

# NASJE NEWS – PRINT VERSION

Fall 2007

*NOTE: Some articles and pieces are only available online. Please read the online edition for the full newsletter.*

## **NASJE Annual Conference, Western Regional Meeting, August 13, 2007**

### Meeting Notes

Diane Cowdrey, NASJE Western Regional Director, opened the meeting with a review of last year's activities. She thanked everyone for their participation, particularly the Planning Committee for this year's Regional Conference in Denver.

Each member shared information on programs or projects they are doing in his or her respective state (please forgive spelling errors on names):

Linda Miller (WA). Passed.

Greg Caskey (CA). Has provided two faculty development programs, for staff and judges. There are 20,000 staff in California. New Employee Orientation is run every two weeks. He coordinates the local training.

Karen Thorson (CA). AOC helping the local courts to do strategic planning and faculty development. Conservatorship abuses - new laws passed, so education is required now for non-professional conservators. Getting curriculum online. Partnering with colleges and universities.

Elizabeth Ncube (AZ). Local court education. Responsible for 4000 Maricopa County employees. Planning strategically for education; this year, case flow management. Worked with Doug Somerlot to create course, and will continue this.

Deb King (AZ). Working on court leadership - education needs for Probation Officer Chiefs, Presiding Judges, top management, using NACM Core Competencies, and the curriculum that matches these. Create an annual conference for all these groups this year. Focus on retention and succession planning.

Marna Murray (AZ). Policy issues around education hours, and carry over. New Judge Orientation. Some facility renovations.

Liz Strong (CO). Leadership training, succession planning are efforts now. Apprentice ideas. Executive development seminar next spring.

Richard Bustamante (NM). Court staff and judges, magistrate judges, specialized programs on domestic violence, water laws, regional training on DWI and benchbook on sexual assault. Web site: //jec.unm.edu

Zella Cox (NM). Municipal judges, supported by Judicial Education Center. Limited jurisdiction training for judges and staff. Wants to hear about other ideas for training.

Claudia Fernandes (CA). Judicial Leaders - emergency preparedness program. Created a DVD - happy to share this. Also, judicial elections, attacks on the judiciary. Created a web site - one for the public and created a PowerPoint to use in public outreach on this issue. Sentencing symposium.

Judith Anderson (WA). New role in fund raising for programs, working with Board on overall curriculum.

Dawn Nagatani (HI). Launching customer service program for front line staff, especially in giving legal advice. Succession planning: over 50% of people retiring in a few years. Knowledge transfer efforts. Judges - child witnesses program.

Todd Brower (Williams Institute). Think tank on sexual orientation issues, and they also conduct programs in states regarding custody issues, new legislation re: civil unions, etc. Usually works with local faculty, primarily law school faculty.

Michael Roosevelt (CA). He has moved in the AOC, not with CJER any more. In the past, he did programs for temporary judges, language access program. Currently, in a new division, expand number of outreach programs re: DUI. Takes to high schools.

Marian Chavez (NM). New to division. Conference planning and logistics.

Diane Cowdrey (UT). Adapted California's curriculum development process and currently doing with several groups. Revision of New Employee Orientation program, with some sections done via Camtasia (online). Her department will no longer be supplying bottled water at classes and conferences, passed out information on this topic.

Victoria Garcia (NM). Conference logistics. Meeting planning software - Event Pro.

Debbie Bogosian (NM). Curriculum development. Their website: happy to share and let people adapt these programs for their states.

David Gordon (NV). In AOC 4 years, new to judicial education.

Doug Ford (WA). Recently combined court staff education to be more integrated. Serve all of the courts. Conversion from old case management system: "Grow the overlap."

Myra Downing (WA). Setting guidelines for education programs, working with faculty in creating their PowerPoint presentations. Annual Presiding Judge and Court Manager conferences. Used listserv to generate questions for responder system: "Everything you Wanted to Ask About..." Faculty development program. "Nuggets" for judges in a book, like a benchbook. Butch Chapin (WA). Helps judges to use electronic tools. Looked at data to assess usage of tools. Creative ways to encourage use of technology. Embedded this into the topical programs. Hands-on training worked well too.

John Sandberg (UT). Education Director for Justice Court education, curriculum development process is finishing up this year.

Kristine Prince (UT). Curriculum development focus this year. Attended Leadership Institute in 2003/4 and has transformed the program for justice court judges. Kathy Story used as a

consultant and in faculty development. New Judge Orientation program revised, full week and a Phase II program. Mentor program.

Lowell Castleton (ID). Drug Court, mental health court, child protection courts, etc had separate funding - have all combined under judicial education. Institutionalize judicial education. Other staff do employee education in Idaho.

Misty Butler (UT). Coordinates training grant for dependency and child welfare, conducting curriculum development.

Evie Lancaster (NV). Specialty courts conference, senior judges' education program. Doing a dependency training (Court Improvement Project). Booklet on legal staff, developing an interactive training program. First effort at distance learning.

Tim Hay (National Judicial College). Less than two months in job. Specialized courts program and capital cases.

Joy Lyngar (National Council of Juvenile and Family Court Judges). Juvenile cases so important. She is a resource to educators, can provide information and speakers. National areas are currently: Adam Walsh legislation/registry requirements, self-represented litigants, new married parents (custody and visitation requirements), and 0-3 issues.

Maggie Cimino (CA). Couple new audiences - HR professionals and automated information management system professionals. Creating a Learning Management System to house curriculum development process products. Shared training space with local courts. Succession planning efforts - small group planning this.

Rhonda Sharbono (CA). Court staff education. Clerk Training Institute.

In the time that remained, Diane asked members to let her know if they were interested in hosting the next Western Regional Conference or serving on the Planning Committee for that conference. She will pass on the information to the new Regional Director: Kent Wagner of Colorado. She expressed her appreciation to everyone for the opportunity of serving as Regional Director for the past four years.

## **NASJE Annual Conference, Midwest Regional Meeting, August 13, 2007**

### Meeting Notes

Members in attendance: Jane Seigel, IN; Jerry Beatty, IA; Dottie McDonald, TX; Jill Goski, MN; Lee Ann Barnhardt, ND; Lynn Sudbeck, SD; Pat Dugan, SD; John Meeks, NCSC; Hope Lochridge, TX; Ann Blankenship, TX; Mari Kay Bickett, TX; Christy Tull, OH; Linda Evans, MO; Carol McMahan-Boies, Nebraska; Robin Wosje, NJC; Milt Nuzum, OH; Debra Weinberg, OH; Anne Jordan, IN, Midwest Director.

Welcome and Introductions: Midwest Director Anne Jordan opened the meeting by welcoming everyone to the annual meeting, and explained the value of having the regional meetings on the first day of the conference so we could better know one another. Introductions were made all around.

Success stories: Capital cases course with an actual voir dire. "You Asked for It"-- a popular program done every year; Meg Spencer Dixon did an excellent session on time management; Kevin Campbell from CA does a program on 'Shelter Care to Permanency' and relative searches; Dr. Anna Salter, Wisconsin, Sexual Predators; Mari Kay Bickett, 'Cornerstones of Justice'; Judge Judy Warne, "The Psychology of Family Violence"; Ada Brown, Dalls, "What Judges need to Know about My Space and UTube; Judge Patrick Garcia, UVA, working with youthful female Hispanic offenders.

What does NASJE do for me: Provides program ideas and faculty; mentoring program should continue; people like the round robin in the MW Region; and provides credibility to the profession.

NASJE Midwestern Region. Some discussion was had on planning a mid-year meeting. In the alternative, discussion was held on adding a half day to the annual meeting to devote to Midwest NASJE members.

Next Annual Meeting: Philadelphia, PA August 10-13.

### **NASJE Annual Conference, Northeast Regional Meeting, August 13, 2007**

#### Meeting Notes

The Northeast Region consists of 11 states and the District of Columbia. Our fearless leader, Linda Richard of Vermont, was not able to attend. Appreciation was expressed for Linda's service as our representative to the NASJE Board. Eight people representing 4 of the states (PA, NH, CT and DC) in our region were able to attend. After introductions, there was a lively discussion of current activities in our jurisdictions and desires expressed for some kind of regional gathering of judicial educators. We also discussed having some regular communication, perhaps through quarterly conference calls. The group offered some ideas for support of the 2008 Annual Conference that is being held in our region. It was agreed to promote attendance at the conference from our respective states, and to support any requests for assistance from our Pennsylvania colleagues.

### **NASJE Annual Conference, Southeast Regional Meeting, August 13, 2007**

#### Meeting Notes

The Southeastern Region had a productive and enjoyable meeting in Portland at the 2007 NASJE Annual Conference. The regional meeting was well-attended and provided a great opportunity to welcome several new members. Our group came prepared to discuss a variety of topics but was only able to address a few due to the lively and engaging exchange of ideas and experiences. Our members discussed e-filing, distance learning, budget issues, best practices, and judicial branch publications. The Southeastern Region unanimously supported conducting a regional activity in the coming year.

### **Transitions**

Please join us in welcoming the following new NASJE members:

- **Ms. Karen Craymer**, Education Specialist, Alabama Judicial College, Montgomery, AL
- **Ms. Connie Fanning Gackstetter**, Education and Organization Mgr., Education and Organization Development, Court Administrator's Office, St. Paul, MN
- **Mr. Timothy Hay**, Program Attorney, The National Judicial College, Reno, NV
- **Mr. Jason Hodges**, Education Coordinator, Alabama Judicial College, Montgomery, AL
- **Ms. Linda J. Miller**, Senior Educator, Administrative Office of the Court, Olympia, WA
- **Hon. Robert Pirraglia**, National Conference of Specialized Court Judges, Judicial Division, Chicago, IL

We are always pleased to welcome back reinstated members:

- **Ms. Rafaela de Loera**, Director, Training & Education, Arizona Superior Court in Pima County, Tucson, AZ

**From the President**  
**by Robin E. Wosje**

Dear NASJE Colleagues:

I would like to thank all of you who made the 2007 annual conference in Portland, Oregon a great success. As an association of volunteers, we rely on our members to plan and implement most of our activities, and there is a long list of people to thank for the annual conference.

Mollie Croisan and Sheryl Fowler of the Oregon Judicial Department top the list. They were ever-present taking care of every detail. The annual banquet at the zoo was a huge success and Mollie and Sheryl put together the best President's Reception NASJE has ever seen with wine & beer tasting from local Oregon makers paired with foods from the area. The Education Committee, chaired by Carrie Brooks, spent many hours planning the education sessions in an attempt to meet all of the needs of our diverse audience. The Education Committee received invaluable help from the Diversity and International Committees in planning education sessions. In addition, Claudia Fernandes, President-Elect, headed planning for the Sunday Fundamentals session, which was well attended.

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

NASJE's committees are the back-bone of our organization, and there is still time to join committees for 2007-2008. Please contact me at [wosje@judges.org](mailto:wosje@judges.org) if you have any questions

or would like to join a committee. The list of committee members on the website has not yet been updated, but many of you have offered to serve, and I hope to hear from more of you in the next few weeks before we finalize the rosters.

The Board of Directors of NASJE has decided that this year we will focus on increasing our membership and ensuring our current members receive the support they need in the judicial education community. If you have any ideas about how NASJE can support you in your job, I would like to hear from you.

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

## **Risk and Domestic Violence**

Dr. Neil Websdale, Principal Project Adviser, National Domestic Violence Fatality Review Initiative (NDVFRI)

### The Notion of Risk

In pre-modern societies, gods forbade certain forms of hazardous behavior. In these settings, societal notions of danger and taboo tended to regulate behavior. As scientific approaches gained ground, the notion of risk assumed greater significance. **Scientific notions of risk therefore supercede older concerns about danger.** When experts talk of risk, we are inclined to listen, partly because the word risk has overtones of scientific legitimacy.

