FUTURE TRENDS IN STATE COURTS

2004

NCSC
National Center for State Courts

A nonprofit organization improving justice through leadership and service to courts

FUTURE TRENDS IN STATE COURTS 2004

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With respect to the Trends articles, we once again have many internal and external contributors for whose efforts we are grateful as well as a number of individuals who helped to solicit and edit the external submissions. Our gratitude also extends to those staff and constituents who shared information about projects on which they were working; such indirect contributions find their way into many of the articles and illustrate the value of networking and collaboration within the state court community—one of the purposes for which the National Center was founded. We would also like to recognize that online legal resources were provided by LexisNexis.

Our acknowledgments would be incomplete if we did not recognize the editorial and production assistance provided by the National Center's Communications Office. In particular, our ability to effect gradual improvements in the quality of this publication from year to year owe much to the editorial continuity provided by Charles Campbell. Lastly, we are indebted to the National's Center's senior managers for their encouragement of continuing court futures work and willingness to provide resources for their support.

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INTRODUCTION

Knowledge and Information Services

The purpose of the *Future Trends in State Courts* report and related products of the National Center for State Courts (NCSC) is to support the courts' strategic planning efforts. This report is the third edition to be published with both an environmental scan and the traditional collection of timely articles. The report is intended to stimulate thought and discussion about potentially important issues for the courts and their solutions, not to predict the future.

Environmental scans are among the major tools used for strategic planning. The 2004 Scan is easier to understand because of an improved layout and the addition of selected graphics and tables. The Scan reviews a wide range of issues within selected domains both related and unrelated to the courts, while considering possible future implications of current conditions. For some readers, the Scan may be confusing because a given set of present conditions may have multiple, mutually exclusive implications for the future. Each implication depends upon the choices society makes, the influence of intervening events, and scientific advances. It is the nature and purpose of scanning instruments to encompass multiple possibilities.

From the information and issues identified while preparing the Scan, the NCSC's staff selects subjects for coverage in greater depth in the Trends articles. These articles illustrate some of the vague or less detailed issues of the Scan, demonstrating how relevant and immediate the issues are with information on what is already happening in some jurisdictions.

In an effort to improve this publication, we welcome feedback from our constituents. Indeed, it is our intent that the online version of the Scan becomes a living document that is adjusted as new developments and insights are brought to our attention. The online version of the Scan will also continue to have links to relevant Trends articles and other supporting resources.

Understanding the Environmental Scan

Environmental scanning is a process that attempts to identify events, trends, and developments that shape the future. These "ETDs" are usually found in published material, but may also be explored through interviews of subject matter experts. Scanning focuses on both dominant issues, as indicated by the amount of attention they receive, and leading edge developments, which may be, for the moment, receiving little attention. Scanning tries to understand which issues might take a court beyond its current way of doing business.

Regular scanning is essential for tracking important issues and for screening anomalous issues. Scanning is similar to an academic literature review, but the issues noted tend to be more focused and driven by current events. Both breadth and depth are important, as is relevance to the courts.

The Scan does not tell a court what it ought to do, but it does bring two primary values to planning. First, the scan will suggest the nature of the world in which the court will be deciding the future it wants and what it needs to do. Second, the Scan provides the court with a wider angle and longer-range view of the future, stretching both strategic and creative thinking beyond normal boundaries.

There are, of course, pitfalls. One obvious pitfall is making misleading or incorrect assumptions about the future. A second is that a general scan may not reflect local conditions. More serious pitfalls can emerge when the scan itself encourages misleading views of the planning enterprise. For instance, allowing scanning to become an end in itself. An organization assumes that the answer is "out there" somewhere in the scanning, but the process never ends because the answers never appear.

Another and somewhat deeper problem is basing assumptions about the future on past and current trends. Hence, most predictions associated with scanning suggest that in the future there will be more of some things, for example, crime, and less of other things, for example, money. Thus, leaders develop elegant plans to create a more efficient past, rather than a new future. Such errant tendencies are similar to "paradigm paralysis" and must be overcome with an emphasis on creativity, alternative thinking, and practice.

As in the last two editions, this year's Scan covers issues organized under 21 domains—7 related to general subjects, 6 to court enterprise subjects, and 8 to subjects of court management. For most issues, readers will find information about current conditions and projections of future conditions and their possible implications. The following list highlights the ten key challenges identified in the environmental scan.

1. Attention to the changing makeup and needs of the public, with responses such as court monitoring and accountability programs, community outreach, empowerment of juries with better information, and generally seeing citizens as customers.

2. Continued shifts toward alternatives to traditional court, including ADR, the multi-door courthouse, and culturally appropriate dispute resolution.

3. Mission creep regarding the services the courts should provide, especially with regard to restorative justice, families, and drug courts.

4. Increased use of information technology, in court management, information management, cross-jurisdictional and public communication, and trials.

5. More cases involving science and technology, either as the subject of the case, or the means for dealing with the subject of the case, necessitating great leaps in scientific and technological knowledge and the creation of special expert resources.

