

## **NASJE NEWS – FALL 2003**

### **NHTSA Project Update**

by Debra Weinberg  
Supreme Court of Ohio Judicial College  
Columbus

Paul Biderman demonstrated the home page of the DUI and traffic safety web site to about 20 NASJE members at the conference in Reno. He reviewed the proposed home page and the structure of the web site in order to obtain feedback from the members. We received some excellent ideas from the audience and will incorporate them into the web site where it is feasible. The web site is scheduled to be on-line in early 2004.

Brian Chodrow, the National Highway Traffic Safety Administration's (NHTSA) project manager also encouraged judicial educators to pursue grant funding from the state Governor's Offices of Highway Safety for judicial branch education on traffic safety matters.

### **Transitions**

#### **New Members**

Please join us in welcoming the following new NASJE members:

Ms. Traci Hobson  
Program Attorney, The National Tribal Center, The National Judicial College, Reno, Nevada

Ms. Pamela Lizardi  
Training & Staff Development Administrator, Superior Court for Maricopa County, Phoenix, AZ  
85003

Mr. Guy K. Tower  
Supreme Court of Virginia, Richmond, Virginia

**Notes from Midwest Region Meeting  
2003 Annual NASJE Conference  
August 22, 2003**

Purpose of the meeting:

- Sharing resources – faculty, topics.
- What issues impact each state and our region as a whole?

Several ideas were proposed regarding ways to reformat regional meetings at the annual conference so that issues can be discussed from a national perspective:

- instead of meeting all together as one region that we mix the members from each region to create groups that might give us a national perspective;
- or** separate into topical groups;
- or** have each region report back to the bigger group about what issues were discussed;

**and** it was proposed that each region assign a scribe to take minutes from the meeting and record training ideas and faculty to then turn in to have published in the *NASJE News*.

Topics discussed:

- A desire for new member orientation during the conference that would include course development, committee meetings and politics – this could be done as a pre-conference day-long workshop. Having new members all together before experienced members arrive gives them an anchor or connection at the conference. (Kenny will look into a simultaneous and/or pre-conference track for new members for Baltimore.)
- Proposed Mentor Program: Education Committee members could call new members or first time conference attendees and explain the conference, topics and try to offer them information and steer them to appropriate courses and ones of interest to them. At the conference, a mentor could meet their mentee when they arrive, introduce them around and be available for questions.
- Proposal to list acronyms for our profession and their definitions in the conference brochure. Could also be published in the newsletter or on the website.

**Exchange of Topics/Resources/Teaching Techniques**

**Kathy Springer and Ann Jordan (IN)**

Louis Phillips for traffic and faculty development through NJC – wrote a chapter for Judicial Education/Adult Education Project (JEAEP) manual

Peter Jaffe (can access him through NCJFCJ; domestic violence)

Gordon Zimmerman for listening and leadership

Faculty Development – Louis Phillips (GA)

Child Custody/Domestic Violence – Peter Jaffee (Canada)

Technology/Privacy – Fred Cate – IU School of Law

Race/Feminism – Susan Williams – IU School of Law

Evidence – Penny White (TN)

Alternative Sentencing (best practices and what works) – Ed LaTessa (OH)

Stress – Adam Fisher (SC)

### **Exchange of Topics/Resources/Teaching Techniques**

**Kenny Miller (TX)** Texas Justice Court Training Center

Self-development topics, self-development, getting organized

Padgett Thomson

Facilitator training

**Debra Weinberg (OH)**

Ethics and Professionalism – author Dr. David Fisher – engineer (Dallas)

**Kristopher Steele (OH)**

Phil DeVol and Ruby Payne – Bridges Out of Poverty

Kate Kearney – ASFA

Center for Sex Offender Management (CSOM) (301) 589-9383

**Robin Wosje (NV)**

Substance Abuse curriculum – contact Denise Dancy

Co-occurring training

Faculty development – basics and developing a higher learning environment, Ethics & bias will be open to states next year through the National Judicial College.

**Ken (MN)**

ALJ's Ron Hofer on writing more clearly (WI)

Steve Simon – Bias and demeanor

Personality types and decision making for Judges

**Philip Schopick (OH)**

Distance learning; passed out contact info for a resource that sells software that can integrate polling software using the responder system right into your PowerPoint presentation. Contact Phil at [schopicp@sconet.state.oh.us](mailto:schopicp@sconet.state.oh.us) for more information.

**Mary Kay Bickett (TX)** Texas Center for the Judiciary.

Judicial Independence and Accountability – Dale LaFever

“You Asked For It – You Got It” Sent out survey about if you could have one program what would it be – then created program from judges’ comments.

**Ann Blankenship (TX)** Texas Center for the Judiciary

Steven Adams (CA) Attorney, Associate Judge – Editor of Family Law Newsletter

Spoke on bias – excellent exercise re: bias; updates on family law

Minnesota v. White – free speech. Contact Ann for more details.

**Dwayne Holman (TX)** Texas Municipal Courts Education Center

Diversity – Judge O’Terra on NORP think factor  
Tim Floyd – Ethics  
Ann Otero – Diversity  
Dennis Challeen – NORP Factor  
Daisy Floyd – Judicial writing.

**Ann (TX)** Male vs. female bias – Steve Adams

### **Exchange of Topics/Resources/Teaching Techniques**

**Roger Rountree (TX)** Texas Justice Court Training Center  
Victim panel in Domestic Violence. Judge as facilitator –good and bad experiences through the criminal justice system. Must use victims that have worked through their own victimization (about 2 hours).

**Jerry Beatty (IA)** Cindy Gray – American Judicature Society – reducing wrongful convictions

**John Meeks (OH)** Simulated trials during New Judge Orientation. Judges are observed and given feedback by a panel of more experienced judges.

**Christy Tull (OH)** Faculty development series – open to any judges – free to people who have taught for the College for the last two years.  
Frederick Frese – on mental illness in the courts.

#### **Ken Nickolai (MN)**

Writing – Ron Hofer (staff attorney with WI Supreme Court)  
Bias/Demeanor – Steve Simon (clinical law professor at University of Minnesota)

#### **Denise Dancy**

Substance abuse curriculum – AJA  
Co-occurring curriculum  
Train the Trainer? Faculty Development for 2004  
Robin Wosje – NJC

#### **Unattributed suggestions**

Houston program (2001) – Mark Curriden, Dallas Morning News (214) 977-8773

Jury Issues and Decision Making

Dr. David Fisher, Michigan State – speed measuring devices.

**Notes from Western Region Meeting  
2003 Annual NASJE Conference  
August 22, 2003**

Diane Cowdrey, newly elected Western Regional Director, opened the meeting by welcoming everyone. As the region's representative on the NASJE Board, she encouraged members to let her know their concerns, ideas or questions related to NASJE. Each member present then introduced themselves.

Martha Kilbourn, the Western Regional Director for the past four years, was thanked by the group for her work in the region and on the Board.

Diane asked each member present to report on any of the following questions:

- What budget, staff or other challenges did you encounter this year?
- What were you the most proud of during the year?
- What's new coming up in the next year that you'd like to share?

Nevada. Mike Bell is working on the 2004 Conference, with a theme of "What is Justice?" He is interested in good speaker ideas. Vicki and Christina talked about the Clerks' Association, and that they are trying to get them to think about regional programs. Currently there are about 1100-1200 staff members, and only about 200 attended the last conference.

National Judicial College. Mike Wise discussed the course on financial statements, which will be offered in San Francisco within a few weeks, and will be offered in California other times during the year. He was interested in getting mailing addresses for California judges, and Claudia Fernandes volunteered to help him with this. He also talked about trying to get scholarships for Administrative Law Judges.

New Mexico. Debbie talked about doing regional programs for district clerks and having them do the bulk of the work. She conducted training for regional coordinators. It was challenging to step back and let them do the work at times. Paul noted how special it was to receive the Hal Heflin award last year. They have added a web course on domestic violence and the web site has been expanded this year. Paul welcomed others to use the materials on the New Mexico website. The America Judges' Association is requesting help from ICM and New Mexico to get a web site going, with education credit available for courses on the site. Pam Lambert talked about the difficulties in encouraging judges to use the materials on the website. These web courses aren't necessary for judges to get enough hours; in other words, the judges do this because they want to get this information. Assessing usage is difficult.

Colorado. In Colorado, there are about 1500-1600 employees. The AOC provided this group with an annual conference, which is now regional due to budget constraints. The AOC and the districts helped with funding. Liz has been focusing on self-directed training, including coached supervisor training. This is a one-year program, with a manual. In the future, she is hoping to have a threaded discussion on particular topics on the web.

Washington. Marna discussed how staff education has been combined this year, due to budget constraints. The new employee orientation program was dropped this year and they are working to put it on-line. Judith talked about mandatory education for judicial officers, which includes magistrates, judges and court commissioners. She is keeping records on their education credits.

California. California has approximately 20,000 court employees and 2,000 judges and court commissioners. With budget problems this year, the staff revisited several areas with the idea of saving money. For instance, this year, Maggie reported that internal staff taught the Faculty Development program rather than using outside speakers. They are using the Blackboard platform for curriculum meetings. There will be no residential clerk program this year. There is a focus on “operational training,” helping train clerks on specific job responsibilities. CJER plans on doing these in 45-60 minute live broadcasts. Claudia is setting up a regional program and working with regional directors to plan education programs. Soon they will be doing an ethics program on-line, and hope to be doing course registration on-line soon, too. Kathleen reported that she can now see that distance learning can work better at some times, even though she was at one time very reluctant to utilize distance learning. She is now retired from CJER, but interested in staying involved in NASJE and the Western Region.

Utah. Diane reported that Utah has dealt with budget cuts during the past two fiscal years, but has continued the basic educational program for judges and court staff at a lesser level. She focused her report on public outreach efforts in Utah, and provided a handout on the variety of programs done in the past few years. Outreach efforts included rule changes to encourage judges to be involved in public outreach, collaborative programs with the State Bar, community-court forum programs, and work with the State Board of Education to include civics.

Diane then invited the group to think about what they value most from NASJE and/or the Western Region. Using a talking piece, members went around the circle and shared their thoughts:

- mentoring
- listening to others’ experiences
- being able to talk to people - pick up the phone
- relationships
- networking

- hearing about states' programs
- knowing that others are doing the same work and having the same problems
- within our region, there are similar state-type populations, same issues. Easier to implement ideas from Western states
- interplay between the national organizations (new ideas) and states
- translate to practical matters
- hearing others' ideas
- networking
- this is a stressful, underappreciated job - good to get together with colleagues
- at the conference - like the networking, have fun in our region
- getting renewed, a "professional jump start"
- learning about adult education, getting inspired (at conference)

Following this, the group brainstormed ideas for the region, including:

1. Developing web-based courses with content useful for several states (Paul B.)
2. Using a blackboard site for communication and ideas (Maggie)
3. Updating the listserve for the region (Claudia, talking with Martha)
4. Roger Rountree (TX) is interested in having regional meetings with us, at different times of the year. Everyone agreed it was a good idea, but might be more difficult for people to travel to the Midwest Region.
5. What is happening in the other states not at our meeting?
6. Post conferences within our region and invite others to attend - either judges or perhaps education staff to learn about different programs. Staff could, if desired, stay an extra day to learn more about that state's program. Also, link with the national provider list (National Center for State Courts).
7. Explore possibility of a regional meeting. Committee includes Maggie and Claudia (CA), Liz (CO), Marna (WA), Christina (NV), Kathleen (CA), Pam (NM).

