

# NASJE NEWS

*Spring 2007*

Special announcement to those who have attended the Leadership Institute in Judicial Education (LIJE) or the Institute for Faculty Excellence in Judicial Education (IFEJE), both directed by Pat Murrell at The University of Memphis:

Greetings from Memphis to our Alumni! We have an exciting opportunity for you. For several years, participants of the Leadership Institute in Judicial Education (LIJE) and the Institute for Faculty Excellence in Judicial Education (IFEJE) have been requesting the opportunity to reconvene for a program that would build upon the teachings and experiences of these Institutes, applying the work in a new context to address issues within the judicial branch. It has been our desire to convene a combination alumni event with a working conference where we could test the thesis that knowledge about ages, stages and styles results in more complex thinking and thus a more systemic approach in addressing the complex issues facing the courts.

Good news: our current Bureau of Justice Assistance grant includes funding for Courts as Learning Organizations: A Workgroup Conference. We will meet at the University of Memphis in the Fogelman Executive Center (FEC) Monday, October 15 through Thursday, October 18, 2007.

For more information about the Conference and to access the application form, please see the Workgroup Conference website: <http://coe.memphis.edu/cshe/workgroup.htm>.

If you have questions, please call us at 901.678.2775 or email us at [pmurrell@memphis.edu](mailto:pmurrell@memphis.edu), [kstory@memphis.edu](mailto:kstory@memphis.edu), or [carrieb@memphis.edu](mailto:carrieb@memphis.edu).

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## NASJE President's Column

Dear NASJE Members and Friends,

It has been a privilege to serve as NASJE's president this year. During the last nine months I have represented NASJE at several meetings and conferences across the country, and I have been struck by how well known NASJE and its members are in the court community. I think we sometimes forget in our daily work that the judges and non-judicial court personnel we serve deeply appreciate the support and leadership we provide and also recognize we are part of a nationwide effort to improve the administration of justice through education.

Some of you know that I changed jobs just a month after becoming president of NASJE. I had been the Director of the Supreme Court of Ohio Judicial College for ten years and in September, 2006 I became the Vice President of the Institute for Court Management (ICM) at the National Center for State Courts, following Chuck Ericksen, who had directed ICM for the previous eight years. While it has been difficult being both the president of this great organization and starting in a new position, bridging the two judicial branch education worlds of state and national providers has given me a new perspective on our work and NASJE's role.

All of us are susceptible to falling into routines (ruts) and a narrow view of our responsibilities, especially because the daily demands on our time are so great. The relationships we develop through participation in NASJE, and by working on its committees and attending the annual conferences, provide us with contacts, information, and other tools that can greatly enhance our work and professional lives. I strongly encourage all of you to get to know your judicial branch education colleagues better by fully participating in NASJE.

Please make plans to attend the 2008 annual conference being held August 12-15 in beautiful Portland, Oregon. The Education Committee, chaired by Carrie Brooks, and local hosts Mollie Croisan and Cheryl Fowler, have been working hard to ensure that this year's program is interesting, informative, and fun, with plenty of opportunities to network with your colleagues. The program will also benefit from the efforts of the Diversity Committee, Chaired by Michael Roosevelt, and the International Committee, Chaired by Claudia Fernandes and Judith Anderson, which are planning presentations for the conference. The registration fee will remain low due in large part to the efforts of the Fundraising Committee, chaired by Christy Tull, which seeks financial support from a variety of sponsors.

See you in Portland!

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## Transitions

Please join us in welcoming the following new NASJE members:

- Missy Becker, JCA Director, Arizona Supreme Court, Phoenix, Arizona
- Gregory Caskey, Director of Education and Training, Superior Court of California, County of Contra Costa, Martinez, CA
- Cheryl A. Fowler, Education Specialist II, Oregon Judicial Department, Salem, Oregon
- Dawn M. Nagatani, Judicial Education Officer, State of Hawaii – Judiciary, Honolulu, Hawaii

We are always pleased to welcome back past members after they have retired from the every day pressures of being a judicial branch educator. With that in mind, we welcome back consultant Kay Palmer of Hot Springs Village, Arkansas

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### A Mental Health Court Judge's Perspective: WIIFM ("What's in it for me")?

Hon. Stephen S. Goss

I have presided over a felony mental health court program for five years. Like many pilot projects, we collect data on the probationers to determine if our efforts are helping reduce recidivism and inpatient mental health hospitalizations. The data collection reveals we are making inroads on these issues. In evaluating our program in order to improve outcomes, we also look at the positive impact the treatment court has on the participants. In order for the program to succeed, a willing and committed trial judge is a key element. A valid question from a prospective, would-be, mental health court judge is "What is in it for me?"

When speaking to judges about mental health court, I invariably get at least one comment to the effect that "I am not a social worker." I agree. There is a very practical way to look at cases involving these chronically mentally ill offenders. Recall the motor oil commercial in which the catch phrase was "pay me now or pay me later." The same is true with this population. Most criminal courts have a core group of familiar faces. These persons often have mental health issues and a co-occurring substance/alcohol abuse problem. They cycle in and out of the jail and our courtrooms. They come in for a drug test failure on probation or a misdemeanor charge stemming from being off their mental health medicines. They are in jail for 60 to 90 days and we try to get them seen by a treatment professional. They are hard to deal with in the jail because of their mental state. When they finally get under appropriate medical treatment and stabilize, they are released from jail for time served or are restored to probation. Many times they leave the jail without medicines or the resources to get their medicines. In days or weeks, the cycle begins again. The judge is dealing with the mentally ill offender multiple times in a cycle. "Pay me now or pay me later." Either way, the judge still has to deal with this chronically ill defendant. It can either be done on an ad hoc basis using a revolving door approach, or in a more stabilized and coordinated fashion.

Effective docket management is not the only issue for the trial judge. Related to the advantage of having a coordinated method for dealing with these cases is seeing tangible personal improvements. When studying before and after effects of mental health court participation over a two year plus period, we found the average felony participant occupied 136 days a year in our local jail before coming into the program. Many times this would be two or three, separate thirty to sixty day stays, a year, coinciding with outbursts stemming from non-compliance with medicines. Approximately forty-one percent of these chronic defendants were not rearrested after placement in the treatment court program. Even those defendants with repeat arrests experienced less prolonged jail stays. Our costly in-patient forensic bed stays at the state hospital dropped after the mental health court program got established. From a judge's perspective, one can see positive results. Many times judges are handling so many cases that we deal with the immediate problem in litigation, but we never really know how it all turned out after the lawsuit. I analogize this to the job of mowing the lawn. One may hate the task, but there is a sense of closure to the job. You can see how the lawn looks when you start and how good it looks a couple hours later when finished. While you may have to do it again in a week or so, you get a sense of satisfaction out of seeing you got something accomplished. A mental health court judge can see improvement in these probationers' lives, even in a short span of several months. They look better when they return to court for review hearings, they are staying out of legal troubles, and their lives stabilize.

As a trial judge, one can get tired of seemingly never-ending domestic disputes and the repetitive probation violations in criminal court. However, most judges have anecdotal stories where a parent approaches them years later in the grocery store advising that the judge had helped turn around their troubled teenager, who has now graduated from college and started a career. These events help carry and re-energize a trial judge. Personally, and in talking with other mental health court judges, I find that I have a better energy level in dealing with these cases, because I see some improvement in the

situation. I do not feel like I am just processing the next case on the docket. I can see improvement in the person's case and in their living situation. When I started this program, I was surprised at the number of tired, senior citizen, parents, and family members, who are grappling with a loved one suffering from mental illness. It is not uncommon to see a couple in their late sixties or early seventies come to court at their wits end. They have a forty year old schizophrenic son they have had to continue parenting, since he became ill at age twenty three. Typically, this son would be looking at helping his aging parents with some issues. In this case, these aging parents have had to continue in the role of supervising their debilitated adult child, and they are losing physical and emotional capacity to keep it up. Seeing that the program is providing these frustrated family members some relief and assistance is rewarding for the judge. This also creates goodwill in the community, because many people have a friend or loved one with such a chronic problem, and the citizens believe that the judge is trying to make head way with this problem.

What is in it for me? Practical benefits include a more coordinated method of handling chronic cases the judge is going to deal with in any event, along with a reduction in the jail stays for these mentally ill probationers. Intangible rewards include a higher degree of satisfaction, because of the positive impact the program has on its participants and the relief it provides to friends and family members of the mentally ill offender.

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."