6. Increased use of private alternatives within the justice system, including private prisons and private courts.

7. Focus on rights of new groups, including alternative lifestyle groups and future persons.

8. Complex ethical and legal issues looming around the biotechnology and life sciences revolutions.

9. Globalization of everything.

10. Short-term serious budget challenges, longer-term staffing challenges.

The Trends Articles

The past year has seen a reduction but by no means an elimination of concerns about governmental budgets and financial resources for the courts. Nevertheless, from the standpoint of trends in the courts, financial issues were comparatively "old news." Consequently, aside from a brief look at alternative resources for courts in our "Updates" section, no article directly relates to court finances. This 2004 edition's articles reflect several themes: the continued growth of the problem-solving approach to adjudication, changes in how courts define families, improvement of access and public trust and confidence in the courts, technological advancements, and the future of court facilities and the workforce.

Courts are preventing recidivism through intensive work at intake, frequent monitoring, and a treatment orientation. This problem-solving approach is illustrated in two articles in the traffic arena—aggressive driving and driving while intoxicated. In the first article, Victor Flango and Ann Keith examine new legislation aimed at curbing antisocial behavior behind the wheel; in the second, Flango describes the growth of DWI courts. Therapeutic jurisprudence and problem-solving courts came into being at about the same time and have always been closely connected, but they are not synonymous concepts. Problem-solving courts have successfully demonstrated principles advocated by therapeutic justice proponents, but therapeutic jurisprudence is not limited to such applications. In his article, David Wexler explains the broader significance and applicability of therapeutic jurisprudence.

As with most controversial issues facing society, the question of how "marriage" and "family" should be defined have found their way into the courts. Ann Keith's article reviews how different states have handled the issue of same-sex marriage and the roles that courts have played. With the steadily increasing number of children entering foster care, Mary McFarland writes of legal guardianship by kin or foster parents as a promising alternative to long-term foster care for children when adoption is not a viable alternative.

Three full articles relate to ongoing efforts to improve access to the courts, particularly by reducing the magnitude of economic and linguistic barriers. Gail Warren's and Bonnie Hough's articles describe specific efforts to help self-represented litigants, with the former focusing on the role of law libraries and the latter describing existing programs in California. Virginia Suveiu covers the growing need for qualified court interpreters to ensure meaningful participation by non-English speakers in our system of justice; the importance of ensuring minimum levels of qualification and attendant financial implications. A new retrospective section following the full articles features a piece on "Where We've Been"; this year, William Downs reviewed patterns in the questions about pro se litigation that have been fielded by NCSC over the past decade, reflecting changes in the courts and public with respect to this issue. Public trust and confidence in the courts are explored through the effect of the entertainment industry's portrayals of trials on citizens' beliefs and expectations about the judicial system. Anne Skove and Judge Jacqueline Connor discuss the problems of juror and litigant misconduct that courts face in this context.

Several articles discuss the implications of technological advances for the courts. In his article, Doug Walker describes the development of wireless networks and their advantages for courts attempting to upgrade their systems within older, more limited court facilities. Speaking from years of experience, Roger Winters says that it is time for courts to shift to electronic records. Walt Latham speculates about the communication potential of Web logs (or blogs) and identifies some pioneering activities in the court community.

Three articles demonstrate how changes in social demographics and associated values require thought about the future of the court workforce and workplace. In the wake of the September 11 attacks and mindful of the ongoing War on Terror, court leaders have given more consideration to security risks in court facilities. Don Hardenbergh acknowledges that increased concern and vigilance with respect to court security are good things but explains that the principal risks are not from terrorists but from the same sources (for example, one person against another) that have long applied. In his second article, Hardenbergh explains how changes in technology and public values and sensitivities are among the factors influencing courthouse designs. Madelynn Herman argues that court leaders need to think strategically about their staffing needs, particularly with the approaching retirement of so many baby boomers.

Among the shorter features at the end of this edition of the *Trends Report* is the new "Where We've Been" feature described above, followed by five updates of issues covered in recent editions of the *Trends Report* and a final "What to Watch" piece. The updates include a case study of Miami's Infant and Young Children's Mental Health Program (Judge Cindy Lederman, 2003) and a follow-up piece by Carol Flango on the death penalty for juveniles (What to Watch, 2002), alternative court resources (Kenneth Pankey, 2002), biometrics (Doug Walker, 2002), and JXDD and beyond (Tom Clarke, 2003). This year's "What to Watch," authored by Lin Walker, celebrates the promise of the Internet to

improve court functions and services but cautions that courts should give careful thought to the long-term implications of joining the global communication revolution lest there be unanticipated and unpleasant consequences.

Suggestions for future contents or for how the *Trends Report* might be made more valuable to the court community are welcome. The volume and quality of input from the field of court administration will directly affect the frequency with which the online version of the Scan is updated and otherwise modified. Information and comments may be mailed to (input on more than one topic is best submitted separately):

Scanning and Trends
Knowledge and Information Services
National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185

or may be submitted using an online form at:

http://www.ncsconline.org/D_KIS/Trends/Submit_Trend_form.html.

