

# NASJENEWS – Spring 2006

## JERITT is still alive

by Catharine M. White, JERITT Project, Michigan State University

This fall, the JERITT Project was pleased to present to the field two significant publications that evaluated contemporary judicial branch education policies, procedures, and practices. The highly anticipated *Issues and Trends in Judicial Branch Education 2005*, coauthored by Maureen Conner and Catharine White, assessed the personnel, budget and finances, programs and services, and organization and governance structures of seven national and forty-two state judicial branch education organizations. In addition, *An Evaluation of the Judicial Branch Education Programming Response to Contemporary Court Challenges* (JERITT Monograph Fourteen), authored by Catharine White with contributions from Maureen Conner, presented a critical, qualitative appraisal of this particular field's response, through the medium of programming, to internal and external challenges that have and will continue to plague this nation's courts.

Collectively, these publications provide a "holistic" or dynamic image of judicial branch education. This presentation of a "holistic" or dynamic image is certainly not limited to the mere conveyance of a past-oriented overall performance appraisal or review. The general intention of these individual works, as exemplified in the undertaken holistic or dynamic approach, was to offer to the field those tools, in the form of information and knowledge that are ultimately necessary for the initiation of change. As such, we encourage all parties with a vested interest in advancing the field of judicial branch education to allocate shelf space for these two publications in their individual or agency libraries. To tantalize your interest in either procuring these important pieces and/or to receive an initial, yet partial glimpse into our research findings, we devote this article to highlighting both the satisfactory and unsatisfactory areas of judicial branch education.

*Issues and Trends in Judicial Branch Education 2005* certainly illustrated the triumphs and shortcomings of judicial branch education functioning over the course of the last two to three years. In regards to personnel, both national and state organizations were found to share the same serious pitfalls such as the lack of inclusion of minorities and younger individuals in management positions. Only three state and national organizations indicated minorities were in possession of a position considered to be at a management level. There also exists a trend in both organization types to have older persons (Baby Boomers and beyond) function within these management positions and subsequently a lack of youthful (e.g. Gen X) representation. For example, among both organization types (national and state), the mean or average age of judicial branch education management personnel was fifty years. While there exists a lack of diversity based race or ethnicity however, both national and state organizations have recognized and/or acknowledged the contributory value of gender diversity. Both men and women maintain strongholds on adequate management representation.

National and state operating budgets substantially varied. For national organizations, operating budgets ranged from approximately \$142,153 to \$5,789,514 while state organizations ranged from approximately \$7,500 - \$10,800,000. While all national and state judicial branch education organizations should be rightfully commended for their exemplary work, those organizations who continue to perform the tireless work necessary to accomplish the fundamental goals of judicial branch education with such "emaciated" budgets warrant a special acknowledgement. To you we say thanks! Equally impressive was the finding that with no extraordinary financial resources at their disposal, these organizations are able to uniquely weave into their educational practices the utilization of new and emerging technologies and practices. For example, over/nearly half of the responding state and national organizations allocated for in their oftentimes meager budgets expenses related to distance learning – a burgeoning method of education delivery reliant upon evolving technology that has the benefit of transmitting and imparting knowledge upon students both nation and internationally.

Several noteworthy findings from the programs and services chapter of *Issues and Trends in Judicial Branch Education 2005* are worthy of extraction and highlight. While national organizations tend by nature to focus primarily on programming designed for judges, state organizations have sought to design and subsequently deliver training to the multiple audience-types that are represented within the courts. From court reporters to

probation officers to court management personnel to court security to judges, state organizations have left few groups uneducated. Again, with many organizations operating on “skeletal” budgets, the ability to apportion programming or training to such divergent audiences is most certainly commendable. Furthermore, several national and state organizations far exceeded their projected programming attendance rates.

For both organization types (national and state), it was found that there remains a firm, substantial reliance upon the conference in terms of most frequently utilized program delivery format. However, due to the evolving interest in distance learning, an emerging reliance upon non-traditional or alternative delivery mediums was demonstrated. Internet-based, computer assisted, video teleconferencing, and broadcasts are all non-traditional or alternative delivery mechanisms employed, at a developing rate, primarily by state organizations. It is hypothesized that future editions of *Issues and Trends in Judicial Branch Education 2005* will see reliance on alternative or non-traditional forms of program delivery rates comparable to those demonstrated by the traditional conference format.

Regardless of budget size, state organizations have recognized and addressed the necessity or importance for delivering programming for divergent audience groups at particular stages within their chosen careers. For example, forty of the forty-two responding state organizations and five of the seven responding national organizations offered career-stage programming. Likewise, over/nearly half of the organization types develop a comprehensive curriculum regiment. Lacking a programming stronghold are succession planning and individualized training/education plans. In regards to the incorporation of NACM Core Competency Guidelines to develop court management and leadership courses, over half of the national organizations and one quarter of state organizations utilize these materials. Finally, most organizations, regardless of geographic affiliation, demonstrate an appreciation for the needs assessment instrument as a source of ascertaining the educational requirements of distinct audience groups.

The above-mentioned “snippets” certainly reflect a diminutive glimpse into the contents of *Issues and Trends in Judicial Branch Education 2005*. Unfortunately, the financial woes and struggles judicial branch education organizations endure overshadow most discussions of progress and change. We strongly encourage our colleagues and friends to read this classic piece to acquaint yourself with the countless other positive areas of judicial branch education that rarely receive acknowledgement.

*An Evaluation of the Judicial Branch Education Programming Response to Contemporary Court Challenges* (JERITT Monograph Fourteen), like *Issues and Trends in Judicial Branch Education 2005* illustrates the triumphs and shortcomings of the judicial branch education programming response to such contemporary court challenges as the increase in pro se cases, population migration, labor mobility, and multiculturalism, and changing public perceptions of the role of the judge and the court over the course of the last five years.

A summative rating of “indiscernible” was ascribed to the judicial branch education response to internal and external contemporary court challenges. For various reasons, a definitive “satisfactory” or “unsatisfactory” was unable to be gleaned from the available data. However, one programming topic certainly outshone the topics selected for inclusion in these analyses. Judicial branch education has presented a strong and immediate programming response to the increase in pro se litigation.

While analyses denoted a lackluster programming response, the field of judicial branch education has found an interesting outlet to acknowledge and/or address the mounting pressure of these challenges. The utilization of publications (books, journals, multi-media, etc.) appeared to be the most frequently employed response vehicle. Whether via programming or publications, the field of judicial branch education certainly shed the blanket of passivity and actively promoted its retort.

In sum, judicial branch education organizations and individual educators continue to forge ahead, through unyielding financial, political, and ideological turmoil, for the attainment of a greater good and the staff members at the JERITT Project has and will continue to align themselves with those individuals and organizations and will provide the necessary support or assistance required to achieve this greater good.

## **SJI Update**

by Steve Linsky

### **Did You Know?**

That the deadline for Project Grants in SJI's fiscal year 2006 grant guidelines was set before our final budget was known. The generous appropriation provided by Congress means that SJI can afford to continue to accept Project Grant applications after February 13, 2006. Applications received after February 13 will be considered at whatever quarterly Board meeting is more than 30 days after the receipt of a given application. The money is there.

Don't let opportunity slip away!

### **States Hit Jackpot -- Scholarships Bust!**

Flush State budgets in 2005 [see e-SJI News Vol. 15, No.4] have reduced the number of scholarship applications this year (just as tight State budgets in 2004 pushed up scholarship applications in 2005). We are currently "underburning" our scholarship allocation by about 35%. Round up your judge and court management "newbies" and those who need to burnish rusty skills and get those applications in for summer and autumn. We will have just under \$100,000 to spend in the third quarter and \$30,000 in the fourth quarter.

That goes a long way at no more than \$1,500 a pop.

## **Transitions**

Please join us in welcoming the following new NASJE members:

- Karla J. Baumgartner, Education Manager, Wisconsin Supreme Court, Office of Judicial Education, Madison, Wisconsin
- Bonnie Black, Administration of Justice Studies Director/Faculty, Mesa Community College - Justice Studies Program, Mesa, Arizona
- Doug Ford, Manager of Judicial Education services, Washington Administrative Office of the Courts, Olympia, Washington
- Laurie Ginn, Program Attorney, National Judicial College, Reno, Nevada
- Gabriel Goltz, Education Specialist, Education Services Division, Arizona Supreme Court, Phoenix, Arizona
- Paul Daniel Julien, Judicial Education Officer, Arizona Supreme Court, Phoenix, Arizona
- Elizabeth Ncube, Manager, Court Leadership Institute of Arizona, Arizona Supreme Court, Phoenix, Arizona
- Kevin Smalley, Assistant General Manager of Education services, Administrative Office of the Courts, Frankfort, Kentucky
- Rebecca Woods, Education Specialist, Arizona Supreme Court, Phoenix, Arizona

## **From the President**

Dear NASJE Members:

This year is moving quickly as I find myself at the midway point in my term as your President. For a volunteer organization, we have so much happening thanks to the energy and commitment of our members! Here is an update of some of the activities happening within NASJE:

### JERITT Update

SJI awarded MSU a grant slated to begin April 1, 2006 and end March 31, 2007. MSU will likely accept the award and use the money to supplement the amount required to transition JERITT to other sources of funding. John Hudzik and Maureen Conner plan to schedule a conference call with the field representatives on the Management Panel to discuss next steps. In addition, Maureen traveled to Washington D.C. regarding an earmark for modernizing the JERITT electronic infrastructure. The appropriate Michigan congressional

members were very supportive with Rep. Mike Rogers making it a priority request and Senators Levin and Stabenow both supporting the request as a priority.

A total of twenty-nine members responded to our survey on JERITT products. The results found that more than 50% of those responding frequently use Monographs, Issues & Trends & the NASJE directory with the JERITT Listserv not too far behind. Over 70% of those responding said they don't use the grants database or master calendar. The top five products respondents most valued are consistent with the products listed above plus the communication tools. This information was forwarded to Maureen Connor and will be part of our discussion with the management panel. Thank you to those that took the time to respond to this survey.