The notion of risk emerged in the field of criminal justice in the last two or three decades. This emergence accompanied the tendency of agencies to share information and work more closely together. The concept of risk provided a means of developing a shared language across agencies. Identifying risk or the possibility or probability of dangerous or threatening outcomes was also part of a triaging process. This process purported to identify the greatest threats to the greatest number of people. Triage also reflected the increasing need to spend tax dollars in a frugal manner, ideally matching expenditures with the greatest hazards. We see this economy throughout government. But with the massive growth of the criminal justice apparatus in the United States, we find growing concerns about how money is spent and whether it is used efficiently.

The fast expanding field of domestic violence is no exception. We now have shelters, orders of protection, mandatory or presumptive arrest policies, intensive probation for domestic violence offenders and federal laws providing relief and punishment hitherto unavailable. Many of our intervention policies rely on our discerning which offenders pose the greatest threat to victims of domestic violence. Ideally, we reserve significant incapacitation, such as long term incarceration, for the most threatening offenders. Prison is expensive. Incarcerating a domestic violence offender drains public funds and sometimes deprives victims of important sources of income for their families. Likewise, shelter services are in short supply. A shelter stay involves enormous upheaval in the lives of battered women and their children. Ideally, those women at greatest risk find refuge in shelters, if this is the path they choose.

Toward Informed Professional Interaction: Court Clerks and Victims of Domestic Violence

The criminal justice system is clogged with domestic violence cases. This is unfortunate because in many ways domestic violence is more a social, political, and economic problem than a crime problem. Nevertheless, when victims seek support in the form of criminal justice interventions against their abusers, they embark on a meaningful and potentially dangerous course of action. This action has consequences not only for themselves and their families but also for those working with them. It is essential that court clerks engage in **informed professional interaction** with those claiming to be victims of domestic violence.

Court clerks provide vital services for victims of domestic violence. Indeed, they stand at a crucial juncture in the lives of the people caught in the ebb and flow of violence and abuse. Circuit court clerks and their staff provide obvious administrative services that enable victims to negotiate the labyrinth of options the courts offer. These services concern matters related to the issuance of orders of protection, divorce and child custody, to name just a few. Clerks, however, provide much more. When victims turn to the courts for protection and redress, they often re-orient their entire lives. This takes enormous courage and energy. Victims often make these life-changing decisions when they feel particularly threatened or when they perceive that their children are in acute danger. They present courthouses with various problems, demands and challenges. They do not necessarily present themselves in a way that court personnel might perceive as helpful, autonomous, or polite. Often, these victims do not know what the court system requires of them. [Having come from tyrannical regimes in their own homes, some victims find the authoritative aura in courthouses intimidating.] It is incumbent upon court clerks and their staff to work with these victims in an understanding and humane manner. [Imagine the victim is your daughter, sister, mother, son, brother or father.]

In many ways, the ethical and legal imperatives of the courthouse make it challenging for court clerks and their staff to interact in a sympathetic and supportive manner with those who present themselves as victims of domestic violence. Court clerks process information, ideally in an accurate, timely, legal, and efficient manner. It is not for court clerks to decide who is a “genuine” victim and who is not. Even the appearance of striking up some kind of affinity or alliance with a victim creates a potential sense of impropriety. After all, it is not up to court clerks to judge the content of affidavits written in request of an order of protection. Rather, the professional court clerk ought to assume a neutral stance with regard to these matters. Neither is it within the job description of court clerks to coach those who present themselves as victims. Again, even the appearance of coaching might smack of impropriety or unethical behavior. It might potentially invite the wrath of alleged perpetrators as well.

Above all else, court clerks must maintain the neutrality of the courthouse and the objectivity of the law. It is these twin towers of impartiality that keep watch over our entire system of government. Put simply, neutrality and objectivity supposedly guarantee fairness and equal treatment for all. They also honor the notion that one is innocent until proven guilty. The courthouse logic of neutrality and our belief in the discovery of the truth through freestanding adversarial debate and argument are high ideals indeed. We know most criminal cases are not disposed of through freestanding debate. They are plea-bargained out. These realities do not diminish the virtues of our high ideal to search for the truth.

Domestic violence cases, however, are different. They cause us to think again about our ideals. **In the really dangerous cases, and in many others, victims and perpetrators do not come before the court as freestanding adversaries.** Rather, **the victim often negotiates the courthouse under intense duress**, a condition that the law recognizes as a form of defense. It is important for court clerks to realize this fact as they work with victims. If maintaining an impartial approach to victims means engaging in indifferent, cold, curt conduct, or displaying a seeming suspiciousness about claims of victimization then such an approach seems unnecessary and potentially cruel. More than this, they might tip the power imbalance in the troubled relationship even more in favor of the alleged perpetrator.

## Specific Risk Markers

For the safety and security of everyone in courthouses, including possible victims and perpetrators of domestic violence, **it is important that court administrative staff be aware of the risk markers.** When a number of these markers are present, particularly the more significant ones, then severe or lethal violence is statistically more likely (see Websdale, 1999).

The first and most important red flag is a **prior history of intimate partner violence.** Numerous researchers assure us that this flag is the strongest predictor of serious injury or death. Under this broad umbrella of “prior history,” some researchers note the predictive significance of “choking” and “forced sex.” Using data from the Danger Assessment Instrument, Dr. Jacqueline Campbell and her colleagues found that compared with a control group of abused women, murdered women were forced to have sex 7.6 more times and were 9.9 times more likely to be choked (2003b: 17). Survey data from shelters and hospitals in Los Angeles and Dallas suggest that strangulation occurs late in the abusive relationship; thus, women presenting with complaints consistent with strangulation probably represent women at higher risk for major morbidity or mortality.

It is very important to determine whether victims experienced any **actual or threatened violence with a weapon.** Campbell’s research revealed a twenty-fold difference between murdered women and her control group regarding this red flag. **Threats to kill** a victim also correlate highly with lethal outcomes. Campbell found a fifteen-fold difference with respect to this variable.

Although prior intimate partner violence in many of its guises powerfully informs the debate on risk, it is also the case that significant numbers of women who die report no prior history of violence that researchers are able to later identify. For example, the Chicago Women’s Health Risk Study reports that in one in five cases of men killing female intimates, researchers uncovered no evidence of prior intimate partner violence (Block, 2003: 5). Block’s observation does not undermine or diminish the importance of Campbell’s research findings on prior intimate partner violence. Rather, Block’s observations warn us to pay attention to cases with fewer obvious markers such as a prior history of intimate partner violence. Just because researchers fail to locate “prior history” does not denote the absence of this variable. It is also important to remember that women may strongly perceive their lives being under threat, even if they have experienced no violence. This is why it is crucially important to maintain open communication as far as possible to learn whether women feel their lives are under threat.

The research also reveals that women’s risk of lethal violence increases when they leave violent relationships. Carolyn Block observes that, “Three-fourths of homicide victims and 85 percent of women who had experienced severe but nonfatal violence had left or tried to leave in the past year” (2003: 6). Her attempt to leave was apparently the “precipitating factor in 45 percent of the murders of a woman by a man” (2003: 6). Given that many women approaching the courts are considering or actually **exiting violent relationships,** Block’s observation ought not precipitate panic. Nearly all victims of intimate partner violence exit these destructive relationships without suffering lethal violence. Nevertheless, it is prudent to exercise particular concern and vigilance when women leave acutely controlling men.

The research literature consistently identifies **obsessive possessiveness or morbid jealousy** as central to intimate partner homicides. Although most established couples are monogamous and somewhat possessive of each other, especially with regard to sexual relations, perpetrators of domestic violence are often extremely jealous and controlling. It is important to know whether extreme anger, life-threatening violence, and statements like **“if I can’t have you no one else will”** accompany this jealousy.



A perpetrator's **threat to commit suicide** is also a noteworthy risk marker. In Campbell et al's 11-city, case controlled study of femicide, she found an increased risk of homicide when the man is suicidal and there has not been any physical abuse" (Campbell et al, 2003b: 16). Barbara Hart, J.D., a leading advocate for battered women, sees batterers' suicidal threats, ideations and plans as very significant risk markers (Hart, 1988: 242). These and other risk markers become all the more onerous if the battered woman plays a "central role ... in the batterer's universe.... Especially if the loss of the battered woman represents or precipitates a total loss of hope for a positive future." Hart bases her insights on what she calls "experiential data," rather than statistical research.

It is a widely held belief that **excessive alcohol**, and to a lesser extent, drug use, accompany intimate partner violence. In predicting dangerous and lethal outcomes, these variables figure prominently on nearly all risk assessment forms. Campbell et al found that women whose partners became "drunk every day or almost every day" were 4.1 times more likely to die than battered women whose partners did not engage in this behavior (Campbell et al, 2003b: 17).

Some research suggests that non-compliant **perpetrators of domestic violence** (e.g. those who snub authority, flout court orders) are more likely to use more serious forms of violence. The argument here is that these offenders have less to lose. Paying attention to the non-compliance is a virtuous practice in domestic violence cases.

Recent research reveals a clear association between **unemployment** and intimate partner homicide. One group of researchers comments that the abuser's lack of employment was associated with a four-fold risk of homicide (Campbell et al, 2003a: 1092). However, it is not enough to know unemployment status alone. It is much more useful to learn **what the threat or experience of unemployment means to the offender**.

According to Wilson and Daly **the presence of children of other unions** constitute, "a major risk marker for violence against wives" (Wilson and Daly, 1998: 226). These researchers draw attention to the fact that some batterers have a hard time raising **children their partners have had with a previous man**. Campbell et al (2003a: 1092) note "instances in which a child of the victim by a previous partner was living in the home increased the risk of intimate partner homicide."

Risk assessors speak of "high risk" when a multitude of red flags appear simultaneously. Put simply, **the more often the potent risk factors appear and the greater their intensity, the more likely pre-lethal violence or homicide becomes**.

## Conclusion

Being aware of the presence of risk markers in cases of domestic violence enables court clerks to make more informed decisions about the safety and security of all concerned. On the other hand, we should not think of risk markers as foolproof. They are not. **It is vitally important to listen to battered women's statements about their own situation, especially if they report being in imminent danger**. Clearly, **court clerks are not in the business of conducting risk assessments or coaching** those with whom they interact. Nevertheless, court clerks have a **moral and ethical duty** to provide a safe environment for those exercising their democratic rights to use the courts. Providing sensitive services and paying attention to the needs of all seeking services will make for a safer courthouse. An important goal is to work toward creating what I have called **informed professional interaction with those seeking services**.

## References

Block, Carolyn Rebecca. 2003. "How can practitioners help an abused woman lower her risk of death?" NIJ Journal, Issue No. 250 pp 4-7.

Campbell, Jacquelyn C. et al, (2003a) "Risk factors for femicide in abusive relationships: Results from a multisite case control study." American Journal of Public Health, July 2003, Vol 93, No. 7, pp. 1089-1097.

Campbell, Jacquelyn et al. 2003b. "Assessing risk factors for intimate partner homicide." NIJ Journal, Issue 250: 14-19. 10.

Hart, Barbara. (1988). "Beyond the Duty to Warn: A Therapist's Duty to Protect Battered Women and Children." In Yllo, K. & Bograd, M. (Eds.) Feminist Perspectives on Wife Abuse. (pp.234-248). Newbury Park, California. Sage.

Websdale, N. 1999. Understanding Domestic Homicide. Northeastern University Press. Boston, MA.

Wilson, Margo and Martin Daly. 1998. "Lethal and Nonlethal Violence Against Wives and the Evolutionary Psychology of Male Sexual Proprietariness." Chapter 8 in Dobash, R. Emerson and Russell P. Dobash (eds), Rethinking Violence Against Women. Sage. Thousand Oaks, California, pp. 199-230.