## **President's Message**

by Kenny Miller

Texas Justice Court Training Center

As I was flying back to Texas that Saturday morning after the Conference, I almost picked up my lap top and started to write this article. Then I said to myself, nah, I'll wait till the last minute and make Phil sweat!!! On second thought, I don't think anything could throw Phil off... that is why he does such a great job as editor of this new letter.

All kidding aside, the conference in Reno was the most humbling of times for me as a person and judicial branch educator. The kind words, support and encouragement were almost overwhelming. Being recognized by your peers is the ultimate honor.

I would like to thank Robyn and her entire education committee for putting together a program that touched the needs of all judicial branch educators. Additionally, the support of the National Judicial College under the leadership of Bill Dressel and our now President-Elect, William Brunson proved invaluable on all fronts. The meeting facilities were state of the art and the food wasn't bad either! NASJE is indebted to the entire staff of the National Judicial College.

The attendance at the conference was excellent... and as Chuck Claxton said, "This is like old home week, seeing all my friends that I haven't seen in such along time." And yes it was, but it was also exciting to see so many first time attendees. We welcome each of you and value the yet untapped talents you will bring to our profession and association.

You were given a draft of the Strategic Plan at the conference. This document is but the first step in process to give our association the direction it deserves to flourish and grow into the future. A letter has been sent to each of you to solicit your comments with a specific deadline. The deadline was set so we could get the comments to the committee and ultimately have a document that can be presented at next year's conference. Please keep in mind that deadline or no deadline, this is a "living document" that we all own.

This upcoming year brings some exciting times. I pledge to represent this association in a professional and distinguished manner. Inclusiveness will play a paramount role in all of my actions on behalf and for this association. Thank you again for allowing me to serve as your president this year. My door is always open.



## **Editorial**

by Phil Schopick

It has been the Newsletter Committee's great pleasure this year to work together toward institutionalizing the changes envisioned under the leadership of past chairs Paul Biderman and Tom Langhorne.

With the dedicated participation of all our committee members, we are well on the road to achieving this goal.

We have been trying to diversify our offerings and our contributors. In addition to articles in the areas you might expect (Adult Education, Domestic and Family Violence, and Family Courts), we also provide articles on a regular basis to help you be better managers; look at our profession from the view of judges; as well as think about the implications of what we do on mentoring, minority affairs, communities of practice, and technology.

We also have NASJE committee liaisons who recruit articles from their committee members for inclusion in the newsletter. And on occasion your regional directors provide us with information to share with you all.

I want to thank all the individuals who contribute to *NASJE News* in the capacities I have just mentioned and the courts, universities, and organizations that support these people.

I personally would like to thank John Meeks and the Supreme Court of Ohio for the unwavering support that allows me to be your editor.

If there are other areas you would like to see regular articles address, please let me know. If there are areas for which you would like to be a guest editor, please let me know this, too. Guest editors serve for one year, renewable if willing and appropriate, and either write articles for their areas or submit for publication the articles of others they have recruited. The NASJE member guest editors we have the pleasure of thanking for their work during the past year are: Mary Ann Aguirre, Jo Dale Bearden, Maureen Connor and Ellen Marshall.

We are pleased with what we have accomplished over the last few years, especially since transitioning to the Web. In case anyone hasn't figured it out yet, this could not have been accomplished without the work and support of Paul Biderman and Pam Castaldi of New Mexico.

The committee looks forward to improving the newsletter even more in the year ahead. We also look forward to providing additional funds for NASJE and additional support to you by developing a Speakers Bureau page. We have a special subcommittee, led by Wendy Deer of New York, dedicated to this daunting task. Thank you, Wendy.

If you have ideas for improving any of what we do, please let me know directly here or via the comments link on the newsletter website.

It has been our great honor to serve you all this past year. Our publication would not be what it is today without the commitment and work of our committee members. The thanks and praise of the NASJE membership goes out to Joy Ashton, William Brunson, Billie Lee Dunford Jackson, Liz Strong, Hon. Bill Williams, and Pam Castaldi, and the organizations that support them.

And thank you all for reading *NASJE News*. We look forward to serving you during the coming year.

*Editor's Note: In our conference recap sections you will find a brief reaction to this track of the conference. Here, Kathleen Sikora has graciously and in great detail related much of what was discussed. If you could not be at this track of the conference, don't skip this article. If you were there, you'll still want to read this article.*

## **Designing Complex Curricula—Course Summary**

by Kathleen Sikora

*(Video Opening—paraphrased)*

*Educator (on phone):* Hello, Judge \_\_\_\_\_, this is \_\_\_\_\_. Our program planning committee would like you to teach a plenary session on Judicial Ethics at the annual program in November....would you be available and interested?

*Judge:* Yes, I would be happy to. What was the date and time?

*(Later...)*

*Judge (to Assistant):* \_\_\_\_\_, please find the file for my presentation last year on Judicial Ethics...

*(later...)*

*Judge (to self, as she reviews the file):* This will work....hmm.... I'll have less time this year, so I'll skip this...this is good...(etc.).

All agreed that this kind of “planning” simply does not work for most courses we plan, much less for complex curricula. But even good planning and implementation sometimes fail. Why? And what can we do to maximize our potential for success?

### **I. Objectives**

Faculty outlined in-class learner objectives as follows;

- ◆ Define complex curricula;
- ◆ Identify problems, including their causes, in designing and presenting complex curricula;
- ◆ Discuss strategies for their solution; and
- ◆ Apply the strategies to real problems.

Faculty articulated an additional (affective) course objective: that participants would leave the session feeling motivated to continue this difficult work.

Faculty also acknowledged that “one size does not fit all”—that given the diversity of roles, organizational structures, resources, and traditions in the room, the course was not intended to present a template for effective course design of all complex curricula, but rather to share the considerable expertise in the room for individual adaptation.

## II. Definitions

### A. Pre-Course Examples

Pre-course questionnaires identified the following as examples of complex curricula:

- ◆ Law and Literature for judges and staff (together)
- ◆ Coping with Judicial Stress
- ◆ Therapeutic Jurisprudence: The Role of the Judge
- ◆ An Open Dialogue (between levels of court on issues of mutual concern)
- ◆ Behind the Bench (judicial leadership in team development)
- ◆ Justice in the 21<sup>st</sup> Century: The Role of the Judge
- ◆ Diversity courses that include both practical application and a discussion of values

Further examples were drawn from participants and faculty:

- ◆ Sexual Harassment
- ◆ Dealing with Self-Represented Litigants
- ◆ Effective Use of Interpreters
- ◆ Domestic Violence
- ◆ Ethics (especially the fairness and appearance of fairness issues)
- ◆ Sexual Violence
- ◆ Fairness in Decision-Making
- ◆ Court-Community Outreach
- ◆ Public Trust and Confidence
- ◆ Civil Access to Justice
- ◆ Mediation/ADR
- ◆ Aspects of the substantive law that touch on race, gender, religion, sexual orientation, immigration, persons with disabilities, age, etc.
- ◆ Customer service (administrative education)

### B. Preliminary Definition

A preliminary definition of “complex curricula” drawn from participants before the course had included courses that: 1) judges consider “touchy-feely,” 2) address “new stuff,” including some that ask a fundamentally hierarchical institution to be more inclusive, 3) suggest altering the participant’s role, identity, or sense of power/authority, and 4) explore the participants’ attitudes, values, and beliefs.

### C. Problems/Barriers

Faculty and participants identified problems and barriers to designing effective complex curricula, to further expand our preliminary definition and seek the key to solving those problems:

- ◆ Time constraints
- ◆ Difficulty ensuring constructive participation (linked to judicial resistance to “soft” subjects)
- ◆ Intellectual difficulty of some subjects (e.g., law and literature)

- ◆ Large group sessions traditionally built into programs
- ◆ Faculty skill/cost of consultants
- ◆ Role of the judicial educator (it's hard to "lead from behind" if no one follows)
- ◆ No hard law "hook" to frame some issues

#### D. Further Understanding

Our knowledge of learning style preference, personality type indicators, and theories of adult development explain more about why the topics listed above are "complex," and why the problems listed above occur (faculty admitted to vastly oversimplifying these concepts and making broad generalizations based on personal observation, in the interests of time):

##### 1. Learning Style Preferences and Personality Type

- ◆ Kolb: Using Kolb's terminology, a large percentage of judges are "assimilators." They prefer to "take in" information through abstract conceptualization and "process" information through reflective observation. The next largest percentage are "convergers," who similarly prefer to take in information through abstract conceptualization. Most complex curricula, as currently presented, do not "play" to assimilator/converger strengths or their preferences for concise, logical analysis, abstract ideas and concepts, technical tasks, and practical solutions.
  - ◆ Herrmann Whole Brain Model and Separate and Connected Knowing: The topics listed above tend to lean toward context, experience, and empathy and away from analysis, objectivity, and reasoning.
  - ◆ Myers-Briggs Personality Type Indicator: Judges as a group lean toward the "ISTJ" side (as compared to the "ENFP") of the type chart. ISTJ learners may be reserved, non-disclosing, pragmatic, data- and detail-oriented, and impatient with "bonding" activities. These learners seek the answer to questions and tend to like "closure."
2. Developmental Models: Whatever one's learning style preference or personality type (which must not be confused with intellectual capacity), a number of developmental models suggest that complex curricula require engagement at the highest levels of ethical and cognitive development. (Faculty referred to work by Perry, Kegan, Bennett, and Kohlberg.) Again, judicial "resistance" to complex curricula does not mean that judges are at low levels of ethical and intellectual development. Rather, very few of us are at the highest level and most of us, in the ordinary course of things, prefer to stay where we are. Despite this, we also have an innate tendency to strive toward higher levels, and, as we age, we have a greater capacity to reach those levels.
3. Social Cognition: Current research on the way the human brain functions and its implications for social behavior, including decision-making, indicates that much, if not most bias, in a low-prejudiced person, is unconscious.

#### E. Working Definition

Thus, “complex curricula” are the ‘peculiar’ courses that deepen us, broaden us, and make us better, mentioned by the Chief Justice of the Supreme Court of Nevada in her welcoming remarks. They draw us toward greater complexity, the integration of polar opposites, and an increased capacity for empathy. They do not always provide closure. In fact, by their very nature, they engage judges’ least preferred ways of learning. Not only that, but if Prof. Chuck Claxton, our morning speaker, is right, and “something supports our development if it puts our assumptions at risk” and we are not even aware of our assumptions, no wonder these courses are hard to do well.

### III. Strategies for Success

Most strategies for success both intensify the ‘normal’ curriculum planning and design process and depend for their success on understanding and accepting the way judge’s like to learn. Again, if Prof. Claxton is right, the best way to move learners from one stage of development to the next is to “support where they are and challenge them to move beyond.”

