire" has been used at programs at NJC to explore substantive topics like evidence and sentencing. Finally, Mr. Brunson lead participants in exploring why humor is essential for successful presentations. Participants discussed types of effective and ineffective humor and identified sources of humorous material. Further, participants discussed potential pitfalls in the use of humorous material and identified strategies for its integration into faculty presentations.

Next, participants selected from several exciting elective events corresponding to the conference theme of Exploring New Horizons, including: Certification Programs and Tracking, Hotel Contract Negotiations, Facilitating Effective Judicial Branch Education Meetings and Faculty Development Curricula.

Certification Programs and Tracking

A number of states are investigating the propriety of certification programs for judges and court personnel. Roger Rountree, Executive Director of the Texas Justice Court Training Center, examined those efforts and provided guidance to those considering certification programs. He led the participants in

identifying the rationale behind instituting certification programs. By the end of the session, participants were able to describe the skills necessary to implement a successful certification program, and had learned of some of the barriers to success.

Hotel Contract Negotiations

Judicial branch educators are often called upon to negotiate hotel contracts without any background in the area. Diane Barnette, a Certified Meeting Planner from NCJFCJ, gave judicial branch educators the tools necessary to negotiate hotel contracts with greater confidence and skill. Ms. Barnette defined the terms of an effective hotel contract, identified negotiable terms and explained how to negotiate and complete a successful hotel contract. She explored John Foster's article entitled, "Twelve Legal Tips to Follow When Negotiating Hotel Contracts and Facility Leases." For some good information on hotel contracts, you may wish to peruse the information at <http://www1.mpoint.com/guides/pgindex.asp?linkid=569>.

Facilitating Effective Judicial Branch Education Meetings

Effective judicial branch educators must have good facilitation skills to get the most out of those all-important committee meetings. The elective presented ideas for ensuring that planning sessions are as productive as possible. Ms. Marna Murray, Judicial Education Manager for the Washington Administrative Office of the Courts, facilitated a discussion on the essential elements of effective meetings, including, preparation the definition of key roles and responsibilities and memorialization of the event.

Faculty Development Curricula

Faculty development has become increasingly important to judicial branch educators as they ensure that different learning styles are honored. The elective highlighted some effective methods of educating faculty members and provided insights into the future of faculty development. Mary Frances Edwards assisted participants in identifying various components of faculty development curricula, compared and contrasted existing faculty curricula and the design of future faculty development workshops.

In the evening, participants were treated to a visit to Historic Virginia City. In its heyday, Virginia City was the largest metropolis between Chicago and San Francisco with 30,000 residents, and its mines produced more than 400 million dollars in gold and silver (in 19th century dollars). Today, it is a restored ghost town with wooden boardwalks, shops, museums, old time western saloons and gaming under the balconies of C Street. Participants enjoyed a gourmet dinner at the Crown Point Restaurant in the Gold Hill Hotel, Nevada's oldest hotel, established in 1859. For more information about the restaurant and area, visit www.goldhillhotel.net.

On Friday, October 19, 2001, participants selected one of two electives: Developments in Distance Education or Private Funding for Judicial Branch Education.

Developments in Distance Education

"Distance Education" has become the buzzword of the late 90s and early 2000s. Is it just hype or is it more? This session examined the distance education efforts of California, New Mexico, Washington and NJC. In doing so, participants were provided with a short summary of different distance education efforts and what each might mean for their respective states.

Mr. Edward Davis, the Senior Education Specialist at the California Administrative Office of the Courts, summarized distance education developments in NASJE's western region. He further described obstacles

to creating successful distance education programs. James Kozick, Senior Educator for the Washington Office of the Administrator of the Courts, showcased Washington's intranet and other distance educational offerings. Pam Lambert, Senior Staff Attorney for the New Mexico Judicial Education Center, profiled the Interactive DUI Trial which is in development. The distance learning exercise uses streaming video and plays the appropriate video segment for the answer selected by the participant. The program is designed to be played all the way through; it doesn't provide an answer until the entire program is completed. New Mexico Judicial Education Center's interactive courses can be found at <http://jec.unm.edu/training/home.html>. William Brunson completed the session by showcasing NJC's first online educational program entitled "Handling Small Claims Cases" which was presented via WebCT. To learn more about WebCT, visit <http://www.webct.com>. The session concluded with an evaluation of which distance education media and approaches were most appropriate for participants' individual organizations.

Private Funding for Judicial Branch Education

Resources for state judicial education are scarce and always vulnerable in the face of potential budget cuts. Recently there has been both an increasing interest in using privately donated funds for judicial branch education and suspicion about the ethical appropriateness of doing so. The State Justice Institute recently awarded the Colorado Judicial Branch a grant to research and write about the ethical, administrative and legal issues surrounding the solicitation, acceptance and use of privately donated funds. Resa Gilats, Management Analyst for the Colorado Judicial Department, reviewed her research on private funding of judicial branch education, while engaging participants in an interactive session on private funding opportunities and obstacles.

NASJE Western Region's Best Practices and Closing

The Western Region compiled an impressive list of creative programs and delivery mechanisms. The session highlighted some of those creations. Program Attorney Mary Ann Aguirre from NJC highlighted her work on the Courage to Live 2000 program which educates judges on how to combat underage drinking and driving. William Brunson profiled the five tribal programs that are currently being presented at NJC, and he discussed the prospects of additional courses in the area of state-federal-tribal jurisdictional issues. Finally, Amanda Young profiled the ABA's Community Outreach Programs. For more information about these programs, visit <http://www.abanet.org/publiced/pedlawy.html>.

Dr. Diane Cowdrey, the Director of Education at the Utah Administrative Office of the Courts, facilitated a presentation of special programs being conducted in NASJE's western region. She synthesized the components of these successful programs and encouraged participants to create new judicial branch education programs integrating the best ideas of these special programs.

In sum, this conference presented a rare opportunity for the western region members to share the best ideas and suggestions for improvements to their programs and projects. The best part about these smaller conferences is the intimacy and the ability of all members to participate fully through either teaching, facilitating or participating. We look forward to next year's western regional.

NASJE Southeastern Region Activity Report

The Southeastern Region had a productive and enjoyable meeting in Williamsburg this past August. Our group came prepared to discuss a variety of topics but was only able to discuss a few due to the lively and engaging exchange. We needed more time! Some of the topics discussed were: best practices; experience with distance learning; experience in producing judicial branch publications; and faculty development plans and programs. The Southeastern Region is currently scheduling a conference call to continue the discussion that started in Williamsburg and to consider having a regional conference.

NASJE Western Region Update - Utah

Cultural Competency Training. The Utah Judicial Institute is currently implementing state-wide Cultural Competency training to all 1200 court employees. The training is designed to provide communication and human relationship skills to all state court employees in order to fairly serve people from diverse ethnic backgrounds. Topics covered during the sessions are cultural awareness, cultural differences and perspectives, cross-cultural communication and practical experience in the work site. Participants complete pre- and post-tests to measure their cultural awareness and cultural competency skills before and after the training. This training is mandatory and employees sign up for a set of two, half-day sessions, spaced one month apart. Every effort is made to have the same people participate in both sessions in order to maintain cohesiveness within each group. Training started in November, 2001, and will continue through June, 2002; the training is held around the state. Because the topic generates a fair amount of discussion and can create strong reactions, we are using highly skilled facilitators generated from the private sector and from within the state system. Every facilitator has been specifically trained in the curriculum and, additionally, is skilled in group dynamics. The training has brought up interesting areas of discussion concerning diversity and of how to work effectively with all people. Participants, even those who were initially resistant to the topic, all walk away from the first session with many ideas to ponder during the ensuing month. At the second session, we are finding that employees are hungry for communication skills and practical applications to their work. It has also generated fresh ideas for future classes.

Pro Tem Judge Training. Utah will be providing orientation training to the pro tem judges who hear small claims cases in the state. This half-day training is offered periodically and it includes information on small claims law, procedure, ethics, listening skills, and judicial demeanor.