### Regional News

The Western Region has organized another year of training conference calls among its members. Additionally, they are planning a regional conference, to be held April 20-21 in Tucson Arizona. The regional conference will be held immediately following a conference for Arizona clerks and managers, and NASJE members are invited to observe this program. For the regional conference, sessions on creating distance learning programs, adult learning, state showcases, law and literature and wellness programs will be presented. For more information contact the Regional Director, Diane Cowdrey.

The Midwest region is hosting bi-monthly Virtual Brown Bag Lunches via conference call conversations on topics of interest to our profession. This is an excellent way to brainstorm and get new ideas from your colleagues. For more information, please contact the Regional Director, Christy Tull

### 2006 NASJE Conference

2006 NASJE Conference is August 13-16, at the Radisson Plaza Hotel in Downtown Minneapolis. You will soon see the agenda from our Education Committee. This is the one time each year that we can indulge in our own professional development, share ideas, reconnect with distant colleagues, meet new friends, re-energize and laugh together. In addition, I am sure you have seen our numerous requests to states for donations to support this conference. Any real or in-kind donation will help. There are a variety of ways you can support the association. If you would like some idea of specific conference expenses that you could support in part or whole, in-kind or subsidized please contact Christy Tull, the chair of our Fund Raising Committee.

### Mid Year Board Meeting

In February, your NASJE Board met in Phoenix for our annual mid year Board Meeting. This two-day meeting provided us the time to discuss the needs and issues facing NASJE in detail. One outcome of this meeting that you will see at the annual conference are the Core Competencies for Judicial Educators. This has been a multi-year effort to review and refine a document that describes the competencies we believe are important to be an effective judicial educator. These will become a driving force for our profession and our future educational efforts. The Core Competencies will be sent out to the membership prior to our Annual Conference for your review. I want to express my sincere thanks to the committed members who began this arduous effort and to those who carried it forward.

### Board Positions

Yes, NASJE wants YOU! Here is your opportunity to get more involved and help lead NASJE's future. The following positions are up for election at our Annual Conference in Minneapolis: Vice President, Secretary, Treasurer, Midwest Regional Director and Southeast Regional Director. You can find more information about the specific requirements and duties of these positions by reviewing the NASJE Bylaws and the Policy & Procedure Manual located on our website. Please contact Cathy Springer, the chair of our Nominating Committee and/or any Board member if you are interested.

## **NASJE Southeast Regional Meeting**

Minutes of August 24, 2005 meeting,  
Savannah, Georgia

The meeting was called to order. The proceedings covered a series of issues relating to judicial education practice.

1. JERITT funding
  - a. It was suggested SJI change its guidelines/paradigm so that it could fund on-going structural support for state efforts, e.g., JERITT. This might be done via contact with SJI board members.
  - b. Question – could individual states each cover part of the JERITT costs? Sentiment was this would only cover a small part of needed costs.
  - c. Question – could Congress be lobbied directly? Sentiment was this would interfere with SJI and NJC efforts and be counter-productive. Further, it would interfere with the efforts and priorities of the individual states.
  - d. Comment – we are “setting fire” to our [judicial education] history.
  - e. Question – do we need to plan an exit strategy for the JERITT historical data?
2. NHTSA/ABA Specialized Judges programming
  - a. ABA fee-based support
  - b. Federal funding is available
  - c. Funding can support conferences, faculty
3. Special Programs funded by Private Entities
  - a. Law & Economics at U Kansas
  - b. George Mason U programs
  - c. Spence Institute
  - d. Century Counsel
  - e. Comment – programs should be vetted by prior review of materials
    - i. Century Council project was editorially independent of the Council and its funding organizations
  - f. Comment – details of funding should be provided prior to setting agenda
4. “Tips for Teachers” supporting materials
  - a. tips
  - b. guidelines
  - c. email suggestions to Kay Palmer for collation and distribution
5. Issue – Next Regional NASJE meeting
  - a. U of Memphis
  - b. Should be held
  - c. Set for early 2006
  - d. Get agendas from other regionals as a guide to topics
6. Topic – Innovative Programs
  - a. Appellate program on Permanency/TPR
  - b. Judicial security summit and AL Supreme Court rule on security
  - c. Use of Meyers-Briggs in training
  - d. Public Health/Emergency Health Powers training and Homeland Security Funding (KY)
  - e. CIP/Certification for GALs
  - f. Distance Learning (Va, Fl, Ca)
    - i. Clerks
    - ii. Domestic violence
    - iii. Best practices
    - iv. Family court orientation

## **Imagine... A Collaborative Approach To Divorce**

by Gary Direnfeld, MSW, RSW

There is a movement in family law whereby divorcing couples can sign agreements with lawyers to not go to court. The process is known as Collaborative Family Law (CFL) and the agreement to not go to court is binding upon the lawyers, not the couple. If one or both clients are unsatisfied, either may still march the dispute to court. They will however have to find new lawyers.

At heart, the CFL process seeks to develop consensus between the parties for a mutually acceptable settlement. The settlement can include the division of assets, spousal or child support and/or the ongoing care of children.

In traditional dispute scenarios both parties retain their own financial advisor and may be subject to a custody/access assessment. The results from financial planners may vary and in such cases, the dispute then widens to include the experts. The recommendations of the assessor may not reflect the position of either or both parties and hence their involvement may fall to conflict as well. Often, other third parties are drawn into the dispute as well.

In the CFL process, while the couple retains separate collaboratively trained lawyers, they then retain a single financial advisor and/or child expert and/or divorce coaches who form a team with the lawyers and clients. The financial advisor, child expert and divorce coaches act as consultants within a team framework. Because each party has their own lawyer though, they are assured their respective legal rights are preserved. Certainly the disposition of the lawyers is one of settlement as litigation is openly off the table. The risk of conflict is reduced in favour of improving the probability of settlement.

At issue to some persons considering CFL, is concern that they may be forced to capitulate or acquiesce on matters of importance or safety.

Firstly, no party is to be forced to agree to anything. That is why they both retain separate counsel; to protect legal rights and assure a process that addresses mutual concerns.

Secondly, either party can table contentious issues and even treatment issues. The objective is not to capitulate, but to address all issues forthrightly and develop plans to genuinely mitigate concerns.

The actual CFL process occurs in four-way meetings (clients and lawyers) and can be expanded to include the financial planner, child expert or any other consultant for that matter. Depending on the style of CFL, ancillary experts may automatically form part of the team. Various jurisdictions have developed some unique differences in approach while all the while adhering to the basic premise of reaching a settlement without the threat of litigation.

Depending on the nature of issues to be resolved, the number and durations of meetings can vary. Unlike traditional family law where meetings tend to be conducted on a schedule determined by Court process, CFL meetings are independent of Court and hence at the control of the participants. Further, because matters are never left to the discretion of a Judge, the parties retain full responsibility and control for settlements achieved.

Practitioners of CFL offer it as a more respectful way to resolve family disputes as neither side is bent on tearing down the other, but conversely, directed towards leaving relationships as intact as possible. Because collaborate doesn't mean capitulate, issues can be addressed in a manner that maintains control in the hands of the parties. The process is thought to provide for more durable outcomes whilst maintaining the integrity of the participants. This bodes well for the children and transition to new family structures.

Separating or divorcing? Consider Collaborative Family Law for a non-litigious, more respectful solution.

## **Strategies to Expand the Problem-Solving Court Approach**

by Pamela Casey, National Center for State Courts

The problem-solving court approach focuses on defendants and litigants whose underlying social problems (e.g., homelessness, mental illness, substance abuse) have contributed to recurring contacts with the justice system. The approach seeks to reduce recidivism and improve outcomes for individuals, families, and communities using methods that involve ongoing judicial leadership, the integration of treatment services with judicial case processing, close monitoring of and immediate response to behavior; multidisciplinary

involvement; and collaboration with community-based and government organizations. During the last decade, these methods have shown significant promise in producing more effective outcomes for some of the courts' most vexing cases.

In 2000, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) passed a resolution in support of problem solving courts. State Court Administrator Dan Becker and former Chief Justice Maura Corrigan explained the significance of the resolution in a 2002 *Court Review* article:

“The most significant aspect of the resolution was the vision and challenge contained in its fourth point—to encourage, where appropriate, the broad integration over the next decade of the principles and methods employed in the problem-solving courts into the administration of justice. This aspect is significant because it articulated a proactive vision and goal for the future on the part of both organizations and it encompassed a statement of responsibility on the part of both conferences for realizing that vision.” (p. 5)

The resolution was reaffirmed in 2004, and the CCJ and COSCA Committee on Problem-Solving Courts continues to work toward the broader use of problem-solving court principles and methods.

To identify possible strategies to broaden the use of the problem-solving approach, the National Center for State Courts (NCSC), with funding from the Robert Wood Johnson Foundation, reviewed the literature and conducted interviews with several judges and court administrators from problem-solving courts. The NCSC asked interviewees what could be done at the state and local levels to encourage broader use of the approach and what education and training would be helpful. The strategies, presented below, may be instructive to judicial educators also interested in facilitating greater use of problem-solving principles and methods.

