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HUMAN TRAFFICKING UPDATE

ATTORNEY GENERAL GONZALES ANNOUNCES ENHANCED PROGRAMS TO COMBAT HUMAN TRAFFICKING

National Conference Focuses On Victim Issues And Law Enforcement Solutions

NEW ORLEANS – Attorney General Alberto R. Gonzales today announced additional funding, totaling nearly \$8 million, for law enforcement agencies and service organizations for the purpose of identifying and assisting victims of human trafficking and apprehending and prosecuting those engaged in trafficking offenses. The funding announced today will be used to create new Trafficking Task Forces in 10 cities around the country, building on the current work of over 32 national task forces working as part of a collaborative effort among various Department of Justice components, the Departments of Health and Human Services, Homeland Security, Labor and State, and national and community-based organizations to combat human trafficking.

Today's announcement was made at the 2006 National Conference on Human Trafficking in New Orleans, where representatives from federal, state and local organizations have gathered to discuss methods of investigating human trafficking and servitude and how victim services are structured and defined.

"Human trafficking is a violation of the human body, mind and spirit. For this vile practice to be taking place in a country that the world looks to as a beacon of freedom is a terrible irony and an utter tragedy," said Attorney General Alberto R. Gonzales. "This funding will help cement partnerships between law enforcement agencies and victims' services organizations, and enable the Trafficking Task Forces' work of identifying and assisting victims of human trafficking as well as apprehending and prosecuting the perpetrators of these unconscionable crimes."

Increasing and prosecuting human trafficking has been a major priority of the Department of Justice. Under the direction of the Attorney General, the U.S. Attorneys and the Civil Rights Division have taken the lead in prosecuting human trafficking cases at the federal level. In fiscal year 2006, the Civil Rights Division, working with the various U.S. Attorneys' offices, initiated 167 investigations, charged 111 defendants in 32 cases and obtained 79 convictions involving human trafficking defendants which reflected more than a twofold increase in convictions over the previous year. In April 2006, the Department of Justice obtained two of the longest sentences ever imposed in a sex trafficking case—50 years each for two defendants in New Jersey .

From fiscal years 2001 to 2005, as compared to fiscal years 1996 to 2000, the Justice Department's trafficking investigations have quadrupled, the number of defendants charged has tripled, and the number of defendants convicted has doubled.

Justice Department prosecutors are also supporting the President's Initiative Against Trafficking and Child Sex Tourism by performing assessments of anti-trafficking activities in targeted countries and making recommendations on program development. For example, prosecutors have worked with their Mexican counterparts to undertake joint investigations, to conduct training for police and prosecutors, and to assist Mexican policymakers in developing anti-trafficking legislation in that country.

Including the new funding announced this morning, the Department of Justice now supports 42 victim-centered law enforcement task forces located throughout the United States including Alaska , Hawaii , and in American Samoa and the Northern Marianas. These task forces are collaborations among U.S. Attorneys, law enforcement, and victim service agencies. Their activities focus on increasing the identification and rescue of trafficking victims through proactive law enforcement, which includes designing a protocol response to the identification of victim services, provision of services, investigation and prosecution of human trafficking cases.

Recipients of the 2006 law enforcement awards are:

The City of Clearwater - Clearwater, Fla. - \$450,000
Louisiana Commission on Law Enforcement - Baton Rouge, La. - \$450,000
City of Independence - Independence, Mo. - \$450,000
Las Vegas Metropolitan Police Department - Las Vegas, Nev. - \$369,572
Erie County - Buffalo, N.Y. - \$450,000
Northern Mariana Department of Public Safety - Saipan, Northern Marianas - \$448,083
City of Fort Worth - Fort Worth, Texas - \$450,000
Dallas Police Department - Dallas, Texas - \$450,000
Bexar County Sheriff Office - San Antonio, Texas - \$406,862
Salt Lake City - Salt Lake City, Utah - \$450,000

Recipients of the 2006 Awards for victim services are:

Tides Center - San Francisco, Calif. - \$450,000 (For work in Utah)
World Relief Corporation - Baltimore, Md. - \$450,000 (For work in Clearwater, Fla.)
Hope House Inc. - Lee's Summit, Mo. - \$450,000
The Salvation Army - Las Vegas, Nev. - \$449,997
International Institute of Buffalo, N.Y. Inc. - Buffalo, N.Y. - \$449, 708
Karidat Social Services - Saipan, Northern Marianas - \$449, 793
Mosaic Family Services Inc. - Dallas, Texas - \$449,996 (For work in Dallas/Ft.Worth, Texas)
Catholic Charities, Archdiocese of San Antonio Inc. - San Antonio, Texas - \$450,000

The Office of Justice Programs provides federal leadership in developing the nation ' s capacity to prevent and control crime, administer justice and assist victims. More information about OJP's work on human trafficking can be found at <http://www.ojp.usdoj.gov>. More information about the efforts of the Civil Rights Division to combat human trafficking can be found at http://www.usdoj.gov/whatwedo/whatwedo_ctip.html.

TRANSITIONS

Please join us in welcoming the following new NASJE members:

- **Todd Brower**, Judicial Education Director, The Williams Institute-UCLA School of Law, Los Angeles, California
- **Callie T. Dietz**, Director, Alabama Judicial College, Montgomery, Alabama
- **Gordon Griller**, Director, Trial Court Leadership Programs, National Center for State Courts, Scottsdale, Arizona
- **Katherine Kavanaugh**, Education Specialist, Arizona State Supreme Court, Phoenix, Arizona
- **Renee S. Lorda**, Asst. Circuit Executive for Conference and Education, US Courts, Ninth Circuit, San Francisco, California
- **Wally Lowery**, Education Coordinator, Alabama Judicial College, Montgomery, Alabama
- **Meichihko Proctor**, Program Attorney & Deputy Counsel, Texas Municipal Courts Education Center, Austin, Texas

Please join us in congratulating the following NASJE members on transitions in their professional lives:

Debra B. Koehler has a new job. She is now working with Fred Williams at the Judicial Institute of Maryland. Her contact information is: Special Projects Manager, The Judicial Institute of Maryland, 2011 Commerce Park Drive, Annapolis, Maryland 21401, (410) 260-3665, debra.koehler@mdcourts.gov

John R. Meeks, president of NASJE, also has a new job. He is no longer director of the Supreme Court of Ohio Judicial College. He is now Vice President of the Institute for Court Management at the National Center for State Courts, 300 Newport Avenue , Williamsburg, VA 23185-4147, (757) 259-1567, jmeeks@ncsc.dni.us

FROM THE PRESIDENT

Dear NASJE Colleagues:

I would like to thank all of you who made the 2006 annual conference in Minneapolis, Minnesota a great success. As an association of volunteers, we rely on our members to plan and implement most of our activities, and there is a long list of people to thank for the annual conference.

Jill Goski, the director of Minnesota's judicial education office tops the list. Jill has only been a member of NASJE for a little over a year, but she and several members of her staff were excellent hosts at the hospitality suite and also planned the annual banquet. The Education Committee, chaired by Mari Kay Bickett and me, spent many hours planning the education sessions in an attempt to meet all of the needs of our diverse audience. The Education Committee received invaluable help from the Diversity Committee, the International Committee, and the Futures Committee in planning education sessions. In addition, Christy Tull, the Midwest Regional Director, assisted the host state and headed planning for the Fundamentals session on Sunday before the conference, which was very well attended.

I would also like to highlight the efforts of the Fundraising Committee. The registration fees for our annual conference do not cover all of the costs of the conference and the Fundraising Committee did an excellent job of securing sponsors and vendors, thereby enabling us to keep our registration fee affordable.

NASJE's committees are the back-bone of our organization, and there is still time to join committees for 2006-2007. Please contact me at jmeeks@ncsc.dni.us if you have any questions or would like to join a committee. The list of committee members on the website has not yet been updated, but many of you have offered to serve, and I hope to hear from more of you in the next few weeks before we finalize the rosters.

The Board of Directors of NASJE has decided that this year we will focus on increasing our membership. The Regional Directors and the Membership Committee will lead that effort, and you will hear more about our membership drive in the coming months. If you have any ideas about how we can reach out to prospective new members, I would like to hear from you.

I am honored to serve as the president of NASJE and I encourage you to contact me with any questions, comments, or suggestions throughout the coming year.

AROUND THE CIRCLE:

Toward an Adult Learning Model with Increased Cultural Relevance

Kelly Tait, Communication Consultant

"When you put your knowledge in a circle, it's not yours anymore, it belongs to everyone." Douglas Cardinal

I am an Accommodator, which if you're familiar with David A. Kolb's Learning Styles Inventory (LSI), explains a lot about how I came to be involved in adapting Kolb's approach for tribal faculty development programs for the National Tribal Judicial Center at The National Judicial College (NJC). However, if you're like most of us, you would get that deer-in-the-headlights look if someone asked you to explain what Kolb's meaning of "Accommodator" is. (See below for a brief primer on some key terms and concepts of Kolb's approach.)

I had been in two separate sessions where Kolb's LSI was taught, both with mixed results, before I had the pleasure of teaching a faculty development program in Russia for the NJC with Dr. Pat Murrell of the Leadership Institute. Pat, of course, is an expert in the LSI, and I learned a great deal watching her teach it. However, even with an expert who is an excellent teacher presenting it, the Russian judges struggled. Not only was the underlying concept of experiential learning

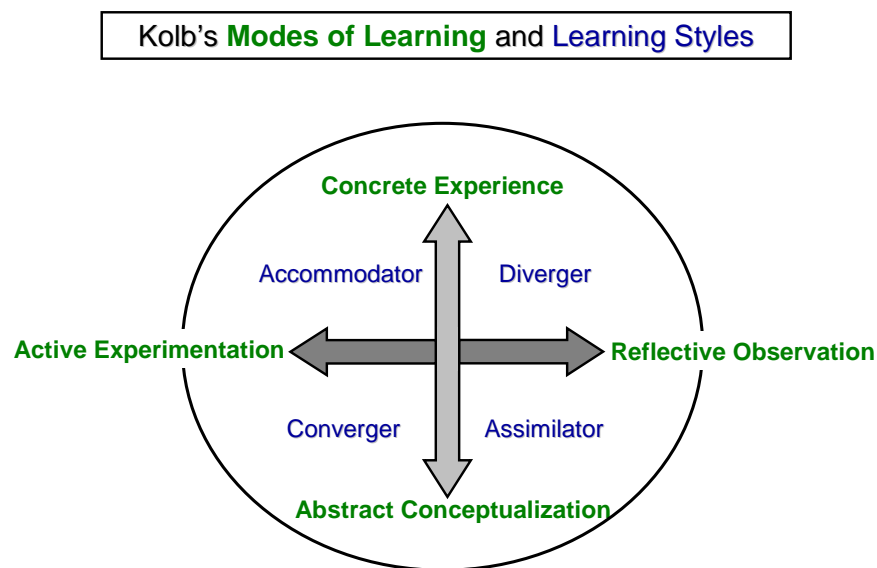
new to them, the terminology was glaringly confusing. There didn't seem to be a direct translation of most of the key terms.

This is a concern in almost any international program, but in this case, it went beyond that: Kolb's terms are not intuitive or easy to remember even for native English speakers. This is particularly true of the names for the learning styles. For instance, "Diverger" is a word that your spellchecker won't even recognize. And if you do draw on the common usage of the word "diverge" outside the Kolb context, does it sound like a Diverger would be very a productive group member? Not likely. For many learners including me, until I became very familiar with the model by teaching it, the terms seemed to muddy the waters rather than making the concepts clearer.

Cultural Sensitivity

Now magnify that negative effect by using the term "Assimilator" with Native American groups when teaching the LSI. The U.S. policy of assimilation, of trying to eliminate the native cultures and absorb them into the dominant culture in the late 1800s and much of the 1900s, led to Native American children being forcibly removed from their families and sent to boarding schools where they were severely punished for speaking their own languages or practicing any of their native traditions. There could hardly be a more negatively loaded word for the Native American tribes. While the rationale for Kolb's names for learning styles becomes clearer after studying his model, the meanings of the terms aren't easily accessible or memorable, and clearly the issue of cultural sensitivity should be considered with particular groups.

Even so, I am a proponent of using Kolb's model in faculty development programs because of the importance of the underlying principles and the ease of administering his two dimensional model. In teaching Kolb's model to many U.S. American groups as well as groups from four other countries, I've learned it is necessary to make a clear distinction between the ways--or modes--of learning and the learning styles. It is also much more useful to emphasize the modes of learning rather than the individual styles.



You've Got Style...

It can be useful to know your learning style because it tends to affect your teaching style—we default to our own preferences. It's also instructive to realize that different people have different preferences in how they like to learn. However, people often focus too much on what style they are and not enough on the idea that EVERYONE, no matter what their style, gets more out of the learning experience if it moves through the whole learning cycle, including all the modes. Emphasizing this makes the most difference in terms of creating a shift toward experiential teaching and learning in the design of sessions by participants in the faculty development programs. We want sessions that move people through the entire cycle: experiencing/doing, reflecting/watching, thinking/theorizing, and applying/testing.

Focusing on the learning styles also compartmentalizes learners. Many cultures, including Native American cultures, approach the world holistically, and this compartmentalization seems unnatural from a holistic perspective. But there is overlap in Kolb's approach and traditional tribal approaches: balance is key in many tribal approaches, an idea that folds nicely with Kolb's idea of creating balance in ways of learning by moving through the whole learning cycle. Tribal

approaches do tend to have a broader scope, looking at the circle of learning as part of the circle of life. The most significant difference this leads to is the inclusion of the “Spiritual” dimension in addition to the “Physical” dimension, the “Intellectual” dimension, and the “Emotional” dimension. The “Spiritual” dimension is not necessarily religiously-based. It tends to include the connectedness of things and the sense of being part of something bigger than yourself.

“Humankind has not woven the web of life. We are but one thread within it. Whatever we do to the web, we do to ourselves. All things are bound together. All things connect.” Chief Seattle

The NTJC Leadership Team

Carolyn Wilson was the Program Attorney for the National Tribal Judicial Center (NTJC) at the National Judicial College when she put together a team to go to the Leadership Institute in Memphis, Tennessee, and draw on the knowledge and experience of Pat Murrell and Kathy Story, among others, in trying to improve tribal faculty development programs. She described the NTJC Leadership Team’s primary goal as “developing a culturally-relevant and memorable model for promoting experiential learning in education programs for tribal justice leaders.” Carolyn led the team which included Karen Bitzer, Hon. Ingrid Cumberlidge, Hon. Dave Raasch, Chloe Thompson, and me.

As Carolyn wrote in her application for the Leadership Institute, “The function and identity of state courts and the role of the judiciary is undergoing a renaissance in the community at-large, and so too, the people in leadership positions in tribal communities are recognizing opportunities for tribal judiciaries to operate more efficiently while positively influencing perceptions of their judicial institutions by integrating custom and traditional practices in their court systems. The challenge facing NTJC is ‘How do you teach legal principles to an audience of enormous cultural diversity without indoctrinating them to adopt rules, practices and procedures derived from western adversarial justice systems?’” She was concerned not only with the content of what was being taught, but how it was being taught. Law school-trained instructors tended to teach with law school methods, which usually didn’t include experiential learning or culturally appropriate techniques.



Carolyn Wilson liked some of the underlying principles of Kolb in terms of encouraging experiential learning but had found that using Kolb’s model generally did not lead to more use of culturally sensitive experiential teaching and learning techniques by the faculty who had been through the tribal faculty development workshops. She wanted to build on Kolb’s LSI since it was a validated instrument, and it appeared to have similarities to the tribally-based concept of the Medicine Wheel.