Wisconsin Update

Statutory Interpretation Seminar Brings Branches Together

At one time or another, all judges are faced with interpreting statutes that are vague, ambiguous, contradictory, or technically complex. How they perform this task and what the process means to the core values and mission of the separate branches of government were the focus of discussion at a first-ever Statutory Interpretation Seminar in Madison.

The seminar was held Sept. 11, as the world watched events unfolding on the East Coast. At the request of the chief justice, televisions were brought into the back of the room so that the 119 legislators, judges, and staff participating in the program could monitor the events during breaks.

The first two presenters - political science Professors Christopher Wolfe of Marquette University and Howard Schweber of the University of Wisconsin-Madison - gave different perspectives on the judge's role in interpreting statutes and the use of the scope, history, context, subject matter, and object of a statute to determine the Legislature's intent.

Sen. Chuck Chvala, D-Madison, praised the professors for setting a lively tone for the day's discussions, but said that the most valuable part of the seminar was the opportunity for interaction between judges and legislators. "In my 18 years in state government I believe this was the largest collection of members of the legislative and judicial branches of state government in the same room," he said.

After a group luncheon at which Mike McCabe, director of the Council of State Governments' Midwestern office, Justice David Prosser Jr., and Court of Appeals Judge David G. Deininger spoke, representatives of the legislative and judicial branches engaged in a panel discussion on improving interbranch communication. Panelists included: Judge J. Mac Davis, Waukesha County Circuit Court; Attorney Gordon Malaise, Legislative Reference Bureau; Court of Appeals Judge Patience D. Roggensack; and Attorneys Ron Sklansky and Russ Whitesel, Legislative Council.

Chvala said he was struck by comments from the judges on the deference they give to legislative intent, "As a result [of listening to the judges' comments]," he said, "I feel it may be appropriate as legislators to consider adding specific statements of intent and additional history to the legislative record."

Sen. Joanne B. Huelsman, R-Waukesha, said she regularly seeks information and input from the judges in her district, and appreciated the opportunity to hear from judges and justices from other parts of the state. In addition, as the only lawyer in the Senate Republican Caucus, Huelsman recognized the importance of the seminar to her colleagues. "Any type of communication between judges and legislators is especially important," she said, "when we remember that today very few legislators are attorneys."

For more information, contact David Hass at (608) 266-7807.

Security Training Project is a National Model

The Wisconsin Courthouse Security Training Project - the first of its kind in the nation - is already attracting interest from other states looking for a model program. Inquiries about Wisconsin's security manual and training project have come from Arizona, Colorado, Florida, and Minnesota. The National Judicial College has also inquired about the program.

The project began at Fox Valley Technical College in Appleton in September. The Appleton workshop was followed by an October session in Oshkosh and a November session in Minocqua.

In all, 400 people representing the courts and law enforcement will be trained in each district for a total of ten regional sessions. The project's goal is to increase security awareness and encourage procedural improvements in Wisconsin's courthouses. It is supported by a \$167,000 grant from the State Office of Justice Assistance in Madison.

"The initial evaluations have been very positive," said John Voelker, executive assistant to the chief justice. Each participant receives a training guide that covers general security, staff and office security, contingency plans, controlling firearms, and security equipment. The participants are then taught how to train court staff, emphasizing the importance of teamwork, involvement, and communication between the

courts and the community. There are approximately 34-40 Wisconsin participants scheduled to attend each session.

The partners in the program are: the Wisconsin Sheriffs and Deputy Sheriffs Association (WSDSA), the U.S. Marshal's Office of the Western District of Wisconsin, the Office of the Chief Justice, the Director of State Courts Office, and Fox Valley Technical College.

Members of the Wisconsin Courthouse Security Committee include: Washburn County Sheriff Terry Dryden (WSDSA vice president); La Crosse County Sheriff's Department Sergeant Carl Fleischman (retired; WSDSA member); U.S. Marshal Dallas Neville and Deputy U.S. Marshal Michael McFadden; WSDSA Executive Director James I. Cardinal; Dunn County Sheriff Robert W. Zebro (WSDSA past president); Shawano County Chief Deputy Sheriff Milton Marquardt (WSDSA president); District Seven Court Administrator Steven R. Steadman; and Voelker.

For more information, contact Steve Steadman at (608) 785-9546.

Office of Judicial Education Celebrates 30 Years

The Office of Judicial Education, which opened its doors on Nov. 1, 1971 on an experimental basis with funding from a federal law enforcement grant, is celebrating its 30th anniversary. Continuing education for judges was a concern of then-Chief Justice E. Harold Hallows who taught at Marquette University Law School for 28 years. Hallows hired Sofron B. Nedilsky - now clerk of the U.S. District Court for the Eastern District - to be the first director of the office. His assistant was a new college graduate named Patricia A. Cox, who is still with the courts.

The first Office of Judicial Education was located in the Capitol - in a room that the two-person staff had to furnish on their own. "The room was completely empty," Cox recalled. "No furniture, no phones, nothing. They directed us to the surplus furniture storage area in the basement and we outfitted the office."

Initially, Nedilsky and Cox focused on traffic-related programs and built from there. When judicial education became mandatory for Wisconsin judges, Cox set up a manual record keeping system to track compliance. "We started from truly nothing," Cox recalled. "It was pretty rewarding to develop a nationally recognized program from scratch."

Today, the office is run by Judicial Education Director David Hass, whose team includes Tammy Hennick and Dona Winkler. Municipal Judge Education Manager Karla Baumgartner and assistant Carol Koschel also work in the office, administering the program of compulsory continuing education for municipal judges and producing publications for the municipal courts. These include a municipal court directory, the Municipal Judge Manual (a bench-book for municipal judges), the Municipal Court Clerks Procedures Manual (a detailed description of clerks' duties and a compilation of municipal court forms), and MuniView, the newsletter of Wisconsin municipal courts.

Hass, Hennick, and Winkler work with the Judicial Education Committee and program planning committees to develop and present approximately 34 days of judicial education programming per year. The office co-sponsors the annual Judicial College and Judicial Conference, and conducts the Clerks of Circuit Court Institute, the Evidence Workshop, the Family Law and Juvenile Law Workshop, and Civil Law and Criminal Law Programs, and sets up one prison tour for judges and court commissioners each

year. In addition, Judicial Education presents special-interest programs on topics such as domestic violence, science and the law, law and humanities, and managing county law libraries.

The office also works with five committees to revise and annually update each of five Wisconsin Judicial Benchbooks (Criminal, Civil, Family, Juvenile, Probate and Mental Health). Benchbooks are desktop procedural reference texts for trial judges. Attorney Ronni Jones serves as editor of the benchbooks.

Current members of the Judicial Education Committee are: Chief Justice Shirley S. Abrahamson (chair); Director of State Courts J. Denis Moran; Judges Robert E. Eaton, Ashland County; William C. Griesbach, Brown County; William C. Stewart, Dunn County; Karen E. Christiansen, Milwaukee County; Thomas T. Flugaur, Portage County; Annette K. Ziegler, Washington County; Donald J. Hassin, Robert G. Mawdsley (as dean of the Wisconsin Judicial College) and Ralph M. Ramirez, Waukesha County; Court of Appeals Judge Margaret Vergeront; and law school Deans Kenneth B. Davis, UW, and Howard B. Eisenberg, Marquette.

For more information, contact David Hass at (608) 266-7807.

