The National Association of State Judicial Educators (NASJE) was founded in 1975 to provide a clearinghouse for an emerging body of specialized judicial education materials and techniques, and to enhance state judicial education programs.

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Billie Lee Dunford-Jackson
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Welcome to NASJE News, Fall Edition.

Please click on one of the articles to the right to begin your journey.

News

- NASJE Plenary Session: Justice as Seen through the Eyes of Others
- President's Column: NASJE's Newly Emerging Era
- Editorial: From the Editor
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NASJE Plenary Session: Justice as Seen through the Eyes of Others

The plenary session on Tuesday, August 20, 2002, focused on the immigration of the Hispanics to the west now known as New Mexico and their impact and influence on the justice system that we know today. Father Jerome Martinez y Alire, pastor of the St. Francis Cathedral in Santa Fe, traced the history of Spain by identifying various immigrant groups such as the Muslims, the Irish and the Romans. He then revealed the migration of the Spaniards to America and to New Mexico. Of interest, was the fact that Santa Fe was founded 10 years before the landing at Plymouth Rock.

The U.S. Catholic Bishops Survey in the 1990’s noted that the Hispanic population in the United States grew by 58%. In 2010, it is predicted that the Catholic Hispanic population in the U.S. will grow by 40%. Father noted that New Mexico has already achieved this growth figure. He further reminded us that immigration has made this country great and not to shut the door as immigrants are often the most creative people.

"... we are all immigrants in this country and that is what makes this nation so great."

Each community focused on extended families in the same manner as the churches that were built by the immigrants. Father said that Hispanics look at law and community organizations as a family and that they try to settle their problems within their extended families. He noted that when they feel isolated, problems arise. Today it is the women who are raising children with the fathers in the fields working which is a totally different culture. One large issue in the United States today is the rootless Hispanics who do not have the sense of family or church/community. Education in this country is a struggle for the Hispanics due to their language barrier.

Father suggested in response to a question that judicial educators could contact their local Catholic diocese office or the U.S. Catholic Conference of Bishops for speakers regarding Hispanic issues. In closing, Father reminded us that we are all immigrants in this country and that is what makes this nation so great.

Editor's note: If you would like to read a very interesting book that looks at how the world might have been different if Columbus’ impact on the new world had occurred in a more moral way, read Pastwatch: The Redemption of Christopher Columbus by Orson Scott Card, published by TOR Books.
President's Column: NASJE's Newly Emerging Era

by Tom Langhorne

Our 2002 national conference confirmed that NASJE is entering an excitingly new era marked by increased national and international influence, inter-organizational collaborations and prominent recognition. These bright developments did not spontaneously materialize. They are materializing in large part due to the many years of inspirational diligence and vision on the part of NASJE's membership and leadership.

Consider the following as proof that NASJE stands ready to assume an even more important role in improving the administration of justice.

First, in the past several weeks, we have witnessed an unprecedented number of NASJE members being selected to receive some of the most prestigious awards offered to anyone in the judicial system. Karen Thorson, Director of CJER's Education Division, was selected to receive the Warren Burger award. The New Mexico judicial branch education team which comprises the New Mexico Judicial Education Center, was chosen to receive the Howell Heflin award. Moreover, Bunny Baum, one of our favorite NASJE stalwarts, was selected to receive the prestigious National Association of Women Judges' Florence K. Murray Award for 2002 given annually to a non-judge who has been providing outstanding service to the NAWJ. Even more impressive is the fact some of these awards are not confined to contributions to the field of judicial branch education, but are awarded in recognition of the highest caliber of contributions to the legal system and judicial branch. These awards verify that NASJE's members are becoming increasingly noted as integral contributors to the broader, noble calling to improve the quality of American justice.

Secondly, more so than any time in NASJE's history, other nationally prominent organizations are approaching NASJE to benefit from our guidance, expertise, collaboration and leadership. They do so in order to advance those worthy organizations' lofty goals which happen to be consonant with NASJE's mission. At the risk of failing to mention many noteworthy examples, allow me to note the following:

During August's NASJE Conference alone, COSCA, the National Center for State Courts, The Century Council and SJI either approached us for collaborative support and guidance or recognized NASJE for its prominent role in assisting these respective organizations. This remarkable development would have been unimaginable when I first joined NASJE. This is yet another indicator of NASJE's national rise in prominence and respect.

Third, NASJE is properly poised to play a major leadership role in the field of international judicial branch education. It is my opinion that NASJE's emergence as a leader and natural talent pool in international judicial branch education may become the single most important transforming development in our relatively short professional history.
My Dear Colleagues:

I am pleased to take this opportunity to let you all know what you can hope to expect in the coming year from your Website Newsletter. There have been a lot of conceptual changes over the last few years as we made the transition from mailed, hard-copy newsletter to Website publication. We are still sorting these out. More than ever before, your letters to the editor with suggestions, comments, complaints and criticisms are welcome and necessary. If you, as one of our readers, are not satisfied with our publication, the most efficient way for you to be sure we know your thoughts is to tell us. You should always feel free to e-mail me or any member of the Editorial Board with your comments.

In the past few years the Newsletter Committee has either solicited or written almost all articles. Starting with our next issue, we are beginning the process of reorganizing the Newsletter into sections that will include regular input from non-committee members. This process could easily take a year or more to implement fully. So, once again, your comments will be welcome. Each section will have an editor or guest columnist responsible for providing 1-3 articles each issue on items of interest in the area covered by that section. If you would like to see articles in an area we are not currently highlighting in a designated section, please let me know. If you are interested in being a guest columnist for a new or existing section, please let me know. I cannot promise a new section will appear in immediate response to your communication, or at all, but I can assure you that the new section you want is much less likely to come into existence if you don’t make your ideas known to members of the Newsletter Committee.

So how will the Website be organized? Starting next issue, with a planned publication around January 2, 2003, you will see at least a few of the following new sections:

Regional Correspondents
International issues
From the Bench
Hot Topics in Domestic Violence and Family Violence
Community of Practice
Mentoring
Adult Education

How the above sections will be organized under and integrated into our current structure of News, Editorial, Resources, Manager’s Briefcase, and Business is only one of our challenges.

We look forward to fulfilling some of your needs over the next year. Please do not hesitate to be sure we know what you think they are.

If you have a comment, email me at schopick@sconet.state.oh.us If you wish to communicate with any other member of the newsletter committee, click on their name at the lower left of our front page.
Transitions

New Members

Please join us in welcoming the following new NASJE members:

- **JoDale Bearden**  
  Program Coordinator, Texas Municipal Courts Education Center, Austin, Texas

- **Carrie Brooks**  
  Project Associate, The University of Memphis Institute for Faculty Excellence, Memphis, Tennessee

- **Billie Lee Dunford-Jackson**  
  Assistant Director, Family Violence Department, National Council of Juvenile and Family Court Judges, Reno, Nevada

- **Susan Davis Morley**  
  Senior Attorney, Office of the State Court Administrator, Tallahassee, Florida

- **Kathryn E. Story**  
  Project Associate, Leadership Institute in Judicial Education, Center for the Study of Higher Education, Memphis, Tennessee

Departing Members

After nearly 20 years in judicial education, Krista Johns has taken an appointment as Dean of English and Business at Diablo Valley College in Pleasant Hill, California. She is leaving CJER to “find new challenges in education administration.” Krista has been a long time member of NASJE and the NASJE News Editorial Committee. She can be reached at kjohns@dvc.edu or 925-685-1230, extension 2199.

All of us who know her and have had the pleasure of working with her for all too short a period of time wish her the best and look forward to hearing of her continued success in life and professionally.
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<tr>
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<td>General Session/Welcome/Housekeeping (Speaker?)</td>
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<td>Resilience in Youth?</td>
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<td>10:45-12:00</td>
<td>Legislative update</td>
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<td>Judge round-table</td>
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**Friday, February 24**

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<tr>
<td>9:00-11:00am</td>
<td>General Session</td>
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<td>11:00-12:00</td>
<td>Conference Closing and Prizes</td>
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Resources

- Helping EveryBODY to Increase Learning PDF | MS-Word
- Connecting Personal and Professional Growth to Create Our Future: Part 2 PDF | MSWord
- Doing Our Jobs Better: The Whole Brain Way May not be reproduced without permission from Hermann International PDF
- Follow up to Plenary: Kolb and Beyond >Go (PDF)
- Effective Course Development >Go
- Cowdrey >Go
- Brain Bank: Content and Use of Faculty Development Handbooks >Go
- Brain Bank: Needs Assessment and Evaluation >Go
- Brain Bank: Exchange of Innovative Teaching Techniques >Go
- Judicial Education on Substance Abuse: Promoting and Expanding Judicial Awareness and Leadership >Go

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Helping EveryBODY to Increase Learning
Author: Denise Hill, Ph.D.

Creating an environment to stimulate people’s motivation to learn as well as their ability to learn is easier than might be expected. It can also increase the trainer’s enjoyment when delivering training. Much has been discovered about learning since Georgi Lozanov’s research, based on principles from as far back as Socrates, were brought to the Western world. With knowledge and experimentation Lozanov developed and refined a systematic process to teach languages and reduced learning time by approximately sixty-six percent. Today the growing knowledge of research and learning has aided biologists, physiologists, kinesiologists, teachers and trainers realize that, under the right conditions, our ability to learn is actually limitless.

Knowledge of our brain’s ability to retain knowledge and abilities has progressed to research and application of the whole body’s involvement in learning. Confirmation of our brain’s connection to the body helps us to connect subject matter at hand to the world around us. The explosion of information from brain research during the 1990s continues to grow at exponential rates. Teachers, parents, siblings and our peers and our own observations, reading and experiences have helped us to learn since we were young, whether it be learning to write our name or write a book. Innately we have continued to use some of the same techniques that worked for us all our lives. Our own unique approaches to learning made learning easier. So what is it we have known?

A group of adults most often agree that they learned the most information and learned it most quickly in nursery school through the early primary grades. That was usually the time they cited school to be the most fun, as well. Adults also often agree about the worst circumstance. The majority will provide a long groan as they recall fifty minute lectures in college. At one time some would surely have listed a few of my training sessions as well. There certainly were some differences between our early and our adult environments.

In primary grades the teachers met the needs of all learners in the classroom, not just the auditory learners. We could physically handle the nickels and dimes to understand about money, remember the five Great Lakes by visualizing the acronym H.O.M.E.S., and spell Mississippi with the help of rhythm and repetition. We also learned from interacting in groups. Research, especially from the past decade, has confirmed that many of the things that went on in these classrooms helped us to learn best. These approaches hold true for adults as well. Reviewing them can give us a new and more inclusive way to look at adult learning.

Right Brain is Connected to the Left Brain. Another thing which researchers have discovered is that people who predominantly access their left brain to think and problem solve are different than those who usually access their right brain. Although all of us can access both sides of our brain, most of us approach learning from one side or the other. Researchers have discovered that left-brained individuals are linear and logical in their
thinking. They wish to receive information sequentially and will start at step one and move through each step to reach a conclusion or to learn new information or tasks. Right-brained individuals, however, are random in their thinking. Because they are random problem solvers and learners, they need to have a ‘road map’ or goal of the session before they start to learn new information. Predominantly left-brained participants don’t particularly care if you share the session’s learner objectives with them before you begin the session. The right-brained individuals will feel more comfortable and better able to learn if they know the learner objectives at the start of the session.

**Learning ala mode.** The learning modes with which we are already familiar are Visual, Auditory and Kinesthetic. Glenn Capelli, in his V.A.K. P.O.INT concept, includes two more modes. The P.O. of V.A.K.P.O.INT represents Print Oriented and the INT. represents Interactive. Those learners who are Print Oriented want to take notes while listening to a lecture portion of a training or rewrite what they have read while studying a book. They are the trainees who bring a pad of paper and pens everywhere they go. They will actively write or at least highlight what they are reading because it helps them to review later and better visualize what they learned when it is important to recall the learning. The Interactive learner is the talker, questioner and sharer in class. The Interactive learner knows they know when they can share this new learning with another person. They also love small group work to confirm their learning. If you think about it, Print Oriented individuals combine kinesthetic and visual learning approaches and Interactive learners combine the kinesthetic and auditory modes to learn.

**It’s music, music, music.** Music can help our learning in two ways. First, in school I remembered the Pythagorean Theorem easily. I already knew the theory because of the lyrics to a song from the movie *Merry Andrew*: ‘The square of the hypotenuse of a right triangle is equal to the sum of the squares of the two adjacent sides.’ The same technique can be used to remember the 6 levels of harassment in a Sexual Harassment class or the values of your organization. I once asked a group to figure a way to remember their agency’s values. They did it with a singing parody of Aretha Franklin’s *R-e-s-p-e-c-t* which included some dance steps. Weeks later I would run into one of them who started singing out the values despite little opportunity to do much repetition of the values in the class. I once asked one of them how she continued to remember the song. She indicated she liked the song so much she kept singing it (along with a few of those dance moves) to herself and others in her office.

Secondly, many of us are calmed or stirred by the music around us. We get out of a mental slump listening to the upbeat *Ready to Run* by the Dixie Chicks or *Take the ‘A’ Train* by Duke Ellington and we may fall asleep listening to slow music with ocean waves in the background. Playing this slow music is wonderful for a nursery school teacher hoping to get everyone quiet for rest time. But less expectedly, a colleague played it for adults with test anxiety and their classmates about to take licensure exams. He played it and did a ten minute meditation to help them believe they would be calm and know the answers to the exam. Statistics showed the overall passing rate for students at that institution went up at least 10 percent for that group and the next six taking the
exam. Passing rates were improved even more for those with identified test anxiety. Upbeat instrumental music, such as many of the songs on Yo-Yo Ma and Bobby McFerrin's *Hush* album, are positive welcoming music playing before class begins, during breaks and at the end of class helps reduce stress and increase energy levels. Play some Cajun music to welcome students back to class after a lunch break or at the end of a class to really lift their involvement. If certificates are given to students at the end of a class, consider playing Elgar's *Pomp and Circumstance*. A graduation robe and hat with applause and handshakes make it even more of a positive event.

The Mozart effect refers to the musical outcome that best supports learning. The music with sixty beats per minute, whether it be created by Mozart and other Baroque composers or our contemporaries, cannot make us more intelligent as some misinterpret the concept. It can, however, add to an ideal learning environment. It allows us to access the brain’s neocortex area which covers much of our brains. This is the ‘thinking cap’ or ‘gray matter’ where we solve problems and relate new information to what we already know. Playing music of sixty beats per minute matches our heart rate and causes our bodies to reach a balance of alertness and relaxation. This is what enables us to use our neocortex most efficiently. Instrumental music at this tempo can enhance thinking when student groups are working through a dilemma in an ethics class or completing an evaluation at the end of a class.

**Stress Less.** As we discussed with test anxiety, our brains don’t work as well when we are under stress. Anything you can do to make all your trainees experience less stress during class is to their learning advantage and your advantage as you help facilitate their learning. Among the many things the facilitator can do are:

- Provide comfortable chairs,
- Keep the temperature comfortable for the majority of students,
- Allow snacks and drinks in the classroom if at all possible,
- Allow comfortable clothing to be worn,
- Provide welcoming music and welcoming signs,
- Use icebreakers to help them get to know others in class, and
- Personally welcome them when they get to the classroom.

Allow students to build to more risky activities as the class progresses and comfort levels rise. Doing partner activities, then group activities and finally individual activities to be shared with others in the class often can do this.