Suggested state-level strategies include:

- Bring together individuals in the state already experimenting with problem-solving approaches to identify a core set of problem-solving principles. What practices do the programs across the state have in common? What are the significant differences? How might some of the principles be transferred to traditional courts? Are there examples of how the practices are being integrated into local courts? Once captured, provide the information to all courts in the state, and give local jurisdictions flexibility to implement the concepts based on their own local legal and service cultures and resources.
- Bring representatives from small and rural jurisdictions together to discuss the unique issues facing these courts in terms of integrating problem-solving concepts. It may be easier, for example, to integrate problem-solving principles into smaller jurisdictions in which one judge hears all cases and already has relationships with many members of the community. These courts might incorporate problem-solving principles as a matter of practice and would benefit from skills training in specific areas as well as discussions with colleagues regarding ways to extend their use of the principles.
- Discuss the advantages of the problem-solving approach in terms of what it can help achieve for the entire system. For example, in criminal cases the ultimate goal is to reduce future victimizations. If policy leaders continually focus on what works and for whom to reduce recidivism, they will start asking different questions and targeting resources differently.
- Express commitment to the problem-solving approach through court rules and/or protocols. Recognize courts that are taking risks and experimenting with new ways of conducting business within the problem-solving approach. Designate “demonstration courts”— courts that are integrating problem-solving practices into their operations— in the state. If a court has used its own resources to start an effort, provide “incentive funds” to build on the initial work.

- Work with the Executive Branch to address resource issues.
  - Courts need to ensure that supervision and monitoring of clients by treatment providers take place and that the court receives status reports on compliance in a timely manner.
  - Local jurisdictions interested in addressing problems holistically are inhibited because of funding streams. Identify examples of efforts to pool resources and discuss the examples with Executive Branch policy makers as prototypes to learn from and adapt to other jurisdictions. For example, local agencies in Boulder, Colorado, pooled resources and were able to address the needs of juveniles more effectively. The approach eliminates the need to “funnel” a child into one treatment modality when, in reality, the child may need several kinds of assistance (e.g., mental health services, substance abuse treatment, special education)
- Work with the bar to gain acceptance. This is a new way of doing business for the bar, too, and they need to be included in the development of programs at the front end of the process. Judges should communicate with the bar regularly and often. Review and discuss what other states and jurisdictions are doing to address attorney concerns.
- Encourage law schools to explore legal issues that arise in problem-solving contexts. Ethical issues tend to be raised by individuals either for or against problem-solving courts. Involving a wider range of voices and perspectives in the discussion will aid in the acceptance of the approach by the more mainstream judicial and legal community.

Suggested local-level strategies include:

- Maintain a well-operating court system on which to build. Individual court leaders need to ensure that their basic “output” or “process” court system has good practices in place (e.g., caseload management and regular performance assessments) before attempting to introduce more “outcome-based” practices.
- Think purpose (e.g., integration of treatment services) rather than structure. It is better to ask “what are we doing well and why, what are we not doing well and why, and what do we need to change” than to get tied to a specific structure. Think about how current court structures could be adapted. For example, some judges’ schedules are so predetermined that they cannot conduct review hearings even if they are willing to do so. How might the court allow some flexibility in judges’ calendars to schedule review/compliance hearings?
- Build in problem-solving elements gradually. Do not try to change the system all at once. To some extent, it does not matter what type of case you start with (e.g., drug, family). You can gradually add elements to encompass a broader range of cases and problems. Adding too much too soon can be overwhelming and more difficult to sustain.
- See the judge and court manager role as facilitators and leaders of the approach. The problem-solving approach requires judges and managers to reach out to many parties, build coalitions, and champion changes that may not be welcome by some individuals. Not all court managers and presiding judges understand the importance of their role in leading change efforts. Those who do may still need assistance in developing effective leadership and outreach skills.
- Encourage judges to observe problem-solving courts. Several judges indicated how helpful it was to



observe their colleagues in problem-solving courts. Seeing and hearing other judges using problem-solving practices and thinking how the practices could be adapted to their own caseload was both educational and inspiring. They recommended that court management encourage and provide time for judges to observe problem-solving courts in practice.

- Encourage judges to use problem-solving practices. Attitudes are changed when applying the principles. Judges begin to see and understand the benefits of using the principles.

Suggested types of education and training to encourage greater use of the problem-solving court approach include:

- New judge training. Provide an overview of problem-solving practices new judges could adapt to their caseload. For example, offer information on how to engage defendants in discussion, what types of questions to ask if there is a substance abuse problem, and what kinds of responses to expect. Encourage new judges to volunteer for a problem-solving court rotation if the opportunity arises to gain experience with specific practices that will be beneficial to their work more generally.
- Substantive training in specialized areas. One judge noted that judges use to decide cases based on their common sense notion of family dynamics, substance abuse, or mental illness. Now they understand that these areas are much more complex, and judges need information to handle the cases effectively.
- Opportunities to observe colleagues in problem-solving courts. Individual judges have a chance to think about how they might do some things differently and what practices they might be able to adapt to their caseloads.
- Leadership training for court leaders. Help presiding judges and court managers understand their role in leading and fostering change. How do you institute new ways of doing business? One judge said that other judges ask her for advice on how to build coalitions, get people to the table, and keep them there. These are not skills that judges and court managers necessarily have in hand when they assume their roles.

Many of the strategies identified in the literature and by the interviewees already are being used across the states. For example, a subsequent NCSC survey of state court administrators, also funded by the Robert Wood Johnson Foundation, found that states are actively engaged in promoting the use of problem-solving methods through a variety of educational, mentoring, and networking activities. As a judicial educator, you may already be involved in some of these efforts. If so, the NCSC is interested in hearing from you regarding your experiences with “what works” in promoting a problem-solving approach. Please send your ideas to [pcasey@ncsc.dni.us](mailto:pcasey@ncsc.dni.us).

## **A few family court shortcuts**

by E. Hunter Hurst IV, Sr. Research Assistant, National Center for Juvenile Justice, Pittsburgh, PA © 2006  
National Center for Juvenile Justice

The Family Court ideal was conceived shortly after the juvenile court to encompass all family troubles. Juvenile courts rapidly spread across the nation. Within the span of a few decades all states adopted special juvenile court legislation; whereas, the hybrid Family Court ideal grew slowly and sprouted a number of branches that today obscure its original form. The purpose of this article is to provide easy access to a few resources judicial educators may consider for stripping the tangle of programs and conceptual plug-ins that bear the attractive “Family Court” label and return the proposal to its roots. The information was assembled

from documents contained in the libraries of the National Center for Juvenile Justice (NCJJ) and insights gained from NCJJ applied research projects.

### Finding the Family Court roots

Shortly after the creation of the nation's first juvenile courts at the turn of the century, New Jersey and Ohio expanded the breadth of their experiment from a court with jurisdiction over the legal matters of children to one over the law as it pertains to families and their children. Hamilton County Domestic Court's first Judge, Charles W. Hoffman, was among the first court leaders to publicly define the motivation for a family court at a national forum. References to Hamilton County establishing the first integrated Family Court are abundant. However, the words of its first leader are difficult to find. Hoffman's 1918 address to the American Probation Association reveals the intent of the integrated juvenile and domestic court and is reproduced on the [NCJJ web site](#).

In the 85 years since Judge Hoffman's committee made a national pitch for Family Court, the idea grew at the local level where it hit fertile ground and was not restricted by state law. Family Court experiments sprouted in places like Des Moines, Iowa; St. Louis, Missouri; Omaha, Nebraska; Portland, Oregon; Gulfport, Mississippi; and Baton Rouge, Louisiana. Some of the experiments thrived while others died, and some thrived only to die amid their success. During this time, Hoffman's own court reorganized into specialized juvenile and domestic courts in Hamilton County as did another prominent Ohio family court in Lucas County (Toledo), and a leading integrated family court in Baton Rouge, Louisiana.

The Family Court cause gained momentum in 1959 when the U.S. Children's Bureau sponsored a Standard Family Court Act companion to its Standard Juvenile Court Act. The Standard Family Court Act was published in the National Probation and Parole Association Journal alongside a treatise authored by Roscoe Pound, espousing the need to adopt a Family Court format. To this day, Pound's article may best address the necessary place of the Family Court and is reproduced on the [NCJJ web site](#).

During the 1960s, the first state systems of family courts were established in Rhode Island (1961), New York (1962) and Hawaii (1965). A California judge, Hon. William E. MacFaden, portrayed the excitement around family courts in the 1960s in an article that was published in the Fall, 1969 Juvenile Court Journal. A scanned copy of his article, "Why a Family Court?" is available on the family court page of the [NCJJ web site](#).

By 1980, thirteen states were operating or seriously studying the feasibility of family court consolidation, and two juvenile justice standard settings groups addressed the issue of family courts. In 2005 the number of states operating or seriously considering family courts rose to 37, with several adopting measures that would combine, in whole or in part, jurisdiction that involves various family members in different legal proceedings. Slides generally classifying the Family Court status of each state are also available on the [NCJJ web site](#).

Kentucky, New Hampshire and West Virginia are among the states to most recently pass amendments and/or legislation with statewide implication. California is in the middle of a ambitious statewide feasibility study involving several family court pilot sites. Finally, family courts continue to sprout at the local level where no obstacle exists for district courts to fold one court division into another. Tulsa, Oklahoma; Calcasieu Parish, Louisiana; and Grand Forks, North Dakota are recent examples of family court federalism. The Tulsa District Court's conceptualization of an integrated Family Court was assisted by NCJJ and is available on the [NCJJ web site](#).

### NCJJ's collection of Family Court working documents

Over the last 25 years, family courts have gained and lost momentum in a host of state task forces, commissions, and pilot efforts. The NCJJ libraries store a fair number of the existing state taskforce reports, enrolled legislation and rare independent evaluations of family court pilots. Among the unpublished documents are sources for learning where other states have traveled with the Family Court ideal—from those that have carefully studied the issue, initiated pilots and assessed their impact—to those that have introduced the concept with a decree something like, "Each circuit shall provide a family court restructuring plan by date certain or the state court will impose a plan." An annotated bibliography that catalogs the NCJJ libraries Family Court holdings is available on the [NCJJ web site](#).