Transitions

Please join us in welcoming the following new NASJE members:

- Michael Losavio, Manager, Education Services - Administrative Office of the Courts - Kentucky
- Michael Roosevelt, Education Specialist - CJER - California
- Judge Ken Kawaichi - Alameda Superior Court - California
- Pauleen Schnaper - Education Program Coordinator, Utah Judicial Institute - Utah
- Tanveer Haider Jalip, Chief Executive of Jalip Law Associates - Lahore Cantt, Pakistan
- Sarah Molinsky, Education Specialist/Paralegal - the Arizona Supreme Court

• **New Mexico's Virtual DWI Trial**

by Hon. Elaine Morris, Magistrate Judge, Los Alamos County, NM

- It is a pleasure to offer a review of the Virtual DWI Trial on the Judicial Education Center's website. I first used the Virtual DWI Trial several months ago. Once I found out my correct password (operator error), it was so easy to go through the trial. In fact, I can't imagine anything much easier; a completely inexperienced computer user can access the trial easily and use it.
- I found it extremely organized, with help at every stage. When there was a question of any kind I went to the mentor judge or to any of the various judges' resources. I also found it helpful to be able to "recess" at any point and come back later. I actually used the "recess" often the first time I used it and then, when I went back subsequent times to the trial, I went straight through from start to finish. That first time was experimental and it was good to be able to stop and start or to use the different resources as often as I wanted. Often times these tutorials are either boring or so elementary they are not interesting. The JEC DWI trial is designed to keep one's interest whether the user is a new judge or an experienced judge.

**The DWI
Interactive
Trial
interface(top),
and an actual-
size view of**



the
video(bottom).



- As an experienced judge, I found that the trial refreshed some of the many elements of DWI that I'd either forgotten or not used for a time at actual trial. Judges are a reticent lot, not always ready to ask for help/advice or admit lack of knowledge. The DWI trial is designed so that a judge can be completely honest in their ruling(s), and if completely wrong, not feel humiliated. Hopefully, then, that becomes a valuable learning experience in the privacy of their computer use. Also, if a judge has been assessing costs and fees incorrectly or not following sentencing guidelines correctly, it lays all of that out very clearly for future reference.
- Lastly, one of the best things about the trial being on the website is that it is so accessible. It is not always easy to put your hands on something you learned in reading the rules, or an article in the Bar Bulletin, or from a lecture from a training session. The access is immediate.

- Thanks for a great source.

• ***Developing Reflective Judgment: CPE Imperative***

by Carol L. Weaver, Ph.D, Seattle University, Seattle, WA

- Although the work of King and Kitchener is not new, it deserves examination in light of recent professional development activities focusing on character development, ethics, moral reasoning and complex thinking. King and Kitchener provide an excellent corollary to the work of Dewey, Kegan, Rest, Narvaez, Kohlberg, Piaget and others. As judicial educators continue exploring complex thinking, this book by King and Kitchener provides a well-researched contribution to understanding intellectual development.

Developing Reflective Judgment provides a model for conceptualizing complex thinking that focuses on solving ill-structured problems.

- *Developing Reflective Judgment* provides a model for conceptualizing complex thinking that focuses on solving ill-structured problems. The authors distinguish between critical thinking and reflective judgment by the kind of problem-solving each addresses. Critical thinking focuses on well-structured problems with "right" answers, whereas reflective judgment looks at the capacity to solve ill-structured problems. Many of the problems faced by professionals are ill-structured, as characterized by Schön's "swamp of practice" and Cervero's "indeterminate zones of practice." In addition, because many of the decisions made by professionals rest on moral and ethical foundations, highly developed reflective judgment is critical for professional competence. The Reflective Judgment model has merit for continuing professional education.
- King and Kitchener provide a seven-stage progressive model moving from pre-reflective levels (Stages One through Three), to quasi-reflective levels (Stages Four and Five), and finally to reflective judgment levels in Stages Six and Seven. The model was developed over a period of years and is based on interviews with over 1700 people ranging in age from 14 to over 65. In addition to the model, the book provides concrete suggestions about how to structure learning events to bring about development in reflective judgment. Although many of the examples focus on higher education, they have direct application to continuing professional education as well.
- Stages One through Three move from the concrete level of judgment, through a stage that parallels Perry's dualism to the third pre-reflective level where the individual believes that the

absolute truth is knowable. At Stage One evidence is often discarded without consideration because it is not compelling or it conflicts with current beliefs. Facts and beliefs are not differentiated. Stage Two reflects increased differentiation from Stage One, but facts are categorized as right or wrong, with a heavy reliance upon external authority. By Stage Three, individuals have a greater tendency to acknowledge uncertainty, but fall back on personal opinion when beliefs are challenged. Diverse points of view are seen by those in Stage Three as a merely temporary uncertainty. Individuals at these pre-reflective stages do not view knowledge as uncertain.

- The quasi-reflective stages (Stages Four and Five) move to understanding that not all problems are well-structured and that it is impossible to know everything with certainty. Stage Four transitions from the concrete to the abstract. Evidence and beliefs are differentiated, but in an idiosyncratic and sporadic fashion. Individuals at this level are likely to choose evidence that matches pre-conceived beliefs. With Stage Five, individuals develop the capacity to relate two abstractions through contrast and comparison. This enables the individual to view problems more broadly and to see the relationship among the problems in a more complex way. Ill-structured problems still prove difficult, however, because thinking is still framed by a single context. It would be difficult, therefore, for individuals in Stage Five to use an interdisciplinary approach to problem solving.
- With the development of reflective thinking (Stages Six and Seven), the individual can articulate the need to construct knowledge and to develop understanding of the knowledge in relation to the context in which it was created. The authors acknowledge the similarity between their conceptualization of reflective thinking and the work of Dewey. Conclusions are drawn from relevant data, but individuals with reflective judgment engage in continued examination of the conclusions as new information becomes available. The "absolute truth" is no longer valued. Stage Six moves from contextual and subjective knowing to a more complex capacity for constructing knowledge across contextual boundaries. Stage Six individuals are limited, however, by their ability to understand a larger system of knowing. By Stage Seven, the boundaries fall to systematic inquiry aimed at constructing knowledge. Higher order synthesis characterizes thinking and decision making at this level, as does an openness to continual exploration of alternative solutions. This openness to criticism and reevaluation of "the truth" characterizes Stage Seven thinking and closely aligns with Dewey's concept of intelligent action.
- Many professionals, because of their age, educational attainment and prior experience, are likely to exhibit reflective thinking strategies in their problem-solving processes. It is imperative, however, that professionals be capable of the kind of thinking and acting described at Stage Seven:
- Individuals with fully differentiated abstract categories see the problematic nature of controversies. The dissonance involved in understanding that a true problem exists conversely pushes them to become active inquirers involved in the critique of conclusions that have been reached earlier, as well as to become the generators of new hypotheses. Since the methods of criticism and evaluation are applied to the self as well as others, individuals see that the solutions they offer are only hypothetical conjectures about what is, and their own solutions themselves open to criticism and reevaluation (p. 73).

With the development of reflective thinking, the individual can articulate the need to construct knowledge and to develop understanding of the knowledge in relation to the context in which it was created.

- Well-structured continuing professional education can support the development of reflective judgment. For example, seminars can provide an opportunity for cross-disciplinary exploration of trends and issues. Furthermore, continuing education can stimulate critical intellectual exchanges that expand the world-views held by individuals. In an era of increasing specialization, Stage Seven requires broad knowledge and capacity for holistic thinking. Continuing professional education can also stimulate scholarship and the construction of new knowledge.
- Continuing professional education can also foster Stage Seven thinking by encouraging professionals to make their thinking processes known; that is, make explicit what usually remains hidden from view. Professional development can also provide an opportunity to analyze problems of practice, develop decision processes and analyze the complex decisions made by others. Developing capacity for reflection and self-evaluation, as well as developing openness to criticism by others, is also possible through continuing professional education.
- Less experienced professionals could benefit from "hearing" the thinking of those at Stage Seven and by being coached through complex, ill-structured problems. In addition, staff development and peer-mentoring provide opportunities to stimulate the development of reflective judgment skills in others. Consistent with advice given by Kegan regarding development of self, King and Kitchener recommend providing a balance of challenge and support. They suggest that the affective aspects of intellectual development are as important as the cognitive aspects and creating a safe, yet challenging learning environment is critical to intellectual development.
- The work of King and Kitchener extends our understanding of human development and has relevance to continuing professional education. Just as the work of Kegan helps us understand the development of self and Kohlberg, Rest, and Narvaez help us understand moral development, King and Kitchener provide a foundation for understanding reflective judgment, an essential component of intellectual development. Fostering reflective judgment is critical in a profession where the problems, by definition, are ill-defined.
- **Recommended Reading:**
 Kegan, R. (1994). *In over our heads: The mental demands of modern life*. Cambridge, MA: Harvard University Press.
 Kegan, R. (1982). *The evolving self*. Cambridge, MA: Harvard University Press.
 King, P. M. & Kitchener, K. S. (1994). *Developing reflective judgment*. San Francisco: Jossey-Bass.
 Rest, J. R. (1986). *Moral development: Advances in research and theory*. New York: Praeger.
 Rest, J. R. & Narvaez, D. (1994). *Moral development in the professions: Psychology and applied ethics*. Hillsdale, NJ: Lawrence Erlbaum Associates.