GENERAL FUTURE DOMAINS

POPULATION DEMOGRAPHICS

REAL POPULATION DECLINE

Present Conditions

"A change has occurred in human behavior that is as revolutionary as it is unheralded. Around the world, fertility rates are plummeting. According to one account, women today on average have just half the number of children they did in 1972. In 61 countries, accounting for 44 percent of the Earth's population, fertility rates are now at or below replacement levels."[1] The primary explanations for these declines are economic development, communications, and family planning.

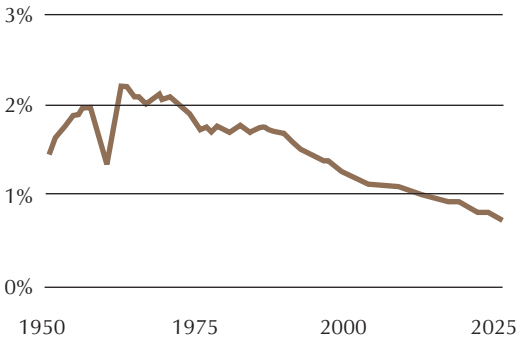
Probable Future

Japan's population will start declining in 2005. Russia's already is. China, Canada, Australia, most European countries, and the U.S. will lose population over the next two decades, and the entire world is likely to be shrinking by 2025. Only migration will maintain labor forces in countries with real population decline.

Urgency

Economic dislocations and uncertainties abound, as the world faces an unprecedented situation—fewer customers each year. Many disputes will arise about immigration, migration, world labor movement, and border security.

World Population Growth Rate Projections



Source: U.S. Bureau of the Census, International Data Base.

AGING POPULATION[2]

Present Conditions

About 10-13% of the U.S. population was over 65 in 2002. The global economy faces a transition of unprecedented dimensions caused by rising old-age dependency and shrinking working-age populations among the world's largest economic powers.

Probable Future

More people are living past age 65. By 2020, the populations of most states will be 20-25% over age 65.

The lack of intergenerational transfer of money and assets as longevity increases causes estates to shrink.

The "generation gap" includes a racial/ethnic and socioeconomic gap because the aging population is mostly white and wealthy, while the younger generation contains more minorities and is less affluent. Competition for resources breaks down along these lines.

By 2008, the first wave of baby boomers will turn 62, a traditional retirement age. A study completed in 2003 concerning federal workers stated that, over the next five years, one in five federal employees will retire, including an estimated 293,000 by 2005.

Depending on their health and financial situation, older workers may continue working, begin a second career, or retire. If the majority retires around age 65, a shortage of qualified or knowledgeable staff will result.

Expect concerns over health care to worsen, including rising costs, accessibility, insufficient numbers of health care professionals, and increased opportunities for fraud/abuse/crime by health care workers.

Urgency

Implications include challenges to retirement and pension law and court personnel policies. Government funding will reach a crisis point over the need to support a dependent generation.

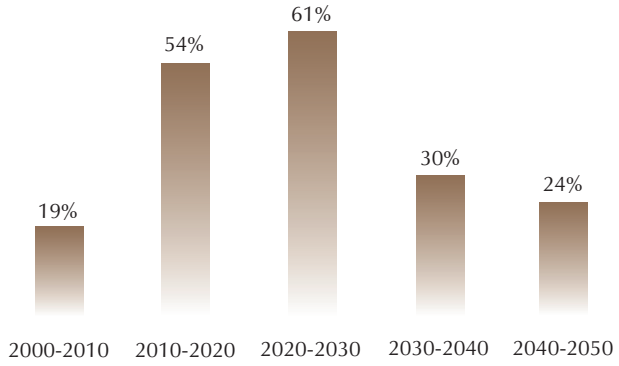
Other implications will include an increase in guardianships for the elderly (particularly in Sunbelt states because families of elderly retirees often reside elsewhere), identity theft (even within a family), and elder abuse.

More traffic accidents involving the elderly will spur stricter conditions for license renewals, advances in vehicle safety features and highway signs, and changes in insurance practices.

Emphasis on ADA compliance will grow to ensure accessibility for the elderly.

Aging populations will shift attitudes toward tax policies and community priorities (e.g., education, parks, zoning, etc.), particularly in Sunbelt states.

Projected Change in 65 and Over Population



Source: U.S. Census Bureau Interim Projection.

GENERATION Y COMES OF AGE[3]

Present Conditions

Baby Boomers, born between 1946 and 1964, numbered about 72 million in the U.S. Generation X, born between 1964 and 1979, was much smaller at about 18 million. Generation Y, born between 1979 and 1994, is about 60 million.

In general, Generation Y is more tolerant of individuals but less trusting of institutions than previous generations. This generation has no memory of segregation, *Brown v. Board of Education*, or other civil rights struggles.

Generation Y consists of "digital natives" who grew up with technology. Generation Y has different expectations for work. Flexibility is extremely important, and they are most interested in jobs that offer opportunities to grow and learn.

Probable Future

Some of the general decline in crime during the 1990s can be attributed to the decline in the youth population. During the next decade, the U.S. will see a shortage of entry-level workers, balanced by immigration, and an increase in the number of young people. In 2007 there will be nearly as many teens as at the peak of the Baby Boom.