\*\*\*\*\*

Dr. Neil Websdale is Professor of Criminal Justice at Northern Arizona University and Principal Project Advisor to and former Director of the National Domestic Violence Fatality Review Initiative. He has published work on domestic violence, the history of crime, policing, social change, and public policy. Dr. Websdale has published four books including: *Rural Woman Battering and the Justice System: An Ethnography* (Sage Publications), 1998, which won the Academy of Criminal Justice Sciences Outstanding Book Award in 1999; *Understanding Domestic Homicide* (Northeastern University Press), 1999; *Making Trouble: Cultural Constructions of Crime, Deviance, and Control* (Aldine Books, co-edited with Jeff Ferrell), 1999; and *Policing the Poor: From Slave Plantation to Public Housing* (Northeastern University Press), 2001, winner of the Academy of Criminal Justice Sciences Outstanding Book Award in 2002 and the Gustavus-Myers Center for the Study of Bigotry and Human Rights Award in 2002. He is currently working on a book tentatively entitled Familicidal Hearts, due to be published by Oxford University Press in 2008.

His social policy work consists of helping establish a national network of domestic violence fatality review teams. He has also worked on issues related to community policing, full faith and credit, and risk assessment and management in domestic violence cases.

Dr. Websdale trained as a sociologist at the University of London, England and currently lives and works in Flagstaff, Arizona.

### **Building a Community Based Mental Health Court Program**

Hon. Stephen S. Goss, Superior Courts of Georgia, Dougherty Circuit, Albany, Georgia

As a state trial judge with felony jurisdiction, I was seeing the same defendants presenting obvious mental health issues every few months. The cyclical pattern was like a revolving door. The defendants would typically appear with a probation violation charge such as a drug test failure or a new misdemeanor charge. These violations would frequently coincide with a life stressor event, which resulted in the individual stopping their mental health prescription drugs or “self medicating” with alcohol or street drugs. The person’s mental state would deteriorate and he/she would land in jail. I would also see the frustration of jail staff and law enforcement officers who knew they were not able to deal with the underlying reason these persons kept landing in jail. It not only clogged up my docket, it was filling our jail with mental health patients, placing a strain on thin local budgets and resources. This phenomenon happens across the country.

Albany is a small city in rural southwest Georgia. It is in the center of one of the poorest Congressional districts in the country. This area is designated by the United States Department of Health and Human Services as a health professional shortage area. We have very high poverty rates and a shortage of mental health treatment professionals to serve many of these indigent persons. As noted, our jail had become their mental health treatment facility. We were getting offenders in jail on minor charges, holding them for sixty to ninety days until stabilized on medicine, and discharging them. However, with unstable living situations and no case management, most of these people would land back in jail within weeks and start the cycle again.

In 2001, I gathered a cross-section of local law enforcement, jail staff, judges, lawyers, mental health professionals, counselors and disability advocates for a discussion of these issues. We set two goals. First, we have an ongoing goal of better training for police and paramedics. Two local psychologists conducted basic instruction on how these first responders can identify a person with a de-compensated mental state and interact with them to avert escalation into a possible violent confrontation. The court is currently working with state officials and NAMI to provide Crisis Intervention Training (CIT) to local officers.

The second goal was to develop a system for dealing with these cases in court. In a coordinated effort with the local community mental health board (Albany Area Community Services Board) and the Georgia Department of Human Resources, we started the first felony mental health treatment court program in Georgia in 2002. It operates as a dual diagnosis program. Some of our participants have mental health issues only and some solely have substance abuse issues. However, many have both problems. We have a diversion component. Treatment Court staff meets multiple times a week with jail staff to screen persons coming into the jail who might need an immediate referral to the local mental health crisis center or the state hospital for medication stabilization. We also have a probation case management program. After screening by the defense and prosecuting lawyers, if endorsed by the treatment professionals, the matter is brought before me as presiding judge. If the participant elects to come into the program and meets public safety criteria (i.e., no sex offenders), then the defendant has a case- tailored treatment plan incorporated into the probation order. Such a plan may include mental health prescription therapy, substance abuse treatment and counseling, or participation in a 12-step group program. Additionally, case managers assist with transportation to treatment and housing issues. Depending on the participant’s level of functioning, assistance may be provided for job training and placement.

Because of the shortage of treatment options and scarce resources, we have worked closely with both state and local treatment providers to use the mental health services available here. We have linked with local housing providers on the homelessness issue faced by many of these

persons. In sum, we have used what is available in an organized fashion with better and more coordinated communication.

We found that recidivism plummeted for the mentally ill participants. Once living situations and medications were stabilized and monitored, the mentally ill offenders had few subsequent arrests. While this group of defendants averaged 136 days a year in the local jail before coming into the program, over forty percent have not been arrested again since going through the mental health court. We have seen some participants rearrested, but most of these are dually diagnosed persons with cocaine addiction, who relapse into substance abuse. Nevertheless, we have reduced recidivism in the dual diagnosis group as well.

In early 2006, our program was designated by the United States Department of Justice Bureau of Justice Assistance and the Council of State Governments as one of five national Learning Sites (Albany, Georgia; Bronx, New York; Akron, Ohio; Idaho Falls, Idaho; Reno, Nevada). This Learning Sites Initiative is part of an ongoing effort to collect data on these new mental health court programs that are rapidly cropping up across the country. Additionally, these five courts have agreed to share information and to serve as mentoring locations for jurisdictions starting new programs. More information about these programs can be found at [www.http://consensusproject.org/mhcp/](http://consensusproject.org/mhcp/). The website for our program is <http://albanycsb.org> click on "treatment court".

\*\*\*\*\*

Steve Goss, Superior Court Judge for the Dougherty Circuit, collaborated in creating Georgia's first mental health court. He's an advocate for the value to judges, as well as to the community, inherent in this type of court operation. His Albany, Georgia, general jurisdiction court has been designated as a national learning site to demonstrate the efficacy of mental health courts. Judge Goss teaches at the National Judicial College on this topic, and is available to work with state judicial education programs. Judge Goss can be reached at [goss@gajudges.org](mailto:goss@gajudges.org)

**From:** Thiagi [thiagi@thiagi.com]  
**Sent:** Tuesday, July 31, 2007 11:25 AM  
**To:** Schopick, Philip  
**Subject:** August Issue of Thiagi's Newsletter Now Available

### **Thiagi GameLetter**

The August 2007 issue contains--

- An article on rapid training design that presents five games that incorporate questions generated by participants.
- A fast-paced activity about handling upset customers that alternates team discussions with paired conversations.
- A paper-and-pencil game called CLEAR COMMUNICATION that rewards you for coming up with clear examples of communication concepts.
- Brief reviews of two more books on simplification.
- A cryptic cluster puzzle that incorporates ten suggestions for becoming a facilitative trainer.
- Brian's insights on an empty desk.
- A short review of the Improv Encyclopedia website.
- A single item survey concerning obvious facts about training.

You can read it by visiting <http://thiagi.com/pfp/august2007.php>

The September 2007 issue contains--

- An article on training design: Do It Anyway: Level 4 Evaluation Design
- A framegame, COMMUNICATION STYLES, that explores both sides of an issue
- CEO, a hand game in which low status people beat high status people.
- Mini-reviews of three useful books
- A cryptic cluster puzzle about obvious facts related to training
- Brian Remer's 99 words on trash and treasure
- Online resources related to a simple hand game
- A single item survey for alternatives to the word "game"

You can read it by visiting <http://thiagi.com/pfp/september2007.php>

The October 2007 issue contains--

- An article on designing training while delivering it
- An interview with a mystery guest who gives a lot of practical advice
- A review game called GRAB THAT SPOON!
- A closer called MEMORABLE
- A logic puzzle plus hints on using logic puzzles in training
- Mini-reviews of three collections of team activities
- The solution to last month's puzzle (along with the names of people who sent in solutions)
- Brian's 99 words on little problems and big issues
- A review of Sharon Bowman's website
- A single item survey on making effective decisions

You can read it by visiting [http:// thiagi.com/pfp/october2007.php](http://thiagi.com/pfp/october2007.php) .

## **Inside the mind of the judge – Part VI: How Appellate Judges Decide Cases**

By Judge David M. Gersten

### **I. Introduction**

In the last edition of the Inside the Mind of the Judge series, I covered how trial judges make decisions. I discussed the diversity of judges and the different approaches that trial judges may use to make their decisions. Ultimately, I concluded that trial judges strive to make a right, just, and proper decision.

This article will explore the process by which appellate judges make decisions. In doing so, I will detail the two types of appellate judges and their philosophies. I will also further dissect these types of judges into two categories: (1) the “one-vote” judge, and (2) the “player” judge. I believe that most appellate judges will not enjoy this article because it deviates from a traditional “party line” and explores the reality of appellate decisions.

### **II. How Appellate Judges Make Decisions**

Just like trial judges, appellate judges also strive to make a right, just, and proper decision. Yet, an appellate judge is very different from a trial judge. Although appellate judges may have wisdom and knowledge from their experiences as a trial judge and/or as an attorney, their job is completely different from that of a trial judge. Their job is different because the appellate process is a political process. Political does not mean Democrat or Republican. It means, rather, that the appellate decision-making process, unlike a trial judge's, involves more than one person.

Although appellate judges are higher up on the judicial food chain, this does not mean that appellate judges are smarter than trial judges. Appellate judging, much like trial judging, takes a large amount of practical sense. Applying practical sense means that the appellate judge must be able to visualize how the opinion will affect or "play out" in the real world of law.

Next, appellate judges have certain personality traits that generally separate them from trial judges. As a practical observation, appellate judges lean towards introversion. Therefore, appellate judges are often less gregarious than trial judges. Also, appellate judges are less open with their thoughts and feelings when conversing with other trial judges and non-judges. But introversion is a suitable personality trait for judges who spend most of their day reading and writing.

Appellate judges, like trial judges, have a personal sense of justice. Often, that personal sense of justice appears in their opinions. Therefore, if one takes the time to read a judge's opinion, it is possible to glean that judge's personal sense of justice.

Admittedly, a judge's sense of justice is embedded in his or her personal philosophy. His or her personal philosophy may range from strict constructionist to ultra liberal. However, sometimes appellate judges use their philosophies to manipulate the law. Manipulation of law is not as bad as it sounds.

Appellate judges manipulate the law because they are compelled by their personal sense of justice to assure the outcome of a case. While the trial judge follows the rules of evidence and procedure in an attempt to mold the facts with the law, the appellate judge is free to pick and choose both law and facts in writing an opinion.

This is not to imply that opinions are written in an incoherent or false fashion; they are not. Rather, they take the form of logic and reason peppered with supporting facts and law. The final opinion will generally appear to reach an obvious conclusion. The conclusion then effectuates the writer's justice.

### **III. Appellate Judges' Review Philosophy**

Ninety-nine percent of all judges, appellate or not, will state, "I follow the law." The problem is that justice and law do not always intersect. In other words, all laws are not just.

Using the term "philosophy" again, appellate judges view their review function in two competing fashions: (1) "if I were the trial judge, I would have decided the case differently. However, I will defer to the trial judge;" or (2) "if I were the trial judge, I would have decided the case differently. Therefore, I will decide the case the way I thought it should have been decided."

An appellate judge has to determine which general review philosophy he or she will adopt. The sooner an appellate judge decides the better. Otherwise, one gets confused in determining his

or her appellate function. In other words, by deciding which philosophy to employ, an appellate judge decides if he or she wants to follow justice or follow the law.

The decision of whether to do justice or follow the law may be daunting for some appellate judges. Because justice and the law do not always intersect, the lofty concept of justice may seem attainable, but only if the law is molded to accomplish a judge's personal view of justice.

The interesting "X" factor for appellate judges is that appellate judges have a lot of discretion in deciding which way a case can go. They can follow the law and compromise their sense of justice, or instead, they can follow their sense of justice and create law or exceptions to the law.

In my opinion, most appellate judges try to only follow the law. I assure you, however, that it is impossible to make every case fit within the law. It is even harder to find an appellate judge who states that he or she follows the law 100 percent of the time. As a result, appellate law remains far from certain or predictable.