#### A. Group Brainstorm

The following strategies were reported by participants (with faculty comment, or afterthoughts, in italics):

- ◆ Work with a small group of interested judges, both planners and faculty, to validate efforts, evaluate progress, and move beyond event-based planning (*yes, and this can take many forms*)
- ◆ Resist mandates, strive for voluntary attendance (*yes, but if a mandate occurs, spend less time regretting it and more time figuring out how to use it to best advantage; take whatever chance you get to “make lemonade from lemons”; “ride the wave”, etc.*)
- ◆ Choose faculty carefully; it seems like good faculty for complex curricula are “born with” excellent teaching skills (*yes, however, some faculty who possess some skill and strong motivation do develop greater skill—consider offering faculty development as an optional course to discover talent; watch for strong course participants—continually recruit; do not put faculty “out there” without specialized training on how to deal with resistance; there are many faculty roles for judges that do not require consummate skill, e.g., discussion facilitators or seminar leaders—training can occur the morning of your program, an hour before it starts; think of ways to build your faculty pool*)
- ◆ In fairness, diversity, or cultural competence courses, always use a member of the group or groups being discussed as faculty (*yes, but don’t forget collaboration and team teaching; don’t expect members of selected groups to do all the work or “speak for everyone” in their group; with sensitivity toward inclusion, members of groups other than that selected can be powerful allies*)

- ◆ Encourage “inner work” (*yes, we need another course to develop this theme; for now, don’t underestimate the need for reflective/introspective time; consider pre-course reading and/or writing, in-class reading or writing, mental exercises (e.g., silent, interactive PowerPoint or Responder questions), or use the self-one person-full group process for self-disclosure*)
- ◆ Midway through, check with your ‘moles’ (*yes, and plant moles (?)*)
- ◆ Find support and learn from evaluations (*yes, narrative evaluations are best; allow space for constructive comments on how course could be improved, requests for further topics, and faculty volunteers; leave class time for filling in evaluations; ask in class or on written evaluation “what one thing will you do differently as a result of this course?” and, if possible, follow up by phone or post-course survey within 6 months—a member of the faculty team should do phone surveys; schedule an in-class evaluation conducted by staff or committee member, with faculty present, for pilot programs*)

B. Faculty Presentation

Faculty highlighted the following points from the outline set forth at Tab Wednesday Track III of the program binder (some thoughts below are added in hindsight):

1. Resources

a. Sources for topics and material

In addition to the “usual” sources for topics and materials, e.g., judicial branch reports, legislative and judicial mandates, committee, faculty, staff, and student recommendations, and state disciplinary reports, faculty recommended that educators pay careful attention to the current issues of special interest and concern to the Conference of Chief Justices and Conference of State Court Administrators and other national organizations. These include the National Center for State courts, the American Bar Association, the American Judicature Society, the National Judicial College, the National Council of Juvenile and Family Court Judges, the National Women Judges Association, the National Consortium of Race and Ethnic Bias Task Forces and Commissions, the National Judicial Education Project, and the State Justice Institute.

Judges in your state will likely be involved in one or more of these organizations, attend their programs, and serve as your eyes and ears. Review their program agendas, faculty, and list of participants. Equally important, the current interests of these organizations represent the thinking of our leadership and complex curricula topics will inevitably be part of their thinking. For example, as a result of the recent initiative on public trust and confidence, one state augmented its new judge orientation program to include a courtroom communication component addressing ways a judge can: 1) show that he or she is listening, 2) demonstrate that he or she is trying to be fair, 3) demonstrate respect to court users, and 4) explain “what’s going on.”

National organizations can also provide excellent pre-designed curricula. Sometimes a pre-designed curriculum can seem overwhelming (4-inch binder, two videos, and an instructors guide), especially when it covers a topic you are pretty sure few would sign up for. But that's partly the reason it was written in the first place. Look for portions you can use, perhaps as components of a more traditional course. At the very least, circulate it among your education planning committee members along with everything else you collect between meetings (e.g., conference programs, letters from advocacy groups, consultants, and disgruntled litigants, etc.). You create an expectation that your committees stay open to new ideas and, even though the new ideas are not adopted wholesale, other ideas will "spark" off the material you provide. Remember the persuasive power of seeing something in writing.

b. Recommendations for use of pre-designed curricula

If you do use a pre-designed curriculum, adapt it to your state using a planning committee that includes representatives from your learner group; get a "second opinion," that is, talk to someone in NASJE who has planned, observed, or attended the program elsewhere; review prior evaluations if possible; and pilot the curriculum in a small group setting or focus group. We cannot overemphasize the importance of pilot programs and recommend that you carefully select those invited to include a representative sample of your learner group in addition to seasoned faculty and persons with decision-making authority on your oversight committee. This creates a base of support for the program.

2. Support

Much of the hard work in designing and developing complex curricula actually occurs well before the course design stage.

a. Sources

You are lucky if support for your curriculum comes from the top. You are luckier still if support comes from both the top and the bottom. Our suggestion: Take whatever support you have and build on it, but if you feel that you have no support, look more closely.

Look back at your state's gender, race/ethnic report and implementation committee rosters. Most of those judges are still on the bench. Is your Chief Justice involved or interested in CCJ/COSCA initiatives? Who attends NAWJ, the ABA Judicial Division, or National Consortium conferences? Who is involved in your civil access to justice commission, court-community planning or outreach efforts, local domestic violence council, local court diversity committee? Who sits in drug, homeless, or mental health court? This may be obvious, but we don't always take the time to peruse committee rosters, review the agendas for programs not our



own, or dig up old reports. Consider this part of the groundwork you must do to assure continuing support for complex curricula, and, if possible, take an active role in the recruitment and selection of education committee members. Cross-committee and liaison membership can be effective, but strive toward the creation of a broad-based committee dedicated to the design and development of complex curricula—this must be done at the right time and with support from the top.

Finally, consider collaboration between judges and court administrators, and education partnerships between the judiciary and other state agencies, the Bar, law schools, and academia, among others. Perhaps another earmark of complex curricula is that their content is cross-disciplinary.

b. Strategies for building support

◆ Faculty development

If you do only one thing as a result of this course, develop and support your judicial faculty. Akin to the “middleman” concept in court-community outreach, judicial faculty influence more judges over a longer period of time than anyone else. Not only that, we know that the very best way to learn something is to teach it.

Dedicated training for faculty who teach a pre-designed curriculum is an absolute must. But every faculty development program should include a component on teaching complex curricula. Participants should be asked to: 1) identify and demonstrate ways to create an inclusive classroom environment, 2) identify and discuss ways to integrate “complex” or “fairness” issues into their subject area, 3) demonstrate effective ways to deal with student “resistance” to the topic or a conflict of opinions in class, and 4) model and enforce groundrules (more on this below). Demonstration is the key. Students should be asked to say, not describe the words they would actually use in class (like a simulation). It is also helpful to have the Chair, Dean, or other person in charge open this segment with a personal statement as to why it is important. Team teaching is advised.

◆ Curriculum-based planning

Although not capable of full discussion in class or here, curriculum-based planning is invaluable for long-term success of any curriculum. But it has special value for complex curricula. Suffice to say, if you do have a dedicated committee that will continue to exist over time, consider engaging in a curriculum-based approach. The resulting documents, preferably focused on demonstrable learning objectives, will save you, your committees, and faculty from “reinventing the wheel” ad infinitum and will profoundly deepen and broaden your committees’ understanding of the issues.

◆ Linkage

We all recall past discussions about the relative merits of “stand-alone” courses versus “integrated” courses that “weave” complex issues into substantive law topics. Both have value, but, if done well, weaving can be much more labor intensive than it sounds and can be done minimally, if not superficially, if that labor is not expended. On the other hand, we have found that some courses are particularly amenable to weaving: ethics, decision-making (including the cognitive aspects of weighing credibility and minimizing the effects of unconscious bias), trials (including jury selection), courtroom communication/control, Excellence in Judging, Moral and Personal Dilemmas in Judging, and Objectivity in Decision-Making. These courses do not offer hard law “hooks,” but are well attended and much loved.

◆ Miscellaneous tips

--Introduce complex curricula as they relate to ethics and decision-making as early in the judicial career as possible. This validates the subject as one of many judicial skills and introduces introspection and self-monitoring as norms. Continuing throughout the judicial career, don't underestimate the need for reflection and rejuvenation at mid-career and the tremendous potential for generativity in late career.

--Run complex courses concurrently with other courses (on purpose), but make sure everyone comes together at breaks and lunchtime.

--Small classes are best; if this is not feasible, break a large class into small discussion groups during class or separate seminars for all but the lectures. If possible, train pre-selected seminar leaders in advance.

--Consider blending learner groups, through simultaneous or cross-training, where course/learner objectives are the same. You can bring judges together with judges at another state court level, federal judges, administrators, staff, or research attorneys when the rationale makes sense.

#### IV. Course Design

Should we apply adult learning principles to the design of complex curricula? In short, “You're doomed if you don't.”

##### A. Objectives

Always include at least one behavioral course or learner objective and, if humanly possible, require participants to demonstrate that behavior in class. *Say it*, don't describe what they would say. In-class demonstrations should simulate the courtroom, to the extent possible. And, never deceive learners about course objectives.

##### B. Content

If, due to time constraints, the amount of content “to be covered” tempts course planners to cut back on demonstration time, cut back on in-class presentation of content instead, e.g., assign it as pre- or in-course reading or “homework,” or condense it into a highly structured presentation touching on points that can be

supplemented by written material. Remember, we read far faster than we talk and we can read almost anywhere but we practice difficult new skills in front of supportive peers very rarely—perhaps only here.

C. Teaching Methods

Traditional interactive teaching methods are effective: role-play, case study, small group discussion. But some of the less traditional, even innovative methods are equally effective: simulation, video-playback and critique, storytelling, literature, interactive technology such as Responder, Internet self-tests, interactive PowerPoint, and broadcast, user panels, and field trips.

Experimental or unorthodox methods (e.g., “crossing the line,” BaFaBaFa) can be tremendously effective teaching tools, but they should be piloted before use, taught by experienced faculty, and plenty of time should be allowed for debriefing, a portion of which should include drawing the connection between the exercise and its real life applications.

D. Format/Learning Circle (Kolb)

We have already suggested that both reflection and application are crucial to effective design of complex curricula. Using Kolb’s terminology, what about direct experience and abstract conceptualization? Pure lecture is seldom, if ever, effective and direct experience can be off-putting to judges if they think it’s “touchy-feely” or it asks participants to reveal their attitudes and beliefs too soon. Faculty suggestion: start with a direct cognitive experience. Ask participants to think about something, respond mentally to an interactive PowerPoint exercise, or complete a self-test or fill in blanks to demonstrate their knowledge of objective facts or well-documented statistics (e.g., federally recognized Indian tribes in your state, poverty statistics in your state, facts v. myths about addiction, findings in the NCSC survey on public trust and confidence, application of the ADA in courtroom, state statutory and case law re sexual orientation issues, etc.). In doing this, you provide a direct experience that challenges student assumptions, but you do it in a way that respects their “comfort zone.” Don’t worry, a discussion of attitudes, values, and beliefs will follow.