The influence of GenerationY will grow significantly in the workplace as Baby Boomers retire. The clashing values and interests of retired Boomers and GenerationY will dominate political and cultural discourse.

Urgency

GenerationY is a smaller group than the Baby Boomers, but it is a large one. Social institutions affected by youth, from schools to juvenile courts, will see increased demand for service. The trend to treat youth as adults in the criminal justice system could have a corresponding impact on adult courts and prisons, even without a change in the crime rate.

CONTINUING IMMIGRATION AND SHIFTING INFLUENCE AND RELEVANCE OF RACIAL AND ETHNIC IDENTITY

Increasing Hispanic population and bi- and multiracial groups[4,5]

Present Conditions

Hispanic immigrants comprise 13% of the U.S. population and represent the fastest growing minority population.

The U.S. Census has included more minority groups by adding questions to its survey.

By 2020, the number of native English speakers in the U.S. will decrease.

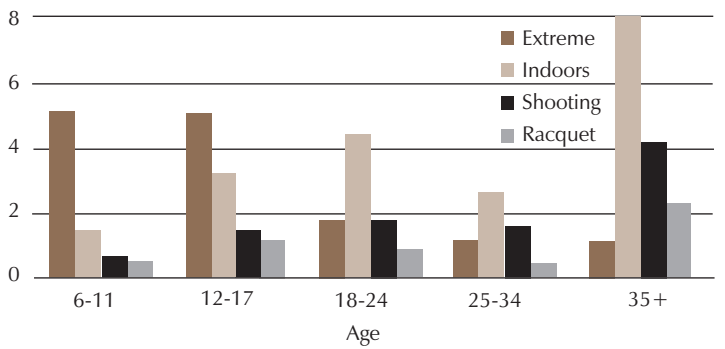
Probable Future

The number of Spanish-speaking immigrants will continue to swell. According to the Department of Labor, by 2050 the U.S. population is expected to increase by 50 percent, and depending upon how people assimilate/intermarry and label themselves, minority groups will make up nearly half of the population.

To some extent, race will become more difficult to determine and less important. However, some groups, particularly those defined by skin color, will not assimilate as easily and could experience either no change in attitudes or worsening attitudes.

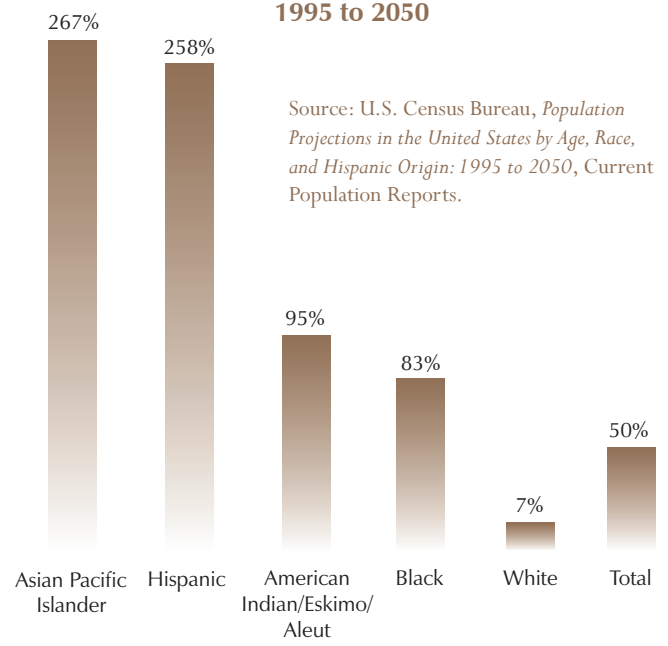
This development is little different than the waves of immigration the U.S. experienced in the late 19th and early 20th centuries. Issues related to documentation of illegal immigrants will increase. More states like California will explore allowing illegal immigrants to obtain driver's licenses, balancing security concerns.

Generation Y Prefers Extreme Sports (millions)



Source: American Sports Data, Inc., *Sector Analysis Report*.

Projected U.S. Population Growth by Race & Hispanic Origin 1995 to 2050



Source: U.S. Census Bureau, *Population Projections in the United States by Age, Race, and Hispanic Origin: 1995 to 2050*, Current Population Reports.

Urgency

There will be continued expectations for the courts to serve people who speak Spanish or some other language as their first language, along with increasing demands for translation services, translated forms, and "plain English" forms.

Labels and legal decisions based upon old concepts of racial or ethnic identity will lose relevance, and the need (and costs) for qualified foreign language interpreters and culturally competent judges and staff will grow.

