

NASJENews Quarterly

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Spring 2005

TEACHING JUDGING IN LAW SCHOOLS

Part III

By Paul Biderman

In January, after months of preparation, we finally launched the seminar on *Judging* at our School of Law at the University of New Mexico. As I wrote in my prior two articles, my co-teacher, Professor Ted Occhialino, and I spent much of last fall sifting through volumes of material to decide on what topics to address, which readings to offer, and how to present our classes. With all that preparation, the seminar, halfway through its fourteen-week run as I write this, continues to evolve as a work in progress—an exciting and challenging one.

Eight pioneering law students took this untried seminar, and have contributed questions and insights that have been indispensable to the development of our discussions. We decided early on that no written material or discussion that the faculty could offer could provide better insights than the students could receive from judges themselves. We have been fortunate to recruit quite a few judges as speakers on a variety of topics. Even more fortuitously, two judges actually have come forward unexpectedly and offered to teach sessions we hadn't even foreseen.

In the last issue of *NASJENews Quarterly*, I described two of the topics we planned to address: judicial decision-making and the role of values in judging. These topics were discussed essentially as I indicated in that article, although we never reached the discussion on errors in reasoning (with a good result, however). Other topics we have addressed so far have included judicial selection, ethics, tailoring tests, problem-solving courts, judicial independence and judicial discretion. Each judge's presentation has been integrated into and served as the basis for discussing one of those subject areas.

For example, during the session on the role of values in judging, we heard from a retired Supreme Court justice who had resigned during an earlier term on the trial bench over the application of a mandatory sentencing statute that he found unconscionable and an encroachment on separation of powers. A judge of our high-volume Metropolitan Court in Albuquerque described the array of problem-solving courts that she had helped to develop and conduct in that community, including the relatively unique homeless court and urban Indian drug court. Three appellate judges (whose offices are actually in a Law School building) presented their somewhat differing perspectives on judicial discretion, while a fourth Court of Appeals judge described the operations and effects of the judicial selection process.

The class examined the implications for judicial independence within the widely publicized *Schiavo v. Bush* case, in which the Florida Supreme Court turned back a legislative and executive branch effort to effectively override its prior opinion authorizing removal of Ms. Schiavo's feeding tubes by her husband. We also explored the policies and applications of the stringent and often counter-intuitive Code of Judicial Conduct. Our discussion there centered around a series of questions answered by letters written by our state advisory committee on the code. While we also discussed some of the more blatant ethical violations for which judges had been disciplined by the Supreme Court, the advisory opinions often present more subtle issues on which judges have admitted to uncertainty and have sought guidance.

In addition to the judges we have recruited to speak, two U.S. Magistrates have approached us to offer presentations. One of them, based in New Mexico, is offering a preview of how law students become and function as law clerks to federal judges. The second was even a greater surprise, since he came from another state and happened to be planning a trip to New Mexico when he learned about our seminar through my previous articles. This U.S. Magistrate has co-authored a study and article on heuristic (i.e., mental short-cut) errors in judicial reasoning—the topic we had not found time to reach in our session on judicial decision-making. He is currently completing another article on how successfully judges can disregard inadmissible evidence once they have seen it. I will offer more on these coming presentations, and a retrospective overview of the whole seminar, in my last article of this series in the next issue.

Transitions

Please join us in welcoming the following new NASJE members:

- Christine L. Bailey, Director, National Council of Juvenile and Family Court Judges, Permanency Planning for Children Department, Reno, NV
- Hon. Amy Karan, Miami, FL
- Bill Kockenmeister, Program Attorney, National Judicial College, Reno, NV
- Michele McFarlane, Education Program Coordinator, Administrative Office of the Courts, Salt Lake City, UT
- Mary McQueen, President, National Center for State Courts, Williamsburg, VA
- Amy Saathoff, Program Manager, National Council of Juvenile and Family Court Judges, Reno, NV
- Jennifer Rains Schoenfeldt, Program Attorney, The National Judicial College, Reno, NV
- Margot K. Vetter, Senior Program Specialist, National Foundation for Judicial Excellence, Chicago, IL
- Heidi A. Voorhees, Managing Director, National Foundation for Judicial Excellence, Chicago, IL

Former NASJE president Paul Biderman, associate director for the Institute of Public Law in the University of New Mexico School of Law, has received the New Mexico State Bar Public Law Sections' Public Lawyer of the Year award. See <http://lawschool.unm.edu/announcements/biderman.htm> for details. Congratulations, Paul!

SJI UPDATE

AMERICAN JUDICATURE SOCIETY EARNS SJI'S HOWELL HEFLIN AWARD

In a ceremony at the United States Supreme Court on November 18, 2004, SJI presented its ninth annual Howell Heflin Award to the American Judicature Society (AJS) in recognition of the exemplary judicial ethics work it has undertaken with SJI grant support since 1988. The Award is given in recognition of innovative SJI-supported projects that have a high likelihood of significantly improving the quality of justice in State courts across the nation.

The importance of an ethical judiciary to the independence and legitimacy of the State courts has been recognized at least since the Canons of Judicial Ethics were adopted in 1924. Since 1988, SJI has awarded ten grants to AJS, the pre-eminent organization in the field of judicial ethics, to educate judges and court staff about their ethical obligations. AJS is a nonpartisan organization with a national membership of judges, lawyers, and non-legally trained citizens interested in the administration of justice. In addition to judicial conduct and ethics, AJS's primary areas of focus are judicial independence, judicial selection, the jury system, court administration, and public understanding of the justice system.

AJS' SJI-supported ethics projects include:

A videotape education program entitled *Judicial Ethics and the Administration of Justice* (1988); A Videotape Training Program in *Ethics and Professional Conduct for Nonjudicial Personnel* (1993); a guide and model rules for the operation of State judicial ethics advisory committees, along with a series of articles issues related to judicial ethics (1993); a videotape training program on *Ethical Issues in Judicial Settlement* (1995); self-study and instructor's guides for an education program addressing judicial relationships with the public and the media (1996); an *Ethics Guide for Part-time Lawyer Judges* (1998); a handbook for members of State judicial conduct organizations (1998); an *Ethics Guide for Judges and Their Families* (1999); a PowerPoint ethics curriculum (2001); an essay entitled *Ethics and Judges' Evolving Roles Off the Bench: Serving on Governmental Commissions* (2001); and a judicial education curriculum providing ethical guidance for judges hearing cases involving self-represented litigants (2003). SJI's grants to support these projects have totaled more than \$1,100,000.

For additional information about these curricula and products, contact Cynthia Gray, Director of AJS' Center for Judicial Ethics, at (773) 248-6005 or cgray@ajs.org.

SJI SCHOLARSHIPS AVAILABLE

Judges and court managers who wish to attend out-of-State court-related educational programs beginning between July 1 and September 30, 2005, may submit their applications for scholarships between April 1 and May 27. Applicants may submit scholarship applications between July 5 and August 29 for programs that begin between October 1 - December 31.

Scholarships may cover tuition, travel, and lodging (up to \$150 per night, including taxes) up to a total of \$1,500. You may access the scholarship application forms on SJI's web site (www.statejustice.org) and fill them out on line; however, you must mail them rather than submit them electronically, as the Institute requires an original signature on the application.

For complete information about the Scholarship Program, please visit SJI's web site (www.statejustice.org), click on SJI Grant Program Fact Sheets in the left-hand column, then click on Scholarships in the drop-down menu. You can also contact Candice Jackson, the Institute's Scholarship Coordinator, at (703) 684-6100, extension 216, or e-mail her at cjackson@statejustice.org if you have any questions.

JUDICIAL BRANCH EDUCATION TECHNICAL ASSISTANCE GRANTS AVAILABLE FROM SJI

The next mailing deadline for the Judicial Branch Education Technical Assistance Grants offered by SJI is June 3, 2005. In addition to curriculum adaptation and consultant assistance in planning, developing, and administering judicial branch education programs, these grants of up to \$20,000 may support assistance in maintaining judicial branch education programming during the current budget crisis, or development of improved methods for evaluating judicial branch education programs. The SJI Board reviews and approves requests quarterly. There is no cash match requirement for this program. For additional information about the Judicial Branch Education Technical Assistance Grant Program, please contact Kathy Schwartz at (703) 684-6100, ext. 215, or kschwartz@statejustice.org.

SJI SEEKS NOMINEES FOR THE FLORENCE K. MURRAY AWARD

The State Justice Institute announces the Florence K. Murray Court Innovation Award to recognize exciting innovations with potential impact in State courts across the country. Named for a judicial pioneer who served on the Institute's Board of Directors from 1994 until her death in 2004, the Award seeks to recognize one or more new court practices each year that are working well and could be implemented in other courts nationally. The practices can be in place at any level and in any division of a State court, with or without SJI grant support.

Interested applicants are invited to submit a letter not to exceed three pages by July 29, 2005, accompanied by descriptive materials or evaluations that describe the innovation and its success in meeting the court's goals. SJI Board members or staff may also visit the court to obtain further information. The Award will be presented in a suitable ceremony at the site of the innovation or an appropriate national forum.

For further information about the Award and how to apply, please contact Kathy Schwartz, SJI's Deputy Director, at (703) 684-6100, extension 215, or kschwartz@statejustice.org.

-----Original Message-----

From: Buttrey, Jennifer [mailto:JButtrey@aspensys.com]

Sent: Monday, May 09, 2005 11:34 AM

To: All CJEG Members

Cc:

Subject: DRAFT CJEG May 2005

Greetings from the National Criminal Justice Reference Service!

The May 2005 order form with new releases from the OJP agencies and ONDCP is now available at: www.ncjrs.org/cjeg. The monthly message below features publication summaries and links to new NIC and COPS resources and news that may be of interest to your readers, so please share the following information with your readers:

Combating Meth Use Topic for Today's CJEG Meeting

CJEG meeting is scheduled for 2:00 p.m. on Monday, May 9, 2005. Please contact Daryl Fox (dfox@ncjrs.org or telephone 301-519-5867) for additional meeting information or to RSVP.

NCJRS Honors Public Safety Personnel

Two "Special Feature" pages were added to the NCJRS Web site to commemorate National Correctional Officers Week (May 1-7) and National Police Week (May 15-21). The Special Features offer information on events across the country, benefits and assistance, equipment and technology, and statistics of interest to correctional and law enforcement personnel. You can access the pages from the "What's New" section of the NCJRS home page at www.ncjrs.org.

Sixth Annual Innovative Technologies for Community Corrections Conference Scheduled for June 13-15 in Seattle, Washington

<http://www.justnet.org/training/commcorr.html>. Each year the National Law Enforcement and Corrections Technology Center's Rocky Mountain Regional Center sponsors a conference and exhibition to convey technology information to community corrections professionals. The goal of the conference is to spotlight the innovative use of technology in community corrections and to introduce technologies on the horizon that may enhance an agency's mission performance. This year's conference is June 13-15, 2005, in Seattle, Washington.

Register Now for the Eighth Annual Crime Mapping Research Conference, September 7-10, in Savannah, Georgia

<http://www.ojp.usdoj.gov/nij/maps/savannah2005/index.html>. Online Registration is now available for the 8th Annual Crime Mapping Research Conference which is hosted by the National Institute of Justice's MAPS program. The conference brings together researchers and practitioners to learn about recent innovative research and share practical experiences with crime mapping and analysis. The conference takes place in Savannah, Georgia, on September 7-10, 2005.

New Resources

The following are new releases from the National Institute of Corrections (NIC) and the Office of Community Oriented Policing Services (COPS). We encourage you to share the publication information with your readers. Please note that NCJRS is not the ordering source for documents from NIC or COPS, however, ordering information is included in each abstract:

NIC

Serving Children and Families of Adult Offenders: A Directory of Programs

NIC ACCN 020200

<http://www.nicic.org>

This update to the 2001 version lists programs in the United States and provides a link to programs in Canada that offer services specifically for children and families of adult offenders. This publication is not available from NCJRS. For availability and ordering information, please contact the NIC Information Center at 800-877-1461 and reference the accession number.