The NCJJ Family Court bibliography also addresses procedural information for family courts. Abundant family court rhetoric exists, with 37 states adopting or growing some aspect of the ideal. However, practical guidance on how to operationalize the concept is rare. The current California experiment is set apart by a detailed implementation guide for California courts to coordinate related family matters. The handbook addresses several procedural nuances of family courts that courts in other states have been left to figure on their own. The guide is relevant for established family courts and for any one considering the feasibility of the concept. It is available on the web site of the Judicial Council of California's [Center for Families, Children and the Courts](#). Also available on the CFCC web site is a California judge's examination of the Family Court ideal about 30 years after Judge MacFaden's article was published, helping to provide a more contemporary family court view (please see, Hon. Donna M. Petre, [Unified Family Court: A California Proposal Revisited](#)).

A classic family court cookbook was developed during the late 1980s in the family court flagship state of New Jersey. *Pathfinders: Principles and Operating Procedures for the Family Division*, is the product of a blue ribbon panel of New Jersey legal scholars and practitioners charged with finding the best operational path for the New Jersey Family Court. The New Jersey Pathfinders is lengthy and was published before the Internet but a photocopy is available upon request from NCJJ. The Chair of the Pathfinders Committee, Hon. Robert W. Page also published an influential article espousing the creation of family courts in the *Juvenile and Family Court Journal* in 1993, *Family Courts: An Effective Judicial Approach to the Resolution of Family Disputes*. Judge Page's article explores the procedural nuts and bolts of the Family Court ideal from his own experience in Camden, New Jersey, and as Chair of the Pathfinders. A photocopy of Judge Page's article may also be available by contacting NCJJ, 412-227-6950.

A third procedural example was developed by NCJJ on behalf of Ohio in 2001, and offers a broad framework for the state to support the natural growth of family court ideals at the local level (rather than forcing a court structure and reorganization). The final chapter of the study (Chapter 10) describes the framework and is located on the [NCJJ web site](#). The same report contains one of the few and most comprehensive examples of related family case research to the support the underlying need for the Family Court ideal (Chapter 3).

Finally, NCJJ's annotated bibliography of Family Court holdings references the foregoing examples and several comparable examples of operational procedures from existing family courts. Many of these difficult to locate items may be copied and provided to judges and judicial administrators upon request by referencing the document author and title and calling 412-227-6950.

#### The missing Family Court stories

The Family Court is a chameleon, frequently taking on a different outward appearance and agenda. Some of the disguises include, increasing public access to the juvenile and family law courts, court sponsored education for separating parents, extending non-adversarial process to the greatest possible range of juvenile and family cases, elevating the status of the juvenile law court, pitching a referendum for a new justice center building, specializing the judiciary, and reorganizing social services under the court's umbrella. Name the court reform and it has probably been sold to judges with a Family Court label. As a result, no two jurisdictions have built the same structure or stacked the same service ideas upon the original premise that all juvenile and family law matters should be guided by the best interest of children. And there is a tendency to define Family Court as a set of programs or procedures, or even a court facility rather than a set of principles that translate into a rubric for court administration.

Revisiting the birth and growth spurts of the concept to date can help strip the disguise. The death of Family Courts are also important to understanding the ideal—the stories of practitioners who worked in prominent family court that eventually splintered into specialized juvenile and domestic relations courts. These stories, however, have not been recorded like those chronicling the birth and growth of the ideal.

### **A Good Match--NASJE's Mentor Program**

by Kathleen Sikora (California)

NASJE has 22 experienced judicial branch educators who have agreed to be mentors for new NASJE members. Of this number, 11 mentors are currently "matched" with a relatively new NASJE member. These are good numbers, when you consider that NASJE's total membership stands at about 165.

Mentors play a number of roles for new members, sometimes called "protégés," among them: content expert, adult education expert, link to resources within the organization, and a "shoulder" or person with whom one can share the excitement and anxieties of beginning a new job, profession, or career.

The Mentor Committee has chosen to showcase one mentor-protégé relationship in this edition of the NASJE News. The idea came one day to Christy Tull (OH), a member of the Mentor Committee, who heard Margaret Allen (OH) talking about some things she had recently learned from her mentor. Why not ask a new "protégé" to talk about what the mentor program means to her? Margaret agreed. Her mentor is not named in her testimonial, but will be revealed below, after you read her mentor's response upon receiving a copy of Margaret's comments:

### **Mentoring has been great for me Margaret Allen (Ohio)**

As a new judicial branch educator, I benefit greatly from the NASJE mentor program. Through conversations with my mentor, I can find out if an idea I have has merit or has been tried before, unsuccessfully. My mentor also provides me with information regarding resources from her organization as well as others. During a 5-day pilot program, I was able to adapt and utilize a variety of participant, faculty, and observer evaluation forms from her state, which gave me feedback I would not have had without her suggestion. In addition, her years of experience connect me quickly and easily to heretofore unknown JBE colleagues who have developed programs in areas of interest to me. Talking with her is like doing an ultra-fast JERITT search!

Another important, yet less tangible, benefit of the mentor program is that of the support factor. It is invaluable to have an experienced colleague to call and express anxiety over trying something (read as: everything) for the first time and hear that in fact, I am on the right track, and receive suggestions to improve what I am doing. While I equally value the support of the colleagues in my home office, I appreciate my mentor's being outside my day-to-day professional circle. As it happens, I have the best of both worlds – my mentor is in a state with a large judicial branch education organization, but formerly worked in my current office, holding my current position! While not everyone will have such a coincidental connection with their mentor or mentee, an outside perspective is valuable to me, both in terms of receiving objective feedback and having the opportunity to learn about resources outside my home state.



I would encourage any member of NASJE to pursue a mentor relationship. As we see each year at our annual conference, there is truly a wealth of knowledge, experience, and expertise contained in our membership that is ours for the taking. Entering a mentor-mentee relationship allows us to further take advantage of all that NASJE has to offer.

### **Margaret's mentor's response:**

#### **The Joy of Mentoring**

"I have the perfect match for you," Kathleen said. And she was right. Serving as a mentor to Margaret Allen has been so rewarding. Margaret was very excited about her new position with the Ohio Judicial College, where I had also worked at one time, and she cared a great deal about doing a good job. Margaret's area was staff education, a field in which I had some experience in Ohio and a lot of experience in California. So it was indeed a perfect match.

I called her and we started off by just chatting and getting to know each other. Margaret shared her goals with me of what she hoped to gain by having a mentor. Then we were off and running with the planning of her

program for probation officers in just two months. By the next time we talked, she had done a lot of work on the program and really just needed some reassurance that she was definitely on the right track. Our office had just finished revising all of our evaluation forms, so I sent those to her. Her program was a big success and I felt so proud of what she had accomplished. Margaret is smart, extremely capable, and seems to love what she is doing. Best of all, she brings me back to the days of being new myself and remembering how excited I was. I realize how much I have learned over the years that I can share with her.

Being a mentor is such fun if you are lucky enough to be paired with someone like Margaret. And I bet Kathleen can find that person for you.

**Kathleen's note:**

I/we can try. If you would like to have a NASJE Mentor, please contact any member of the Mentor Committee, including me. And thank you to Margaret Allen of Ohio and Martha Kilbourn of California for sharing their insights with us.

## **February issue of Thiagi's online newsletter now available**

Hello!

I am happy to announce the February 2006 issue of my free electronic newsletter.

You can retrieve it by visiting <http://thiagi.com/pfp/february2006.php> .

We have recently changed the stylesheet of the newsletter to make it more readable while maintaining the simplicity that permits fast downloads. Please let us know what you think.

The February issue contains

- A ready-to-use game that explores trust in the workplace.
- A description of a job aid format for easy reference while conducting a game.
- 14 principles for faster, cheaper, and better design of training packages.
- An invitation to participate in three 1-day courses on training game design and delivery in Switzerland.
- A pithy saying that focuses on the difference between presentation and facilitation.
- A contest (with a \$200 gift coupon as the prize) for changing the name of our online newsletter.

Enjoy this issue. Read it and play it!

Playfully, Thiagi

## **April issue of Thiagi GameLetter now available**

I am happy to announce the April 2006 issue of my free online newsletter.

You can read it by visiting <http://thiagi.com/pfp/april2006.php> .

The April issue contains--

- An interview with Jeff Johannigman, a computer game industry pioneer
- A ready-to-use game, ACTION PLAN, that explores how to appeal to different stakeholders
- A template for creating your own MATCH AND MIX games
- A simulation game that deals with balancing different factors by using a deck of playing cards
- An invitation to the 2006 Learning and Performance Strategies Conference in Monterey

- Results of the contest for naming the newsletter

Enjoy this issue. Read it and play it!

Playfully, Thiago

## **Acting with Impunity: A Three-Part Series on Peacekeepers' Involvement in Trafficking in Women in Bosnia and Herzegovina**

### **Part II: Focus on Trafficking in Bosnia and Herzegovina**

by Pauline White

United Nations peacekeeping personnel, working in Bosnia and Herzegovina in the aftermath of the Bosnian war, have been accused of various human rights abuses, including trafficking in women. These abuses range in scope from patronizing brothels where women were held in slavery-like conditions to working with organized crime to facilitate the movement of trafficked victims. In this series, I analyze the role that United Nations personnel, in particular civilian police, have played in trafficking in women in Bosnia and Herzegovina. The first installment of this series, published in the last issue, addressed how peacekeeping missions have changed since the end of the cold war. Various characteristics of these modern peace-building missions have allowed for an environment in which trafficking in women can flourish. This second installment analyzes the root causes of trafficking in women, both overall and specifically in Bosnia and Herzegovina. The third and final installment will discuss the gendered implications of trafficking in women and how trafficking in women in Bosnia and Herzegovina could have been predicted and thus avoided.

Trade in women is not purely a modern phenomenon. Anthropologists have long argued that trade in women for sexual purposes reflects cultural practices and norms often deeply embedded in many kinship systems.<sup>1</sup> Various cultural practices throughout history reflect this notion. Women have been taken in combat and given as gifts, exchanged to create kinship, and in various other ways, bought and sold. The spread of market economies has only served to transform these practices into more complex and commercialized systems of exchange.<sup>2</sup> According to the 2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol), widely accepted as the contemporary international standard for a definition of trafficking,

(a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, or abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of the victim of trafficking in persons to the intended exploitation set forth in paragraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;<sup>3</sup>

Due to various conditions in their country of origin, including discrimination, unemployment, and/or political and economic instability, individuals desire to migrate for better opportunities.<sup>4</sup> Various Western nations have

<sup>1</sup> Lynellyn D. Long, "Anthropological Perspectives on the Trafficking of Women for Sexual Exploitation," *International Migration* 42:1(2004) 8.