ECONOMIC CONDITIONS

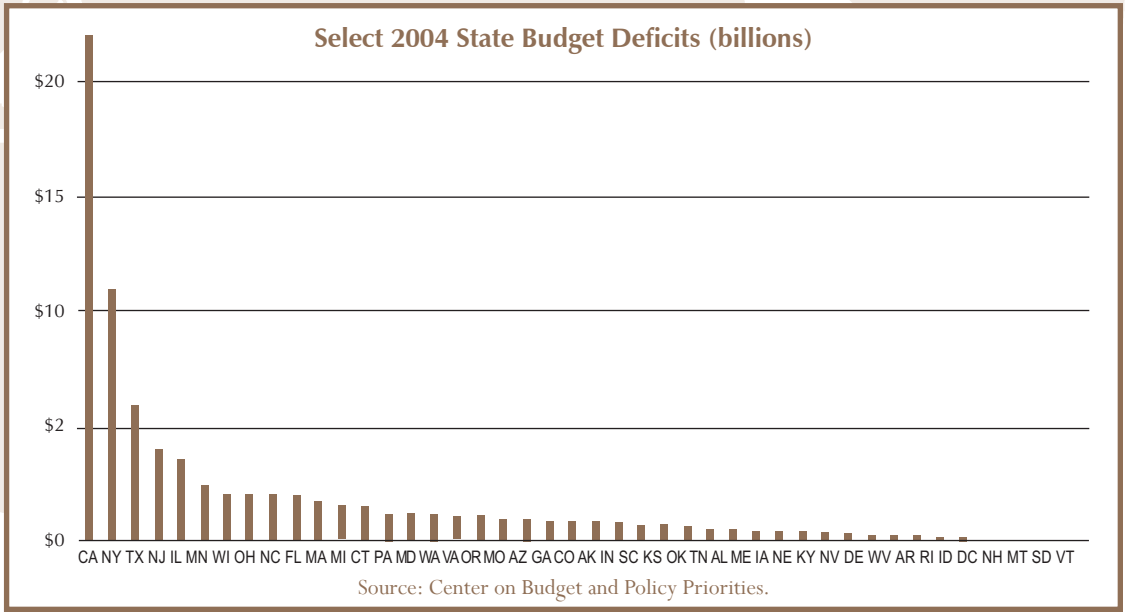
SEVERE DEFICITS[6]

Present Conditions

Record government surpluses turned into record deficits between 2001 and 2004. States that constitutionally do not allow for deficits are facing severe financial distress.

Probable Future

Deficits and economic stress will be the norm for several years. State governments are cutting nonessential programs such as free day care to low-income families. Typically state governments decrease eligibility to Medicaid and Medicare programs. Often these programs provide essential money and stability to financially stressed families. States have also slashed budgets for lower and higher education.



Source: Center on Budget and Policy Priorities.

Urgency

Court remodeling, staff upgrades, prison construction, and more will be difficult for the next several years.

Reduced state welfare programs may create additional stress on families, which may be reflected in the caseloads of juvenile and family courts.

State universities and colleges will increase tuition and decrease financial aid to compensate for decreased funding. This could lead to a shortage of qualified employees for essential court jobs. Students fresh out of college will be in greater debt and will be less likely to take a low-paying job in a rural or even urban court.

EMPLOYMENT UNCERTAINTY[7]

Present Conditions

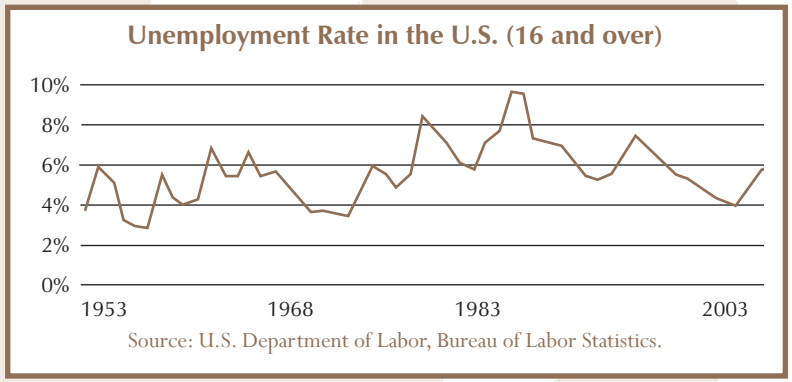
The U.S. economy has been in recovery from the most recent recession for several quarters. Yet job growth has not rebounded as expected. While many economists remain confident that job growth will eventually match historical trends, others are beginning to wonder if the U.S. economy has entered new territory. Labor force participation rates are at a half-century low. It will take a normal job recovery and GDP growth of 4% for several years to recover the 3 million payroll jobs lost in 2001-03.

Probable Future

Job growth patterns may not match historical trends. Rapid improvements in productivity may continue as technology advances.

Job growth in the U.S. is tied to the global labor force. Countries that were formerly third world, and countries that remain part of the developing world, can now compete for sophisticated, white-collar jobs. While the impact on U.S. jobs remains small to date, the impact is likely to grow. While many call centers and other entry-level white-collar jobs have moved offshore, it is unlikely that many human-capital-intensive employment opportunities will be displaced.

Increased employment uncertainty changes consumer-spending habits, decreasing both spending and state tax revenues. Extending unemployment benefits to longer than 13 weeks has been discussed. It is highly likely that the federal government will not provide supplemental unemployment benefits, but individual states could decide to increase benefits.