Proceedings of the Large Jail Network Meeting, Winter 2005

NIC ACCN 020300

<http://www.nicic.org/Library/020300>

This publication summarizes a meeting of NIC's Large Jail Network focusing on the following topics: preparing leaders for the future, training as a strategic management tool; mental health issues and the jail, justice and the revolving door, and corrections in the next decade. This publication is not available from NCJRS. For availability and ordering information, please contact the NIC Information Center at 800-877-1461 and reference the accession number.

COPS

COPS POP Guide: Bomb Threats in Schools

<http://www.cops.usdoj.gov/mime/open.pdf?Item=1433>

This guide addresses the problem of bomb threats in schools, public or private, kindergarten through 12th grade. The guide reviews the factors that increase the risk of bomb threats in schools and then identifies a series of questions that might assist departments in analyzing their local problem. Finally, the guide reviews responses to the problem and what is known about these from evaluative research and police practice. This resource is not available from NCJRS. For availability and ordering information, please contact the U.S. Department of Justice Response Center at 1-800-421-6770.

A Suggested Approach to Analyzing Racial Profiling: Sample Templates for Analyzing Car-Stop Data

<http://www.cops.usdoj.gov/mime/open.pdf?Item=1462>

Decisions regarding the merits of racial profiling concerns are important and should not be based on either anecdotal evidence or incomplete analysis. This pamphlet describes the general approaches used, and illustrates them with sample templates of the analytical output. These templates represent examples of how to display and evaluate results from various methods of analysis. This resource is not available from NCJRS. For availability and ordering information, please contact the U.S. Department of Justice Response Center at 1-800-421-6770.

If you have any questions regarding this month's CJEG message or if you have any comments or suggestions about the way NCJRS shares information with you, please contact me.

Thank you,

J.B.

Jennifer Buttrey

CJEG Coordinator

NCJRS (www.ncjrs.org)

301.519.6208

301.519.5711 (fax)

jbuttrey@ncjrs.org

A Biographer's Biography: Jim Toner

In 1997, as part of our biography series on great judicial educators, NASJE News did an article on Jim Toner, the man who had written so many biographies himself. Jim has recently retired from the National Council of Juvenile and Family Court Judges. It is hard to say it better than we did back then. Jim: you are one of a kind and we will miss you. Enjoy your well-earned retirement! And if you want something to do, I am sure many of us would love to have you come work with us on some project. So here is that article from NASJE News, Summer 1997.

Over the past nine years, Jim Toner has served as biographer of those who have left their marks on the field of judicial education. His portraits in the NASJE News have given us a glimpse of the “whos” behind the “whats,” making human interest stories out of what might otherwise have been glorified résumés. As do most portraits, Jim’s gave us a glimpse of the artist as well as the subjects; they revealed his interest in each individual’s family, history and personal beliefs, and his own sense of humor. With his recent retirement from the post of NASJE biographer, we wanted to take an opportunity to look past the résumé of M. James Toner to find the human interest side.

When most people are asked about Jim, their responses come in the form of a story. A composite of these vignettes forms a more complicated picture than appears at first blush. The stories reveal someone with strong pride in his Irish roots, his North Dakota and Minnesota family ties, and his Catholic faith. They also show someone who has studied in Europe, has been active in a number of civic organizations, and who has, at various times, been a hot-rodder, a bicyclist, and a jogger. Add to these his devotion to wife Susan and daughters Kristen, Nicole, and Bridget, and one gets a much richer view of this man who has, for the past seventeen years, been largely identified in our professional circles as associate director for continuing education of the National Council of Juvenile and Family Court Judges.

No story about Jim would be complete without significant reference to his famous sense of humor. This humor cannot be stopped by language barriers. When a group of Bulgarian judges and officials visited in Reno, Jim’s opening question was, “How many of you know who Rodney Dangerfield is?” Once the simultaneous translation was completed, the guests were quick to give up the name of Bulgaria’s answer to Rodney Dangerfield. Jim then went on to say that like his hero, Rodney Dangerfield, he also came from a small town; in fact, the town was so small that the welcome sign was nailed to the back of the “please come back again” sign. The Bulgarian visitors responded with the international response to Jim’s jokes: groans and rueful chuckles.

Judges attending courses at the National Council of Juvenile and Family Court Judges will be greeted by the towel joke. “The University Inn has improved greatly since its days as the College Inn. In fact, one judge at the last program was remarking to me that he could tell that the Inn was a really good hotel, because the towels were so thick he was having a hard time getting his suitcase shut.” Groan though one must, Jim’s colleagues agree that there is something endearing about a repertoire that is gently corny instead of biting.

Indeed, individuals interviewed for this portrait consistently used words like loyal, trustworthy, brave, clean, reverent, generous, and honest to describe Jim. This may result from his Midwestern upbringing in a family that valued education and service to others. Born in Hettinger, North Dakota, Jim is the eldest of eight children, raised primarily in St. Paul, Minnesota. There are strong, pioneering women in his background, among them a homesteader and a one-room school administrator.

As director of judicial education programming for the oldest judicial membership organization in the U.S., Jim Toner retains personal responsibility for the 1,500-person National Juvenile Justice Conference held annually in the spring. As Arne Schoeller at the Council says, “After the first of November, it doesn’t matter what you want to call Jim about; be sure to leave the message that you want to talk about the Juvenile Justice Conference, or he won’t call you back.” Much of Jim’s time is spent sharing from his encyclopedic knowledge of the juvenile justice field, suggesting expert presenters or current special interest areas to judicial educators across the

country. In addition, he manages a staff of more than ten, a budget that nears \$2 million, and hundreds of faculty and consultants each year. Between travel, training, and staffing Council committees, Jim still finds time for grant writing and helping fledgling court and social work organizations with conferences.

Jim came to the National Council of Juvenile and Family Court Judges in 1972 from his position as assistant director of the Missouri Law Enforcement Assistance Council. His previous work experience included foundation administration, marriage counseling, training coordination, and hands-on work as a juvenile officer in the St. Louis Juvenile Court. His first position at the Council was as director of development. It was in that position that Jim developed the audiocassette training library for judges and other juvenile court personnel. He later moved into the position of director for special projects, finally taking his current position in 1982. Among the strengths that he brings to his current position are a genuine interest in others, combined with a prodigious ability to listen and a willingness to jump in and help wherever needed. Jim has helped staff members who were moving, has worked with employees to accommodate special family needs, and has developed a knack for remembering things that are important to the individuals who work with him.

Jim's language abilities in Latin and Italian come from his student years. A 1961 graduate of the St. Paul Seminary with a B.A. degree, Jim was selected from the Archdiocese of St. Paul, Minnesota, to attend North American College and Gregorian University in Rome, Italy. After receiving his Bachelor of Sacred Theology degree there, Jim went on to complete a Masters Degree in Social Work at St. Louis University. Years later, his oldest daughter Kristen also obtained an M.S.W. degree.

No one knows where Jim's dancing ability originates, but long-time colleague Thelma Sekiguchi confirms that he knows every dance step ever invented and that he is a natural on the dance floor. Jim has been known to demonstrate an Irish jig during evening programs of the Council. This agility has also helped him hold his own in racquetball contests with student workers at the Council.

There is a rumor that Jim would someday like to be a sports car driver. Another rumor is that Jim plans to retire to Ireland and take over management of a pub named "Toners." In the meanwhile, his hobbies include seeing foreign films with his wife Susan and encouraging his daughter Bridget's interest in horses (they recently built a horse barn). Jim has served as president of the Reno Sierra Club and as president of the National Association of Social Workers, Nevada Chapter. He regularly teaches an evening class at his church and also serves as supervisor/mentor for graduate social work students in the University of Nevada. Among the many advisory boards on which he has served, Jim most often mentions the Casa De Vida, a home for young mothers, and the Editorial Committee of the NASJE News.

Jim Toner's vita lists his height at six feet, one inch, and his weight at 200 pounds. While his profiles of other judicial educators did not include similar statistics, they did bring out tidbits of information that illustrated lesser-known aspects of the subject's life. Always kind as a biographer, Jim has helped honor individuals in judicial education by not only telling about what they accomplished, but by describing them as unique persons. While Jim has left off the writing of stories for the time being, we look forward to his continued story-telling whenever the occasion arises.

Thanks again, Jim. Slainte!

From the President

"My fellow Americans, ask not what your country can do for you; ask what you can do for your country."

John F. Kennedy spoke these famous words in a speech that set the tone for his administration. It's a little late for me to set the tone for my presidency since it's more than half over. Still, this statement has a lot of resonance for me and could be easily used in the context of NASJE: "Ask not what your association can do for you; ask what you can do for your association."

When I first joined NASJE, I was happy to participate in the annual meeting (if the budget would allow it). I also would participate tangentially in some committee work. I use the word "tangentially" because I was reluctant to volunteer to do too much because of my other commitments. Frankly, I thought I was too busy to help. However, at some point, I decided to devote myself much more to the association, and that's when I really started to realize the benefits of membership.

Maureen Conner, Karen Thorson and I were recently discussing the strategic plan, and the issue of volunteerism came up. The question then arose: What influences a person to transition from asking his or her association what it's going to do for that person to that person asking what he or she can do for the association?

For me, it was taking a leadership position and wanting to do a good job. Sure, ego plays a part in that: I certainly want people to think highly of me. But I also tremendously enjoy the relationships that I've gained through my work with NASJE. Each of us will have different reasons for helping. Some may pursue leadership positions to build his or her resume. Others may do it because they love the work. Still others may find that they enjoy the camaraderie of creating something valuable with a group of people whom they enjoy. None of us certainly does it because of the money!

I've participated on a number of committees, and the ones that provided the most enjoyment were also the hardest working. I am always amazed at how hard some of the committees work at making this association better. For example, we can be really proud of our annual conference because of the education committee. I especially want to thank its co-chairs, Martha Martin and Debra Koehler, for their work. You will enjoy the benefits of that committee's work in beautiful Savannah this summer.

I have a challenge for you. If you really want to see how our association differs from other like associations (e.g., Conference of Chief Justices, Conference of State Court Administrators, National Association for Court Management, et al.), take a look at their websites. After that comparison, you will be even more astounded at your association's website and its extraordinary breadth of information and usefulness. And, all of the content on that site is the result of volunteers. For that, you can thank the NASJE Newsletter Committee and its editor, Phil Schopick. If you want to go back in time to the original creation of the website, please thank Paul Biderman for his willingness to create the website and for supporting his colleague, Pam Castaldi, in creating this tremendous resource. Believe it or not, the website was originally built so NASJE could save the postage and printing costs for the Newsletter. Now, it is such a tremendous resource that that original reason for its creation seems incongruous.

I have some news to report with regard to NASJE's website. Based upon a request of the NASJE Newsletter and Website Committee, the board split this committee into two separate committees: The NASJE Newsletter Committee and the Website and Technology Committee. This committee structure will promote the further development of the website to include not only the NASJE News (and Phil has some news in that regard) but also a general redevelopment of the site so that it's even more useful for the membership. If you want to be involved in this exciting process, please contact Ray Foster, the chair of the Website and Technology Committee. Obviously, this is going to take a great deal of effort and help is always appreciated.

In other news, the NASJE board has requested that the newly formed Website and Technology Committee attend the Leadership Institute in Judicial Education. Through Pam Castaldi's leadership, the team applied and was accepted to attend. While the committee learns about adult education and philosophy, it will also have an opportunity to meet to discuss the proposed changes to the website. If you have any suggestions for beneficial changes, please email either [Pam Castaldi] or [Phil Schopick].

I'm also happy to report that NASJE is experiencing an unprecedented number of regional conferences. The Midwestern Region had its conference in Columbus, Ohio on March 21 and 22, the Northeast Region had its conference in White Plains, New York on April 4, and the Western Region is having its conference in Phoenix, Arizona, on June 2-3. I applaud the efforts of the regional directors, Christy Tull, Linda Richard, and Diane Cowdrey for providing the leadership for the offering of these conferences. If you've never attended a regional meeting, I highly recommend it. It's a great way to really get to know those within your region. Diane Cowdrey has even taken the next step and is having regular training conference calls for her region. I'm amazed at the dedication of these regional directors.