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Graduated Sanctions: An Effective Approach in Helping Juvenile Offenders Receive Appropriate Programs and services  
By David Gamble, NCJFCJ

Introduction:

In an era of trying to make youth more accountable for their behavior, juvenile graduated sanctions can be an effective systemic approach. Additionally, the use of valid decision making instruments in a graduated sanctions program helps to ensure that intervention services for youth are appropriately identified. This article will define graduated sanctions and its key levels of intervention, effective program alternatives at each level, the use of decision making instruments, and finally discuss helpful resources on graduated sanctions developed by the National Council of Juvenile and Family Court Judges (NCJFCJ) in cooperation with the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

Graduated Sanctions

Graduated sanctions is an accountability based sanctions system that may be defined in different ways, however, the basic concept remains the same. For the purposes of this article graduated sanctions is a conceptual framework for a continuum of disposition options that juvenile court personnel, particularly judges, probation officers and other similar court officials can use for delinquency reduction.

Graduated sanctions systems make use of a "multi-tiered continuum" of intervention of services and programs that allows the juvenile justice system to match these to specific characteristic of the juvenile offender. The match usually requires the use of an objective assessment or structured decision making instrument. A graduated sanctions system that is fully functional should consist of three components; the program component, the assessment and decision making component, and the management information component (DeComo & Wiebush, 2005).

While the term graduated sanctions is the term of choice in this article, other familiar names for accountability based sanctions systems are; graduated options, graduated alternatives, graduated responses, graduated incentives and graduated consequences. Some juvenile justice practitioners believe that choosing the word "sanctions" sound too punitive for a system that began with rehabilitation of youth as its main goal. However, when juvenile offense rates along with the seriousness of delinquent acts increased legislatures across the country responded with new laws that held youth more accountable. Hence, accountability based sanctions systems evolved as a way to more effectively address juvenile delinquency.

The implementation of accountability based sanctions systems gained momentum nationwide in 1997 when the US Congress allocated 16.5 million to support these kinds of programs. The funds were to specifically support Innovative Local Law Enforcement and Community Policing (ILLECP) programs in states that provided assurance that they had in

effect, or were working on these kinds of programs. The policies and programs in place had to also ensure that juveniles were subject to accountability based sanctions for every act for which they were adjudicated delinquent (Matese, 1997).

#### Five Graduated Sanctions and Intervention Levels for Juvenile Justice

The National Council of Juvenile and Family Court Judges web-site presents a wide range of information on juvenile graduated sanctions ranging from the five levels of intervention, resources, targeted behavior, program structure, priority program services and examples and links to programs and intervention models. The following information discusses sanctions and intervention levels in juvenile justice (<http://www.ncjfcj.org/>):

##### Level 1. Immediate Sanctions:

Immediate sanctions are targeted toward less serious non-chronic offenders. They are designed as early intervention that can hold youth accountable for their actions by sanctioning illegal behavior and, securing needed services. Typical immediate sanctions include community service, restitution, curfew restrictions, informal supervisions, and mandated involvement in short-term programs (shoplifter program or substance abuse education). Immediate sanctions are frequently delivered in the context of diversion from formal court processing.

##### Level 2. Intermediate Sanctions:

Intermediate sanctions are appropriate for juveniles who continue to offend following immediate interventions, youth who have committed more serious felony offenses, and some violent offenders who can benefit from supervision, structure, and monitoring but not necessarily institutionalization. This type of sanction entails formal court processing and may include such court-ordered community-based corrections as intensive supervision, day treatment, probation, electronic monitoring, house arrest, and alternative schools.

##### Level 3. Community Confinement:

Aside from small secure facilities, there are other program alternatives to incarceration. These programs can be effective in well developed community-based settings. This type of programming is appropriate for juveniles who have been involved in serious property crimes and crimes against persons. These offenders have a low or moderate risk of recidivism and out-of-home treatment needs.

##### Level 4. Secure Confinement:

Secure confinement is appropriate for serious violent and/or chronic offenders. The behaviors manifested in these offenders include serious property crimes and violent delinquency. These offenders have a high risk of recidivism and extensive treatment needs. This type of sanction involves commitment to state training schools, or other secure correctional facilities. It has been demonstrated that small correctional units and residential programs with a treatment orientation are more effective and more humane than large institutions for this population.

##### Level 5. After Care

After care sanctions are appropriate for offenders transitioning back into the community following secure care. After care should be provided for all youth returning to the community from any type of secure program or facility. After care should be built on a well structured graduated sanctions system with "step-down" services and sanctions. It is much less difficult to develop after care services than append these services to an existing poorly structured correctional system. A model after care program referred to as intensive supervision program should consist of the following elements: 1) short term transitional placement in secure confinement, 2) day treatment, 3) outreach and tracking, 4) intensive supervision, 5) routine supervision, and 6) case closure.

#### The Use of Decision Making Instruments in Graduated Sanctions

While graduated sanctions is a systemic approach that strives to hold juvenile offenders accountable for their behavior, it is crucial to combine sanctions with the correct range of programs, services and treatment interventions. To assist in this process first a systemic approach to developing guidelines from outcome research on delinquency programs and services should be developed for jurisdictions where graduated sanctions are implemented. Once the guidelines and list of services are identified, decision making tools should be used.

Decision making instruments i.e., risk assessment instruments, needs/strengths assessment instruments, a matrix system and a structured decision making model, should be used in helping to place juvenile offenders in programs that address

their underlying needs and to help prevent them from re-offending. These decision making instruments overarching principles are similarly based upon the structured decision making strategy designed to reduce delinquency:

Decisions can be substantively improved-in terms of consistency, equity and validity-when they are structured appropriately. The use of structured assessments and decision protocols increase the consistency and enhances equity by ensuring that all staff assess all youth using the same set of criteria. Structured decision making assessment results should drive how agency resources are used. That is, the level of resources devoted to any given case should be directly related to the public's need for protection (as measured by offense severity and risk of re-offending) and the youths need for service intervention (as measured by strengths and needs assessment). (National Council of Juvenile and Family Court Judges [NCJFCJ], 2004 p. 2)

The use of informal methods in case decision making can be unfairly subjective resulting in inconsistent and even inappropriate services and programming for juvenile offenders. Consequently, in some instances for example, informal methods of decision making may also contribute to the over representation of minority youth in the juvenile justice system.

### Helpful Resources in Graduated Sanctions

The National Council of Juvenile and Family Court Judges (NCJFCJ) in cooperation with the Office of Juvenile Justice and Delinquency (OJJDP) in 2001 entered into a multi-year agreement to improve sanctioning options for youthful offenders by creating the Juvenile Sanctions Center headquartered at the NCJFCJ. Among the projects many deliverables was to develop a series of publications that addressed issues in juvenile sanctioning, and moreover other important and crucial issues in juvenile justice. The following is a list of the publications published by the Juvenile Sanctions Center (now referred to as the Juvenile Sanction Division):

- Graduated Sanctions for Juvenile Offenders: A Training Curriculum Guide-Volume I Immediate to Intermediate Intervention Court Contact
- Graduated Sanctions for Juvenile Offenders: A Program Model and Planning Guide-Volume I From Immediate to Intermediate Court Contact
- Graduated Sanctions for Juvenile Offenders: A Training Curriculum Guide-Volume II Dispositional Court Hearing to Case Closure
- Graduated Sanctions for Juvenile Offenders: A Program Planning Guide-Dispositional Court Hearing to Case Closure-Volume II
- Monograph I: Sanctions Program Development and Future Initiatives
- Juvenile Sanction Division Training and Technical Assistance Program Bulletins:
  - Vol..I # 1 - Introducing the New Juvenile Sanctions Center
  - Vol. I # 2 - Structured Decision Making for Graduated Sanctions
  - Vol. I # 3 - School-Based Probation: An Approach Worth Considering
  - Vol. I # 4 - Promising Sanctioning Programs in a Graduated System
  - Vol. II #1 - A Practical Approach to Linking Graduated Sanctions with a Continuum of Effective Programs
  - Vol. II # 2 - Using Federal Title IV – E Money to Expand Sanctions and Services for Juvenile Offenders
  - Vol. II # 3 - Three Innovative Court-Involved Reentry Programs
  - Vol. II # 4 - Resource Reallocation: The Clark County Experience
  - Vol .II # 5 - Employment Opportunities for Youth

These publications can be obtained in hard copies from the NCJFCJ or online and many are downloadable from [www.ncjfcj.org](http://www.ncjfcj.org). There also is an e-tool on graduated sanctions on the same site that is interactive and provides detailed information on graduated sanctions; targeted behavior, program structure, priority program services, and examples of programs and intervention models.

### Summary

Juvenile graduated sanctions systems when fully operational have demonstrated to be an effective way of addressing juvenile delinquency. This approach is particularly effective in assuring that juvenile offenders receive appropriate programs and services. Jurisdictions that are experiencing increasing delinquency and diminishing resources may want to consider examining this approach as a corrective form of action.

### References

DeComo, R., & Wiebush, R., (Eds,) (Spring 2005). Graduated sanctions for juvenile offenders: a program model and planning guide: disposition court hearings to case closure. National Council of Juvenile and Family Court Judges, Juvenile Sanctions Center, Vol. No. II.