Chloe Thompson, a member of the NTJC Leadership Team, reviewed the literature on native perspectives in education and using the medicine wheel for educational purposes. She found that “The medicine wheel is a concept used in many variations by many tribes. At its essence, it is a circle with four quadrants—physical, spiritual, intellectual, and emotional.¹ The circle symbolizes harmony, equality, and unity, as well as the totality, interconnectedness, and unity of all things.² Each of the four quadrants is of equal importance,³ although the element of spirituality is also all-encompassing.⁴”

The NTJC Leadership Team thought a key for creating more lasting change in having the instructors who go through the faculty development workshops follow-through by developing sessions that were culturally relevant as well as experiential was to combine a cultural perspective with Kolb’s learning cycle. [We wanted to create a model that would resonate with tribal learners.]

Transforming the Learning Circle

Much of what tribal learners negatively reacted to in the Kolb model was the inaccessibility of the terminology, something that I think applies to all groups I’ve taught (with the possible exception of professional educators). However, what the NTJC Leadership Team discovered is that changing the terminology was not enough. We had to “widen the circle” to be more inclusive of native perspectives. After much research, we focused on the Anishinabe perspective on learning as taught by Hon. Ernest H. St. Germaine, a former tribal judge for the Lac du Flambeau Tribe (Chippewa) as well as an adjunct professor at UW-Eau Claire and an author of Indian history. Working with a fellow Anishinabe judge, Hon. Alton

¹ See, e.g., Orr, Jeffrey A. “Learning from Native Adult Education” in “Addressing the Spiritual Dimensions of Adult Learning: What Educators Can Do.” *New Directions for Adult and Continuing Education* 85 (2000): 59-66.

² Reagan, Timothy, *NON-WESTERN EDUCATIONAL TRADITIONS: ALTERNATIVE APPROACHES TO EDUCATIONAL THOUGHT AND PRACTICE* 87 (2000).

³ Orr, *supra* note 1, at 85.

⁴ See, e.g., Reagan, *supra* note 2, at 83-97.

“Sonny” Smart, Chief Judge of the Bad River Band of Chippewa, Judge St. Germaine co-wrote a training manual for social workers that included a two-dimensional model of the Anishinabe perspective on how and why people learn. The model portrays four aspects of the self: Spiritual, Physical, Emotional, and Intellectual. The Anishinabe characterize themselves as “knowledge-seekers”. The achievement of balance and harmony is a goal in all aspects of life, including learning.



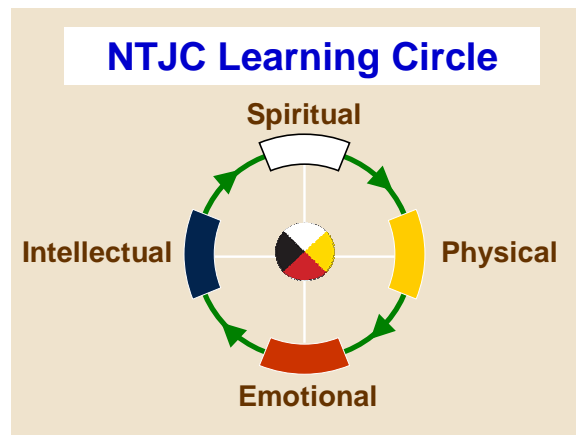
The NTJC team recognized that the Anishinabe perspective, as presented by Judges St. Germaine and Smart, generally represented an approach that was consistent with the goals of their project for the Leadership Institute. The team also recognized that the Anishinabe perspective was consistent with some interpretations of a widely recognized symbol sacred to many Plains Indian tribes: the Medicine Wheel. Although the Medicine Wheel is not used in all indigenous North American cultures, it is often used as a symbolic representation in educational programs developed for tribal participants. The Medicine Wheel is comprised of four quadrants of different colors that represent the different forces in balance. The various interpretations are too numerous to summarize here, but its adaptability was one of the reasons the NTJC team chose to use the Medicine Wheel as the inspiration for the visual characteristics of its model.

In working toward a model that combined the different approaches, the NTJC leadership Team overlaid the Kolb’s model and the Anishinabe model and different Medicine Wheels; we turned them, we debated what to name the different parts of the new circle and how to clearly and powerfully describe their meanings. We came to the conclusion that the Kolb’s categories were relevant but were not a direct fit with a more traditional tribal approach. By a consensus of the team participants, the Anishinabe perspective became the foundation for the conceptual model. Kolb’s theory was used to identify methods to apply the Anishinabe perspective to promote experiential learning.

So in transforming the learning circle, we remained consistent with most of the foundational principles of Kolb’s theory, but we made changes to promote the understanding of those principles within the cultural context of the individual learning experience. Some of Kolb’s categories were closer fits than others. For instance, as inspired by the Anishinabe perspective, the “Intellectual” dimension is reasonably close to the type of learning that Kolb calls “Abstract Conceptualization,” or thinking/theorizing. However, it also encompasses some of the elements of “Reflective Observation,” or watching/reflecting.

Cultural Relevance

The NTJC model, the “Learning Circle”, has some elements that are not related to Kolb’s theory. The “Spiritual” quadrant is not directly related to any of Kolb’s categories. The “Spiritual” dimension is present in the Kolb model in terms of the emphasis on learning as a natural cycle, and in the pursuit of balance in different ways of learning. It can be seen as part of each of Kolb’s categories across the continuums, from reflecting on experiences and information (Reflective Observation) to actualizing or trying to create positive change (Active Experimentation), for example. In the same sense, the “Spiritual” quadrant of the Learning Circle is also more encompassing than it might appear in the NTJC Learning Circle—it is actually present in all of the dimensions, but we felt it needed to remain a specific quadrant in terms of the Learning Circle in order to encourage the development and inclusion of learning activities that recognize and draw on this part of who we are.



The Medicine Wheel may be described as a symbolic representation of the Self. The silver intersecting lines represent the need for balance and harmony in engaging all aspects of the Self in the learning process. The arrows were added at the suggestion of Dr. Pat Murrell to show the natural progression of the learning cycle. We made them green to symbolize the Earth and natural forces that become sources of learning.

While the symbolism is strong, the Medicine Wheel itself is an optional part of the model. NTJC offers judicial education to the more than 260 tribes with existing judicial systems, as well as the growing number of tribes with emerging justice systems. There is a tremendous amount of cultural diversity within the Native American communities, and many times a symbol has different meanings to different tribes. The Medicine Wheel has a multitude of interpretations across tribal cultures, so we decided to limit the number of symbols (such as animals) that we used in the general model and to encourage those who taught the Learning Circle to adapt it and the symbols around it to their particular learners.

The evolution of NTJC's Learning Circle eventually meant that Kolb's model became one of a couple of sources of inspiration for the new model as opposed to the basis of its adaptation. We also moved away from the idea of even using an instrument to determine individual styles because of the desire for a culturally-relevant holistic approach—an approach that builds on what has been the most useful part of the Kolb model in practice. The result is that Kolb's terms are not integral to the NTJC Learning Circle while many of Kolb's principles are.

After reviewing the literature and helping develop the tribal Learning Circle, Chloe Thompson said, "If instructors take only one idea from this model, it should be the concept of balance. Whether they prefer to think in terms of the four quadrants of the medicine wheel, or the four learning styles of Kolb, instructors should strive for balance."

Where Are We Now?

If we were to apply Kolb's learning cycle to the NTJC Leadership Team's process of creating a new, more culturally-relevant adult learning model, where would we be in Kolb's learning cycle?

--We had the concrete experience of using Kolb's model with somewhat limited success with tribal groups (among others). We reflected on that experience and observed which parts of Kolb's model seemed effective and ineffective with this particular group. We sought an expert, Ernie St. Germaine, for a tribally traditional approach, and conceptualized how the different approaches might be combined. We are now in the process of testing out the approach that we developed, which ended up relying on the Anishinabe perspective with some incorporation of Kolb's ideas. The NTJC Faculty Development Workshop in August 2006 provided an opportunity to actively experiment with the model ... and gave us more concrete experience to reflect upon.

Around we go, both being transformed by and transforming Kolb's approach.

"Everything an Indian does is in a circle, and that is because the Power of the World always works in circles, everything tries to be round....Even the seasons form a great circle in their changing, and always come back again to where they were. The life of a man is a circle from childhood to childhood, and so it is in everything where power moves." Black Elk—Oglala Sioux

Kelly Tait is a speech communication instructor at the University of Nevada, Reno, and a communication consultant who has designed and conducted a variety of communication skills-based workshops and seminars for organizations such as the National Judicial College, the New York State Judicial Institute, the Supreme Court of Virginia, and the Nevada State Bar Association. Her specialties include faculty development, courtroom communication skills, and diversity issues.

Recommendations for Reducing the Numbers of Delinquent Minority Youth in the Juvenile Justice System

By David Gamble, NCJFCJ

The Problem

Ethnic minority youth (African Americans, Latinos, Pacific Islanders, Asians and Native Americans) are disproportionately represented in the juvenile justice system. In 2002, Snyder and Sickmund (2006) report that the majority of delinquency cases involved white youth at 1,086,700 or 67% and a disproportionate number of cases involved African American Youth at 473,100 or 29%, given their proportion of the juvenile population. Whites made up 78% of the juvenile population, while African American youth 16% and youth of other races 6%.

Pope and Snyder (2003) acknowledge that some observers of the juvenile justice system argue that the system is perceived as being biased against minority offenders. This position is supported by the aforementioned statistics that point out that minority youth and African American youth in particular are more likely to be overrepresented in the juvenile justice system. Toberman (1994) conducted a study that revealed that the overrepresentation of minority offenders occurs in all phases of the criminal justice system in the United States.

In 1988, the United States Congress in its Juvenile Justice and Delinquency Prevention Act (JJDPA), recognized that minority youth were being confined in public institutions in greater numbers than their representation in the general population. The JJDPA mandated that all States participating in the Formula Grants Program were required to address the "disproportionate minority confinement" or "DMC" problem in their State. In 2002 with the reauthorization of the JJDPA, the term DMC was changed to mean "disproportionate minority contact." The new term is more encompassing and tests for disparity at key decision points i.e., arrest, referral to juvenile court, detention, petition, transfer or automatic waiver to criminal court, adjudication and out of home placement following adjudication (Snyder and Sickmund, 2006).

Possible Causes of Minority Overrepresentation

The obvious question is "why does this disparity exist?" Some suggest that the United States experienced a significant population shift at the beginning of the twenty first century. Pollard (1999) report that the United States has transformed from a population of mostly Western culture, to one of many different racial and ethnic minorities. The author further reports that at the beginning of the twentieth century nearly 87% of the United States was white; however, toward the end of the century the white population had decreased to 75%. The minority population continues to increase; Pollard (1999) project that by the middle of the 21st century "Hispanics will be nearly one-fourth of the U.S. population. 'Minority' is likely to have a very different meaning in the 21st century." (p.3).

Toberman (1994) indicates that "Blacks report significantly less access to intermediary treatment resources such as psychiatric and drug treatment facilities, community treatment referrals and placement in foster homes...the disparity raises some critical questions of possible inequality." (p.15).

Some argue that minority youth, and African American youth in particular are more likely to be arrested, Pope and Snyder (2003). Is this arrest rate different because minority youth are committing more crimes? Arguments are made both ways, but it has been suggested that the problem is based on bias in decision making at the law enforcement level.

The reasons for the debate as to why minority youth are disproportionately represented in the juvenile system continue and are complex. However, most researchers and others appear to agree that any discussion as to why this problem exists must include funding issues, community characteristics, family situations as well as the possibility of disparate treatment.

The Effects of Disproportionate Representation

The Increasing number of minorities in the United States will continue to bring about changes in our social and legal systems. Pollard and O'Hare (1999) indicate, "...the increase in the minority population is closely linked to important policy issues relating to immigration, affirmative action, welfare, and education reform" (p.5). The juvenile justice system

is no exception and is already experiencing the impact of increasing numbers of minority youth. If current populations projections are accurate minority representation will be tremendous. Policy decisions affecting the processing of minority youth will have to be made that do not unfairly contribute to increasing their representation in a system where they are already overrepresented.

Leonard et al. (1995) report, that “a number of recent studies have identified race as predictive of juvenile court dispositions, even after controlling for relevant court criteria: prior record, offense seriousness, type and level of injury or damage” (p.100). It should also be noted that Leonard et al. (1995) report, that there are studies that also indicate that race has little or no effect as a predictor in the processing of minority youth in court.

In the final analysis the disproportionate representation of minority youth in the juvenile justice system may raise concern about the fairness of juvenile courts. If this is the case this alone may be reason enough to more closely examine and try to ameliorate this problem.

Recommendations for Reducing the Numbers of Minority Youth in the Juvenile Justice System

As the debate on the nature and extent of disproportionate representation of minority youth in the juvenile justice system continues, research and practical lessons learned from local jurisdictions’ models offer some recommendations for ameliorating the problem. Three nationally recognized organizations known for developing policy in addressing the concerns of youthful offenders and their families have provided some important and valuable insights. The organizations selected for this article are: The National Council of Juvenile and Family Court Judges, The Child Welfare League of America, and the Annie E. Casey Foundation.

The National Council of Juvenile and Family Court Judges’ list of recommendations is in its publication *Minority Youth in the Juvenile Justice System: A Judicial Response* LeFlore (1990) and are as follows:

1. Appropriate administrative officers of the court should conduct monitoring and review efforts that assure minority youth are not in the system disproportionately.
2. All Juvenile justice practitioners should receive regular sensitizing training as to cultural and ethnic differences.
3. Minority practitioners should be represented in critical decision-making ranks of the juvenile justice process.
4. Judges should take the leadership in assuring that community services and programs are developed.
5. Minorities should be involved in developing and implementing alternatives to detention and institutional confinement.
6. The family and community that impact upon minority youth should be regarded as important factors when making dispositions.
7. Judges should take the leadership role advocating for all youth.
8. Judges should help in the evaluation and research of the juvenile justice system.
9. Training programs, workshops, and conferences, that focus on the needs of minority youth should be developed.

The Annie E. Casey Foundation’s list of recommendations is in its publication *Reducing Racial Disparities in Juvenile Detention* Hoytt et al. (2002) and is as follows:

1. All children should be treated equally within the juvenile justice system.
2. Individual and institutional racism should be addressed.
3. Decision-making and policies should not result in unintended consequences causing disparity.
4. Data should be collected and analyzed to help develop strategies to help reduce DMC.
5. Proper authorities should provide leadership in this area.
6. Individuals and agencies have a responsibility to address disparate practices.
7. Emphasis should be placed on practices that can be changed in the detention system that helps in the reduction of minority incarceration.

The Child Welfare League of America’s list of recommendations is in its publication *Disproportionate Minority Contact in the Juvenile Justice System* Short and Sharp (2005) and is as follows:

1. States and/or localities must assign an organization that is responsible for addressing DMC.

2. Juvenile Justice data must be collected and analyzed.
3. There needs to be consensus building through community-agency partnerships.
4. There needs to be a coordinated training effort so that plans can effectively be implemented.
5. Community based programming should be culturally appropriate.
6. Decision making at the intake level should utilize risk assessment tools.
7. The quality of counsel that youth receive through the public defenders office needs to be improved.
8. The effect of all DMC intervention reduction strategies should be measured for its effectiveness.

Summary

The purpose of this article was to provide a “primer” for addressing an issue that the juvenile justice system has been concerned about for the past two decades. Although some progress has been gained, it is an issue that unfortunately may be around for a while. However, it is encouraging to know that not only the three organizations noted in this article have mounted an effort to address this problem, but there are many other national, regional and local efforts as well. It is hoped that the reader will focus attention on the recommendations in this article and mount the appropriate effort to help ameliorate this problem.

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The National Council of Juvenile and Family Court Judges stands as the Nation’s largest and oldest non-profit membership organization solely devoted to improving the Courts of Juvenile and Family Jurisdiction. The Council is located on the campus of the University of Nevada in Reno.