During its midyear meeting in Austin, Texas, the board reviewed the strategic plan and is in the beginning stages of implementing the association's operations plan. If you have any insights or wish to offer any assistance in implementing the plan, please contact me.

Your reasons for helping will be as individual as you are, but I can assure you that you will individually gain from your effort as much as the association grows and develops from your volunteerism.

From the Editor

New this issue is a “to the editor” segment: your letters (well, emails) to those of us on the editorial board. I want to thank you for your emails and encourage all of you to let us know what you think of what we publish or what you would like us to publish.

We have recently begun receiving e-mails from you all in greatly increased numbers. Some of you may be wondering why people have finally started writing to us. I think people are writing to us because of the qualitative improvement in what we print that has occurred over the last several years. Thanks to the support of the NASJE leadership, as well as the direction set by previous editors and newsletter committee members, the depth, breadth, and sophistication of our articles has been ever-increased. True, we no longer have to limit people because of space, but, more importantly, over time, as a reflection of you our readers and contributors, our publication has become more like a journal, with articles of higher and higher quality. In light of this, it is our great pleasure to change our name to one that more reflects what we present for you to read.

Again, your comments and ideas for articles are always welcome. Don't forget to start making your reservations for the annual conference in Savannah.

See you in Georgia!

Phil Schopick
Editor
NasjeNews Quarterly

Letters to the Editor

-----Original Message-----

From: Blan Teagle [mailto:teagleb@flcourts.org]

Sent: Thursday, January 27, 2005 12:52 PM

To: Schopick, Philip

Subject: NASJE News

I just received my issue electronically and I just have to tell you what an excellent publication I think the NASJE News is and how the quality and usefulness, as well as navigability, keeps on improving. I enjoy it all, but I particularly thank you and your excellent authors for two items in particular this time. Martha Kilbourn's article about performance planning was superb and so timely. I was recently able to provide it to a senior manager here who is developing a performance plan with a particular employee for whom I think Martha's article and charts are ideal. What a service she has provided on an important and neglected topic. Also, Robin Wosje's article regarding copyright issues and the fair use doctrine, and the easy link to Circular 21, were first rate and a perfect complementary sidebar to the article on using film clips in education programs. The whole issue is terrific, but I especially want to single out those two contributors whose choice of topics and manner of presentation really helped me. Thanks for your diligence in pushing the NASJE News to even higher levels. Please pass this on to your editorial committee and to the authors. Thanks again for all you all do to turn out a superior educational and informational resource on a volunteer basis.

-----Original Message-----

From: Preuss, Joy

Sent: Thursday, January 27, 2005 1:17 PM

To: Schopick, Philip

Subject: NASJE NEWS

Great issue!

Joy C. Preuss
Program Manager, Court Personnel Education
The Supreme Court of Ohio Judicial College

-----Original Message-----

From: Sherry Carson [mailto:Sherry@icje.lawsch.uga.edu]

Sent: Thursday, January 27, 2005 11:29 AM

To: Schopick, Philip

Subject: Comment on NASJE News

The article on Coordinating Technology for Off-Site Training was wonderful. I learned about a piece of equipment that I did not know existed, the Document Viewer. This is great.

*Sherry Carson, Program Manager
ICJE, University of Georgia*

-----Original Message-----

From: Jo Dale Bearden [mailto:bearden@tmcec.com]

Sent: Thursday, January 27, 2005 10:13 AM

To: Schopick, Philip

Subject: Comment on NASJE News

I just read the NASJE News and kudos, what a great issue!!!!

Jo Dale Bearden
Texas Municipal Courts Education Center

A CHILD-FOCUSED APPROACH TO DOMESTIC RELATIONS LITIGATION

Justice Maura D. Corrigan
Michigan Supreme Court

In our workaday lives, we judges tend to get so involved with the crisis *du jour* that we have no time to consider the broader societal problems that cause those crises. Academics, on the other hand, are paid to examine the great issues and to propose solutions. After 30 years of daily crisis management, I recently returned to academia for a few days to attend a workshop at which I discussed family law issues with some truly great academics. This article will summarize a court rule idea that I presented there.

My back-to-school experience was triggered by the American Law Institute's ([ALI](#)) publication of its *Principles of the Law of Family Dissolution: Analysis and Recommendations* (2002). Notice that this particular treatise is not an ALI **restatement** of existing law. Instead, the ALI has **prescribed** what the laws of family dissolution ought to say.

In a time when the very definition of "family" is controversial, it should come as no surprise that many of the ALI's recommendations have been challenged by scholars, judges, and family law professionals. Many of us still believe (or have been reborn to the belief) that a traditional family composed of a husband, a wife, and their children is the "family" configuration most likely to produce children who will become responsible and successful adults.

To foster a critical examination of the ALI's family-dissolution prescriptions, Professor Mary Ann Glendon of Harvard Law School and Professor Robin Wilson of the University of Maryland School of Law organized a two-day workshop. It was held October 14-15, 2004, at Harvard Law School. The gathering's formal title was *Critical Reflections on the American Law Institute's Final Principles of the Law of Family Dissolution*.

I was one of thirty participants who were asked to write papers and present them during the workshop. Included in the thirty were 29 law professors and one judge (me). Professor Glendon, of course, is a world-renowned expert on family law matters, a status evidenced by Pope John Paul II's recent request that she chair the Vatican's Council on the Social Sciences. The others who assembled for the workshop had credentials that are only slightly less impressive. It is an understatement to say that I was both flattered to receive the invitation and quite fearful that my contribution would not meet expectations.

The conference organizers asked three of us to write papers critiquing Chapter 3 of the *Principles*, the chapter that proposes a new mathematical "formula" for determining how much child support should be paid by noncustodial parents. (NOTE: The formula actually determines the relative contributions of *both* parents, but we typically think of child support as the noncustodial parent's obligation.) I drew the Chapter 3 writing assignment because I had recently helped to shepherd Michigan's crash program to implement a statewide child-support computer system. That experience taught me a lot about child support law, but it did not actually qualify me to dissect the math or the legal reasoning of the ALI experts who had devoted more than 10 years to creating a new model formula.

I did **try** to nit pick the formula; but, after suffering a bout of math fatigue, it finally occurred to me that I had failed to see the forest for the trees. After all, I agreed with the ALI's basic premise that most states' current child support formulas allocate too little money to the household in which the children reside. If finances were our sole concern, then I could have written a one-page paper observing that (whenever the noncustodial parent

has significant income) the new ALI formula will deliver more of that money to the children. That is a good result, and I applaud the ALI for recommending it.

But tinkering with child support formulas will do nothing to prevent the damage that our traditional adversarial process inflicts on a disintegrating family. Worse, courtroom warfare actually makes it less likely that the noncustodial parent will provide future financial and emotional support to the children. Therefore, when I wrote my conference paper, I changed the subject somewhat, as you might infer from the title: *A Formula for Fool's Gold: The Illustrative Child Support Formula in Chapter 3 of the American Law Institute's Principles of the Law of Family Dissolution: Analysis and Recommendations*. (Note: That paper will be published along with the other conference papers. I do not yet have even a tentative citation, but I will gladly provide electronic copies to readers.)

The title reference to *Fool's Gold* reflects my belief that expending so much scholarly effort to devise an ultra-precise formula caused the ALI and the rest of us to overlook a more serious systemic problem. The traditional "culture" of domestic relations litigation worsens intra-family strife and inflicts unnecessary emotional harm on children who are trapped between warring parents. If we could make just one change, it would have nothing to do with formulas. We could do more to help families and children if we moved domestic relations cases (especially those involving minor children) out of the adversarial arena to which we now consign them. That would reduce the emotional trauma; and, if we can persuade the parents to negotiate a consent judgment, they will be far more likely to obey the letter and the spirit of that judgment.

I realize that there is nothing novel about a suggestion to use alternative dispute resolution (ADR) procedures in domestic relations cases. But I introduced two new ingredients in my Harvard paper: (1) a "child-focused" court rule proposal; and (2) similarly child-focused interactive websites designed for parents whose cases are being administered pursuant to the new court rule.

The credit for writing the court rule and creating the three websites belongs to Charlie Asher, a South Bend, Indiana, attorney who founded and administers *Freedom 22 Foundation*, a charity dedicated to initiatives in family dispute resolution and minority education. The ABA's Dispute Resolution Section recognized Charlie's pioneering work by giving him its 2003 "Lawyer as Problem Solver Award." [Note: The websites are fully operational and available to anyone who wants to use them. Go to www.UpToParents.org, (for divorcing and divorced parents); www.ProudToParent.org, (for never-married parents); and www.WhileWeHeal.org (to help parents who are trying to reconcile also remember their children's needs)].

Although I did not write the rule or design the websites, I am an advocate of ADR techniques and am quite willing to borrow good ideas when the inventor consents, as Mr. Asher graciously has done. Also, while serving four years (2001-2005) as Michigan's Chief Justice, I co-chaired the Joint Problem-Solving Courts Committee of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA). (Note: Drug courts are the most familiar example of "problem-solving courts," but the term describes any court or court rule that is created to handle one type of case.) In 2004, CCJ/COSCA adopted a joint resolution urging their members to educate others about problem-solving courts and to apply the lessons learned from drug courts to other areas of the law. By writing this article, I hope to accomplish some of the missionary work endorsed by CCJ/COSCA.

I believe that domestic relations cases require targeted problem-solving courts and special court rule procedures designed to handle those cases much differently than we do now. Although most states have a few special rules for domestic relations cases, and many have special domestic relations divisions within their traditional courts, even those special rules and courts continue to follow our traditional adversarial methods. Such half measures are not good enough. For the children's sake, we must change the very culture of domestic relations litigation.

How might that be done? As I said in my Harvard workshop paper:

The lodestar for all concerned should be a desire to protect the children from further emotional trauma. That one overarching principle requires that we take these cases out of the adversarial process and create a process that encourages—indeed requires—that the adults (including the attorneys and judges) act as true adults by discussing, negotiating, and compromising.

There will, of course, be some parents so intransigent that the courts will have to intervene. But our current system effectively encourages intransigence when it ought to do the opposite by every possible means.

[A problem-solving court for domestic relations could take many different forms as long as we honor the core principle that every action must be child-focused and designed to minimize conflict.] Below, I have quoted three excerpts from the *Commentary* that introduces Charlie Asher's model rule. The first speaks to parents/litigants; the second advises attorneys, judges, and other family law professionals; and the third captures the essence of the model rule's mandated procedures.

(1) [P]arents' dedication to their children's interests is often the best predictor of their own good outcomes in divorce. Overwhelmingly, divorcing parents who cooperate to bring order to their children's lives also do best for themselves – financially, legally, and emotionally.

Sadly, divorce litigation in America has too often focused on senselessly venting adult grievances instead of protecting children, on litigating a troubled past instead of building a better future, and on blaming instead of cooperating. But a cooperative approach to divorce cases is both possible and actually helpful to parents and children alike. To solve rather than enlarge problems, the law must conduct divorce litigation in ways that reduce conflict, build cooperation, preserve relationships, and protect children.

(2) Previously, only personal conscience and choice led attorneys to try cooperative problem solving in divorce cases. Many attorneys did choose that collaborative approach. This rule requires it.

Attorneys must intervene constructively to reduce family conflict. Divorcing parents face the daunting challenge of reducing their child-destructive conflict at a time of intense personal stress and depleted financial and emotional resources. As the chosen representatives of their clients, attorneys have especially great opportunities (and responsibilities) to guide parents toward more cooperative and child-focused solutions.