- **Journal Writing: An Online Mini-Workshop for Judicial Educators**
Part Three: Getting Started: The Tools, the Place, the Time

by Krista Johns

- It could be said that people wrote in journals before paper and pen were invented. In those days, they used the walls of caves and wrote in symbols with the charred ends of sticks. For most of us today, that level of preparation to write would be daunting: "can someone help me create a symbol for teamwork?" But on a smaller scale, journal writing is still about preparing oneself to record thoughts, feelings, projects, resolutions, learning, unformed impressions and decisions.
- The tools, place and time of writing are all part of the preparation. They can be as simple or as complex as necessary to move the writer to put word to paper. Remember that writing can happen in many ways. Any of the preparations described here can be set aside by the writer at her discretion.

- **The Tools**

You might ask, what tools are there, besides pen and paper? Well, let's look at those two before we consider others. If you're starting journal writing for the first time, try several writing instruments and surfaces before settling on one to use.

- There are all sorts of pens: felt tip, roller ball, ballpoint, fountain, quill. They come in various colors of ink, various shapes and sizes, refillable or not. They can cost under a dollar or several hundred dollars. A visit to a stationer or pen counter might help you decide the kind of pen you'd like to use. Don't forget, though, there are also pencils, markers, paints, computer keyboards and your PDA stylus to consider. You will want to enjoy the physical experience of writing, and the "pen" is a critical component.
- Paper is the other primary physical component. The surface on which your words are shown and stored should be pleasing to the eye and conducive to multiple journal entries. "Paper" selection is largely going to be a matter of personal taste. Most people work on bound paper. They may use a sketch pad, spiral notebook, homemade or purchased blank book, or binder. Whether bound or loose, paper choices include color, weight (thickness), texture, and feel. They can be lined or unlined. Consider the size: do you want small pages, easy to fill up, or large pages, with room for a lot of words? Again, there are also computer and PDA screens as possible surfaces (with the odd cave wall thrown in).
- Other tools to include in your list might include an ink blotter, timer, lamp, "do not disturb" sign, bookmark, secret storage drawer, dictionary, or white-out. You might want to have a CD or tape with appropriate music to set the mood. You may want a writing prompt on your computer, calendar, or to-do list. The tools you choose will help prepare you for writing.

Exercise:

Take five minutes to describe the tools you might want to have for journal writing. What writing instruments and surfaces do you like? What other aids will help you prepare to record your thoughts in a journal?

- **The Place**

If you are just beginning to keep a journal, consider visiting the same place to write each time. It might be your favorite arm chair at home, your office, your bed, the front porch, kitchen table, or in the car (not while driving, please). The place you choose should be well lit. It should be a location where you can have privacy and be undisturbed for a period of time. If you are writing with paper, you will need a supportive table, clipboard, or floor surface on which to write.

- For some folks, it might be easier to begin writing in a new environment, say while on vacation or assigned out of town, to build the habit before returning home. For inspiration and variety, consider writing in another location once in awhile.

Exercise:

Imagine yourself in the ideal writing environment. Where is it? Where are you sitting, how are you writing, what do you hear, where is the light source? Take five minutes to describe the look and feel of your ideal writing environment.

Now, think of places you might like to write, for variety. Take two minutes to brainstorm a list of places. When done, circle the two or three top prospects.

Experienced journal writers know that opportunities to write often come up at unexpected times and in unexpected places. Consider carrying a journal with you, for use when the moment is right.

- **The Time**

The time issues in journal writing involve time-of-day, frequency, and length of time.

A number of journal writing sources suggest writing first thing in the morning, or last thing at night. The idea is to select a time that you can have available daily or on a regular basis for writing.

Think about times during the day when you are most able to pause, make observations about your thoughts, feelings and activities, and reflect on things. That time of day may be the best time for journal writing.

- How often you write will be a matter of opportunity and choice. You may want to start writing a little bit each day, to build comfort, confidence, and the habit of writing. Or, you may pick a few days per week on which to write. We recommend for beginning journal-writers, that a frequency of at least twice per week be maintained. Most writers find that a daily schedule is preferable, even if allowances need to be made for "misses."

Over time, some writers adopt a less stringent timetable, returning to a daily schedule as warranted by the events or needs in their lives.

- It can be helpful for journal writers to set a length of time for each writing session. Individuals on a frequent writing schedule may set a 10-minute timeframe on each session. It will be necessary to set a timer or watch the time during the first few sessions. Over time, each writer will get a sense of how much writing is done in a given timeframe, and will be able to work without the clock.
- It may seem counterintuitive to the reflective process to set time parameters. However, when embarking on a new activity, individuals tend to over- or under-estimate the length of their involvement. It is often easier to relax into the new activity of writing if there is a defined boundary of time.

Exercise:

Write out a tentative plan for your journal writing over the next month. How often will you write? When? How long? Make appointments in your schedule for your journal writing.

- Now that you have an idea of the tool, place and time preparations needed to begin journal writing, don't forget the intellectual preparation. Instead of saying, "I'm thinking about trying journal writing," say "I am a journal writer." In the next session, we discuss the method of journal writing.

- **Knowledge Management in Brief**

by Krista Johns

- To conceive of knowledge as a collection of information seems to rob the concept of all of its life.... Knowledge resides in the user and not in the collection. It is how the user reacts to a collection of information that matters. C. West Churchman, 1971

- Judicial educators can add value to the evolving judicial branch curriculum by becoming aware of trends in the private sector and considering how the trends could be of use in understanding judicial education and the administration of justice. Not every idea generated for profit will provide insights for courts, but many will.
- One emerging field in business that has promise for the courts is knowledge management. The subject is just starting to appear in popular magazines, but the university resource centers, consultant web sites, and body of literature have been developing for a number of years. As with any new field, its practitioners are coming from many professional areas and offer somewhat different perspectives based on their areas of expertise.
- Knowledge management stems from a belief that businesses need more than a strategic plan and a good product to remain viable into the future. In a time of discontinuous change, organizations need to be flexible, dynamic, intellectually strong, innovative, and aware of their place in the environment. Professionals in knowledge management are creating models for organizations to think about and gain insight from their own activities. Implementation strategies involve effectively using- and not overly relying on- information technology, applying anthropological approaches, and taking full advantage of human abilities to "make meaning" of organizational purpose and activities.
- Author Neil Fleming in "Coping with a Revolution: Will the Internet Change Learning?" described what has become a growing misperception about technology-enhanced abilities to collect, analyze and report information:
 - A collection of data is not information.
A collection of information is not knowledge.
A collection of knowledge is not wisdom.
A collection of wisdom is not truth.
- Knowledge management experts find that the capacities for voluminous information gathering through technology have actually created an environment of false certainty in business decision-making. Planners, in their efforts to predict the future and chart an organization's strategic direction toward that future, are taking elements of data as objective indicators of significance. Building from the data elements, they use consensus processes to create a description of the organizational context. They then use various processes to link the information to organizational assumptions, hoping to thereby cipher the information's implications for future behavior.
- To those in knowledge management, the resulting "created contexts" are more akin to conjecture than to a meaningful reality. Even the selection of data elements for use in planning and decision-making, from among the millions of pieces of information that come to an organization in the course of its business, is often based more on previous practice or habits than out of a particular awareness of what is relevant. In knowledge management, reliance on so-called objective data to determine an organization's direction is seen as a failure to account for the crucial role of the individuals who are selecting, perceiving, understanding, and acting on the data. The errors, however small to start, compound rapidly and themselves become part of a flawed basis on which new directions are charted.
- The knowledge manager follows a more informed approach by examining context, understanding relationships and patterns, and looking at activity flow, to determine what information is of value for achieving organizational wisdom. The objective is not to achieve "truth," but to acknowledge that learning and wisdom are socially constructed within and for organizations. The most successful organizations find ways to take regular snapshots of their organization and the

Organizations need to be flexible, dynamic, intellectually strong, innovative, and aware of their place in the environment.

environment for effective decision-making, while also plumbing divergent perspectives to reassess and renew the organization's concept of the big picture.