**Just Want to Have Fun.** The middle or limbic area of our brain is where we retain learning. It is also where our emotions reside. Those two facts are linked. Researchers tell us that we are more likely to remember something if emotion is involved. Think about how well you remember the smell, sight, sounds, and feel of things touched at significant life events such as your wedding, graduation, or the Challenger disaster, even if the event happened many years ago. Eliminate the negative and add humor and fun activities whenever appropriate to increase learning.
Research also proves that movement modulates emotion and allows us to get more oxygen to the brain. So using movement throughout the session is important for increased learning. You might have participants change their seating location at least once during a session or have them go up to get or post flip chart paper to share information with others. And instead of discussing something with the person next to them, have them stand up and walk five feet and while standing talk to the person from another table who is now nearest to them. Take a tour of a building during Orientation rather than just talk about it. It is like a field trip and we probably still remember the feel of the lamb’s wool at the farm or the clink of the milk bottles at the dairy. A tour helps the 75% of us who are primarily visual learners to remember where everything is located better than a map could.

**It’s Not the Presentation that Counts.** The amount actually learned is ultimately the responsibility of each student. The rule of thumb is that the closer the learning is to how students will use the learning on the job, the better the student’s learning opportunity. For example, on the job the student will rarely have someone deliver a lecture to him or her, so try to limit that activity in the classroom. Instead have them practice the thing that they will do on the job. Supervisors might take turns role-playing a discussion with an employee being accused of sexual harassment or class participants can spend time discussing and using a model to work through a common ethical dilemma.

The knowledge about our brains, body and learning are growing at an exponential rate. As educators, we have the perfect opportunity to accelerate learning. The end result of using what the researchers have learned is increased learning for the participants. Additionally, trainers who involve all types of learners and meet their training needs can challenge themselves, learn more from the participants and heighten their enjoyment of the training experience.

**Reference Materials**


Editor’s note: What follows is the long-awaited promised part two of an article by Blan Teagle that appeared in the Winter 2001 NASJE News.

When last we considered Professor Brad Mitchell's keynote address to NASJE conferencees (see NASJE News, Winter 2001: Connecting Personal and Professional Growth to Create Our Future: NASJE Keynote), we were focused primarily on his construct of the practicality ethic and the creativity ethic. We explored his theoretical notion of adult learning operating within one of these two contexts. He told us the key was to design programs that balance between the two and even employ a pervasive method of addressing each ethic within a holistic session design model.

Where the rubber meets the road what does this mean? I promised in the last installment that in this one we would cut right to Mitchell's concrete session design recommendations. As I listened to him, I got two very practical ideas on how we can create quality learning environments that I intend to implement post haste. They are:

1. The CALL model based on the Center for Army Lessons Learned employed in the military; and,


1. The CALL model-
The Center for Army Lessons Learned created an "electronic book of knowledge", says Mitchell. Any tank commander could pull up this knowledge book from a remote notebook, laptop or PC with Internet access and it provides immediate context for a given community of practice. It also can connect different communities of practice within the military. It is full of lessons learned in a practical setting.

Similarly, we as judicial branch educators can create electronic books of knowledge, what Mitchell suggested we name "JELL", for Judicial Education Lessons Learned, and through this electronic knowledge book we reach out through the Internet, share best practices, and have a dialogue, judicial branch educator (whoever that may be) to judicial branch educator. What is great about Mitchell' suggestion is that both NASJE and JERITT have created the scaffolding to build the electronic book of knowledge through their data bases, web cites, and list serves; our own NASJE News, through its own web based format is poised to be a part of that electronic book of knowledge. Although it has quarterly instalments, it can through the web stimulate ongoing learning discourses and conversations throughout the year. These conversations, begun through what were formerly static articles on pieces of paper, can now be ongoing through fiber-optic means and build a buzz that resonates right into the traditional class room, say at an upcoming NASJE conference where we are all face to face.

But how would this work back in our home jurisdictions? At our work places, depending on the nature of the technology available to us, there can be list serves set up for judges, research aids, and other court staff to weigh in on topics of mutual concern before a
seminar or scheduled conference. The needs assessment for a particular seminar could even be developed electronically through a pre conference chat between the faculty and registrants for a course. Outlines could be sent out ahead of time on-line and critiqued by the prospective attendees. Participants might even be able to suggest or create their own agendas or hypotheticals they want addressed at a conference. The faculty then can truly become the "guide from the side" rather than the "sage from the stage". The electronic book of knowledge becomes one in which all make entries, or at least have the opportunity to do so.

2. The "Sticky Issues" Protocol-
Some time at formal seminars can be devoted to this sort of less structured, but not chaotic, dialogue field. It takes courage to let go of control and risk failure, which is a possibility with any innovative instructional design technique, but the adventurous among us will experiment with the Sticky Issues Protocol at some point in one of our programs. It begins by having the judicial branch education staff propose the question to a group of judges or court staff, "What problem is so important to you, you want some time with your colleagues, on site, to talk about it?" This can be done in advance and is not too terribly different from what we adult educators would call a preliminary needs assessment. If it happens, as Mitchell suggests, on the spur of the moment, after everyone is present in a learning environment, it is still not much different from the standard on-site needs assessment questions most of us have from time to time begun a seminar with, "Tell me why you are here and two things you want to learn today?" or "What do you hope to get out of this seminar?" The difference, at least as I see it, with Mitchell's suggestion is that it is bordering on improvisation, and it doesn't matter what "they" say, because it is totally the participants' agenda and their response does not have to fit under a neat topic heading or script the planners hoped to address or "cover" that day. There really is only the process at work here, not the planners' hidden content agenda.

Mitchell proposes that after posing the question, the planner/facilitator ask any attendees who will to come forward and write their issues on a piece of news print. The issues might be narrow technical ones, "I want to know how to rule on the business records exception to the hearsay rule in light of recent technological record keeping advances", or they might be broad and philosophical, "I want to have dialogue about the restorative justice movement and its implications for how we jurists function in society." The planner reserves some 30 to 40 minute space in a two to three day conference where everyone who signed up for one of these learning conversations can report to a designated and posted room at a designated time for a designated topic discussion. Then, the planner sits back and watches the communities of practice blend and mix.

What if no one shows up at some of the tables or locations? Well, the persons who posted the topics for those tables can know that they were maybe ahead of their time. They can be encouraged to join another group whose topic is closest to one of their interests or passions.
The important component to be sure and include is the "after action review." Somebody at each table needs to be responsible for reporting to the judicial branch education staff or a member of the planning committee:
1) What happened; 2) What did not happen; and 3) What did the group, or the individual reporter, decide that they could influence or change. You can really make your own rules on what you want to get back from the groups depending on how you want to use the information.

The sticky issues protocol may sound way too open ended for the control oriented among us, and it looks a lot like chaos, but we have all read enough about chaos theory to know that modern science is more and more able to see patterns emerge from the alleged maelstrom. Mitchell says that after 80 years of progressive education we should know that "freedom does not mean the absence of structure." The role of the teacher, facilitator, leader, or whatever term you choose, is to sit with the group and coach. More and more, the role of adult educators is to coach the dynamics. You set up the provocation and you simply apply and enforce some agreed upon ground rules of civil discourse and ensure the process integrity. The judicial branch education staff’s role becomes one of empowering and respecting a process whereby content and enrollment at particular topic tables is entirely governed by the learners themselves.

What do you do after the CALL sessions and the Sticky Issues discussions? Mitchell suggests that the principal role of the educator after the CALL sessions or the Sticky Issues protocols gets played out back at the office. He recommends that the judicial branch education staff members should pull the training and design team together to pool the data; stated differently, they get all the documentation from the "after action reviews" and gather around the lap top at CALL Central (substitute your office) to do a pattern and trends analysis. Then, the judicial branch education office can publish the results to its constituent group. Planners take: 1) the time/place/topic sheets; 2) the original topic coverage interest areas; 3) the after action review documents; and, 4) the pattern analysis and combine them all into one knowledge source. Planners or education committees can take that document to the next level and identify both examples of actual practice as self reported, and consensus statements of agreed upon best practice. These results, taken from the discussions of the sticky issues protocols become the judicial education organization’s book of knowledge, its compilation of learning and practice.

These two models are not intended to revolutionize every education and training event. Mitchell does not suggest that all seminars must combine creativity and practicality in equal measures. His ideas for structuring sessions do not supplant traditional models that concentrate predominately in either the "practicality" or "creativity" domains. What they do is give us a chance to combine our creative and practical sides in a praxis, i.e., theory in action, applied to the real world dilemmas, not made up scenarios. The possibilities cannot help but excite.

I am a fairly conservative curriculum planner and session designer, but I was inspired by Mitchell's ideas and intend to try them out in some fairly small settings with safe groups of adult professionals who are true believers in education and training and who are
willing to experiment with new techniques. I am too timid to try them out first in large
groups, but even the celebrated G.E. CEO, Jack Welch, who is noted for his bold and
fearless approach to leadership and management is also known for being cautious enough
to build "popcorn stands" to groom future leaders in the organization. What he means by
that is that he is never afraid to experiment with new team leaders as long as they are
given a small "pop corn stand" to prove their ideas before unleashing them on the whole
company. That way, if one pop corn stand goes up in smoke, there are still others
popping away.

So, we only have to have a little courage, not a lot, to experiment with Mitchells ideas.
Just as Welch builds pop corn stands to groom his leaders, we can build pop corn stands
to develop our education programs, and in the process develop our constituents and
ourselves. I hope those who did not get to the session, will have their interest piqued
enough by this article to find out more about Professor Brad Mitchell and his ideas, of
which I have only summarized two. With apologies to Mr. Welch, pardon the cinematic
metaphor, but maybe you will build at least one of those pop corn stands at your next
conference and before you know it, you may have a whole multiplex of new sessions
going with a pop corn stand nourishing your audiences at each one.
Connecting Personal and Professional Growth to Create Our Future: Part 2
Blan Teagle

Editor's note: What follows is the long-awaited promised part two of an article by Blan Teagle that appeared in the Winter 2001 NASJE News.

When last we considered Professor Brad Mitchell's keynote address to NASJE conferencees (see NASJE News, Winter 2001: Connecting Personal and Professional Growth to Create Our Future: NASJE Keynote), we were focused primarily on his construct of the practicality ethic and the creativity ethic. We explored his theoretical notion of adult learning operating within one of these two contexts. He told us the key was to design programs that balance between the two and even employ a pervasive method of addressing each ethic within a holistic session design model.

Where the rubber meets the road what does this mean? I promised in the last installment that in this one we would cut right to Mitchell's concrete session design recommendations. As I listened to him, I got two very practical ideas on how we can create quality learning environments that I intend to implement post haste. They are:

1. The CALL model based on the Center for Army Lessons Learned employed in the military; and,


1. The CALL model-
The Center for Army Lessons Learned created an "electronic book of knowledge", says Mitchell. Any tank commander could pull up this knowledge book from a remote notebook, laptop or PC with Internet access and it provides immediate context for a given community of practice. It also can connect different communities of practice within the military. It is full of lessons learned in a practical setting.

Similarly, we as judicial branch educators can create electronic books of knowledge, what Mitchell suggested we name "JELL", for Judicial Education Lessons Learned, and through this electronic knowledge book we reach out through the Internet, share best practices, and have a dialogue, judicial branch educator (whoever that may be) to judicial branch educator. What is great about Mitchell's suggestion is that both NASJE and JERITT have created the scaffolding to build the electronic book of knowledge through their data.

"The electronic book of knowledge becomes one in which all make entries, or at least have the opportunity to do so."
bases, web cites, and list serves; our own NASJE News, through its own web based format is poised to be a part of that electronic book of knowledge. Although it has quarterly instalments, it can through the web stimulate ongoing learning discourses and conversations throughout the year. These conversations, begun through what were formerly static articles on pieces of paper, can now be ongoing through fiber-optic means and build a buzz that resonates right into the traditional classroom, say at an upcoming NASJE conference where we are all face to face.

But how would this work back in our home jurisdictions? At our work places, depending on the nature of the technology available to us, there can be list serves set up for judges, research aids, and other court staff to weigh in on topics of mutual concern before a seminar or scheduled conference. The needs assessment for a particular seminar could even be developed electronically through a pre conference chat between the faculty and registrants for a course. Outlines could be sent out ahead of time on-line and critiqued by the prospective attendees. Participants might even be able to suggest or create their own agendas or hypotheticals they want addressed at a conference. The faculty then can truly become the "guide from the side" rather than the "sage from the stage".

The electronic book of knowledge becomes one in which all make entries, or at least have the opportunity to do so.

2. The "Sticky Issues" Protocol-
Some time at formal seminars can be devoted to this sort of less structured, but not chaotic, dialogue field. It takes courage to let go of control and risk failure, which is a possibility with any innovative instructional design technique, but the adventurous among us will experiment with the Sticky Issues Protocol at some point in one of our programs. It begins by having the judicial branch education staff propose the question to a group of judges or court staff, "What problem is so important to you, you want some time with your colleagues, on site, to talk about it?" This can be done in advance and is not too terribly different from what we adult educators would call a preliminary needs assessment. If it happens, as Mitchell suggests, on the spur of the moment, after everyone is present in a learning environment, it is still not much different from the standard on-site needs assessment questions most of us have from time to time begun a seminar with, "Tell me why you are here and two things you want to learn today?" or "What do you hope to get out of this seminar?" The difference, at least as I see it, with Mitchell's suggestion is that it is bordering on improvisation, and it doesn't matter what "they" say, because it is totally the participants' agenda and their response does not have to fit under a neat topic heading or script the planners hoped to address or "cover" that day. There really is only the process at work here, not the planners' hidden content agenda.

Mitchell proposes that after posing the question, the planner/facilitator ask any attendees who will to come forward and write their issues on a piece of news print. The issues might be narrow technical ones, "I want to know how to rule on the business records exception to the hearsay rule in light of recent technological record keeping advances", or they might be broad and philosophical, "I want to have dialogue about the restorative justice movement and its implications for how we jurists function in society." The planner reserves some 30 to 40 minute space in a two to three day conference where everyone who signed up for one of these learning conversations can report to a designated and posted room at a designated time for a designated topic discussion. Then, the planner sits back and watches the communities of practice blend and mix.

What if no one shows up at some of the tables or locations? Well, the persons who posted the topics for those tables can know that they were maybe...
ahead of their time. They can be encouraged to join another group whose topic is closest to one of their interests or passions.

The important component to be sure and include is the "after action review." Somebody at each table needs to be responsible for reporting to the judicial branch education staff or a member of the planning committee:
1) What happened; 2) What did not happen; and 3) What did the group, or the individual reporter, decide that they could influence or change. You can really make your own rules on what you want to get back from the groups depending on how you want to use the information.

The sticky issues protocol may sound way too open ended for the control oriented among us, and it looks a lot like chaos, but we have all read enough about chaos theory to know that modern science is more and more able to see patterns emerge from the alleged maelstrom. Mitchell says that after 80 years of progressive education we should know that "freedom does not mean the absence of structure." The role of the teacher, facilitator, leader, or whatever term you choose, is to sit with the group and coach. More and more, the role of adult educators is to coach the dynamics. You set up the provocation and you simply apply and enforce some agreed upon ground rules of civil discourse and ensure the process integrity. The judicial branch education staff's role becomes one of empowering and respecting a process whereby content and enrollment at particular topic tables is entirely governed by the learners themselves.