Prior to this current position, Mr. Gamble was the Director of the Council’s Juvenile Sanctions Center. The Juvenile Sanctions Center was an over 2.5 million dollar multi-year initiative between the Council and the Office of Juvenile Justice and Delinquency Prevention to create and/or improve juvenile accountability-based sanctioning programs for communities and their youth who come into contact with the juvenile justice system. Mr. Gamble has worked with national, state, local juvenile justice organizations striving to improve the system’s response to the needs of youth and families. Mr. Gamble has his Bachelor’s Degree from Penn State University, Masters Degree from the University of Pittsburgh, and an Educational Specialist Degree from the University of Nevada at Reno. He can be reached at the National Council of Juvenile and Family Court Judges, University of Nevada, Reno, P.O. Box 8970, Reno, NV 89507. The phone number is 775-784-6631 and email is dgamble@ncjfcj.org.

Preparing New Judges for the Bench

Maureen E. Conner
Catharine M. White

Introduction

New judge education and training continues to be the cornerstone of judicial branch education curriculum plans for judicial officers. This article explores the evolution of new judge programming. It includes the three basic types of programming – pre-bench, new judge programming after taking the bench, and mentoring.

The programs reported to the JERITT Project indicate that pre-bench primarily focuses on judicial ethics and conduct and life and family changes related to becoming a judge – moving from private citizen to public citizen. The new judge orientation programs address “nuts and bolts” and “need to know” information on substantive law and procedure, judicial administration, public and media relations, and the like. Mentoring programs round out the new judge programming. It focuses on socializing new judges to the judicial environment as well as coaching and problem-solving for peak judicial and administrative performance. Mentoring will be discussed in a later article.

The article closes by situating new judge programs within the context of career-stage education, training and development.

Programming Reported to the JERITT Project

Programming Topic: New Judge Orientation

Seven hundred and seventy-seven (777) programs pertaining to the *orientation of new judges* have been reported to the JERITT Project since 1990. From this data it appears that most reporting states have some type of new judge orientation program.

Table 1.0 highlights the frequency of new judge orientation programming by year:

| Table 1.0 New Judge Orientation Programs From 1990-2006 | |
|--|---|
| Year | Total Number of New Judge Orientation Programs |
| 1990 | 29 |
| 1991 | 30 |
| 1992 | 46 |
| 1993 | 37 |
| 1994 | 40 |
| 1995 | 36 |
| 1996 | 40 |
| 1997 | 41 |
| 1998 | 29 |
| 1999 | 46 |
| 2000 | 43 |
| 2001 | 50 |

| | |
|------|---------------------|
| 2002 | 72 |
| 2003 | 32 |
| 2004 | 104 |
| 2005 | 82 |
| 2006 | 20 (as of 04/01/06) |

Programming topics reported to the JERITT Project addressing the orientation of new judges remained fairly consistent from 1990 – 2000. This decade demonstrated a programming low of twenty-nine and a programming high of forty-six. The years 2001 – 2002 saw a marked increase from fifty to seventy-two programs respectively, but a substantial decline to thirty-two programs in 2003. While an overwhelming 104 programs were conducted in 2004 – this appears to be an anomaly as the years 2005 and 2006 saw a dramatic decline in programming to eighty-two and twenty reported programs respectively.

A variety of topics are offered at these new judge orientation programs. In the last several years, some of the most common topics include judicial role and responsibilities, court administration, civil law and procedure, criminal law and procedure, evidence and ethics.

To view a detailed list of topics at programs since 1990, please visit the online version of this article to view Table 2.0. The agenda topics that are displayed in Table 2.0 are inclusive of the topics reported to the JERITT Project for New Judge Orientation Programs. The agenda topics are arranged under the JERITT Project Subject Matter Category headings. This arrangement allows readers to see the topics and/or issues that new judges are first exposed to when they take the bench.

Table 3.0 highlights the distribution of the JERITT Project main topic codes, or codes used to qualitatively organize the new judge orientation agenda topics, by their respective programming year. Please visit the online version of this article to view Table 3.

Programming Topic: Transition to the Bench

Forty-eight programs pertaining to transitioning to the bench have been reported to the JERITT Project since 1996. Table 7.0 highlights the distribution of transitioning to the bench programming by year:

| Table 7.0 Transition to the Bench Programs from 1996, 1999, and 2000 - 2005 | |
|--|---|
| Year | Total Number of Programs Offered for Topic |
| 1996 | 1 |
| 1999 | 1 |
| 2000 | 6 |
| 2001 | 6 |
| 2002 | 6 |
| 2003 | 14 |
| 2004 | 10 |
| 2005 | 2 |

The number of programs related to the theme or subject matter, “Transition to the bench” demonstrated a marked increase from one program in 1996 to fourteen programs in 2003. A significant decline was noted however, from ten programs in 2004 to two programs in 2005. No programs related to this theme have been reported thus far in 2006.

Courses on judicial role and responsibilities as well as courses relating to ethics and judicial conduct seem to be most common in recent years.

To view a detailed list of topics at programs since 1996, please visit the online version of this article to view Table 8.0. The agenda topics that are displayed in Table 8.0 are inclusive of the topics reported to the JERITT Project for Transition to the Bench Programs. The agenda topics are arranged under the JERITT Project Subject Matter Category headings. This arrangement allows readers to see the topics and/or issues that new judges are first exposed to when they take the

bench. It is important to note that during the transitioning phase, judges are given knowledge and information about the life changes they will encounter and the ethical demands associated with becoming a judge.

Table 9.0 highlights the distribution of the JERITT Project main topic codes, or codes used to qualitatively organize the transition to the bench agenda topics, by their respective programming year.

| Table 9.0 Distribution of the JERITT Project Main Topic Codes by Respective Programming Year | | | | | | | | |
|---|-------------------------|------|------|------|------|------|------|------|
| Main Code | Programming Year | | | | | | | |
| | 1996 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
| Discipline, Ethics, and Conduct | | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Judicial Life and Judicial Role and Responsibilities | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |

Career Stage Education Programming

State-by-State Career Stage Education Program Offerings

New judge training seems to be a well-established educational offering in most reporting states. But new judge training can serve dual purposes. Not only does it assist new judges in the transition to the bench, it can also introduce new judges to the spectrum of judicial education offerings that will be available as they continue their judicial careers.

Issues and Trends in Judicial Branch Education (2005) was the JERITT Project’s publication that provided the most recent information on “The State of Judicial Branch Education.” Table 10.0 provides readers with the list of states/organizations that offer full career stage education beginning with pre-bench education. To view Table 10.0, click [here](#).

CURRICULUM BUILDER REPORT

Submitted by
 Lee Ann Barnhardt
 Judicial Education Coordinator
 North Dakota Supreme Court

During the past year, the Technology Committee of the National Association of State Judicial Educators has been constructing an online curriculum builder designed to help judicial educators at all levels plan better programs.

Members of the Technology Committee attended the Leadership Institute in Judicial Education in Memphis, Tennessee during 2005 and 2006. The Curriculum Builder is the result of that group’s institute project. The software incorporates the ideas, tools, and curriculum from the Leadership Institute.

“The software integrates Kolb for those with little or no experience with adult learning principals,” said Joseph Sawyer, distance learning and technology manager with the National Judicial College and Technology Committee member. “Pat Murrell and her staff at the Leadership Institute have been forthcoming with ideas of how to adapt adult learning into the program.”

The software is still under development at this time, but a prototype is available for preview. Sawyer said they are working on “behind the scenes” issues such as log-ins and databases, which will allow multiple users on the site to save and store their work. Quincy Rolle from the Palm Beach County Court is volunteering his time to work on the software.

When it is complete, the program will allow judicial educators to design a course integrating effective learning objectives using Bloom’s Taxonomy and learning activities by integrating Dr. David Kolb’s Experiential Learning Cycle.

Sawyer said the purpose of the software program is to introduce adult learning theory to both the new and experienced program manager, as well as to add value to the NASJE website, where it will be hosted.

When using the software, educators will enter who they are, where they work, and their intended audience. It will then walk them through writing course objectives and learning objectives. Sawyer said there are drop-down menus that will provide suggested verbs consistent with Bloom's Taxonomy to use in writing the objectives.

Users will then plan activities that reinforce the objectives. The curriculum builder software even assists with logistics such as room set up, equipment and materials. The plan that is developed can be saved and printed.

Sawyer said having the software available through the NASJE website will provide added value to being a member of the association. He said guests will be able to see a limited version of the program, but the full version will be password-protected for NASJE members.

The NASJE Technology Committee includes Evie Bosch, Steve Circeo, Judge Peter Evans, Raymond Foster, Mary O'Connor, Quincy Rolle, Joseph Sawyer, Philip Schopick, and Elizabeth Strong.

Editor's note: the curriculum of the LIJE that was attended by some of the technology committee members and which was the focus of a presentation at the Minneapolis conference is discussed in Pat Murrell's three-part article that was published in NASJE News in 2003 and 2004. To take a closer look at what was done, click on the links below:

Murrell, P. (2003) Readiness for justice in courts: The role of judicial education, Part 1. NASJE News. <http://nasje.unm.edu/archives/fall03/resources-readiness-justice.htm>.

Murrell, P. (2004) Readiness for justice in courts: The role of judicial education, Part 2. NASJE News. <http://nasje.unm.edu/archives/winter04/resources.htm>.

Murrell, P. (2004) Readiness for justice in courts: The role of judicial education, Part 3. NASJE News. <http://nasje.unm.edu/archives/spring04/resources.htm>.

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For Immediate Release

The Collaborative Justice Resource Center is pleased to announce the availability of a new publication: *Five Reasons Why Judges Should Become More Involved in Establishing, Leading, and Participating on Collaborative, Policy-Focused Teams*. This monograph addresses the critically important role judges play in convening and leading collaborative teams focused on enhancing the administration of justice and the ethical considerations surrounding judges' participation on such teams.

This document, along with a number of other resources on collaboration in the criminal and juvenile justice systems, can be found at [here](#) [link to document] or at www.collaborativejustice.org. Please visit the site for training curricula, case studies, and other information on topics such as enhancing the effectiveness of criminal justice teams, the importance of collaborative leadership and data and information sharing in achieving successful criminal justice outcomes, and the role of facilitators and support staff in successful collaborative endeavors.

C e n t e r f o r E f f e c t i v e P u b l i c P o l i c y

Five Reasons Why Judges Should Become More Involved in Establishing, Leading, and Participating on Collaborative, Policy-Focused Teams



By Richard P. Stroker
October 2006

Introduction

Justice Oliver Wendell Holmes, Jr. once remarked that “a moment’s insight is sometimes worth a life’s experience.” In the course of discharging their responsibilities, judges may have a great many insights into the circumstances of individuals, the operations of systems, and the interaction of the two. In any given case a judge may act, as Socrates once commented, by “listening courteously, answering wisely, considering soberly, and deciding impartially.” However, particular situations or circumstances may cause a judge to look well beyond the facts or boundaries of a case. A judge might be concerned about the ability of self-represented parties to access the court or navigate its processes, the security of the courthouse, the absence of meaningful or comprehensive alternatives available to the judge for certain types of cases, the perception of the court by the broader community, or many other issues. These concerns may lead a judge to see the need for, or desirability of, making improvements or modifications in the way that the court discharges its responsibilities.

In some situations, other individuals may be the ones noting particular issues that may involve the outcomes of cases or operation of the court and the impact that these actions or processes have on litigants, system partners or others. These might include areas such as the availability of programs or resources to serve individuals who have had their cases disposed of by the court, difficulties associated with enforcing child support orders or other judgments, issues involving jail or prison overcrowding, or other circumstances. When these types of issues are identified, system partners may be most anxious to gain the perspectives of judges or see the need for judicial involvement in order to properly address or resolve various matters.

Systemic issues can often have extremely complicated histories, involve the actions or resources of numerous entities, and will most likely not lend themselves to easy solutions. For many of the reasons outlined below, establishing collaborative, policy-focused teams can represent a sound approach to problem solving. The following discussion outlines five principal reasons why judicial leadership and participation on these teams is critical to the successful investigation and resolution of complex issues.

Reason 1: The Perspective of the Judge is Unique and Must be Shared with Others in an Appropriate Context in Order to Make Meaningful Progress on Difficult Issues.

“Life is made up of constant calls to action, and we seldom have time for more than hastily contrived answers.” Judge Learned Hand

Judges have a unique perspective regarding court operations, the administration of justice, the work of system partners, and the impact that these and other matters may have on individuals and the broader community. No one else may be able to see or appreciate so many different concerns, or components of issues, from such a neutral, objective position. As Chief Justice Earl Warren once remarked, “Judges are able to see the whole gamut of human nature.” Assuming that judges have insights and opinions about the causes, scope, or ramifications of particular problems that are relevant to the court and its work, how can judges help to bring about an effective review and resolution of these matters? As reflected in the remark from Judge Hand, hastily contrived answers are most likely not the best method of resolving or attending to complex issues. Substantial issues require thoughtful, comprehensive solutions. One way to encourage meaningful consideration of difficult and often long standing issues is to establish collaborative, policy-focused teams. These types of groups can represent individuals from various organizations and differing perspectives who are collectively attempting to understand the dimensions and nature of some set of issues and who strive to achieve something together that they could not do alone. These teams create the opportunity to gain substantial amounts of information from different points of view, review how systems operate, understand root causes or issues, identify possible areas of change or improvement, and develop and implement solutions that are acceptable to a wider range of individuals.

Ron Reinstein, a Superior Court Judge from Arizona, has worked on several collaborative, policy-focused teams that have ultimately implemented intermediate sanctions, revised probation violation responses, and developed innovative solutions to address a variety of other significant matters. Regarding the importance of involving key system partners on these teams, Judge Reinstein notes that:

“If everyone in the justice system engages with each other and works together, it can only improve that system. Going it alone will only create chaos, confusion, and a poor use of scarce resources.”

Judges are essential to the establishment and operation of these teams. This is true for at least three reasons:

1. First, a judge may be aware of issues or may have particular concerns that are simply not recognized by others. Court personnel or employees from other agencies have particular jobs to do, and they carry these functions out within their individual chains of command. As long as policies are followed, and their agency's responsibilities are met, these individuals may simply not appreciate the existence of a problem that is quite evident to the judge. Judicial participation with others is required in order to bring these issues out in the open where they can be studied, considered, and resolved.

2. Second, when special issues or problems are perceived by individuals who work for the court or for other entities, these individuals may be concerned primarily with how this issue or problem impacts, or could impact, them. A broader perspective on the matter may be necessary in order to bring about the most appropriate review, to identify the most critical issues, and to develop the most meaningful outcomes. Because a judge is in a position to see different points of view and the broader landscape associated with numerous issues, a judge can help others to gain a different appreciation of the scope of a problem.

3. Third, regarding issues that involve the work of the court, no other person has the same vantage point as the judge. System partners who are interested in bringing about changes to pre-sentence reports or developing new criminal sentencing options may be notably disappointed if judges do not agree with the products or alternatives developed. To avoid this waste of effort and time, judges need to become involved with issues and areas that are impacted by their actions and decisions so that teams can be well-focused and directed. Groups that are working on issues that are related to the court or its operation absolutely need to understand how judges perceive these issues.

Individuals who have participated with judges on collaborative, policy-focused teams certainly appreciate the indispensable value of gaining judicial perspective regarding the issues under consideration. For instance, Todd Nuccio, Trial Court Administrator in North Carolina's 26th Judicial District, recently participated in a very successful inter-entity effort that focused on issues concerning self-represented litigants in his District. Several key judges within the District provided leadership to the overall effort, guided work groups, and fully participated in the development of new partnerships, approaches, and tools. Regarding the involvement of judges in this effort, Mr. Nuccio offers the following:

"Judges bring valuable insights that others simply do not have. They can analyze information, interpret it in a number of contexts, and draw appropriate conclusions based upon their special position. The contributions they made to the discussions were particularly invaluable to our pro se project. Those of us who play more limited roles and have a narrower view needed to know how our proposals would truly impact operations. Without the participation of judges, we simply would have been hoping that we were working on the right things and moving in the right direction."