(3) Under this court rule most court hearings could more accurately be called court conferences. This transition from hearings to conferences means two things. First, the most common purposes of court appearances will be to memorialize agreements reached elsewhere and to confirm that the parents are successfully reducing conflict, building cooperation, preserving family relationships, and protecting their children. Second, when an issue remains in dispute, courts will most often refer the parents to community resources for the help they need to solve the problem on their own.

In other words, [the main function of the courts will be to build and enforce a culture of cooperation.] In that culture, the courts will demand the best cooperative efforts of everyone involved. Contested hearings should be held only when the parents' interaction is dangerous and cannot be contained by anything less than the courts' coercive intervention.

Many readers no doubt will question my assumption that negotiation and compromise can ever become the norm for parents whose relationship has disintegrated to the point of separation and divorce. But remember that they are just fellow humans who are suffering great emotional pain. If our legal system facilitates and encourages fighting, that is what they will do. But if we instead facilitate and encourage cooperative

negotiation, most will find that a more promising path to emotional peace. It is only because we are so accustomed to endless conflict that we may instinctively regard reasoned compromise as impossible.

I will conclude by once again stressing that everyone's goal should be to protect the children from the fallout of their parents' conflict. No matter how bitter that conflict, almost every parent wants the best possible outcome for their children. As one experienced mediator has observed:

[If divorcing parents [can] agree on one thing, they will agree on everything.] And that one thing is simply this: What do we want our children to look like when they are 25, and will we do everything possible to make that happen for them? Pat Brown.

[“What do we want our children to look like when they are 25?”] Pondering that simple question should cause even the angriest and most anguished adults to pause and contemplate how their domestic conflict affects their children. It then falls to our legal system to maintain that focus on the children's welfare while we facilitate negotiation and compromise. The model court rule endorsed by this article is designed to do exactly that. (Note: As stated earlier, I will provide copies of my Harvard paper to anyone who requests one. The paper includes the full text of both this *Commentary* and model rule.)

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PART I: DOMESTIC VIOLENCE BATTERER DOES ONE BATTERY A BATTERER MAKE?

JUDGE DAVID M. GERSTEN*

Do you know the difference between a person who commits a battery and a “batterer?” Is a person who gets drunk at a bar and engages in a “street fight” a batterer? What about a person who in the heat of a contested divorce, strikes his or her spouse? Should a mentally deranged person who lashes out be considered a batterer? How do we determine if these types of behavior are that of a “true batterer” or that of someone who engaged in physical violence and committed a battery for some other reason? Is there a difference? This article, will address the distinctions between someone who commits a battery and a “batterer.”

The first major sign of a batterer is the existence of violence occurring within an intimate relationship.¹ The true batterer has a specific intended victim. Usually the victim is a family member or someone the abuser lives with or is dating.² The batterer wants to dominate his or her victim and uses various methods to gain the victim’s compliance. One such method is physical abuse or battery.

If a battery occurs outside of an intimate relationship, it is usually committed by someone that does not meet the definition of a batterer. A few such examples that we will discuss include: the violent perpetrator, the mentally disturbed person and the one time offender. Although these people can also be batterers, their reasons for committing batteries differ from the true batterers.

A violent person does not go out intending to hit a specific person. When the violent person fights, it is a reaction to the environment. The violence is not a means to control a person for any extended time. Rather, the violent person only intends to control his or her victim at the exact time of the punch. The violent person does not care who they hit nor have they planned a course of action. This type of perpetrator uses violence to resolve conflict in a social setting. A batterer, however, seeks to control a specific victim in a specific setting for an indefinite period of time.

A second indicator of a batterer is a pattern of abusive behavior. A batterer uses a pattern of coercive behavior to control an intimate partner.³ This pattern of behavior includes words, actions and gestures. This is not to say that domestic violence cannot involve a single incident of abuse.⁴ It definitely can, but more often than not, a batterer engages in a pattern of abusive behavior. In fact, a domestic violence victim is three times more likely than a victim of stranger assault to suffer a repeat assault within a six month period.⁵

Often a batterer engages in “a cycle of violence” which consists of a tension building phase, followed by an acute battering of the victim and then a remorseful or “honeymoon” phase where the batterer promises that the violence or abuse will never happen again.⁶ While the abusive behavior does not always follow this type of pattern, there is normally some consistent pattern.

* The author would like to thank Margaret Brenan Correoso for her research and editing assistance in writing this article.

¹ Every fifteen seconds, a woman is beaten by an intimate partner. Uniform Crime Reports (1994).

² Mary Anne Dutton, *Understanding Women’s Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191 (1993).

³ Nancy Ver Steegh, *Yes, No and Maybe: Informed Decision Making About Divorce Mediation in the Presence of Domestic Violence*, 9 WM & MARY J. WOMEN & L. 145 (2003).

⁴ A batterer might use the single episode of domestic violence as a threat to his or her partner as to what might happen if he or she is not in control.

⁵ Alison Nathan, *At the Intersection of Domestic Violence and Guns: The Public Interest Exception and the Lautenberg Amendment*, 85 CORNELL L. REV. 822 (2000).

⁶ See Dutton, *supra* note 2.

The truly violent person, however, does not operate on a pattern of behavior. The violent person does not have an intended victim and may use violence in many situations against many different people on an ad hoc or inconsistent basis. Similarly, the person who commits the single battery also falls into this same category of non-pattern behavior. The person who commits the single battery, however, is someone who does not normally engage in violent activities and instead committed a battery perhaps in response to a particularly stressful time in his or her life.

A third sign of a batterer is the duration and escalation of the abuse. A batterer's actions usually escalate in severity and frequency and are drawn out over an extended period of time.⁷ The actions of a truly violent person and a one time offender are more spontaneous and occur less often, certainly with the single battery offender.

On the other side of the spectrum, the batterer's violent actions are usually the result of a calculated buildup. More likely than not, the batterer's victim had some signs that violence was imminent. Therefore, the victim in a batterer's relationship is almost always in the best position to predict the volatility of a batterer. To that end, the victim can take evasive measures such as mollification to avoid the battering. Often evasive measures can make the difference in severity. Sometimes, however, nothing will stop the batterer.

Batterers' behaviors can take on many forms. A batterer might impose economic or financial restrictions.⁸ A batterer often enforces physical or emotional isolation and repeatedly invades the victim's privacy. A batterer tries to supervise the victim's behavior and terminates support from the victim's family or friends.⁹ Children even become pawns that the batterer might use to control the victim's actions.¹⁰ A violent person, a mentally ill person or a one time offender generally only engage in the physical battery.

A batterer's behavior is most often a learned behavior which the abuser chooses to engage in. Batterers perfect their behavior through observation, experience, reinforcement, culture, family and community.¹¹ A batterer learns what works to make the victim do what he or she wants.

Conversely, a person who hits his or her spouse during a heated divorce may never again commit any battery whatsoever. Similarly, a mentally ill person might hit someone for no reason and have no idea why. This person will not necessarily hit the same person again. A batterer, however, usually will repeat the abusive behavior over and over again to exert power and control over the victim. For the batterer, violence works.

Another batterer's trait is to use violence in private whereas, other types of people who commit batteries may do so in public places.¹² Batterers are often charming, sociable, likable people to the members of the community, yet, mean and abusive in their homes. These types of abusers are commonly referred to as Dr. Jekyll and Mr. Hyde.

Using Jekyll/Hyde deception, a batterer might tell the victim that no one will believe them if they expose the abuse. Further, batterers often make their victims look like they are the ones with problems. Batterers are by their nature manipulators.¹³ Other violent offenders, on the other hand, are more obviously -- not nice people.

To determine whether a person who committed a battery is a batterer, an analysis of the context out of which the violent behavior arose is necessary.¹⁴ What was the offender's intent in committing the battery? What did the battery mean to the victim and how has it affected the victim?¹⁵

⁷ See Nathan, *supra* note 5.

⁸ Nancy Ver Steegh, *The Silent Victims: Children and Domestic Violence*, 26 WM. MITCHELL L. REV. 775 (2000).

⁹ See Dutton, *supra* note 2.

¹⁰ Julie Kunce Field, *Screening for Domestic Violence: Meeting the Challenge of Identifying Cases Involving Domestic Violence and Developing Strategies for Those Cases*, COURT REVIEW (2002).

¹¹ Jeffrey Edleson and Richard Tolman, *Intervention For Men Who Batter: An Ecological Approach*, (Newbury Park, Sage, 1992).

¹² Some research shows that there are two types of batterers, ones who are violent only in the home and others who are violent in the home and also commit other crimes outside the home. See Nancy Ver Steegh, *supra* note 8.

¹³ See Field, *supra* note 10.

¹⁴ Billie Lee Dunford-Jackson and Judge Scott Jordan, *Context is Everything: Domestic Violence in the Real World*.

¹⁵ See Dunford-Jackson, *supra* note 14.

A batterer's intent in committing a battery is to exert power and control over the victim. A mentally ill person who lashes out probably did not intend to hit someone and instead needs clinical intervention.¹⁶ Similarly, the person who hits his or her spouse in the heat of a contested divorce probably did not intend to hit the spouse. Rather, the divorce set off an emotional flurry that culminated in a one-time only battery.

What was the meaning of the violence to the victim? Of all the examples given, the batterer's victim is the one who is going to have continued fear because of the violence. Other victims can move on with their lives and understand that it was probably a one time episode that will not reoccur. A batterer's victim lives in fear of continued and escalating violence. The intended effect of the act on the victim is quite different for the victim of a batterer.

There are certain factors that courts should look out for in identifying batterers. Some common characteristics include low self esteem and high levels of dependency on an intimate partner. Batterers may be very suspicious people and extremely jealous. They may exhibit a fear of intimacy, have a high need for power and control and are often depressed.¹⁷ Batterers may also have prior arrests involving the same victim and alcohol and substance abuse are often a part of their lives.¹⁸

In conclusion, a batterer is someone who seeks to exercise power and control over a specific intimate partner. A batterer engages in a pattern of abuse and often engages in more than one type of abuse. Usually, the abuse occurs in private, and is calculated, reoccurring and of escalating violence. If these factors are not present, then more likely than not, the person who committed the battery is not a "batterer." While, we must be vigilant about protecting people from any type of battery, batteries committed by "batterers" are even more worrisome because this type of violence is often not reported and if not stopped may lead to death of the victim.

NEXT: PART II.
JUDICIAL RESPONSE TO BATTERERS

¹⁶ See Dunford-Jackson, *supra* note 14.

¹⁷ Ann D. Carden, *Wife Abuse and the Abuser: Review and Recommendations*, 22 COUNSELING PSYCHOLOGIST 539 (October 1994).

¹⁸ Kerry Healey, *Batterer Intervention: Program Approaches and Criminal Justice Strategies*, ISSUES AND PRACTICES IN CRIMINAL JUSTICE (February 1998).

DWI COURTS: STRATEGIES FOR ADDRESSING THE DWI OFFENDER

by C. West Huddleston and Robin Wosje

On March 15-16, 2004, under a grant from the National Highway Traffic Safety Administration (NHTSA), The National Judicial College held a Sentencing Summit to identify innovative sentencing practices that have been used successfully by courts in dealing with DWI offenders who have not been prevented from re-offending by traditional sentencing methods. The following piece is a reprint of the first promising sentencing practices, DWI Courts which is a variation of the drug court. If you would like a copy of this publication visit the NHTSA website at <http://www.nhtsa.gov/people/injury/enforce/PromisingSentence/pages/index.htm>.

Promising Sentencing Practice No. 1:

DWI Courts

Overview

This article discusses drug courts in the United States; the success they have experienced, both by reducing recidivism and costs; and how these courts can serve as models for DWI courts. It is recognized that many jurisdictions may not have the resources to fund separate DWI courts. However, if a drug court is in existence, at a minimum, DWI offenders should be eligible to participate in the drug court program. Jurisdictions should also consider the ultimate cost savings they can experience with the implementation of drug courts and DWI courts. Ideally, separate DWI courts should be the goal of the courts for the reasons discussed below.