What do you do after the CALL sessions and the Sticky Issues discussions? Mitchell suggests that the principal role of the educator after the CALL sessions or the Sticky Issues protocols gets played out back at the office. He recommends that the judicial branch education staff members should pull the training and design team together to pool the data; stated differently, they get all the documentation from the "after action reviews" and gather around the lap top at CALL Central (substitute your office) to do a pattern and trends analysis. Then, the judicial branch education office can publish the results to its constituent group. Planners take: 1) the time/place/topic sheets; 2) the original topic coverage interest areas; 3) the after action review documents; and, 4) the pattern analysis and combine them all into one knowledge source. Planners or education committees can take that document to the next level and identify both examples of actual practice as self reported, and consensus statements of agreed upon best practice. These results, taken from the discussions of the sticky issues protocols become the judicial education organization's book of knowledge, its compilation of learning and practice.

These two models are not intended to revolutionize every education and training event. Mitchell does not suggest that all seminars must combine creativity and practicality in equal measures. His ideas for structuring sessions do not supplant traditional models that concentrate predominately in either the "practicality" or "creativity" domains. What they do is give us a chance to combine our creative and practical sides in a praxis, i.e., theory in action, applied to the real world dilemmas, not made up scenarios. The possibilities cannot help but excite.

I am a fairly conservative curriculum planner and session designer, but I was inspired by Mitchell's ideas and intend to try them out in some fairly small settings with safe groups of adult professionals who are true believers in education and training and who are willing to experiment with new techniques. I am too timid to try them out first in large groups, but even the celebrated G.E. CEO, Jack Welch, who is noted for his bold and fearless approach to leadership and management is also known for being cautious enough to build "popcorn stands" to groom future leaders in the organization. What he means by that is that he is never afraid to experiment with new team leaders as long as they are given a small "pop corn stand" to prove their ideas before unleashing them on the whole company. That...
way, if one pop corn stand goes up in smoke, there are still others popping away.

So, we only have to have a little courage, not a lot, to experiment with Mitchells ideas. Just as Welch builds pop corn stands to groom his leaders, we can build pop corn stands to develop our education programs, and in the process develop our constituents and ourselves. I hope those who did not get to the session, will have their interest piqued enough by this article to find out more about Professor Brad Mitchell and his ideas, of which I have only summarized two. With apologies to Mr. Welch, pardon the cinematic metaphor, but maybe you will build at least one of those pop corn stands at your next conference and before you know it, you may have a whole multiplex of new sessions going with a pop corn stand nourishing your audiences at each one.

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SKILLS DEVELOPMENT
Fall 2002

Resources

Doing Our Jobs Better
Anne Hermann-Nehdi

This highly interactive multimedia session with Anne Hermann-Nehdi focused on improving our seminars and ultimately judicial branch performance through understanding and applying whole brain thinking. Using recent examples from the private sector and government, and over 20 years of detailed research on thinking styles and the application of the research in organizations like IBM, Du Pont, U.S Forestry Service, Nortel, P&G and others, Hermann-Nehdi brought her knowledge to bear especially in the area of learning design strategies for maximizing whole brain usage in a variety of learning situations. Participants discussed a multitude of strategies and take away tools in this session. Based on the Whole Brain Model, developed and validated through years of successful application by her father, Ned Herrmann, Anne Hermann-Nehdi provided NASJE members with examples and tools that allowed attendees to learn about their own thinking styles and how they impact not only learning, but also workplace performance. If you were not able to attend this session, check out the materials at the website to help you learn to identify and describe different thinking styles and apply the information to improve organizational performance. The emphasis is not just on improving education and training events, but also workplace interaction and long-term retention and transfer of learning for education staff and for the recipients of your education services.

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SKILLS DEVELOPMENT
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Resources
Follow up to Plenary: Kolb and Beyond

Blane Teagle assisted Anne Herrmann-Nehdi with this follow-up session to her opening plenary presentation. This afternoon program was designed to serve as a "learning conversation" among members where they could answer for themselves the "So what?" question and discuss ways in which current research about human brain function and whole-brain learning relates to or complements prevailing adult education theory, such as the work of David Kolb, and learning design models like those based on Kolb's Learning Styles Inventory.

What we learned is probably best summarized in a quotation from Richard Elmore's excellent forward to Education for Judgment, where he speaks of reciprocity in learning. Elmore says, "People learn to the degree to which they can actively manipulate facts within some general framework and can relate general ideas to specific events in their experience. We have knowledge, in other words, only as we participate in its construction." (from the Forward to Education for Judgment: The Artistry of Discussion Teaching, Harvard Business School Press. Boston, 1991)

Teagle and Herrmann-Nehdi tried to model teaching in this mode of collegial inquiry and discussion as the group constructed its own applications of the material. Through guided discourse, the group talked about ways to design training so individuals with differing brain dominance could contribute to knowledge construction in the most holistic way possible.

They also discussed that all three approaches to fathoming how our brains work, how we communicate and how we learn- the Kolb model, Herrmann's model and the MBTI - all are research based models derived from the seminal work of psychologist Carl Jung. Each deals with much of the same information, but each method also applies a unique vocabulary of physiology, psychology, or behavioral and temperament analysis.

The more fluent we are in the terminology of each discipline, the larger will be the audience we may be able to reach and convince of the value of applying adult learning principles to judicial branch education. Also, there was a healthy appreciation of the interdependence of different fields of study and how much we can learn from dialogue among different areas of professional practice.

> Powerpoint slides PDF | PPT
Karen Thorson, Director
Education Division/Center for Judicial Education and Research
California Administrative Office of the Courts

Ms. Thorson began this session with the steps of the planning cycle, determining needs, setting goals, stating the objectives, selecting the content, planning the presentation, designing the materials, presenting the program, and evaluating learning. To illustrate the cycle and the problematic errors, Ms. Thorson showed a video following a course development through the cycle. The class was divided into groups where each group was assigned a step in the planning cycle to review the staff and faculty in the video. The video highlighted the situations where both staff and faculty fail to develop an effective course. The areas that hit home with the participants were the failure to develop needs, goals and objectives; the staff did not facilitate the faculty, the target audience was discussed, nor was the objectives; and the faculty did not leave time for evaluations. Of course the program was a huge failure. The exercise demonstrated, and Ms. Thorson reiterated that the planning cycle is a SYSTEM, meaning that if one-piece changes, the other pieces must change to compensate.

Ms. Thorson delved into the cycle further by both lecture and group work. The class again returned to the group to choose a topic. Topics such as evidence, ethics, and jury instructions were chosen. The groups were further broken down into faculty and staff. Ms. Thorson lectured on each part of the cycle, with tips as to make that step as effective as possible. After the lecture on each cycle, the participants returned to their groups and through role-playing, the participants walked through each of the steps to eventually developing an effective course. A few tips that I found helpful were to incorporate the staff, faculty, and planning committee throughout the cycle. Also, when choosing a learning environment, keep the seating, audiovisals, etc in mind. Concerning the material provided to student, less is more. Ms Thorson stated she only includes the "essence of what is important." If there is more material than what the student can use in class, insert it as an appendix.

Ms. Thorson then discussed two adult learning models, Kolb and before Kolb. Ms. Thorson stated that she believed it was important for all faculties to be aware of some type of learning model, even if it was basic. For instance, the before Kolb model states simply that an instructor should do three steps to be successful:

1. establish was the students will learn,
2. provide them that information, and
3. allow time for testing.

Ms. Thorson ended the class with three effects of a well-designed course:

1. it enables participants to perform more effectively;
2. it provides practical solutions to real problems; and
3. it balances the challenge of new perspectives with the confidence to try new approaches.

For further reflection, Ms. Thorson left the class with the thought of what will you do differently? As both faculty and staff, I left the class with these specific thoughts, I will evaluate learning more, I will decrease the amount of materials in my courses, and I will carry the burden as staff to make my courses effective.
Nearly everyone feels stress when he or she's in a life-threatening situation. When someone holds a gun to your head, for instance, your body goes into "automatic pilot." These are primitive reactions, and are difficult to alter. We normally think of "Fight or Flight" reactions, but in this session, instructor Robert Williams explained that there are really four basic reactions to stress. These are:

a. Flight (Get out of the situation fast)

b. Fight (Move into the situation)

c. Hide and Watch (Immobilized by the situation)

d. Tend and Befriend (Try to connect with the stressor)

But what if you are holding a figurative gun to your head, to create stress in your life?

Robert believes that we have to decide how to manage it, and to create a personal approach to removing the gun. Your approach will be based upon which of the four basic reactions to stress that you have.

In order to determine our basic reaction, participants in the session paired up with a partner, and then hit them with a foam stick. "Hit him harder!" Robert yelled to the crowd. "Make her feel like you're really going after her!" Creating a realistic environment of danger was the key to determining how someone might react. Did they duck (flight), move toward the attacker (fight), stand still during the attack (hide and watch), or look shocked and saddened that they'd been hit (tend and befriend)? This activity was fun, and stress-relieving to most of the attackers!

Robert emphasized that it's very difficult to change your natural reaction to stress, so the best way to manage it is to enhance what comes naturally to you. In his written materials, he lists certain stress-relieving activities for each of the basic reactions to stress. His belief is that many people attempt to relieve stress in ways that others tell them to do, which may not be suited for their natural reactions. In other words, if your basic reaction to stress is the "fight" reaction, you won't feel relaxed by meditation. In fact, it will make you even more stressed! Depending upon your basic reaction, you should consider the following activities as part of your personal plan for managing stress:

**People with "fight" reactions:**
- hitting sports (boxing, etc.)
- pushing sports (weights, etc.)
- hard manual labor

"It's very difficult to change your natural reaction to stress, so ... enhance what comes naturally to you."
aggressive dancing

**People with “flight” reactions:**
- fast walking or running
- bicycling
- swimming
- aerobics
- dancing alone

**People with “hide and watch” reactions:**
- sleeping 8+ hours
- deep breathing
- doodling
- meditation

**People with “tend and befriend” reactions:**
- pets
- family or friends
- couples dancing
- visiting others

Another fun and informative part of the program was a visual demonstration of what stress does to the body. Judicial educators played a variety of roles, and some even had costumes! There were parts of the body - blood, bone marrow, organs, brain, muscles, bones, and body fat. There were projections (of the mind), memories, reflexes, mind, and cortisol and adrenaline. And most importantly, there was a “person” and an “attacker.” The “attacker” had the most fun, going after the “person” with the foam stick!

Robert set up the game by having the “person” get attacked and visually showing how this stress robs the body of sugar and protein, and continues to destroy the different parts of the body during this process. It can actually increase body fat. Obviously, we don’t always have an actual attack happening to us, as in the game that Robert set up. But that’s when the mind can kick in, and make something feel as if we are being attacked. It’s not physiological, but the body reacts the same way, by using memory and projections. In other words, if someone at work is difficult or rude to you during the day, you may feel as though you’re being attacked and move into your basic stress reaction. Your mind doesn’t know the difference! It becomes time to practice your personal stress management plan.

Robert ended the session by playing four different varieties of music that matched the stress reactions. Everyone ended by dancing or moving to each of the beats, and understanding in yet another way how we best can manage our stress (and have fun at the same time!).

*Submitted by Dian Cowdrey*
Roundtable Brain Banks: Content and Use of Faculty Development Handbooks

Submitted by Garnett Matthews-Campbell
Judicial Department Education
Missouri Office of State Courts Administrator

Quality and effective faculty is a constant goal and hurdle for all judicial educators. This became apparent to me shortly after the start of the 2002 NASJE annual conference and attracted me to the “Content and Use of Faculty Development Handbooks” brain bank discussion. Like many of the other educators attending this brain bank, I was looking for ways to educate peer faculty on the groundwork and delivery of effective presentations. At the end of the session I walked away with an understanding of the usefulness of faculty development handbooks as well as other strategies for building effective peer faculty.

Everyone in our brain bank discussion agreed that the best faculty development programs have three elements: training, references, and reminders. A mistake that is often made is trying to use faculty development handbooks to fill all three of these roles. Staff developing handbooks must determine from the onset how they want the materials used. The group agreed that faculty development handbooks are best used as reference tools to reinforce participants’ classroom experiences. Most instructors will find a handbook too rigid to use for classroom instruction (although they might use excerpts). Handbooks most often contain too much information to be sent to faculty as reminders on how to develop and deliver an effective presentation.

However, faculty development handbooks should not be limited to our faculty. Our discussion group explored how handbooks could have an even more important role in educating our own committee members and staff as to the importance of faculty development for quality presentations. The more we can teach people in our organizations about adult education the more likely we are to gain their support for core faculty development programs. Several educators already use their faculty development handbooks to educate committee members, staff, and potential supporters.

Our brain bank group wrapped up with a discussion of what we could do to foster faculty development while facing cuts in funding and/or support for on going classroom training. We parted with the following suggestions:

• Schedule your best faculty for your introductory and orientation programs so that you set the expectation for quality presentations. New court staff exposed to quality programming will hopefully support ongoing faculty development efforts.
• Include small segments of faculty development in your other programs. One educator had moderators come in prior to a program to review moderating techniques. Another scheduled meetings with faculty that were presenting at the same program to review the program and make presentation suggestions.
• If you have a faculty member you feel is promising, bring him or her to the attention of the National Judicial College.
Participants in this brain bank identified that what they most wanted to know was how to conduct evaluations of programs once learners had returned to their respective workplaces. Thus, we discussed the four-levels of evaluation in the Kirkpatrick model--reaction (level 1), learning (level 2), behavior change (level 3), and results for the organization (level 4).

We focused our attention on the two key factors that will determine the depth and breadth of any evaluation process--know who your client is and what they want. This is important as any evaluation outside of the education and training program requires the buy-in, participation, and support of other organizational members. Unless the client is influential in the organization, set evaluation as a priority, and make resources available it is unlikely that evaluation past level one can be undertaken. Time, money, and fear of what the results may reveal will stall even the most avid supports of evaluation when their processes, products or services are involved.

Submitted by Maureen E. Conner, Ph.D.
Executive Director
JER/TT Project
East Lansing, MI

Resources
Needs Assessment and Evaluation Brain Bank

We focused our attention on the two key factors that will determine the depth and breadth of any evaluation process--know who your client is and what they want. This is important as any evaluation outside of the education and training program requires the buy-in, participation, and support of other organizational members. Unless the client is influential in the organization, set evaluation as a priority, and make resources available it is unlikely that evaluation past level one can be undertaken. Time, money, and fear of what the results may reveal will stall even the most avid supports of evaluation when their processes, products or services are involved.

Submitted by Maureen E. Conner, Ph.D.
Executive Director
JER/TT Project
East Lansing, MI

Resources
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- Connecting Personal and Professional Growth to Create Our Future: Part 2
- Doing Our Jobs Better: The Whole Brain Way
- Follow up to Plenary: Kolb and Beyond
- Effective Course Development
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- Brain Bank: Content and Use of Faculty Development Handbooks
- Brain Bank: Needs Assessment and Evaluation
- Brain Bank: Exchange of Innovative Teaching Techniques
- Judicial Education on Substance Abuse: Promoting and Expanding Judicial Awareness and Leadership

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Roundtable Brain Banks: Exchange of Innovative Teaching Techniques

In the brain bank Exchange of Innovative Teaching Techniques, the participants discussed a number of innovations that we’ve seen in judicial branch education. Further, there was discussion about what makes a person an effective faculty member.

These are the ideas listed in no particular order:

- Some faculty members have successfully used game show themes in the teaching of their materials. Two examples were provided. First, in “Who wants to be a U.S. Supreme Court Justice,” the host faculty asks the participants to provide answers to questions, and as they progress the questions become more difficult. The winner is the one with the most correct answers. In “Jeopardy,” the host faculty member provides the answers, and the students are to provide the questions just as in the game show. These methods make learning fun.