Learning ... becomes embedded in organizational memory and is passed along in many forms as the organization evolves. ...learning is an inherent characteristic of culture.

- In judicial education, socially constructed knowledge is a concept that has not been fully developed. For the most part, individual learning, learning styles, and learning theory are used instead of cultural, group learning approaches to understand judicial education. By contrast, knowledge management views group learning as a shared phenomenon rather than the sum total of individual learning. "Learning organizations" are not simply organizations made up of individuals who are committed learners. Learning, which is continuous in the regular functions of the organization, becomes embedded in organizational memory and is passed along in many forms as the organization evolves. In this view, organizations are cultures, and learning is an inherent characteristic of culture. Anthropological approaches, such as the study of an organization's language, artifacts and action

routines, help knowledge managers understand how organizational wisdom is (and can better be) developed.

- Another aspect of knowledge management that challenges developments in judicial branch practice is the shift in emphasis from expertise to wisdom, from specialists to globalists. In "Rhythms of Learning: Patterns that Bridge Individuals and Organizations," author D. Cowan points out that expertise is only useful when we know the context and can consult the right expert. In times of rapid change, organizations cannot depend on the ability to bring in or develop appropriate areas of expertise to sustain currency and relevance. The nuances of "relevant expertise" are too difficult in a shifting environment. Instead, a more integrative view of proficiency and mastery is called for.

The difference pivots increasingly, not on information but on interpretation—the ability to make meaning out of still-emerging patterns.

- The concept of wisdom in knowledge management extends knowledge beyond what can currently be perceived in data. In a sense, it permits operating beyond the bounds of what data and "information" would support, by using a combination of contextualized information, awareness of the organizational culture, and human meaning-making from diverse perspectives.
 - As knowledge management models and methodology continue to develop in the private sector, the benefits of their application for courts will become clearer. For now, judicial educators may wish to put "knowledge management" on their list of trends to follow. More information about knowledge management and group learning can be found in a web search for "knowledge management," "discontinuous change," and "socially constructed knowledge."
-

First in a Series of Three

Why Do We Need Court Performance Standards?

by Ingo Keilitz

This is the first of three articles about the Court Performance Standards (CPS). More than ten years in the making, the CPS were published in four volumes as the Trial Court Performance Standards in July 1997. [1] The CPS and various adaptations, including the Family Court Performance Standards and Measures, published in December 1999, [2] represent milestones in the development of concepts, strategies, and techniques to examine and to improve the performance of courts and the justice system. This first article addresses the threshold question of why state judicial educators should care about the CPS.

"All great managers know that they have very little control."

Marcus Buckingham and Curt Coffman

How can you get people to do what you want them to do when you are not there to tell them to do it? How do court managers, presiding judges, and judicial educators make anything happen? Why is it so hard to manage people

well? Performance standards, in general, and the **CPS**, in particular, can help court managers and leaders respond to these challenges.

All great managers, say Marcus Buckingham and Curt Coffman in their best selling book, *First, Break All the Rules: What the World's Greatest Managers Do Differently*, [3] know that they have very little control. They know that they have less control than the people who report to them. Each individual employee can decide what to do or not do, and with whom at what particular time. All managers can do is influence, motivate, and persuade in the hope that people will do what is asked of them. Buckingham and Coffman say that this is not control, but *remote* control.

The manager's predicament is compounded by two factors. First, even if they were not remote, few managers have the detailed substantive knowledge or expertise to tell their employees what to do, when and with whom. The inner workings of the various divisions and units of courts, especially large courts, are beyond most court managers. That's what the other employees of the court were hired to understand. Second, no matter how scrupulously the court's human resource department recruits, each employee arrives on the job with unique needs, styles, and motivations. Not only do managers have to manage by remote control with less knowledge and expertise than their employees, they need to take into account the fact that people are enduringly different and that each employee will respond to communications from management in different ways.

Buckingham and Coffman describe the manager's dilemma in this way: he or she must be able to control the court's organizational performance -- where the manager's major responsibility clearly rests -- and yet acknowledge that he or she cannot, and probably should not, force everyone to perform in a particular way.

The solution, upon which the **CPS** are premised, is as elegant as it is efficient: define the right organizational outcomes and let each person find his or her path toward those outcomes. Buckingham and Coffman contend that this solution may appear simple-minded, but if studied more closely it will reveal its simple elegance and power.

First, it resolves the manager's dilemma by harmonizing two truths that seemed irreconcilable -- that he or she must focus everyone on the same organizational performance that defines the court's success, and that everyone is inherently different and cannot effectively be told what to do. In fact, by focusing on outcomes -- on what the court should accomplish -- the successful manager is freed from the responsibility that he or she always knew was impossible anyway: forcing everyone to behave in certain uniform ways to achieve the desired outcomes. "Standardizing the ends prevents her from having to standardize the means," counsel Buckingham and Coffman.

Asked how the records department of a court I had recently consulted with had achieved such dramatic improvements in case file accuracy, a records clerk sheepishly replied to me that she had been given the "answer sheet." How could she fail, she asked. The court had adopted Standard 3.6 of the **CPS** (records of all relevant court decisions and actions should be accurate and properly preserved) and had begun to measure its success in achieving the standard with Measure 3.6.4, "Case File Integrity," which sets out

the criteria for an accurate and complete case file. With the assistance of the records department staff, the court manager had rigorously defined the desired performance outcome by articulating the standard and measure of court performance that constituted the "answer sheet." Without further assistance and additional resources, the records department had devised the means to achieve the desired performance outcome. As General George S. Patton, Jr., put it, "Never tell people how to do things. Tell them what to do and they will surprise you with their ingenuity."

Second, this solution is efficient. The most efficient route from point A to point B, the desired end or outcome, is seldom a straight line, and there is certainly no "one best way" to reach the desired end from the numerous starting points represented by the different court divisions and staff. Optimal organizational alignment means that all the parts of a court - its entire organizational architecture, its people and its resources - are working in coordination and heading in the right direction, toward the desired outcomes. The most efficient path from A to B, and the best way to align the means with desired ends, is always the path of least resistance. The most efficient way to turn individual resources and talents into successful organizational performance is to help people find their own paths of least resistance toward desired outcomes. George Patton was right.

Third, by defining the right outcomes, and by "standardizing" the ends instead of the means, managers raise their expectations of employees to take responsibility not just for their own behavior but also for the performance of the court as a whole. They create the challenge and creative tension that spur individual performance. Great managers, say Buckingham and Coffman, create a "tension to achieve" by defining and then measuring the achievement of desired outcomes.

The most important job of court managers and leaders is to define desired outcomes. They must communicate clearly what matters most in terms of goals, purpose, vision and values. The **CPS** can help. They provide the language and articulate the principles, standards and measures of desired court performance.