Stand-alone DWI courts and "hybrid" drug courts that also serve an impaired driving population (DWI/drug courts) are changing the mindset of criminal justice professionals and affecting how DWI offenders are handled. Treatment with intensive supervision works with this population and promises better long-term outcomes through decreased recidivism. While the efficacy of DWI courts has been established, additional studies are currently underway to better define their effectiveness.

Establishment of Drug Courts

For more than a decade, a "quiet revolution" has occurred within the criminal justice system. Dade County, Florida, established the first drug court in the United States. Today, there are more than 1,100 drug courts across the country, with hundreds more in the planning stage. (See Huddleston, C. West, *et al.*, "Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States," Vol. I, No. 1, National Drug Court Institute (May 2004)). Although program specifics and populations vary depending on community priorities and resources, the objective of every drug court is the same--to engage defendants charged with drug-related offenses in comprehensive, enduring programs that integrate adjudication, substance abuse treatment, and close supervision.

Drug courts are part of an innovative judicial model in which offenders are held accountable for their actions, but are afforded the tools they need to break the patterns of drug abuse that damage their lives, as well as the lives of others. The major goals of most drug courts have been established with the benefit of both offenders and their communities in mind. Typically, the goals are: (1) to reduce drug use and associated criminal behavior by engaging and retaining drug-involved offenders in treatment services; (2) to concentrate expertise about drug cases in a single courtroom; (3) to

address other defendant needs through clinical assessment and effective case management; and (4) to remove drug cases from traditional courtrooms, freeing these courts to adjudicate non-drug cases.

Success of Drug Courts

Today, there is substantial evidence drug courts are achieving what they set out to do. In reviewing some 120 evaluations of drug courts located throughout the nation, the National Center on Addiction and Substance Abuse at Columbia University concluded that:

Drug courts provide the most comprehensive and effective control of drug-using offenders' criminality and drug usage while under the court's supervision. Drug courts provide closer, more comprehensive supervision and much more frequent drug testing and monitoring during the program than other forms of community supervision. More importantly, drug use and criminal behavior are substantially reduced while offenders are participating in drug court. (See Belenko, Steven R., "Research on Drug Courts: A Critical Review," The National Center on Addiction and Substance Abuse, Columbia University (1998)).

Other researchers have similarly concluded that "we know that drug courts out-perform virtually all other strategies that have been attempted for drug-involved offenders." (See Marlowe, Douglas B., *et al.*, "A Sober Assessment of Drug Courts," Federal Sentencing Reporter, Vol. 16, pp. 113-128 (October 2003)).

Perhaps the most important finding is that offenders who become part of a drug court program are succeeding on completion of the program. Comparisons with other groups reveal much higher retention rates in the program, and lower recidivism and drug-use rates after the program ends, for drug court participants. (See Belenko, *supra*).

The most substantial and compelling national study of drug courts to date was commissioned by the National Institute of Justice and released in 2003. This study tracked 2,020 graduates of 95 drug courts in 1999 and 2000 to establish a benchmark national aggregate recidivism rate. It found that only 16.4 percent of drug court graduates were re-arrested and charged with a serious offense after one year and only 27.5 percent were re-arrested and charged with a serious offense after two years. (See Roman, John *et al.*, "National Estimates of Drug Court Recidivism Rates," National Institute of Justice, U.S. Department of Justice (July 2003) The NIJ study was not a comparative study but a study to establish a "benchmark national aggregate recidivism rate.")

In 2000 a Vera Institute of Justice report found that "the body of literature on recidivism is now strong enough, despite lingering methodological weaknesses, to conclude that completing a drug court program reduces the likelihood of future arrest." (See Fluellen, Reginald & Trone, Jennifer, "Issues in Brief: Do Drug Courts Save Jail and Prison Beds?", Vera Institute of Justice (May 2000)).

Using Drug Courts as a Model for DWI Courts

If drug court programs can reduce recidivism among the populations they now serve, could the drug court model, applied to a wider network of offenders, have an even greater impact on crime rates? More specifically, could the drug court model work for hardcore repeat DWI offenders?

To date, it has generally been left to the traditional courts and criminal justice system to deal with DWI cases, and it has become clear that the traditional process is not working for repeat DWI offenders. Punishment, unaccompanied by treatment and accountability, is an ineffective deterrent for the repeat DWI offender. The outcome for the offender is continued dependence on alcohol; for the community, continued peril.

A new strategy for fighting repeat impaired driving now exists, however, based on the proven drug court model. These “DWI courts” and “DWI/drug courts” hold offenders to a high level of accountability while providing them with long-term, intensive treatment and compliance monitoring. Currently, there are more than 58 stand-alone DWI courts nationwide, with an additional 30 in the planning stage. In addition, there are some 32 hybrid DWI/drug courts nationwide which are primarily drug courts that also target DWI offenders. Providing system oversight and system accountability, DWI courts and DWI/drug courts monitor the justice and treatment system, as well as the offender.

Objectives and Operation of DWI Courts

DWI courts are distinct court systems dedicated to changing the behavior of alcohol and drug dependent offenders arrested for DWI. The goal of these courts is to protect public safety by attacking the root cause of DWI: alcohol and other drug abuse.

DWI Courts use all criminal justice stakeholders (prosecutors, defense attorneys, probation officers, law enforcement agencies, and others), along with alcohol and drug treatment professionals. These individuals comprise a “DWI court team,” which is usually accountable to the DWI court judge who heads the team. The DWI court team uses a team-oriented approach to systematically change an offender’s behavior. This approach includes identification and referral of offenders early in the legal process to a full continuum of drug or alcohol treatment and other rehabilitative services. Due to the public safety concerns with the DWI offender population, DWI courts are typically post-plea in structure and require a conviction and in many cases, incarceration before entering the program. The post-plea model allows for better community supervision during the program and prosecutorial leverage in the event the participant fails to successfully comply or complete the program. In the event of program failure, the participant would face certain incarceration.

Compliance with treatment and other court-mandated requirements is verified by frequent alcohol or drug testing, close community supervision, and interaction with the judge in non-adversarial court review hearings. During these review hearings, the judge employs a science-based response to participant compliance (or non-compliance) in an effort to further the team's goal of encouraging pro-social, sober behaviors that will prevent DWI recidivism. (See Loeffler, Michael & C. West Huddleston, “DWI/Drug Court Planning Initiative Training Curricula,” National Drug Court Institute (November 2003).

The missions, objectives, and operations of a drug court that exclusively targets illicit drug abusers, a stand-alone DWI court that targets alcohol or other substance impaired drivers, and a hybrid type of DWI/drug court that targets a mix of DWI offenders and illicit drug abusers are nearly interchangeable. All are part of the drug court model. The structure of the three types of treatment courts is also similar. The advantage of establishing a stand-alone DWI court, however, is that it allows for the development of a more specialized treatment focus and a more case-manageable network of relevant and supportive community resources.

Benefits of DWI Courts

DWI courts shine a spotlight on the triggers and consequences of non-responsible alcohol and drug intake. They embrace the community of victims of DWI incidents and encourage the fair and sensitive inclusion of victim advocates in the treatment process. Most importantly perhaps, they serve as a potential unifying hub for the many agencies and organizations that have been part of piecemeal attempts to fill the gaps in the impaired driver control system.

DWI courts can and should serve as a unifying venue of accountability for the repeat DWI offender. By joining with State motor vehicle departments, governors' offices of highway/traffic safety, State and local law enforcement agencies, NHTSA, Mothers Against Drunk Driving (MADD), and other crash prevention and victim support groups, DWI courts can strengthen the justice system's response to repeat impaired driving.

A DWI court's coercive power is the key to admitting DWI offenders into treatment quickly and for a period of time that is long enough to make a difference. This proposition is unequivocally supported by the empirical data on substance abuse treatment programs. (See Simpson, D.D., & Curry, S.J. (Eds.), "Special Issue: Drug Abuse Treatment Outcome Study," *Psychology of Addictive Behaviors*, Vol. 11 (1997); Simpson, D.D., & Sells, S.B. "Effectiveness of Treatment for Drug Abuse: An Overview of the DARP Research Program," *Advances in Alcohol and Substance Abuse*, Vol. 2, pp. 7-29 (1983); Hubbard, R.L., *et al.*, "Drug Abuse Treatment: A National Study of Effectiveness," University of North Carolina Press (1989); Center for Substance Abuse Treatment, "National Treatment Improvement Evaluation Study, Preliminary Report: Persistent Effects of Substance Abuse Treatment – One Year Later," Substance Abuse and Mental Health Services Administration, U.S. Department of Health & Human Services (1996)). Data consistently show that treatment, when completed, is effective. However, if given a choice, most drug addicts and alcohol abusers will not enter a treatment program voluntarily. In addition, those who enter programs voluntarily rarely complete them. About half drop out in the first three months, and 80 to 90 percent leave by the end of the first year. Among these dropouts, relapse within a year is the norm. (See Stark, M.J., "Dropping Out of Substance Abuse Treatment: A Clinically Oriented Review," *Clinical Psychological Review*, Vol. 12, at p. 93 (1992), as cited in Marlowe, Douglas B., *et al.*, "A Sober Assessment of Drug Courts," *Federal Sentencing Reporter*, Vol. 16, No. 1, pp. 113-128 (2003); Satel, Sally L., "Drug Treatment: The Case for Coercion," American Enterprise Institute Press (1999)).

Accordingly, if treatment is to fulfill its considerable promise as a key component of DWI reduction policy, DWI offenders not only must enter treatment, but also must remain in treatment and complete the program. If they are to do so, most will need incentives that may be characterized as "coercive." In the context of treatment, the term "coercion"--used interchangeably with "compulsory treatment," "mandated treatment," "involuntary treatment," and "legal pressure into treatment"--refers to an array of strategies that shape behavior by responding to specific actions with external pressure and predictable consequences. Evidence shows those substance abusers who receive treatment through court orders or employer mandates benefit as much as, and sometimes more than, those who enter treatment voluntarily. (See Huddleston, C. West, "The Promise of Drug Courts: The Philosophy and History," National Drug Court Institute Training Presentation (2000); Breckenridge, J.F., *et al.*, "Drunk Drivers, DWI "Drug Court" Treatment, and Recidivism: Who Fails?" *Justice Research and Policy*, Vol. 2, No. 1, pp. 87-105 (2000); Satel, Sally L., "Drug Treatment: The Case for Coercion," American Enterprise Institute Press (1999); "DWI/Drug Courts: Defining a National Strategy," National Drug Court Institute (March 1999)).

A DWI court is the best vehicle within the criminal justice system for expediting the time interval between arrest and entry into treatment, and for providing the necessary structure to ensure that a DWI offender remains in treatment long enough for benefits to be realized.

Monitoring Success of DWI Courts

Evaluation studies are vital in sustaining DWI court programs. Systems should conduct outcome evaluation studies to demonstrate the effect of DWI courts on the community, to assess relative costs, to assess program benchmarks, and to maintain or seek funding.

Examples of DWI Courts

A number of DWI courts have been operating for several years. Their experience may be helpful to other courts that are considering establishing DWI courts.