- Another game was entitled “Cultural Bingo.” In this game, there are questions on each square of a bingo card. The card is first handed to individual players. It is highly unlikely that any one person can answer the questions to achieve bingo because the questions are likely known by different races and ethnicities. Then the faculty members groups the students and they attempt to find solutions as a group. They quickly learn that the more diverse their group, the better chance they have of achieving bingo.

- Dr. Herrmann’s presentation on the Whole Brain was cited as utilizing a number of innovative techniques:
  - The use of colored cards to describe ourselves and asking the participants to raise their cards. That allowed fellow participants to get a better understanding of the types of people who have certain brain dominances.
  - The use of toys at the tables to describe ourselves was an interesting “spin” on the traditional icebreaking exercise of introducing ourselves.
  - Asking persons to select words that best describe them through the use of cards was also innovative and asking them to trade with other participants in the room was not only fun but interesting.

Beside innovations, the brain bank participants stressed the importance of using audiovisual aids and when using them, ensuring that the slides are effective. Some of the suggestions included:

- Ensure that PowerPoint shows don’t contain too many words because it sometimes leads to the instructor reading from the slides instead of keeping eye contact with the audience members.
• In using PowerPoint slides, don’t use small fonts or use serif fonts (such as Times New Roman) because those mistakes make the slides difficult to read. In addition, make sure that there is a strong contrast between the background of the slide and the letters (black letters on a white background or white letters on a black background as the most contrast).

The brain bank participants recommended the use of various teaching methods such as role play, brainstorming, debates, discussion, mini-lectures, writing exercises, games, etc. The participants provided the following suggestions for ensuring effective activities:

• For brainstorming exercises, the results must be used for some purpose. Some of the members complained of instructors who simply collect ideas on a flipchart and then never do anything with them. If items are collected in a brainstorming activity, those items should be used either immediately to achieve the learning objectives or later in the program. One innovative use of a brainstorming activity asks the students to rate the importance of each item once they were entered on the flipchart. Consequently, there weren’t just a lot of ideas shared, but there was also a prioritization of the ideas.

• In debates, ensure that there is a fairly even playing field. If you split the class in two, and the debate becomes one-sided, the instructor should be prepared to provide arguments for the other side.

• In discussions, it is a good idea to plan key questions to ensure that the discussion is rich and varied.

• In any exercise, the instructor must ensure that the instructions provided are clear, concise and understandable. Some of the participants complained about exercises that are not clearly defined and the results are not helpful towards achieving the learning objectives.

Some of the brain bank participants stressed the importance of having achievable learning objectives for each learning session. The learning objectives should be clear and understood so that all participants are working towards the same goals. If a student asks a question, a brain bank participant recommended that if it is not in pursuance of the learning objective, the instructor should inform the student that he or she will address the question after the class session.

One brain bank participant discussed the use of video clips from movies as an excellent idea for exploring ethical issues in the courtroom.

Using a case study at the beginning of a presentation can highlight a number of issues, which the instructor and students can then discuss. The case study provides the concrete fact scenario that helps the students in applying the subsequent information.

In sum, the brain bank participants shared a number of innovations in teaching. Nevertheless, it appeared to be the consensus of the group that a good teacher has meaningful learning objectives and materials that support those objectives. Further, a good teacher uses a number of teaching activities to ensure that all of the students’ different learning styles are recognized and honored. While innovations can be fun and exciting, it is most important that the students are able to do something differently as a result of participating in the educational event.
Court are often society's first opportunity to identify individuals with substance abuse problems. Every day judges and their staff are confronted by the problems of alcohol and other drug abuse in a variety of cases that appear in our nation's courtrooms. Courts are in a unique position to link these individuals to treatment programs and local drug treatment courts, where available and appropriate. In so doing, courts can contribute to the reduction in demand and use of drugs and help ensure the public's safety. The costs to society in terms of health, safety, and social and economic impact demand full court involvement to identify, confront, and address the abuse of alcohol and other drugs when these cases present them.

In 2001, the National Center for State Courts (NCSC) received funding from the State Justice Institute (SJI), on behalf of the American Judges Association (AJA), to develop, demonstrate, and disseminate an educational curriculum on substance abuse for judges. On behalf of the AJA, the National Center is developing a curriculum that will be adaptable for various educational contexts at the national, state and local levels and appropriate for judges who deal with substance abuse issues in all types of cases.

A 12-member advisory committee comprised of representatives from AJA, as the lead organization, and other national organizations (including the Conference of Chief Justices, the Conference of State Court Administrators, American Probation and Parole Association, the National Association of State Judicial Educators, the National Association for Court Management, the National Association of Drug Court Professionals, National Council of Juvenile and Family Court Judges, and the National Judicial College) convened twice to assist NCSC staff in curriculum design and provide on-going feedback on the curriculum to ensure it meets the needs of the judiciary and judicial educators. Additionally, input from addiction treatment specialists was sought to ensure the accuracy and timeliness of information on aspects including pharmacology and treatment modalities.

The objectives of the curriculum are to:

- HelpEDucate and Expand Judicial Awareness and Leadership
- Increase SubstancEDrugs and Other Addiction Awareness and Usage
- Promote Effective Drug Rehabilitation Programming
- Enhance Drug Education Programs
- Foster Effective Drug Intervention Programs
- Improve Drug Treatment Programming
- Enhance Drug Addiction Education and Training
- Strengthen Drug Addiction Education and Training
- Improve Drug Education and Training
- Foster Effective Drug Rehabilitation Programming
- Enhance Drug Education Programs
- Promote Effective Drug Rehabilitation Programming
- Improve Drug Education Programs
• Generate an awareness of substance abuse issues arising in a variety of cases that appear in the courts
• Identify how the judicial role places judges in a unique position to respond both to the litigants and the community as they struggle with substance abuse issues
• Provide a basic understanding of the nature of substance abuse, addiction and recovery, and treatment modalities
• Assist the judge with the development of strategies and tools for responding (when in the courtroom) to parties with substance abuse problems
• Encourage judges to initiate and engage in an on-going dialogue, with other judges, lawyers, and interested community leaders, regarding the evolving role of the judge in substance abuse issues and problem-solving approaches generally.

The completed curriculum can be used as an introductory session for judges who handle all case types and will be appropriate for delivery at state or local judicial conference.

The curriculum consists of three modules:

• Substance Abuse Awareness (approximately 30 min.) – This module will raise the awareness of judges regarding substance abuse and how their judicial role places them in a position to use that information to benefit the litigants, the community and the court.

• The Nature of Addiction, Basic Pharmacology, Principles of Recovery and Treatment (approximately 1 hour) – This module is intended to provide participants with a basic overview of the key concepts of substance abuse and addiction and the components of successful recovery and treatment delivery programs.

• Strategies and Tools for the Courtroom (approximately 1 hour) – This module is designed to assist judges develop strategies and tools to use from the bench to effectively apply substance abuse and addiction information.

Two pilots of the curriculum with judicial audiences are scheduled for September 2002. Following the pilots, the curriculum will be finalized for dissemination. The curriculum resources will include a cd-rom of appropriate multi-media presentation materials, an instructor’s guide, and participant handouts consisting of tools and other resources supporting the objectives of the curriculum. The resources also will include references to additional comprehensive topic-related resources that are available through a number of other state and national education providers. The products will be distributed to all State Judicial Institute-designated libraries, to National Association of State Judicial Educators, and other interested individuals.

For more information on this project, please contact Hillery Efkeman at the National Center for State Courts (phone - 703-841-5606 or email - hefkeman@ncsc.dni.us)

(Handout for the National Association of State Judicial Educators Conference, August 2002)
Manager's Briefcase

Getting Organized: Improving Personal Productivity

Paul Smith, a Senior Instructor at the Florida Institute of Government, led a session entitled “Getting Organized: Improving Personal Productivity” aimed at NASJE members who are administrators or managers. The goal of the session was to enable participants to maximize their productivity by setting priorities, establishing goals and enhancing their use of available time.

Looking more closely at this session, we see that Mr. Smith highlighted those things that ensure success in achieving our goals. He quoted Merrill and Donna Douglas as follows:

Time management is an illusion, because no one can really manage time. Time, simply, is a constant. Time is a measurement of intervals. It moves at the same rate regardless of who we are or what we are trying to accomplish. Time respects no one. No one can convert, change, or otherwise mitigate time. Despite this, we continue to use the phrase “managing time” to identify our efforts to use our allotted moments meaningfully. Managing time really refers to managing ourselves in such a way as to optimize the time we have. It means conducting our affairs within the time available so that we achieve gratifying results.

Manage Your Time, Manage Your Work, Manage Yourself (AMACOM, New York, NY).

He also quoted from Dr. Saul Gellerman for the following proposition:

The amount of energy that supervisors put into their work is not the main factor in their success. Effective supervisors are far more concerned with whether they are doing things that really matter than with expending a lot of energy.

Mr. Smith defined time management as “organizing and controlling personal activities to achieve the most productive and efficient use of the time available.” He explained that time management requires the application of good planning skills and an informed proactive approach to controlling the use of time.

The two most common results of not planning the use of time are: (1) we spend time doing things we shouldn’t do, and (2) we don’t have a good way to prevent others from using our time to get their work done. Mr. Smith explained that most people don’t plan because it’s hard work and because they fear that their assumptions may be incorrect.

Mr. Smith explained the time management matrix that appears as follows:

<table>
<thead>
<tr>
<th>URGENT</th>
<th>NOT URGENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Crises</td>
<td>Prevention</td>
</tr>
<tr>
<td>Pressing Problems</td>
<td>Personal development</td>
</tr>
</tbody>
</table>
He explained that the more we can concentrate our efforts in boxes 1 and 2, the better off we are.

Next, he discussed the importance of ensuring that meetings are meaningful and not a waste of time. He recommended the use of five practices. First, provide an agenda. Second, ensure that there is a set time for "new business," so it doesn’t go on and on. Third, set a time for the meeting. Fourth, ensure that all participants understand the purpose of the meeting (e.g., fact finding, decision making, etc.). Fifth, ensure that all participants participate to capture their good ideas and suggestions. If you are called to a meeting, you may want to ask what the meeting organizer expects from you as input so you can prepare properly.

On page 4 of his materials, Mr. Smith provided the participants with a goal writing worksheet. This form is used to set goals and ultimately achieve them. The user must: (1) describe the goal; (2) set forth the conditions that must be met to consider the goal accomplished; (3) provide a date for the goal’s establishment; (4) provide a deadline for attaining the goal; and (5) a signature line. Writing the goal down ensures that the user mentally processes the goal, and it forces the user to commit on paper.

Next, Mr. Smith provided a guide for effective time management. He suggested that you find or devise a time management system that you will use instead of post-a-notes, scraps of paper, etc. Plan day to day activities one week at a time, so each Friday you should establish what the goals for the next week are.

Use a daily “to do” list and prioritize the list with A (important and urgent), B (important but not urgent), C (not urgent and not important). If there are three As, you should prioritize them as A1, A2, and A3. For those in the C category, decide whether any of them can be discarded after asking yourself why they are on the list. He also suggested prioritizing the most unpleasant task of the day as A1. Attempt to schedule time for each time and give yourself a 10 to 20 percent cushion between each item.

He explained that there are many time wasters such as poor delegation, ineffective communication, failure to avoid and manage interruptions, and letting paperwork manage you. For the latter, he suggested that you should attempt to reduce the amount of paper that hits your desk. Give someone the authority and responsibility to decide which mail you need to see. Only touch each piece of paper once, and use the 4 Ds: (1) Do something with it; (2) Delegate it; (3) Delay it; or (4) Dump it. Organize your work and keep your work area clean by scheduling one-half day each month to clean and organize your workspace. Don’t begin a new task until the one you are working on is complete.

One of the most prevalent time wasters is procrastination. Mr. Smith recommends the following:

1. Confess your procrastination to yourself. It’s the first step to recovery.
2. Do something!!! Make yourself begin (e.g., start typing, put something down on paper, go get the needed materials).

"There are many time wasters: poor delegation, ineffective communication, failure to avoid and manage interruptions, and letting paperwork manage you."

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3. Develop a “do it now” mentality.
4. Determine to go ahead without inspiration. Have a daily routine.
5. Set deadlines for yourself and make them public.
6. Remember, behavior that is rewarded is usually repeated.
7. Break down major projects or complex tasks into smaller components.
8. Don’t let unplanned, pleasant activities get in the way. Stay on track.

One of the most important ways to manage your time is effective delegation. Good leaders make good delegators. Supervisors often don’t delegate because: (1) they believe there isn’t enough time to do so; (2) the supervisor believes the task is too important to delegate; (3) the supervisor believes that he or she can do the job better; (4) the supervisor likes performing the task; (5) the supervisor doesn’t have sufficient confidence in work team members; (6) the supervisor fears that he or she will lose control; (7) the supervisor is concerned that the delegate will do a better job than the supervisor; and (8) the supervisor thinks that his or her boss will think that the supervisor is not working.

To delegate effectively, Mr. Smith recommends the following:

1. Form a clear mental picture of the results you are seeking.
2. Use delegation as an employee skill development device.
3. Empower employees to act for you.
4. Accept mistakes as part of the learning process.
5. Refuse to accept incomplete or unsatisfactory work.
6. Evaluate completed work in light of how you communicated the task.
7. Provide appropriate support and encouragement to the delegate.
8. Recognize and give credit for acceptable outcomes.

In conclusion, Mr. Smith suggested that you need to have clear goals (preferably written), delegate tasks, set and participate in effective meetings, and set up a time management system that works for you. If these things are done, you will accomplish goals that are truly important to you.

Manager's Briefcase

Hotel Contract Negotiations: Beyond the Room Rate
Diane Barnette, Director of Conference Planning, National Council of Juveniles and Family Court Judges

Ms. Barnette began the class with the idea that everything is negotiable, including all aspects of a hotel contract, prices, meeting space and yes, even cancellation and attrition clauses. With that idea in mind, Ms. Barnette took a step-by-step approach to hotel contract negotiations.

Ms. Barnette stated as a beginning step for an agency or organization is to send meeting specifications to all the hotels in the area that an agency is targeting. The meeting specifications are to be “an accurate reflection of your meeting needs that shows the hotel the value of your program.” The specifications are to include the group name, title, preferred and alternate dates for a program, sleeping rooms required, meeting space required, food and beverage requirements, group history, and the very specific details that your organization wants to exclude or include in the contract. Ms. Barnette stated that accuracy at this point is important because these are the details that the hotel will incorporate into their contracts.

Next, Ms. Barnette suggested that once the hotels begin sending contracts based on the meeting specifications an agency should begin to compare the obvious: hotel room rates, meeting room rental charges, food and beverage costs, complimentary rooms, and other items that are important to your agency. Ms. Barnette made the suggestion that an agency request two room rates, one for participants and a lesser rate for faculty and staff.

After comparing, Ms. Barnette listed the next step as deciding on a hotel and moving forward to a formal contract. Ms. Barnette listed five elements needed to formalize a contract:

1. An offer with definite terms
2. Acceptance of the terms
3. Requirement of consideration
4. Competent parties authorized to enter into the agreement
5. Statute of frauds

Ms. Barnette included in the course materials a sample contract from a national hotel chain, which she reviewed section by section. Several important suggestions were included in the lecture: regarding room rates, request an average projected room rate for the month of the conference, from that a planner can determine what is fair; base the number of complimentary rooms on a cumulative basis, instead of a per night basis; beware of hidden cancellation and attrition clauses, such as “in the even the Group fails to pick up 95% of the anticipated room block the hotel shall be entitled to compensation”, hotels will sign contracts where planners have inserted their own cancellation clauses and
attrition clauses; never pay room rental, offer instead to incorporate the cost into the food and beverage; and ask for 20% of the top of Audio Visual Costs.