In summary, by sharing their perspectives, observations or concerns with members of collaborative, policy-focused teams, judges create a necessary foundation for the work of these teams.

Reason 2: Judicial Participation on Teams Helps Bring Other Stakeholders to the Table.

"No one learns more about a problem than the person at the bottom." Justice Sandra Day O'Connor

Participation by judges in groups has the general effect of encouraging participation by others. The Conference of Chief Justices and the Conference of State Court Administrators recently indicated that⁵:

"While leadership can come from different facets of the justice system or community, judges are well positioned to lead reform efforts because of their unique ability to convene stakeholders."

The fact that a judge wants to be involved in a discussion raises the importance of that issue in the eyes of others. Teams need the active participation of numerous individuals and many organizations in order to solve complex problems, so the mere presence of a judge on a team may help a group to overcome one of the first and most important of issues – getting the right members to attend and participate in meetings.

When judges lead and participate in the work of collaborative teams, it can have a magnetic effect on others – it inexorably pulls necessary parties into the discussion. As Judge Ron Reinstein from Arizona relates:

"I definitely believe judges are in a unique position to bring disparate groups

⁵ COSCA and CCJ (2006).

to the table to resolve issues and move the system forward. We're all partners in the justice system. You can accomplish more by working together than on your own, while still maintaining your autonomy as well as judicial independence."

When a project is initiated by one particular organization, it may simply be seen as that organization's effort. Others may be skeptical about the motivations of that entity and may be unwilling to share their thoughts or ideas. While some agencies and their personnel work well together, many others do not. This may be driven in part by the fact that organizations often see themselves as competitors, rather than partners, with each other. This competition may be over resources, recognition, or any number of other factors. In this environment, trust levels between various organizations may be rather low.

Judges – in large part because of the belief by others in their authority, judgment, and neutrality – cannot only help to bring people together from various organizations, they can help to create an atmosphere of trust. When judges lead groups, it encourages others to believe that matters will be dealt with in a fair, comprehensive, and appropriate way, and will not be slanted to serve the interests or desires of a single entity. As Todd Nuccio from North Carolina observes:

"The involvement of judges conveys a sense of legitimacy, brings about essential 'buy-in' from others, and makes it possible to bring many other individuals to the table. Without the involvement of judges, and the participation of others who joined the efforts because of the involvement of judges, it would not have been possible for us to realize the attainment of so many lofty goals."

Once the right members of a team are involved in a discussion and there is sufficient trust to speak openly about issues, three interesting things can begin to happen. First, the true nature of the problem will receive further scrutiny. Second, the importance of developing a common understanding about system issues and operations will emerge. Finally, a more comprehensive effort will be made to arrive at mutually acceptable, long term solutions.

1. *Understanding the problem.* For a variety of reasons, people who are working on complicated issues or problems often want to rush quickly to the development of solutions. Groups that have failed to spend a sufficient amount of time learning the true nature, depth, or factors associated with a particular situation may be able to move swiftly – but it may be in an unfortunate direction. Groups that are working on the "wrong" problems will very seldom arrive at the "right" solutions. In order to understand all of the most important aspects of a problem, it is critical to have knowledgeable individuals from various entities participating in the discussion. The ability of judges to attract other individuals to the table makes it possible for teams to gain a better understanding of the true nature of the problems they are facing.

2. *Understanding the system.* What often becomes obvious during a discussion about the nature of a problem is that no one individual has a full appreciation of how an entire system actually works. Many individuals will understand how some portion of a system operates, or should operate, but it is relatively uncommon for people to come together to truly consider how a system does operate. Different entities often work in relative isolation from each other. While it may be clear where the lines of authority or responsibility lie, individuals operating within the system are seldom offered the opportunity to consider how the system components work together. Systems are often developed over long periods of time, and some steps, aspects, or methods may be convoluted, confusing, or unnecessary. In order to understand how a system operates you must have the participation of everyone who is involved in the operation of that system. Once again, the ability of judges to attract numerous individuals to participate on policy-focused teams creates the opportunity for these teams to have a better understanding of the context and implications of their work.

3. *Developing better solutions.* Finally, individuals who have participated in discussions concerning potential problems and system operations are much more likely to reach a common understanding about the need for, or value of, certain solutions. Having all the "right" people participate from the beginning of a policy-focused team's work helps to generate collectively embraced solutions, and their involvement in the process helps to generate commitment to its outcomes. Therefore, the ability of judges to attract appropriate individuals to discussions about complex problems helps to ensure that the best solutions will be generated and implemented.

Teams working on difficult problems are much more likely to realize successful outcomes if they have all the necessary parties involved in the discussion. Judges have a unique ability to encourage this critical participation.

Reason 3: Collaborative, Inter-Entity Groups Need the Leadership of Judges.

"The greatest thing in life is not so much in knowing where we are, but in knowing what direction we are moving." Justice Oliver Wendell Holmes, Jr.

Individuals who work in the courthouse or who work for agencies that have responsibilities that are impacted by what happens in the courthouse look to judges to provide leadership, guidance, structure, and vision regarding an array of important issues. Judges are armed with what might be termed “positional leadership” authority. This is leadership authority that is derived entirely from the nature of one’s position. When a person is seen as having positional leadership, other individuals expect that certain actions will be taken or qualities demonstrated. The lack of interest in a project or effort by a positional leader carries a fairly clear message and may spell disaster for that effort. As Mr. Nuccio from North Carolina explains:

“Judges are the “face” of the organization, and if they are not seen in a prominent role, the project almost always becomes suspect and the chances of its success are diminished.”

When individuals see someone else as having positional leadership authority, they may be reluctant to explore issues without permission or an instruction to do so. Even though some problem or issue may be appreciated by a variety of other individuals, little work might be done to resolve such matters until the judge or the positional leader identifies the existence of this issue or problem and directs someone to do something about it. Therefore, both because judges are viewed as leaders and because others will wait for direction to be provided or instructions to be given, leadership by judges is often required in order for significant issues that involve the court to be addressed. But what does it mean to show leadership on an issue?

As many management and leadership books make abundantly clear, leadership involves the demonstration of particular qualities or actions – put simply, leaders “act” like leaders. Leaders exert influence through their actions and they are followed because of their credibility. Unlike positional leadership, “personal leadership” involves the nature and types of actions that are taken by an individual. While people will ordinarily do what a positional leader requires, people will *want* to do what a personal leader suggests. Perhaps this distinction between positional and personal leadership can be demonstrated by a remark once made by Dwight Eisenhower: “Leadership is not about hitting people over the head – that’s assault, not leadership.”

In the courtroom, judges are required to determine what is allowed, to consider issues and make rulings, and to determine who is right and who is wrong. They have the authority to be decision makers, and they are viewed by others as natural leaders in this environment. However, these very traits – the ability to be decisive and authoritative – may often not be the types of qualities that help people to be effective as personal leaders. In his books entitled *The 7 Habits of Highly Effective People* and *Principle-Centered Leadership*,⁶ Stephen R. Covey provides some thoughts regarding how good leaders can or should act. Among the traits he mentions are the abilities to:

- Be proactive;
- Start with the end in mind;
- Think win/win; and
- Try and understand, before trying to be understood.

Judges are often in a unique position to apply these personal leadership principles to the work of collaborative teams:

1. *Taking a proactive approach to issues.* The most difficult time for anyone to try and solve a problem is when it has already overwhelmed them. And yet, people may often wait for problems to become extensive before decisions are made to address them. Effective leaders are able to appreciate the current situation and anticipate logical developments of the future. Instead of being stuck in a reactive mode, constantly trying to keep your head above some rising flood, good leaders try to anticipate and develop strategies to address the issues that are just forming. Judges are constantly receiving information from numerous sources, and this information allows them the opportunity to form a broader perspective. In fact, judges may often be in the best position to appreciate the current nature of things and the predictable direction of future actions. Freed from some of the conflicts that impact so many system partners, judges are in an excellent position to show personal leadership by encouraging other individuals to work collaboratively toward meaningful outcomes. When judges offer their insights about the nature of an emerging problem, it encourages others to take a fresh look at existing situations.

For instance, Judge Linda Morrissey, who has participated on collaborative teams focused on significant criminal justice issues in Oklahoma, relates that:

⁶ Covey (1989); Covey (1992).

"I was interested in joining a collaborative team because I believed that the criminal justice system could be a lot more efficient, more proactive, more restorative, and more effective in managing nonviolent offenders. I believed that we could find ways to re-acclimate these offenders in the community with greater life skills that would enable them to be more functioning members of the community. I had a criminal docket at that time and wanted to be as informed and as innovative as I could be in managing the individuals on that docket."

2. *Begin work by starting with the end in mind.* Among all of the other traits of leadership, having a clear vision for the future may be the most important. Perhaps the notion of "starting with the end in mind" means that the leader imagines a preferred destination towards which a group could strive. At least, as Justice Holmes might observe, it may help others to appreciate the direction in which things could be moving. When this preferred destination is shared with others who have the capacity to impact future events and a collectively shared vision is embraced, teams can become powerful vehicles for change. Groups that have no sense of where they are trying to go or what they hope to generally achieve may wander in the wilderness for a long time. Groups are anxious to know what judges or other positional leaders want to see happen in the future. When judges share their thoughts about how things could be, they play a critical role in helping groups to establish direction. This, in turn, allows groups to properly frame their most important objectives.

Regarding the role that judges can play in helping groups to identify their direction or desired outcomes, Suzanne Brown-McBride, Executive Director of the California Coalition Against Sexual Assault, indicates that:

"Judges have an 'end analysis' perspective of the intersection of statute and case construction that is completely unique. No other element of the criminal legal process is able to consider and evaluate the process of an investigation, presentation of a case, the impact of a defense, and the application of statute and sentencing as completely as a judge. As a result, the judicial perspective has the potential to be broadly informative to the development of policy and the implementation of practice."

3. *In problem solving, think win/win.* Many individuals who work in or are impacted by the court system may see problems or their solutions in terms of a win/lose scenario. Judicial leaders can help set the tone for inter-entity discussions by indicating the importance of reaching mutually acceptable outcomes, by giving individuals the opportunity to identify and speak to their concerns, and by demonstrating a willingness to listen. Judges also have considerable experience at helping individuals to arrive at a common understanding regarding troublesome or long standing issues. Negotiation and mediation are concepts understood and routinely utilized by judges. Thus, consistent with both their position and experience, judges are uniquely qualified to help others to better understand issues, reach mutually acceptable accords, resolve disputes, and move forward with their work.

4. *Before trying to be understood, try first to understand.* Some positional leaders might identify a problem and its solution on their own. They then inform, instruct, or require others to accept both their analysis and their outcomes. While this may represent a certain type of decisiveness, it may not be a particularly helpful way of approaching difficult issues or developing long-term solutions. Chief Justice John Marshall once remarked that "to listen well is as powerful a means of communication and influence as to talk well." Learning all of the details or ramifications associated with some particular situation is a necessary part of developing sound solutions. Judges have considerable experience at listening to all sides of an argument, sorting fact from opinion, and approaching complicated issues from a problem-solving perspective. These qualities, when exercised by a judge and incorporated into the work processes of a policy-focused team, can help groups to successfully work on the matters before them.

For all of the reasons indicated above, judges are specially qualified by position, perception, and experience to provide both positional and personal leadership to collaborative teams.

Reason 4: Participation on Collaborative Teams can be Entirely Consistent with a Judge's Ethical Responsibilities.

"The man of character, sensitive to the meaning of what he is doing, will know how to discover the ethical paths in the maze of possible behavior." Chief Justice Earl Warren

If the reasons explored above help to explain why it is so important for judges to establish, lead and participate on collaborative, policy-focused teams, are there reasons or factors that might inhibit this activity? Judges may have difficulty finding the time to adequately or appropriately participate with a group. But if time constraints can be overcome, are there ethical considerations that might restrict judicial participation with certain types of teams?

In her paper entitled *Ethics and Judges' Evolving Roles Off the Bench: Serving on Governmental Commissions*,⁷ Cynthia Gray discusses and explores a variety of ethical issues that may arise when judges participate on various types of governmental teams. Ms. Gray explores the most pertinent portions of the American Bar Association's (ABA) *Model Code of Judicial Conduct*⁸ and offers insights concerning some of the more relevant advisory opinions that have been provided to judges who were seeking guidance on the ethical implications of their participation on various types of public sector groups. The language of the ABA's Model Code, viewed rather broadly, conveys the importance of judges acting as impartial and neutral arbiters, preserving the integrity of the judicial branch, not being unduly influenced by others or becoming involved in matters that may give rise to controversy, accepting no appointment that might interfere with the proper performance of judicial duties, and refraining from political activities.

Regarding a judge's participation on collaborative, policy-focused, inter-entity teams, a few of the Model Code's canons seem to be particularly relevant. Canon 4(C)(2) indicates that judges should not participate on governmental commissions concerned with issues of fact or policy except as they relate to the law, the legal system, and the administration of justice. Canon 4(C)(3) provides that a judge may serve as an officer, director, or trustee of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice. Further, the commentary to section 4(B) indicates that:

“. . . a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice . . . To the extent that time permits, a judge is encouraged to do so, either independently, through a bar association, judicial conference or other organization dedicated to the improvement of the law.”

In determining whether an activity is genuinely involved with the improvement of the law, the legal system, or the administration of justice, some advisory opinions focus squarely on the connection between the purpose or nature of the group's efforts and the responsibilities of the court.⁹ Even so, the language contained in canons, commentaries, and advisory opinions may sometimes make it difficult for judges to have confidence in the exact position of the line separating activities that seek to “improve the law, the legal system, or the administration of justice” from those that do not. In her paper, Ms. Gray identifies several factors that appear to be significant in resolving ethical questions regarding the participation of judges on governmental commissions. These include whether the commission:

- Is primarily concerned with the delivery of unbiased, effective justice;
- Addresses matters that are central to the legal system and that directly affect the judicial branch;
- Serves the interests of individuals who use the legal system;
- Deals with issues that a judge is uniquely qualified to address;
- Has diverse membership;
- Focuses on recommendations that generally benefit the legal system; and
- Has a structure that permits judges to be involved with issues that pertain to the improvement of the law, the legal system, and the administration of justice.

To reiterate, judicial involvement with groups that are focused on matters unrelated to the delivery of effective justice, deal with issues of a non-judicial nature, reflect a narrow point of view, seek to advance the cause of a particular group, or involve topics that are largely outside of the legal system or the administration of justice may give rise to a variety of ethical concerns.

Many states have adopted rules of judicial conduct that are patterned after the ABA's Model Code. At least forty-six states have language in their judicial rules of ethics that permit judges to participate in extra-judicial activities concerning the law, the legal system and the administration of justice. Thirty-five states have language that encourages judges to do so.¹⁰ At least thirty-one states have language in their judicial conduct standards that reflect the sentiments contained in the commentary to Canon 4(A) of the *Kentucky Code of Judicial Conduct*¹¹:

“Complete separation of a judge from extra- judicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives.”

⁷ (Gray, 2002).

⁸ See: <http://www.abanet.org/cpr/mcjc/toc.html>.

⁹ See, e.g.: *Massachusetts Advisory Opinion 98-13* at <http://www.mass.gov/courts/courtsandjudges/courts/supremejudicialcourt/cje/98-13h.html>.

¹⁰ See, e.g.: *Nebraska Code of Judicial Conduct*, comment to Canon 4(B) at http://court.nol.org/rules/Judcon_30.htm.