Matese, M., (March, 1997). Accountability based sanctions. Office of Juvenile Justice and Delinquency Prevention Fact Sheet No. 58). U.S. Department of Justice Office of Justice Programs.

National Council of Juvenile and Family Court Judges (2002). Structured decision making for graduated sanctions. Juvenile Sanctions Center, Vol. 1 No. 2.

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## Overcoming Barriers to Distance Learning

By Lee Ann Barnhardt, with contribution of Pam Castaldi (NM) and Linda Evans (MO)

A couple of years ago an article in the NASJE News stated that judicial educators should no longer be asking if they should use technology, but rather how to use technology to deliver programs. If we agree that technology, and therefore distance education, should be a part of our offerings, the question then is how to overcome obstacles to this delivery method.

Although long-distance learning was in existence long before video-conferencing, the Internet, or webinars (think back to the old pencil and paper correspondence courses or independent study classes), distance education in its current form is still very much an innovation. It is constantly changing, and thus, there always seems to be an element of risk to it.

Former judicial educator, Pam Castaldi, currently the Instructional Media Project Manager for the Learning Design Center at the University of New Mexico's Health Science Center, said there are many ways to diffuse information and get people to accept and use distance education. Perhaps one of the most effective ways is to identify a respected person within the system as a role model for using a specific technology or program.

Ev Rogers would call this person an "early adopter" (Rogers, 2003). Early adopters are people who are well integrated into the social system; they are respected, liked, and looked to for their opinions and advice. They are not necessarily the formal leaders within the institution, nor are they innovators themselves. However, they are usually one step ahead of most people and are relied upon to lay the path for everyone else.

"In New Mexico, we had a core group of early adopters who played a significant role in demonstrating that web technologies are an effective educational method for judges and staff," Castaldi said. "These were the judges and court staff who were willing, often eager, to try the new technologies, and when they liked them, to implement or encourage the use of these technologies into their own courts."

Typically the most powerful communication these early adopters have is through their own interpersonal networks. But the New Mexico Judicial Education Center saw an opportunity in these early adopters and enlisted them to speak at conferences and to act as mentors.

"I think they made the difference in the speed with which the courts adopted JEC's educational web courses and other resources," she said. "It seemed slow at the time, but looking back, they were ahead of the curve in trying this new thing called distance ed."

Courts would be wise to identify their early adopters - keeping in mind that they are not necessarily formal leaders and not even innovators themselves. She suggested offering opportunities for communication through conferences and meetings, but also taking advantage of informal social gatherings.

Linda Evans, Director of the Division of Judicial Education for the Office of State Courts Administrator in Missouri, suggests emphasizing how the learner benefits from courses offered in an on-line environment.

- On-line learning provides more efficient use of time
  - Less time traveling
  - Less time required to find something out
- By moving lecture and background materials on-line, classroom time...
  - ...can be reduced
  - ...can emphasize discussion and interaction
- On-line materials are available anytime

- People can learn at their own pace and as their own schedule permits
- Learners can return to the materials again and again
- No waiting for a class to be held
- Professionals learn more effectively and quickly on the job
  - Efficient on-line learning becomes part of the job instead of something that happens separately
  - Working and learning integrate as a single whole
- On-line learning can more easily parallel personal learning styles
  - By breaking information down into small, manageable courses over time, students are better able to absorb and use what they've learned
  - Creating an on-line forum or other discussion method creates continuing relationships with other professionals that fosters continuous learning
    - A broader perspective is created when learning networks transcend local parochialism

In addition to finding early adopters and promoting the benefits, it is helpful to keep in mind the challenges distance education presents to both teacher and learner. In distance learning, both teachers and students have different roles to play compared to a traditional classroom environment. The teacher is no longer the sole source of knowledge, but instead a guide or facilitator and the students are responsible for their own learning and must actively participate in what and how knowledge is imparted.

Faculty not only have to know content, but computer software and other technologies. Students must deal with feeling isolated and learn new ways to communicate with classmates and teachers. An article by Jill M. Galusha (1997) at the University of Southern Mississippi, "Barriers to Learning in Distance Education," outlined some of the common obstacles to successful distance education programs.

#### Learner Barriers

**Feedback and Teacher Contact:** Learners may have a strong desire for direct access to the expert teaching the course. Maintaining a link between the faculty and the learner is essential. This can be addressed through e-mail, online discussion boards or webcasts where questions can be submitted in real time.

**Isolation or Alienation:** Learners may have a preference for learning through social interaction and networking. Learners of all kinds want to be part of a larger community. The need for interaction can be addressed by creating collaborative work groups (online and offline), online-chats, threaded discussions, and conference calls.

**Discomfort with New Methods and Tools:** Learners may not be well versed in the use of distance learning technologies. Using electronic mediums may exclude those who lack computer skills. Keeping it simple can alleviate this concern. Give clear instructions and teach learners how to manage the operating system. Technical barriers need to be made a non-issue.

**Resistance to Responsibility:** Effective distance learning requires interaction, critical thinking, and synthesis. The learner can't check out mentally as he or she might do in a traditional setting. Manage this by making distance learning an extension of job responsibilities. Integrate learning accountability into performance appraisals.

#### Faculty Barriers

**Lack of Training in Course Development and Technology:** More than any other participant, faculty roles change the most in distance learning programs. They must change teaching styles, how they present material, and how they meet the needs of their students. They must have access to and be trained on proper equipment. Court administration and judicial education staff must provide ongoing technical support for faculty and provide training on curriculum development.

**Lack of Motivation:** Some faculty are not as eager to accept distance learning as others. Select faculty for these programs who are interested and want to participate. Faculty who want to teach distance courses are more likely to be successful.

Source: Rogers, E. M., 2003. Diffusion of Innovations, 5<sup>th</sup> ed. Free Press: New York.

The problem-solving justice toolkit offers a blueprint for using the problem-solving approach for cases involving recurring contacts with the justice system due to underlying medical and social problems. Available in the online version of this newsletter at <http://www.nasje.org>.

The value of a mentor for new judges

Written by Josephine Deyo, with a portion contributed by Maureen E. Conner, PhD, Executive Director of the JERITT Project, and Catharine M. White, Academic Specialist for the JERITT Project.

Closing a law practice, handling hearings, hiring an assistant – a multitude of new issues await the new judge as he steps into the judicial role. The new judge will likely have more questions than rulings when he or she first takes the bench.

How can judicial educators help those new judges quickly, when they most need help? In many states, mentor programs meet that need.

Although most states have educational programs for new judges, a new judge may have to wait several months before a scheduled program. A mentor can help a new judge find his or her way around the courthouse in the meantime.

“Every new judge has different issues,” the Honorable Lisa Davidson, Director of the Florida Mentor Program, said. The new judges have questions about how to interact with attorneys, litigants and the community, questions about ethical constraints, and day-to-day questions about their work in the courthouse.

[A mentor can be a counselor, an educator and an advocate], and the mentor’s responsibilities can be somewhat intense in the first few weeks after a new judge is appointed or elected.

In Florida, a mentor is generally assigned to a new judge within 48 hours of a new judge’s appointment or election. The mentor program tries to match the new judge with a mentor in the same geographic region and in the same tier and division of court.

The mentor should become involved with the new judge as quickly as possible, Judge Davidson said. As Cal Goodlett, a senior attorney with the Office of the State Courts Administrator in Florida, explained, the mentor should meet frequently with the new judge during the first 30 days after the new judge is appointed or elected.

And this high level of dedication continues. [The mentor’s job is to be available for the new judge anytime, twenty-four hours a day, seven days a week], Judge Davidson said. The new judge knows that he or she should interrupt the mentor whenever the new judge has a question.

A good mentor can easily establish rapport with the new judge and can gain credibility and the trust of the new judges, Fred Inderlied, a retired judge in Ohio who was Director of Ohio’s Mentor Program, said. But, he added, a mentor should also be willing to go looking for answers to a new judge’s questions.

In addition, mentors are expected to take action and not just react to questions, Judge Davidson said. The mentors should not only help the new judge learn how to handle a hearing or rule on an issue, but should also warn new judges about pitfalls to avoid.

Florida’s mentors also act as advocates for their new judges. For example, the mentor can try to make sure that the new judge doesn’t get the worst office in the courthouse, or assignment to an inappropriate docket, Judge Davidson said. The mentor should assist the new judge with such administrative or personnel matters.

Guidance during the social and personal transition may be as important as training on substantive or administrative subjects. A mentor can help a new judge with the social adjustment, Goodlett said. Furthermore, the friendships that develop between a mentor and a new judge can mitigate the isolation that a new judge may feel, Judge Davidson said.

This multi-dimensional aspect of the mentoring process is especially beneficial because [informal education can be more productive than formal education], Judge Inderlied said. Since the mentor relationship involves less pressure than a class, he said, it can permit the new judge to be more comfortable and open about concerns.