Urgency

Employment uncertainty will likely continue, even during the economy's growth cycle. There will be a continued shift from blue-collar jobs to white-collar service industry jobs. Foreign-based consulting and white-collar firms will not be able to monopolize the American markets due to economies of scale, language barriers, and distance.

RATIONALIZATION OF GLOBAL LABOR[8]

Present Conditions

As economic development and educational attainment continue in developing continues, the nature of work continues to evolve, becoming more information intensive. These factors to make it more likely that labor will migrate, seeking the least expensive areas.

While NAFTA has opened up the borders between the United States, Mexico, and Canada for trade, legislators have been slower to open up the borders to increase migrant workers between nations.

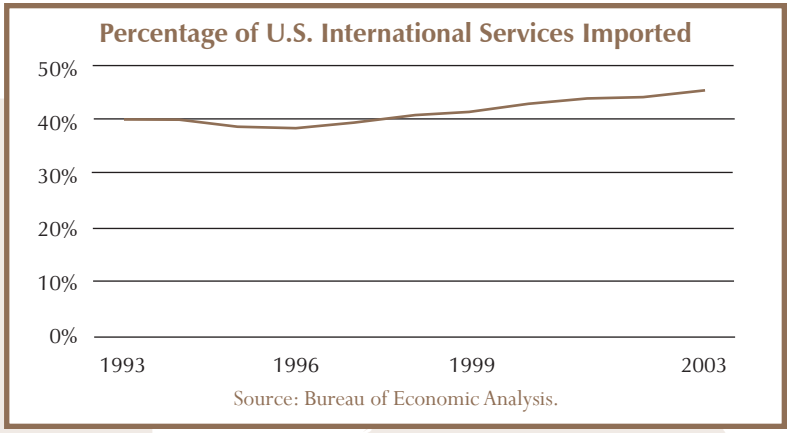
Probable Future

Long-term rationalization and leveling of global labor is likely to continue for decades. One ironic result of globalization will be decreased economic disparity between nations, but increased economic disparity within nations.

Many states have responded to NAFTA's effects with regulations. Ten states have legislation aimed at preventing critical employment sectors from leaving. These regulations include adding barriers to foreign-owned companies and providing state subsidies to ailing industries.

Urgency

Legal challenges and labor disputes about globalization of labor and fair labor and environmental standards will grow.



TWO ECONOMIC SCENARIOS COMPETE – GLOBAL ECONOMIC DOWNTURN VS. RETURN OF THE LONG BOOM[9,10]

Present Conditions

Opinions on the future of the economy continue to differ in the spring of 2004. One set of indicators and opinions suggests that the global downturn early in the decade is a temporary adjustment in an otherwise positive future, made worse by Sept. 11, 2001, and the continued international insecurity that followed. Prominent among such voices are Schwartz and Leyden and their view of the, "Long Boom" which holds the mild recession is over. It is still possible that we may see a return to robust global economic prosperity, driven especially by two mega-trends: technology revolution and global openness.

The alternate scenario is a "synchronized" global downturn, which does not return to robust growth. Rising global insecurity, disenchantment with globalization, rising interest rates after the 2004 elections, increasing and unstable energy prices, environmental challenges, and cultural conflict all hold economic activity down. The increased globalization of the world's economy has created the potential of a "jobless recovery," according to the Federal Reserve Board.

Probable Future

Under the global boom scenario the world continues to regain its economic footing and relatively robust growth will reemerge. Technology development will accelerate, and when business investment picks up, so will deployment of new and transformative technologies, especially in biology, life sciences, and energy. Growth rates of 5% worldwide will be more characteristic of the next two decades. Proponents believe that a high-growth economy is inevitable.

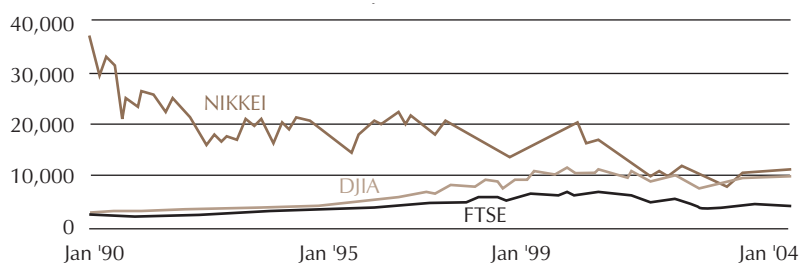
The synchronized global downturn scenario suggests that the next decade will be more similar to the 1930s, and that during the next five years the world economy will teeter on the brink. Economic activity remains slow and uneven across the globe, which increases economic tensions between nations and ethnic groups. More Americans feel uncertain about their jobs and feel their job security is much more threatened by foreign workers in different countries then immigrants in America.

Urgency

If the boom returns, current federal and state budget woes will be temporary, on the order of three to five years, as government budgets lag economic performance. Courts may expect temporary budget shortfalls. A Long Boom economy also portends less crime and smaller or at least slower growing prison populations. At the same time, the global Long Boom suggests increases in global criminal associations and activity, as well as the simple involvement of state and local business across global boundaries.