¹¹ See: <http://www.sunethics.com/kycodejudconduct.htm>.

Ethical questions regarding the participation of judges on particular groups or in various activities have arisen in a number of circumstances. Differences in the exact focus or nature of the group's activities, the role of the judge on the group, the degree to which the activity is considered to be connected to judicial responsibilities, whether the judge would be placed in too delicate a position with regards to individuals who might routinely appear in court, and a variety of other considerations seem to drive the outcomes achieved in many of the advisory opinions.¹²

Given the sometimes broad nature of the language contained in rules of judicial conduct, there may also be room for different interpretations depending on the jurisdiction and the particular facts presented. For instance, while it may be seen as ethically appropriate for a judge to serve on a local criminal advisory committee in one state,¹³ serving on a police department's advisory board has been viewed as contrary to ethical considerations in other states¹⁴. Serving on a community corrections advisory board or being a member of a local drug abuse council may be seen as consistent with ethical considerations in some jurisdictions,¹⁵ while chairing a committee that is revising mental health code provisions or serving on a local jail overcrowding task force may be seen as inappropriate elsewhere¹⁶.

Perhaps in order to bring further clarity to the language and intentions of rules of judicial conduct, and through them to provide more guidance to judges who are considering service on a policy-focused collaborative team, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) recently adopted a resolution (Resolution 8, August 2, 2006)¹⁷ that recommended to the American Bar Association that its Model Code of Judicial Conduct be amended in ways that will encourage judicial leadership on matters related to the administration of justice. CCJ and COSCA indicated that:

“. . . the Model Code should be strengthened to acknowledge and recognize the leadership responsibility of judges to the extent that the leadership responsibilities do not interfere with the adjudication process.”

Noting that they believed “the following concepts would strengthen and provide the needed specificity to encourage judicial leadership,” CCJ and COSCA specifically recommended that:

- Rule 2.10 be amended regarding ex parte communications so as to permit a judge's consultation with a problem solving court team;
- Rule 2.12 be altered so that a judge should not be disqualified from a case on a per se basis due to official communications received in the course of performing a judicial responsibility or knowledge gained through training programs or experience; and
- Rule 2.14 be amended so as to reflect the judge's responsibility to seek the necessary time, staff, expertise, and resources needed to discharge administrative responsibilities.

Most importantly for purposes of this discussion, CCJ and COSCA also recommended that Canon 4 be amended as follows:

“Language should be added to Canon 4 recognizing a judge's civic responsibilities, including (1) providing leadership in: (a) identifying and resolving issues of access to justice; (b) developing public education; (c) engaging in community outreach activities to promote the fair administration of justice; and (d) convening, participating or assisting in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of services, and/or the administration of justice and (2) publicly or individually endorsing project goals concerning the

¹² See, e.g.: *Virginia Advisory Opinion 00-2* at <http://www.courts.state.va.us/jirc/opinions/2000/00-2.html>; *Utah Informal Advisory Opinion 98-6* at <http://www.utcourts.gov/resources/ethadv/98-6.htm>.

¹³ See: *Florida Advisory Opinion 2004-14* at <http://www.jud6.org/LegalPractice/opinions/judicialethicsadvisoryopinions/2004/2004-14.html>.

¹⁴ See: *Kansas Advisory Opinion JE 70* at <http://www.kscourts.org/clerkct/JE69-72.PDF>; *West Virginia Advisory Opinions 1998 - 4A* at <http://www.state.wv.us/wvsca/JIC/advop.htm#Extrajudicial>.

¹⁵ See, e.g.: *Wisconsin Advisory Opinion 01-1* at <http://www.wicourts.gov/sc/judcond/DisplayDocument.html?content=html&seqNo=874>; *Maryland Advisory Opinion 2004-24* at <http://www.courts.state.md.us/ethics/op200424.pdf>.

¹⁶ See, e.g.: *Delaware Advisory Opinion, JPC 1991-1* at <http://courts.delaware.gov/jeac/opns/91-1.pdf>; *South Carolina Advisory Opinion 19-2003* at http://www.judicial.state.sc.us/adv_opinion/displayadvopin.cfm?advOpinYR=2003&advOpinNO=19.

¹⁷ See: <http://cosca.ncsc.dni.us/Resolutions/JudicialConduct/resolution8ModelCodeJudicialConductJudLdrshp.html>.

law, the legal system, the provision of services or the administration of justice, in principle, and actively supporting the need for funding of such organization or governmental agency.

In adopting this Resolution, CCJ and COSCA asked the American Bar Association's Joint Commission to Evaluate the Model Code to include the above concepts in its revised Model Code. CCJ and COSCA also formed a task force to draft and submit proposed language regarding the above matters. The actions taken by CCJ and COSCA indicate their positions and preferences regarding the exercise of judicial leadership on critical issues involving the legal system and the administration of justice. If individual jurisdictions' rules of judicial conduct follow this lead there should be greater clarity regarding, and clearer indications of support for, judicial involvement in the work of policy-focused teams. In the interim, the advice offered by Ms. Gray in her paper, *Ethics and Judges' Evolving Roles off the Bench*, may certainly provide some important guidance.

Reason 5: Collaborative Teams are More Successful at Achieving Meaningful Outcomes when Judges are Involved.

"Most of the things that were worth doing in the world were declared impossible before they were done." Justice Louis D. Brandeis

In the final analysis, successful policy-focused team efforts are ones that identify the most basic or significant problems, involve the right people in meaningful discussions, produce appropriate and achievable solutions, see those solutions implemented, and are evaluated over time to determine if the objectives of the effort have been met. For all of the reasons mentioned thus far, when judges demonstrate leadership and become involved with inter-entity groups, these results are simply more likely to occur. Perhaps this is true because judges are in excellent positions to help create the neutral, reflective, future-oriented, optimistic atmosphere that is necessary for successful teams to possess. When judges are involved, team members can easily believe that the work they are engaged in is important, and that meaningful outcomes will be realized. This, in turn, encourages the commitment of time and energy that is so critically required in order to make meaningful progress on difficult issues.

Judge Jefferson Sellers from Oklahoma, who has been participating on a team that is focused on a variety of important criminal justice issues, expresses it this way:

"Judges come to the collaborative effort to make the system better respond to the needs of the principal actors, but more importantly because they want to make as big a difference as possible in improving the results of the criminal justice system. A presiding judge can make things happen and has a unique opportunity to advance the policies and plans of the collaborative effort."

Also, as positional leaders, judges can exert great influence over the actions, attitudes, and work efforts of others. A positive or encouraging word from a judge can work wonders on an individual's perspective, demeanor, and general willingness to help with the work of a group. Teams that are trying to solve complex issues often need to find ways of encouraging changes in the activities of many actors or system partners. Judges who are sensitive to the dynamics of groups, exercise personal leadership in effective ways, stay focused on overall objectives, are willing to share credit, do not show favoritism, and know how to influence behaviors with positive observations can be instrumental in fostering these changes.

It is no coincidence that judges who have been actively engaged in leadership roles on collaborative, policy-focused teams have been able to successfully develop drug courts and mental health courts, create new sentencing alternatives, improve court operations, foster better security in the courthouse, help develop tools or methods that may aid self-represented parties in having more appropriate or meaningful access to justice, and generate many other creative solutions or outcomes. Judges provide the authority, neutrality, momentum, and information that can help teams accomplish meaningful results. Judges can help to build bridges between system partners, and to foster the collaboration that is essential to the work of policy-focused teams.

One example of this can be found in the pro se project in North Carolina's 26th Judicial District. In this project, the District's "Self Serve Center" was revitalized, new partnerships were established with the bar, local attorneys agreed to volunteer a considerable amount of time to assist pro se litigants on a variety of issues, new technology was acquired to simplify the completion and filing of forms, and a variety of other innovative actions were taken. Regarding these outcomes, Todd Nuccio indicates that:

"With the involvement of judges, we had the confidence to move forward and make things happen, because we knew that they supported this effort, and would keep all of us on the right track. Without the judges' participation and

commitment to this project we could not have started our project work, and we would not have made the progress, or reached the outcomes, that we were able to achieve.”

Conclusion

Chief Justice Earl Warren once said that “To get what you want, stop doing what isn’t working.” Collaborative, policy-focused groups are entities that can help a jurisdiction to figure out what is not working, why it is not working, and what to do about it. Judges who are willing to establish and participate on policy-focused teams have the opportunity to provide their unique perspective, critical leadership, and powerful collaborative capacities to important problem solving efforts. This investment of judicial time and energy is essential to the work and outcomes achieved by many policy-focused groups.

Judges bring indispensable qualities to teams. When judges wisely apply their particular positional and personal leadership characteristics, constructively involve the participation of necessary parties, and act in ways that are consistent with ethical considerations, they provide a powerful impetus for successful outcomes.

A Note to Readers

The Center for Effective Public Policy administered a national training and technical assistance project entitled the National Resource Center on Collaboration in the Criminal and Juvenile Justice Systems. This project, sponsored by the State Justice Institute, along with several federal partners including the National Institute of Corrections and the U.S. Department of Justice, Office of Justice Programs, assisted selected jurisdictions in building stronger collaboratives as they sought to enhance justice in their communities. This is the last in a series of articles produced under this project.

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THIAGI NEWSLETTERS

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You Don't Know Me
Submitted by Lee Ann Barnhardt

Starting with a discussion of left-handedness versus right-handedness, Michael Fowlin, an actor with doctorate in clinical psychology, tackled the issues of race, discrimination, personal identify, suicide, gender equity, homophobia and disabilities in the opening plenary session.

In his fast-paced, one-man show, "You Don't Know Me Until You Know Me," Fowlin slips in and out of male and female characters, who share their stories, both humorous and heartbreaking.

He led the audience in gently by asking them to think about being left-handed in a right-handed world.

"The left-hand experience is that they don't fit the norm and they have to adapt to fit that norm," he said. "Now apply that to race, religion, gender, ability and socio-economic status and try to be open minded."

Fowlin's characters ranged from a gay high school football player, to a depressed Hispanic teen with an abusive father, to a bi-racial teen girl dealing with gender bias.

He talked about racial issues between blacks and whites through his portrayal of a white male with "no cultural identity", and explored tension within races as an educated black college student who was "not black enough."

Fowlin connected with the audience with true stories of his own life, encouraging people to think of a positive response when someone pushes their buttons or gets under their skin.

"A starting point is seeing beauty in ourselves and others," he said, challenging the audience to say hello and smile at 10 people they don't know.

Poetry was also a tool used by Fowlin to make his point. He shared an original poem about rape and ended the presentation with a recitation of "Still Here" by Langston Hughes.

Still Here
been scared and battered.
My hopes the wind done scattered.
Snow has friz me,
Sun has baked me,

Looks like between 'em they done
Tried to make me

Stop laughin', stop lovin', stop livin'—
But I don't care!
I'm still here!

Fowlin is from Morristown, New Jersey. He has an undergraduate degree from Evangel University in Springfield, Mo and attained a doctorate degree in clinical psychology from Rutgers University. His mission is to create an atmosphere of worldwide inclusion, not just tolerance, toward all people. More information about his performances can be found at <http://www.michaelfowlin.com>.

Western Regional Meeting
August 13, 2006

Diane Cowdrey, Regional Director, opened the meeting by welcoming everyone, and having people introduce themselves. Before beginning the Regional Meeting, the group did some debriefing from the Plenary Session.

Following this, Diane reported on the activities of the Region during the past year. These included a Western Regional Conference, which was held April 20-21, 2006 in Tucson, Arizona. There were also five conference calls, hosted by members in the region. There was some discussion about desired activities for the upcoming year, including:

- Regional Conference (Liz Strong has offered to host this in Denver. The most preferred dates for this were June, then March and May dates)
- Hosted conference calls
- Conference calls that allow people to share ideas about what they are doing rather than focus on a particular topic

After this discussion, there was an opportunity for everyone to highlight a particular program and/or faculty members.

California. Bob Lowney said that with a new rule for temporary judges, they have been doing training for these individuals. There is a three-hour course which includes a section on demeanor. Claudia Fernandes noted that the court staff web site is now available to the public.

www2.courtinfo.ca.gov/comet
www2.courtinfo.ca.gov/cjer

Linda McCulloh noted the revised rule for court accessibility. She is working on a new awareness brochure, that should be available soon. Nanette Zavala discussed training for law clerks and research attorneys. She is happy to share her programs with others.

Kathleen Sikora (Consultant from California) discussed a grant project she is working on focused on the transferability of problem-solving courts to the conventional court setting. She also mentioned an Advanced Faculty Development program she taught which included a section on educational technology (a hands-on component).

National Council of Juvenile and Family Court Judges. Cheryl Lyngar noted that many publications were on-line and available at their web site: www.ncjfcj.org

Nevada. Evie Lancaster-Bosch said that she was partnering with ICM and has 26 court managers starting the Court Manager Program. Meg Caldwell discussed the Justice at Stake organization and that they had spoken at a recent conference. She also recommended a speaker, Dr. Donna Beagle, who talked about poverty. She is located in Portland, Oregon. Michael Bell reported that they had recently conducted their first specialty court conference, using a team approach. He is interested in getting information on security for bailiffs.

Washington. Doug Ford reported that they are conducting training in a mobile wireless computer lab and this has increased the demand for the regular computer training they offer. His address is doug.ford@courts.wa.gov

New Mexico. Pam Lambert noted their web site includes virtual trials, web courses and New Employee Education, which is on-line. The site is www.unm.edu

Debbie Bogosian reported that they are also doing regional conferences on topics such as domestic violence and DUI. They recently hired Tom Langhorne, to conduct an evaluation of their magistrate court judge training. Pam used a State Justice Institute grant for this project. Susan Page reported that she is doing volunteer mediator training.

9th Circuit. Renee Lorda discussed the Federal Judicial Center's video courses. She is currently working on programs for the Pacific Islands.

Arizona. Elizabeth Ncube developed six computer based training programs, including one for New Employee Orientation. Bonnie Black runs a Judicial Studies program through the local colleges and is happy to share this information with others who may want to start similar programs. Marna Murray reported that they have developed computer based programs for their probation officers. They will be doing a new jury video this year, as well.

Utah. Polly Schnaper reported on the Senior Clerk Academy that was held this past year and provided information on for several faculty who were particularly successful in this program: Elizabeth Guss (emotional intelligence and work/life balance), Doug Nielson (change your perceptions and attitudes), and Shawna Kelly-Ward (conflict management, life balance, stress). Diane Cowdrey mentioned the web CT course that they developed with ICM focused on management training. Utah has new resources to provide programming for justice court judges and court staff.

Oregon. Molly Croisan discussed training done for support staff, a program held at the same time as the judges' conference. She also recommended a program sponsored by the George Mason Law and Economic Center, and said that it was a balanced presentation with no political views. They also had several successful sessions at their judicial conference, including Justice at Stake, the Federalist Papers, security, and media issues. They are doing more work in reaching out to legislators in Oregon.

National Judicial College. Melody Luetkehans reported that she facilitated a conference in West Yellowstone for Administrative Law Judges, and is developing more programs for them. She let everyone know that they could contact Joseph Sawyer for any questions on technology (he was not present at the meeting to confirm or deny this!).

Present at the meeting were:

Bob Lowney (CA)
Jan Starnes (CA)
Claudia Fernandes (CA)
Zella Cox (NV)
Richard Bustamante (CA)
Meg Caldwell (NV)
Linda McCulloh (CA)
Cheryl Lyngar (NCJFCJ)
Evie Lancaster Bosch (NV)

Debbie Bogosian (NM)
Doug Ford (WA)
Nanette Z (CA)
Kathleen Sikora (CA)
Pam Lambert (NM)
Renee Lorda (9th Circuit)
Elizabeth Ncube (AZ)
Bonnie Black (AZ)
Marna Murray (AZ)
Diane Cowdrey (UT)
Polly Schnaper (UT)
Mollie Croisan (OR)
Laurie Ginn (NJC)
Melody Luetkehans (NJC)
Susan Page (NM)
Michael Bell (NV)

CourTools Session Summary
Submitted by Lee Ann Barnhardt

The CourTools performance measures designed by the National Center for State Courts, allow an organization to focus energy and enthusiasm on what counts.