The mentor relationship in Florida is a confidential relationship, as Judge Davidson pointed out, so that a new judge can be comfortable in both asking questions and resolving problems. This is especially important because a Florida mentor also must be the bearer of bad news; he or she should talk to the new judge about any problems that arise.

This valuable relationship can be a lasting one. Judge Inderlied said that some of his new judge mentees from 10 years ago still call him, and some of his mentees eventually became mentors.

And this mentor relationship is valuable for the mentor as well as the new judge.

“When you’re trying to lead your peers,” Judge Inderlied said, “you have a tendency to want to be on the top of your game.” The mentors also receive the personal satisfaction of being part of something that improves the judicial system, Goodlett noted.

[“Mentoring, for me,” Judge Inderlied said, “was always an opportunity to improve the overall quality of the sitting judiciary], and it was always rewarding when I had occasion to provide assistance to a mentee.”

Mentoring training itself is also valuable. In Florida, mentors must attend a 4-hour initial training in local areas, and advanced mentor training is offered occasionally as well. The remainder of this article is a summary of mentor programs, as compiled by the JERRITT Project.

#### Programming Topic: Mentoring

Thirty-three (33) programs pertaining to judicial mentoring have been reported to the JERRITT Project since 2000. Table 4.0 highlights the distribution of mentoring programming by year:

Year	Total Number of Mentoring Programs
2000	14
2002	12
2003	7

The number of mentoring programs reported to the JERRITT Project decreased by half from 2000 (14 reported programs) to 2003 (7 reported programs).

The agenda topics that are displayed in Table 5.0 are inclusive of the topics reported to the JERRITT Project for Mentoring Programs. The agenda topics are arranged under the JERRITT Project Subject Matter category headings. This arrangement allows readers to see the topics and/or issues that mentor-judges are exposed to so that they are better prepared to acculturate new judges to the judicial branch and assist them in becoming contributing members of the judiciary earlier in their careers.

Year	Agenda Topics
2000	Judicial Branch Education Going to bat for the new judge – advocacy Mentor program New mentoring outline Mentor introduction and exercise Project mentor training Brainstorming issues and questions Mentoring  Discipline, Ethics, and Conduct Ethics - common questions of new judges
2002	Judicial Branch Education Creating a good climate for learning Principles of adult learning Learning styles Preparation for the first meeting Dealing with challenging scenarios You as a mentor - your experience, values, and learning needs Going to bat for the new judge – advocacy  Communication Skills: Verbal, Nonverbal, and Written Dialogue skills - responding to typical concerns Communication skills and the coaching styles inventory
2003	Judicial Branch Education

Questions and answers about the mentor program Advanced mentor training Mentoring assignments Role of the mentor Module one: mentoring as a process Module three: roles and responsibilities of the protégé Module eleven: putting it all together
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Table 6.0 highlights the distribution of the JERITT Project main topic codes, or codes used to qualitatively organize the mentoring agenda topics, by their respective programming year.

Main Code	Programming Year		
	2000	2002	2003
Judicial Branch Education	✓	✓	✓
Discipline, Ethics, and Conduct	✓		
Communication Skills: Verbal, Nonverbal, and Written		✓	

#### Career Stage Education Programming

Judicial branch educational programming occurs along a continuum for various audience types. Twelve or thirty percent of the responding organizations offer pre-bench programming, thirty-eight or ninety-five percent offer a new judge/employee orientation within the first year of service, thirty-six or ninety percent offer an update/hot topic programming that occurs at all career stages, twenty-eight or seventy percent offer mentoring, twenty seven or sixty-eight percent offer early-career programming, and twenty or half offer mid- (three-and-a-half to six years) and advanced- (six years or more) career programming. Twelve or thirty percent offer retreats.

Programming Type	Frequency	Percent
pre-bench	12	30%
new judge/employee orientation w/in 1 <sup>st</sup> year	38	95%
update/hot topics (all career stages)	36	90%
mentoring	28	70%
early-career programs (1–3 years)	27	68%
mid-career programs (3.5–6 years)	20	50%
advanced-career programs ( 6 + years)	20	50%
retreats	12	30%

Noteworthy gains have been demonstrated regarding the implementation of programming based on a mentoring philosophy. The 1999 edition of Issues and Trends in Judicial Branch Education noted that sixty-four percent of the responding organizations maintained mentoring programs for judges while currently seventy percent of the responding organizations maintained mentoring programs not only for judges, but for other audience types.

#### Career Stage Programming by Audience Type

The distribution of organizations offering career stage programming by the sixteen differing audience groups is presented in Table 3h.

Audience Code	Pre-Bench	New Judge	Update/ Hot Topics	Mentoring	Early-Career	Mid-Career	Advanced-Career	Retreats	Total <sup>1</sup>
ALC	1	3	4	0	1	0	1	0	10
CC	1	14	16	5	8	5	6	0	53
CMP	0	13	10	2	7	5	3	2	42
CPP	0	4	4	2	4	2	1	0	17
CR	0	2	4	0	0	0	0	0	6
CSP	0	11	8	3	9	6	5	0	42

GAL	0	1	0	0	0	0	0	0	1
I	0	1	1	0	0	0	0	0	2
J	9	39	35	25	20	17	16	8	169
M	2	4	5	0	4	1	1	1	18
P	0	5	2	0	3	2	1	0	13
PD	0	0	0	0	0	0	0	0	0
PROS	0	0	0	0	0	0	0	0	0
QJ	0	0	1	0	0	0	0	0	1
SLC	0	0	1	0	0	0	0	0	1
TCA	0	0	0	0	0	0	0	0	0

<sup>1</sup> Total programming count per audience classification code.

Audience Codes: ALC = attorneys/law clerks, CC = court clerks, CMP = court management personnel, CPP = court professional personnel, CR = court reporters, CSP = court support personnel, GAL = guardians ad litem, I = interpreters, J = judges, M = miscellaneous, P = probation officers, PD = public defenders, PROS = prosecutors, QJ = quasi-judicial personnel, SLC = security/law enforcement, TCA = trial court administrators

Substantial career stage programming was delivered to a judicial audience. Nine of the forty-two responding organizations indicated they offer pre-bench programming, thirty-nine offer new judge/employee orientation within the first year of service, thirty-five offer update/hot topics programming for all career stages, twenty-five offer mentoring, twenty offer early-career programs, seventeen offer mid-career programs, sixteen offer advanced-career programs, and eight offer retreats. Minimal career stage programming is offered to court reporters, guardians ad litem, court interpreters, quasi-judicial personnel, and security/law enforcement personnel.

No career stage programming is offered to public defenders, prosecutors, and trial court administrators. See Appendix 3C for a complete description of organizations and their particular career stage programming offerings.

Of the forty organizations offering career stage programming, twelve or thirty percent maintain budgets in excess of \$1 million dollars. These organizations include the Arizona Supreme Court, Administrative Office of the Courts, Education Services Division; the Florida Office of the State Court Administrator, Legal Affairs and Education Division; the Michigan Judicial Institute; the Mississippi Judicial College; the Missouri Office of State Courts Administrator; the New York State Judicial Institute; the Texas Justice Court Training Center; the Texas Municipal Courts Education Center; the California Administrative Office of the Courts; the Institute of Continuing Judicial Education (ICJE) of Georgia; the District of Columbia Courts (Washington DC); and the Wisconsin Office of Judicial Education. The staffing size of these organizations ranges from four to sixty-five. Seventeen or forty-three percent of the responding organizations offering career stage programming maintain budgets that ranging \$7,500-\$932,000. These organizations include the Alaska Court System; the Delaware Administrative Office of Courts; the State of Hawaii Judiciary; the Idaho Supreme Court; the Indiana Judicial Center; the Iowa State Court Administrator's Office; the Kansas Supreme Court; the Administrative Office of the Courts Kentucky; the Louisiana Judicial College; the Nebraska Administrative Office of the Courts/Probation; the New Hampshire Supreme Court, Office of General Counsel; the Oregon Judicial Department-Education and Training; the Judicial Academy of Puerto Rico; the Tennessee Administrative Office of the Courts; the Utah Administrative Office of the Courts, Utah Judicial Institute; the Vermont Office of the Court Administrator; and the West Virginia Supreme Court of Appeals. The staffing size of these organizations ranges from one to twelve. Regardless of budget or staffing size, judicial branch education organizations are implementing this new and emerging judicial branch education trend.