There is also a place for abstract conceptualization. Applicable law can be presented, of course. But even lecture can be interactive.

**V. Learning Environment**

We know that the learning environment can greatly affect any course, but it is particularly important to the success of complex curricula. Ideally, the learning environment should “model the message.” Something as small as seating participants at round tables and faculty, if seated, at ground level makes a difference. But more importantly, consider the “ground rules” set forth below as a guide to several things: the tone you hope to set in class for interaction, selection of faculty, even your own personal approach to this work (meaning clarified in parentheses):

- ◆ Active participation is encouraged, but “share the air”

- ◆ Try fresh perspectives (reserve judgment)
- ◆ Consensus is not required
- ◆ Be responsible only for yourself (you are not responsible for anyone else's learning)
- ◆ Maintain confidentiality (this is relative, of course, but personal things discussed in this course should not be repeated)
- ◆ "Mistakes" are OK

Select faculty who model these ground rules, consider posting the ground rules in particularly sensitive courses, and apply them to yourself if you become too self-critical.

## **VI. Dealing with Resistance**

If you engage in preplanning, build support, control the learning environment, and prepare your speakers, you will offset some resistance. If you focus on behavioral outcomes and create the "need to know" through a direct, cognitive experience, you will reduce resistance even further. But it will occur. It is probably necessary and may actually be a good sign. Tips for faculty and staff (again, clarifying comments in parentheses):

- ◆ Anticipate and plan for "resistance" (know and practice what you are going to say; it often helps to voice anticipated objections up front)
- ◆ If a biased or hostile comment is made, stay detached emotionally, but don't let it go—consider this an opportunity
- ◆ Model the ground rules—respect the speaker and protect his or her right to voice an unpopular opinion even if you disagree ( if you make a comment someone challenges as objectionable, thank them, apologize, then explain)
- ◆ Acknowledge the comment (hold a mirror up to it; repeat it so you know you understand)
- ◆ Ask at least one probing/clarifying question (if appropriate)
- ◆ Deflect; ask others what they think (optional, but it gives you time to think)
- ◆ Feel free to state your own opinion as your own
- ◆ Summarize (resolution is not necessary, having the discussion is valuable in and of itself, relate the issues to the judicial function—why the issues are important)
- ◆ Move on

One Judge - One Family "It Makes A Whole Lot of Sense"

by

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The concept of One Judge - One Family is uniquely adaptable in an island judiciary. Guam, like Hawaii, has moved in this direction. As a judge on the Superior Court of Guam, I began practicing this concept long before I knew it had a name. I first heard the term during a judges training in Reno at the National Council of Juvenile & Family Court Judges in 1999. After listening to the instructor laude its benefits before a room full of judges from all across the nation, it became apparent to me that the concept was not widely practiced among family court judges.

A year and a half later at a domestic violence training in Boston, I was asked to say a few words to a luncheon crowd of judges about my practice as a One Judge - One Family court. Amidst the clanging of plates and glasses, I was given three minutes. The first thing I noted was my surprise that Guam is among only a few jurisdictions to practice an integrated system of One Judge - One Family. Secondly, I mentioned that the practice of One Judge - One Family is an incredible tool of information that [allows our practice as judges to be professionally and personally satisfying.] Lastly, I concluded with a word of caution. Wearing different hats at one time is not easy, and I have been guarded with respect to the potential for conflicts. But there was more to be said if you took the inquiries I received from other judges as an indication of the interest in the concept.

There are only seven judges on our island, a small remote territorial possession of the United States in the Western Pacific. We all share a broad assignment of criminal, civil, family, domestic, probate, land, traffic, and juvenile cases. We work in one courthouse, centrally located with consolidated administrative and judicial functions. The configuration of our single judiciary is perhaps the most relevant factor allowing for the success of a One Judge - One Family court in our jurisdiction. I now have more than five years in the practice of being a One Judge - One Family court.

Just what is a One Judge - One Family court? It is the consolidation of various cases before one judge involving members of the same family or household. The purpose of consolidation is the prompt resolution of all issues common to the parties before a single judge. This could involve consolidation of domestic cases with juvenile matters, or domestic proceedings with criminal cases. One Judge - One Family facilitates [an exchange of information between the cases that would not normally occur] if handled in different courts by different judges.

In a One Judge - One Family court parties and issues bring the cases together, not the proceedings. In the hands of a single judge the information is consolidated for decision making. Information is a powerful tool for a judge. To have at your fingertips information necessary to

make consistent orders and decisions across a gauntlet of cases [is an invaluable judicial tool]. Keeping a wealth of information that flows quickly between the cases in their proper perspective is not easy.

A One Judge - One Family court should be mindful to use this flow of information prudently by always informing the parties how the information influenced a judge's decision. Neglecting to disclose to the parties how information was used by a judge in her ruling opens the door for challenges. This can be avoided by good disclosure practice by the judge and the attorneys. To date, after 5 years of practicing as an integrated court I have not been accused of a single challenge of conflict.

Assuring compliance and monitoring of court orders by the parties is another one of the benefits of a One Judge - One Family court. This occurs through regular hearings used to monitor issues of custody, contact, visitation, counseling, reconciliation, treatment, and probation, to name just a few. [There is a heightened sense of accountability] when parties find themselves regularly before the same judge on issues of enforcement and compliance.

Controlling case management over procedurally different types of cases is not easy and can be a difficult balancing act for any experienced judge. A criminal proceeding is not generally concerned with fostering reconciliation between the victim and the defendant. Nor is it about a child's best interest as in an on-going custody battle, how to customize visitation schedules between custodial and non-custodial parents, or the enforcement of child support payments. Yet, these are critical issues in the lives of families who find themselves immersed in the court system on many different fronts. Resolving all these issues before one judge promotes better management of the various cases, as well as the parties.

Balance is a key element to a One Judge - One Family court. Trying to juggle review of the issues across procedurally distinctive cases can be extremely frustrating for an attorney who finds herself before a judge wearing different hats. Listening to issues of custody and visitation can be as foreign to a prosecutor's perspective as I would imagine Guam is to some of you. I have sympathetically watched a prosecutor sit quietly cringing in her seat in a cross over domestic hearing as she listens to the victim plead for the state to dismiss its case, and a concurrent plea from the defendant that I should allow contact with the victim and visitation with his children because they are going through reconciliation in the divorce matter. Likewise I have seen the prosecutor's adamant insistence that a defendant have absolutely no contact with the victim bolstered by the victim's declaration for a permanent injunctive stay away against the defendant in the domestic proceeding. More commonly I have seen the resolution of pending domestic issues foster negotiations in a plea agreement and, vice-versa, the resolution of a plea agreement has assisted in resolving pending domestic matters. If this can all be accomplished before one judge it promotes judicial efficiency and economy. Closing cases promptly is icing on the cake.

The ability of one judge to issue concurrent and consistent orders in both criminal and domestic proceedings, and to monitor compliance by the parties on a periodic basis through probation or further proceedings serves a balance of justice for both the public and the family in the various cases. It is a swift and immediate rendering of finality to crucial issues with multiple cross benefits for the family. One Judge - One Family gets to the heart of everything that is important in their lives.

Practicing One Judge - One Family takes a lot of patience, but the rewards are tremendous. Knowing that you have resolved core problems affecting a family without regard to procedural or time barriers that would naturally hinder the issues if handled in different courts is incredibly satisfying. One Judge - One Family reminds me of a return to the old country doctor approach to medicine, of going back to the basics in teaching, of dispensing justice before rules and procedures took over our work as judges. Judges who practice the concept of a One Judge - One Family are the essence of true problem solving courts.

One Judge - One Family just makes a whole lot of sense.

*The Honorable Elizabeth Barrett-Anderson has served Guam as legal counsel for the Guan Department of Education, Attorney General, Senator, and since 1995, judge. Her article this issue is our offering in the Family Courts area and From the Bench, while Hon. Bill Williams is taking some time off from his regular duties.*

## **Full Faith & Credit for Protection Orders**

Danielle G. Van Ess and Millicent Shaw Phipps  
National Center on Full Faith and Credit

In 1994, Congress enacted the Violence Against Women Act (VAWA). The VAWA includes a provision that requires all states, tribes<sup>1</sup>, and U.S. territories to afford one another's protection orders<sup>2</sup> full faith and credit. Congress amended this and other provisions of the VAWA in 2000 to clarify certain provisions and better provide for safety across jurisdictional borders. (*18 U.S.C. § 2265*.) What follows is an explication of the information judges need about issuing enforceable orders and enforcing the orders of other jurisdictions.

The full faith and credit provision requires state, tribal, and territorial law enforcement officers and courts to enforce protection orders from these other jurisdictions ("foreign" protection orders) as though they were issued by a court within the enforcing jurisdiction. Federal law defines "protection order" very broadly to include all civil and criminal, emergency, temporary, and permanent orders. [*18 U.S.C. § 2266(5)*]. In addition to orders issued pursuant to domestic violence or stalking protection order statutes, this definition encompasses divorce and separation orders containing protective provisions and conditional release orders.

The statute includes due process protections for the respondent subject to the protection order. Specifically, the issuing court must have had subject matter and personal jurisdiction under its laws, and the respondent must have had reasonable notice and an opportunity to be heard. [*18 U.S.C. § 2265(b)*]. The federal law also specifies that *ex parte* protection orders are entitled to full faith and credit, provided the respondent has received notice of the order and will have an opportunity to be heard within the time required by the issuing jurisdiction's laws, "and in any event, within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights" (*Id.*).

Two critically important safety amendments Congress made in 2000 prohibit jurisdictions from requiring registration (also commonly referred to as "filing," or "domestication") as a pre-requisite to enforcement and from notifying the respondent that an order has been registered, unless the protected party requests notification [*18 U.S.C. § 2265(d)*]. These amendments were designed to stop practices that were endangering survivors.

In practice, the issuing court determines all terms of relief, the duration of the order, and which parties are eligible for and entitled to protection under the order. The enforcing

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<sup>1</sup> There is controversy regarding the ability of the federal government to require tribes, as sovereign authorities, to do or refrain from doing anything generally. Tribes may choose to enforce protection orders as an affirmation of their sovereignty either through full faith and credit or through comity.

<sup>2</sup> Protection orders are also commonly known as "protective orders," "no contact orders," "stay away orders," "injunctions," "restraining orders," "PFAs," or by the relevant code sections in some states (e.g. "50-Bs" in North Carolina, and "209As" in Massachusetts).



jurisdiction then determines enforcement mechanisms such as the arrest authority of responding law enforcement officers, pretrial detention policies, sanctions for violation, and post-conviction consequences (e.g. probation, parole).

### **Common Full Faith & Credit Challenges for Judges**

Judges must be adequately prepared to respond to several of the common challenges foreign protection orders raise. For example, as with all other provisions of a foreign protection order, judges must also enforce any firearm possession prohibitions issued in accordance with the *issuing* jurisdiction's laws<sup>3</sup>.