- **Anchorage Wellness Court** (Anchorage, Alaska) was established in 1999 as a therapeutic court for alcoholic misdemeanor defendants. Participants enter an 18-month program under plea agreements that give them reduced sentences if they complete the program. During these 18 months, they must stay alcohol- and drug-free, be monitored for sobriety, attend treatment for their addiction, take naltrexone for the first four months, attend a cognitive behavior group and Alcoholics Anonymous (AA) meetings, appear before the Wellness Court judge at regular intervals, be rewarded or sanctioned for progress, be employed, pay restitution, and pay most of their treatment costs. Nearly all of the participants are repeat DWI offenders, with an average of more than three DWI offenses. The rates of recidivism for graduates of the program are as follows: 0 percent for 2003 graduates and 25 percent for 2001 and 2002 graduates. The cost of participation in the program is less than 10 percent of the cost of incarceration. (For further information about the Anchorage Wellness Court, see McKelvie, Alan R., "Anchorage Wellness Court Summary of Facts: 2003 Update," Justice Center, University of Alaska, Anchorage (February 14, 2004), and "Anchorage Wellness Court: 2001-2002 Summary of Facts," University of Alaska, Anchorage (April 18, 2003). In addition to the misdemeanor Anchorage Wellness Court, Anchorage also sustains a felony DWI court for repeat DWI offenders.
- **Maricopa County DUI Court** (Phoenix, Arizona) is funded by NHTSA, the U.S. Department of Justice (DOJ) and the National Institute on Alcohol Abuse and Alcoholism (NIAAA), and has been operating since 1998. After entering guilty pleas, defendants who are assigned to this court must appear in court at least once a month. At each court session, the defendant is required to enter into a contract with the DUI court judge, which details the defendant's obligations, including abstaining from using alcohol or drugs, obtaining substance abuse counseling and/or treatment, attending AA meetings, reporting to the probation office, and participating in a DUI victims program. The sentencing judge imposes a 60-day deferred jail term in addition to any mandatory incarceration term, to encourage defendants to comply with their contracts. Sanctions for non-compliance with an obligation under the contract may include imposition of some portion of the deferred jail term, as well as community service, removal from the DUI court program, and revocation of probation. The program lasts for one year. After completing the program, participants are placed on additional supervision probation for one year.
- **Athens DUI/Drug Court Program** (Athens, Georgia) Offenders with either two DUI convictions within a 5-year period or with three or more lifetime DUI convictions are sentenced to the DUI/Drug Court Program. The post-adjudication program operates on a team concept and involves enhanced supervision, mandatory substance abuse treatment, individual and group counseling, random and frequent drug testing, AA and NA meetings, bi-weekly appearances before the judge for either encouragement for positive participation (incentives) or, if needed, reprimand or sanctions for non-compliance. DUI/Drug Court participants receive services in 5

phases of court supervised involvement. DUI/Drug Court is a minimum period of 1 year and a maximum period not to exceed 2 years based on successful completion of all phases of the program. Except for situations of physical disabilities preventing work, DUI/Drug Court participants shall seek, obtain, and maintain gainful employment and pay a fee for their participation in the program. Presently, participant fee collections total approximately 58 percent of the annual program budget. Successful completion of the program meets treatment requirements for driver license reinstatement by the Department of Motor Vehicles. Since the program's inception in February 2001, the DUI recidivism rate for participants is 3 percent.

- **Butte County Superior Court** (Chico, California) began the ReVia project in its existing drug court in 1996. ReVia (naltrexone) is an opiate treatment that has been highly effective in reducing or stopping the cravings experienced by alcoholics. This court has found that ReVia is a particularly effective tool in aiding the recovery of repeat DWI offenders and making them more receptive to treatment. Therefore, in appropriate cases, it has ordered repeat DWI offenders to take ReVia as part of their sentences. For further discussion, see Promising Sentencing Practice No. 9, Drug Therapy.
- **Rockdale County, Georgia** (Conyers, Georgia) has developed a program that combines traditional and alternative sanctions that are individually tailored to the DWI offender's needs. The program works to ensure consistency by keeping detailed records of the facts of each DWI case including the sentence imposed. It includes a pre-sentence investigation by the judge who uses a database created by the court. Rehabilitative sanctions that may be considered include counseling, victim impact panels, and AA meetings. Probation conditions may include electronic monitoring, random alcohol and drug testing, alcohol treatment, ignition interlock devices, and the seizure of license plates. NHTSA's evaluation of this program found that offenders in the program had a recidivism rate that was one-half that of offenders in another local program using minimum sentences. (See Jones, R.K., *et al.*, "Problems and Solutions in DWI Enforcement Systems," NHTSA (1998)).
- **Kootenai County DUI Court** (Coeur D'Alene, Idaho) is an alcohol treatment program for persons arrested for their second DWI offense within five years or who have a BAC of 0.20 percent or higher. Potential participants are screened to determine the extent of their alcohol problems and eligibility for the program. People who are accepted into the program must sign a contract for comprehensive alcohol treatment lasting a minimum of 1 year, and are placed on extensive probation supervision and judicial monitoring by the court. NHTSA's evaluation of this program found that only 4 percent of the participants who completed the program were re-arrested for DWI. (See Crancer, Alfred, "An Analysis of Idaho's Kootenai County DUI Court," NHTSA Region X (December 2003)).
- **Michigan Sobriety Courts** treat alcohol addiction with intense treatment and heavy court supervision, imposing incarceration as a last resort. Offenders must enter a guilty plea, allowing the court to incarcerate an offender for failing to complete treatment. Participants receive 36 weeks of detoxification, urine and breathalyzer tests, AA counseling, and group therapy. They must also meet with a probation officer and an alcohol counselor once a week and with a sobriety court judge once a month. They may retain their driving privileges by installing an ignition interlock system at their own expense.
- **Bernalillo County DWI Court** (Albuquerque, New Mexico) has been operating since 1997, with the primary goal of reducing recidivism. It is a voluntary, court-supervised treatment program, which requires regular appearances before a DWI court judge and regular contact with the probation officer. Participants are required to undergo treatment, participate in mandatory drug

and alcohol counseling, attend 12-step or other self-help meetings, and submit to random drug and alcohol screening. They are also required to attend a victim impact panel and to complete a specified number of hours of community service. A participant who violates any conditions of the program is sanctioned by a DWI court judge as soon as possible. Sanctions may include incarceration. (For further discussion, see Guerin, P., "Evaluation of the Bernalillo County Metropolitan DWI/Drug Court," University of New Mexico Institute for Social Research, Center for Applied Research and Analysis (September 2002)).

- **Rappahannock Area Alcohol Safety Action Program (RAASAP) DUI Recidivism Court** (Virginia) is a cooperative effort that includes the judge, prosecutor, defense counsel, treatment professionals, and RAASAP case manager. This team reviews the progress of each offender in the program. Frequent status hearings are conducted. The DUI court judge is responsible for imposing sanctions; however, any team member may recommend sanctions. The judge readily responds to relapse or other violations with immediate sanctions, including increased frequency of status hearings, increased frequency of alcohol or drug screening, increased case management appointments in the RAASAP office, increased treatment attendance, referral to the ignition interlock program, removal of driving privileges, curfew, community service, or jail. (For further information about specific DWI/drug courts, see the DUI Courts Web site (www.aca-usa.org/duicourts/home.htm), "Specialized and Problem-Solving Courts—Trends in 2002: DUI Courts," Keith, Ann L., National Center for State Courts (2002), and "DWI/Drug Courts: Defining a National Strategy," Appendix A: Advisory Panel Jurisdictions, National Drug Court Institute (March 1999)).

GUIDING PRINCIPLES FOR DWI COURTS

DETERMINE THE POPULATION

A DWI court primarily focuses on repeat offenders charged with driving while impaired by alcohol or illicit drugs and who have been diagnosed with a serious alcohol and/or illicit drug problem. Special emphasis is placed on the previously convicted DWI offender whose fear of prosecution has proven to be an ineffective deterrent to continued drunk driving. A systematic DWI offender referral process ensures that potentially eligible participants are not inadvertently or inappropriately denied the opportunity for participation. The eligibility screening process will eliminate from the pool of potentially eligible participants those offenders who are not appropriate for the program. For those who are still potentially eligible after a review of information contained in legal documents, a face-to-face screening interview is absolutely necessary.

PROVIDE A CLINICAL ASSESSMENT

- The determination of whether an intoxicated driver is eligible for DWI/drug court is typically based on legal criteria related to that individual's current impaired-driving charges and recidivism history. In addition, intake staff may administer a brief screening instrument to confirm the individual has a substance abuse problem and is potentially suitable for substance abuse treatment. This, however, is only the first step in conducting a clinically competent assessment of the impaired-driving offender.
- Effective treatment requires that the offender undergo a thorough clinical assessment to identify relevant impairments and strengths in multiple biopsychosocial domains. An objective clinical assessment should be administered to all DWI court clients, and should address the following domains: (1) severity of alcohol use/abuse; (2) level of care needed and placement in treatment; (3) drug use involvement; (4) medical status; (5) psychiatric status; (6) employment and financial

status; (7) family and social status; (8) alcohol triggers and cognitions; and (9) self-efficacy and motivation for change. If the evaluator cannot characterize a client's needs, strengths, and resources along each of these dimensions, then he or she will have considerable difficulty developing a clinically competent treatment plan for that individual.

DEVELOP A TREATMENT MODEL

When developing the treatment model, there are several factors that the DWI court team must consider. The team should: (1) rely on the expertise of treatment and mental health experts; (2) provide cross-training for all DWI court team members on substance abuse, treatment, co-occurring disorders and the criminal justice system; (3) address cultural differences when sentencing offenders to treatment programs; (4) incorporate evidence-based treatment practices; (5) provide greater availability to other intervention strategies (e.g., 12-step programs, victim impact panels, community service, aftercare); (6) address cross-addiction to prescribed medications; and (7) provide specialized cognitive-behavioral treatment modalities, residential/in-patient resources, and jail-based treatment.

SUPERVISE THE OFFENDER

There are unique characteristics attributable to those who drive while impaired by alcohol and other drugs. Alcoholics or alcohol abusers, unlike users of illicit drugs, may not have lost the support of their families and friends, and in many cases may still have some semblance of functional lifestyles. Similarly, while involvement with the court may be considered inconvenient or embarrassing, the alcoholic's family and friends may enable the alcoholic to continue to drink by covering up or denying the problem. As a result, the DWI offender is often in a greater state of denial than other addicts and is therefore more resistant to the goals of the DWI court team and specifically to supervision efforts. The offender who drives while impaired is extraordinarily dangerous; this coupled with the quick dissipation of alcohol from a person's biological system makes increased supervision a necessity. Public safety remains the paramount concern, and therefore more frequent monitoring by the court, the probation department, and treatment providers must occur. Since there is a potential for a greater level of danger to the public, supervision must be tighter, and the response to violations must be faster and stricter. This supervision may be accomplished through technical innovation, random and frequent drug and alcohol testing, home and other field visits, office contacts, and weekly judicial review.

FORGE AGENCY, ORGANIZATION, AND COMMUNITY PARTNERSHIPS

While partnerships are the cornerstone of any effective collaborative program and certainly necessary within the general drug court model, they are perhaps most important in the DWI court setting in which public safety is at great risk. Partnerships fulfill two main purposes: (1) they increase services for program participants, thereby increasing the likelihood of their long-term success; and (2) they gain the support and understanding of agencies and organizations that might otherwise be opposed to DWI courts. Groups that can assist with support or services include chambers of commerce, law enforcement agencies, victim advocacy groups such as MADD, service clubs and organizations, media organizations, defense attorneys and public defenders, other attorneys, insurance companies, treatment groups, 12-step programs, alcoholic beverage control agencies, departments of motor vehicles, schools and colleges, hospitals and medical clinics, faith-based and cultural organizations, and local pharmacies and pharmaceutical groups.

TAKE A JUDICIAL LEADERSHIP ROLE

DWI courts require courageous judges who are committed to solving the revolving door of the courts. The judge who endeavors to implement a DWI court, or who is assigned the task of being the judge in an existing program, ideally will have extensive experience handling DWI cases. An experienced judge with a strong and positive reputation in the legal community will be in the best position to forge the kinds of partnerships necessary to develop and implement a successful DWI court. The judge must also possess the leadership skills and motivational energy necessary to enlist the assistance and cooperation of the various entities that have a stake in the issue of DWI. The DWI court judge should be a person who tempers his or her judicial authority in a manner that encourages teamwork and empowers others to contribute to the team process. Finally, the DWI court judge must possess a heartfelt deep commitment to and strong personal belief that only by first addressing the underlying problem of substance abuse, does there come an ability to stop future incidences of impaired driving. This will require the judge to expand his or her role and delve into the lives of those who stand before the bench.