Appendix 3C. Career Stage Program Offerings (N=42)

State	Organization	Pre-Bench	New Judge	Early-Career	Mid-Career	Advanced-Career	Update/ Hot Topics	Retreats	Mentor
Alabama	Administrative Office of Courts, Alabama Judicial College	√	√	√	n/app	n/app	√	√	√
Alaska	Alaska Court System	n/app	n/app	n/app	n/app	n/app	√	n/app	√
Arizona	Arizona Supreme Court Administrative Office of the Courts, Education Services Division	n/app	√	√	√	√	√	n/app	√
Arkansas	Administrative Office of the Court	n/app	√	n/app	n/app	n/app	n/app	n/app	n/app
California	Administrative Office of the Courts	n/app	√	√	√	√	√	n/app	√
Colorado	Colorado State Court Administrator's Office	n/app	√	√	√	n/app	n/app	n/app	√
Connecticut	Superior Court Operations, Judge Support Services	√	√	√	√	√	√	n/app	√
Connecticut	Court Support Services Division	√	√	√	√	√	√	√	√
Delaware	Administrative Office of Courts	n/app	√	√	n/app	n/app	√	√	√
Florida	Office of the State Court Administrator, Legal Affairs and Education Division	√	√	√	√	√	√		√
Georgia	Institute of Continuing Judicial Education (ICJE) of Georgia	n/app	√	n/app	n/app	n/app	√	√	√
Hawaii	State of Hawaii Judiciary	n/app	√	√	√	√	√	n/app	√
Idaho	Idaho Supreme Court	n/app	√	√	√	√	√	n/app	√
Illinois	Administrative Office of the Illinois Courts	n/app	√	√	√	√	√	n/app	√
Indiana	Indiana Judicial Center	√	√	√	√	√	√	n/app	√
n/app: not applicable									
State	Organization	Pre-Bench	New Judge	Early-Career	Mid-Career	Advanced-Career	Update/ Hot Topics	Retreats	Mentor
Iowa	State Court Administrator's Office	n/app	n/app	√	n/app	n/app	n/app	n/app	n/app
Kansas	Kansas Supreme Court	n/app	√	n/app	n/app	n/app	√	n/app	√
Kentucky	The Administrative Office of the Courts Kentucky	n/app	√	n/app	n/app	n/app	√	n/app	n/app
Louisiana	Louisiana Judicial College	√	√	√	√	√	√	n/app	n/app
Maryland	Judicial Institute of Maryland	n/app	√	√	√	√	√	√	√
Michigan	Michigan Judicial Institute	√	√	√	√	√	√	n/app	√
Mississippi	Mississippi Judicial College	√	√	n/app	n/app	n/app	√	n/app	n/app

Missouri	Office of State Courts Administrator	√	√	√	√	√	√	n/app	√
Nebraska	Administrative Office of the Courts/ Probation	n/app	√	n/app	n/app	n/app	√	n/app	n/app
New Hampshire	New Hampshire Supreme Court, Office of General Counsel	n/app	√	√	n/app	n/app	√	√	n/app
New Mexico	Rozier E. Sanchez Judicial Education Center	n/app	√	√		√	√	√	√
New York	New York State Judicial Institute	√	√	n/app	n/app	n/app	√	n/app	√
North Carolina	Institute of Government	n/app	√	n/app	n/app	n/app	√	n/app	
North Dakota	North Dakota Supreme Court	n/app	√	n/app	n/app	n/app	√	n/app	√
Oregon	Oregon Judicial Department- Education and Training	n/app	√	√	√	√	√	n/app	n/app
Puerto Rico	Judicial Academy of Puerto Rico	n/app	√	n/app	n/app	n/app	√	√	√
South Carolina	South Carolina Court Administration	n/app	√	√	√	√	√	√	√
Tennessee	Administrative Office of the Courts	n/app	√	√	√	√	√	n/app	√
Texas	Texas Justice Court Training Center	n/app	√	n/app	n/app	n/app	n/app	n/app	n/app
Texas	Texas Municipal Courts Education Center	n/app	√	√		√	√	√	n/app
n/app: not applicable									
State	Organization	Pre-Bench	New Judge	Early- Career	Mid-Career	Advanced- Career	Update/ Hot Topics	Retreats	Mentor
Utah	Administrative Office of the Courts, Utah Judicial Institute	n/app	√	√	√	√	√	n/app	√
Vermont	Office of the Court Administrator	n/app	√	√	√	n/app	√	√	√
Washington DC	District of Columbia Courts	√	√	√	n/app	n/app	√	√	√
West Virginia	West Virginia Supreme Court of Appeals	√	√	√	√	√	√	n/app	√
Wisconsin	Supreme Court of Wisconsin, Office of Judicial Education	n/app	√	n/app	n/app	n/app	√	n/app	n/app
Total		12	38	27	20	20	36	12	28
n/app: not applicable									

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April issue of Thiagi GameLetter I am happy to announce the April 2007 issue of my free online newsletter. You can read it by visiting [http:// thiagi.com/pfp/april2007.php](http://thiagi.com/pfp/april2007.php) .

The April 2007 issue contains--

An audio game called EMPATHY that helps you display concern to your customer  
A framgame, RECORDINGS, that enables you to create your own game to train participants on any conversational skill  
A paper-and-pencil game called WHY that forces participants to examine assumptions and principles  
An interview with Dave Piltz, an OD specialist who talks about games  
A simulation game by Dave Piltz on decision making and critical thinking  
Les Lauber's review of two books that save trainers' time  
Brian Remer's monthly insight in exactly 99 words  
An announcement about Thiagi's new card game kit  
A special Playhouse article by Kat Koppett on the power of "Yes, And..."  
SPEECH TAG, an improv game by Kat Koppett on storytelling.

Enjoy reading this issue of the Thiagi GameLetter -- and playing it!  
And please give us feedback.

Playfully,  
Thiagi

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May issue of Thiagi GameLetter I am happy to announce the May 2007 issue of my free online newsletter. You can read it by visiting [http:// thiagi.com/pfp/may2007.php](http://thiagi.com/pfp/may2007.php) .

The May 2007 issue contains--

An article on how to let participants generate questions and use these questions for faster, cheaper, and better training design.  
A ready-to-play matrix game called EUROPEAN NEIGHBORS  
Explanation of how to use the matrix game as a template to instantly create your own training games.  
A Cryptic Cluster instructional puzzle that deals with presentation skills.  
A review by Les Lauber of two books on on-the- job training.  
A new insight by Brian Remer about climbing toward goals.  
A review of Clark Aldrich's blog with clickable links to different types of online games.  
A single items survey about characteristics of effective training games.

Enjoy reading this issue of the Thiagi GameLetter -- and playing it!  
And please give us feedback.

Playfully,  
Thiagi

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Human Trafficking: A New Problem for State Courts  
By Gretchen Hunt

The problem of human trafficking, or modern day slavery, has received a lot of national and international media attention, but only recently has it received attention at the state level. At the mention of human trafficking, images spring to mind of Eastern European and Asian women and young girls forced into prostitution, as do vast criminal networks that profit from these abuses. Sadly, these imagined scenarios too accurately reflect the reality for many men, women and children across the United States.

Such realities led to the creation of the 2000 Trafficking Victims Protection Act ("TVPA") which made human trafficking a federal crime in the United States, provided incentives for non-citizen victims to cooperate with law enforcement and authorized monitoring of foreign anti-trafficking efforts. The TVPA defines human trafficking as a commercial sex act compelled by force fraud or coercion, or where the victim is under 18, or forced labor, including involuntary servitude and

debt bondage compelled through force, fraud or coercion. [As a departure from earlier laws, traffickers who enslave their victims through subtle means, such as threats of reporting to the authorities, can now be prosecuted.]

Many states are only recently recognizing the problems posed by human trafficking, problems that affect not only women and girls in far-off lands, but also runaways, immigrant laborers, nannies, maids, factory workers and women in servile marriages (or “mail order brides”) right here in the U.S.

Slavery has been found in both urban and rural areas, impacting U.S. citizens and non-citizens alike, including drug-addicted homeless African American men, undocumented farm workers, domestic servants and women and girls forced into prostitution. [Put simply, the only thing victims have in common is a vulnerability exploited by the trafficker: lack of documents, history of abuse, homelessness or substance abuse.]

Many states have passed legislation making trafficking a state crime and are training local police to detect trafficking and refer victims to services. Judicial educators should be next in line to institute training and develop protocols on human trafficking and victim-centered interventions. That is because state courts, along with local police, hospitals, domestic violence and homeless shelters and immigrant centers are often among the first places trafficking victims seek assistance. Yet, without awareness of the dynamics and signs of trafficking, state courts may deny victims the help they need. According to a study conducted by the Family Violence Prevention Fund, many victims actually sought medical care during the course of their forced servitude or soon after, but few were screened for victimization. (Turning Pain into Power: Trafficking Survivors' Perspectives on Early Intervention Strategies, Family Violence Prevention Fund (2005), available at [www.endabuse.org](http://www.endabuse.org)). Similarly, trafficking victims who escape their enslavement describe seeking police assistance, only to find help elusive due to language barriers and fear of deportation.