Another common challenge is the lack of due process. Statutorily, many jurisdictions place the burden on the respondent to raise due process infirmities as an affirmative defense to a protection order violation. Judges must then be prepared to determine whether the issuing court had personal and subject matter jurisdiction, whether the respondent was afforded an opportunity to be heard, and whether the respondent was properly served according to the laws of the *issuing* jurisdiction.

A judge might also have to consider a request to enforce a "mutual protection order"<sup>4</sup> against the party that initially sought protection from the abuse. Federal law prohibits such enforcement against the petitioner except in very limited circumstances sufficient to protect the petitioner's due process rights. Specifically, the respondent must have cross-filed a written pleading for a protection order and the issuing court must have made specific findings that both parties abused each other and were entitled to protection from further abuse. [(18 U.S.C. § 2265(c)).

Child custody provisions within protection orders pose a unique challenge to judges; the topic is therefore covered in a forthcoming article. However judges enforcing foreign protection orders must also be prepared to enforce economic relief provisions such as child or spousal support and temporary property divisions or restrictions so as not to compromise the petitioner's safety or financial security by requiring a return to the jurisdiction from which the petitioner fled further abuse. Judges may need to consult their jurisdiction's Uniform Interstate Family Support Act.

The full faith and credit provision explicitly requires states to recognize and enforce tribal and territorial protection orders just as they must recognize and enforce orders from other states. The statute also explicitly recognizes the full civil jurisdictional authority tribes have to enforce protection orders against non-Indians who violate foreign protection orders on tribal lands. [18 U.S.C. § 2265(e)]. It is consistent with tribes' sovereign rights to enforce foreign protection orders to provide safety for Indian survivors of domestic violence. To do so, tribes may choose to use comity principles or to enact full faith and credit enabling legislation as part of their tribal code.

Criminal and military protection orders each pose an additional set of challenges for enforcing judges. When a criminal defendant violates a criminal protection order such as

a bond condition, it is often left to the two jurisdictions to arrange for the offender's extradition. Some states, however, have created separate provisions of their criminal code for violation of a foreign criminal protection order, facilitating full faith and credit enforcement of such orders in compliance with the federal mandate.

In general, military protection orders do not satisfy the due process requirements for full faith and credit. Typically the respondent has no opportunity to be heard to contest entry of the order, which is issued by the commanding officer, not a court. However, commanding officers in all branches of the military may accord full faith and credit to a protection order issued against service personnel by a state, tribe or territory.

### **Best Practices - Suggestions for Judges**

#### **Issuance for Enforcement Elsewhere**

When crafting protection orders, judges should always provide both oral and written notice of the full faith and credit provisions of state, territorial or tribal and federal law, explaining that the order is entitled to national enforcement.

At a bare minimum, the order should contain the following:

- name and contact information for the issuing court;
- a citation to the relevant state, territorial or tribal code that forms the basis of authority for granting the order;
- a clear statement of compliance with the jurisdictional and due process requirements of the VAWA;
- name and contact information for the state, territorial or tribal registry;
- expiration date, if any, or other duration of the order (e.g. lifetime);
- other relevant numerical identifiers for entry into both the state, territorial or tribal and national (National Crime Information Center Protection Order File (NCIC POF)) registries; and
- a clear indication of the parties' relationship to one another in order to facilitate enforcement of the federal firearms prohibitions, prohibiting unlawful purchases and transfers. [*18 U.S.C. §§ 922(g)(8) and 921(a)(32)*].

As a matter of good practice, judges should:

- provide free, certified copies of the order and any modifications;
- whenever possible, have the respondent sign acknowledgement of service on the face of the order itself;
- indicate that custody provisions within protection orders comply with the governing state custody jurisdictional law (Uniform Child Custody Jurisdiction Act or Uniform Child Custody Jurisdiction and Enforcement Act) and the federal Parental Kidnapping Prevention Act (PKPA);
- question both parties about the existence of any other orders or ongoing proceedings, review any such orders and, if necessary consult with the other court(s) to avoid issuing orders that would conflict with existing orders; and

- develop, implement, and educate court staff on court rules, policies, and procedures pertaining to full faith and credit.

### **Enforcement of Foreign Protection Orders**

Judges apply the criminal law of *their* jurisdictions to enforcement proceedings, not that of the issuing jurisdiction. Nonetheless, judges must decide due process challenges by applying the *issuing* jurisdiction's laws. Judges should readily admit evidence from the *issuing* jurisdiction (in accordance with the *enforcing* jurisdiction's evidentiary rules) to substantiate a protection order's validity. Judges must also understand which party bears what burden of proof, remembering that facially valid orders generally may be presumed valid while challenges generally are affirmative defenses.

Judges must recognize that a defendant who already has crossed jurisdictional lines to commit acts of abuse likely poses an increased flight risk and enhanced danger for the survivor of that abuse. For enforcement purposes, judges should conduct a dangerousness or lethality assessment<sup>5</sup> for the following reasons:

- to determine the propriety of bail, and if so the proper amount for bail;
- to help determine whether to order discretionary firearms prohibitions;
- in conjunction with the defendant's criminal history information, to help determine the most appropriate sentence.

At sentencing, judges should also permit survivors of domestic violence to make statements related both to the risk of further violence and to the impact of past domestic violence and respect any requests for specific protective provisions and compensation. At the conclusion of the enforcement proceeding, the judge should either inform the issuing court of the case disposition, or should order the prosecutor to do so.

*For further information regarding full faith and credit and the enforcement of protection orders, please contact the National Center on Full Faith & Credit at (800) 256-5883 x 2. The Center is available to provide technical assistance, including judicial education, on these issues.*

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<sup>5</sup> See: Hart, Barbara; "Assessing Whether Batterers Will Kill," Harrisburg, PA: PCADV, ©1990. This article is available at:  
<http://www.mincava.umn.edu/documents/hart/lethali.shtml>

## A Community of Practice is About Oneness

Maureen E. Conner

What happens in judicial branch education in Arkansas, California, Florida, Michigan, and so on affects us all. In a societal culture that values individualism and separateness, we think that what is going on is “over there” and has no bearing on what is happening in “my organization.” I challenge you to think again.

Albert Einstein concluded that we are all intimately connected—that this life experience is indeed metaphysical.

*A human being is a part of the whole called by us “Universe,” a part limited in time and space. He experiences himself, his thoughts and feelings, as something separated from the rest, a kind of optical delusion of his consciousness. This delusion is a kind of prison for us, restricting us to our personal desires and to affection for a few persons nearest to us. Our task must be to free ourselves from this prison by widening our circle of compassion to embrace all living creatures and the whole nature in its beauty.<sup>1</sup>*

Wayne Dyer, when contemplating Einstein and the word universe, set forth an interesting way to think about our metaphysical existence.

*Take a few moments to study the word “universe,” the term that we use to describe this immense world of form in which we find ourselves thinking and breathing, day in and day out. Breaking the word down, we have “uni,” meaning “one,” and “verse,” a “song.” One song! That is our universe, my friends. Just one song. No matter how we separate into individual little notes, we are all still involved in the onesong.<sup>2</sup>*

If we accept the premises of Einstein and Dyer, we begin to understand that what each of us does everyday contributes to what we all do. Our collective contributions become our “onesong.” To think of ourselves as both an individual and a collective is to understand the paradox of our existence. Unless we act in accordance with this paradox, our community of practice, known as judicial branch education, will disintegrate as we will not have onesong.

You may ask what is our onesong? Who are we, what do we do, and how can we harmonize with our work and each other in a way that brings meaning, joy, advancement, value, knowledge, and expert practice to our entire community?

Who are we? Excellent question. [We are individuals who value the important role of courts in free societies.] We value both the concept and practice of justice. We also value education as a vehicle of human development and professional evolution. We

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<sup>1</sup> As quoted on page 74 in Dyer, Wayne W. 1989. *You'll See It When You Believe It*. New York: Avon Books.

<sup>2</sup> Dyer, Wayne W. 1989. *You'll See It When You Believe It*, pg. 73. New York: Avon Books.

believe that by applying our passion for education with our convictions about justice and freedom, we can lead the courts into the future and back to their original intent of protecting all individuals from undue governmental interference and ensuring individual rights and liberties.

What do we do? Another excellent question. Most often we listen. We listen to judges, administrators, probation officers, clerks, and others discuss the challenges confronting them in their respective workplaces and personal lives. We do our best to honor the confidence they have in our skills and abilities to deliver experiences that expand what they know and can do while also ministering to their human spirit. In order to do all of this, we conduct endless budgeting processes, administrative meetings, and planning sessions. We engage in campaigns to build sustainable recognition and resources for judicial branch education. The present and the future become one as we know that what our future looks like rests on our ability to deliver what is wanted and needed every day.

How can we harmonize with our work and each other? This is a more difficult question to answer. Most often, [we harmonize with our work by finding the one thing that most speaks to our hearts and brings us joy and meaning.] Then, we weave that magical thing, whose expression is so personal, through everything we do. It is that one thing that sustains us through the tough times. Perhaps, more importantly, it is that one thing that we bring to our community of practice that makes our contribution both necessary and unique. As we enter our community, we find that sitting in the center of the community are those things that are identified as “our practice.” In a way, they are our covenant with each other and with those whom we serve. Our covenant is expressed in NASJE’s *Principles and Standards in Judicial Branch Education*, Web site, annual conference, and strategic plan. It appears in JERITT’s monographs, databases, and Web site. Through these means and others, we learn the fundamentals about needs assessment, evaluation, curriculum design, program development and delivery, faculty preparation, adult learning theory and practice, committee structure and function, governance, management infrastructure, and organizational leadership and management.

How we approach and practice all of these things is the way that our individual contributions have the potential to harmonize and become our onesong. If we lose respect or value in one state, there is the potential to lose respect and value in all states. The same is true with money and other resources. That is how communities of practice work. They have their own consciousness. Threads of that consciousness sustain our origins and connect us to our onesong. Duane Elgin termed this oceanic consciousness, and he described it as having “...a deep sense of bonding and community, humanity will work to build sustainable future premised on mutually supportive development.”<sup>3</sup>

As we contemplate our community of practice and our onesong, I leave you with the words of Wayne Dwyer.

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<sup>3</sup> Elgin, Duane. 1993. *Awakening Earth: Exploring the Evolution of Human Culture and Consciousness*, pg. 154. New York: William Morrow and Company, Inc.

*...once we know how this principle of oneness works in this endless universe, we will begin to see how we can make the principle work not only for each of us, but for this entire song that we make up. The harmony will be felt within you, and it will radiate out to make the onesong a rapturous melody, totally in tune, harmonizing with all of the individual notes that make up this uni-verse!*<sup>4</sup>

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<sup>4</sup> Dyer, Wayne W. 1989. *You'll See It When You Believe It*, pg. 77. New York: Avon Books.

## List Servers: Managing the Exchange of Ideas

Thanks to JERITT and its list server, we are all familiar with the idea of a list server. JERITT's list server allows us to exchange ideas, request information, post job openings, etc. This said, why not use list servers to facilitate the exchange of information and ideas among our constituents? Whether you use a general list server, such as a training list server, or a specialized list server, such as a judge or prosecutor list server, a constituent list server can help foster the transmission of information.