DEVELOP CASE MANAGEMENT STRATEGIES

Case management--the series of inter-related functions that provide for a coordinated team strategy and seamless collaboration across the treatment and justice systems--is essential for an integrated and effective DWI court. There are five core functions of case management in DWI courts. They are: (1) assessment; (2) planning; (3) linking; (4) monitoring; and (5) advocacy. Although various members of the DWI court team share the performance of these functions, a specially designated team member should serve as the person primarily responsible for coordinating the development and pursuit of participant case plans, linking participants to resources, and monitoring participant and service provider performance.

ADDRESS TRANSPORTATION ISSUES

Perhaps the most unique aspect that differentiates DWI courts from drug courts is the issue of transportation. Defendants in DWI courts face the suspension or revocation of their privileges to drive as a direct result of their arrests. DWI courts must insist that defendants adhere to any and all restrictions on their driving privileges and should impose sanctions on them for violating those restrictions. DWI court defendants should not be allowed to use lack of transportation as an excuse for not meeting the court's program requirements. Courts should deal directly with defendants on the issue of transportation. Some jurisdictions have good access to alternative means of transportation such as public transportation, taxi service, bicycle loan programs, bike trails, and so on. Some programs obtain donated bus passes or tokens, and these are distributed to program participants.

EVALUATE THE PROGRAM

- Many individuals and groups have a vested interest in the effectiveness of the DWI court's programs. They include the public, victims impact groups, local law enforcement agencies, advocacy groups, health care industry, local funding sources such as county commissions and local planning councils, State funding sources, and the courts. In addition, evaluation of the DWI court's program is essential to assess whether the program is meeting its benchmarks (e.g. target population, timelines, completion rates, etc.). A DWI court must establish a number of process and outcome measures and determine the best way to collect the necessary data before the court becomes operational. Measures should include: (1) sobriety; (2) re-arrest/post-program recidivism; (3) program capacity; (4) target population; (5) services provided versus accessed; (6) court requirements versus compliance; and (7) retention.

- Data on the process and outcome measures must be compiled, analyzed and reported on regular intervals to the team and community stakeholders.

CREATE A SUSTAINABLE PROGRAM

Sustainability is the last and most important guiding principle of DWI courts. There are several ways to ensure sustainability and to obtain funding for a DWI court: (1) direct donors (e.g., computer companies, drug companies, the insurance industry, or the automobile industry); (2) participant contributions; (3) public entities (e.g., one-time grants, grants that flow through other organizations, or endowments); (4) State funding (e.g., State authorization, legislation and appropriation, general fund or excise liquor taxes or State-regulated liquor outlets), State agencies (e.g., the department of health, mental health, Governors' Office of Highway/Traffic Safety), and local agencies (e.g., city councils, county commissions, boards of health, housing agencies, or law enforcement agencies). The best way to approach this issue is to research other DWI courts to learn how they have obtained funding and achieved long-term sustainability. Ultimately, the success of each DWI court is based on the resources in its own community, coupled with its ability to find additional resources or funding as needed.

Meeting technology – Where do we get our information?

Part 1

By Jo Dale Bearden

Continuing the dialogue of *Coordinating Technology for Off-Site Training* (NASJENews Quarterly, Winter 2005, Vol. 20 No. 1), let us turn our attention to the resources that help us locate new audio/visual components, make changes to our current technology practices, and provide us with new training information. I am of course talking about the websites, e-newsletters, and booklets created for those who coordinate technology for training.

Two booklets about technology are currently available. Both are reasonably current and contain information about videoconferencing, wireless technology, and planning strategies for technology. *Meeting Professional's Guide to Technology* is published by EventCom Technologies by Marriott. It can be ordered by visiting <http://www.eventcominternational.com/>. *Ultimate Technology Guide for Meeting Professionals* is published by Meeting Professionals International (MPI) and can be downloaded by visiting <http://www.mpiweb.org/resources/mpif/purchase.asp>.

Technology is of course, ever changing. Interested in the most current information, then e-newsletters may be your choice of information. Visit www.corbinball.com and <http://meetingsnet.com> to sign-up for e-newsletters on meeting technology. If you prefer to keep your *inbox* empty, visit the sites to access archived newsletters.

Meeting planning organizations, such as Professional Convention Management Association (PCMA), Meeting Professionals International (MPI), and Society of Government Meeting Planners (SGMP) all have technology resources available on their websites. PCMA also publishes *Convene*, a meeting planner magazine that has a long running technology column. To access archived issues visit www.pcma.org.

Although all of the tools are not specifically technology related, visit www.marriott.com/eventcom, www.corbinball.com, and <http://meetingsnet.com> to access meeting planning checklists, tools, and meeting templates.

Educational technology resources are also beneficial, particularly to those developing curriculums around technology. To access articles on educational technology visit <http://edtech.twinisles.com/index.html> and www.ed.gov/index.jhtml. Interested in learning how to access multiple intelligences through multimedia? Visit the *Encyclopedia of Educational Technology* at <http://coe.sdsu.edu/eet/>.

These resources are far from the only resources available. NASJENews, National Center for State Court, and JERITT all have additional resources on technology. If you have a resource that you would like to share with others, e-mail me at jodaleb@gmail.com. Then look for Part 2 of this article in the next NASJENews with the results.



Jo Dale Bearden is the Program Coordinator for the Texas Municipal Courts Education Center (TMCEC). She was brought up in a rural area outside of Birmingham, Alabama, but came to Austin for its fine higher education institutions. She graduated from Saint Edward's University with a Bachelor of Arts in Criminal Justice and went on to receive a Masters of Science in Criminal Justice from Southwest Texas State University. Ms. Bearden has authored several articles for The Recorder, a TMCEC publication, including the Tech Corner and court security articles. She is an Adjunct Faculty at Texas State University-San Marcos, where she will teach a course on Cybercrimes in the Fall.

There *is* a Free Lunch: The Emergence of Open Source Course Management Systems

Before the introduction of Course Management System (CMS) applications beginning in the mid 1990s, using the Web for the delivery of education was a daunting undertaking. Users not only had to be proficient in HTML and other Web programming languages to create content (although the arrival of HTML editors like Dreamweaver and FrontPage made it somewhat easier), but these early adopters of online learning also had to endure the scorn of many of their colleagues who tended to look down on any form of education that did not involve students sitting in a classroom.

The development of Blackboard, WebCT, and other commercial CMS providers helped overcome many of the technical and pedagogical concerns of educators, and spurred a rapid expansion of distance education initiatives in colleges and universities, and more recently in nonacademic institutions. These systems used templates specifically designed for Web-based instruction and incorporated various course activity and administrative tools into a seamless interface for online delivery and management of course content. By using built-in quiz and discussion features, uploading course documents, images and files created in familiar applications like Microsoft Word, instructors could easily create Web courses comparable (and in some instance superior) to their classroom counterparts.

As the commercial CMS industry matured, its products became increasingly more sophisticated and, not surprisingly, more expensive. At the same time, the CMS user community became more savvy about the strengths and limitations of these systems. In particular, many educators became frustrated with the inability to customize these systems to meet the specific needs of their institutions. This "one-size-fits-all" approach coupled with increasing costs, led a number of individuals and groups to think that they could build better and more flexible CMS applications. In addition, and perhaps because of the altruistic nature of many in the teaching profession, a number of these new CMSs were developed as open source initiatives, which meant that the software program's source code was made publicly and freely available for use and/or modification.

How do these free CMSs stack up against the big commercial ones? Very well, thank you. Not only do many of the open source CMSs offer most of the functionality of the commercial ones, but because the code is "open," the opportunities for customization are also greater than they are for the commercial products.

Does this mean that the days are numbered for the commercial CMS vendors? Probably not, at least not in the near future. By purchasing a commercial CMS you have the security of knowing that the product comes with extensive documentation and training, paid programmers to maintain product stability and develop new features, and a help desk for product support. On the other hand, with an open source CMS, product support, documentation, and upgrades typically depend on the interest and motivation of a group of volunteer programmers.

Institutions that have invested significant amounts of money and resources in integrating a commercial CMS into their technical infrastructure will probably be reluctant to switch to an open source CMS. However, for the rest of us, especially those who do not currently have a CMS, the open source approach may be the way to go.

Whether you go the commercial or open source route there are a number of products to choose from. On the commercial side, two vendors, Blackboard and WebCT, control about 80 percent of the CMS market. The National Center for State Courts (WebCT) and the National Judicial College (Blackboard) have created first-rate online courses using their respective CMS providers. Ray Foster at the National Center and William Brunson at the Judicial College would be happy to describe their experiences and show you some of the courses they have created using these products.

On the open source side, there are two products worth mentioning. The first one, Sakai, is one that I know only by reputation. When four top-flight universities (University of Michigan, Indiana University, MIT, and Stanford) a couple of foundations, and \$6.8 million come together to create an open source CMS, you can anticipate a quality product to emerge. The first version has only recently been released, and I have not seen any reviews.

The second open source product I would like to mention, and one with which I am familiar, is Moodle—a homegrown CMS started by a single individual working on his doctoral dissertation. I was initially attracted to Moodle because I found its user interface more intuitive than the ones developed by other CMSs. In addition, a very active group of developers from around the world is continually fine-tuning the application.

It should be noted that unless your IT department is willing to install and maintain the software on your network, it may be necessary to have the CMS hosted by a third party. This is the case here in California, where for \$2000/year (the cost depends on the amount of disk storage space requested) Moodle is hosting the software for us.

So maybe it's not quite a free lunch, but the cost is minimal, and if you are looking to create flexible, collaborative, and cost-effective learning opportunities, an open source CMS is one option worth considering.

For a comprehensive description of several commercial and open source CMS products, go to:
<http://www.edutools.info/course/index.jsp>

Eddie Davis, Ed.D., is a senior education specialist in the Education Division of California's Administrative Office of the Courts. He is part of an education technology group dedicated to the development of distance education strategies and technologies for the design, delivery, and expansion of judicial and staff education programs for California's 2000 judges and 20,000 court employees.

Thiagi Newsletter

From: thiagi@thiagi.com

Sent: Tuesday, February 15, 2005 2:24 PM

To: Schopick, Philip

Subject: Play for Performance: February 2005 Issue Ready

I am happy to announce the February issue of my free electronic newsletter, "Play for Performance".

You can retrieve it from <http://www.thiagi.com/pfp/february2005.php> .

I am very excited about this issue. It includes

- * An interview with Dr. Clue, our guest gamer
- * More practical tips from Roger Greenaway on encouraging participation in debriefing
- * A game of inductive logic that you can play with your pocket calculator
- * A review of THE SYSTEMS THINKING PLAYBOOK, along with a special offer for the book and a DVD with Dennis Meadows
- * An online game about diversity

All this plus an Event Alert and a pithy saying.

Enjoy this issue. Read it and play it!

Playfully,

Thiagi

Sivasailam "Thiagi" Thiagarajan

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FastRead[©]

Where to find great information on hot topics for today's overwhelmed workforce.

Today's Book:

The 8th Habit: From Effectiveness to Greatness

By Stephen Covey
Free Press, 2004

The *8th Habit* by Covey can only be described as a curriculum in succeeding and managing to succeed in today's knowledge-worker environment, where people truly make the bottom-line difference. There is an overwhelming amount of information packed into this book and its accompanying DVD with self-teaching video clips that dramatically reinforce the learning points. It would take a full college semester of reading, studying, and discussion to absorb and practice the concepts...time well spent.

I'm going to whet your appetite by focusing on one small but mighty strategy Covey offers to help improve your communication. When trying to find common ground during a conflict-resolution or decision-making conversation, with one person or during a meeting, search for and explore the *third alternative*.

Yours, Mine, and Ours: The Third Alternative

Successful second-marriage families don't throw away the children from the previous marriage of either party to fit into one or the other's small apartment; to succeed, they must find a third alternative. This is my loose analogy to Covey's concept: when two or more people meet in a discussion mode, they bring *their children* with them in the form of values, histories, and perceptions. Each party must be committed to honoring these inherent *frames of reference* in order to establish a *mutual understanding* and *create a shared vision* that leads to a win-win *third alternative*: find a bigger house or a better option than any one of the parties might have considered. There are only winners, no losers.