#### **IV. "One-vote" judge versus "player" judge**

Because most appellate courts sit in three judge panels, there is one factor that somewhat equalizes appellate law and appellate judges—the majority vote. Appellate judges have two options: (1) to cast one vote or (2) to cast one vote and influence another judge to join in a majority decision. These options generate the one-vote judge versus the player judge phenomenon in each appellate court.

When it comes to judicial decision-making, a one-vote judge understands that he or she only has one vote. A one-vote judge carefully decides how to use his or her vote. Once he or she casts a vote, however, he or she then waits on the other judges to vote and determine the majority.

On the other hand, a player judge tries to bend the will of at least one judge to form a majority. A player judge understands that he or she needs a majority of votes to mold the law to the player judge's concept of justice.

The underlying flaw in the player judge's logic is failure to recognize that his or her sense of justice may be inverted and ego-centric. An ego-centric sense of justice may cause an appellate judge to rationalize decisions. An ego-centric sense of justice may cause appellate judges to overvalue their decisions, claiming their law should be the only law. As a result, a balanced panel viewpoint is lost, and true consensus justice does not always prevail.

If you are not clear what I mean by player judge or ego-centric sense of justice, I suggest reading some of the United States Supreme Court majority opinions. Some justices follow precedent. Some justices distinguish precedent. You, gentle reader, can decide which is the better philosophy to follow.

#### **V. Conclusion**

Appellate judges, at some point in their careers, may define themselves as one-vote judges or player judges. However, most appellate judges are one-vote judges. Thus, you can be certain that there are fewer players manipulating the direction of law. Regardless of an appellate judge's affiliation as a one-vote or player judge, fealty to the law guides appellate judges.

Please email me at [gerstend@flcourts.org](mailto:gerstend@flcourts.org) with any suggestions or solutions that we can share with our membership. Thanks for reading. FRATRES CONJURATI.



***Judge David M. Gersten has served as an appellate court judge since 1989, having previously served at both tiers of the trial courts since 1980. Judge Gersten served as the Associate Dean for the Florida College of Advanced Judicial Studies and is currently a faculty member lecturing on: Alimony, Domestic Violence, UCCJEA, Enforcement of Non-U.S. Judgments, Collegiality, Bio-Ethics, Constitutional Law, Criminal Issues, and Civil Issues. He also serves as faculty for the National Judicial College, Reno, Nevada, and is an Adjunct Professor at St. Thomas University School of Law. Judge Gersten has published articles on a variety of legal topics. His publications include: Matthew Bender: "Florida Civil Practice Guide" (1994-present); Reviewer, Florida Forms of Jury Instruction (1990 to present); The Florida Bar Journal: "Evidentiary Trends in Domestic Violence" (1998); "The Doctrine of Lis Pendens: The Need For A Balance" (1995); Special Report: Legal Ethics in Florida, "A Consensus of Morality In Ethics - Toward A Comprehensive Code of Professional Ethics" (1991); "Manifest Necessity - A Trial Judge's Responsibility to Assure Justice" (1989).***

## **Education Services Department, Office of the Executive Secretary of the Supreme Court of Virginia**

Caroline Kirkpatrick

The Educational Services Department is one of 12 departments in the Office of the Executive Secretary of the Supreme Court of Virginia. The Office of the Executive Secretary is basically Virginia's administrative office of the courts or AOC, as it is known in many states. The Office of the Executive Secretary provides assistance to the Chief Justice in the administration of the judicial system. With the assistance of many departments in this office, but primarily through the Educational Services Department, Chief Justice Leroy Rountree Hassell, Sr. and Executive Secretary Karl R. Hade have made educating judicial system employees a priority.

Despite the relatively small size of the department (four full-time staff), a fairly large number of events are hosted in Richmond, where the Office of the Executive Secretary is housed, along with the Supreme Court, and in other areas throughout the state. The Pre-Bench Orientation Program for all newly appointed judges "kicks off" the training season in late March. This program is comprised of three one-week sessions offered in March, May and June each year. Continuing education for Virginia judges occurs during their annual conferences, one for which attendance is voluntary and one for which attendance is mandatory. Legislative and case law updates always top the agenda, however other "hot topics" are also included and decided upon by the Education Committee for each group of judges. These committees are comprised of eight judges from various geographical areas throughout Virginia, and members serve for three-year terms. Beginning last year, we have also added computer skills training to the Pre-Bench Orientation Program and to the judicial conference agendas. Classes include *Basic and Advanced E-mail, Legal Research, Electronic Resources Available through the Intranet, and Effective Use of the Internet.*



Virginia judges are one of the primary groups trained by the Educational Services Department, but they are by no means the only group. Clerks, magistrates, hearing officers, special justices and substitute judges are other beneficiaries of the many educational opportunities provided. Large statewide conferences take place on an annual or bi-annual basis, and regional training (typically offered in six locations) occurs throughout the year. In addition, technology and business skills courses are available online to all judicial system employees (at no cost to the employee), 24 hours a day from any location with Internet access, through the e-learning solutions company, Skillssoft.

As a result of grant funding, a new Clerk Certification Program (CCP) has been implemented within the last year, allowing those participants to enroll in the Michigan State University Judicial Administration Program. The clerks currently taking advantage of this grant funding have enrolled in online courses based on the NACM Core Competencies, including *Information Technology Management and Education, Training and Development*. They have also achieved course credit hours in *Vision and Strategic Planning* by attending the Mid-Atlantic Association for Court Management (MAACM) Mid-Year Conference in June. Continually seeking grant funding and other monies to enable us to offer additional training to those groups we serve is a primary goal of our department.

Another special project currently underway is the offering of Spanish language classes to staff in Virginia's judicial system, preliminarily to those staffing the district court clerks' offices. A pilot program was held earlier this year, in which occupational Spanish language classes were offered to court personnel in Richmond and in Harrisonburg. Based on the feedback from students, including the addition of several phrases most often used in the clerks' offices when dealing with non-English speaking customers, Command Spanish is developing a curriculum tailored specifically for Virginia judicial system employees. Once the curriculum has been developed, the program will be rolled out on a statewide basis.

Despite the many "routine" events sponsored and planned by the Educational Services Department, there are always new ventures on the horizon that allow us to constantly hone our conference planning and curriculum development skills. The first such "venture" of 2008 occurs in January with the Mid-Year Meeting of the Conference of Chief Justices in Williamsburg, Virginia. The Educational Services Department will assist the National Center for State Courts (NCSC) in their efforts to host and support this important event. The 71<sup>st</sup> Annual Conference of the National Council of Juvenile and Family Court Judges (NCJFCJ) will be held in Norfolk, Virginia in July 2008. As the host state, our office and a committee of judges will be involved in some capacity in the planning and delivery process of the event. A State-Federal Judicial Conference is also scheduled for next July, and the Educational Services Department is working with a committee of state circuit court judges and federal judges to plan the educational content as well as any related social events. Ultimately, with this continual momentum, we will not only maintain the current level of training, but also will increase the quality and quantity of educational opportunities available for those pursuing a career in Virginia's judicial system.

### **It's a Small World, After All**

By Ellen Marshall

Thankfully, our organization's title, **The National Association of State Judicial Educators**, does not fully describe our evolution into being JBE (Judicial Branch Educator) experts around the world. Many of our colleagues have worked in either short or long term international assignments and have had amazing experiences. From the beginning of NASJE's history,

judicial branch founding educators like: Paul Li, retired CJER director; Dennis Catlin, Michigan JEO and now Associate Professor in the Department of Criminal Justice at Northern Arizona University (Tucson). Tony Fisser, retired Connecticut JEO and now president of his own consulting company; and Larry Stone, retired Ohio JEO who consulted six times in Ukraine over a four year period and once in China for three weeks as part of a delegation, have used their expertise to assist developing judicial systems to create a judicial education function. We polled our membership to locate JBE's working internationally to tell us about how they employ their JBE skills in other cultures, how that work has changed their perspective, and how they access NASJE resources in their consultancies.

This is the first of two articles describing how the JBEs transfer expertise learned through their professional development and experience in the U.S. to another legal culture. The author will relate the practical aspects of taking international consultancies, like pay and taking time off from full time state jobs, to the more philosophical considerations like how these consultancies transform their lives. We will go from the general to the specific experience, as we educators tend to do on a daily basis.

NASJE members were polled on the JERITT listserv to determine how many of us worked internationally. From those responses, the author asked questions about the experience and from that colloquy, this article emerged.

Generally, NASJE consultants work either on a pro-bono basis or a fee basis, depending on the length of the project and the nature of the consulting task. For example, Joe Silsby (JEO Missouri) says that CEELI will pay only transportation and per diem sustenance allowances to their consultants. On the other end of the continuum, Mary Frances Edwards (formerly with the National Judicial College), now works full time in Egypt for AMIDEAST and receives a salary and benefits, as well as generous annual time off to get home.

Those who have full time jobs in the U.S. often have to negotiate either using accrued vacation time to work internationally or take administrative leave. Probably, there are variations in that continuum, for example, using some earned leave and administrative time. Speaking from this author's D.C. Court experience, the Executive Officer ( D.C.'s equivalent of SCA) saw this as a compliment to our court that its JEO would be solicited to work internationally. She used administrative leave for the entire consultancy.

It should be noted, however, that all of these projects are funded by governmental or not-for-profit organizations that receive U.S. government (often through USAID's Rule of Law grants) or United Nations Development Program money to support their project goals. And, as a rule of thumb, even if the entity is only paying transportation and sustenance per diems, they will place you in a Business or First Class seat on the flights if your travel time is longer than twelve hours. Try a coach seat to Cambodia or Mongolia and you'll see the wisdom in that policy.

The practical considerations aside, however, several JEOs who have worked in other cultures, describe the immense gratification they experience from interacting with colleagues in other parts of the small world in which we live and work. Mary Fran Edwards writes:

*Working abroad is extremely rewarding. There is nothing like living in place to get to know the culture and customs. I am fortunate that both countries in which I have been assigned have strong ex-patriate communities where I can meet other people with similar interests and backgrounds.*

In answer to this author's question about life-changing consultancies, Joe Silsby replies:

*I don't think any of my experiences were as dramatic as "life changing." I relearned that people are afraid of the unknown (many, if not most, Americans) and assume that you should be too. It confirmed things that I already knew, that people are people, that people from the Middle East (as well as Asians) don't question your assertions in order to "save face," and once in a while there is a shy shining star in your class that wants to know more but is not sure how to approach you.*

Debra Koehler, currently working for Maryland's Judicial Institute, speaks with much emotion about her work with Kosovar leaders in the Hope Fellowship Program. Recently, she described how her work there created life-long concerns for the nebulous political status of her friends in Kosovo:

*I worry about them all the time. What must they be going through, with the UN not giving their country independence? I am afraid they are facing more bloodshed if the matter is not resolved. Look what happened in Bosnia.*

International consultancies can last for a few days or for years: Joe Silsby describes his African consultancy:

*The first program I presented was for clerks in Morocco (Casablanca and Marrakech) and the second program was for judges in Algeria (Algiers). For the two programs in Morocco, I co-presented with a fellow from Kansas who spoke on transactional analysis. These two programs lasted three days each. In Algeria I was the sole presenter for the three day period.*

Ernie Borunda writes: "As you know I was overseas until October 2006. I have done two additional short term assignments in the past year." {Note: Until 2006 Ernie (formerly a judge in California and then Academic Dean for the National Judicial College) worked in long term consultancies.}

In the same vein, several JBEs from California (CJER and California AOC) describe their work in Macedonia. Maggie Cimino writes that "I was in Macedonia as faculty for a Judicial Faculty Development course for 2 weeks in May 2005." Claudia Fernandez also taught short term for Ernie Borunda's faculty training project in Macedonia, led the Macedonian rule of law project for Chemonics, and lived in Macedonia for two years.