A little background on mailing listservs: the first automatic mailing list server was developed in 1986. Today, list servers are most often referred to as *listservs*, but the term *Listserv* refers to a specific mailing list—a commercial product marketed by L-Soft International<sup>5</sup>, the term is used incorrectly when referring to a general mailing list server. This article will continue to use list server as a tag for mailing list server, but the three titles—mailing list server, list server, and listserv—are used interchangeably.

At its simplest, a list server is a communication tool that allows its users to contact large numbers of people at the same time. If a user posts or sends a message to the mail server, that message is sent to all the individuals who subscribe to that mail server. List servers are maintained on a server, the server stores all the active e-mail addresses, as well as all the messages received or posted on the mail server. The user may access the messages posted either through their e-mail or by visiting the website that hosts the mail server. For example, I subscribe to the *Municipal Court Administrator List Server* that is managed by TMCEC and facilitated through *Yahoo*. Through my e-mail, I receive all the messages that are posted on the server. However, if I am out of the office and not receiving my e-mail, I can go to [www.yahoo.com](http://www.yahoo.com) and access and respond to all the messages posted.

On their *Communications* webpage, JERITT summarizes the advantages, disadvantages and best use of listservs, as well as other types of technology. Visit the site at <http://jeritt.msu.edu/communications.aspAdvantages>. Following is their summary of list servers.

### Advantages:

- No access to the web is necessary.
- Messages come directly to your mailbox.
- Can communicate with large numbers of people with ease.

### Disadvantages:

- If the list server activity is extensive, mailboxes will be rapidly filled with messages.
- Messages are not held in one record.

### Best use:

- Rapid dissemination of information.

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<sup>5</sup> [www.webopedia.com](http://www.webopedia.com)

- Question and answer sessions.
- Rapid seeking and sharing of information

If you are interested in creating a list server, there are two things you must have. First, you must have a server, provider, or facilitator. If you have a server in-house, there is commercial software available to run a list server on your own. The other option is to run your mail server through a provider, such as msn.com or yahoo.com (there are an unlimited number of free services if you have the time to look). Whichever option you choose, the second must is an administrator to manage the list server. This person will add members and monitor the messages posted.

Managing a mailing list server takes a village. Both the participants and the administrator bear shared responsibility in keeping the list server task oriented, legal and appropriate, and functional. This said, let us review some common management tips<sup>6</sup> for both users and administrators of list servers.

1. Send a thorough welcome letter that includes who is hosting the list server, how it works, and most importantly the list server's topic. The letter should also briefly mention that list servers have two different e-mail addresses: the list address, the address that submits to the entire group, also called *sending mail to the list* and the list server address, the address that commands are sent to, such as to subscribe or unsubscribe.
2. All parties involved should try to check their e-mail daily. It is polite to be timely in following the conversation, particularly when many conversations may be happening at once.
3. Help when you can, the goal is to share information. However, no one is expecting a response from you each time, so only respond if the information is helpful, i.e. don't send meaningless messages with no content, such as "I agree."
4. Every mail server treats e-mail messages differently, but be careful when setting your e-mail to auto-reply if you are going to be away. If the mail server does not screen those messages, your auto-reply e-mails may cause havoc on the list server.
5. Use a meaningful subject line. Some list servers are very active, it is important for a user to be able to screen out messages they do not want to read just by reading the subject line.
6. Do not send attachments to the list server. Due to computer viruses, many e-mail servers will not allow messages with an attachment, meaning your message will not be received. Instead, state that you have the information and have the individual user contact you directly for the information.
7. Keep your original messages brief and when responding, include a portion or summary from the message to which you are responding. Again, this is being polite; remember the information is the key.
8. Don't use all uppercase when writing, it's just rude. This is an old netiquette rule, but it applies in list servers as well.

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<sup>6</sup> Many of the management tips are from West Loogootee Elementary's webpage. Visit them at <http://www.sieec.k12.in.us/~west/index.html>. The information was developed for schoolteachers, but they have great resources on teaching the basics of technology, including slide shows.



9. Don't be critical of people's queries posted on the list server and never send insulting, abrasive, or threatening remarks. If you are unhappy with a posting, contact that person directly to discuss your differences of opinions.

There are many considerations for both the users and the administrator when participating in a list server, but list servers can be a source of learning that is self-sufficient. As educators, it is vital that we embrace and nurture new ways of learning. As a departing thought, a list server is at its core only e-mail. By following "The 10 Commandments of E-mail," we shall never sin, at least through our list server practices.

*The 10 Commandments of E-mail*<sup>7</sup>

By Judge Don Shelton

Ann Arbor, MI

Thou shalt include a clear and specific subject line.  
Thou shalt edit any quoted text down to the minimum thou needest.  
Thou shalt read thine own message thrice before thou sendest it.  
Thou shalt ponder how thy recipient might react to thy message.  
Thou shalt check thy spelling and thy grammar.  
Thou shalt not curse, flame, spam or USE ALL CAPS.  
Thou shalt not forward any chain letter.  
Thou shalt not use e-mail for any illegal or unethical purpose.  
Thou shalt not rely on the privacy of e-mail, especially from work.

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<sup>7</sup> As printed in *Judicial Division Record*, Fall 2001, Page 4.

“Teaching, Learning, and “Thinking Outside The Box”: The Judicial Educator’s New Work” by Dr. Chuck Claxton.

This thought-provoking session was primarily designed around pushing us to discover what it means to “think outside the box” and the following quote:

**“We will never solve the problems of today with the same level of thinking we had when we created the problems in the first place”  
-Albert Einstein**

Dr. Claxton suggested that the work of the judicial educator is changing. There seems to be a paradigm shift in our work from “A Teaching Paradigm” to “A Learning Paradigm,” where real transformation of the participant can be supported and cultivated. This suggests that what we do goes beyond the hope for behavioral change and moves toward supporting people in new ways of thinking.

Often times when we talk about enhancing our organizations, we talk about “changing the culture.” Culture can be defined as “the way we do things around here.” It is based in a large part on our assumptions of our work world. Dr. Claxton challenged us to view our organizations as an ecology where the mindset tends to move us from perhaps a more rigid one of “fixing problems and short term solutions” to a more malleable one of “fostering a richer environment and cultivating relationships for the future.” The role of the educator becomes one of “meaning making” or “learning leader” in the organization as we support the learners’ journey. We reviewed some of the work of William Perry, Robert Keegan, Parker Palmer and Kolb. Through role play and examples, he suggested that the judicial educator’s new work is:

- To provide programs that support learners in “changing their minds.”
- To provide programs that support learners’ development toward, through and (perhaps) beyond fourth order consciousness.
- To foster awareness (a) that learning goes in the work setting as a whole and (b) that this learning can be intensified.

Dr. Claxton concluded by having us look at our work as a vocation. Through this lens we can see that many of us are in this work because we have a passion for it and it is indeed noble work.

*Editor’s note: our thanks to Liz Strong of Colorado for her brief summary of this session.*

Concurrent Track:

“How To Develop A Course” by Dr. Maureen Connor and Kay Palmer

This session was enthusiastically attended by many new NASJE members. The course was designed for those new to the field of Judicial Education and based on JERITT Monograph Number Four, which provides the fundamentals of developing a course and discusses an eight step model of Program Development.

Step 1: Assess Needs

Step 2: Develop Goals

Step 3: State Objectives

Step 4: Establish Content

Step 5: Design Presentation

Step 6: Select Teaching Aids and Room Arrangements

Step 7: Present

Step 8: Evaluate

The session participants agreed that every new educator and their education committee members should have a copy of Monograph Four.

The session provided an opportunity to ask many questions and receive such practical advice from creating basic curricula to dealing with the politics of “selling” your programs to your customers and committees. If there was any detractor from the session, it was that there was not enough time to thoroughly review the steps and satisfy the participants’ questions.

*Editor’s note: our thanks to Liz Strong of Colorado for her brief summary of this session.*

## NASJE Post-Conference Session Summary

**By Sharon L. Bowman, MA**  
**Professional Speaker and Trainer**

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**Session Title:** “Preventing Death by Lecture”

### **Session Summary:**

“So what did you learn?” You pause, think, and answer, “Oh, lots of things.” At the NASJE 2004 Conference in Reno last week, you collected so many new ideas that it might seem difficult now to articulate exactly which ideas you are going to put to use. Or perhaps you simply need some “incubation time” to let all the new information sink in for awhile.

A number of folks who attended **Sharon Bowman’s “Preventing Death by Lecture”** session were able to give specific answers to the question “What did you learn that was most useful to you?” The ideas and activities were so practical that participants immediately were able to transfer what they learned to their own areas of expertise.

Here are some of the gems participants walked away with:

**Francis X. Halligan, Jr., President of the American Judges Association**, said that the “**Ten-Minute Rule**” - breaking up a lecture with a change or an activity every ten minutes - was very helpful. Francis also enjoyed the information pertaining to the different ways people learn, different lengths of attention span, and the suggestion to remember who your audience is and how to reach them.

**Paula Mae Weekes, Court Judge from Trinidad and Tobago**, said the “**Koosh-Ball Toss**” was the most useful and a non-threatening way to involve learners. Paula also liked the “**Peripheral Learning**” - printing information on chart paper and posting the charts on walls around the room - because it was an easy way to review information, it didn’t have to be planned or taught, and the curious read the charts as soon as they stepped into the room.

**Joyce Francis, Judicial Project Coordinator from Austin**, liked the Ten-Minute Rule and the brain research behind all the activities. The “**Brain Secretary**” (i.e. “Reticular Activating System”) notices any change from the ordinary and routine. Also, whenever we feel physically or psychologically threatened during a new learning experience, mental activity shifts from “thinking brain” to “emotional and survival brains.”

The two most important points to remember about the brain research were: to change your lecture-delivery in some way (using movement, voice, tone, gestures, visuals,

sound, or learner-involvement), and to create a learning environment where people feel safe learning together.

**Dwayne Holman, Judicial Project Manager from Austin**, thought the “**Graphic Organizer**” - a simple, organized note-taking sheet - was a great way to take notes and remember important information.

**Ana Otero, Director of the Judicial Externship Program at Texas Southern University**, liked the Koosh-Ball Toss, the Ten-Minute Rule, and the “**Numbered Shout Out**” - where participants shout out a number and then come up with that number of facts pertaining to the topic.

During the session, participants experienced each activity, then talked about how they could use the activity in their own teaching and training. Lots of movement, talking, questioning, and discussing made the session lively, hands-on, memorable, and fun. Everyone walked out of “Preventing Death by Lecture” alive - and enthusiastic about what they learned!

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Sharon Bowman is a thirty-year veteran teacher and trainer. She specializes in “train-the-trainer” programs for educational institutions, businesses, and government agencies. She is the author of six popular teaching and motivation books. She is also a member of The National Speakers Association and the director of The Lake Tahoe Trainers Group. Log onto her web site at [www.Bowperson.com](http://www.Bowperson.com) for more information about her books and training services.