The Clear Leaders' CourTools—Bringing a Bit of Science to the Artistry of Court Administration was presented by Dr. Ingo Keilitz, Sherwood Consulting, Williamsburg, Va.

According to Keilitz, clear leaders think of CourTools as incentives to make improvements to programs and for major policy change. "CourTools change the way courts do business," he said.

The 10 CourTools cover the following performance measures: Access and Fairness; Clearance Rates; Time to Disposition; Age of Active Pending Caseload; Trial Date Certainty; Reliability and Integrity of Case Files; Collection of Monetary Penalties; Effective Use of Jurors; Court Employee Satisfaction; and Cost Per Case.

Keilitz said performance measures focus on outcomes, can be aligned with key success factors, and give courts a baseline for looking at trends and future planning. He said the best way to use the measures is to compare your court over time on a continuous basis.

"This is not third-party research," he said. "These are things the court does on a regular basis. This is information for us."

He suggested two keys to effective performance measures. The first is to identify performance measures that will actually help achieve a desired result. The second is to make sure performance measures are available to the right people, at the right time, in the right place and in the right way.

"We can't manage what we can't measure," said Keilitz. "What gets measured gets attention."

Templates for the CourTools are available on-line. Each measure follows a similar sequence, with steps supporting one another. These steps include a clear definition and statement of purpose, a measurement plan with instruments and data collection methods, and strategies for reporting results.

Download a free copy of CourTools at www.courttools.org or call 1-800-466-3063.

Beyond Brokeback Mountain:
Developing Sexual Orientation Training and Education Programs
Kelly Tait

Innovative approaches to developing sexual orientation training and education programs were modeled and discussed in this highly interactive session at NASJE's Annual Conference. The session was full of creative ideas for training in what can be a divisive topic.

Crystal L. Banks, Assistant Director for Judicial Education and the Center for Education and Training, District of Columbia Courts, moderated the session and demonstrated the use of activities to illuminate points and provide platforms for discussion on sexual orientation issues. She and the other faculty members encouraged participants to be mindful of their own biases, including doing self-assessments such as the online Implicit Association Test (<https://implicit.harvard.edu/>).

An approach to lowering resistance to the topic that shifts the focal point from fairness to awareness by emphasizing the provision of information was discussed as a nonconfrontational way to teach the topic. The value of providing demographic information in particular was addressed, with the idea that giving participants a local snapshot helps make the issue come to life for them. Todd Bower, Professor at Western State University College of Law, and Director of Judicial Education at The Williams Institute, UCLA School of Law, said that demographics prove that this issue is not just an urban phenomenon or a coastal phenomenon. For example, across the country, 27% of same sex couples are raising kids, and educators could ask what that will mean to judges in terms of who might appear in their courts and what issues are likely to arise based on those demographics.

Integrating sexual orientation issues into other substantive courses was addressed as an option by Michael Roosevelt, Education Specialist for the California Center for Judicial Education and Research (CJER). Using law-based scenarios that include these issues would engender a different reaction than telling people that they need to attend a class specifically about sexual orientation. He said that [any area of law can be a conduit for getting diversity issues into substantive programs]. A session on custody questions could include a section on custody issues with same sex couples, for instance, allowing integration of the issue rather than separation of it.

Michael Roosevelt also provided CJER's faculty guide for "Sexual Orientation in the California Courts: A Curriculum for Court Employees," a resource full of information and activities for innovatively approaching education on this topic. He encouraged participants to anticipate the need for training in this area so that it's ready when needed and the opportunity for teaching isn't lost right when the issue becomes most relevant. He also recommended looking closely at trainers and providing train-the-trainers programs to ensure the trainer doesn't disengage people from the message.

Many interesting ideas came from both the faculty and the participants, including using indirect, interweaving approaches in addition to using the more standard direct approach, combining methodologies, using media from satellite programs to websites to movie clips, as well as suggestions for specific programs and activities.

Overall, the session provided numerous tools, resources, and new perspectives for creatively approaching the issue of sexual orientation training, making it clear that there are many paths that can lead us beyond Brokeback Mountain.

Kelly Tait is a speech communication instructor at the University of Nevada, Reno, and a communication consultant who has designed and conducted a variety of communication skills-based workshops and seminars for organizations such as the National Judicial College, the New York State Judicial Institute, the Supreme Court of Virginia, and the Nevada State Bar Association. Her specialties include faculty development, courtroom communication skills, and diversity issues.

Literature and the Law

Power versus principle: the great conflict
By Laurie Ginn

Hon. Stephen Ables guided the participants through *The Consul*, by Richard Harding Davis. *The Consul* pits "old man Marshall" against United States Senator Hanley. Richard Harding Davis utilizes sharp wit and misdirection to achieve the moment of truth, will Marshall allow power to dissolve his principles or will Marshall stand up for his principles?

The Consul begins describing "old man Marshall" as appointed by President Lincoln. Marshall represents the lasting esteem the State Department has for Lincoln, which is why Marshall was the United States' Consul to the Republic of Columbia. Marshall was loyal, hard-working, capable, and willing to go where other consuls would not go. Of the last six consuls to this post, three died and three others resigned. Despite this history, Marshall took the post. Marshall was still mentally sharp after serving over forty years as a United States Consul.

Judge Ables asked if "old man Marshall" was not sharp or not. The discussion became, what should happen to a judge who was slipping mentally? Should you rally around the judge, facilitate the judge as much as possible, and utilize the court system and court personnel to keep that judge on the bench? Is the answer easier if you do not know the judge or

when you are removed from the situation? Indeed, if it were you who had to sit that judge down and delicately tell the judge his/her mind is not what it used to be, would the answer be the same? The participants explored court education and supporting the judge tactfully as solutions.

The Consul continues with Marshall encountering Senator Hanley, whose hurricane damaged ship stops at Marshall's post. Shortly after arriving, Senator Hanley receives orders to return home, due to the filibuster in the Senate. Senator Hanley requires Marshall to sign an official document stating Senator Hanley was healthy. However, contrary to Marshall's advice, Senator Hanley visited Las Bocas where something like the bubonic plague existed. Thus, the Royal Mail boat would not carry Senator Hanley without Marshall's seal on a certificate certifying that Senator Hanley had not visited Las Bocas. Senator Hanley understands Marshall has importance in "this fever infested swamp" but is convinced Marshall will bend to Senator Hanley's pressure.

Marshall states, "[W]hile I have no weight at Washington, in this fever swamp I have the honor to represent eighty millions of people, and as long as that consular sign is over my door I don't intend to prostitute it for YOU, or the President of the United States, or any one of those eighty millions." Thus, Marshall refuses to place the seal of the consulate "on a lie." Senator Hanley rages "I'll take your tin sign away from you by sunset."

Judge Ables discussed Marshall's choice to remain true to Marshall's principles in the great conflict with Senator Hanley. Marshall makes this choice believing he will lose his post. The Literature and the Law participants discussed how the circumstances surrounding a situation can cloud proper decisions. Literature is important to teach judges to choose principles. Elections, ratings, and peer pressure can impact a judge's decision to choose principles. When other characters, real or fictional, display the courage to make the difficult decision to stand for principle, the judge may not feel so alone. Making difficult decisions is a judge's job. However, literature can help judges not feel so alone while making difficult decisions.

Marshall must see Senator Hanley one last time in *The Consul*. Marshall attempts to conceal his hurt and enjoy the remaining moments of his career, while Senator Hanley conceals the joyous news awaiting "old man Marshall." Senator Hanley triumphantly states that Senator Hanley did take Marshall's "tin sign" away. As a reward for standing on his principles in the face of potentially career-ending circumstances, Marshall is now the new minister to The Hague.

HIGH IMPACT: Talking about "Crash"

Kelly Tait

The visceral impact of 2005's "Best Film," *Crash*, led into to a spirited discussion about race relations in the U.S. in the session "Diversity in Popular Culture—Film Discussion: 'Crash'" at NASJE's Annual Conference in August. Clips of commentary from the director and some of the actors involved in the project gave participants a behind-the-scenes perspective of why and how this movie was made. In the words of producer Cathy Schulman, "We have to visit what we are in order to understand what we want to be."

In the session we discussed how *Crash* addresses many stereotypes, turning them around and then around again, making viewers question their own assumptions and perspectives. Discussion ranged from which characters the participants identified with most to what they liked least about the movie to what the implications are for the future. [The personal and professional relevance of the issues raised in *Crash* clearly illustrated the benefits of using the movie as a teaching tool]--of reaching the learners at a deep level on what can be a difficult topic to address head-on.

The complexity of many of the characters is a hallmark of *Crash*. As writer/director Paul Haggis said, "I didn't write any villains in this. They're all good people horribly flawed." In the NASJE session, we discussed character development as well as the techniques Haggis used for linking the many storylines, including transitioning from scene to scene in ways that visually linked the disparate characters to show how we're all connected. Most people said they really liked these techniques, while some found them too contrived.

We touched upon the influence of differences in learning styles in our reactions, as well as addressing the power of the words we use to talk about ourselves and members of different groups. [Contrasting emotional and intellectual reactions as well as personal experiences helped us see from new perspectives.]

The attendees were challenged to continue exploring the issues' relevance to judicial branch education both independently and by attending more of the sessions in the diversity track, including "Emerging Court Trends-Implications for Judicial Branch Educators" and "Social Cognition: Solutions for Unintended Bias."

The discussion was facilitated by Joseph Sawyer, Distance Learning and Faculty Development Manager at The National Judicial College, and Kelly Tait, Communication Consultant. The session was wrapped up with Paul Haggis's explanation of why he chose to end the movie with snow falling as well as ash from a fire swirling: "If it can snow in Los Angeles, anything's possible. Maybe there's hope for us."

Kelly Tait is a speech communication instructor at the University of Nevada, Reno, and a communication consultant who has designed and conducted a variety of communication skills-based workshops and seminars for organizations such as the National Judicial College, the New York State Judicial Institute, the Supreme Court of Virginia, and the Nevada State Bar Association. Her specialties include faculty development, courtroom communication skills, and diversity issues.

Grammar: Get it Write and Common Mistakes in English Usage

Nancy Tuten delivered two presentations on English Usage. The participants discussed how language is always changing and how, therefore, the English Usage rules change too. Style manuals conflict, so what is a writer to do? Be consistent is the number one rule.

Word processing and computers are changing English grammar and guidelines. The two hours covering English usage challenged the participants' habits, and training. For example, double spacing between sentences is no longer required with word processing.

Punctuation and grammar mechanics started the session. The proper use of the apostrophe was discussed. The placement of the apostrophe changes meaning. "Alice and Michael's parents" tells the reader that Alice and Michael have the same parents. 1980s is proper without the apostrophe. The discussion turned to italics and quotation marks. Authors use italics for book titles and other whole documents. Authors use quotation marks for direct quotations and for a segment of an entire document, such as a chapter of a book. Periods and commas are inside the quotation marks but semicolons and colons appear outside the quotation marks.

The participants discussed the comma. If the information is essential then no comma is used. If the information is non-essential a comma is used. Typically, phrases beginning with the word "that" are essential, while phrases beginning with the word "which" are non-essential. Commas are important because the comma cues the reader to the important information.

The difference between "affect" and "effect" welcomed the participants to the second discussion hour. Confusing words invade the English language, which results in regrettable mistakes in our written documents. The author is anxious or eager to hear the reader's response, but cannot be both unless the author has mixed emotions. Anxious implies "nervous anticipation," while eager is a positive emotion. A short quiz provided numerous examples of commonly confused words.

The hour ended before the participants completed the material. Racing to the finish, the conversation ended on the distinction between "lay" and "lie." Participants left understanding the importance of word choice and realizing the continuing need to up-date writing skills. As Dr. Tuten put it: Good grammar and punctuation cannot make a poor piece of writing strong, but usage errors can certainly call the writer's credibility into question.

Such issues as *who* and *whom*, the appropriate use of reflexive pronouns (*myself* being the worst offender), dangling and misplaced modifiers, redundancies, and errors in logic were beyond the scope of this presentation and will have to wait for another time.

Emerging Court Trends

Denise Dancy

"Emerging Court Trends: Implications for Judicial Branch Educators" continued the dialogue begun at NASJE's 2005 conference session on futuring and strategic planning. Denise Dancy and Kevin Bowling, members of the NASJE Futures Advisory Committee, led this practical, interactive session that built on the premise that courts have two choices when it comes to the future: they can either WAIT and REACT or they can ANTICIPATE and PLAN. As part of the diversity track at this year's conference, this year's session illuminated current social trends and demographics, particularly related to diversity issues, which have or already are impacting the nation's courts. The National Center for State Courts' (NCSC)

Future Trends in State Courts – 2005 provided the general framework. In addition, other trends-related publications, court research, and census data provided supporting information.

The session began with a review of several key court challenges (noted as being relevant to diversity) identified in a 2003 NCSC environmental scan (i.e., accountability to the changing makeup and needs of the public; shifting alternatives to the “traditional court;” the courts’ “mission creep” to provide services for restorative justice and specialized courts; and increasing focus on rights of new groups and lifestyles), and select results from a recent 2005 cross-organizational court constituent survey administered by NCSC. The challenges laid aside the survey results illustrate a disparity between recognized sociological and demographic shifts in the U.S. and a significantly lower priority given related issues by those in the courts who responded to the survey. Judicial education can play a crucial and necessary role in filling the gap that exists between the court’s *perceptions* and emerging *realities*. **[Judicial education can play a crucial and necessary role in filling the gap that exists between the court’s *perceptions* and emerging *realities*.]**

The goal of the session then was to provide a framework for judicial educators to begin to fashion proactive action steps to address both the challenges and opportunities to courts posed by these emerging trends. Specific objectives were outlined that courts and state judicial educators must be able to accomplish in order to do so. They must:

1. Identify **practical implications** of trends for courts in the near future
2. Prepare **general education strategies** over the next 3-5 years for their court systems
3. Identify **resources**, prioritize **tasks**, and interested **stakeholders** necessary for feedback

Four specific trends related to diversity were then discussed along with some of the specific implications each has for courts and judicial education:

- **Increased effectiveness via improved performance measurement**
- **The application of problem-solving court principles to conventional courts;**
- **Increased cultural diversity (among both court-users and court employees);**
- **The unprecedented and disproportionate increase in aging Americans (i.e., 65 and over) in upcoming years**

Participants were then asked to select a trend of particular relevance to their court and to complete a worksheet designed as a practical planning tool to facilitate addressing that trend. The worksheet asked participants to first describe what might happen if their court did not address the identified trend; to list both the challenges and opportunities presented to the court in addressing the trend; to identify three preliminary action steps that they could take to devise a curriculum or other strategy related to the trend; and finally, to list the internal and external people from whom feedback should be garnered in their planning process.

The session concluded with a short group discussion and brief reports back from individual participants on the particular trends and action items listed on their planning worksheets.

Resources

Future Trends in State Courts, 2005, National Center for State Courts.