In the worst-case scenario, courts without training to recognize trafficking may further harm victims by convicting and punishing them for the very crimes they were forced to commit. Victims may be charged with crimes ranging from prostitution to false documents and drug possession. Even without state legislation criminalizing human trafficking, state courts can refer victims to services, alert federal law enforcement and apply other state laws to address victimization, such as false imprisonment and assault statutes.

Training state court personnel is one way to increase prosecutions of traffickers and guard against re-victimization. In Kentucky, reported raids of Korean massage parlors resulted in evidence of trafficking, including women living in brothels, being moved frequently and not having control over their documentation; but, many such cases were handled in state courts merely as prostitution prosecutions. This is in contrast to federal prosecutions in which Korean massage parlor owners have been charged with human trafficking in similar schemes. In the federal cases, where law enforcement and court personnel presumably had more training and greater awareness of trafficking, victims were treated as victims rather than defendants. In Kentucky, however, the possible victims of trafficking were charged with crimes themselves. Some involved with the cases even questioned whether the court interpreter may have been in league with the brothel owners, raising further doubts about the accuracy of the information given to the courts by the women.

All players in the court system, from clerks taking criminal complaints, prosecutors and victim advocates to judges, must be trained to recognize human trafficking. Possible victims may present as juvenile defendants, battered spouses or as defendants charged with false documents, prostitution or other crimes. [Judges in particular may play a critical role in ensuring that prosecutors and defense attorneys handle trafficking cases as such and that victims of trafficking get the representation and protection they deserve.] Under federal law, for example, victims of human trafficking have the right not to be charged with the crimes for which they are being enslaved, (e.g. prostitution) and the right not to be detained in facilities inappropriate to their status as victims (e.g. jail).

Training should include understanding the dynamics of power and control in a trafficking situation, the criminal definition of trafficking, signs and screening tools for trafficking, the need for victim-centered investigation and prosecution and protections and resources for victims. Training should also emphasize the distinction between smuggling and trafficking and how “consent” is irrelevant (since no one can consent to being a slave). [Many non-citizen victims will not self-identify as victims, having been coached by their traffickers to tell a different story and made to fear court systems because of their lack of English, lack of documentation or cultural beliefs that they owe a debt to their traffickers.] To overcome these barriers, training should address language access, cultural competency and immigration law issues.

Across the country, the best practices and prosecutions have occurred through multi-disciplinary teams centering on the wellbeing of victims. Currently, no uniform or specific protocol exists for state courts dealing with trafficking victims, although New York has developed protocols for state and local prosecutors through an interdisciplinary task force. Judicial training should mirror as closely as possible the multidisciplinary approach and should include trainers from victim services, immigrant communities and federal law enforcement.

One of the most important things state courts can do to ready themselves to handle trafficking victims is to develop language access plans and train all staff on the importance of language access. Under Executive Order 13166,

implementing Title VI of the Civil Rights Act, all agencies, including courts, which receive federal funding, must provide “meaningful access” to their services for people with limited English proficiency. “Meaningful access” may vary based upon the client population and agency resources, but at a minimum includes free interpretation and translation of vital documents. Staff training and process monitoring are also cornerstones to ensure access to the courts. There are few services more important than access to protection in court. While not all trafficking victims will be non-citizens, or have limited English proficiency, the availability of these resources is critical in identifying victims and maintaining control over the court process. As one Spanish-speaking trafficking victim implores in a training video for police, “...please do not use the traffickers as the translator (sic interpreter).” Most court administrators would deny having used traffickers to interpret, but the reality is that many may have done so inadvertently, when the trafficker or their acquaintance steps in and offers to interpret. This becomes even more of a risk in rural areas lacking competent interpreters and in any area where the victim’s language is not widely spoken.

Fortunately, interpreter services are available in even the most remote areas through special telephone access. Contracting with a telephonic language service, using competent volunteer interpreters and bilingual staff are all options for courts with limited resources. More information about language access policies and resources is available at the federal website, [www.lep.gov](http://www.lep.gov).

Once identified, trafficked victims may be eligible for an array of protections and services. Awareness of available services and how to access them should be part of any human trafficking training curriculum. State courts, especially those that often refer victims of domestic violence and sexual assault to services, may be well positioned to also provide referrals to trafficked victims. The first point of contact nationwide may be the U.S. Department for Health and Human Services hotline for trafficked victims at 1-888-3737-888. This service connects individuals to the federally funded trafficking victim services agency in their state. Services may include housing, job placement, assistance with public benefits and immigration matters, counseling, English classes and medical assistance. Legal Aid Societies, which provide valuable legal representation to indigent individuals, are allowed to represent trafficking victims regardless of their legal status. Non-citizen child victims of human trafficking may present with a number of specialized needs. In addition to being eligible for state child protective services, trafficked children also may benefit from the Unaccompanied Minor Program (<http://www2.acf.dhhs.gov/programs/orr/programs/urm.htm>) that offers foster care that is linguistically and culturally appropriate.

Training resources are available at <http://www.acf.hhs.gov/trafficking/>, the federal site dedicated to raising awareness of human trafficking. The materials primarily address health care and law enforcement professionals, but are applicable to state courts as well. They include posters, informational DVDs, screening tools, powerpoint presentations on the TVPA and victim protections, fact sheets on immigration benefits, sex trafficking, forced labor, the TVPA, and child victims of trafficking. All materials are free of charge and many are produced in multiple languages. United States Attorney’s offices across the country have launched a videoconference training series with the help of prosecutors, work groups and other experts on human trafficking to help law enforcement and the courts better identify victims and prosecute traffickers. Training on human trafficking, language access, cultural competency and immigration is provided through the National Judicial Institute on Domestic Violence (NJIDV) in partnership with the National Council of Juvenile & Family Court Judges and the US Department of Justice Office on Violence Against Women (<http://endabuse.org/programs/display.php3?DocID=89>). The Freedom Network ([www.freedomnetworkusa.org](http://www.freedomnetworkusa.org)) is a coalition of agencies providing services to trafficked victims, training and technical assistance on human trafficking. Agencies such as Free the Slaves ([www.freetheslaves.net](http://www.freetheslaves.net)) have produced documentaries on the global slave trade and human trafficking survivors in the U.S. that illustrate well the dynamics of trafficking and interventions that will help victims. The Polaris Project compiles information on trafficking of non-citizens and U.S. citizens, and has issued reports on sex trafficking on the state level, including one about Ohio. ([www.polarisproject.org/polarisproject/programs\\_p3/Ohio\\_Report\\_Trafficking.pdf](http://www.polarisproject.org/polarisproject/programs_p3/Ohio_Report_Trafficking.pdf)) Training and resources for law enforcement have recently been developed by the International Association of Chiefs of Police ([www.theiacp.org/research/VAWPOLICEResponse.html](http://www.theiacp.org/research/VAWPOLICEResponse.html)), including a very effective series of short videos that could be used for court personnel.

Modern slavery should have no place in our society. State courts can help detect trafficking, bring traffickers to justice and restore victims. The starting point to achieve this goal is training.

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Inside the mind of the judge: Part V  
How trial judges decide cases  
By: Judge David M. Gersten

In Part IV of this series, I covered the long-term judge. I discussed how to become a great judge, by simply having an open mind, and how to become the worst judge, by having a closed mind. I also discussed how to get the curmudgeon judge to achieve judicial greatness, by embracing judicial education.

This article will explore the process by which trial judges reach decisions. It is not an exhaustive discussion but rather an overview. The process is indeed complex and will take some time to detail. However, I must stress that, on a daily basis, thousands of state and federal trial judges, strive to reach a right, just, and proper decision.

There is a difference between right, just, and proper. A right decision engages the law, and thus, it must fit within the law. A just decision is one that is consistent with the judge's concept of justice, but it may not necessarily fit into the law. And, lastly, there is a proper decision, which incorporates both law and justice and all procedural safeguards.

## DIVERSE JUDGES—DIVERSE DECISIONS

At the outset, we must acknowledge that all judges are unique. A variety of factors such as: a judge's DNA, culture, race, religion, gender, potential disabilities, and sexual orientation make each judge different. Therefore, his or her decision will not be influenced in the same way nor will they follow the same procedure for making their decisions.

A judge's assignment may also influence the decision. For example, a judge in the criminal division may view how he or she must decide cases differently from a judge who sits in the family division. Also, domestic violence cases are different from contract cases, just as juvenile cases are different from accident cases.

## LEGAL REALISM AND JUDGING: A THEORY THAT FITS

Against the backdrop of these characteristics, many, many legal theorists claim to know how judges make their decisions. Although there is no way to prove such claims, I believe the theory of "legal realism" most adequately explains how judges decide cases.

Basically, legal realism is a theory that suggests judicial decisions and the law derive from public policy. When deciding cases, judges refer to public policy as well as draw on their own common sense, wisdom, reason, intuition, and experience. Rather than focus on formal rules and procedures, their decisions are tinged with their own psychological, sociological, economic, and historical realities. Legal realists believe that this is the best approach for achieving just and proper results.