*Editor’s note: our thanks to Sharon Bowman for her brief summary of this session.*

## **Developing Curricula for Challenging Topics**

Kathleen Sikora and John Meeks provided a helpful and engaging session on “Developing Curricula for Challenging Topics.” Topics such as ethics, literature and the courts, diversity, sexual harassment, stress, therapeutic jurisprudence, the roll of the judge, domestic violence and professionalism present problems for a teacher or facilitator that call for greater skill than topics that are nested in more substantive content with more objective material. This provided an excellent follow-up to the keynote address, affirming the need to move from what had been discussed as “outer work” to “inner work.”

One of the main reasons for this challenge is the role that values play in our lives and work. While a learner may not have strong feelings about case flow management, he or she may have very strong feelings and commitments in the area of diversity or ethics. Thus, the facilitator needs teaching strategies that provide both challenge and support for the learner, as Chief Justice Deborah Agosti mentioned in her opening remarks.

The presenters made good use of a variety of presentation techniques in an effort to define “complex curricula,” identify the causes and problems with such topics, and suggest solutions. The audience was engaged in the generation of the content, and the presenters were encouraging and respectful.

The materials in the notebook were also strong and provide an additional resource for participants as they reflect on the session and apply the principles to their own work setting.

*Editor’s note: our thanks to Pat Murrell of Tennessee for her brief summary of this session. For more on this session, see the article in this issue entitled *Designing Complex Curricula—Course Summary* by Kathleen Sikora*

Plenary Session Panel: “Economics and Judicial Education”

Panel Members:

**Hon. Ken Kawaichi of California; National Judicial College President William Dressel; Chuck Eriksen, Director of ICM; NASJE President Tom Langhorne; and, Maureen Connor, Director of JERITT**

This was an interactive session with judicial educators led by a panel discussing:

- National and state perspectives of judicial education in light of tough economic times
- Funding challenges and ideas
- Strategies and innovations for surviving these times

It was clear from the participant comments and from those members unable to attend, that most judicial education state budgets are suffering greatly. A few states (eg., NM) that have a funding source (eg., fees attached to certain filings) whereby funds are placed in a separate account, not subject to general fund bureaucracy, are in much better shape than their neighbors.

The session began with panel members sharing their national perspectives. Chuck Eriksen, the Executive Director of the Institute for Court Management (ICM) at the National Center for State Courts (NCSC) shared his recent experience at the 2003 Conference of State Court Administrators (COSCA). The NCSC/ICM regularly surveys COSCA and the Conference of Chief Justices (CCJ) regarding the value of services they provide. He noted that six years ago, ICM/judicial education was consistently at the top of what they valued. However, in the latest survey, ICM dropped to the bottom of the list. Not surprisingly, government relations, dealing with the budget crisis and technology services, have jumped to the forefront. COSCA is working on a white paper to summarize the recommendations members made at this meeting regarding the budget crisis. While not currently published, Chuck highlighted these recommendations but with a “twist.” He suggested that NASJE may also benefit from some of these suggestions so he replaced “COSCA Leadership” with “Judicial Education” to create the following:

-Need for “judicial education” to have a demonstrated track record of good governance (credibility) and accountability. This includes developing a budget that is transparent, establishing a judicial reputation of excellence and providing visionary leadership.

-The “judicial educator” needs to build a position of strength with the funding authorities. This includes a good relationship with the customers and associations we serve.

Next, William Dressel, President of the National Judicial College (NJC) in Reno, NV spoke supporting the summary by Chuck Ericksen. President Dressel noted that from his perspective, attitudes have changed when looking at where to place resources. While private industry continues to embrace the concept of a “learning environment,” especially in the distance learning arena, it appears that state governments see less urgency in education. He also noted that there is much more competition for the same funds judicial educators need. At a recent meeting of the Assembly of Court Associations, President Dressel noted that all associations have established similar objectives and goals:

- All hold national conferences where education is the backbone of the events
- All produce publications to educate their membership
- All want to increase their membership through education
- All want to increase their use of distance education strategies
- All want to do national and international programs

These associations are lobbying our leadership, chasing the same resources we are chasing. He suggested that if we do not have the heads of our leadership behind us, in poor economic times, it may be too late. He emphasized the need for judicial educators to focus on accountability and be able to show our leaders the impact of our programs to the organization as the key to our future success.

The Hon. Ken Kawaichi, retired judge from California, shared with us what he has seen in his travels around the states delivering education programs. For many programs to continue, participants are paying their own way and sharing the cost to deliver face to face programs. Planning for events is done primarily through email and conference calls. There are strong efforts to minimize hard copy materials for participants and provide the majority of the materials on a disk. Several organizations are joining together to form coalitions to jointly produce programs and conferences. In these difficult times, Judge Kawaichi shared with us that the Chinese symbol for crisis is also the same one for opportunity.

Tom Langhorne, serving in one of his final roles as President of NASJE, expressed his frustration over education in the judicial branch being the object of severe budget cuts without the due course of analysis. He said that in the United States, judicial branches tend to have a “whimsical” approach to budget decisions, especially when it comes to education and training. In his travels as a consultant, particular in Eastern Europe, judicial education is seen as a “must have,” not an afterthought. As educators, we must become more adept at proving the value of our programs through strategic planning and analysis.



Next, Maureen Connor, Director of the JERITT Project, led us through a discussion encompassing several years of data pertaining to issues identified by judicial educators as “important.” She stated that funding for judicial branch education is a perennial problem. Education and training are not used or viewed as “the best” vehicle to achieve organizational goals. Therefore, it is marginalized and tends to live at the fringe of the organization. Today’s budget crisis demonstrates just how vulnerable we and our programs are. She emphasized that Directors of judicial branch education programs must be at the decision making table; we must create a presence.

Maureen was one of the key planners for and facilitators at the 1999 Futures Symposium for Judicial Education held in St. Louis, MO. Teams from all over the US consisting of educators, Supreme Court justices, court administrators and education committee members gathered to discuss and strategize on the future of education in the courts. In 1999, the participants identified the following primary obstacles to Judicial Branch Education:

- Insufficient Funding
- Lack of Leadership
- Resistance to Change
- Public Distrust
- Technology

Sound familiar? In a survey of NASJE members prior to this conference, members identified similar issues.

In 1995, she published an article titled “Creating Presence” in the Winter Edition of *NASJE News* and found many of the same issues described then are relevant for educators today. At the time, educators expressed frustration at feeling “marginalized,” spending a majority of their time “defending the value, worth and contribution of judicial branch education...” with their decision makers. Eight years later, as states deal with one of the worst budget cycles in history, these same frustrations were cited by many members.

So what does it mean to create presence? “Creating presence is an operating mode that depends on clarity, acknowledged values, stated intentions, hard work, and mastery of people and process.” It means making what we do central to the business of doing justice. OK, but how do we do that? The survey results from educators interviewed in 1995 on how they created presence were consistent with the responses from the participant group discussions at this year’s conference:

- There must be support from the top (Supreme Court Justices) demonstrated by:
  - Specifying state funds set aside judicial education
  - Appointing a supervising justice for judicial branch education
  - Supporting some mandatory training

--Adopting curriculum plans created by education advisory committees

- The Educator must possess integrity and credibility while the programming must be of extraordinarily high quality demonstrated by:
  - Providing education to all judicial and court personnel
  - Publishing a newsletter dedicated to continuing education
  - Being of assistance to judges and court personnel beyond an education request
  - Providing basic faculty skills training for staff and judges
  - Developing and implementing long range operational plans, policies and procedures
  - Evaluating and constantly assessing programs
  - Developing collegial relationships with customers to be served
  - Visiting the courts to stay in tune with current needs
  
- There must be support from the field
  - Judges and staff must want the education programs
  - Their efforts should be engaged in lobbying the decision makers for programs and money to support the programs
  - Develop relationships with key decision makers

At the end of the session, there were no “magic answers.” It is a dialogue that will continue. However, there was a sense of renewed commitment that to create a presence within our organization we must be “grounded in a clear plan, executed strategically, aligned with stated values, and embedded in relationships of mutual respect.”

*Editor’s note: our thanks to Liz Strong of Colorado for her summary of this session.*

Concurrent Track:

“Leadership Principles in Collaborative Settings” by Ms. Debra Koehler

**“Leading is influencing, guiding in direction, course, action, opinion.”**

**-Warren Bennis and Burt Nanus**

**Leaders: The Strategies for Taking Charge**

This session challenged the group to consider how to use leadership skills in collaborative settings at work. Debra led the group through an exercise that reflected on the skills and attributes of an effective leader. The created list was expansive.

Next, we talked about five myths about leaders.

Myth 1: Leadership is a rare skill

Myth 2: Leaders are born not made

Myth 3: Leaders are charismatic

Myth 4: Leadership only exists at the top of an organization

Myth 5: Leaders control, prod and manipulate followers

The group debated the accuracy and effectiveness of the myths in various situations.

Finally, the group reviewed and discussed strategies used by effective leaders and how to incorporate skills reflective of these strategies into our work.

Strategies:

1. Attention through Vision
2. Meaning through Communication
3. Trust through Positioning
4. Positive Self-Regard

For further exploration of this topic, Debra recommended the following books:

Bennis, Warren and Nanus, Burt, Leaders: The Strategies for Taking Charge

Covey, Stephen R., Principle-Centered Leadership

Covey, Stephen R., The Seven Habits of Highly Effective People

DePree, Max, Leadership Jazz

Holman, Larry, Eleven Lessons in Self-Leadership

*Editor's note: our thanks to Liz Strong of Colorado for her brief summary of this session.*

## **Workplace Mediation**

William Brunson

For the majority of states in the U.S., 2003 has been a year marked by decreasing budgets and, in many cases, layoffs. In this climate, remaining employees often have to take on additional duties and that can result in stress. Often, this erupts into conflicts in the workplace.

In a managerial model a manager may feel that the best approach to dealing with conflicts between employees is to begin a progressive discipline process. Under that approach, the manager would counsel employees and place each of them on a performance improvement plan. If the situation escalated, the manager may feel that the appropriate response is suspension or termination. With a suspension or termination, the manager may lose a productive employee, and the workplace may suffer increased morale problems. Workplace mediation is another approach that the manager can use to assist in the resolution of the dispute. This article defines mediation, compares litigation and mediation, identifies the types of disputes that are likely to be resolved through mediation, and describes what to do when there is a power imbalance between the parties.

### **Mediation Defined**

Mediation is subject to a great deal of misunderstanding. It is NOT a procedure where a third party hears the dispute between the parties and then renders a decision. In an informal basis, that would be known as arbitration and in a formal setting, the judicial process. Rather, mediation is an informal process where a mediator hears the positions of each party. One writer defined mediation as follows:

The mediator does not give legal advice or decide how the dispute should be resolved. The mediator guides parties through a process in which they discuss the issues, generate options for resolving the dispute and design an agreement that meets their respective interests.