Courts 2010: Critical Trends Shaping the Courts in the Next Decade (Martin and Wagenknecht-Ivey)

Collaborative Justice Courts - Resource Workbook (2006 SJI grant to CJER)

Problem-Solving Courts: Is the General Public Buying It? NASJE News Quarterly, Winter 2006 (Rottman and Bromage)

The Courts and Judicial Branch Education: Creating Their future in the New Millennium, JERITT Monograph Ten

Building and Implementing an Effective Performance Measurement System, NASJE News Quarterly, Winter 2006, (Keilitz)

Policy Paper: A Report from the First National Meeting of the Elder Abuse and the Courts Working Group Meeting (Uekert, Dancy, et al), NCSC (2006)

CourTools, National Center for State Courts

Court Interpretation: Limited English Proficiency Resource Guide, National Center for State Courts

Trial Courts Performance Standards and Measurement System, National Center for State Courts

Denise O. Dancy is a Court Research Analyst at the National Center for State Courts in Williamsburg, Virginia

How to Instruct Faculty on Presenting/Incorporating Difficult Topics

Laurie Ginn

Loretta Frederick, legal counsel with the Battered Women's Justice Project, taught a workshop at NASJE's Annual Conference on the best way to assist faculty in presenting sensitive or difficult topics. After a brief opening, the session participants brainstormed on such issues as what educational resources should be provided to the faculty. The session participants discussed that a wide variety of sources, including local newspaper articles, widely available literature, and the Internet are available. These resources can be utilized in locating the appropriate materials, which could provide faculty members and potentially the class participants an initial understanding of the topics and the topics' socially sensitive nature.

The right materials assist the faculty in conveying an intellectual understanding of the topic. However, the wrong materials could polarize the students in such a manner as to make productive discussion on the challenging topic virtually impossible. Even an attempt at evenhandedness by the faculty could backfire due to the order in which materials may be presented. For example, a difficult topic for faculty can be presenting the rights of those who publicly advocate socially unpopular viewpoints. The placing of materials favorable to the advocacy of unpopular opinions first in a discussion could offend those against whom those unpopular opinions are addressed. Conversely, the placing of materials in favor of the restriction of unpopular opinions first could offend those whose belief is that all opinions should be aired in public.

The need to involve the faculty in developing the course objectives in addition to incorporating the right materials was emphasized. Loretta Frederick said that the planning process was vitally important for sessions that include difficult topics. For instance, having focused, appropriate learning objectives would be one way to be proactive in eliminating or reducing some of the problems associated with sensitive topics.

Another issue discussed was what should be done if the faculty member is uncomfortable in discussing the topic over the telephone. The session participants agreed that it was extremely important for the faculty member to be comfortable in discussing the topic. After some discussion, the session participants agreed that the faculty member can begin the topic discussion directly with the program attorney/manager, with another judge, or with another faculty member.

Session participants also addressed how learning activities assist the faculty and how to involve the students. The appropriate structuring of participatory learning activities can facilitate the transformation of judges' attitudes and thinking. One learning activity mentioned was the utilization of small group conversations. Some session participants felt that some students may feel uncomfortable discussing emotionally charged social topics in larger groups, but may feel more comfortable in discussing their opinions and feelings on these socially difficult topics in smaller groups. The small groups could then identify one spokesperson who would report back to the larger group on what topics were most discussed. Then the faculty could utilize the small group discussions to guide the rest of the presentation.

Through this session, the participants gained options for assisting their faculty in more effectively teaching difficult topics.

Laurie Ginn became a Program Attorney for the National Judicial College in March of 2006. Prior to accepting the position with the National Judicial College, she was the Legal Case Manager for the Public Utilities Commission in Carson City, Nevada. Ms. Ginn is a member of the Nevada and California State Bars. She received her B.S. at Oregon State University and her J.D. at Willamette University College of Law. During law school, she was a member of Willamette University Public Interest Law Project.

Social Cognition: Solutions for Unintended Bias

Kathleen Sikora

Following the direct experience and reflection of BaFa-BaFa, "Social Cognition: Solutions for Unintended Bias" delved into the abstract conceptualization and application aspects of Kolb's Learning Circle. Ideally, a half day would be devoted to each of the Tuesday afternoon workshops. However, the instructors identified brief experiential methods other than

BaFa-BaFa that can be used with either judges or court staff to introduce a discussion of the current research on social cognition—the impact of mental processes on social behavior. These included a Traffic Court simulation and short in-class exercises, several of which are available on a CD of the material covered in this workshop entitled: “Cultural Competence–Model Curriculum for Judges” (produced by the National Judicial College through a Bureau of Justice Assistance grant; contact Joseph Sawyer at NJC for a copy).

In essence, the workshop explored the area of current social cognition research that deals with bias and discrimination. Its underlying message was that we are all prone to prefer people in the social groups to which we ourselves belong; much, if not most bias, whether favorable or unfavorable, exists at an unconscious or unintended level; even unconscious bias should not impact judicial fact-finding or decision-making, employment decisions, or access to justice, though it does; and there are things we can do to minimize the potential negative, even deadly serious consequences of unintended bias.

A summary of course content follows:

1. Categorization (of everything, including groups of people) is a normal, fundamental process of the human brain.
2. Our brains also create “schemas,” or associations between groups of people and our favorable or unfavorable attitudes or feelings toward them and between groups of people and traits we ascribe to them (stereotypes).
3. Not only do we tend to prefer the people in our own social groups (“in-groups”), we tend to see people in our in-groups as unique and individual, while those in other groups (“out-groups”) seem homogeneous, or “all the same.” Indeed, when we meet someone from an out-group who does not fit our expectation, instead of revising our basic expectation, we tend to create a sub-group category for that person—an exception (“You’re not like the other _____”).
4. Our schemas, or associations, attitudes, expectations (“implicit biases”) are unconscious lenses through which we view the world. In fact, our brains process more readily information that confirms our implicit biases and screens out that which does not.

Faculty led workshop participants through a discussion of the implications of this research in the context of the judicial branch. What does the research imply about cross-cultural eye-witness identification? sentencing disparities? the disproportionalities found in the juvenile justice system e.g., out-of-home placement, detention, etc.? What light does it shed on disproportionate hiring, retention, and promotion practices? What does it reveal about the process of weighing credibility or interviewing job applicants?

Finally, of course, faculty discussed what we can do to minimize the potential impact of unintended bias. Fortunately, the research gives us hope, not the least of which is that low-prejudiced persons (all of us) are helped by reminding themselves or being reminded by others of those beliefs.

p.s. You can test your own “implicit associations” online at <https://implicit.harvard.edu/implicit/>

Kathleen Sikora is a former senior attorney at the California Administrative Office of the Courts (AOC), having retired in May, 2003 after four years on the Legal Staff and 15 years at the California Center for Judicial Education and Research (CJER), the AOC’s Education Division. A graduate of Stanford University and Hastings College of the Law, Ms. Sikora was primarily responsible for CJER’s judicial curriculum development on issues of gender, race/ethnicity, persons with disabilities, and sexual orientation fairness. Areas of subject matter expertise also include faculty development and the current research on social psychology and decision making. She has served as an instructor at the Conference of Chief Justices, the Second International Conference on the Training of the Judiciary, the National Judicial College, and numerous judicial education programs both within and outside California.

Cultural Competence: A Simulation

Michael Roosevelt

Chair, Diversity Committee

Learning by doing is the axiom of *Ba-Fa-Ba-Fa*, a cultural simulation designed to help people in organizations explore cultural differences and similarities¹⁸. Simulations get people to interact with each other rather than simply talk, listen or passively receive information. In this simulation participants are divided into two equal groups and assigned to one of two

¹⁸*Note: This simulation is a powerful tool and must be well-planned and conducted by skilled facilitators.*

facilitators (or faculty). Once participants are in their groups they learn about and become one of two cultures. Throughout the activity, groups (now two distinct cultures) interact with each other.

Since this simulation is a seemingly benign activity, participants are often surprised by how much they reveal about their assumptions and beliefs about race, gender, language, communication and culture. With the help of faculty/facilitators, participants begin to make connections between the simulation and the real world. Debriefing is an important part of the program and must be facilitated in a way that facilitators/faculty don't get in the way of the experience.

Our experience in California with this simulation has taught us the importance of connecting the experience with what courts do and applying the experience in ways that are meaningful and useful professionally and personally. We have also learned that this activity can be and has been successful with staff, managers and judges. While we were initially concerned that judges might find the simulation "touchy-feely," they found it to be an invaluable exercise.

The in-class discussions that follow the stimulation have included, power and privilege, class, communication, judicial demeanor, fairness, diversity, gender and sexual orientation. The session often concludes (as did the session in Minneapolis) with a discussion of social cognition theory and unconscious bias.

Michael Roosevelt is an Education Specialist and Program Manager for the Center of Judicial Education and Research (CJER), the Education Division of Administrative Office of the Courts (since 1998). He has undergraduate and graduate degrees in Clinical Psychology from San Francisco State University, and has completed course requirements for a doctorate in psychology. As an education specialist, he develops curricula for judicial officers and staff in the area of fairness. Among the curricula and courses that he has developed are *First Impressions: Communication in the Courthouse* (2002), *Beyond Bias: Assuring Fairness in the Courts* (1999), *Innovations in Fairness Education* (2001), *Summary Judgments* (2003), and *Culture and Communication* (2000). Finally, at least three times each year, he teaches for the *National Judicial College* in Reno, Nevada, on the topic of bias

TRANSFER OF LEARNING: MAXIMIZING THE CONTEXT

Dr. Sandy Daffron
Western Washington University

Dr. Sandy Daffron, assistant professor, department of educational leadership, Western Washington University, presented a session at the NASJE 2006 Annual Conference on the Transfer of Learning for State Court Judges. Dr. Daffron opened up the session asking us; "What do you do to make sure that the students learn?" Some answers from the audience included a good lunch, asking the students what they want, using illustrations, and using current information and applicable examples.

Dr. Daffron continued the session by discussing some of the work and studies she has done with judges, with Palestinian law school professors, and with software professionals. The findings from the state court judges study are below. For information about the other two groups, read:

- ✓ Daffron, S. & Davis, W. (2005). Lessons learned from Palestinian professors about transfer of learning. *Journal of Legal Education*, 55 (4), 571-582.
- ✓ Daffron, S & North, M. (2006). Learning transfer: Lessons learned from software company professionals. *PAACE Journal of Lifelong Learning*, 15, 51-67.

Review of the literature on transfer of learning or training since 1990 reveals a vast number of articles. However, when it comes to the ways professionals transfer learning to their practice, the research is limited according to Merriam and Leahy (2005). Daley (2001) found in four professional groups, adult educators, nurses, social workers, and lawyers, the way each professional group integrates learning is influenced by the culture of the group. Clarke (2002) also studied social workers and found their ability to transfer learning was influenced by time constraints. This led us to study a professional group, state court judges, to see how they integrate learning into their practice

Our study found that the American Bar Association's *Model Code of Judicial Conduct*, a code that sets the standards for the regulation of the behavior and actions of judges, affects the way judges make meaning from continuing professional educational programs. The judges in this study did not have peers readily available in their workplace to discuss ideas and information gained from the conference they attended that would help them in the transfer of learning to the bench.

The *Code* also restricted them from discussing information with anyone other than another judge. In this study, we found judges discussed the new information, skills and knowledge they learned at the conference with peers at the conference to make meaning and transfer the information to their practice. This practice is unlike the practice of other professional groups we have studied, where individuals return to the workplace and discuss concepts with their peers. We found that time needs to be allocated during the formal presentation for discussion among the judges with their peers to make meaning. When put into this context, judges transfer their learning into their practice. Specific program planning factors, similar to many studies in the past, were found to aid the transfer of learning. (Merriam & Leahy, 2005).

Introduction

The study of transfer of learning or training has focused the last 20 years on identifying the variables that need to be in place for the individual to take the knowledge, skills and information back to the workplace. For this study we recognize transfer of learning as "the effective and continuing application by learners - to their performance of jobs or other individual, organizational, or community responsibilities - of knowledge and skills gained in learning activities" (Broad, 1992, p. 2). To make this transfer happen, adult educators have embraced Knowles' principles and assumptions of the science and art of teaching adults (andragogy) as the delivery system for continuing professional education. In her latest program planning book for adult educators, Caffarella (2002, p. 203) added a segment of "devising transfer of learning plans" to her interactive program planning model. Caffarella says that educators have not paid much attention to how professionals could integrate what they learned at a continuing educational program into their practice. She provides techniques for the adult educator and lists potential barriers that could be overcome for transfer to take place.

Caffarella and other adult educators have worked closely with the National Association of State Judicial Educators to instruct judicial educators in ways to implement andragogical principles and practices in their programs for judges. The State Justice Institute (SJI) funded thousands of programs to improve the state judicial system from 1990 to current times with the stipulation that programs should incorporate principles of adult education. We wanted to know if the use of andragogical principles in the delivery of judicial programs or other variables in the planning process affected transfer. We wanted to find factors that enhanced transfer or barriers that needed to be overcome for transfer to take place.

Method

We interviewed state court judges who were juvenile court judges and attended an annual state conference on juvenile court issues. Fifteen interview questions were crafted to identify the variables in place in the program planning stages, during the presentation of the program and when the judges returned to the bench. The interviews were conducted approximately 6 months after the conference.

The annual conference was held in the northwest region of the country and was attended by 35 juvenile court judges. The program lasted 3 half-days and was held in a resort area in the mountains. Judges attended sessions Day 1 from 1- 5pm, Day 2 from 8:30 am -3pm, and Day 3 from 8:30 am - 12:30pm. Each day had a mix of general sessions and small group sessions. The rest of the time was provided for judges to gather in small groups and discuss the topics presented in the sessions. The site location was in an isolated area, which meant the participants stayed on site and did not have time or opportunity to go back to their courts. All meals were provided on site and judges had free time to talk with other judges. The principles of andragogy were incorporated into the presentations within the program.

For this study, the interview questions were grouped into four parts: the program planning process, the delivery of the program, the post-program phase and suggestions and ideas to help with transfer of learning to practice. The questions were a compilation of studies on learning transfer from Baldwin and Ford (1988), Fecteau, Dobbins, Russell, Ladd & Kudisch (1995), Quinones, Ford, Segó, & Smith (1995) and others. The compilation led to four variables:

1. variables within the pre-program process, which include the planning process and the characteristics and mind set of the individual trainee before the training;
2. variables within the delivery of the program including program design, methods of delivery and involvement of the trainee in the learning process;
3. variables in the post-training experience including informal learning methods with immediate application and the environment within the workplace and support from the institution and peer support;
4. barriers to transfer and suggestions for helping make transfer happen

For the issue of bringing about a change to practice, Cervero (1985) posed the question of effectiveness of continuing professional education programs. He developed a model to examine a training program, the influence of the individual characteristics of the trainee on the learning environment, the nature of the proposed change, and the application within the work environment where the learning is to be practiced. Cervero's model was adapted for this study.

Study Results

The state court judges responded in the interviews that for learning to transfer, they had to put the general knowledge provided from the conference into the context in which they worked. They had to discuss the concepts presented at the conference with other judges (their peers) at the conference and to rationalize an approach to their practice before they made the changes at home in their work environment. Then when they returned home to their courts, they had to believe in the change because it had to be introduced in a systemic approach with "the team" that is the juvenile court context. They also said they were motivated to attend the conference to learn new information and they had preconceived expectations to learn and apply the information. The judges felt their needs were represented in the planning process through an advisory board. They said the delivery methods were varied and that they learned best when speakers interacted with them. Adult education principles were evident in the variety of delivery methods used at the program. Each judge interviewed said he or she used the conference to discuss the concepts presented because the barriers to transfer were issues of time and opportunity to discuss with peers in the workplace.

1) Variable One - Involvement of the Learner in the Planning Process and Self- Motivation to Participate

The first series of interview questions examined the pre-program planning process and the participants' involvement in the planning process. We wanted to know if the judges were involved in the planning process and if they suggested topics. If they were not involved directly in the planning process, we wanted to know if they felt they had been represented. We also wanted to know what their motivation was for participating in the conference.