Ms. Barnette discussed the legal implications of September 11th on hotel contracts, including the definitions of three legal principles: impossibility, impracticality, and frustration of purpose. These principles deal with cancellations and defining who is at fault and who holds the financial burden for that.

Ms. Barnette concluded the class with a discussion of how to properly insert addendums into contracts and how to properly prepare a cover letter to the hotel. Of which, most importantly, she stated that a planner should request the hotel to counter sign contract and newly attached addendums.

Suggested reading included in materials:
Twelve Legal Tips to Follow when Negotiating Hotel Contracts and Facility Leases, John S. Foster CHSE, Esq.

Submitted by JoDale Beardon, Program Coordinator, Texas Municipal Courts Education Center, Austin, Texas

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STRATEGIES THAT ACTUALLY WORK:
“EMPLOYEE PERFORMANCE ISSUES”

Presented August 20, 2002 by

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A. Introduction

Over the last several decades, the federal government has enacted laws that have created all manners of employee rights. For the most part, each state has followed suit in enacting its own laws similar to the federal versions. In some situations, the states have basically adopted the federal laws. but, in other cases, the states have significantly expanded and supplemented the federal laws.

As a professional, you are not only responsible for meeting the expectations of the public and your colleagues, you are also responsible for ensuring that you and your business (that is the operation of the court) respect and comply with the various laws that affect your employees. This is an important responsibility for several reasons. First, by creating a work environment where employees are respected, you are also creating a positive work environment in which you can deliver the results that you are striving to achieve. Second, by the very fact that these standards have become laws, compliance with them is mandatory, not optional. If you fail to live up to the legal standards that apply to your business, you will subject your agency and perhaps yourself to significant penalties. See e.g., Ashe and McRae, Performance Evaluations go to Court in the 1980’s 36 Mercer L. Rev. 887 (Spring 1985).

Employers’ defenses to employment litigation are often undermined by inflated employee performance evaluations. The problem seems to be that supervisors struggle to be candid or realistic about a poor performing employee for fear of being too negative to the employee. For example, many supervisors give across the board “excellent” ratings to average or poor performing employees. If such an employee is later terminated for his or her poor performance, the employee may be more likely to sue because the employee has been given an inflated evaluation of his or her performance and, therefore, may distrust the employer’s reason for terminating him or her. If a lawsuit is filed, it will be more difficult to argue that the employee was fired for poor performance when that argument is repeatedly contradicted by inflated evaluations. Supervisors should be counseled on the importance of tough-minded, candid evaluations and the role of performance evaluations as a mechanism for achieving employee improvement.

As a result, dealing with the poor performer (or even the average employee whose performance the supervisor desires to improve) can often be a difficult process due to employee resistance. Overcoming that resistance through proper management techniques can lead to performance improvement and overall productivity increases.

Within these materials, we will first review the performance management basics, followed by suggestions of different strategies that can be used in managing the performance issues. We will then conclude with a discussion of how to appropriately document performance issues in a constructive and legally compliant fashion.
B. PERFORMANCE EVALUATIONS

1. Introduction

The purpose of this portion of the materials is to familiarize the reader with information about becoming a more effective evaluator of employee performance. As part of this process, this outline will first review what is and what is not a performance evaluation. It will then discuss the purpose of an evaluation and its value both in the short term as a measure of employee performance and in the long term as a document which may have legal significance. It is hoped that after you have reviewed this material, you will appreciate how important it is to you and the employer to have effective performance evaluations.

2. What Is a Performance Evaluation

An evaluation is generally defined as a series of observations by a supervisor about the performance of a job by an employee over a set period of time. By keeping this definition in mind, this will help you understand what is and what is not a performance evaluation.

a. A Series of Observations

The definition starts with a series of observations. An evaluation is not a single observation. It is not your first observation or your last observation but rather a collection of observations.

b. By A Supervisor

This is self-explanatory. However, you must keep in mind that as a supervisor, you have a duty not only to your employer but to your employees to conduct effective performance evaluations.

c. About the Performance of A Job

Your evaluation should be on the employee’s job, not on non-work related matters. Unless the employee’s off-duty conduct is adversely affecting the employee’s job performance, your evaluation must focus on the job.

d. Over a Set Period of Time

With the exception of certain probationary evaluations, evaluations usually covers a one year period. Therefore, your evaluation should not concentrate on what the employee has done in the last two or three months; but rather over the entire period being rated. This is particularly important because merit increases should reflect work performed throughout the rating period and not just on the last few months.
3. What Is Not a Performance Evaluation

Equally important as knowing what is an evaluation is knowing what is not an evaluation. An evaluation is not a time for you, as the supervisor, to get even with your employees. If you have had problems with a particular employee throughout the year, you should have been discussing these problems with that employee all along. Also, an evaluation is not a time to take your frustration or anger out against your employees.

4. The Purpose of Performance Evaluations

a. Management Tool

An evaluation is a tool designed to give employees constructive feedback about their performance in an effort to improve and enhance that performance and to correct deficiencies. A good evaluation improves the performance of employees because it allows them to build on their strengths and at the same time correct their weaknesses.

An evaluation is also a time for you to learn more about yourself and your management style. If you have open communications with your employees, then during the evaluation process, you may learn how to better your supervisory skills. If a problem has developed between you and the employee, then by talking openly about it with your employee, this can prevent the small problems from becoming larger problems.

b. Legal Document

As a legal document, the evaluation is of great significance both to the employer in the event that an employee is later involved in litigation and as to the other employees, who may challenge that they received a disparate evaluation compared to their peers. Because of the legal significance, supervisors should recognize that the matters written on performance evaluation forms may one day, years from the creation of the evaluation, come back to them and they may be obligated to explain why they gave a particular rating. In this regard, it is critically important that a supervisor justify with actual facts and observations each and every rating given. For example, in the area of attendance, it is not enough to rate an employee unsatisfactory and put in the comments section that he or she was late. Rather, the proper method would be to rate an employee unsatisfactory and indicate in the comments box that an employee was late X number of times within the rating period, was absent X number of times within the rating period, etc. These are facts which can be later substantiated by other employer records and which will support the claims that you have made.

Imagine yourself in a situation three years after you have given an evaluation where an employee is now claiming that you evaluated him or her poorly for some unlawful reason and seeks to have his or her discharge overturned. If you did not list specific objective criteria used to justify a particular rating, the employer may well have difficulty in defending your judgment in giving the
rating at issue. Thus, it is critically important that you provide the facts which support each and every rating given.

The same is true of "outstanding" or "exceeds expectation" ratings on performance evaluations. The failure to point out specific tasks or assignments which caused the employee to earn the particular rating may well lead to a claim by other employees that the supervisor is "playing favorites" and rating friends higher than other employees. If you feel that an employee has done extraordinarily well, you must have a reason. Therefore, include that reason on the evaluation.

Finally, since an evaluation is generally in writing, this document takes on unique legal significance. Most evaluations are considered contemporaneous documents and therefore take on greater legal significance than live witness testimony. Additionally, evaluations are useful because the supervisor who made the adverse employment decision may have left the employer and the only evidence of the poor performance that the employer may have is the evaluation. Because of the legal importance of evaluations, it is extremely important that evaluations are based upon facts and do not contain discriminatory comments such as, "getting too old for this type of work" or "she is unable to perform a man's job."

5. Conducting a Performance Evaluation Interview Generally

Even though performance evaluations are a critical part of one's employment, it is generally an uncomfortable process for both the employee and the supervisor. There are, however, a few steps that you can take which will help ease the situation and make a more meaningful performance evaluation experience for both you and the employee.

For new employees, it is generally a good idea to first explain the reasons for the performance evaluation. You should tell the employee that the reason that you have an evaluation process is to help the employee become a better employee by pointing out his or her strengths and weaknesses. You should also tell the employee that the evaluation is to correct problems that have developed. If appropriate, you can tell the employee that the evaluation process is also to help you become a better supervisor by learning more about your employees and their particular problems. Finally, you should also tell the employee during this introductory phase of the performance evaluation that you encourage open communication and any questions that the employee may have.

After the employee has been familiarized with the reasons for the performance evaluation, you should explain to the employee how the evaluation process works. Specifically, you should tell the employee what was used to base your determination and why you consider this an important part of the employment process.

You should then tell the employee what is expected from his or her job and why this particular job is so important to the employer. This will help the employee feel better about his or her job.
After these preliminary matters have been discussed, it is generally more comfortable and more productive to tell the employee his or her strong points. This will allow you to start with non-controversial issues and the opportunity to tell the employee that if they performed this strong in all their areas of work, he or she would be one of the best employees.

After you have discussed the employee’s strong points, you should then go over their weak points. As stated before, it is extremely important that you have facts to support the weak points of your evaluation. You should explain to the employee why it is important for them to improve in these areas. You should ask the employee for their suggestions how they think they can improve.

In closing the interview, summarize what has happened and try and show enthusiasm for the plans that you and the employee have made for the future. Finally, allow the employee to make comments on his or her evaluation form at the close of the interview. After the process has been completed, make a note to yourself regarding the development plans that you and the employee have made to improve performance. Send a copy to the employee, asking that he or she get back to you if he or she has a different understanding of the expectations that you have regarding performance for the next rating period.

C. GOOD MANAGEMENT STRATEGIES IN GENERAL

The most effective way of managing performance properly and thereby avoiding litigation is to never have to be put in a position of having to administer performance related adverse actions, such as a Below Expectations rating, implementation of a Performance Plan, or denial of a merit increase or bonus. Further, employees are happier and, consequently, less likely to pursue litigation, when they are not being subjected to negative feedback which causes them to fear a job loss or demotion. However, preventing performance problems before they happen is not easy. Nevertheless, good management skills can on occasion help to prevent problems before the need for performance management arises, and can help in administering feedback when it becomes apparent this is necessary.

1. Honesty with Employees

Tell employees exactly what is expected of them and put these expectations in writing where appropriate.

2. Open Door Policy

Employees need an open line of communication to express concerns. When an employee does raise a concern, employers should listen to it and address it. Even if the employer does not resolve the issue in the employee’s favor, at least the employee knows that the employer was responsive to him or her. Furthermore, employers should follow-up employees’ concerns with discussions in the future.
3. **Employer Awareness**

Employers should be aware of what is going on in the work force. If tensions are high because of a particular event, employers should try to diffuse the situation.

4. **Employer Expectations**

Employers should be sure their employees know what is expected and should not demand more or less than what is expected of the job. In instituting work rules, employers should use common sense and refrain from instituting work rules that are arbitrary or have no bearing on furthering the employer's interests. Once a reasonable rule is in place, employers should make sure all employees know about it. Once they do, the rule should be enforced uniformly.

5. **The Golden Rule**

Employers should treat employees the way you would want to be treated.

D. **DIFFICULT PERFORMANCE ISSUES AND STRATEGIES**

1. **“Not My Fault Ned”**

How many of you have faced the circumstance that when you confront an employee about a particular performance shortcoming, the response from the employee inevitably is that “it is not my fault”, following by a recitation of the various factors which caused the shortcoming or the naming of the individuals on whom the employee believes blame is properly placed. This employee type typically demonstrates behaviors ranging from blaming others (at times in a public forum), resisting new work assignments based on claims of a heavy work load, or offering other work product instead of the particular work needed to account for how their time has been spent. How best does one deal with the employee whose shortcomings are never of their own making.

**Strategy:**

- **Listen, Assess and Address**

  A critical component of managing this type of employee is fact gathering. Because an excuse has (or will be) offered, you must be able to determine its legitimacy. This means having an open mind, and listening to the excuse and assessing responsibility. Where multiple factors contributed to a performance failure, be prepared to acknowledge that and put in place a means by which to avoid the problem in the future. This means being willing to change your mind when new facts are learned. It is important to act on information and observable criteria and information rather than rumor or mistaken beliefs. Be willing to discuss performance and to work out differences.
Naturally, this strategy works only if there is open communication between the supervisor and the employee who is the subject of the evaluation. Preparing for the performance discussion is like preparing for a speech. The more preparation you do, the better it will be. There is no substitution for preparation and knowing the subject matter you are going to speak about or the work of the employee with whom you are having difficulties.

In preparing to conduct the performance discussion, you should be clear in your mind as to a number of factors. First, make sure you understand exactly what was expected of a particular job in terms of duties, standards, performance factors, objectives, assignments and other pre-determined criteria for evaluation. It is important that you understand what the job entails and your expectations are not too high or too low for the particular job. If the employee also demonstrates inappropriate behavior in conjunction with the deficiency (i.e., blaming others in a public forum), be prepared to address that issue as well.

Before the meeting, determine the areas which you need to discuss with the employee. Be sure that you have specific, unbiased facts that you can use to support each of the strengths and weaknesses that you have discovered. For each area where there are deficiencies, be prepared to discuss a practical plan of improvement to increase effective performance. Identify the areas that you anticipate concentrating on in the next review period and where you expect to see improved performance. That should be clearly articulated to the employee. It is critical to establish and document expectations and accountability for the end result.

2. “Whistleblower Wanda”

Most employers are well aware that state and federal anti-discrimination laws do not permit them to discriminate against their employees on the basis of race, color, religion, age, sex, disability or other protected characteristics. Most employers are very good at avoiding actual violations of those laws (if not accusations of violations). But many employers find it much more difficult to avoid violating the anti-retaliation provisions that are invariably incorporated in anti-discrimination laws. Retaliation can be broadly defined as the taking of an adverse employment action against an employee because that employee has engaged in certain activities that the law deems worthy of protection. When an employee accuses an employer of discrimination, the accusation can often create strong negative feelings about the employee and employer concerns about employee dissension. Of course, when the employee’s accusations are without any merit whatsoever, the employer’s antipathy for the employee can be even more intense.

Strategies:

Know The Law and Your Rights

One of the many ironies of employment law is that an employee who makes false accusations often receives the exact same protection against retaliation as an employee who has made meritorious allegations. Moreover, the protection against retaliation often extends much further than
employers realize. In fact, the anti-retaliation provisions have now been interpreted to allow an employee to complain about a series of unpleasant incidents, even though the incidents cause the employee no economic harm, and have recently been expanded to encompass employee participation into employer-led investigations into EEOC Charges of Discrimination, even if the employee does not oppose any of the employer’s practices or provide damaging information in the investigation.

Certain opposition conduct is not protected. “The courts have required that the employee’s conduct be reasonable under the circumstances, and have held that ‘the employer’s right to run his business must be balanced against the rights of the employee to express his grievances and promote his own welfare.’” Jefferies v. Harris County Community Action Agency, 615 F.2d 1025, 1036 (5th Cir. 1980) (quoting Hochstadt v. Worcester Foundation for Experimental Biology, 545 F.2d 222, 230-34 (1st Cir. 1976)). Under this rule, an employee who copied and transmitted confidential documents and records to a coworker without authorization was held to have placed herself outside the protection of Title VII’s anti-retaliation provisions. Id.; see also Laughlin v. Metropolitan Washington Airports Authority, 952 F. Supp. 1129 (E.D. Va. 1997), aff'd 149 F.3d 253 (4th Cir. 1998). Likewise, a court found that an employee’s conduct had exceeded the bounds of statutorily-protected opposition where the employee had distributed a letter to various community officials to protest his perception of discriminatory conduct within his employer’s ranks. Abernathy v. Walgreen Co., 836 F. Supp. 817 (M.D. Fla. 1992).