Ingo Keilitz, Ph.D., is a major contributor to national court performance standards and guidelines including the Trial Court Performance Standards (1995), the Family Court Performance Standards and Measures (1999), the National Probate Court Standards (1993), the Guidelines for State Court Decision Making in Life-Sustaining Medical Treatment Cases (1992), and the Guidelines for Involuntary Civil Commitment (1986). He is president of Sherwood Consulting, a management and education consulting firm in Williamsburg, Virginia.

[1] Commission on Trial Court Performance Standards, *Trial Court Performance Standards With Commentary*, Washington, DC: U.S. Department of Justice, Bureau of Justice Assistance, July 1997 (NCJ 161570); Commission on Trial Court Performance Standards, *Trial Court Performance Standards and Measurement System Implementation Manual*, Washington, DC: Department of Justice, Bureau of Justice Assistance, July 1997 (NCJ 161567); Commission on Trial Court Performance Standards, *Trial Court Performance Standards and Measurement System - Program Brief*, Washington, DC: Department of Justice, Bureau of Justice Assistance, July 1997 (NCJ 161569); and Commission on Trial Court Performance Standards, *Planning Guide for Using the Trial Court Performance Standards and Measurement System*, Washington, DC: Department of Justice, Bureau of Justice Assistance, July 1997 (NCJ 161568).

[2] Family Court of the State of Delaware, *Family Court Performance Standards and Measures*, Wilmington, DE: Family Court of the State of Delaware, December 1999.

[3] New York: Simon & Schuster, 1999.

Staffing: The Recruitment, Selection, and Appointment of Court Staff

by Theodore H. Curry II, Professor and Director School of Labor and Industrial Relations Michigan State University

Introduction

Justice system units (administrative office, judicial education, clerk's office, trial courts, appellate staff attorney offices, etc.), like all organizations, are made up of people. While technological advances have helped to increase office productivity and effectiveness, people are undoubtedly the most important office resource. In fact, personnel expenditures often comprise more than 80% of the office budget. Arguably, therefore, the most important administrative decision made is who is recruited and ultimately selected to fill entry and other positions within the organization.

Much has changed in the staffing process in recent decades. State courts as employers are governed by state personnel statutes and numerous federal fair employment practices statutes, such as: Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and Immigration Reform and Control Act. Employment-related actions by judges and justices are subject to challenge as judges and justices have been held to be not immune when involved in administrative decisions, like hiring. While federal courts are generally not governed by federal personnel statutes, they have been required by the Judicial Conference of the United States to adopt a "Model Equal Employment Opportunity Plan." As a result "at will employment" and "serve at the pleasure of" do not carry the weight that they once did.

In addition to increased legal scrutiny and the possibility of challenge, the cost of selection mistakes has risen for other reasons. Substantial staff time as well as money is spent in recruitment, staff time is spent in screening and interviewing, and training costs are squandered if a candidate hired is dismissed or leaves. Estimates place the cost of filling a position at two to three times the initial starting salary for many positions. Poor selection decisions can negatively affect the morale and productivity of the rest of the office. And most importantly, poor selection decisions by judicial system units can affect the unit's ability to support the bench as required, impacting the providing of justice.

AN OVERVIEW OF THE RECRUITMENT/SELECTION PROCESS

One can consider eight major steps in the process of recruiting and selecting staff attorneys or other employees:

1. Conduct (update or review) a job analysis, in light of units goals, strategies, and values, i.e.:
 - Define the job (i.e what are the required duties, responsibilities, reporting relationships, working conditions, etc.);

- Identify and define the necessary knowledge, skills, abilities, attitudes (KSAA's) required for the job; and
- Review and clarify the organization's core values as they relate to the job.

2. Develop and administer a recruitment strategy for attracting a pool of highly qualified applicants that adequately represents the demographics of the labor market.
3. Determine which selection devices can best (effectively and efficiently) provide information to evaluate candidates against the core values and required KSAA's.
4. Structure the selection tools or devices into a selection plan or "blueprint."
5. Develop necessary selection and evaluation tools.
6. Administer the selection process.
7. Evaluate the candidates and make selection decisions.
8. Evaluate the selection process.

Step One: Conduct (Update or Review) a Job Analysis.

The first and most important step in the recruitment/selection process is to ensure that a thorough understanding of the job exists. While this may seem redundant and/or intuitive, it is important that whoever manages the hiring process first has a clear understanding of the required duties, responsibilities, reporting relationships, working conditions, salary, etc.

Secondly, to effectively recruit and hire, one must identify and define the necessary knowledge, skills, abilities, attitudes (KSAA's) required for the job. Identifying the necessary KSAA's is relatively easy. "We are looking for someone who has legal reasoning, legal writing skills, good judgement, organizational skills, etc." The difficult and frequently overlooked step is to define (i.e. ensure a clear and consistent understanding of) the meaning of each of the KSAA's. For example good leadership might mean: "The ability to set goals and develop and motivate people to meet those goals."

Or it could be defined as Dwight D. Eisenhower did,
"The art of getting someone else to do something you want done because he wants to do it."

A good starting point for job analysis is to review the current job description, if one exists. This important document, a summary of a job analysis, usually lists the major job duties and KSAA's, and describes the working conditions or environment, including reporting relationships. If the job description is still accurate, then perhaps all that remains to be done in this first step is to define the important KSAA's and to review/clarify the organization's core values.

One final note of caution must be considered. The Americans with Disabilities Act requires that employers consider only a candidate's ability to perform the "essential functions" of the job, with or without reasonable accommodation. Thus, if a the job requires travel and setting up for a conference, once or twice every few years for instance, then the inability or difficulty of a candidate who is an individual with a disability to perform that responsibility should not be a factor in the hiring decision. Performing such occasional, non-essential functions should serve neither to penalize an individual with a disability, nor to reward a non-disabled candidate.

Step Two: Develop and Administer a Recruitment Strategy.

The recruitment process has a two part goal. First is to develop a pool of highly qualified applicants. Second is to ensure that the pool adequately represents the demographics of the labor market. While part one seems to suggest a rifle, not a shot gun approach to recruiting, recruitment should be viewed from a long-term perspective as well as to fill an immediate need. For example, many court units participate in law school or college/university activities. While this is service to the profession, it also serves to plant seeds that may produce viable candidates down the road. In fact, many offices report that developing good relationships with universities generally, and placement offices in particular is one of their most effective recruitment strategies.

The second part of the goal, ensuring that the pool adequately represents the demographics of the labor market can be examined from many perspectives. First, federal and state fair employment practices statutes require non-discrimination in the recruitment process. Second, the workforce has changed in the recent decades, becoming more diverse in terms of gender, race, national origin, and age. Many argue that innovation, creativity and problem solving are enhanced through workforce diversity. Finally, many states have initiated taskforces to examine issues of race and gender bias in the courts. While the findings vary, most taskforces have encouraged courts to pay close attention to all hiring practices, including recruitment.

Alternative Recruitment Strategies

There are number of possible strategies for recruitment. Before examining them, however, a good question to be answered as a preface to recruiting is "What's attractive about this job?" Courts are in competition with other employers for the strongest candidates. Part of recruitment, therefore, is to think in marketing terms. What does the court have to offer? Where does it have competitive advantages, e.g. quality of life issues or importance of the nature of the work to be done, rather than salary. Major recruitment strategies that should be considered by court related offices are:

1. Employee Referrals -- Employee referrals (including referrals from judges) are a commonly used recruitment strategy because of both cost and effectiveness. Present members of the court family tend to refer candidates that will reflect well on themselves. And the referred candidate has received a thorough briefing on the job and organization. However, if this strategy is used exclusively it will tend to lead to a staff that with lots of "sameness," perhaps lacking in diversity in skills and thinking, as well as gender and race/ethnicity.
2. Walk-ins -- Occasionally candidates walk into the office. Such candidates should be handled with the courtesy that all "customers" receive. In addition, the Americans with Disabilities Act requires accessibility of hiring offices or reasonable accommodations so that all interested can apply.
3. Newspaper Advertisements -- Positions can be advertised in both general newspapers and in local legal newspapers. Sunday is generally considered the best day of the week for advertising positions in general newspapers, usually in metropolitan areas within the state. In either case, larger and/or display ads generally prove more effectively in attracting applicants, but are also more costly. The body of the ad should include, at a minimum, the nature of the job, location, tenure (i.e two year appointment versus for no specific term), salary range, and application procedures and deadlines. However, to have a real impact with employment advertisements, distinctively attractive features of the position should be highlighted, e.g a chance to make a difference, taking part in the administration of justice, serving children

and families, etc. Finally, in many communities minority newspapers exist which may be used to attract greater diversity in the candidate pool.