Diane Cowdrey of Utah tells us that "I traveled to Macedonia in spring 2006 to do some judicial training for Ernie Borunda.

Pat Murrel describes her short-term consultancies as follows "...I have worked in Macedonia twice, Morocco twice, Jordan and Canada several times. This October I will be on the program for International Organization for Judicial Training (IOJT) in Barcelona." {Note: Pat doesn't include the length of time she spent in each country}.

JEOs perform a gamut of adult education functions when they work abroad. Mary Fran Edwards describes this variety:

*In general, I am an advisor instead of being an implementer. There are several areas in which I have concentrated in Mongolia and Egypt: Training of Trainers (I can teach the Basic myself but usually utilize local PhDs for advanced issues, thereby ensuring long term sustainability),*

*helping with curriculum development (including learning objectives and encouraging course materials), use of sophisticated audio visual aids, and enhancing staff capacities through in-house training. Everything is aimed towards enhancing capacity and creating sustainability so that enhancements can be maintained after the project is over. For instance, we are assisting with expertise and funding the development of a new web site for the judicial studies center here. We will also provide web site maintenance training so the center can sustain the web site on its own. I am still working with judges who are experts on the law and decide the content of courses both of my projects also do study tours to the USA or third countries. I am a designer and sometimes an escort instead of host for study tours.*

*I guess the key difference is that almost everything involves a training element, even if it is only OJT, to ensure that enhancements will be sustained. For instance, the judicial center library was using an obsolete Dewey Decimal system 20 years old. We brought in a consultant who had a crew reorganize and recode in the up-to-date Dewey system. We then hired an expert through the American University of Cairo to train the center's own librarians on how to code. My JE team is now working with an outside data entry vendor to computerize the entire card catalog. The JE Team will then hire someone to train the center librarians on how to enter new items into the system. Here in Egypt, my department also organizes and monitors computer training for court staff because another section of the project is automating some of the courts. In Mongolia, the project IT Team trained the court staff themselves, and my JE team had nothing to do with it.*

Why should full time JEOs consider an international consultancy? Joe Silsby explains:

*I would certainly welcome the opportunity to teach overseas again and I think everyone should consider it. We live in a global society and to understand the global society it is imperative to travel and to see things from a different point of view.*

In this author's on-line interview with Mary Fran, I asked: "Would you share with your NASJE colleagues an insight you gained or a life changing experience you had that was a direct result of this work?"

Her reply:

*I have come to be more sensitive to other cultures and respect other cultures' standards and customs more. Living abroad also bashed cultural stereotypes. For instance, Mongolians have one of the highest literacy rates in the world and are the most cultured people I have never encountered. Every Mongolian has been to the opera or ballet, and the contemporary paintings and sculpture are magnificent.*

What should be NASJE's legacy to the international justice community?

Joe Silsby replies, "That there is more to judicial education than educating judges.

Mary Fran Edwards reflects that NASJE should be:

*Encouraging NASJE members to take foreign assignments, especially those who are retired and have flexible schedules. NASJE members on vacation should make an attempt to contact local judicial education centers; it will enrich their travel experience.*

From its earliest days NASJE members have shared best practices in JBE with their colleagues in other parts of the globe. In this article current members have recounted the practical

expediences of international work as well as the life-enhancing benefits of engaging with another culture. The next issue will include information about the resources JEOs tap into while working internationally and address any specific questions readers ask about this rewarding work.

*Ellen Marshall has worked as director of both the Maryland and District of Columbia Court Education and Training Divisions. She followed her heart to work for the Hope Fellowship Program in Kosova from 2003-2005 and to start her own adult education company, Eureka! Contact Ellen with questions or ideas for the next article in this series at [Eurekacompany@aol.com](mailto:Eurekacompany@aol.com).*

## **A Report on Judicial Education Staffing and CLE across the country**

By Laurie Ginn

Recently, judicial educators around the country used the JERITT listserv to request of each other information regarding judicial education staffing and state judicial education requirements. This article details the responses to the JERITT inquiries, includes the state population estimates from the 2005 U.S. Census Bureau, and offers a special thank you to everyone who submitted the responses.

As one might expect, the actual number of judicial educators differs in the various states. For example, Maine does not have a separate judicial education staff while Georgia has 24 judicial education division employees. While the divergence in numbers is at first startling, the divide is not as wide as it appears. A Maine Supreme Court Justice is in charge the coordination of Maine's judicial education and is assisted by a secretary. Arizona employs 31 people in its judicial education services but has 4.6 million more people than Maine. Every jurisdiction has its own unique challenges and requirements for judicial education.

### **Arizona – 31 Judicial Educators** (Population approximately 5,939,292)

Arizona has thirty one full time judicial education service employees, who serve 575 judges and other judicial staff. Another 117 court personnel are "training coordinators" when they are not performing their regular court duties. The education division offered more than 60 programs including web courses.

Although the number of judicial education programs offered is different, all the states above are focusing on the important goal of judicial education. Continuing legal education is important, especially in today's changing fast-paced world. Judicial education is the key to transform information into instrumental knowledge and lasting wisdom. According to the English poet Alfred Lord Tennyson, "Knowledge comes, but wisdom lingers."

### **Georgia – 12 Judicial Educators** (Population approximately 9,072,576)

Georgia's judicial education is not directly connected to the Supreme Court. Rather, Georgia's ABA accredited law schools, State Bar, and judiciary all support the Institute of Continuing Judicial Education of Georgia (ICJE), which is funded by Georgia and local governing authorities. The ICJE holds a number of programs a year and is responsible for the training and continuing education of the judicial branch. Georgia's programs encompass 50,000 hours, 3,000 attendees, and 140 to 150 workdays per year.

### **Illinois – 6 Judicial Educators** (Population approximately 12,763,371)

Illinois' six full-time judicial education staff members gain support from other divisions within the Administrative Office of the Illinois Court, such as the financial Division, to put on its educational programs. The education staff presents new judge programs and programs that last one to two days every year. Advanced Judicial Academies and Educational Conferences are offered biennially. The education staff also provides resources to all approximately 920 trial and appellate state court judges.

Illinois judges are exempt from Continuing Legal Education requirements. Every Trial and Appellate Judge is required to attend a bi-annual conference, which is mandated by the Illinois Supreme Court's judicial education policies and practices. The policies and practices give Judges continuing legal education and specific resources for the Illinois judiciary. New judges and judges hearing capital cases are mandated to attend further educational programs. The Administrative Office of the Illinois Courts oversees the programs and attendance.

**Iowa – 1 Judicial Educator** (Population approximately 2,966,334)

Iowa's sole judicial educator coordinates twelve to fifteen programs per year. The judicial education also comprises special orientation programs, subject matter programs, and a three day institute. Iowa has 116 General Jurisdiction Judges, 57 Limited Jurisdiction Judges, 12 Juvenile Judges (full time), 1 Probate Judge, 30 Senior Judges, and approximately 150 Magistrates (part-time), 175 Juvenile Court Officers, and 100 Clerks/Deputies. All Judges and attorneys, no exceptions, must complete 15 Continuing Legal Education hours each year and two hours of ethics every two years. New judges complete an orientation program and a two-week program at The National Judicial College.

**Kentucky – 8 Judicial Educators** (Population approximately 4,173,405)

Kentucky's eight staff members are employed by the Supreme Court's Administrative Office of the Courts.

**Maine** (Population approximately 1,321,505)

As noted above, Maine utilizes a Maine Supreme Court member and a secretary to coordinate its judicial education.

**Maryland – 4 Judicial Educators** (Population approximately 5,600,388)

The Maryland Court of Appeals employs four judicial education staff members. New judges attend New Trial Judge Orientation, which lasts for 6 days. Experienced judges attend an annual Judicial Conference and complete 16 hours of continuing legal education selected from 35 different CLE programs to complete the CLE requirement. New judges and judges entering the family law rotation attend the Family Law Curriculum, while the ASTAR (science and technology) judges attend a regional program and a national program, each three days long.

**Michigan – 14 Judicial Educators** (Population approximately 10,120,860)

The Michigan Judicial Institute has fourteen staff members.

**Missouri – 24 Judicial Educators** (Population approximately 5,800,310)

The Office of the State Courts Administrator's Judicial Education Division has twenty four employees. The Office of the State Courts Administrator is the administrative arm of Missouri's highest court, the Missouri Supreme Court. One Judicial Education Division staff professional is assigned to coordinate programs for judges and commissioners, non-judicial court employees, and juvenile and detention workers.

**Montana – 1 Judicial Educator** (Population approximately 935,670)

Montana's single judicial educator is employed by the Supreme Court, Court Administrator's Office. Montana holds 9 to 10 judicial conferences per year and conducts additional basic training as needed for New Juvenile Probation Officers and New District Court Judges. One additional conference is a basic training for New District Court Judges. Limited Jurisdiction Judges must complete two trainings per year. Limited Jurisdiction Judges may not carry over any Continuing Legal Education credits. District and Supreme Court Judges complete a 16 hour program and can carry over extra Continuing Legal Education credits for two years.

**Nevada – 4 Judicial Educators** (Population approximately 2,414,807)

Nevada's Supreme Court employs four Judicial Education staff, who are all Administrative Office of the Courts employees. The staff size is linked to the Judicial Education Division's judicial education conferences and conferences held by other organizations. Nevada is growing rapidly, which has led to a significant increase in judicial officers and staff requiring more judicial education programs. Nevada requires its judiciary to attend certain courses at The National Judicial College. Each judge is required to complete The National Judicial College's General Jurisdiction or Special Court Jurisdiction course within 12 to 24 months of taking the bench. The National Judicial College's Ethics for Judges is also prescribed by the State of Nevada.

**New Hampshire – 1 Judicial Educator** (Population approximately 1,309,904)

New Hampshire's part-time judicial educator is also a staff attorney to the Office of General Counsel to the Supreme Court. The judicial educator, employed by New Hampshire's Supreme Court, shares an assistant.

**New Jersey – 8 Judicial Educators** (Population approximately 8,717,925)

New Jersey has a director and seven support staff. The seven support staff members include an assistant director, two secretaries, two computer specialists, a program coordinator, and an administrative assistant. The programs address a variety of topics and vary in duration from three hours to 11 days. The judicial education staff also conducts the judicial evaluation program of judge's performance.

**North Dakota – 1 Judicial Educator** (Population approximately 636,677)

North Dakota holds two judicial education conferences per year and additional conferences as needed. The additional conferences include Leadership, Management, and other topics. The sole judicial educator, employed by the Administrative Office of the Courts, holds biennial conferences, including a Judicial Institute and the Bench and Bar Seminar. North Dakota has 42 District Court Judges and five Justices. North Dakota requires forty five continuing legal education hours over three years with three ethics hours, which are reported to the Administrative Office of the Courts. No hours may be carried over into another time period.

**Ohio – 12 Judicial Educators** (Population approximately 11,464,042)

Ohio's Judicial College, a division of the Supreme Court of Ohio, utilizes 12 full time staff for judicial and court personnel education. There are currently one director, five program managers, and six support staff. Ohio's judicial education staff offers around one hundred and twenty courses annually. Active judges must complete 40 Continuing Legal Education hours every two years. Retired judges and magistrates complete 24 Continuing Legal Education hours every two years. Judges may carryover up to 12 hours from one reporting period to the next. Ethics, the New Judge Orientation, and mentoring programs are prescribed. Judges within the capital case jurisdiction must attend a capital cases program.

**South Dakota – 1 Judicial Educator** (Population approximately 775,933)

South Dakota's judicial educator is employed by South Dakota's highest court through the State Court Administrator's Office. The judicial educator plans three judicial conferences and annual conferences for court staff – clerks, deputy clerks, court services officers, and court reporters.