Implications of continued global downturn include increased crime; more bankruptcies, especially among small businesses; increased pressures on the justice system given the likely paralysis of the executive and legislative branches; increased need for community and neighborhood mediation and other sources to decrease the pressures on the official justice system; and pressures on the judicial system to produce more work and innovation with fewer people and less money.

Major Stock Market Indices (adjusted close)



Source: http://finance.yahoo.com/.

HEALTH INSURANCE CRISIS[11]

Present Conditions

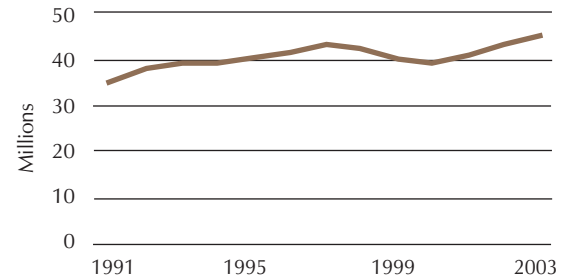
The U.S. health insurance system continues to link eligibility for insurance primarily to possession of a full-time job. The cyclical nature of the employment cycle results in at least 44 million uninsured in 2004 at any one time. Health insurance cost is cited by most businesses as a drag on hiring and as cost prohibitive in the face of global competition. As more nations subsidize their health care industries, their goods become more competitive because private firms do not bear the sole burden of health insurance. Instead, federal governments provide health care insurance or heavy subsidies to private firms.

Probable Future

Almost all current and near-term labor disputes will involve access to health care and sharing of health insurance costs at their core. This will continue as long as the insurance system does not change appreciably. Labor advocates are lobbying to expand public health insurance and coverage for part-time and temporary workers.

Economic pressure to obtain prescription drugs from Canada, Mexico, and other nations will continue, with states playing a leading role in challenging federal policy.

U.S. Population Without Health Insurance



Source: U.S. Bureau of the Census.

Urgency

Health care access issues will affect court HR policies. If private sector employers are required to provide more comprehensive health insurance plans, prospective court employees may choose the private sector instead. If

standards of health insurance are raised, courts may face even tighter budgets and may cut programs or staff. As more work falls to the remaining employees, courts' accessibility and quality may suffer.

State courts may be called upon to mediate issues among employers, labor advocates, and health insurance companies.

SPENDING WAVE NEARS PEAK[12]

Present Conditions

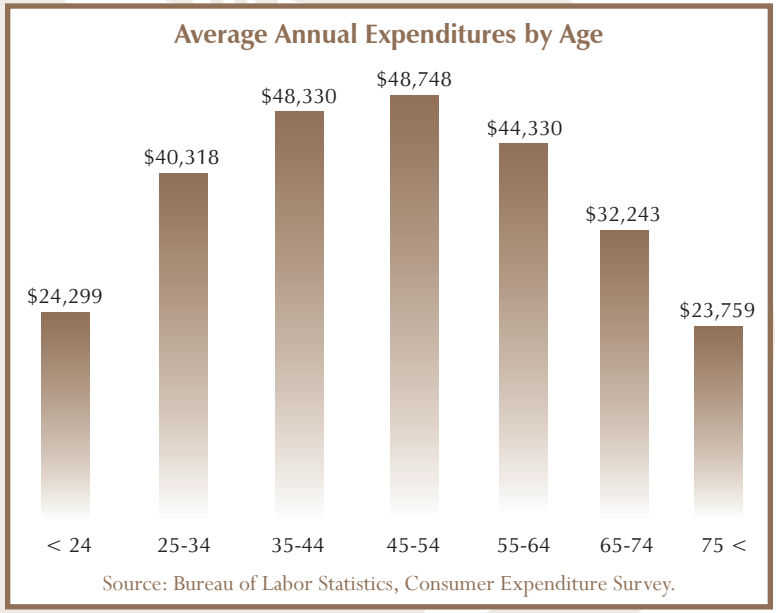
Nearly 100 years of financial records and evidence suggest that people spend the most money between ages 42 and 48. Assuming a family, this is when the kids are most likely to be teens. Observers have noted a correlation between the performance of the economy and the number of people in their peak spending years. Currently the last wave of Baby Boomers are in their peak spending years. Thus, U.S. consumer spending, the core ingredient of economic performance, continued to climb during the recent recession in business investment.

Probable Future

The spending wave will contribute to U.S. economic growth at least through 2007, when the Baby Boom peak tapers off. Then, depending on the situation with immigrants, who tend to be younger than the rest of the population, and the global economy, consumer spending may flag, thus slowing economic growth.

Urgency

Spending wave theory suggests a middle ground between the Long Boom and the synchronous economic downturn. That is, the spending wave will help economic growth, but the decline of the wave as smaller Generation X begins to dominate the 42-48 age group will dampen the Long Boom. The shift from the Baby Boomers to Generation X will dramatically shift consumer-spending patterns.