<sup>2</sup> Gayle Rubin, "The Traffic in Women: Notes on the 'Political Economy' of Sex," *Toward an Anthropology of Women*, ed. Rayna R. Reiter (NY: Monthly Review Press, 1975) 175; Ilse König, ed. *Trafficking in Women: Women's Policy Perspectives after the '95 World Conference on Women* (Vienna: Federal Chancellery, 1997) 11.

<sup>3</sup> United Nations, *Protocol to Suppress, Prevent and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, ONLINE (2000, United Nations) Available: [untreaty.un.org/English/notpubl/18-12-a.E.doc](http://untreaty.un.org/English/notpubl/18-12-a.E.doc) [Mar. 11 2004] Art. 3.

<sup>4</sup> Council of Europe, Parliamentary Assembly, *Motion for a Resolution on Migration Connected with Trafficking in Women and Prostitution*, ONLINE (March 19, 2001, Council of Europe) Available:

implemented stricter immigration policies, leading to decreased legal channels for migration. Individuals must therefore turn to illegal means in order to migrate.<sup>5</sup> Former Soviet states are major sending countries for trafficked persons, especially women. Estimates average approximately one hundred and twenty thousand people per year, the majority of which are women.<sup>6</sup> Often believing that they will be working as waitresses, domestic laborers, or dancers in Western Europe, these individuals arrive in destination countries such as Bosnia and Herzegovina to face various abuses, including confiscation of their visas and passports, brutality, rape, threats to their families, and debt bondage from which it is difficult if not impossible to escape.<sup>7</sup>

In the aftermath of conflict, criminal justice services do not function at their pre-conflict level, social institutions are decimated, and countries often face economic crisis. In addition, border control is often weakened.<sup>8</sup> The presence of international troops, intended to aid in these chaotic times, may actually exacerbate the trafficking problem. Although they are certainly not the only customers taking advantage of trafficked women, their presence and circumstances creates a greater market for sexual services. When these elements are combined with globalization's free markets, the presence of organized crime, and the strategic location of the Balkans between typical countries of origin and the European Union, an environment is created in which trafficking can flourish.<sup>9</sup>

In the specific case of Bosnia and Herzegovina, the challenges of reconstruction after the conflict were exacerbated by the highly decentralized and fragmented political system set up by the Dayton Accords: "governance is...shared by thirteen political units, each possessing constitutional and legislative authority and managed by one hundred and eighty-one Ministries all this for an estimated 3.8 million people."<sup>10</sup> In such an environment, it is difficult to monitor human rights abuses, such as trafficking, since different region may create different legal standards to combat the phenomenon.

In 1998, the first official reports regarding trafficking in Bosnia and Herzegovina were made public by non-governmental organizations (NGOs) and the International Police Task Force (IPTF).<sup>11</sup> Between January of 2000 and June of 2003 at least 714 women and girls were identified as trafficking victims and assisted. Of

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[http://assembly.coe.int/Documents/WorkingDocs/doc01/EDOC\\_9003.htm](http://assembly.coe.int/Documents/WorkingDocs/doc01/EDOC_9003.htm) [Mar. 11 2004] Art. 1; Bridget Anderson and Julia O'Connell Davidson, *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study* (Geneva: International Organization for Migration, 2003) [Electronic Book]; Available from IOM <[www.iom.int/DOCUMENTS/PUBLICATION/EN/mrs\\_15\\_2003.pdf](http://www.iom.int/DOCUMENTS/PUBLICATION/EN/mrs_15_2003.pdf)> (accessed Mar. 11 2004) 8.

<sup>5</sup> Council of Europe, Parliamentary Assembly, *Migration Connected with Trafficking in Women and Prostitution: Report by Committee on Equal Opportunities for Women and Men*, ONLINE (April 25, 2003, Council of Europe) Available: <http://assembly.coe.int/Documents/WorkingDocs/Doc03/EDOC9795.htm> [Mar. 11 2004], Part II Art 23 and Part I Art. 3.

<sup>6</sup> In 2002, the US Department of State estimated differently, suggesting that 700,000 women and children are trafficked worldwide each year. Regarding the European Union in particular, estimates vary just as widely. A 1998 IOM study indicated that 300,000 women a year may be affected while a 2001 European Commission document places the figure at 120,000. These studies rarely indicate how results were calculated or if numbers include redundancies in the case of re-trafficked individuals. Elizabeth Kelly, *Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe* (London: International Organization for Migration, 2002) [Electronic Book]; Available from IOM <<http://www.iom.int/documents/publication/en/mrs%5F11%5F2002.pdf>> (accessed Mar. 11 2004) 19 and Council of Europe, *Report to Committee on Equal Opportunities*, Part II Art 23 and Part III, Art. 2; Carmen Galiana, *Trafficking in Women*, ONLINE (March 2000, The European Parliament) Available: [http://www.europarl.eu.int/workingpapers/libe/pdf/109\\_en.pdf](http://www.europarl.eu.int/workingpapers/libe/pdf/109_en.pdf) [May 11 2004] Part I Art. 3.

<sup>7</sup> This idea has been widely cited by various scholars including Donna M. Hughes, "Supplying Women for the Sex Industry: Trafficking from the Russian Federation (Draft)," *In Sexualities in Postcommunism*, eds., A. Štulhofer, et al. Forthcoming [Electronic Document]; Available from the University of Rhode Island <[http://www.uri.edu/artsci/wms/hughes/supplying\\_women.pdf](http://www.uri.edu/artsci/wms/hughes/supplying_women.pdf)> (accessed Mar. 11 2004) 1.

<sup>8</sup> Rehn and Sirleaf, 12 and *Victims of Trafficking in the Balkans: A Study of Trafficking in Women and Children for Sexual Exploitation to, through and from the Balkan Region*, (Vienna: International Organization for Migration, 2001) 48.

<sup>9</sup> Rehn and Sirleaf, 12 and *Victims of Trafficking in the Balkans*, 48.

<sup>10</sup> Barbara Limanowska, United Nations Children's Fund, et al, *Trafficking in Human Beings in South Eastern Europe: 2003 Update on Situation and Responses to Trafficking in Human Beings in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Serbia and Montenegro including the UN Administered Province of Kosovo, the former Yugoslav Republic of Macedonia, Moldova and Romania*. (UNDP, November 2003) 105.

<sup>11</sup> Limanowska (2003), 106.

these victims, forty-four percent were from Moldova, thirty-seven percent from Romania and twelve percent from Ukraine.<sup>12</sup> These percentages reflect an early 2001 study performed by the International Organization for Migration (IOM).<sup>13</sup> Between 2000 and 2003, the average age of trafficked victims in Bosnia and Herzegovina was twenty-two with sixty percent of victims ranging from eighteen to twenty-four years old.<sup>14</sup> According to IOM estimates, there were between 600 and 3,000 trafficked women in Bosnia at any given moment, mainly located in Sarajevo, Tuzla, Prijedor, Brcko, Bijeljina and Zvornik.<sup>15</sup> The majority of women, sixty percent, were single and many were quite poor.<sup>16</sup> Seventy-five percent believed that they would be working in legitimate jobs<sup>17</sup> in the service industry such as waitressing, domestic help, etc. while the other twenty-five percent had knowledge that they would be working in the sex industry. Although these women knew they would be working in the sex industry, they often were unaware of the harsh conditions under which they would work.

Until October 2001, when a new Criminal Code entered into force in Republika Srpska, Bosnia and Herzegovina did not have a specific anti-trafficking law. Under the new Code, trafficking in persons for the purpose of prostitution warrants a penalty of six months to twelve years in prison. At the time this article was written, this law, however, only applied in the Republika Srpska.<sup>18</sup>

While the arrival of peacekeeping personnel is meant to create a sense of security in the local community, the influx of relatively well-off male individuals, such as civilian police, into locations that have little economic opportunity may cause the development of a sex industry to cater to their needs.<sup>19</sup> The statues laid out in the Dayton Peace Agreement called for international participation, resulting in the presence of 50,000 international personnel in Bosnia and Herzegovina, the majority of them male.<sup>20</sup> Several members of the IPTF have been implicated for involvement with trafficked women. Their actions include frequenting brothels where trafficked women were held, selling and buying women for sexual slavery and working with organized crime bodies to recruit and facilitate the movement of trafficking victims. Romanian members of the IPTF were implicated in direct trafficking activities: recruiting Romanian women, falsifying documents to facilitate international movement, and selling them to brothel owners in Bosnia.<sup>21</sup>

Although international police officers have faced numerous charges of various types of misconduct, corruption, and sexual impropriety during their time in Bosnia, allegations have resulted in little actions beyond repatriation of perpetrators. In 2001, at least three American peacekeepers were repatriated due to various forms of misconduct.<sup>22</sup> In response to peacekeeper involvement in trafficking, the U.S. State Department initiated a zero tolerance policy with respect to "immoral, unethical, and illegal behavior."<sup>23</sup> The notion of zero tolerance, however, was not reinforced by adequate punishments for perpetrators. Those involved in trafficking under zero tolerance were terminated from their positions, had to pay their own airfare home, lost their completion bonus, and were ineligible for participating in future missions, far from the outlined legal repercussions for involvement in trafficking on their native soil.<sup>24</sup>

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<sup>12</sup>Regional Clearing Point, Stability Pact Task Force on Trafficking in Human Beings, *First Annual Report on Victims of Trafficking in Southeastern Europe* (Vienna: IOM, 2003) 115-116.