**Virginia – 4 Judicial Educators** (Population approximately 7,567,465)

Virginia has four Judicial Education staff employed by Virginia's Supreme Court. The Judicial Education Staff include the Director, Conference Coordinator, Education Specialist, and an Administrative Assistant. The Judicial Education staff holds thirty annual events that include week-long conferences and certification classes for all Virginia judges, substitute judges, clerks, magistrates, and hearing officers.

**West Virginia – 1 Judicial Educator** (Population approximately 1,816,856)

West Virginia's judicial education director, an attorney, has a part-time secretary and holds 15 to 20 conferences per year. The Judicial Education department has support from other judicial department directors and staff. Justices, General Jurisdiction Judges, and Family Court Judges must complete 30 hours of judicial education every other year. Magistrates and Probation Officers attend annual conferences. Specific hour credit is reported directly to the Administrative Office by the Judges. Court staff attend biennial conferences.

\*\*\*\*

Ms. Laurie Ginn became a Program Attorney for the National Judicial College in March 2006. She concentrates on the Judicial Writing and Judicial Management courses, including Management Skills for Presiding Judges and Court Management for Judges and Court Administrators. She also edited the Second Edition of *Logic and Legal Reasoning*. Prior to accepting the position with The National Judicial College she was the Legal Case Manager for the Public Utilities Commission in Carson City, Nevada. Ms. Ginn received her Bachelor's degree at Oregon State University and her Juris Doctor at Willamette University College of Law. During law school she was a member of the Willamette University Public Interest Law Project. She is a member of the Nevada and California

**Opening Plenary: Chief Justice De Muniz**

By Lee Ann Barnhardt

Oregon Chief Justice Paul De Muniz delivered the opening plenary session of the 32<sup>nd</sup> National Association of State Judicial Educators Conference held Aug 12-15 in Portland. He addressed the importance of judicial education in maintaining the delicate balance among the three branches of government.

De Muniz explained that our constitutional democracy is not self-sustaining and must be nurtured from generation to generation. He said while the other two branches of government acquiesce to judicial power, the judicial branch can't fund its own operations or enforce them on its own. The power of the judiciary, he said, comes from the majority of Americans believing in the impartiality of the courts and having confidence in the courts.

According to De Muniz, the greatest challenge facing the judicial branch is maintaining public confidence in its institutional integrity. He pointed out three trends that have the potential to erode that confidence: 1) Attacks on the court system intended to blur the distinction between judicial and political accountability; 2) Massive influx of special interest financing of judicial campaigns; and 3) Loosening of ethical constraints in judicial campaigns.



Education of the judges, court staff, and the public is essential to maintaining public confidence. De Muniz said judicial educators need to educate judges in order to maintain their competency and need to advance into the community and provide public outreach programs.

“Judges come to the bench with less breadth of experience than in the past. Lawyers are no longer generalist and the younger generation lacks experience in certain areas of the law,” De Muniz said. “Educators have to fill in their education so they can competently handle all types of cases.”

He said education for judges also needs to address working with self-represented litigants and the changing needs of children, and that public outreach education is an essential piece of the puzzle.

“Civic education is often seen as external to the courts, but the responsibility resides with us,” he said. “We know how important an educated electorate is and it is up to us to educate the public about the courts.”

De Muniz added that judges also have an obligation to be out in the community educating the public.

“There are tremendous opportunities to partner with others to educate the public, students, and teachers,” he said.

### ***Babel*-On: Film Discussion**

By Kelly Tait

As the lights went down, the mood in the room was relaxed and anticipatory -- a let's put our feet up, have some popcorn, and watch a movie mood. As the lights came up at the end of the screening of the Oscar-nominated film *Babel* at NASJE's annual conference in August, the mood was somber and thoughtful. It's a film that's been described as edgy, engaging, thought-provoking, and ambiguous. It definitely gave us something to talk about.

The next morning at the session “Diversity in Popular Culture: Discussion of the Film *Babel*,” talk we did. More importantly, we listened to the varied perspectives of the other participants. **[The tagline of the film was the theme of the session: “If you want to be understood ... Listen.”]** A common observation after the session was that it was quite illuminating to find out how differently people perceived and reacted to the characters, events, and techniques used in the movie.

*Babel* interweaves four connected storylines, moving between Morocco, Southern California, Northern Mexico, and Tokyo. It shows how connected we all are in some ways, and how isolated we are in others. Each of the storylines includes conflicts that are very personal, yet all of the personal issues are nested in larger contexts of diversity issues.

As illustrated by clips of the movie during the session, the Moroccan boys' relationships and actions are engulfed by their culture, including the relatively unlimited power of the Moroccan police, and by world politics. The estrangement of the American couple shows in stark relief against the backdrop of Morocco, and their fear is contrasted with the nurturing and care the tour leader and his village provide. The Japanese teenager's anger and sense of loss from her mother's suicide are surrounded with the isolation of having a hearing impairment and of coming

of age in Tokyo. And the Mexican nanny's relationship with the U.S. American children she cared for is contrasted with the treatment she receives (a scolding and deportation) from the immigration officer.

The issues that arise from these situations were further explored in the session by using the Responder system to get and graph anonymous opinions from the participants. For instance, a question was asked three ways: Would you deport the nanny, who was an illegal immigrant, if: 1) you only knew what the immigration officer knew? 2) you were a judge and you knew the nanny's whole story? 3) you were yourself (not representing the court system) and you knew the nanny's whole story? Lively discussions followed.

Other discussion points included director Alejandro González Iñárritu's use of techniques such as going from sound to silence to show the perspective from a deaf person's point of view. Participants debated the effectiveness and necessity of the techniques in showing diversity-related differences. As with many of the issues the facilitators raised, multiple viewpoints were given by the participants.

The movie and the ensuing discussion emphasized how the potential for isolation *and* the potential for connection are present in all human relationships. The session ended with a quote from screenwriter Guillermo Arriaga that offered further perspective: "What we are trying to explore is that we can have dialogue and we can have communication, we can be open and listen to others, but it's not a substitute for love."

**[*Babel* is not your typical popcorn movie, but it was a great jumping off point for discussion of many diversity issues and how those issues might affect us both personally and professionally.]**

The session was facilitated by Joseph Sawyer, Distance Learning and Faculty Development Manager at The National Judicial College, and Kelly Tait, Communication Instructor at the University of Nevada, Reno, and Communication Consultant.

## **Developing The Leader In You**

By Liz Strong

This session was based on the book [The 8th Habit: From Effectiveness to Greatness](#), by Steven R. Covey. The group discussed the premise of Finding Your Voice as a leader using discussion and exercises.

Covey believes that most organizations are still run with the mindset of the Industrial Age. The main assets and primary drivers of economic prosperity in this time were machines and capital—things. People were like things, you could be efficient with them and when you wore them out, get new ones.

He believes leaders in the workplace are still managing like it is the Industrial Age. This mindset is represented by such things as:

- The belief you have to control people
- Accounting for people as expenses and machines as assets
- Carrot & stick motivational philosophy

The outcome of not seeing the true value in people and treating them like things has crushed the morale in today's workplace. You see people:

- Demoralized
- Depressed
- Alienated
- Low trust
- Lack of initiative

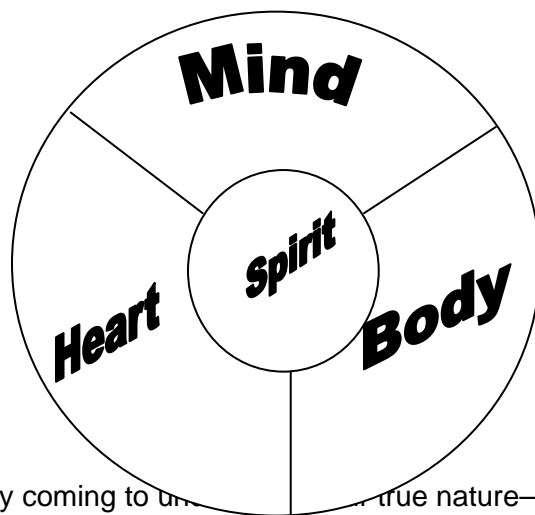
This has created a co-dependent relationship whereby:

- People think of leadership as a position, so don't see themselves as leaders. They don't see themselves with the ability to influence others.
- They put themselves in a place to be treated like a "thing". They wait to be told what to do by a person in a formal leadership role and are "thanked for their support."
- This only continues the mindset of formal leaders that it is imperative to direct and manage their employees
- Have you ever been in an educational session and said "the people who need to hear this are not here?"
- That is looking at whatever it is through the weakness in someone else, you disempower yourself and empower their weakness to continue

Covey believes that to shift from the Industrial Age mindset to the Knowledge Worker mindset, one must make a monumental paradigm shift in thinking. People are not things, but are made up of mind, body, heart and spirit. People have choices. They will decide how much they will give to the work based on how they are treated and on their opportunities to use all four parts of their nature. Covey calls this The Whole Person paradigm.

The Whole Person Paradigm is based on the concept that you, as a leader, need to find your voice and then help others find theirs. The session concentrated on discovering your voice as a leader.

The Whole Person Paradigm

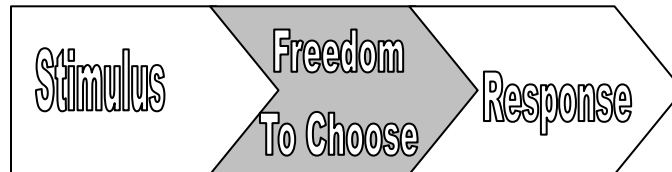


Discover Your Voice

Covey states that by coming to understand your true nature—what he calls “birth gifts” and by developing and using with integrity the intelligence tied to each of your four parts of nature, you will discover your voice as a leader. There are four birth gifts discussed:

1. Birth gift: The Freedom & Power To Choose

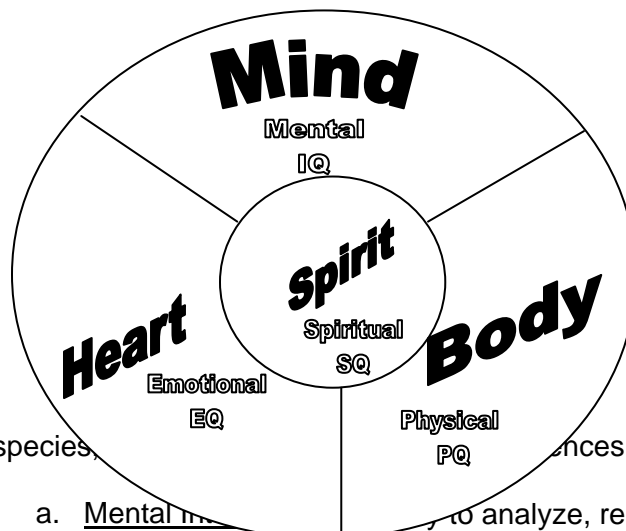
- This gives you the freedom to reinvent yourself, change your future and influence others.
- We are not a product of how other people treat us. They may influence us, but they do not determine us.
- In a society where we spend a lot of time comparing ourselves to others, this may be tough to grasp.
- Everyone has the space to allow the Freedom to Choose. Some very large, some not. It is in the use of this space that the opportunity to enlarge it exists



2. Birth gift: Natural Laws or Principles

Universally, Covey finds that great leaders live by principles that are Universal, Timeless & Self Evident. Examples include fairness, kindness, respect, honesty, integrity and service. While these may seem like common sense, he reiterates that they are not necessarily common practice.

3. Birth gift: The Four Intelligences/Capacities of Nature



Unlike any other species, humans have four intelligences:

- a. Mental Intelligence of the mind to analyze, reason, think abstractly, use language, visualize and comprehend.
- b. Physical Intelligence of the body to heal itself, balance and harmonize the functioning of the brain with the functioning of the heart, etc. Our ability to act on thoughts and feelings, and to make things happen is unmatched by any other species
- c. Emotional Intelligence is one's self-knowledge, self-awareness, social sensitivity, empathy and ability to communicate successfully with others. Also described as the right brain capacity as distinguished from the left.