An employee will not be permitted to disrupt the employer’s business operations in the name of resisting discrimination. Rollins, 868 F.2d at 40 1; Whatley v. Metropolitan Atlanta Rapid Transit Auth., 632 F.2d 1325, 1329 (5th Cir. 1980). “Disruption” includes publicly opposing the business goals of the employer, abandoning work, or harming workplace morale beyond the hard feelings normally accompanying a charge. See, e.g., Hochstadt v. Worcester Foundation for Experimental Biology, 545 F.2d 222, 229-30 (1st Cir. 1976). Protected opposition does not include being insubordinate, or refusing to work. See Simmons v. Camden County Bd. of Education, 757 F.2d 1187, 1189 (11th Cir. 1985) (“ongoing pattern of conduct manifesting disrespect and open defiance toward . . . supervisory authority” is not protected activity). See also Hazel v. U.S. Postmaster General, 63 Fair Empl. Prac. Cas. (BNA) 43, 46 (1st Cir. 1993). An employer remains entitled to an employee’s cooperation and loyalty, regardless of any complaints about unlawful activity.

In managing this aspect, it is important that the employee know of the legitimate routes of complaint, and that the employer follows up on those complaints. Expectations and parameters must be set and communicated if accountability is to be established. Managers cannot allow themselves to be distracted by irrelevant issues, but at the same time, do not be non-responsive. If the issue is unprotected conduct, then that message should be sent as to what aspects of the behavior are unacceptable. Because of the high potential for litigation, this is a type of situation in which legal advise should be sought as the situation is being managed.
Focus on Consistency of Treatment

A issue that is often raised in the context of managing a difficult employee whether the treatment is inconsistent with that of other similarly situated employees. In defending whistle-blower claims, it is always good to be able to establish even-handedness to all employees, thus rebutting the notion that one is retaliating. Following one’s own policies is also advised if they have been consistently followed in the past. If deviation is contemplated, be sure it is justified.

3. “Superior Susie”

Perhaps one of the more challenging performance issues is to manage is the high performer who lacks interpersonal and relationship skills. Task oriented individuals with high accountability are often driven to perform tasks exceedingly well, but they can often fall into the trap of comparing themselves to others, becoming frustrated by what they perceive to be co-workers lack of diligence, poor performance, or other various complaints. Managing these more tangential performance issues can be a daunting task, as any effort to do so is typically met with a reaction of shock because the core work product is so well done.

Strategies:

- Identify and Correct the Specific Observed Behaviors

  This is actually harder than it sounds. Because the work product is usually good to excellent, the more intangible qualities (i.e., someone having a “sense of team” or good “interpersonal relationships”) is often hard to identify. It is important to identify the behaviors that are creating the issue, be it complaining over others’ work quality, sullen attitude, unwillingness to assist when the crunch comes, and the like.

- Try to Develop Empathy and Sense of Team in the Employee

  This strategy, if successful, can help address the behavioral issues of a “Superior Susie”. The starting point is to achieve in the employee a recognition of the value of differing work styles and personalities. That is, when the employee is frustrated by another co-worker who seems too “chatty”, explain to the employee the value of being able to form effective working relationships and how that can be critical in maintaining inter-departmental cooperation. If possible, give examples. To make this strategy work, you have to get the employee to a place where he or she recognizes the value of skill sets other than their own and how that can contribute to a greater organizational success.

4. “Personal Problem Peter”

There are people in life who for whatever reason have a type of life that is filled with crisis. On a sporadic or ad hoc basis, any employee might expect to experience a temporary set back, such
as the hospitalization of a loved one, a child having difficulty in school, or the like. Others, however, move from crisis to crisis, doing their best to try and fit work in between, to the detriment of the workplace. At times, such an employee can also demonstrate a poor attitude toward management, feeling that however much is done for the employee is simply not enough.

Strategy:

. Set Firm and Objective Expectations

In this type of circumstance, one approach that has met with some success is to move toward a “no fault” management structure of accountability. Because the excuses are (or will be) many and varied, it is difficult to envision each one which will arise. Using a “no fault” model requires that performance expectations be set objectively (that is, be at work by 8:30 a.m. or finish X project by this date”, no excuses). The discussion with the employee should show the appropriate sympathy toward whatever circumstances have arisen, but at the same time, needs to communicate the business needs and expectations. Work has to be -re-established as a priority (ideally the priority), and if not, then the employee knows it is at risk. Be cautious, however, when the reasons for non-performance fall within something which may have a protected characteristic or aspect such as the use of FMLA or some intervening disability issue.’ Special attention must be paid to such circumstances to insure legal compliance.

5. “Absent Alan”

Perhaps the most challenging (and is some ways, perhaps now the easiest given enactment of the ADA and FMLA) is managing the absent employee. This can be a source of endless frustration for co-workers who must pick up the slack when the employee is absent.

Strategies:

. If the Leave if Protected, Manage It

At the outset, the initial inquiry will always be “is the absence protected?” By that, one determines if there is a law (be it the FMLA or a state leave law), that guarantees an entitlement to the absence. If the answer is yes, managing the absence is simply a matter of getting by, that is meeting the minimum legal obligations. Within the legal framework, the employee may have options available to it, such as reassignment for FMLA leave which is intermittent or on a reduced schedule. Moreover, even FMLA can be exhausted. This strategy requires the supervisor to manage the situation, making such decisions as they are able.

Whether the answer is yes or no as to whether the particular circumstance is FMLA qualified, the second inquiry revolves around the ADA issue and whether the individual is an otherwise
qualified individual who with the granting of some period of absence would be able to perform the essential functions of his or her position. Unlike the FMLA, the ADA does not set any minimum or maximum amount of leave that an employee is entitled to or that an employer must provide. Like any reasonable accommodation, the amount of leave must be determined according to the particular circumstances faced by the employer and employee. In some cases, no amount of leave will render an employee well enough to return to work and therefore an employer would not be required to grant a leave of absence as a reasonable accommodation. In other cases, an extended leave of absence may be required. The EEOC states that after an ADA leave, “the employee is entitled to return to the same job unless the employer demonstrates that holding the job open would impose an undue hardship.” EEOC: Fact Sheet on the FMLA, ADA and Title VII, 8 Lab. Rel. Rep. (BNA) (Fair Empl. Prac. Manual) 405:7371, 7374 (1996) (hereinafter “EEOC Fact Sheet”).

See Evans v. Federal Express Corp., 133 F.3d 137 (1st Cir. 1998) (employee who had already been given a month’s leave of absence for treatment of addiction to cocaine; employer was not required under Massachusetts’ counterpart to the ADA to grant a second leave to treat alcoholism as a reasonable accommodation); Duckett v. Dunlop Tire Corp., 120 F.3d 1222, 1226 (11th Cir. 1997); Monette v. Electronic Data Sys. Corp., 90 F.3d 1173 (6th Cir. 1996) (employers simply are not required to keep an employee on the payroll indefinitely hoping that sometime in the future a position may become available that the employee can perform); Hudson v. MCI Telecommunications Corp., 87 F.3d 1167, 1169 (10th Cir. 1996); Myers v. Hose, 50 F.3d 278,283 (4th Cir. 1995) (ADA does not require an employer to grant leave as a reasonable accommodation unless such leave will render the employee able to perform the essential functions of the job presently or in the immediate future); Fuller v. Frank, 916 F.2d 558,562 (9th Cir. 1990) (employer had no duty to provide indefinite leave to await uncertain results of alcohol treatment program as a reasonable accommodation); Pegues v. Emerson Elec. Co., 913 F. Supp. 976 (N.D. Miss. 1996) (employer need not allow indefinite leave); Walsh v. United Parcel Service, 201 F.3d 718 (6th Cir. 2000) (finding no ADA violation where a pilot was terminated after being on leave for more than 1 year and where the pilot had already failed to provide the employer with requested medical documentation).

See Cehrs v. Northeast Ohio Alzheimer’s Research Center, 155 F.3d 775 (6th Cir. 1998) (trial was necessary to determine whether granting plaintiff an extension of her 90 day leave period for a total of 180 days of unpaid leave was required as a reasonable accommodation); Ralph v. Lucent Technologies, 135 F.3d 166 (1st Cir. 1998) (employer was required to provide a temporary part-time schedule as a reasonable accommodation even after employer had already provided plaintiff with one year paid leave as a reasonable accommodation); Corbett v. National Products Co., 1995 WL 133614 (E.D. PA. 1995) (a 28-day leave of absence allowing plaintiff to participate in an alcohol rehabilitation program was required as a reasonable accommodation when there was no evidence that the treatment would be futile); Garcia-Avala v. Lederle Parenterals, Inc., 212 F.3d 638 (1st Cir. 2000) (a leave of absence for 10 months could be required as a reasonable accommodation where a date certain of return had been established and employer covered plaintiffs job through use of temporary employees while she was on leave).
If the Leave is Unprotected, Enforce Attendance Requirements

If neither the FMLA or ADA or corresponding state laws are implicated, then managing Absent Alan is a simple matter of setting and enforcing expectations regarding attendance. Even employees entitled to protection under the ADA generally have fared poorly when it comes to attendance issues.

Manage Leave Banks Properly Where Possible

There are some simple steps, listed below, that may help manage a leave situation.

a. Keep vacation/sick leave banks to a reasonable amount of time, i.e., a maximum of 90 days.

b. Have a leave policy that provides for unpaid leave, if vacation or sick leave is unavailable, up to the same 90 days.

c. Provide for extension of leave on a case by case basis. Provide that with the exception of FMLA situations, an employee’s job will not be held during the 90 days if doing so would create an undue hardship in the operation of the business.

d. Provide that where an undue hardship is present, and FMLA is not implicated, the employee’s position will be filled and the employee may be discharged. If a temporary employee could be used to fill the position, place the returning employee in the same or an equivalent position. If another (permanent) employee has filled the position, place the returning employee in an equivalent position or the next available position for which the employee is qualified.

e. If there was no undue hardship and the employee returns, but if the employee cannot be accommodated to perform the essential functions of the previous position, under the ADA the employer must attempt to place the employee in a vacant position at the same or lower level if the employee meets the minimum qualifications.

f. If no position is available and if it is not an FMLA situation, the employer may discharge the employee. In the discharge letter, invite the employee to apply for future positions.

E. DOCUMENTATION

Documentation is key to an effective performance management program. It also serves as a written record to assist when memory fades.
"'The horror of the moment,' the King went on, 'I shall never, never forget!' 'You will, though,' the Queen said, 'If you don't make a memorandum of it.'" — L. Carroll, Through the Looking Glass

In the most simple of terms, documentation is a written communication, such as a letter, a memorandum, a report or a file note, which serves to record the factual events of the moment, and in some circumstances, the author's mental impressions or interpretations are relevant. Documentation is simply that—a written record. As such, it is neither good nor bad.

Documentation is key to an effective performance management program. It is often also a crucial factor in litigation when deciding whether an employer has attempted to be progressive or has warned an employee about performance. It also serves as a written record to assist when memory fades.

Some more important reasons for keeping written records are as follows:

1. **Written Records are More Permanent Than Human Memory**

There are several reasons why this statement is true:

a. Written records are better than human memory because they are not displaced by more recent or apparently more important events which is what happens to events which are only committed to memory. In addition, biological forces such as stress and the aging process can affect memory.

b. Written records are not dependent on the writer's availability for their use. Managers of organizations come and go as their careers flourish and as organizational needs change. Career paths, family needs, personal goals, mergers, consolidations, buyouts, and promotions are among the factors which influence human memory and its availability to the organization.

c. Records survive these processes and important records are duplicated to ensure their continuing availability. No process is available for duplicating human memory—except, of course, writing what is remembered down.

2. **Written Records Have More Meaning in our American Legal System and in Some Instances are Required by It**
Because written records are more permanent than human memory and harder to alter to suit the objective of litigants, the American legal system attributes greater weight to written records than it does to human recollection. This in turn prompts people to write records rather than to promote their recollection as perfect.

Many government agencies involved in policing aspects of the employment relationship require that organizations make records about key decisions. For example, records about hiring must be kept for one (1) year and records about the hours an employee works must be kept for at least three (3) years.

3. **The Fact That Something is Written Down has a Greater Effect on the Person who is the Subject of the Record**

In part because of the impact of our thinking of our legal system and in part because most people are better able to learn information that is visually available, written records and communications are more significant than oral communications. When we get something in writing, we are more likely to consider its significance than when we are spoken to on the same topic.

4. **Written Records Serve as Reminders of Communications**

Consider the difference between an assignment given to you in the hallway when you are on the way, almost late, to an important meeting and an assignment which is given to you by a memorandum. Which is more likely to be remembered? Which is more likely to be remembered and carried out? For most people, the answer is the same—the written assignment. An important ingredient is that the document itself reminds us of the assignment. Whether it is kept in an “in” box or on the corner of the desk, the memorandum reminds us that we have an assignment. Written communication commands attention.

An additional and related reason to provide written documentation is that it submits itself to contemplation and reflection. The receiver of a written communication can read and reread it, thereby considering its meaning and the proper reaction to it. Oral communication does not allow that—it is spoken and, if heard, heard only once. Whatever is missed is gone forever.

5. **Written Communication is a More Effective Organizational Tool**

In nearly every organization, several people are involved in each task. Consider, for example, good patient care. The physician, nurse, pharmacist, dietician, and a whole array of other professionals all need to know a great deal of information about the patient. It simply would not work if the physician told the nurse who had to tell everyone else! Similarly, what if a couple building a home had to count on the architect’s recollection of their “dream” getting to the carpenter’s assistant? Any team process relies on each member of the team operating from a common base of understanding of the relevant facts. Written documents, such as patient records or blue prints or evaluations, are an indispensable part of successful teamwork.
6. Oral Communication is not Only Inefficient, it is Inaccurate as Well

The children's game "gossip"—where a message whispered in one person's ear and so on until it has been whispered to all, and then is compared with the message the last person receives more than—amply demonstrates the point.

G. Tips for Documenting Performance

By no means is the above a comprehensive list of the reasons for creating and maintaining written documentation. These reasons are offered in the hope of convincing you that time spent making written records is time productively spent for the accomplishment of valid organizational objectives. To be effective, documentation supporting performance should indicate: (1) that the employee has failed to perform his or her job; and (2) that the supervisor was supportive in trying to help the employee succeed. The employer's role in accomplishing this involves gathering the facts, setting objectives, formulating solutions, and taking action.

a. Gathering Facts

The key to effective documentation involves organizing and gathering the facts that are the subject of the disciplinary action. It is important for the employer to put together an accurate, objective assessment of the employee's behavior. A subjective description may be too vague to sufficiently describe the employee's behavior. For example, statements such as "he was drunk" or "he sexually harassed other employees" may be too conclusive and incriminating to the employer. A way to avoid such subjective observations is to describe exactly what happened. In the sexual harassment example above, it is preferable to write: "On March 10, we received a complaint by one of your co-workers that you used profanity and sexual terms in her presence." When facts are objectively written, they allow the reader to draw the same conclusion that the supervisor drew in taking the action against the employee.

To keep track of incidents or other discussions, supervisors should consider whether to maintain a log or diary of occasions in which they have significant conversations with their employees. The supervisor need not document the entire conversation in this log; a brief summary is sufficient. Thus, this log (if kept) should include events such as all warnings, counseling sessions, training sessions, and discussions of objectives.

In documenting employee behavior, it is also important to note the cost or impact of the employees' behavior on the organization. Numbers, dollar amounts or citizen impact can help quantify the consequences of what the employee did and provide strong justification for the employer's disciplinary action.