Listening with Empathy

Covey categorizes communication four ways: reading, writing, speaking, and listening. While we spend almost half our time listening, "No more than five percent of us have had more than two weeks of formal training in how to listen." In Covey's levels of listening (going from least to most effective) – ignoring, pretend listening, selective listening, attentive listening, and *empathic* listening – only empathic listening actively honors the other person's frame of reference.

The following listening technique, clearly explained and successfully used by Covey in many good examples, comes from an old Native American tribal tradition, taught to the Founding Fathers of the American Republic by Indian chiefs of the Iroquois Federation. It is a simple process that can be used by two or more people to practice empathic listening.

Stick to the Rules

A "Talking Stick" (which can be a real stick, pencil, or any object), held by a person in the discussion, gives that person the right to talk until she feels comfortable that the other person/group clearly understands her point. The listeners may not argue, agree, or disagree. All they may do is attempt to understand and then articulate that they understand. So when the person is through speaking, the listeners may restate the point she is making *in a way that the speaker feels confident* there is real understanding, not just patronizing acknowledgement. The speaker is, then, obligated to pass the Talking Stick to the next person to make his points, which must be honored by the others using this form of empathic listening.

When everyone sincerely feels their points are clearly understood (one of the deepest needs of a human being), the discussion environment takes on a more positive and creative tenor: new ideas emerge, opening the gateway to *third alternatives*. Covey makes an important point here: "...to understand does not mean to agree with. It just means to be able to see the other person's eyes, heart, mind, and spirit."

Two Steps to Third-alternative Listening

While you cannot control how someone delivers a message – the words he uses (semantics) or his frames of reference (values, history, and perceptions) – you can influence the discussion atmosphere and outcome by leading the speaker into a third-alternative search. Here are two questions from Covey that will help you lead a conversation toward a productive outcome:

1. Would you be willing to search for a solution that is better than what either one of us has proposed?
2. Would you agree to a simple ground rule: No one can make his or her point until they have restated the other person's point to his or her satisfaction?

Sometimes, Covey says, you start with the first question and other times, with the second. It depends on the situation. And like any new process, it takes practice.

Buy this book to learn more about how to use third-alternative listening in building complementary teams and also to discover the power behind Covey's 8th (and latest) habit: *Find your voice and inspire others to find theirs*.

Marguerite Stenquist, President of Support Systems Group, Inc., is a corporate trainer and curriculum developer. Her mission is to inspire high-spirited communication in the workplace. For more information about her services and flagship workplace writing programs, visit her website at www.onthejoblearning.com or e-mail her at ssgroupinc@aol.com.

Guidelines for Judicial Program Written Materials

Originally published Fall 1994.

Larry Stone was president.

Committee members were: Maureen Lally, Washington; Michael Runner, California, Jim Toner, Nevada, Franny Haney, Delaware; Rich Reaves, Georgia, Blan Teagle, Florida.

The program syllabus materials serve as important references during the courses and when student judges return to their courts. The goal is to generate a syllabus containing a small amount of materials that will be functionally useful on the bench. The following specific guidelines apply to your preparation; materials that do not conform will be deleted.

1. Include only the most important materials for the student judges.

The most valuable items are step-by-step, "how to do it," procedural checklists and scripts (or spoken forms).

The next most important items are brief outlines of the subject matter and citations to prominent cases or statutes.

Prepare a brief bibliography of published references for your course topics, emphasizing materials particularly useful to judges.

2. Do not include the following materials; they will be removed before copying:

Copies of cases and statutes (give cites and brief summaries).

Law review articles (give cites and brief summary of topic).

Copies of available published materials (other than checklists actually used in class) or other materials readily accessible to judges. Just give the appropriate citations.

3. Other syllabus "dos":

Minimize in-class handouts because of the disruption they create. Ask us to color-code handouts, such as hypotheticals, to distinguish them from materials that student judges should save for later reference.

Review outlines of other courses in the program to avoid duplication of coverage in written materials (or class presentations). Call faculty for other courses if in doubt.

Adhere to syllabus deadlines below; submit clean copy (or disk) for clear, readable photocopies.

Syllabus Deadlines

[Date (6-8 weeks before program)]: Mail copy of materials to judge who serves as course liaison (and to us if typing, cut-and-paste, etc., are needed).

[Date (4-6 weeks before program)]: Submit final materials to us. Materials received after this date (and by [next date below]) will be duplicated and distributed as handouts and not included in the syllabus.

[Date (2-3 weeks before program)]: Submit handouts or any remaining materials to us. After this date, faculty must duplicate and bring to class an adequate number of copies for participants (reimbursement with receipt is limited to \$20).

Giving Feedback

Martha V. Kilbourn

Manager, Branchwide Education Initiatives

CJER

You hired a top-notch employee named Elizabeth Sharp, then you and she developed her performance plan together so she would know what was expected of her. Everything is going along smoothly, right?

“Well, there are a few things that could be better,” you say.

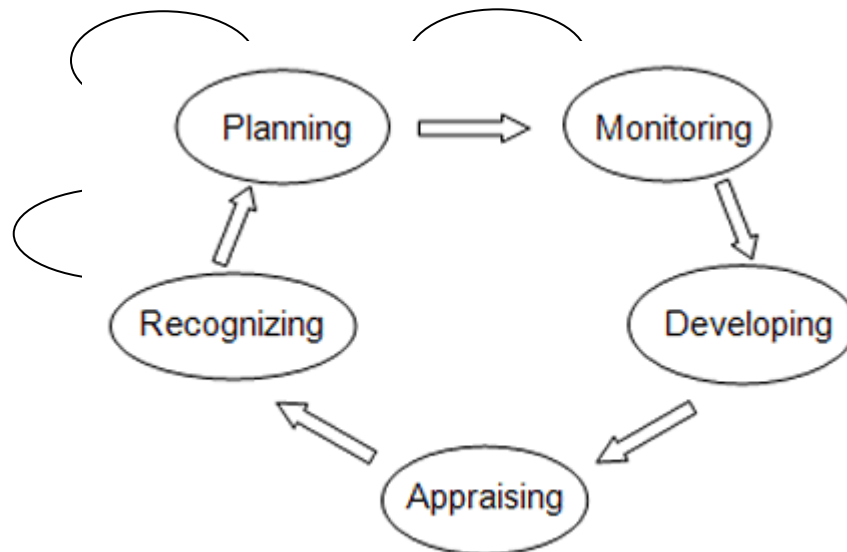
“So you’ve talked to her about these, right?”

“Well, I don’t want to hurt her feelings, and I know she’s very capable and is trying really hard, so I just keep hoping things will get better as she learns the job,” you respond.

We all wish that capable employees would do their work well and that we never had to correct their performance, but life in most judicial branch education offices just isn’t like that. Hoping that employee performance will get better on its own is just wishful thinking and our work is too important for that. The educational programs our offices conduct affect large numbers of judges and court staff, and therefore contribute directly to public trust and confidence in the courts. It requires highly qualified people doing their best work.

This article addresses the second phase of performance management in the diagram below—monitoring performance through giving feedback.

Employee performance management includes:



1. *Planning* work and setting expectations
2. *Monitoring* performance through ongoing feedback
3. *Developing* the capacity to perform
4. *Appraising* performance periodically in a summary, formal fashion
5. *Recognizing* good performance

Here is a good definition of feedback—the transmission of pertinent information to an individual about an action, event or process. It is used to impart necessary information in an accurate, fair, helpful and culturally sensitive manner in a format that allows for two-way communication.

There are two different types of feedback:

1. Motivational feedback is used to reinforce behavior that is effective and desirable. Motivational feedback encourages employees to succeed.
2. Corrective feedback is used to alter a behavior that is ineffective or inappropriate. It is also used to identify and communicate gaps in performance

Motivational feedback is usually easy for us to give. We are pleased with the person's performance and say, "Good job!" Well that's a nice thing to say, but is it really effective feedback? What did you especially like about the job? Let's use Elizabeth as an example. She has just conducted her first planning meeting for a half-day course on Child Witnesses. You look at the meeting notes and say, "Good job. I'm sure the judges will really like that." It would be much more motivational to comment on a specific aspect of the plan, such as the creative activity planned to help the judges learn how to evaluate a child's testimony at various ages of their young lives. Elizabeth will then be much more motivated to include interactive learning in more of her courses.

Corrective feedback is much harder for most managers. Let's say that Elizabeth works best under pressure and usually waits until the last minute to put together her course materials. She always gets it done in time, but puts a great deal of stress on the secretarial and copy center staff, sometimes causing them to work overtime. How could you approach that?

Observing work performance and providing feedback about it should be a routine part of the supervision process. Feedback should be based on observed and/or verifiable work related behaviors, actions, statements, and results.

The purpose of observing employee behavior and the results of work performance is to identify and describe it in order to help the employee be successful and continue to develop his or her skills, knowledge, and experience.

Observations should be the basis for feedback, and may also suggest actions, which might be taken to support, develop or improve performance.

Corrective feedback is best given in private to avoid embarrassment to the employee. Some people, depending upon their cultural frame, may also be embarrassed to receive positive feedback in front of others.

Although supervisors are often encouraged to give feedback as close to the observed behavior as possible, sometimes it may be better to wait for a time when the person is less stressed, angry or anxious. It is hard for a person to hear feedback when they are already defensive and angry.

Example: "Hi Elizabeth, have you got a few minutes now, or would later be better? I'd like to share some feedback with you about the project you are working on."

It is important to control the environment for feedback:

- Limit distractions
- Turn the ringer down on your phone
- Make good eye contact
- Face the person you are talking to – move out from behind that desk!
- Prepare yourself to both listen and speak. Listen with your head for the data and your heart for the meaning

Steps to Providing Feedback

1. Describe the behavior and its impact on the project, the office, and others. You have set expectations; you have specific, measurable and observed behaviors to comment on. Clearly and concisely describe the performance behavior in a straightforward way.

Example: Elizabeth, I noticed that staff had to work overtime in order to have all the materials copied, compiled, and mailed to the hotel for the Juvenile Court Judges Conference. Staff are stressed when they are asked to make changes in their personal lives at the last minute. In addition, paying overtime really cuts into our budget and our policy is to avoid overtime as much as possible.

2. Inquire as to the employee's assessment of reasons or explanations for the behavior. Before you make assumptions about what the behavior means, get more information. You may find that there is a valid reason for the behavior or the person's perception of the event is different from your own.

Example: Were there specific requirements for this conference that could not be met in our usual timeframe? Were there special circumstances that required staff to work overtime?

3. Make a suggestion or request for a change in behavior, and then check for understanding. Ask the employee to do one or more of the following:
 - Stop a disruptive or unproductive behavior
 - Act in a different way
 - Acknowledge the behavior and its impact

Example: We all have different work styles and putting on conferences is a team effort. Our conference planning guide has timelines that should guide the project and keep in on track. I suggest that you meet with the project staff regularly and have each person make a commitment to have the work done on time. That way we can avoid the need for overtime in the future.

4. Check for agreement/commitment on next steps.

Example: Does that sound like a reasonable plan to you? Take a look at the guidelines and let's meet again to review them to see if they need updating for your specific assignments.

To close this article, I'd like to share with you a study by the Corporate Leadership Council that lists ten ways feedback impacts performance. These are listing in descending order of impact from high to low:

1. Feedback is fairness and accurate.

2. Manager is knowledgeable about employee performance.
3. Feedback helps employee do his or her job better
4. Feedback emphasizes personality strengths.
5. Manager is likely to volunteer feedback
6. Feedback is detailed and specific.
7. Feedback is immediate versus delayed.
8. Emphasis on amount of effort put into the job.
9. Emphasis on specific suggestions for doing the job.
10. Emphasis on performance weaknesses.

Special thanks to Julie Doss and David Hurley who shared the materials from the Feedback course they teach for court managers and supervisors.