4. Job Postings -- Job announcements can be posted in many places, such as the courthouse, state and local civil service or personnel offices, educational institutions (colleges, universities, community colleges, law schools, etc.). They can often be delivered by mail for posting in geographically dispersed areas. As with newspaper advertisements, larger and/or display ads generally prove more effective in attracting applicants, but are also more costly.

5. Law Schools and their Placement Offices -- One of the most effective recruitment sources for court positions requiring legal training is the placement office of law schools. While these offices primarily serve graduating students, many offer services to recent alumni as well. In addition to the placement office, many report that contacts with professors and participation in various school activities aid in recruitment.

6. Bar Association -- Bar association publications and activities serve many offices as an effective recruitment technique. As with newspaper advertisements and job postings, larger and/or display ads generally prove more effective in attracting applicants, but are also more costly. In addition to the main state and local bar association, most states and metropolitan areas have minority and/or female bar associations. Personal contacts and sending job announcements to these groups may serve to increase the diversity and quality of the applicant pool.

7. Internet - Increasingly applicants for employment look at the web sites of prospective employers. Hence, the court's web site is a critical staffing tool. It sends an initial message about the image of the court as an employer, in addition to supplying specific information about job openings.

8. Other Strategies -- Among the strategies used by some and worth considering are advertisements in supreme and appellate court advance sheets, National Center for State Court job bulletins, state civil service, and administrative office of the courts job announcements. Finally, consider using the expertise of organizations that can help ensure that recruitment strategies attract a diverse pool of candidates, e.g. state and local civil rights agencies.

Final Recruitment Thoughts

When the decision is made to fill a position and the recruitment process is started, every effort should be made to handle all applicants and applications in a professional manner. Letters should be answered promptly and courteously; telephone inquiries should be handled with care. Use of an applicant flow log or an automated system of applicant tracking can aid in keeping track of the status of all applicants.

Step Three: Determine Which Selection Devices Can Best Provide Information to Evaluate Candidates Against the Required KSAA's.

There are a number of tools, devices, and tests that can be used to screen applicants and ultimately select new employees. This section will discuss the major selection devices used by court system offices.

1. Employment Application, Resume, Statement of Interest -- The employment application is an important tool in the selection process. It can be used to inexpensively screen applicants for baseline qualifications. It should also be examined for gaps in education and employment, trends, and missing information. Some

offices use it as a minimal test of an applicants ability to follow directions. Much of the information found on the application can be provided through resumes. Resumes will usually provide much additional information, allowing for elaboration and details that cannot normally be provided on an application. The resume provides an opportunity for the candidate to sell him/herself as potential employee.

While resumes are useful for initial screening, they should not take the place of the application. Every applicant should complete an application before he/she is hired for the following reasons. First, the application requires that specific information be provided by every candidate, allowing the hiring agency to compare each candidate to required KSAA's for the position. Second, applications make it more difficult for candidates to camouflage gaps in education and employment, as one must usually provide month and year for the beginning and end of each job on an application, not just say that he/she worked from "1987-89." Most importantly, applications usually include important legal information at the end, just above the candidate's signature. Three issues are regularly covered: (1) truthfulness of information on the application, (2) employment at will status, and (3) authorization for prior employers to release reference information.

Many offices require that candidates include a letter or statement of interest with their application or resume. This serves as an initial writing sample as well as a method for initially assessing job fit. Some find that it separates more serious applicants from those simply applying to any job vacancy, reducing the number of applications that must be screened.

2. Academic Performance - Academic performance is a more relevant predictor of job success for recent graduates than for those who have spent many years in the job market. Evidence of performance with recent employers may be a more relevant predictor of success for the experienced candidate.

In checking academic performance, an examination of the candidates transcript provides the most reliable assessment method. The candidate should be asked to have transcripts sent directly from the undergraduate/graduate institution and, if applicable, law school.

3. Writing Samples/Writing Test -- Where writing is an important part of the job, e.g. appellate staff attorneys, many offices require that applicants submit a sample of original writing. While this tool can be an inexpensive screening device when used early in the selection process, it is possible that the candidate did not create the sample him/herself. Therefore, some offices require that finalists prepare on-site a writing sample of the type that would be created on the job. A performance test of this type, which is a close approximation to actual job duties, tends to be among the most valid and reliable predictors of success on that aspect of job performance.

4. References -- Despite the reluctance of many former employers to provide detailed information in response to reference checks, prior employment references should always be checked before a candidate is offered employment. Even if no other information is gathered, it is important to verify that the candidate was where he/she said he/she was, when he/she says he/she was there. Some prior employers might be more willing to provide information in response to a written request for specific, job-related information, that is accompanied by a sign authorization/release from their former employer.

Because of the difficulty in getting reference information, some employers take advantage of state laws which give employees access to their personnel records held by present and former employers. These

employers require that candidates produce (preferably sent directly by the former employer) prior performance appraisals and other relevant information from their personnel file.

5. The Employment Interview -- One of the most widely used selection devices is the employment interview. This structured oral discussion provides an opportunity to assess not only interpersonal and oral communications skills, but also a host of other KSAA's through careful development of interview questions. The interview provides a chance to secure more detailed information about an applicant's qualifications as well to give an applicant information about the position.

The interview process should begin with deciding what is to be assessed. In other words, the interviewer needs to determine what he/she is trying to determine (i.e. which KSAA's) through the interview. Some information may already have been obtained from the resume, letters of recommendation, etc. "Are we trying to secure information in this interview about judgement, legal reasoning, oral communication, teamwork, and/or initiative?" Because most interviews last only one hour or so, it is important to first identify the scope or purpose of the interview, i.e. what are we trying to assess.

After deciding what to assess, it is important to clearly understand and define the KSAA's. What is meant when we say we want a candidate with initiative, organizational skills, knowledge of appellate rules, etc.? Only after defining and describing "good versus bad" initiative, knowledge of court rules, organizational skills, etc., can interview questions be developed to assess the existence of the knowledge, skill or ability. Perhaps no technique in the interview process is more helpful than using a structured interview guide -- asking the same core questions of every candidate. If not, three important consequences may arise. First the interviewer is in effect comparing apples to oranges, and not comparing each candidate consistently to the requirements of the job. Second, not using the same set of core questions can lead to charges of unfairness and discrimination, which are more difficult to rebut when inconsistency is demonstrated. Finally, using a structured interview guide minimizes the possibility of unconscious bias of various types, e.g. the person who went to the same school, who dresses similarly, etc.

It is important in the interview process that interviewers be well trained in conducting interviews. The competent interviewer must be knowledgeable of equal opportunity laws and regulations, the use of open-ended questions, practicing good notetaking, and recognizing and minimizing common interviewer biases. Among the common biases are the following:

- Halo Effect - Applicant appears very good because he/she answered a few questions very well or is strong in one area.
- Horns Effect - Applicant is seen as poor throughout the interview because of answering one or a few questions poorly.
- Central Tendency - The inability to distinguish between applicants so that everyone is rated average.
- Leniency/Severity - The tendency to be a very easy or very difficult rater.
- Stereotypes - Viewing all people with certain characteristics the same way.
- Selective Perception - "You see and hear what you want to see and hear."
- Similarity - Rating people high who are like oneself.
- First Impression - Forming a lasting conclusion at the beginning of the interview.
- Contrast Effect - Applicant is compared to other applicants, not to the job.