A great deal of current research suggests that in the long run, Emotional Intelligence is a more accurate determinant of successful leadership than is mental intelligence.

- d. Spiritual Intelligence represents our drive for meaning and connection with something greater than ourselves. It is the quest for connectedness with something larger and more trustworthy than our egos. Spiritual Intelligence also helps us discern true principles that are part of our conscience and acts as our compass. It is what we use to develop our longing & capacity for meaning, vision, and value.

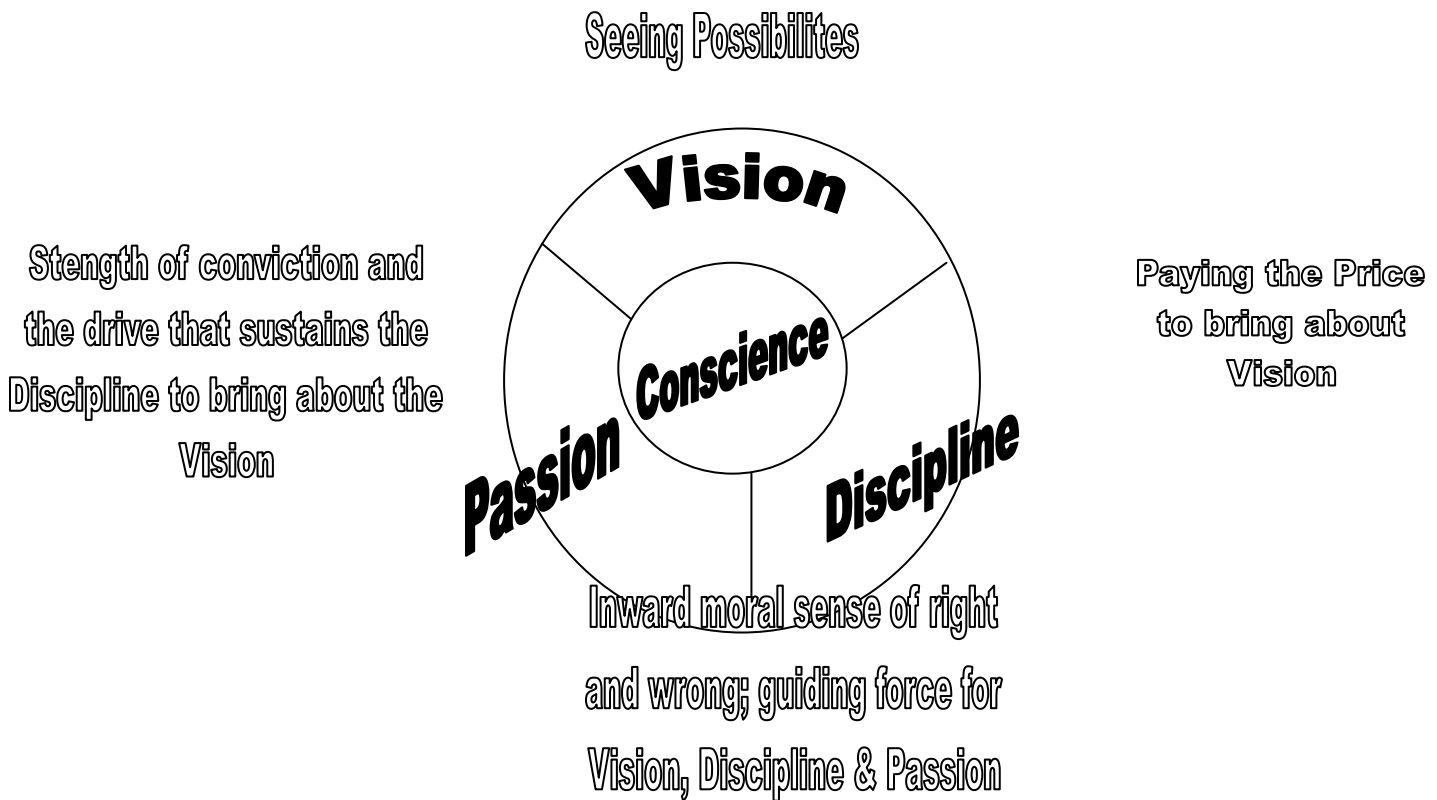
Many of these intelligences overlap so you can't really work on just one without touching directly or indirectly on the others. Developing these intelligences will impact your ability to influence others and help them find their voice. The session members discussed suggestions on how to develop them.

### Expressing Your Voice

If you look at those leaders who have had a great influence on others, who have made significant contributions—you will see a pattern. Through their persistence and inner struggle, they have greatly expanded their four native intelligences to their highest manifestations:

- A. Mental = Vision
- B. Physical = Discipline
- C. Emotional = Passion
- D. Spiritual = Conscience

These represent the highest means of expression our voice.



#### A. Vision:

- Seeing a future state with the mind's eye
- Applied imagination
- It is the beginning process of reinventing oneself
- The most important vision of all is to develop a sense of self, sense of your own destiny, a sense of your own purpose and meaning
- Vision allows us to see the potential in others, helping them find their own voice

#### B. Discipline:

- It is the executing, the making it happen, the sacrifice it takes to realize the vision
- It defines reality and accepts it, not deny it
- The sense of hope in a vision helps us help us deal with what may be a discouraging reality

- It is the habit/strength to do the right thing
- C. Passion:
- Comes from the heart & is manifest as optimism, excitement, emotional connection, determination
  - Enthusiasm is deeply rooted in the power of choice rather than circumstance
  - Enthusiasts believe the best way to predict the future is to create it
  - It makes you become part of the solution rather than part of the problem
  - The key to creating passion in your life is to find your unique talents and your special role & purpose in the world
  - Courage is the essence of Passion
- D. Conscience
- Moral sense
  - Innate sense of fairness, of right & wrong, of what is kind & unkind, of what is true and what is false
  - It is that small voice within us
  - Ego focuses on ourselves, exclusive of others, it is threatened by negative feedback
  - Conscience looks for the greater good & attempts to discern whatever truth the feedback contains
  - It is sacrifice
  - It teaches us that ends and means are inseparable
  - It transforms passion into compassion

All of these attributes represent the four dimensions of your voice. If you apply these capacities to any role in your life, you can find your voice in that role.

1. Need -What need do I sense in the organization I work for
2. Talent -Do I possess a true talent, if disciplined, can I meet the need?
3. Passion-Does the opportunity to meet the need tap into my passion?
4. Conscience-Does my conscience inspire me to take action and become involved?

### **Distance Learning: Design Considerations for Online Learning**

By Merry Hofford, District of Columbia Courts

Selecting the right faculty for online instruction is just as important as designing the curriculum. Distance Learning: Design Considerations for Online Learning, taught by Ray Foster, Education Technology Director, National Center for State Courts and Joseph Sawyer, Distance Learning and Faculty Development Manager at the National Judicial College, identified the attributes of an effective online instructor and looked at the process of designing both a faculty-led and a self-study online web-based course.

The faculty offered excellent, practical advice on uses-for and development of distance learning programs. Challenges include creating community, the role of the faculty, teaching faculty to adapt to an electronic format, creating short modules, and expenses. Software licenses for courseware development, plus servers or hosting services can be very expensive.

The instructors explained the basic process for developing an online course that takes a minimum of 6 to 8 months of teamwork. The difference between synchronous and

asynchronous learning was explained along with the pros and cons of different equipment and connections (avoiding wireless internet and VoIP) were reviewed. MACs are highly recommended for course development; Web Ex is cheap and user-friendly. And a look towards the future: iPods are THE next media for online learning!

## **Homeless Courts: A Model for Problem-Solving Courts**

By Kelly Tait

Inspirational examples of collaborative justice in action were discussed in “Homeless Courts: A Model for Problem-Solving Courts” at NASJE’s National Conference in Portland, Oregon.

Steve Binder, San Diego Deputy Public Defender and the founder of homeless courts, gave an overview of the concept of homeless courts as well as specific examples of how they’ve worked. He emphasized that dealing with the underlying issues for homelessness is a key component of homeless courts, and that the motivation the court can provide can be very helpful in getting people to change.

Pam Casey, Principal Court Research Consultant at the National Center for State Courts, set the stage by reviewing problem-solving court principles, methods, and models. She also introduced the Problem Solving Justice Toolkit, an interactive online toolkit accessible at [www.ncsconline.org/PSC](http://www.ncsconline.org/PSC), which includes assessment questions, implementation steps, links to online resources, and videotaped clips of judges and practitioners.

The two prevailing models of homeless courts were delineated: the “front end” model which starts when someone is picked up off the streets, and the “near the end of the tunnel” model which involves people farther along in the process, who have been identified by social service providers as having made good faith efforts to improve.

**[Homeless courts allow judges to consider the back story of an individual rather than just routinely processing an offender.]** They acknowledge the human and social contexts behind individuals’ behavior while including appropriate consequences for violating the law, consequences that lead to less of the “revolving door syndrome.”

**["It’s the best thing I’ve ever done,” said Hon. Steven K. Austin]**, a Contra Costa Superior Court Judge in Martinez, California, who has been running a homeless court for over a year. On a regular basis, he holds court (with his bailiff) in homeless shelters, often removing or reducing fines by giving credit for time spent on things such as vocational rehabilitation, mental health assessment, life skills training, community service, and job searches. These help treat the causes of the homelessness and also lift the burden of the fines that can be major barriers to moving out of homelessness.

Homeless courts not only take into account the underlying reasons for the homelessness, they also acknowledge the fact that the majority of the numerous citations that homeless people often get are a direct result of being homeless, such as taking shopping carts, sleeping in parks, littering, and dogs off leash. Without money to pay the initial fines, they spiral out of control, and the citations become warrants.

It’s more efficient to deal with the accumulating fines and the warrants a different way, said Brenda Durbin, the Interim Director of Clackamas County Social Services in Oregon City, Oregon. A selling point of homeless courts is that the counties do not actually lose money if



alternatives to paying the fines are used since most of the fines will never be paid anyway. She said that resolving these cases and getting people out of the court system is “win-win-win: everyone likes it.”

Judge Austin gave the example of a man who was just barely making a living as a bus driver, who got a traffic ticket and couldn’t afford to pay it. The fines accumulated and eventually cost him his license. Without a license, he couldn’t work, and without income, he lost his home. While in a homeless shelter, he assisted on a reading program for children there, among other things. The homeless court gave him credit for his efforts, and without the burden of the fines, he was able to get his license reinstated and get his job back.

Now that’s problem-solving.



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

### **Experiential Learning in Action: The Level Playing Field**

By Kathy Story, J.D., *Leadership Institute in Judicial Education University of Memphis* And Crystal L. Banks, Esq. *Assistant Director, Judicial Education, D.C. Courts*

“Central to the advancement of human civilization is the spirit of open enquiry. We must learn not only to tolerate our differences; we must welcome them as the richness and diversity which can lead to true intelligence.” Albert Einstein

“The Level Playing Field” is an experiential exercise with the following goals:

1. To offer participants an experience to deepen their own reflection on privilege.
2. To explore institutional and cultural power in a very personal way.
3. To deepen participants’ understanding of how differential treatment flows from society’s ranking of social identities.
4. To demonstrate graphically that the “playing field” has never been, and is not yet, level.

According to the renowned sociologist Peggy McIntosh, “Privilege is an invisible package of unearned assets that people can count on each day, but about which they are meant to remain oblivious.” (1988) The Level Playing Field attempts to bring this “invisible package of unearned assets,” more clearly into our view. Participants begin the exercise in a straight line across the room, but soon spread out in response to a series of statements relating to privilege.

Representative statements include:

1. If you have NEVER been harassed or disrespected by police because of your race, sexual orientation, or ethnicity, move one space forward.
2. If you have ever had to worry about the disclosure of a disability or the consequences of such a disclosure, move one space backward.
3. If you were ever denied a job or promotion because of your race, gender, sexual orientation, or ethnicity, move one space back.