Minnesota Department of Employee Relations, *Workplace Mediation: What It Is and When to Recommend It* (visited Sept. 5, 2003)  
<[www.doer.state.mn.us/tdrc/courses/SupvCore/super1.pdf](http://www.doer.state.mn.us/tdrc/courses/SupvCore/super1.pdf)>

The agreement can contain any legal terms. Conversely, arbitrators and judges must find a winner or loser and the remedies available are almost always statutorily or legally defined. Those remedies are generally quite limited.

### **Comparing Litigation and Mediation**

Litigation poses a number of problems for the employee. First, the employee will likely find the litigation process to be traumatic because of the expense of attorney's fees and participation in depositions and ultimately, cross-examination. Second, the employee

will not be able to continue the relationship with the employer because litigation, by its very nature, polarizes the parties. Elizabeth Whittenbury, an attorney, author, mediator and fact-finder, writes:

Once the parties have faced each other in court, the working relationship has been destroyed, and the employer will likely lose one or both employees. In addition, those left in the workplace will likely take sides, thus causing productivity and atmosphere problems for the remaining work force.”

*Elizabeth Whittenbury, Sexual Harassment Claims: When Can Mediation Work? (visited Sept. 5, 2003)*  
<[http://research.moore.sc.edu/Publications/B&EReview/BE43\\_4/mediate.htm](http://research.moore.sc.edu/Publications/B&EReview/BE43_4/mediate.htm)>

Third, the employee’s dispute will be public and embarrassing information will likely be revealed.

Similarly, litigation poses problems for the employer as well. First, confidential business practices may be subject to revelation. Second, litigation is extremely expensive. Not only are there costs associated with paying counsel and associated litigation costs, but also there are substantial costs in lost labor. Direct managers and human resource professionals will spend a tremendous amount of time documenting the case. Further, other employees and sometimes-senior management will miss a tremendous amount of productive time because of depositions during the trial’s fact-finding process.

**[Instead of establishing the facts of the past (the purpose of litigation), the concentration in mediation is on how to make the parties whole looking forward.]**

On the other hand, mediation costs much less. It allows the parties to fashion a solution to the issues present. Instead of establishing the facts of the past (the purpose of litigation), the concentration in mediation is on how to make the parties whole looking forward. In mediation, the dispute can be kept private between the parties. There is no obligation to reveal information to the public or to other employees (as can happen in litigation). Since the dispute remains confidential, the employee is much more likely to be able to return to employment.

The types of remedies that result from mediation are much more varied than those that occur in litigation. Examples include:

- More flexible hours or vacation schedules for the employee
- Apologies (on behalf of the employer or employee depending upon the situation)
- Outplacement assistance if termination of the employment relationship is unavoidable
- Reinstatement in case of suspension or termination
- Provide a raise or promotion that may have been withheld
- Transfers, termination or reeducation of harassers in sexual harassment cases, (depending upon the situation’s severity)

**[The remedies in workplace mediation can be as creative as the parties, mediator and counsel (if present).]** Indeed, the remedies in workplace mediation can be as creative as the parties, mediator and counsel (if present). “The remedies fashioned through mediation will tend to focus less on assigning a monetary value to the problem and more on redressing the true inequities involved.” Elizabeth Whittenbury, *Sexual Harassment Claims: When Can Mediation Work?* (visited Sept. 5, 2003) <<http://www.mediate.com/articles/whittenburyE.cfm>>

## **Types of Disputes**

The types of disputes that are commonly resolved through workplace mediation include:

- Manager – employee disputes
- Co-worker disputes
- Work team conflicts
- Discrimination claims
- Americans with Disabilities Act (ADA) accommodation issues
- Interpersonal communication issues
- Sexual harassment claims

This list is certainly not exhaustive. Mediation can be used in any organization-based dispute that arises. Because of mediation’s relative simplicity, small disputes can be resolved quickly and inexpensively.

## **Power Imbalances**

How do you mediate disputes where there is a clear power imbalance such as the manager – employee dispute or a sexual harassment claim? What can mediators do to allow the party with less power to express his or her position without fear of retribution? Elizabeth Whittenbury refers to a four-phase model for addressing this issue.

**Phase One:** The mediator asks the parties to tell their stories directly to the mediator. This phase has four identifying characteristics: (1) the disputants don't talk directly to one another; (2) the mediators perform active listening and positive feedback; (3) the mediator attempts to validate the parties' feelings and help them feel heard; and (4) the mediators elicits the issues that require resolution.

**Phase Two:** The goal is to help the disputants understand each other. This phase has four identifying characteristics: (1) the parties face one another; (2) the mediator asks the parties to listen to one another; and (3) the mediator asks the parties to respond in a manner that evidences understanding.

**Note:** During phase one or two, the mediator may decide to caucus separately with the respective parties. “Caucus” is defined as a one-on-one meeting between the party and the mediator.

Phase Three: Once the mediator believes that the parties understand one another, the mediator helps the parties acknowledge their new understanding. This doesn't signify that the parties must agree with one another. The parties simply acknowledge or state the other party's position or issues requiring resolution.

*Phase Four: With the assistance of the mediator, the parties will resolve the issues identified in phase one. Typically, the mediator does not suggest solutions. Instead, the mediator's role is to help the parties stay focused on the issues. The mediator can facilitate brainstorming regarding solutions and ensure that each party accepts the final solution. The mediator can also provide a reality check for the solutions offered by the parties. Elizabeth Whittenbury, Sexual Harassment Claims: When Can Mediation Work? (visited Sept. 5, 2003)*  
<[http://research.moore.sc.edu/Publications/B&EReview/BE43\\_4/mediate.htm](http://research.moore.sc.edu/Publications/B&EReview/BE43_4/mediate.htm)>

Certainly, mediation may not be appropriate in all circumstances. For instance, if there is an allegation of sexual harassment that permeates a workplace, mediation between the harasser and only one of the victims would not serve any purpose. Similarly, mediation between all of the victims and the harasser would also likely fail. In those cases, removal of the employee is warranted. The question then is between what remedies are available to the victims and what capacity does the employer have to redress those issues. This may be amenable to mediation.

## **Conclusion**

In sum, workplace mediation offers an alternative to managerial discipline that is controlling in nature. That is, workplace mediation allows the parties to design their own resolution whereas the manager defines the result. Workplace mediation also provides an excellent alternative to litigation because of cost savings, declines in morale, and loss of productivity. Finally, it's clear that workplace mediation can't be used in all circumstances. Nevertheless, where the parties define their own destinies, there is generally a greater acceptance of the results.

*William Brunson became academic director of The National Judicial College on October 1, 2001. Before this appointment, he was the assistant academic director for more than four years beginning in January 1997. He also served as a program attorney for four years and as a program coordinator for the College under a Bureau of Justice Assistance grant in 1992. He received his Bachelor of Arts degree from the University of Nevada, Reno. He received his J.D. degree from Willamette University College of Law. While in law school, he worked as an associate editor of the Willamette Law Review. In 1999, he received a President's Special Service Award presented by NASJE. He is an editorial board member of NASJE News and a member of the American Society for Training and Development. He has educated faculty both nationally and internationally on adult education philosophy and practice, and he joined the faculty of The National Judicial College in 1997.*



Book summaries for busy managers who have to know but don't have time to read about it!

### **Today's Book:**

## ***Primal Leadership: Realizing the Power of Emotional Intelligence***

By Daniel Goleman, Richard Boyatzis, and Annie McKee  
Harvard Business School Press, 2002

### **Great Leaders Create Resonance**

Emotional intelligence (EI) is a more reliable predictor of workplace success than IQ, according to research findings published by Daniel Goleman in his international bestseller, *Emotional Intelligence* and *Working with Emotional Intelligence*. This new indicator of bottom-line performance has given a new spin to the hard-hitting impact of what were once considered to be the *soft skills*.

In his latest book, *Primal Leadership: Realizing the Power of Emotional Intelligence*, Goleman and co-authors Richard Boyatzis and Annie McKee, explore the role of EI in leadership. "The fundamental task of leaders," the authors contend, "is to prime good feeling in those they lead. That occurs when a leader creates *resonance*—a reservoir of positivity that frees the best in people."

### **Positivity is Contagious and Attracts Talented People**

The emotional centers of our brain operate as an open-loop system, which depends largely on external sources to manage itself. Unlike the closed-loop circulatory system, which is internally self-regulating, our emotional stability relies on connections with other people, what scientists describe as "interpersonal limbic regulation." This means that when people are near each other, even when the contact is completely nonverbal, emotions spread. The more cohesive the group, the stronger the sharing of moods.

The leader in any work group is an emotional guide and has the power to generate enthusiasm or antagonism toward work through their emotional states as well as their actions. "The more open leaders are—how well they express their own enthusiasm, for example—the more readily others will feel that same contagious passion." This effect is a product of resonant leadership.

*Resonant* leaders, according to the authors, are those who connect with others by skillful use of EI competencies such as empathy and self-awareness. Their effectiveness as leaders stems from the ability to adapt their leadership style to the situation at hand. And they exude upbeat feelings. It is for these reasons that they attract talented people to their work units, which leads to higher productivity, deeper commitment, and greater harmony within their groups.



### **Good Moods Lead to Good Work**

“When people feel good, they work at their best. Feeling good lubricates mental efficiency, making people better at understanding information and using decision rules in complex judgments, as well as more flexible in their thinking.” Research studies confirm this premise: “...a well-timed joke or playful laughter can stimulate creativity, open lines of communication, enhance a sense of connection and trust...” Hence, an emotionally intelligent leader embraces and broadcasts a spirit of playfulness.

### **Service Climate Drives Customer Satisfaction**

According to the authors, “For every 1 percent improvement in the service climate, there’s a 2 percent increase in revenue.” Their analyses suggest that “Overall, the climate—how people feel about working at a company—can account for 20 to 30 percent of business performance.” In most cases, the person who has greatest control over workplace conditions and service climate—who directly determines people’s ability to do their best on the job—is the manager, the boss, the leader.

### **Primal Leadership Relies on Emotional Intelligence**

There are four EI domains: self-awareness, self-management (personal competencies) and social awareness and relationship management (social competencies). Each domain consists of several associated competencies. No leader has strengths in every one of the competencies. However, “...highly effective leaders typically exhibit a critical mass of strength in a half dozen or so...and demonstrate strengths in at least one competence from each of the four fundamental areas...”

### **Growing Into the Leadership Role through Self-directed Learning**

Great leaders, research confirms, develop over time as they gradually acquire throughout their lives the skills and competencies they need to make them highly effective. “The competencies can be learned by any leader, at any point.” Two imperatives for this development are honest assessment of a leader’s real self and a self-directed plan for growth.

Richard Boyatzis’ learning model revolves around five discoveries through which the learner confronts reality and uncovers an ideal vision of him or herself. In the process, the learner establishes ideals, examines the real self, identifies strengths and gaps, creates learning strategies to close the gaps, and practices new behaviors.

*Primal Leadership* offers the reader a thorough review of the emotional competencies, a repertoire of leadership styles, the differences between dissonant and resonant leaders, tools for self-directed leadership development, and guidelines for building emotionally intelligent teams. It is packed with solid evidence and case studies to support the relationship between emotions and performance.

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