There are other discrete and subtle factors that may affect a judge's decisions. Some factors include the deep and personal biases and prejudices that some judges have concerning some aspects of life. These biases may spill over into certain cases. For example, a judge may have had a difficult childhood, which may affect his or her decisions in family law cases. Others may have been victims of family violence. Others may have family members that are drug-addicted or alcoholics. All of these factors can color a judge's decisions and are the type of influences that might be expected from judges adhering to legal realism.

However, a judge's awareness can combat these factors from becoming part of a judge's decision. Since there is no predictability for how these personal biases will affect a decision, a judge cannot do anything other than be aware of these factors. If aware of their own biases, most judges will not hear the case, and those who decide to hear the case will try to set the biases aside.

## NEWCOMER JUDGES—EXPERIENCED JUDGES

Next, it is important to understand that a judge's length of time on the bench may also affect decision-making. At the beginning of their careers, most judges are overwhelmed by the process of sitting in judgment of people. They are also overwhelmed by the system, its rules, laws, and the sheer number of people it takes to get any decision carried out. Needless to say, there is a learning curve that is extremely steep and often hard to master.

This difficulty is eased for a judge who learns the art of management. With so many people involved in the system (including parties, lawyers, clerks, court reporters, case managers, corrections officers, psychologists, experts, department representatives, guardian ad litem and others), the judge is confronted with a daunting array of management issues. Information from these people enables the judge to decide issues, but the sheer volume of information often impedes the decision-making process.

At some point, the judge must shut off the information flow and begin the decision-making process. Oddly, the judge may have shut the information gathering process down, and started making decisions before gathering all the information. In other words, the judge may often have made up his or her mind before actually hearing the entire case.

With the newcomer-to-the-bench judge, deciding cases is not second nature. The process is often an agonizing one where the judge fears making a wrong decision. He or she fears the decision's ramifications on peoples' lives. He or she

fears looking and sounding dumb. He or she fears being reversed. Some of these fears never go away, but eventually the newcomer will get into the swing of the job. The demands of the job will affect his or her mind and body (yes, the body: sleep, stamina for heavy caseloads and personal time deprivation). Then, once the newcomer gets into the swing of the job, his or her decisions will often become predictable. The newcomer will approach problems from a uniform perspective and will often forget to look outside the box to the bigger picture.

The experienced judge is one who has been around a long time. This judge has learned the ropes and most certainly does not want to re-invent the decision-making wheel. This judge most certainly will resist the need to learn a new way to do things. New decision-making concepts take time, and the experienced judge knows that time is precious. Hence, the experienced judge makes his or her decisions quite swiftly and moves on to the next case.

Yet, the experienced judge, by necessity, has learned how to be an effective decision-maker. In becoming an effective decision-maker, the experienced judge has learned to synthesize the elements of law, procedure, and fact-finding. In doing so, he or she has honed in on truth and incorporated law into the decision-making process. This process leads to excellent informed decisions.

## AVOIDING REVERSAL

As previously mentioned, the fear of reversal makes the appellate court a big factor in the decision-making process. Trial judges do not like to be reversed. After all, they have worked hard at making a great decision (in their mind) and feel that it should stand. They do not like the higher court telling them that they have made a wrong decision. In order to combat this event, they are careful about the record.

The record becomes the great equalizer. At some time in the trial judge's career, practically all trial judges will learn what the sting of reversal feels like. Once stung, they become cognizant of the record and try to avoid reversal. In avoiding reversal, they may make a decision that is legally correct or right. However, this decision is not necessarily one that is just.

Therefore, the judge may face a conflict between following the law and justice. This does not mean that these concepts cannot overlap, but it does mean that sometimes following the law and justice do not intersect. In that situation, the judge has to be creative in making a square set of facts fit into a round hole of justice. If deft and clever, the judge can accomplish both law and justice while at the same time avoiding reversal.

For some judges, the fear of reversal may dominate the decision-making process to such an extent that they may neglect other important factors. Some rely heavily on personal experiences and biases without worrying about the possibility of reversal. Others focus too much on first impressions. Despite all of these considerations, it is important to remember that the most important force driving a judge's decisions is the desire to do the right thing and make proper decisions.

## GOOD IMPRESSIONS—BAD IMPRESSIONS

Another important consideration is the mighty "human factor." In this section, I am discussing the idea that we are all human, especially in our vulnerability to making judgments colored by first impressions.

Within the first few seconds of an encounter, a judge, like any other person, makes several observations. He or she observes a litigant or an attorney's appearance, demeanor, mannerisms, and body language in the courtroom. Once this first impression is made, it can become hard to reverse. This can be critical because judges often start forming opinions about each witness's credibility from the beginning.

As a former trial judge, I will admit that at times it is hard to see past the surface and judge solely on the facts of the case when a litigant or an attorney makes a bad first impression. This is because when a person makes a bad impression, the judge may stop paying full attention to the litigant or attorney, which can be detrimental to the case.

Yet, there are ways to avert the closing of a judge's mind by getting him or her to set aside first impressions. For example, the judge will treat you better if you are respectful and dress well, instead of looking as if you rolled out of bed. It is not appropriate for a litigant to show up in court wearing flip flops, a tank top, and baggy shorts. Also, if you are deferential to the judge, and not argumentative and rude, the judge will treat you better. My Aunt Ruth Rome always says, "catch flies with honey."

Despite my belief in the importance of first impressions, litigants and attorneys should not worry about a judge using his or her first impressions as the sole basis for deciding the case. In fact, trial judges must be careful and cognizant of what they say in the courtroom because what everyone says is transcribed to form the record. Hence, the record, as mentioned previously, remains a particularly strong factor in the decision-making process.

## THE PROCESS LEADING TO A FINAL DECISION

Now, I will begin detailing the process of how trial judges actually decide cases. For starters, we are reminded that all judges want to do the right thing. All judges want to do justice. Yet, sometimes the prospect of doing justice seems difficult when the judge is faced with a complex case.

Often, a judge may not wholly understand the facts. It is scary to think that the presiding judge controls the fate of the parties without having ever been in the same shoes as the parties. In other words, imagine watching a foreign language movie with English subtitles. The subtitles do not always accurately reflect what is said in the movie. The viewer might not have a full understanding of exactly what has happened in the movie, but then he or she will come to a conclusion and decide whether or not he or she liked the movie.

This situation happens quite often. Judges may not fully understand the case, but they will have to make a decision on how the case should be resolved. Thus, judges try hard to figure out exactly what is going on in a particular case before formulating any opinions. Different procedures are present depending on whether the case is civil or criminal. However, the conscientious judge will carefully review the documents and pleadings.

Then, the judges will acquaint themselves with the law applicable to the case. After that, the judge will start to listen to the testimony. However, sometimes witnesses are unavailable, which creates gaps in the facts. This means the judge necessarily has to fill in the gaps to make a reasoned decision.

Most judges systematically approach each case before making a decision, but some make judgments without employing a method. This is perhaps because the judge has already seen a case with similar issues and is convinced it should be resolved in a certain manner. Some judges even formulate opinions before a case proceeds to trial and may gloss over evidence contrary to their opinion.

The judge often has the opportunity to sort through the evidence before the case ever gets to trial. For example, a civil judge may hold evidentiary hearings, pre-trial conferences, and summary judgment hearings. A criminal judge may also hold evidentiary hearings on motions to suppress, motions in limine, motions to dismiss, discovery issues, and many other issues.

There is no substitute for good lawyering to steer the judge towards effective decision-making. The astute lawyer will make sure that gaps in information and the law are cleared up for the judge. Although the judge may make a decision that is contrary to a lawyer's position, it can still be a very well-informed and cogent decision.

## CONCLUSION

When making that final decision, judges may use different approaches. Some judges see the law as black and white. Others find a way to fit a square peg into a round hole. Some judges focus on avoiding reversal. Other judges think their decisions are always one hundred percent correct. Even if their decisions are not correct, they may spend an inordinate amount of time rationalizing them.

Regardless of the approach, judges understand the importance of their decisions. They understand that they are expected to remain neutral. They understand that a party's fate lies in their hands. They understand that they must strive to do the right thing and then serve justice with their decisions.

Please email me: [gerstend@flcourts.org](mailto:gerstend@flcourts.org) with any suggestions or solutions that we can share with our membership. The next chapter in this "Inside the Mind of the Judge" series: "How Appellate Judges Decide Cases." Interested? Thanks for reading. FRATRES CONJURATI.

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Is it Time for a Change?  
Marguerite Stenquist

Science tells us that a chrysalis hanging from a twig houses something called the "pupa," from which a caterpillar transforms into a butterfly. Every cell in the caterpillar changes. In its pupa stage, the insect is shapeless organic goo. The caterpillar actually melts and reshapes itself at the same time. Its old physical identity is erased entirely; it is, in essence, reborn as a butterfly. Scientists cannot explain this phenomenon, which many people consider to be miraculous.