4. If your religious holidays are regularly recognized by the court's calendar, move one space forward.

None of the statements, or any person's position at the end of the exercise, has anything to do with hard work, intelligence, determination, or abilities. None of the statements is about any individual's choice or decision: each was dependent on parents, other people, or social circumstances. Many of the statements relate the multigenerational impact of oppression and privilege. The statements and the life experiences they represent have a cumulative effect. No matter how fast or hard people near the back wall run, they will not beat the people near the front to the "wall of benefits and opportunity".

### **Processing the exercise**

As with any experiential exercise, the processing afterwards is crucial. Questions to consider include:

- What stood out for you during the exercise?
- What are your reactions, affective and cognitive, to the exercise?
- How did you feel as you went through it? Did some statements elicit more feelings than others?
- How do you connect your experience of the exercise with your own experience of privilege and cultural identity?
- What did you learn by participating?
- Where would various constituents in your court systems be at the end of the exercise?
- What emotional responses might logically be evoked by these common, repeated, and expected experiences?
- Is the playing field level? Does race, class, gender, disability, sexual orientation, religion, etc., continue to influence access to opportunities in society?
- Can elimination of individual bias alone level the playing field?
- So what? What will you do differently as a result of this experience?
- What are the implications for judging and court management in your state?
- What are the implications for judicial branch education in your state?
- How can judicial branch education be used to create a more equitable system of justice in our country?

### **Cautionary Notes**

As with any program that you are considering implementing in your state, you will want to consider the following:

- Appropriateness for your learners
- Appropriateness for your educational program
- Experience and skill of the facilitator(s)
- Be prepared for deep emotional responses during the exercise and during the processing – two facilitators may be needed
- Prompts can be adapted to fit your learners and your program but must adhere to the criteria above.

### **Points to Consider for Change**

Remember that these issues overlap and can be very complex:

- Race
- Class
- Age
- Gender
- Culture

- Ethnicity
- Sexual Orientation
- Disabilities
- Learning Styles
- Language

Transformation is possible but it takes work on a daily basis. Being proactive is key to positive transformation.

- Listen to and observe what is going on around you with reference to culture, race, class, gender, etc.
- Always be willing to learn from others
- Remember that “whiteness” is also an identity
- Seek out information and resources
- Be honest
- Be an ally
- Be compassionate

This is a deeply personal exercise sure to be thought provoking, if not life altering; something that we all seek to help facilitate in judicial education.

<sup>1</sup> This exercise has a long history of development. The activity was originally developed by Martin Cano, Valerie Tulier and Ruth Katz of “World of Difference”, the Diversity program sponsored by the Anti-Defamation League. It was subsequently adapted by Ellen Bettman and retitled the “Horatio Alger” exercise. Subsequent modifications/improvements, particularly the instructions, goals, processing questions and take home messages were developed by Joan Olsson of Cultural Bridges and Betty Powell of Betty Powell Associates. Additional changes were made by Betty Powell and Mitchell Karp of Karp Consulting Group, Inc.; Dr. Sharon Horne, Counseling Psychology, University of Memphis; and Kathryn E. Story with the Leadership Institute in Judicial Education at The University of Memphis in consultation with Brondi Borer and Todd Brower of the Williams Institute on Sexual Orientation Law and Policy at the UCLA School of Law.

References: Working Paper 189. "White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences through Work in Women's Studies" (1988), by Peggy McIntosh

### **Core Competency: Site Selections**

By Lee Ann Barnhardt

Planning cost effective conferences and seminars is an everyday challenge for judicial educators. It is often complicated by detailed contracts, space limitations, limited budgets or other regulations. The NASJE Core Competency session on Making Excellent Site Selections provided guidance and suggestions to enhance the skills an individual needs when planning educational programs.

The session was taught by Nancy Ahlbin, marketing coordinator for the Oregon Cooperative Procurement Program, and JoAnn Ghelfi, conference and special events manager/affiliate associations manager with the League of Oregon Cities.

Participants discussed their own needs regarding meeting and conference planning which included the following: alternative sites to hotels, how to streamline the process, contracts, controlling costs, bargaining tools, travel arrangements (air and ground) security, and the job skills needed for an event planning position.

Upfront planning and ongoing project management were suggested as keys to successful events. Planners should consider what kind of meeting is taking place, when and where it is going to happen, and any other components specific to that conference. The faculty recommended site inspections and suggested changing the dates for annual conference if a certain time of year is more expensive or accommodations are limited due to higher demand. For those planning events in tourist areas, they suggested holding educational events in the shoulder seasons, just before or after a major tourist times.

Other issues include the length of the conference, the budget, special needs of attendees, such as dietary, ADA compliance and security. In selecting sites, several factors should be considered including distance from the nearest airport, available ground transportation, other groups booked at the facility during your conference, traffic, construction and renovation issues, parking availability, and the cost of sleeping rooms or meeting space. Ahlbin and Ghelfi recommend having a contract with the hotel or facility to specify your needs and to cover financial obligations in case the event should be cancelled or reduced in size or scope.

How to manage the event was also discussed, including using teams or committees versus having a single project manager. They also discussed outsourcing some of the work such as online registration or event management. Using off-the-shelf software to help plan and manage events was also suggested.

Areas covered in the handout materials included ways to save money on food and beverage, how room setup affects food and beverage consumption, a site selection checklist, a conference planning worksheet, and tips for preparing a request for proposal.

## **May the Force Be with You: Power and Rank Dynamics**

By Kelly Tait

Randee Levine led a lively session exploring power, rank, and privilege at NASJE's 32<sup>nd</sup> annual conference. For many participants, it was an eye-opening experience to have someone encourage them to embrace their power – to connect with it so it can be consciously used to positively impact themselves and others.

This sensitive and complex topic was addressed both personally and professionally as *one* aspect of relationships. Power and rank were described as natural and unavoidable, with the goal being awareness. If we tried to eradicate or equalize rank, it would move farther out from our awareness and operate in a more destructive way. Recognizing power and rank and making them explicit can help us avoid some of the pitfalls of operating with implicit biases. For instance when you are not a member of the mainstream culture, you're very aware of it; when you are a member of it, it's the norm and you're less consciously aware of the privileges that attend it.

Ms. Levine's open, interactive style was strong yet non-threatening. We moved between pair discussions, large group discussions, and interactive lecture in examining the issues and the feelings that accompany them. The session included personal assessments as well as definitions of power, rank, and privilege. There was an in-depth discussion of types of rank:

social (from culture and society), structural or contextual (from organizations, families, etc.), psychological (inner resources), and spiritual rank (a bigger picture perspective, not necessarily religious). She said that often times having a lot of rank in one area leads to a deficit in another area.

**[The overriding message was to be conscious of rank and power, to feel good about the ways we have power, and to use our privileges to benefit others along with ourselves.]**

Positive, conscious use of rank include:

- Noticing and addressing implicit signals of rank in your interactions with others
- Using power to support others to express themselves
- Using power to express yourself directly
- Listening to and speaking up for those with less power
- Saying no to power abuses you see

Randee Levine is a Certified Process Worker from Salt Lake City, Utah. Process Work is a cross-disciplinary approach to people and relationships based on the work of Dr. Arnold Mindell.

The session was engaging and enlightening. Since pulling rank is natural and differences in power are unavoidable, we were encouraged to use rank and power for positive impact all around. As Ms. Levine said, "Nobody wins if anyone loses."

### **Appreciative Inquiry**

By Lee Ann Barnhardt

Appreciative Inquiry: A Strength-Based Approach for Building our Community of Practice, gave participants the opportunity to sample appreciative inquiry for possible application for themselves, their organizations, and their profession and to identify best practices for the profession.

Dr. Mary Jo Greil, founder and president of the Carson Greil Group in Memphis, Tenn., gave an overview of the appreciative inquiry model—Discovery, Dream, Design, and Delivery—and the change process. She said appreciative inquiry does not focus on the deficiencies or what's missing, but instead focuses on what is working and builds on the strengths of the system.

In the morning session, Dr. Greil led participants through a series of exercises that focused on discovering effective approaches for judicial branch education. In pairs, and then small groups, dialogues were held that discussed high points in judicial education experiences, values held by judicial educators, and wishes for the future of judicial education. Common themes were identified at each table and presented to the larger group. These exercises modeled the discovery and dream stages of appreciative inquiry.

In the afternoon, participants were asked to select one of six topics that interested them and then work with their team to write an aspiration statement for that topic. Aspiration statements are design statements that express the ideal organization/unit/action area. They are statements of belief, stated in the affirmative and in the present tense, grounded in what works, and stretches the organization beyond its norm into novel and more desired forms of interaction.

The focus of the design exercise was on how NASJE could better serve and support its members. The six topic areas were values, the presence of education within the court organization, judicial independence, programming, resources and partnerships, and technology.

Each draft aspiration statement was shared with the entire group, which had the opportunity to give feedback to strengthen the statements. The final statements were collected by the NASJE leadership and will be used for future planning.

Dr. Geil provided the following websites for individuals who want to learn more about appreciative inquiry and how it can be used in change management:  
<http://appreciativeinquiry.cwru.edu> – This is Appreciative Inquiry Commons, begun by one of the “founders” of the AI concept, Dr. David Cooperrider.

[www.taosinstitute.net](http://www.taosinstitute.net) – The Taos Institute was founded by Dr. David Cooperrider and Diana Whitney. Access it for more articles, tools, and listings of workshops conducted by the Institute.

[www.ntl.org](http://www.ntl.org) – This is the homepage for the National Training Laboratory for Applied Behavioral Science. NTL conducts a 7-day workshop to introduce practitioners to AI.

Dr. Greil can be reached at [mj@carsongreil.com](mailto:mj@carsongreil.com).

### **Sustaining your momentum: Closing plenary**

By Lee Ann Barnhardt

Sustaining Your Momentum: Maintaining Your Creative Spark, the closing plenary of the conference, was designed to promote and cultivate ongoing freshness and creativity for judicial educators. Using the Cycle of Renewal developed by Frederic Hudson, participants reflected on the interface between their personal and professional selves.

Alanna K. Moravetz of Alanna Consulting in Woodbury, Minnesota and Isabel D. Van Sicklen, a marriage, family, and child therapist with Tortuga Coaching and Consulting of Modesto, California, served as faculty.

Using an appreciative inquiry model of discovery and dreaming, participants were asked to look at their lives through the lenses of mindfulness, positive psychology, and the Cycle of Renewal.

The session started with each person creating a lifeline from age 20 to the present and answering a series of questions. The questions were appreciative reflections on the lifelines and were part of the discovery mode of appreciative inquiry.

In introducing the renewal cycle, the faculty discussed some of the changing rules of society and the patterns of change. There are four phases on the Cycle of Renewal. Phase 1 is Go For It. This is a period of stability that is purposive, focused, and committed. Phase 2 is The Doldrums. This is a period of detachment and restlessness where individuals feel disenchanting, trapped, or defeated. Phase 3 is Cocooning. This period is where you come to terms with yourself. It is a time of healing, exploring, and reconstructing. Phase 4 is Getting Ready. This is time for experimenting. This period is for testing, tasking risks, networking, and creativity.

Still in the discovery mode, participants were asked to reflect on where they have been on the cycle and where they are now. The next step in the appreciative inquiry process is dream and design. Participants looked at where they might be going on the cycle (dream) and how they might get there (design).

To help with this process, the faculty offered Ten Practices that will help individuals manage their place on the cycle and their own renewal. The practices are as follows:

1. Mindfulness
2. Build positive emotional states and generating positive words
3. Practice gratitude
4. Practice "Belly Breathing" throughout the day
5. Physical exercise
6. Use your strengths
7. Plan leisure time
8. Find flow activities
9. Journal regularly
10. Examine and change counterproductive self-talk