The employer should also get information from third parties that may have witnessed the employee's behavior. Usually, third parties will add credibility to any allegations made by the employer. If there are third party witnesses available, the employer should have these witnesses
prepare detailed statements of their observations. The employer should also get these witnesses to sign their statements.

b. Setting Objectives

To ensure performance improvement measures are effective, it is important that the employee understands the standards being applied and the expected performance behavior is documented. When an employee’s performance is below par, a record should be made of what was told to the employee. An example of this is a statement such as “You must turn in your monthly report by the last working day of the month” or “You must sell five widgets per month.” Another example would include “In the future, I expect you to be at work and ready to begin work at 8:00 a.m. each day that you are scheduled to work.”

c. Formulating Solutions

By formulating solutions, the employer is helping the employee meet the established objectives. Giving an employee solutions to improve his or her behavior shows that the employer offered the employee help to improve such behavior and helps to eliminate the suspicion that the employer was out to get the employee or trying to build a case against him or her. For example, in the sexual harassment context, the employer should write: “You are instructed to avoid future contact with Jane Doe in the future unless the contact is necessary and work-related. You are further instructed to review the company’s sexual harassment policy and to ask your supervisor or a member of the Human Resources Department any questions you may have about the policy.”

d. Taking Action

The final step is indicating the action that the employer intends to take if the employee does not meet the company’s objectives. The employer should consider letting the employee know: (1) what action it is taking now; and (2) what action will occur if the employee’s behavior does not change. For example, if the employee is being given a warning notice, then the employee should be told that he or she is receiving a warning notice, and if the behavior does not change, the next step in the process will be serious discipline, including the possibility of termination.

e. Common Documentation Pitfalls

Below are the five most common mistakes in documenting (or not) performance issues

  . Inappropriate stray remarks that may be perceived as biased

On occasions, the most well intentioned statements regarding the causes of poor performance or the performance itself may be perceived as biased by the employee recipient, and thus should be avoided. Examples are remarks like: “I recognize that at your age, ...”, “It is tough for women to do X job”, or “Your use of FMLA has been excessive.”
. No specific examples to justify ratings

Memories do indeed fade, and often the defense of an employment claims can come years after the dispute or issue arose. Both in terms of being able to compare employees, as well as to justify particular ratings, the use of actual examples is critical.

. No action plan to correct the issue

Identifying the problem is sometimes not enough. The setting down (where appropriate) of the means by which the employee can be successful is generally viewed as showing a commitment to the employee’s success, the negating an inference that the employer was just trying to get rid of the employee for some impermissible reason.

. Failing to do evaluations

When performance is not documented but an employee continues in employment, the law more or less presumes the employee must be doing okay, or otherwise they would not still have a job. Because of the difficulties inherent in managing performance, supervisors will sometimes seek to avoid responsibility and not document the issues. Instead, a workaround is developed to get the job done, but the problem continues.

. Not maintaining a consistency of files

Often, when the performance issue reaches a certain level, supervisors will begin to “build the tile”. Creating legitimate documentation is perfectly appropriate, but within reason. Do not suddenly start doing the long neglected annual evaluations on one employee while not conducting annual evaluations on the others. From that point, the employee’s performance determines the further existence of documentation, but if the supervisor had the same performance issue with two different employees, one would expect a similarity of documentation unless legitimate circumstances warrant a difference in treatment (for example, a first offense v. a repeat offender). The same process should be used for all. Further, if an employee suddenly drops from an “exceeds” rating to “below expectations”, one would hope there is some record of coaching or counseling between the two, or something on the evaluation commemorating prior verbal discussions on when the performance began to deteriorate.

F. CONCLUSION

There are a few helpful hints that you should remember when conducting performance discussions with employees. If you keep these in mind, you will find that your evaluation will become an important part of the employment process and you becoming a better supervisor.
DO:

1. Be prepared.

2. Be confident.

3. Be candid.

4. Be a good listener.

5. Praise employees where praise is due.

6. Criticize employees where criticism is due, but remember to be constructive.

7. Remember that employees are human beings. Say things to the employee in the way you would like your boss to say the same comment or criticism to you.

8. Be fair - standards should be the same for everyone under your supervision.

DON’T:

1. Apologize if you have to give an employee a bad evaluation.

2. Avoid giving criticism because you are this employee’s friend.

3. Avoid praising or being overly harsh on an employee because you don’t particularly like him or her.

4. Rush the employee through the evaluation process.

5. Allow yourself to be interrupted by telephone calls or other employees.

6. “Turn off” the employee while he or she is trying to talk to you.

7. Be inflexible - if an employee has information that was new to you, consider whether it should cause you to change the evaluation that you have prepared.

8. Expect more of some employees than others.

9. “Copy” the employee’s last evaluation. Every employee changes and your evaluation should reflect what is going on during this rating period.
Managers Briefcase

Low Maintenance Faculty: Dream or Reality?
Hon. Ernest Borunda, Dean, The National Judicial College
William Brunson, Academic Director, The National Judicial College

The session was co-taught, tag-team style. The class began with a discussion of how to educate faculty. Mr. Borunda suggested that education happens both formally and informally; formally through steps such as faculty development workshops, books and manuals, videotapes, or audiotapes and informally through steps such as faculty meetings, mentoring, research and others.

Mr. Brunson broke the class into groups to discuss the two types of faculty rewards, intrinsic and external. Intrinsic was defined as "of or relating to the essential nature of a thing; inherent". Extrinsic was defined as "not forming an essential or inherent part of a thing; extraneous or originating from the outside".

The groups developed the following list of intrinsic awards: professional pride, the benefit of learning, improving general poise, a love of teaching, getting to know participants, and gaining the respect of peers. The extrinsic list included: payment, physical rewards (attaches, portfolios, coasters, paperweights, etc.), payment of the cost of the trip and attendee cost of conference, paying for cost of entertainment and meals, thank you letters and certificates, press releases, awarding teaching credits (CEU, CLE, etc.), and a simple statement of thank you. Mr. Brunson stated that if a payment is not available, that is when staff plays the intrinsic card to encourage faculty.

Mr. Brunson opened the floor to discuss payment for faculty. Answers to the following questions were discussed: Who sets the fees? How are they set? How and when are the fees adjusted? Mr. Brunson suggested setting a fee schedule for faculty with a concrete outline to that there is no mystery surrounding payment. Also, it is appropriate to increase on percentage basis as cost of living increases.

Evaluating faculty was also discussed. Mr. Brunson stated that through better questions, staff will get better answers. Mr. Brunson included in our materials six written responses that he collected from the National Judicial College evaluations over the past several years, give practical examples, needs better structure/organization, and it would be helpful if the instructor slowed down a bit. He stated that from all of the comments, only these six were helpful to faculty because they were specific enough to truly provide help.

A participant asked how to communicate to a faculty member that the faculty received poor evaluations. Mr. Borunda suggested that faculty be told the results of the evaluation, but that faculty should be given a second chance, perhaps pair them with a mentor. If no improvement is seen, the faculty has to be let go, despite the potential political ramifications, but handle tactfully.
Gavin Lane and Liz Strong facilitated the technology session at the NASJE meeting. The facilitators first asked whether the technology committee of NASJE should concentrate on teaching technologies or other technologies involved in court operations. The group agreed that NASJE should concentrate its efforts on teaching technologies. These are defined as distance education technologies and those technologies that are used in teaching such as PowerPoint, responder systems, visual presenters (e.g., ELMOs), etc.

Gavin Lane defined distance education as "learners accessing educational programs and products while separated from the faculty, either by location or time." He also differentiated between programs or products that were stand-alone or part of a traditional program.

The delivery mechanisms discussed were computer-based training (CBT), web-based training (WBT), satellite broadcasts, videoconferencing, and the use of videos with workbooks.

The first question we addressed was, "why should we focus on distance education?" In California, it was an easy decision. Gavin explained that California Judicial Education and Research (CJER) had four primary reasons for pursing it. First, CJER needed to provide education for more than 20,000 judges and court personnel. Second, CJER wanted to reduce the burden on local courts, especially with regard to the time and the expense for travel for employees to go to live programs. Third, distance education provides easier and more frequent access to educational content. Fourth, distance education would provide local courts with more control over the education of their personnel.

**Satellite Broadcasting**

Gavin Lane emphasized what CJER has done with regard to satellite broadcasting. He explained the advantages of the technology as (1) the faculty can reach large numbers of people; (2) it allows a unique grouping of learners; (3) it provides a forum for focus on local issues or applications. The disadvantages to satellite are: (1) the faculty can feel isolated; and (2) interaction can be limited with other faculty and with the other sites.

Since launching the first broadcast to limited sites in May of 2001, CJER has launched 25 broadcasts to court employees statewide, educating nearly 7,000 judicial branch employees. He explained that every Tuesday, there are staff education broadcasts with the following subjects: (1) orientation to the judicial branch; (2) orientation to the judicial council and the administrative office of the courts (AOC); (3) supervisory training; (4) staff training; and (5) continuing the dialogue. Further, CJER offers satellite programs for court staff on differentiating
between legal advice and information, ethics, fairness, avoiding sexual harassment, and customer service. CJER also offers quarterly broadcasts on California Court News.

Finally, it offers programs for appellate and trial court judges on a variety of subjects including jury management, cause of action recusal, case management forms and collaborative courts. The broadcasts use a variety of teaching methods, just as would be used in live programming. Panel discussions, lectures, question and answer, debates, case studies, and testimonials can all be used in this environment. To ensure the success of the program, Gavin recommends seeking local court support for four primary reasons. First, it ensures the proper installation of broadcast downlink equipment. Second, CJER needs the assistance of a local training coordinator to serve as the primary link with CJER. Third, local courts provide the necessary facilitators to ensure the program’s success. Fourth, the local courts can distribute passwords or serial numbers for accessing online content.

Because satellite time is quite expensive, many courts and organizations have pursued other distance education technologies that include interactive videoconferencing, CD-ROMs, videos and workbooks, and web-based training (WBT).

**Videoconferencing**

Unlike satellite broadcasts, videoconferencing relies on telephone lines. For most applications, an integrated services digital network (ISDN) line is used. Using a number of ISDN lines, the bandwidth can be extended to 384 kbps (kilobits per second) which allows for full motion video to be compressed and decompressed by use of a CODEC (which stands for “COmpression-DECompression”). At some point in time, ISDN technology will give way to other delivery mechanisms as developments in broadband increase. The advantages of videoconferencing are:

1. faculty and students can see and hear each other;
2. it provides a forum for students to discuss issues of concern from site to site. The disadvantages of the technology are:
   1. locations are limited because it’s difficult, almost impossible, to have meaningful dialog between more than four sites;
   2. the limitation of (1) also reduces the available number of student seats; and
   3. the video and audio is compromised by the compression process which can make the images appear choppy and not as clear as satellite images.

The National Center for State Courts’ Institute for Court Management (ICM) has been the leader in the use of this technology. ICM reports on its website that “[the videoteleconferencing programs have been suspended for fall, 2002 due to major scheduled in-house renovations. ICM will resume these national program in 2003.” See [http://www.ncsconline.org/d_icm/icmcourses_vtc.html](http://www.ncsconline.org/d_icm/icmcourses_vtc.html).

**CD-ROMs and Interactive CD-ROMs (a.k.a., CD-i)**

The Michigan Judicial Institute (MJI) initially developed interactive CD-ROMs (CD-i) to educate judges. Unfortunately, judges didn’t use the technology in sufficient numbers to justify continued investment. Nevertheless, MJI later developed CD-ROMs for use by court staff. This proved to be quite popular, and significant numbers of court staff are educated in this way today. Currently, MJI has the following subjects available via CD-ROM and CD-i: (1) "I'm sorry, I can't give legal advice"; (2) Your Guide to Accessing Michigan Courts; (3) The Michigan Court Rules: A Guide for Court Support Personnel; (4) The Court Staff Guide to PPOs; (5) Repeat Offender Legislation; and (6) Court Employees: A Commitment to Excellence.

The Washington State Administrative Office of the Courts (AOC) is currently...
creating a variety of multimedia education products for Washington judges and court staff. The AOC is presently developing Online Ethics, an extranet-based e-Learning product, for judges. The AOC also recently completed a CD-ROM entitled, "Unified Family Court: Some Thought from the Bench." The CD-ROM includes digital video interviews with judicial officers involved with unified family court. Previously, the AOC created "Washington State's Judicial College...Stepping into the 21st Century," a CD-ROM featuring the history, development and vision of Washington State's Judicial College.

Videos and workbooks
Another method of distributed learning is the use of videos and workbooks. The advantage to this technology is that it's low-tech for users who may be hesitant to use other technologies. The materials are also reusable and can be good sources of information to educate those who need remedial training. Further, videos and workbooks can be good reference tools. The disadvantages of a video are that it can be expensive to produce high quality video and once created, they quickly become obsolete.

Self-study, web-based training (WBT)
Because of these problems and the expense and difficulty of distribution, WBT has come to the forefront. WBT has a number of advantages. First, it is easily accessible to those with Internet-ready computers. Second, it can be accessed whenever it's necessary providing "just-in-time" training where necessary. Third, it can be easily updated. Unlike videos and CDs, the SJE doesn't need to send users the newest version of the CD or tape. Additionally, the SJE doesn't have to worry about older, inaccurate versions being used. The disadvantages of WBT are: (1) the students may feel isolated; (2) students may have difficulty accessing the system either through technical difficulties or lack of expertise; and (3) many court staff don't have access to computers.

In California, judges have access to online courses and self-study resources for judges. They also have access to JB Radio (JB stands for "judicial branch"), which allows users to view video from previously offered presentations and the materials that accompany those presentations. In this way, judges could learn about substantive law (e.g., Proposition 36). In addition, JB Radio provides access to bench guides and business software tutorials. For court staff, CJER offers courses in the following subject matters: (1) self-study core courses; (2) basic in-service training; (3) handling change; (4) basic safety; (5) basic security; (6) ethics; (7) diversity; (8) customer service; (9) employee orientation; and (10) writing for results.

New Mexico first launched self-study WBT with a course on search warrants. Today, New Mexico boasts eight courses in the following subject matter areas: (1) Ethics for Judges; (2) Ethics for Court Staff; (3) Health related leave (for all court staff); (4) Hearsay (for judges) which features question and answer based training for judges and an "Interactive Domestic Violence Evidence Chart"; (5) Sentencing (for judges) which features sentencing exercises and sentencing calculators for magistrates and municipal court judges; (6) Torts (for judges) which includes information on basic tort law and several short exercises; (7) Interactive DWI Trial (for judges), which is a simulated DWI trial using video testimony where the user is the judge, the feedback is presented at the end of the trial, and ultimately the judge sentences the offender; and (8) Alternative Dispute Resolution (ADR) Web Course, which is New Mexico's first instructor-facilitated, web-based course to teach judges and court staff about ADR and encourage adoption of appropriate ADR programs in courts throughout the state. See http://jec.unm.edu. These courses are located on the Internet without password protection (with the exception of the ADR course); consequently, anyone can access them.

A leader in web-based training for the judicial branch, The National Center for State Courts offers two self-paced web courses: (1) "An Introduction to Trial Court Performance Standards"; and (2) "On-Line Benchbook on Mass Tort Litigation". The latter course is offered via Blackboard and features discussion groups in
addition to quizzes, materials and other helpful information. See http://www.ncsconline.org.