In Deepak Chopra's "The Book of Secrets," he tells us that change is natural and essential to life. For example, "(the body's) skin cells perish by the thousands every hour, as do immune cells fighting off invading microbes...Cells adapt from moment to moment. They remain flexible in order to respond to immediate situations."

Our physical selves thrive on change, even instigate it, while at an emotional level, we tend to be more skeptical. What separates us from the caterpillar's miraculous transformation from pupa to butterfly is that our logical self, not nature, decides if we should make a change, what change to make, when to make it, and how to make it happen. We are intellectually and emotionally active participants in the process. Consequently, our decisions to change are often peppered with fear, doubt, low energy, and procrastination. So while we want to acknowledge what sometimes holds us back, we want to focus on the possibilities. Let's remember that we have been designed, at a cellular level, to emerge from a past condition into a new configuration of ourselves.

Those Shifty Values. We have all experienced the urges and stages during our work life that signal the need for change: restlessness, boredom, frustration, curiosity, loss, sometimes aging, even panic. In hindsight, these cues often predict turning points – crossroads where new priorities emerge that struggle to be satisfied rather than stifled. In fact, how we suffer or blossom through our turning points may be our most reliable guide to future choices.

Career changes often reflect a shift in values that may go undetected (or not honored) for long intervals. So it isn't unusual to work in a particular capacity that is out of synch with our values. At twenty, for example, what I valued most was a job with a high-profile company and a predictable paycheck. So I signed on with Eastman Kodak and stayed for twelve years, until a couple of those urges became too prickly to ignore, probably boredom and curiosity. The truth is I worked around this discomfort for several years before acting on the signals. I could say the timing wasn't right or I could say it was a case of avoidance. But let's be kind: acting on a values shift doesn't happen overnight. It's a process. I was in my thirties when I discovered that, at that time, I valued a job that capitalized on my writing strength. This priority drove all my decisions after that: back to school for an English degree, relocation, and a job as public information officer for the Colorado Secretary of State. Less money, more engaging: a successful turning point. But it didn't occur without doubt and fear (the pupa goo).

My Kodak boss said, "If you can't find your niche here, can you find it anywhere?" My mother said, "What's an English degree going to get you?" My co-workers said, "But nobody leaves Kodak." It's true. Some of them stayed for another thirty years.

At forty came another values shift: challenging assignments and travel. So I moved into the advertising world, where I managed millions of dollars for Denver clients, bustling around New York and San Francisco to produce TV commercials. And in my fifties I valued learning and teaching, which led to a master's degree in education and a few years teaching writing. I wanted nothing to do with travel. In my sixties, I place the highest value on flexibility and creativity in my work. I am a corporate trainer. I'm writing a novel. I am experimenting with art and yoga.

Each turning point has taught me valuable lessons: Fifty is not too old to go to college; change that honors values is energizing, not exhausting; and taking the next step means being willing to linger in the transformational goo for a period of time.

Taking the Next Step. If you're feeling the prickly sensation that signals a potential turning point in your work life, here's a process that can help you make a smooth TURN:

1. Turning-points timeline – Reflect on your past. In a notebook list the key events that have occurred over your life's journey and about when they occurred (not every event, just those that jump out at you during your reflection). Which ones influenced your career choices (promotion/demotion, family circumstances, finances, downsizing, relocation, education, health, termination, a passion, etc.)? What career changes did they lead to? Of those, which changes do you feel really good about? Let's call these your turning points.
2. Updated values chart – Examine each turning point to discover what you valued most at that time (i.e. interesting assignments, money, management, travel, teamwork, fun, working outdoors, working downtown, peaceful environment, competition, creative work, prestige, power, informality, structure, freedom, flexibility, learning on the job, making a difference, the opportunity to do what you love to do, exposure to experts, access to resources, etc.) Identify a couple of your key values at those times.
3. Reflection on current situation – What do you value most today, as it relates to an ideal work situation? How does your current job reflect these values? Are your job and values in synch? For example: I value writing; my job requires me to write 80% of the time; I value freedom; my job allows me to work from home and the focus is on results not seat time. If your work and values are compatible, you probably are not at a turning point. But, if you're feeling that prickly restlessness, keep reading.
4. Next-step planning -- When our work is consistent with what we value, we are what Gallup researchers describe as "engaged" performers. Their studies show that over half of the U.S. workforce is not engaged in their jobs; they show up but take the path of least resistance in most of what they do. This drag on productivity, I believe, results

from a disconnection between values and the job. When we are engaged, we feel more satisfied and less stressed, which is a much healthier way to spend a forty-hour week. If you're feeling disengaged, the following steps can help you take the next step:

A. What is one compelling goal at this stage of your career (i.e. promotion, retirement, career change, self-employment, education, relocation, self-improvement, etc.)? Be as specific and as honest as you can.

B. Does your goal honor your current values, or is it a "should-do" that does nothing to relieve that prickly feeling? If it's a should-do, go back to No. 1 above to remind yourself that you have escaped this pattern in the past and you have what it takes to escape it again...if you want to.

C. If your goal and values are in synch, and you have admitted this in writing in your notebook, you have taken the first step in your next-step program.

The rest is up to you. Follow the process that has worked for you in the past. Remember that a successful TURN usually requires spending a little time in the goo. But each time you TURN, the goo feels more like reassurance than chaos: "Oh, yeah, this is how it's supposed to feel; I've been here before" – there's a butterfly in the making.

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## Improving Your "E" IQ: Simple Tips for Netiquette

Jennifer Rains, Program Attorney, The National Judicial College

"The newest computer can merely compound, at speed, the oldest problem in the relations between human beings, and in the end the communicator will be confronted with the old problem, of what to say and how to say it." Edward R. Murrow

E-mail allows us to communicate quickly (sometimes simultaneously directed to many people) via a method that creates a permanent record. Thus, the old problem of deciding what to say and how to say it is frequently condensed into a matter of seconds but has lasting consequences. For many of us, e-mail is simply too easy. This ease allows slipping into a false sense of security or privacy. Consequentially, we may type words we might not otherwise say or write in a traditional letter. This is particularly problematic in a business environment. When communicating with business associates or colleagues, it is important to maintain the appropriate tone although e-mail often feels very informal.

As more people use e-mail with increasing frequency, a culture of "e-mail etiquette" or "netiquette" has emerged.

"Netiquette," as defined by Encarta Dictionary, is "a set of empirically derived rules for getting along harmoniously in the electronic communication environment."

Here are some basic tenets of netiquette to guide you in making more informed use of e-mail:

- Use clear and meaningful subject lines that your reader will understand. Consider that your reader may use your subject heading as a means of organizing and retrieving your message.
- Keep your message short and focused.
- Use short paragraphs.
- Return emails in the same day that you would return a phone call.
- Use emoticons (smiley faces, winks, etc.), and other virtual gestures only after carefully considering the nature of your relationship with the recipient.
- Likewise, use acronyms sparingly to avoid confusion. These tools can convey your voice to your recipient, but sarcasm, irony, and humor can be very easily misread.
- Limit the list of recipients and direct your message only to those who need to receive it (in other words, avoid overusing the cc (carbon copy) function).
- Use bcc (blind carbon copy) when addressing a message to a large group that does not necessarily know each other in order to respect privacy of e-mail addresses.

- Avoid using all capital letters, which indicates you are yelling.
- Re-read and proofread messages.
- Think twice before hitting send. There are few experiences worse than suddenly realizing that you sent an ill-conceived message or accidentally sent a message to an unintended recipient.
- Refrain from sending unnecessary attachments.
- Do not flame anyone. “Flaming” is “a virtual term for venting emotion online or sending inflammatory emails.”
- Include relevant portions of the original in the reply message to increase clarity.
- Write single subject messages whenever possible.
- Ask for action or the response you need directly.
- Remember e-mail is not always the best method of communication.
- Remember any message you send is permanent.

Sources (and helpful resources): Online Writing Lab, Purdue University, [http://owl.english.purdue.edu/handouts/pw/p\\_emaillett.html](http://owl.english.purdue.edu/handouts/pw/p_emaillett.html) (last visited March 26, 2007); Mike Song et al., How to Stop Spinning Your Wheels—and Start Managing Your e-Mail, *Moving Ahead: Management Insights for Business Success*, <http://www.amanet.org/movingahead/editorial.cfm?Ed=445&BNKNAVID=24&display=1&spMailingID=733779&spUserID=MTk4OTE0MTc5MgS2&spJobID=24978427&spReportId=MjQ5Nzg0MjcS1> (last visited March 26, 2007); Staff Training & Organizational Department, Yale University Library, Email Netiquette, <http://www.library.yale.edu/training/netiquette/> (last visited March 26, 2007).