<sup>13</sup> Long, 9.

<sup>14</sup> *Victims of Trafficking in the Balkans*, 43 and 50; Rehn and Sirleaf, 13.

<sup>15</sup> *Victims of Trafficking in the Balkans*, 43.

<sup>16</sup> *Victims of Trafficking in the Balkans*, 50.

<sup>17</sup> Rehn and Sirleaf, 13.

<sup>18</sup> Limanowska (2003), 110.

<sup>19</sup> Rehn and Sirleaf, 11; Christine Chinkin, "Gender, Human Rights, and Peace Agreements," *Ohio State Journal on Dispute Resolution* 867(2003): 877.

<sup>20</sup> Madeleine Rees in Cockburn and Zerkov, 61.

<sup>21</sup> Colum Lynch, U.N. Halted Probe of Officers' Alleged Role in Sex Trafficking, *Washington Post* (December 27, 2001) A 17.

<sup>22</sup> Colum Lynch, "Misconduct, Corruption by U.S. Police Mar Bosnia Mission; U.N.; Europeans Query Push to Bring In More Officers," *Washington Post*. (May 29, 2001) A 01.

<sup>23</sup> Prepared Statement of Hon. Nancy Ely-Raphel, Director, Office to Monitor and Combat Trafficking in Persons during United States Congress, House Committee on International Relations, Subcommittee on International Operations and Human Affairs, *The U.N. and the Sex Slave Trade in Bosnia: Isolated Case or Larger Problem in the U.N. System?* (Washington: GPO, 2002).

<sup>24</sup> Prepared Statement of Nancy Ely-Raphel in *U.N. and the Sex Slave Trade in Bosnia*.



According to Rule 4 of the U.N. General Assembly Code of Conduct of 1993, U.N. peacekeepers should “not indulge in immoral acts of sexual, physical or psychological abuse or exploitation of the local population or United Nations staff, especially women and children.” Under the terms of the Dayton Peace Agreement, U.N. peacekeepers have immunity from local prosecution; instead, U.N. peacekeepers are under the jurisdiction of their countries of origin. None of the peacekeepers repatriated for involvement in trafficking faced criminal prosecution.<sup>25</sup> It was in the capacity of the UNMIBH to ask that the U.N. waive immunity so that police monitors accused of involvement in trafficking could be tried in Bosnia and Herzegovina. This did not occur; instead, violators were repatriated under the “legal fiction” that nations would prosecute these actions. As of November 2002, eighteen IPTF members who visited brothels, purchased trafficked women, or were involved in other areas of the trafficking industry, were repatriated.<sup>26</sup> Stabilization Force contractors, civilians hired to provide support for military forces based in Bosnia, were also accused of participating in trafficking.<sup>27</sup> Gaps within United States law as well as lack of political will allowed perpetrators to go free; they were immune to prosecution abroad and laws did not exist to prosecute them at home.<sup>28</sup>

A number of employees of DynCorp, the PMF proxy for the U.S. in the UNMIBH, were accused of involvement in trafficking. The company pulled perpetrators out of the country before they could be prosecuted. Two individuals, who had implicated other DynCorp employees and made the human rights abuses known to the public, were fired by the firm in retaliation. Although the two individuals either won or settled cases brought for wrongful dismissal, little has been done to implicate DynCorp. As of summer 2004, DynCorp had a similar contract helping to reconstruct the police force in Iraq. In terms of preventing future trafficking by its employees, the company’s attempt to curtail trafficking involved employees signing a document stating that trafficking is “immoral, unethical and strictly prohibited.”<sup>29</sup> As of the time this article was written, the regulatory and legal implication of any misconduct on the part of individuals in these industries is unclear.<sup>30</sup> International laws regulating these types of firms are either ineffective or non-existent. For example, international human rights law is only binding for states. Outsourcing duties that are traditionally performed by states creates a void in which states can ignore human rights abuses performed by peacekeepers working on their behalf.<sup>31</sup> Since the firms are private, it is not clearly within the states’ jurisdiction to prosecute for abuses performed on foreign soil. Although the United States developed the Military Extraterritorial Jurisdiction Act of 2000 (MEJA) in order to prosecute abuses performed on foreign soil, no abusers have been prosecuted. At the same time, international laws, created to deal with mercenaries, are ineffective since they often have a very narrow view of what is defined as a mercenary. PMFs often do not fit all the criteria to be considered mercenaries and are therefore not prosecuted under these laws.<sup>32</sup>

When international police officers patronize bars and clubs where trafficking victims are being held, a message is sent to these victims that the international community can not be trusted and that it is of no use to turn to them for aid.<sup>33</sup> Madeleine Rees, the UN High Commissioner for Human Rights in Bosnia, is quoted in the media as stating that “Visiting brothels where women have been gang-raped into submission, into slavery, is

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<sup>25</sup> United States Congress, House Committee on Government Reform, Subcommittee on Human Rights and Wellness, *The Role of the Government in Combating Trafficking in Persons - A Global Human Rights Approach*. Statement of Mohamed Y. Mattar, S.J.D. (Washington: GPO, 2003) 10-11.

<sup>26</sup> Human Rights Watch, *Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution* (Vol. 14 No. 9(D), Nov. 2002) 5.

<sup>27</sup> *Hopes Betrayed*, 5.

<sup>28</sup> *Hopes Betrayed*, 6, 46.

<sup>29</sup> P.W. Singer, “War, Profits, and the Vacuum of Law: Privatized Military Firms and International Law,” *Columbia Journal of Transnational Law* 42(2004): 538.

<sup>30</sup> Singer, “War, Profits,” 525

<sup>31</sup> Murray, 484.

<sup>32</sup> Singer, “War, Profits,” 525.

<sup>33</sup> Human Rights Watch, *Bosnia and Herzegovina: Traffickers Walk Free* (New York, Nov. 2002) [Online Article]; Available from Human Rights Watch < <http://hrw.org/press/2002/11/bosnia1126.htm>.> (accessed May 16, 2004).

not part of the UN's mandate.' Without an enforceable code of conduct, immunity often means impunity. We should look at ways of waiving that immunity. 'I would be very happy to see the possibility of prosecutions for rape or assault in the UK. There is no question this should happen.'<sup>34</sup>

According to local NGOs, in 2003, international clients still made up a significant percentage of those taking advantage of trafficked women. For example, members of stabilization forces (SFOR), the NATO-led military peacekeepers, made up forty percent of clients.<sup>35</sup> Clearly, any potential threat of repercussion for impunity is not working. Instead, emphasis needs to shift to creating a gender perspective in peacekeeping processes. Using a gender perspective provides peacekeepers with a more complete understanding of how conflict affects genders differently and how peacekeeper involvement in trafficking, whether specifically facilitating movement or simply purchasing the services of trafficked women, reinforces notions about women's inferiority.

The final installment in this series, appearing in the next issue, will discuss how trafficking in women in Bosnia and Herzegovina could have been predicted and thus avoided. Issues that will be discussed include how trafficking in the region mirrored the violence against women occurring during the Bosnian war, how gendered violence does not end with ceasefires, and how a clearer gender perspective in the Dayton Peace Agreement negotiations, as well as within peacekeeper training and missions, could have lead to less demand for trafficked women.

### **Inside the mind of the judge, part 3**

#### **The Acquisition of wisdom: the "sophomore" judge to the "decade" judge**

by Judge David M. Gersten

In previous editions of the "Inside the Mind of the Judge" series, we covered the basics. We know that all judges have a big ego; all judges want to be right; and all judges have an agenda. We also know that there are three types of new judges: (1) the "deer in headlights" judge, (2) the "I'm large and in charge" judge, and (3) the "willing to learn" judge. Now we will cover the intermediate judge, the judge who has been on the bench for at least two years but less than ten years. The next article will cover long-term judges, who have been on the bench for more than ten years.

#### **Reaching "sophomore" status and ultimately "decade" status as a judge**

This article deals with the category of judges who have been on the bench for two to ten years. From a judicial education standpoint, these judges are prime targets for judicial education. They are prime targets because they have not been on the bench for so long that they kid themselves into believing that they know everything. Yet, they feel that they have learned the ropes of judging, they seek new challenges, and they are comfortable in their judicial environment.

There are several factors to consider when examining the inside mind of a sophomore judge. First, an essential factor is the age of judges when they enter the judiciary. For the purpose of this article, we will assume that most judges entered the judiciary somewhere within their 40s and 50s. They enter predominantly in this age bracket because that is the age when most lawyers come into their own. They have established themselves as practitioners who have become proficient at what they do as lawyers, and feel that it is time to move on and upward in their legal careers. Maybe, it is just that they have matured as human beings, and they now seek a higher calling.

However, at this stage of life, a person's options become narrower. After all, we have only a finite number of productive years. Each time we traverse a new path, time slips by. In that respect, when a person chooses

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<sup>34</sup> Dominic Hipkins, "Bosnia Sex Trade Shames UN," *Scotland on Sunday* (February 9, 2003) 24 quoting and paraphrasing Madeleine Rees.

<sup>35</sup> This percentage was provided by local NGOs. According to the European Union Police Mission, which took over some of the IPTF functions in January 2003 after the UNMIBH closed, this number is lower, approximately thirty percent. Limanowska (2003), 107.

and attains a judicial path it takes a tremendous time commitment. Judges are keenly aware of the commitment.

Also, I must note that there are some judges, who are not lawyers or, in the teaching parlance, they are not, “legally trained.” Often, these judges may be justices of the peace, municipal court judges, or magistrate judges. These judges may also be tribal court judges who have to straddle both the traditional legal court concepts and their own unique tribal court concepts. Regardless, my experiences in teaching all types of judges still lead me to the conclusion that most judges enter the judiciary in their 40s to 50s.

Another factor is the different types of judgeships. For example, there are lower and higher level trial judges; there are appellate judges; there are hearing officers and administrative law judges; there are military judges; and there are tribal court judges. Each type of judicial office has its own uniqueness. The type of judgeship is a factor because of the degree of steepness in the learning curve. I believe that the appellate and tribal judges have the steepest and longest curve because of the nuances of their jobs.