Interactive WBT
Unlike self-study WBT, interactive WBT allows the users to communicate with one another and thus avoids one of the disadvantages of self-study WBT. Interactive WBT includes any web-based technology that allows the user to interact with other users. This article will highlight four different types of WBT. First, WebCT (www.webct.com) and Blackboard (www.blackboard.com) are similar products. They allow the student to access the following tools, among others: (1) course materials; (2) quizzes; (3) calendar of events or syllabus; (4) discussion groups (a.k.a., threaded discussions); (5) Internet resources; (5) subject matter-related terminology; (6) chat room; (7) whiteboard; and (8) course survey or evaluation. This allows the student a variety of options. For instance, the instructor could post an assignment via an announcement page or include it in the syllabus or calendar of events. A student could read the course materials and take a quiz to determine if she grasped the materials correctly. The student could also engage in a discussion about the materials with other students either in real-time via a chat room or themed discussions in discussion groups. If the student found that she didn’t understand some of the terms involved, she could click on the terminology icon to look up relevant terms. The instructor may wish to give the students an assignment to research resources on the Internet. Finally, after the course is completed, the student can complete an online evaluation to assess the success of the course.

Second, WebEx (www.webex.com) and Placeware (www.placeware.com) are two leading interactive WBT products that allow an instructor to project PowerPoint slides, responder-type questions, whiteboards, and graphs via the student’s computer. In addition, the instructor communicates with the student via the telephone. While both products allow for the voice to be delivered over the student’s computers (a.k.a., voice-over IP), the majority of users prefer the use of telephones for three reasons: (1) voice-over IP requires the student’s computer to be equipped with a sound card, speakers, and a microphone, which may be a problem; (2) voice-over IP is less reliable than telephone lines; and (3) voice-over IP is less clear.

ICM presented a wide variety of number of WebEx stand-alone courses in 2001 and 2002 in subjects ranging from Emotional Intelligence to Faculty Development for Live Web Class Programs. Krista Johns reported on her experiences in Distance Learning, WebEx Style. See http://nasie.unm.edu/archives/spring02/resources/products_de.htm

The National Judicial College (NJC) offered its first interactive WBT in 2001 on Handling Small Claims Cases via WebCT. Also, NJC offers a course entitled Selected Criminal Evidence Issues and is developing other courses including Diversity and Ethics for Judges and Evidence for Administrative Law Judges. The programs allow judges from across the country to interact and share ideas on how to handle certain cases. NJC used a number of techniques to ensure interactivity.

First, the instructors used a number of case studies and asked the students to
analyze them in discussion groups in addition to the self-study quizzes, online materials, online chats, etc., that the software enables. Second, the course was offered in a six-week format requiring the students to complete two-hour assignments each week. Just like in other classroom experiences, most of the students completed the homework on Sunday evenings, since the assignments were due on Monday morning. If the student attempted to log in on Monday morning to complete the assignment, he or she would not be able to log in and instead would be prompted to contact an NJC staff member to discuss if there were any problems with the software or misunderstandings about the assignment. This approach usually persuaded the students to complete their homework assignments on time. Some participants dropped from the course to take at a later time when they could devote the appropriate amount of time to it. Conversely, some students completed the assignments as soon as they were posted on Monday morning. NJC found that it is extremely important to keep students motivated and to ensure that the discussions include all of the participants instead of a few vocal few. Third, NJC found it's important to ask the students to submit photographs so everyone can see one another. To further "humanize" the experience, the students post introductions of themselves so that the other students can recognize and understand who their fellow students are. Fourth, in addition to posting introductions, the first assignment is always to ask the students to become comfortable with the WebCT software.

In addition to the WebCT component, NJC has utilized WebEx to provide a real-time experience for the participants, so they can hear the voices of the instructors and one another. WebEx gives the students the opportunity to interact in an informal way and also to add the "human element" to the program. As Krista Johns noted in her article:

> For learners like me, more of the human connection and relational learning should be built into webcasts. This might be accomplished by adding more pictures of people's faces in the graphics, finding a way for small group discussion by chat or phone, and by making full use of the audio portion with music, drama clips, and other emotion-evoking elements. Time and experience will enhance the use of this medium, just as they have for in-person courses. See [http://nasje.unm.edu/archives/spring02/resources/products_de.htm](http://nasje.unm.edu/archives/spring02/resources/products_de.htm)

While NJC has experimented with the use of music with some success, it's still not viable to use drama clips because of the limitations on bandwidth. As progress is made in building greater bandwidth, this will change.

In sum, the use of satellites, videos, CD-ROMs, CD-is, web-based training and other technology-related media to educate judicial branch employees is increasing and changing the way in which the judicial branch is educated. As in any education, planning the learning objectives and building materials to support those objectives are the key to success in ensuring a successful educational event. Many of the states and national providers are experimenting with these different delivery mediums for one ultimate goal: to educate the judicial branch in advancing justice. While there will be some failures and successes, we all need to work together to ensure that we always keep that ultimate goal in mind.
Manager's Briefcase

Notes from NASJE Technology Committee Brain Bank Session
Submitted by Gavin N. Lane, Education Technology Manager, Education Division, Administrative Office of the Courts of California

The question was: Help define the scope of the work of the NASJE Technology Committee. What types of issues should the committee address?

These are the responses from the easel chart:

- How to working with faculty to deliver online education
- What's everyone doing?
- What do people want to do?
- Why don't people make more use of online courses now?
- Education about Distance Education Technologies
- How they work
- When to use them
- How to use them effectively/appropriately
- Education about teaching technologies (equipment etc.)
- What they are.
- How they work
- When to use them
- How to use them effectively/appropriately
- Education in basic computer literacy
- What lessons have been learned
- What procedures and protocols have been established and why
- What models have been developed (education)
- What's out there for training and learning?
- Web site resources
- How to prepare your institution
- How to incorporate web based training “into the system”
- Not “court technology”

Specific Ideas

1. RE Blackboard or Web CT

- Introduce faculty and students by use of pictures and metaphors if possible
- Make sure you schedule modules and timeframes very clearly
- Create real deadlines for submitting content by using the technology to enforce them
- Use Blackboard to post announcements as a way to communicate
- Create some clear rules for chat, to modify natural human behaviors and enable everyone to talk
- Limit the number of participants in an online course to 15 (20 max). The
volume of postings will be too much for faculty or students to manage if there are too many participants

- Courses being produced now by the National Judicial College have a duration of six weeks.
- Content includes Small Claims and Evidence
  - Two days of credit are received upon completion

2. NASJE should work with the National Center and see if it's possible to generate some kind of group discount for this type of software, like the Learn2 discount.

Who's using what?

- Washington DC, NSCS, National Judicial College are using Blackboard or WebCT. California is in the process of purchasing Blackboard.
- California is using satellite broadcast. Texas, Ohio and New Mexico use it infrequently.
- Ohio is using videoconferencing extensively. California will conduct pilots this year.
This well attended and highly interactive discussion generated several innovative, pragmatic strategies for responding to judicial branch education budget cuts. Some of the identified related “problems” included:

- revenues previously earmarked for judicial branch education are frequently redirected to other state operational needs
- state revenue shortfalls are becoming endemic, forcing JEB directors and AOC’s to cancel programs, layoff employees, and eliminate education-related travel
- in some states, JEB learning is not as highly valued as many other state obligations, and accordingly, JEB programs are the first to be eliminated

Potential solutions to the forgoing problems and troubling trends included:

1. Diversify your “revenue portfolio”: Rather than relying predominantly on a single source of financial support, diversify your financial resources to include foundation support, grants, tuition and gifts.
2. Improve political support for JEB initiatives. Do this by recruiting support from politically influential trial judges, appellate court judges and state legislators who have demonstrated a history of supporting judicial branch education and/or whom your AOC respects. Begin a letter writing campaign to get legislators’ attention. Avoid in-fighting with departments within your organization.
3. Admit to yourself that competition for scarce resources exists within your administrative office of the court. Win that competition by demonstrating the detrimental effects of financial cuts, educating Justices and friendly legislators about these detrimental effects and be vocal: don’t immediately assume the fight cannot be won or that losses cannot be ameliorated.
4. Begin charging for training. You may be surprised how many people are willing to pay a modest fee to receive much needed training, especially when you articulate the dire financial situation your office is experiencing. If you choose this route, give your localities advance notice so they can begin budgeting for this new approach.
5. Replace statewide conferences with several one-day regional meetings. This avoids costs associated with hotel “overnight stays” and if planned correctly, can reduce travel and meal costs.
6. Contact the technical assistance representatives from the National Center for State Courts to request various forms of financial assistance.
7. Improve collection of fees/revenues on the front end. Make sure these funds are dedicated to a specific fund by attaching an earmarked administrative fee.
8. Train a pool of specialists within your local courts who can conduct site
visits in the field, thereby providing technical expertise at the grass roots level.

9. Use the NASJE Website (nasje.unm.edu) and JERITT to download curricula and other pre-packaged materials to save you resources, effort and money.

10. Partner with universities and other public agencies/organizations to use their facilities and faculty.
Manager's Briefcase

Round Table Brain Banks: Court Security

The court security round table was small, but effective. Facilitated by John Meeks, the group discussed disaster recovery planning, loss of funds for security, and training that the different states were doing. Mr. Meeks stated that there has been a general evolution from just court security to disaster recovery planning, where court security and court administrators are working together to prepare for disaster. The group agreed that money was scarce for making security changes.

The National Judicial College discussed an online training module that was being developed on court security for judges. Mr. Meeks also discussed that Ohio had a courthouse security project where all courthouses were reviewed for security and allocated money to make those improvements. The group agreed that there were ways to improve security that does NOT involve spending money, such as not designating parking spots as JUDGE. The Texas Municipal Courts Education Center reported that they have a training specifically designed for bailiffs and warrant officers. They focus the training on court security issues, such as crowd control and handling difficult people, as well as legal issues in the courtroom.
ANNUAL BUSINESS MEETING

AGENDA

1. Call to order

2. Approval of minutes of 2001 Annual Business Meeting

3. Recognition of guests

4. President's Report

5. Treasurer's Report

6. Reports of standing committees
   A. Diversity Committee
   B. Education Committee
   C. Membership Committee
   D. Standards Committee

7. Reports of Special Committees
   A. Competency Guidelines Committee
   B. International Committee
   C. Mentoring Committee
   D. Newsletter/Website Committee

8. Election and swearing in of new officers and directors
   - Newly Elected Officers
   - Visions and Bios for Candidates
   - Past Presidents

9. Adoption of bylaws revision

10. Future Annual Conferences
    Announcement of 2003 Conference in Reno
    Discussion of scheduling for 2004 and subsequent conferences

11. Remarks by the new president

12. Unfinished business

13. New business

14. Adjournment
REGIONAL MEETINGS AND REPORTS

Review of Midwest Regional Meeting

The Midwest Regional Meeting was facilitated by Kenny Miller. We began by introducing ourselves. Once we had done that, Kenny set out a few topics to cover, including new programs that states were doing and great faculty they were using. Ohio discussed a diversity program that they had held. The course not only discussed ethnic diversity but also socio-economic differences. Dan Schenk from South Dakota requested information about training court reporters, as his region is having a difficult time filling the need in the rural areas. Missouri discussed a program they held for court reporters that introduced court reporters to new technologies.

Denise Kilwein reports that the most pressing issue facing Kansas is the budget, as reported also by Jerry Beatty and Alanna Moravetz. The four of us face budget cuts and various restrictions placed on our existing activities.

Alanna reports that MN is in the middle of a huge transformation to a fully state-funded court system. The education division was officially renamed the EDUCATION AND ORGANIZATION DEVELOPMENT DIVISION last January. Alanna and crew are working with several consultants to share and implement the new court system. Surprisingly, they have added one professional position (Education Manager) and will soon add another Training Coordinator and Education Program Assistant. MN continues to provide all of the judicial education programs that they have in past and are now adding court staff programs (orientation, management, leadership, team building, facilitation skills, court interpreter skills).

Missouri experienced a 25% reduction in the education budget this fiscal year. We continue to provide services, although we have scaled back in some of our research and development efforts in technology. Nevertheless, we continue to strive to make inroads in web training, where we are developing modules to support our statewide automation project. We also launched an education web page this past year and continue to expand our information and offerings using that site for marketing. It's proving highly successful. We look forward to the possibility of partnering with other states, as we believe technology will enable us to more cost-effectively provide services in a recessionary period. For more information, please contact Kirk Arnold, Education Technology Coordinator, at 573-522-2478.

Review of Northeast Regional Meeting

The Northeast Region met at the NASJE Annual Conference and discussed the upcoming 2004 Annual Conference which we will host. Ellen Marshall and Franny Haney will send a questionnaire to all members requesting their input on the dates of the conference and possible sites. Since two members had to leave early and there were only 3 members in attendance, the meeting ended early. A follow-up meeting has been suggested in the northeast at a possible conference site.

Review of Southeast Regional Meeting
Proposed Topics for Discussion

Topics From The 2001 Regional Meeting:

- Your organization’s best practices
- Your organization’s experience with distance learning
- Your organization’s experience in producing judicial branch publications
  - funding sources
  - types of publication
- Your organization’s judicial branch education website
- Your experience in recruiting judicial faculty
- Do you use the same judicial faculty for all of your programs?
- How do you “nurture” your volunteer faculty?
- Your contingency plan if a presenter does not show
- Your faculty development plan/programs
- Your top three plenary presenters

Topics For The 2002 Regional Meeting:

I would like to revisit the above topics and add one more –

- Your organization’s experience with budget cuts

Review of Western Regional Meeting

1. Sharing highlights of the year in each state:
   - What have you done?
   - What are you planning?

2. Ideas for supporting each other as a region

3. Western Regional Conference
   - Do we still want to have one this fiscal year?
   - If so, where, who, what, when?

Report from Western Regional Meeting

The Western Region will hold a virtual regional conference in 2003 using technology and distance education. A combination of media will be used—broadcast, on-line, blackboard—all with materials sent ahead of time. Each state will take one component and be responsible for one of the courses. It is hoped that the National Center for State Courts will be able to contribute their assistance. The committee to plan the “conference” is chaired by Gavin Lane (CA), Pam Castaldi or David Ferris (NM), Liz Strong (CO), Janica Bisharat (Utah), Eddie Davis (CA), Robin Wosje (NJC), and Ray Foster (NCSC).

State reports:

Nevada is continuing its conferences and trainings despite a 30% statewide cut in funding from the legislature. The judges associations have stepped up to support future events if the state cannot do so. They held a rural judges retreat with Isaiah Zimmerman on judicial stress and isolation, and the court administrators have formed an association and will have a conference in October.

The National Judicial College discussed the scholarships available for judicial training and its Courage to Live Program. NHTSA discussed that 2003 will be the Year of the Impaired Driver and that funds and resources are available.
Utah completed mandatory training for all court employees in cultural competency through a cadre of instructors. They also had a 2-day senior clerks training. They held an Institute for faculty training and their Chief Justice helped teach the faculty. They have created an independent learning project through which learners can earn up to half of their required hours of instruction per year.

California discussed its satellite broadcast project for court staff. Small dishes have been installed on 130 courthouses and 50 more will be added next year. Training areas were also built in each court and local staff trained in the technology. They estimate that they will conduct 75 broadcast programs next year. Six online courses have been developed for court staff. Some broadcast have been held for judges also. A mandatory qualifying ethics course is moving from totally face-to-face delivery to combined distance education delivery.

New Mexico has created an ADR web course with links to other websites. It combines videos and discussion groups. Each module has a moderator who starts the discussion. They are looking to train faculty further on using this new medium. They are continuing their community outreach work, have written a DWI benchbook, and have created an interactive virtual trial on domestic violence.

Hawaii has begun developing staff training programs. They are working on an electronic benchbook and will be conducting an Alcohol Symposium for the judiciary.

Colorado has a mandatory professional development program for judicial assistants. They can get credit by giving back to the profession—mentoring, teaching, chairing a committee. Yearly bonuses are also available for outstanding contributions.

Respectfully submitted
Martha Kilbourn
Western Regional Director