Interview preparation must include selecting a suitable location for interviews. It should be quiet and free from interruption. Often an office or conference room is appropriate. Desk and seating arrangements

should be conducive to open communications. For example, using a conference or round table instead of the interviewer sitting behind his/her desk can create a more open environment.

The format of the interview should include three parts -- time reserved for building rapport with the applicant, time spent in getting information from the applicant, and time spent providing information to the applicant. Good questioning techniques are especially important in information getting. Open-ended questions are particularly effective in interviewing. Starting questions with words like "explain, describe, what, how, why," etc. forces an applicant to talk. Situational or applied questions can require a candidate to demonstrate knowledge or skills. Leading questions, i.e. questions that suggest one correct answer, should be avoided. For example, "Can you work under tight time deadlines?" might better be asked in a situational question that explores how a number of work projects given simultaneously would be prioritized.

During the interview, brief notes should be taken using key words. Immediately after the interview of each candidate, notes should be expanded upon and evaluation comments made to avoid comparing candidates to each other and not to the job.

Many offices use interview panels or boards. The principal advantages of such a procedure are: (1) the ability to have a number of assessors witness the same interview at the same time, and (2) increased perceptions of interview fairness. Additionally, much is missed in a one-on-one interview, with the interviewer required to ask questions, listen, take notes, and think of follow-up questions, all at the same time. With a panel, responsibilities can be shared and rotated, allowing for more in-depth attention and assessment from each panel member. The negative side of panel interviews is that with three people on a panel, three hours of staff time were used to see one hour of candidate time. Individual interviews would have led to getting three hours of information from the candidate.

If panels are used, the size should be kept manageable, usually no more than three or so. Panel members should be involved in the process of developing interview questions. Roles of panel members need to be established, e.g. who will introduce the other members, who will ask which questions, how will follow-up questions and notetaking be handled, etc. Finally, the beauty of the panel process occurs when panel members discuss each interview after its completion and try to reach consensus, rather than simply averaging their individual ratings. Often through this discussion process, one interviewer might have facts that he/she forgot or overlooked highlighted by a fellow panel member.

Step Four: Structure the Selection Tools into a Selection Plan or "Blueprint."

Having examined possible selection devices, one must ask, "in what order should they be structured?" First, a general considerations -- Often voluntary information about race, sex and national origin of applicants is collected on a detachable part of the employment application. This information, used for EEO and recordkeeping purposes should be separated from the application and stored separately.

Three rules should guide the process of arranging the many selection devices that one might use in deciding which candidate to hire. First, least expensive screening tools should be used prior to more expensive ones. It is simply too expensive to interview every candidate that applies. Instead, a review of the application or resume for baseline qualifications might be a good place to start with other more expensive, time consuming tools used later. Second, less offensive or intrusive selection devices should

be used before more intrusive ones. Drug tests, criminal records checks, etc. should be done to as small a pool of candidates as possible. Finally, remember to separate information not needed until, and unless, an applicant is hired from the selection process. For example, information about "who should be contacted in case of emergency" is not really needed until after a candidate is hired. Other information like age, dependents, etc. is appropriate after hire, but not before.

Step Five: Develop/Secure Necessary Selection and Evaluation Tools.

Selection devices may need to be secured or developed before they can be administered. The following are some of the tools that may need to be developed:

- Interview questions
 - Forms to check references
 - Tests
 - Release forms to receive transcripts
-

Step Six: Administer the Selection Process

Once selection devices have been chosen or developed they must be administered. Efforts must be made to ensure the actual and perceived fairness of the selection procedure. Steps to be taken include:

- Establish timelines for the application process and stick to them
 - Ensure consistency in how all applicants are treated
 - Where exceptions are made, ensure that they are justified and documented
 - Be willing to make reasonable accommodations that do not cause an undue hardship for individuals with disabilities.
-

Step Seven: Evaluate the Candidates and Make Selection Decisions

It is important that candidates be assessed at each step of the selection process. This is often referred to as a multiple hurdle approach. The administration of each selection device places a hurdle in front of the pool of candidates. Some clear it and continue in the process; others drop out. Along the way it is imperative to compare each candidate to the job -- its duties, requirements, KSAA's, organizational core values -- not to other candidates. The chances for this happening are increased when candidates are assessed one at a time, against the job, and not in groups or after more than one has completed the "test."

Step Eight: Evaluate the Selection Process

Finally, in addition to evaluating and ultimately choosing a candidate, it is important to evaluate the selection process. This is done most importantly by assessing the success of the newly hired employee on the job. If a candidate that was predicted to be successful turns out a failure, the process has probably not performed well. An examination is in order to determine what caused the fit between the new

employee and the job to work poorly. Do not rule out the possibly that non-selection factors may be at fault. It is not unusual for a poor orientation to contribute to a new attorney failing. In fact, the initial employment or probationary period should be used as the last step of the selection process.

For additional information, contact:

Theodore H. Curry II
Professor and Director
School of Labor and Industrial Relations
Michigan State University
403 South Kedzie Hall
East Lansing, MI 48824-11032
curryt@msu.edu
(517) 355-1801 (Telephone)
(517) 432-9443 (FAX)

Bylaws Revisions - Big Changes

At the 2001 NASJE Annual Business Meeting, voting members approved the following amendments to NASJE's Constitution and Bylaws:

- Creating a single class of membership with full voting rights and the opportunity to hold elective office in the association;
- Changing the membership dues structure so that the first three members of an interested organization pay dues in the amount set by resolution of the Board of Directors and for each additional member from that organization, the organization has the option of paying a reduced amount as determined by the Board;
- Eliminating a specific date for membership dues payment and replacing it with a requirement that dues must be paid no later than 60 days prior to the annual meeting.

The changes went into effect immediately. Prior to the amendment, there were four types of membership. Of these four types only one, full membership, had full voting rights and the opportunity to hold elective office. It is anticipated that having a single class of membership will result in more new members and greater diversity. The last major changes dealing with membership were made at the October business meeting in 1997 when the section membership category was created and the restriction on the number of full memberships that a statewide or local judicial education organization could have was eliminated.

Announcements

[NASJE Announces Major Collaborative Effort with the Century Council](#)

Read the [NASJE resolution supporting continued funding for SJI](#)(in MS Word)

Save These Dates!

Future NASJE Conferences:

August 18 - 21, 2002 - Santa Fe, NM

August 20 - 24, 2003 - Reno, NV

NASJE's 2002 Annual Conference will be in Santa Fe, New Mexico at the [Hotel Santa Fe](#). For those of you who can arrive early, accommodations have been reserved in Albuquerque on Saturday, August 17. The New Mexico Judicial Education Center will arrange buses to transport you to Santa Fe so that you can visit the famous Indian Market on the Plaza on Sunday before the opening reception Sunday night.

New Science and Technology Committee

At the request of several members, NASJE is creating a new Science and Technology committee. Nancy Lubiani of the Leadership Institute in Judicial Education, from Memphis, has agreed to chair the committee, and Agnes Felton of Arizona will serve as co-chair. Nancy will be contacting a number of members who have expressed an interest in serving on this committee or whose names have been suggested by colleagues, and the committee expects to hold its first conference call shortly. Anyone who is interested in serving on this committee, please contact Nancy at the Leadership Institute, lubiani@memphis.edu, 901/678-2392.

GREAT NEWS!

ICM has been awarded a grant through SJI to offer free demonstrations of live Web classes and free substantive programs over the Web throughout February and March. The demos are 30 minutes each and scheduled over six weeks in February and March. Go

to: <http://www.ncsconline.org> and click on Free ICM Demos and Classes under the 'What's New' column. Take advantage of this rare opportunity to try something really neat for free. The five full length classes cover topics that will interest you: Strategic Planning, Grants in the Courts, Faculty Development in Live Web Class Teaching, Power Point Slide usage in different venues, and Ethical Dilemmas in the Courts. Have questions? Call Mary Ann Massey, 757-259-1511 or Kevin Mittler, 757-259-1817.