The appellate judge has to learn all aspects of all the different types of law, together with the incredible formalities of writing and publishing. The research is often more detailed, and the analysis becomes critical lest the appellate judge muddle the law. The appellate judge also has to learn how to get along with his or her colleagues on a collegial court. The trial judge does not have those complications. Sometimes, trial judges sit on appellate panels, but this occurs infrequently, and it is not a permanent trial court assignment.

The tribal judge, on the other hand, often has to navigate jurisdictional guidelines and bounce between traditional and legal formalities. Indeed, this is a difficult and complicated endeavor. The run-of-the-mill legal judge normally does not deal with the tribal and legal interplay of laws, customs, and especially, jurisdictional issues. Hats off to the tribal judges.

Another factor is the judge’s basic personality. As discussed in a previous article, judges enter the judiciary either as a “deer in headlights,” a person with a “large and in charge” tyrannical attitude, or as a person who is “willing to learn.” Judges who fall in the first category might have a difficult time adjusting to the demands of the new judgeship. This type of judge often wonders whether they are well-suited to becoming a judge.

Judges who fall into the second category become tyrants of the court unless some higher power can change their personalities. These judges might be well-suited for the job of judge, but, they will have to keep their personalities in check in order to effectively serve as a jurist. If the tyrannical judge sits on an appellate court, colleagues will avoid that judge like the plague. Further, tyrant judges will not have the respect of their colleagues. On the other hand, the tyrant judge may not care.

Finally, a judge who is willing to learn has the best chance of thriving in any atmosphere. These judges will not only be willing to learn about the law, they will be extremely amenable to both formal legal education, and learning from other judges. This healthy attitude and personality will help maintain a strong and vibrant judiciary.

Regardless, all judges must adhere to a higher level of ethics: the Judicial Canons. Judges can no longer socialize or fraternize as they did when they were attorneys. Avoidance of impropriety is a huge weight to carry on their shoulders. Judges must carry that responsibility for their entire judicial careers.

But anyone who has taken on such a responsibility knows that judging is an invaluable experience. And as a result, intermediate judges will fall into three categories: (1) I have the hang of the judge’s job; (2) I am or am not comfortable in my skin as a judge; and (3) I have been a judge for a decade, so what is next?

### **Do I have the hang of judging?**

In this category, we have the judge who sits in one type of division of the court system. This is a judge who has learned the ropes of a particular assignment. For example, if they have been assigned to the criminal

division, they have done enough repetitive judicial work to understand the mechanics of how to move a case along to fruition . . . plea or trial. These judges acknowledge that they do not know it all. But they also acknowledge that they pretty much know what they are doing. This type of judge is as ripe as they come for judicial education. They are ripe because they have tasted the fruit of judicial work, and they hunger for more. Judicial education is the place to broaden their palate.

If the judge is a judge of a one-function type court, like a traffic, juvenile, or family court, they certainly feel competent to proceed as an experienced judge. This judge is the perfect candidate for specialized legal education in their field of judging. They need to know the “trends” and benefit from the “better practices” type of courses.

Judges in non-specialized courts may wonder whether judicial life is greener on the other side of the judicial assignment. For example, the judge assigned to hear criminal cases may wonder if the civil assignment is better. Those judges often have the option of hearing different types of cases by rotation or being assigned to another division of their court.

When a judge rotates into another division within their court, they again are entering new judicial terrain. The judges entering a new division within their court will feel both apprehension about the unknown and some regrets about leaving the safe cocoon of a division they understood. By and large, however, they will eventually settle into a routine that will get them to the same comfort level as the one they experienced in their old division.

This division-shifting judge will also be an excellent candidate for a broad-based type of judicial education. They are amenable to learning both the previous division’s judicial courses, as well as the new courses. Thus, they can keep up with the old while getting a handle on the new. Actually, these judges, when confronted with an upcoming change of assignment, will take anticipatory courses so that they can hit the ground running when they enter the new division. These judges acknowledge that there is much to learn and will sponge up judicial education. This way they will not appear stupid to the “regulars” who observe this new judge in a new setting.

### **Am I comfortable in my skin as a judge?**

In this category, we have the judge, who has adjusted to the new surroundings of the judgeship, but the judge either is or is not comfortable in their skin as a judge. If the judge is comfortable, I guarantee that you will see a happy judge, a judge that loves his or her job. If judges are happy in their division, then all is copasetic.

However, there are some judges who do not like their job at all. They probably enjoy the concept of being large and in charge, but they just do not like the work. I briefly alluded to this concept when I mentioned the judges who cannot stand their division. If they are unhappy, they may be able to seek a different assignment from their chief judge. If they are in a single-type court, there could be a problem, a very serious problem.

By ten years, a judge knows whether he or she wants to continue being a judge. A judge who stays on as an unhappy judge makes for one very scary jurist. He or she will treat most before them with disdain and a general lack of respect. It is not their fault if they do not know what they are feeling. It is their fault if they know that they lack job satisfaction, but continue on for various reasons. These reasons can include: they are too unsure of themselves to return to the practice of law; they do not want to give up the financial perks like health insurance, or they just feel attached to the title.

Some judges leave the bench because they do not like being second-class citizens. They feel like second-class citizens because they cannot say and do as they feel. Instead, they must rigorously adhere to the Judicial Canons that basically limit free speech and association that judges used to enjoy as a lawyer and private citizen.

Judges not only have to adhere to the Judicial Canons, they also have to live in a fish bowl. This is particularly true for judges living in smaller communities where everyone knows who they are, what they buy, and even

what they had for breakfast. It can be unnerving and unpleasant. Thus, some judges do not want to live such a transparent existence and instead, they choose to reenter the lifestyle of a private citizen.

### **What lies ahead for the decade judge?**

When judges reach the ten-year mark, they face a crossroad. For example, they (as any elected official does) may be thinking of their next election or they may be thinking about making a move to a different or higher court. Or, they may be thinking about retirement and hanging it up as a jurist.

For the decade judges that think about re-election and another term, they have a feeling that they have earned the right to stay on the bench. However, they also know that they could be the victim of a campaign against them. The term “victim” is used with precision. They feel like a victim because they have just dedicated a substantial portion of their life to the judiciary, to the law, to serving the public, and to ensuring justice.

When the decade judge faces the prospect of a contested campaign, they do not welcome the contest. Rather, they dread the fundraising, the handshaking, and the feeling that they are unappreciated in spite of their hard work. The sitting judge who goes through a campaign is not a happy judge. Instead, these judges are scared judges, who quite frankly are not in the best frame of mind for exercising their most sound judgment. I do not envy these judges.

On the other side of the spectrum is the judge who seeks a higher judgeship. The judge seeking a higher judgeship is ambitious, but also confident in their skills as a judge. These judges are goal-oriented and will often gain what they seek. Of course, it is important that once they gain what they seek that they do not look back and regret the decision. There are several judges who have regretted the decision to move up in the judiciary. Yet, these judges are few and instead, most upwardly mobile judges have been happy that they accepted the new challenge.

The judges who seek and obtain a judgeship in the higher court are judges who feel that they have much more to learn and to give as a jurist. They know that they may retain the title of a judge but their learning curve will be as steep as their first day as a judge. They know the uphill journey they face. Yet, they still seek the journey. Additionally, these judges are superb candidates for judicial education.

Unless the decade judges are nearing their 70s, it is unlikely that they would be thinking about retirement. Those who do retire often feel that their judgeship was the most rewarding professional aspect of their life. They are proud of their service and do not regret their decision to have become a judge.

Actually, most judges do not want to retire completely from the bench. The retired judge that periodically returns to sit as a senior judge is one of the best assets of the entire judicial system. These judges bring a wealth of knowledge and experience to the bench while at the same time helping the regular division judges move their caseload.

### **Conclusion**

Reaching sophomore status and ultimately decade status as a judge is not an easy feat. It takes years of commitment to the law and to the public. The acquisition of wisdom is a slow process, but the legal system will benefit from the judges’ acumen when they have the hang of their jobs and are comfortable in their skin as judges.

When judges achieve this “decade” status, they will then think about the next decade and what they will be doing as a jurist. Will they still be up to the challenge of judging? Will they become stale in the job? Are they losing touch with humanity? These thoughts lead to the next article in this series: “The Experienced Judge — The Ideal Jurist or the Curmudgeon?” Thanks for reading. FRATRES CONJURATI.

**Book review: *Turning to One Another: Simple Conversations to Restore Hope to the Future*, by Margaret J. Wheatley, Berrett-Koehler Publishers, Inc., 2002**

by Marguerite Stenquist

Margaret Wheatley is internationally valued for her teachings on leadership and communication. She has worked with organizations and communities of all types and on most continents. She calls herself Meg, a simpler version of Margaret. And in her book, filled with common sense communication principles, she delivers a simple message: What's missing in our interactions today is simple, honest, human conversation, "where we each have a chance to speak, we each feel heard, and we each listen well."

People love to be together; we are a herding species. And we love to talk. It's how we process what we think. We invented language when we were in familial settings and were curious about each other. We had things to say. But life moves at such a frantic speed today that we no longer take time to really talk. Meg asks: How willing are you to dedicate time to a slow, meandering conversation? With instant messaging creating a new communication standard, the answer to that question is probably "not very."

When honest conversation occurs, the conditions for change materialize. Whether the topic is interpersonal, organizational, or international, when people unite to discuss what they care about, they arouse a spirit of hope. Without conversation, conditions are ripe for fear, misinterpretation, and disaster. Listening and talking to one another, according to Meg, "heals our divisions and makes us brave again. We rediscover one another and our great human capacities."