Some of the judges stated that they were involved in the planning of the conference. Even those who were not involved in the planning indicated that they felt their needs were considered in the planning process because they knew their colleagues had served as program advisors. They felt that those judges represented them well and had been thoughtful in their planning process and were invested in making the program successful. Several said they had served on the planning committee in previous years.

Every judge said that they either had a chance to provide input in the planning of the conference or they were properly represented by others who did. Knowles (1990) and Caffarella (2002) stress involvement of the learner in the planning process as a crucial component for participation. Mathieu, Tannenbaum & Salas (1992) show in their study that giving input into the program content is directly linked to motivation to attend and ultimately transfer of learning. We were able to link this input into the program planning by the participants directly to their motivation to attend the conference.

Self-Motivation

Motivation to attend training occurs for a variety of reasons, but somehow, individuals must be motivated to attend. In this particular judicial conference, what motivated the judges to attend? Are the motivations intrinsic or extrinsic? Even though their state has mandatory continuing education requirements, the majority of judges in this study said they wanted to attend this conference rather than attending other programs offered. They told us they attended this conference each year to gain new skills and to talk to other judges about their work. They said they wanted to get updates on legal issues, to get new ideas for practice and for social interaction. Several said they needed continuing legal education credits. Generally, their motivation to participate was high because the conference was directly related to their work and addressed certain expectations they had from participating in previous conferences. The issue of self-motivation resonated with almost all of the judges.

Facteau, Dobbins, Russell, Ladd, and Kudisch (1995) found the importance of pre-training motivation. They examined the factors related to pre-training motivation of 967 managers and supervisors. The managers and supervisors who understood the intrinsic incentives for the training had higher levels of motivation to attend the training. They also listed other reasons for attending, the reputation of the training entity, and their organization's commitment to the training. Facteau, Dobbins, Russell, Ladd and Kudisch found that pre-training motivation was an important variable in transfer and that motivation would lead to behavioral changes on the job. Those who were required to attend training because of state requirements were less motivated and were less likely to transfer their learning to practice. In our study, the judges said their participation in the conference was voluntary because they could attend other conferences and programs to gain their credits needed for mandatory continuing legal education. Clearly, they chose to attend this conference.

Cheetham and Chivers (2001) studied 80 practitioners from 20 professional groups and how they transferred their learning to practice. The results showed an emphasis on the concepts of self-awareness, self-image, and self-esteem and they were critical to the learning process. The learner had to have the motivation to acquire the learning and to continue to carry out the learning to practice. Learning is transferred when the learner is confident of himself, if he feels there is a need for the information, and when he or she is motivated to learn. The motivation had to come within and not from the

organization. The judges told the planners what they needed and they saw the results in the conference agenda, thus they went to the conference with the confidence it would meet their needs and expectations.

Expectations for the training

Motivation to change one's behavior as a result of a training program is another factor in transfer of learning. Mazmanian, Ratcliff (Daffron), Johnson, Davis & Kantrowitz (1998) found physicians who attended a program with the expectation of changing their behavior had a high correlation with actually making the change to their practice after the program. Without this motivation to change, most physicians in the study did not change their practice.

In this study of judges, we found the majority of judges said they went to the conference with preconceived ideas. They expected the information to help them do their current jobs more effectively. This tells us about their motivation to learn. They expected to get updates on legal issues. They expected to discuss the new information with their colleagues. Some judges said their motivation was validation. They hoped to come away with the validation that others used the approaches they were using. Validation of approach to practice was often mentioned among the participants. We assume this would be true of the judges who have spent longer periods in their jobs and have attended many of the previous conferences.

In their review of the literature on learning transfer, Merriam & Leahy (2005) note many studies in which learners with high expectations for the training demonstrate more actual transfer of the learning. While this is an individual variable, this current study shows how positive past experiences with both the planning process and the training itself can influence the learners to have a high expectation for the program. In this way, program planners have some degree of influence with the learner in shaping their expectations of the program and increasing their motivation to attend, both of which positively impacts learning transfer.

2) Variable Two - Use of a Variety of Delivery Approaches and Immediate Applicability on the Job

Perception of positive learning experiences reflects, to some degree, the expectations that the learner brings to the learning situation. In the previous section, we see the majority of the judges had certain expectations. Their motivation for learning was high. It is no surprise then, that all of the respondents said their learning experience was positive. The judges then were asked to record what the most valuable part of the conference was. They cited the information they gained on case law updates, interaction with colleagues and professional exchanges as the most valuable part of the conference. They also said the chance to discuss the application of the legal updates with other judges or the practical application was the most valuable part of the conference; in other words, immediate applicability.

When it comes to delivering the program, the program planner can have a key role in seeing that presenters use a variety of delivery methods. Baldwin (1992) found business students responded positively to classes that had a variety of delivery methods. In the conference program in this study, participants said the presenters were open to dialogue, and exchanges of comments between participants and faculty flowed freely and easily. They felt the success of the conference could be summed up with the word, "involved." They felt involved in the presentations with "give and take" of the speakers on applicability to practice. They used terms like "a positive learning experience," "Information was relevant," "discussion-based format," to describe the delivery of the programs. Moreover, the examples used by the presenters illustrated their points, and were related to the courtroom setting in which the participants worked. Tallman [Cowdrey] and Holt (1987 tell us, "The concept of relatedness is crucial to learning transfer; without including similar items or examples in the program as exist in the work setting, there will be little transfer" (pp. 26-27). All of those who reported using the information gained on the job said their presenters used teaching/lecture time mixed with a lot of lab exercises and working through tutorials. Many said they liked the use of responders (scenarios are presented and each person in the group indicates electronically how they would rule with the results posted for all to see). The use of responders allowed the judges to express their opinions, but in a non-threatening way.

There were only a few complaints and they were about the use of lectures with PowerPoint slides. Some judges said they were boring, but overall the judges did not object to lectures as long as the speakers were engaging and there were good handouts. The judges did say they expected and were given a chance to discuss the information following the lecture.

Does Using a Variety of Delivery Approaches Really Work? How do professionals learn best?

Knowles (1990), Merriam and Caffarella (1991), Elias and Merriam (2005) and others discuss the various ways adults learn and the need for a variety of teaching approaches to match the learning styles of participants. For this study we wanted to know if judges recognize how they learn best and if programs delivered to them use enough variety in delivery methods to ensure learning. How does this tie into transfer of learning skills and knowledge to the job?

We asked a series of questions, "How do you learn best?" "What methods of delivery did the instructor use in the training session?" "How did the instructor involve you in the learning process?" The judges told us the conference was successful

for them because they could exchange ideas with the instructors. They interacted with the instructor and each other, which resulted in the decision to use the information on the bench. While they didn't object to lectures, they did say the variety of delivery methods made the conference more interesting and learning more meaningful for them. Almost every judge indicated they learn best by exchanging information with each other and with the speakers in a conference setting. They said analyzing case law and problem solving gave them the opportunity to discuss the information presented within the context of their work. They also said that during the free time, meals and breaks, they spent time discussing their work and professional concerns with other judges. They felt the environment allowed them to express their ideas and opinions in a non-threatening, non-invasive way.

The comments from the respondents in this study are particularly meaningful to instructional designers, and may provide some good clues as to how trainers can enhance transfer. Those responding said the presenters provided useful scenarios and let them vote how they would rule. Discussion followed and often they changed their minds. Often their rule was vindicated. They liked the scenarios and the opportunity to have realistic problems. They appreciated this positive environment, where they could question and re-question their professional practice. Again, it appears that the basic principles of adult education all apply here.

How new information is used - making meaning

For information to be transferred to practice the learner uses the new information they have gained through training and make meaning out of it. Daley (2001) says that a case can be made for "meaning-making" or that information is transferred. ". . . in this process of using information, the professionals again changed what the information meant to them based on the results they observed. In other words, incorporating new knowledge is a recursive, transforming process, rather than a simple, straightforward transfer of information from one context to another." (p. 50). In reviewing Daley's study of professional's making meaning, Merriam and Leahy (2005) question whether transfer is "embedded in the construction of professional knowledge." (p. 18). In Tracey, Tannenbaum, & Kavanaugh's (1995) study of the work environment, they concluded that if the climate was set or if the organization encouraged continuous learning, then employees were more likely to make meaning of the skills and knowledge gained.

In this study, all participants reported that they had discussed the new skills and information presented at the conference with their peers right at the conference. When asked how they have used the new information from the conference in their work, the judges said they factored the new knowledge into their decision-making. Others said they changed the format of their court hearings as a direct result of conversations they had at the conference. They said they were better informed about the needs of children as a result of the conference and while it was difficult to say what exact skills they now use that they were taught at the conference, they often used the phrase, "I have a better understanding of current family law issues."

Continuing education for professionals has as its goal the improved practice for participants. Specific transfer of knowledge and skills is only considered valuable if it leads to more effective practice overall. For these professionals, responses such as "better mastery of . . .," "increased skill in . . .," indicate that the goal of improving professional practice was met for them. In considering transfer of learning for professionals, the opportunity for meaning making is more relevant and effective than simply directly applying new skills.

3) Variable Three - Recognizing the Context for Learning in a Professional Practice

Expectations to share learning

Expecting the trainee to share the information with his or her peers and/or management upon return from the training class, is a good tool to use to enhance transfer of learning. Many of the studies on transfer of learning cite organizational support as critical for transfer to practice. When Factaeu, et al, (1995) examined the role organizational support played in transfer, they found if the organization emphasized the importance of the training, then employees were likely to pay more attention to the learning situation and return to put the information into practice. In this study, however, judges told us unanimously that they did not expect to share the information they gained from this conference with others on the job. This response follows what the judges told us in the previous discussions, i.e., that they do not go back to the bench and discuss conference information with their colleagues or court staff. In fact, all of the juvenile court judges are at the same conference; or in other words, there are virtually no other judges to share the information with in their work environment. Many are the only juvenile court judges in the county while others are simply too busy or don't have an occasion to share the information. There seems to be little opportunity for these judges to share the information from the conference or get reaction from others about what they learned. From their answers on this survey, we have concluded that if the participants don't discuss the material presented at the conference with other judges at the conference itself, the transfer of learning probably will not take place. Previous research has shown the importance of organization support.

Quinones, Ford, Segó, & Smith (1995) in a study of 118 graduates of an Air Force training program, identified the most crucial variable affecting transfer of learning as the support of the supervisor and the organization's expectation that the trainee would be able to perform the tasks on the job after the training was completed. They found that successful transfer occurred when trainees knew before the training that they would be expected to recall and demonstrate the skills and knowledge learned on the job. The study illustrated that the transfer process also depended upon individual motivation, ability and personality characteristics. They conclude, "It is also possible that individuals performing more tasks (or more complex tasks) are perceived more positively by their supervisor. More positive attitudes on the part of the supervisor would then result in greater opportunities to perform trained tasks." (p. 43)

Xiao (1996), Campbell and Cheek (1989), Vroom (1964), and Noe (1986) examined the link of trainee motivation to learning to employer expectations. Noe found trainees will be more motivated to learn if a high effort leads to high performance and if high performance leads to high job performance and then the high job performance is tied to desirable outcomes. In Xiao's model, "KSA," (the utilization of knowledge, skills, and attitudes gained in the training setting) was encouraged by the organizations for electronics workers in China. The facilitation for learning was tied directly to the organizations' expectations of the workers.

Campbell and Cheek (1989), Noe (1986), and others found individual and situational constraints such as lack of opportunity to immediately put learning into practice has a negative effect on transfer of learning. Mathieu, Tannenbaum & Salas (1992), said characteristics of the individual and the organization influenced the pre-training motivation of the trainees to learn the information and then impacted upon the transfer to practice after the training. These studies suggest that a continuous learning environment, as suggested by Tracey, et al, (1995), be established to encourage transfer of learning to practice.

In this study, however, the participants said there were no organizational expectations to report information gained at the conference and there was no one to share the information when they returned to their jobs, on the bench. Therefore, judges used the conference setting to discuss the information with other judges attending the conference. They told us they took the discussion time provided to get reaction from others about implementing the ideas into their work on the bench and they also took advantage of social time to discuss best practices with other judges. Others said they used a systemic approach, discussion with judges at the conference, followed by meetings with the other members of their local "team" - representatives of social agencies before they put the ideas into their practice. They told us they needed to put learning into their own context before transfer happened. While this method may not be unique to this professional group, it is in part due to the restrictions put on judges by the *Model Code of Judicial Conduct* that prohibits them from discussing certain issues of the court with others.

4) Variable Four - Barriers to Transfer of Learning

Broad and Newstrom (1992) and Kotter (1988) tell us the barriers that prevent transfer of learning. In this study of judges, we were expecting to find many barriers like those from Kotter's study, such as a non-supportive organizational culture, interference from immediate work environment, or lack of reinforcement from the workplace. Instead, the judges in this study felt there were no barriers since they felt transfer happened as a result of the discussions they had at the conference and then the meetings with the local team when they returned from the conference. Several mentioned that the lack of commitment of the entire local team was one barrier to implementation of the ideas and a few others mentioned lack of time and resources as a barrier.

Implications of This Study for Future Practice

We have determined for purposes of this study that transfer of learning is the application of knowledge and skills gained from an educational setting into practice at the workplace. The literature shows that this transfer occurs only in the minority of cases. Merriam and Leahy (2005) have conducted a thorough review of the literature on learning transfer and in turn made a compelling argument for continuing professional educators to understand the strategies needed in the program planning process to bring about transfer. We agreed with their argument and conducted this study to identify the strategies judicial educators needed to consider when planning programs for judges. In studying judges who attended a conference, we were able to identify three variables in place for those who reported transfer of learning to the bench. First, they felt their interests were represented during the planning process so the topics for the program were the topics they wanted. They were self-motivated to participate in the training; even though there were mandatory continuing education requirements, they wanted to attend this conference. They wanted the information, skills and resources provided. Second, the instructors used a variety of delivery approaches, and the skills offered in the training were immediately applicable to practice. The instructors and participants discussed ways to use the information in their practice. Third, the judges reported transfer of learning happened right at the conference and not when they returned to the bench. The judges used the opportunities at the conference for discussion as well as the time designated for social interaction to discuss putting

the newly acquired information into practice. They told us this was their only opportunity to discuss the information taught with other judges. They also said that when they returned they often put the information gained into a systematic context by presenting it to their local team. The judges mentioned few barriers to transfer of learning if they had a chance to discuss the new information with other judges at the conference.

When asked for suggestions to give to program planners or judicial educators in helping to make transfer of learning happen, the judges reiterated the need for case law updates, the need for a variety of deliveries or teaching methods during the conference to keep the learner engaged and the absolute need for time to discuss the information presented with other judges. Many suggested more time be allotted at conferences for discussions and less time for lectures. It appears that the principles of adult education instituted by the State Justice Institute and practiced by judicial educators across the United States have set the stage for transfer of learning for judges. As Daley (2001) has found in her research and this study shows, for knowledge to become meaningful in professional practice, the educator needs to understand the context for learning to take place, and then put it into place. For this group of professionals, the context is a discussion with their peers about concepts learned at the training site.

Plenary session: Stress and Wellness

Judge James Hoolihan of the Benton County District Court in Foley, Minnesota reviewed with the group the results of the stress survey that Dr. Younger and he have been using with judges across the country. The survey gathers data on 11 stressors and the strains judges are feeling as a result of those stressors. The survey also inquires about coping strategies used by judges in dealing with these stressors.

The group spent some time reviewing generally how stress affects our health and exploring the mind, body, emotion, and spiritual connections and the importance of maintaining balance in these areas in order to survive successfully the stresses of life.

We brainstormed on the work stressors most prevalent for judicial educators and agreed to do a survey of those stressors with the members of NASJE. The attendees agreed to a goal of 90% or greater response rate to the survey.

We did a number of self assessment exercises and then spent some time on what a good recreational life would look like as part of a balanced lifestyle.