In her book, Meg emphasizes six principles for people willing to host and participate in a meaningful conversation:

1. Acknowledge one another as equals. In the workplace, this means we let go of our roles and meet each other as interested peers.
2. Try to stay curious about each other. This helps us stay focused on listening for something new rather than competing with or judging the speaker.
3. Recognize that we need each other's help to become better listeners. The most difficult aspect of conversation is the art of listening, which is a skill worth acquiring or improving to enhance all our relationships.
4. Start by slowing down and taking time to think and reflect before responding.
5. Remember that conversation is the natural way humans think together. Language gives us the means to know each other better.
6. Expect it to be messy at times. Because we are human and not perfect, our conversations are messy. Truth often lies at the other side of chaos, so we have to allow ourselves to ride out the storm.

Hosting a meaningful conversation takes time and planning. Meg says not to expect to get it right the first time. Following the principles, however, will gradually shape productive conversations and create an environment where we can work together to restore hope to the future. But, she cautions prospective conversation hosts, be willing to be disturbed, to "have our beliefs and ideas challenged by what others think."

When I heard Meg speak at a conference recently, she talked about how important it is to change how we listen. We usually listen for people who think like we think. When we hear something from someone who doesn't agree with us, we stop listening and start arguing in our head with the speaker, we can't wait for him or her to shut up. Sometimes we don't: we just interrupt. Meg says to change our goal: try listening for something different or new, something you may not like to hear. When you focus on searching for this little nugget and find it, you have achieved your goal. The urge to fight diminishes.

To help readers get started in meaningful conversations, Meg poses several conversation starters. Here are a few examples:

- Am I willing to reclaim time to think?
- When have I experienced good listening?

- What is my unique contribution to the whole?

The concept of using thoughtful conversation starters as the foundation for a team meeting or retreat intrigues the trainer in me. So I'm going to try it out. I'm going to begin by interviewing the members of my client's team to identify six or seven questions that will help them explore how they think and what they believe. What I hope to achieve goes way beyond what the MBTI or work styles profile offers. It is to reacquaint the team with the power of simple conversation among people who share a common goal: to make a difference.

**Giving and Receiving Feedback: Chapter Six**  
**Feedback and Communication Styles**

**Chapter Objectives**

- . Identify your preferred communication style.
- . Recognize the impact your preferred communication style has on the way you tend to give and receive feedback.
- . Understand other styles of communication and how those styles relate to feedback.
- . Adapt your communication style to the needs of the feedback situation, particularly the needs of feedback recipients

**What Are Communication Styles?**

Communication styles play an important part in the giving and receiving of feedback. All of us have developed communication patterns that reflect our individual identities. These patterns develop over time and become our preferred manner of communicating.

Your effectiveness in giving and receiving feedback will be enhanced if you are aware of your preferred communication style and that of your feedback recipient. By recognizing the strengths and weaknesses of both styles, you can more easily adjust your style to avoid conflicts and ensure understanding.

There are four major communication styles:

- **Driver**—The driver is direct and task-oriented.
- **Collaborator**—The collaborator is enthusiastic and relationship-oriented.
- **Contributor**—The contributor is supportive and avoids change and confrontation.
- **Investigator**—The investigator is accurate and detail-oriented.

Though our individual communication styles are usually a composite of all four styles, we tend to have one stronger, preferred style. The chart below describes some of the strengths and potential stumbling blocks associated with the four styles. Which style comes closest to describing the way you tend to communicate?

<b>Communication Style</b>	<b>Strengths</b>	<b>Potential Stumbling Blocks</b>
<b>Driver</b>	Direct Practical Decisive Confident Clear, to the point  Task-oriented	Challenges others Impatient Insensitive Overly independent Need for control, domineering
<b>Collaborator</b>	Talkative Friendly Enthusiastic Approachable, open	Overly sensitive Lack of follow-through/details Unprepared, disorganized Subjective in decision-making

	Initiates through involvement of others	
<b>Contributor</b>	Supportive, patient Predictable Easygoing, calm Listens actively Responsive to others	Avoids confrontation, passive Slow to change Slow to initiate Indecisive Withholds feelings
<b>Investigator</b>	Accurate, well-prepared Diplomatic Analytical Cautious, restrained Systematic, detail-oriented	Too critical, insensitive Inflexible Withdrawn Overly cautious Imposes high standards

### How Styles Affect Feedback

Most of us give and receive feedback in a manner consistent with our dominant communication style. Review the preferred manner for giving and receiving feedback for each of the four styles, paying particular attention to your own style.

<b>Communication Style</b>	<b>Prefers to Give/Receive Feedback</b>
<b>Driver</b>	Quickly Directly To the point Focusing on the "WHATs"
<b>Collaborator</b>	Con conversationally Allowing time for anecdotal support Sensitively Allowing time for much verbalizing Focusing on the "WHATs"
<b>Contributor</b>	Patient, allowing time to respond Nonthreateningly Clearly Supportively Privately Focusing on the "WHATs" and "HOWs"
<b>Investigator</b>	Objectively Thoroughly Accurately Patiently, allowing time to change With no surprises Focusing on the "WHATs" and "WHYs".

### Understanding the Communication Styles of Others

Knowing and understanding your preferred communication style is important because in order to fully appreciate others' styles, you must first appreciate your own. You will want to be conscious of your own communication preferences when giving and receiving feedback from others. But your primary focus needs to be on what you believe the other person's preferences are.

If you are giving feedback to a coworker or an associate, you need to be sensitive to that person's communication style. By matching that individual's style, or delivering your feedback in a way that is



comfortable to the person, he or she will be more likely to hear what you have to say and to be open to changing his or her behavior or improving performance.

When receiving feedback from others, be aware of their preferred communication styles. Understanding their styles explains their approach in giving you their feedback. Understanding their approach enables you to get beyond “how” they are giving you the feedback and allows you to concentrate instead on probing for specifics (the “what’s” and “whys”).

Let’s look at an example of a supervisor with a Driver communication style redirecting the performance of an associate with an Investigator style. Note how the supervisor adapts the basic steps for giving redirection to a style that is compatible with her associate’s style, not necessarily her own. She enters the feedback discussion well prepared, ready to provide lots of facts and specific details. She knows her associate is going to want to know “why” he needs to improve his performance, not just “what” she sees as unsatisfactory performance.

### **Driver Giving Redirection to an Investigator**

**Step 1**—Describe the behavior or performance you want to redirect.

**Sharon:**

Bill, we need to talk about your follow-through on the customer inquiries assigned to you in the database. Of the 49 inquiries—all five weeks old or older—21 are at a Stage 3 or higher in reaching resolution. That means 28—or over 50 percent—have had initial contact but little follow-up.

**Step 2**—Listen to the reaction of your feedback recipient.

If Bill acknowledges that he has not consistently followed through on customer inquiries and that this is a problem, Sharon can move immediately to Step 5 and help Bill develop an action plan. Otherwise, Sharon must take the time to help Bill understand and acknowledge the impact his performance is having on others. Until Bill recognizes the consequences of his performance and takes responsibility for them, there’s little incentive for him to change.

**Step 3**—Explain the effect the behavior/performance is having on the organization.

**Sharon:**

When you are slow in reaching resolution on inquiries, it has far-reaching effects. For example, until an inquiry reaches Stage 4, the fulfillment department can’t access it and begin preparations for processing. This causes a backlog online and makes it difficult for fulfillment to schedule employees.

We know that delays in follow-through result in fewer sales. We need to be responsive to customer inquiries while their interest is strong. Delays result in lower commissions for you, missed sales targets for our team, and less revenue for the company.

**Step 4**—Help your feedback recipient acknowledge that a problem exists and take responsibility for it.

Sharon should continue to discuss the situation with Bill until he acknowledges his responsibility for the situation:

**Bill:**

I can see that I need to move more quickly if I want to meet our sales goals. Let’s set up a timetable.

**Step 5**—Develop a plan that will help the receiver of your feedback adjust his or her actions.

**Sharon:**

Bill, in order to meet our goals, we need to reach resolution on all inquiries within eight weeks of the inquiry date. What can you do, and how can I help, to increase your rate of follow-through?

Bill and Sharon can now work together to set short- and long-term goals for Bill's performance and create an action plan that will help Bill meet those goals.

**Step 6**—Thank your feedback recipient for his or her efforts.

After they've made specific plans, Sharon can thank Bill, review their conversation, and arrange a future meeting:

**Sharon:**

Bill, thanks for taking the time for this talk. You've acknowledged that your delays in reaching resolution are having negative effects, and you've identified several steps that will help you reach resolution more quickly. I'm here to help you if you need it. Let's get together again next Tuesday and assess the progress you've made.

**Take a Moment**

How well did Sharon (a Driver) do in matching the way she provided feedback to Bill (an Investigator)?

Was she well prepared?	_____yes	_____no
Was she thorough?	_____yes	_____no
Did she explain the "whys" for improving?	_____yes	_____no
Was she objective and nonaccusatory?	_____yes	_____no
Was she detailed and specific in her examples?	_____yes	_____no.

Being aware of the four communication styles and adjusting your feedback to the style of the person to whom you are speaking can help you give and receive feedback more effectively. In the next chapter, you will have the chance to assess your current level of feedback skills and create an action plan for developing them further.

**Self-Check: Chapter 6 Review**

Match each communication style with the appropriate description.

- |                       |  |
|-----------------------|--|
| _____ 1. collaborator | a. detail-oriented, accurate                   |
| _____ 2. investigator | b. direct, task-oriented                       |
| _____ 3. contributor  | c. supportive, avoids change and confrontation |
| _____ 4. driver       | d. Relationship-oriented, enthusiastic         |

Complete each sentence.

5. In order to fully appreciate others' communication styles, you must first understand and appreciate

\_\_\_\_\_

\_\_\_\_\_

6. Whether you are giving or receiving feedback, it is important to be aware of, and in some cases, match,

\_\_\_\_\_

\_\_\_\_\_

## **Answers to Chapter 6 Review**

1. d
2. a
3. c
4. b
5. Your own style
6. The other person's communication style