RESOURCE SCARCITY

Present Conditions

As the world continues to expand and industrialize, natural resources continue to decline. After WW II, natural nonrenewable resource prices declined as more developing nations increased their exports. Fifty years later, natural resources are severely limited, and prices have dramatically risen. In the past decade, gas prices have increased steadily as the Middle East exerted more control over the production of crude oil. While the U.S. has crude oil reserves and is not as dependent on the Middle East as other developed nations, there have been small steps to decrease oil consumption. These small steps, including hybrid cars and higher gas prices, are insufficient to curb Americans' excessive consumption of oil.

Probable Future

It is likely that the rising oil prices will fuel the innovation of new technologies such as hybrid cars to decrease our oil dependency. Industries will research alternatives to the nonrenewable fuel sources and materials.

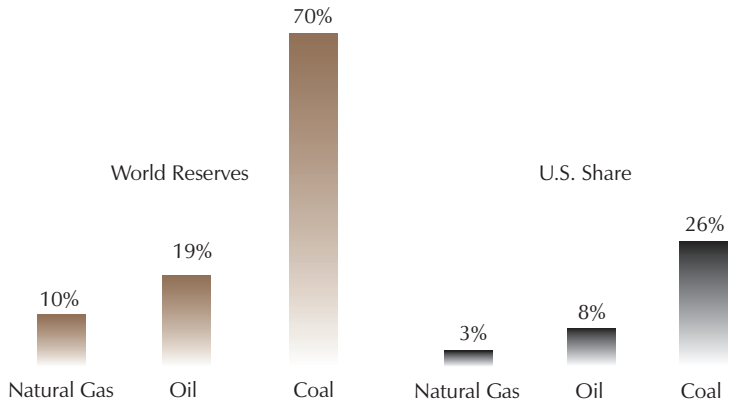
It is likely that states will continue to enforce stricter emission regulations on vehicles and promote public transportation and carpooling. It is unlikely that global economic growth will be stifled unless the price of crude oil rises above $50 a barrel. Most experts agree that OPEC will not increase the price of oil over $45 a barrel, on average.

Urgency

New laws and regulations will govern new technologies. The preservation of natural resources might be backed up by environmentally friendly regulations.

Many states are creating legislation to preserve their natural resources and state parks.

Percentage of Fossil Fuel Energy Reserves (coal unit equivalents)



Source: U.S. Department of Energy's (DOE) Office of Scientific and Technical Information (OSTI).

INCREASED FREE TRADE AREAS

Present Conditions

With the relative success of NAFTA, many Latin American nations are pushing for a Free Trade Association of the Americas (FTAA). This FTAA would unify trade policies of all participating member nations. Currently, there is not much American support for an FTAA.

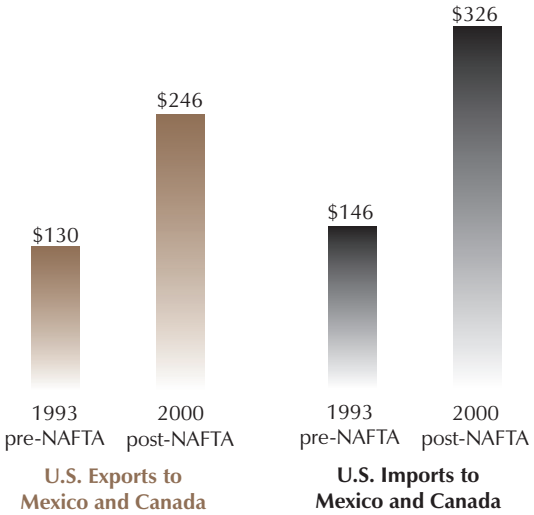
Probable Future

An FTAA would increase free trade significantly throughout the western hemisphere and would be highly likely to increase overall economic efficiency and conditions for its members. Improved economic conditions in certain sectors could come at a cost for key American industrial sectors. An FTAA would decrease state and federal governments' ability to control trade, tax, and tariff-related activities. An FTAA would be one of the first steps in creating a more unified western hemisphere. Advocates use the success of the European Union as motivation for further economic integration. Critics point toward the obvious differences in structure, cultures, and size between the Americas and Western Europe.

Urgency

With the current financial and budget crisis, it is highly unlikely that the American government will enter into an FTAA with Latin America. If the U.S. does enter into another Free Trade Area, existing legislation will have to be updated. Foreign ownership of private enterprises in states will increase with an FTAA. State courts will have to clear up matters of jurisdiction, shareholders, and other trade provisions pertinent to the states.

U.S. Exports and Imports to Mexico and Canada, 1993 Dollars (billions)



Source: Economic Policy Institute.

Present Conditions

The gap between the average incomes for the highest and lowest fifth of society is increasing. From 1988 to 1999, the average income of the lowest fifth increased by only $110, or roughly 1 percent, while the average income of the highest fifth increased by $17,870, or roughly 15 percent. The income gap has dramatically increased as the federal government cut or decreased social programs. In the 1990s, production workers' salaries would have had to increase from roughly $25,000 a year to around $125,000 to keep up with CEOs' salary increases.

The state governments' budget crisis could be remedied by increasing taxes on several goods, including Internet service providers and commodity sellers. Both of these areas are tax-exempt and could provide the revenue needed to keep in place the social programs that many states are cutting.

Probable Future

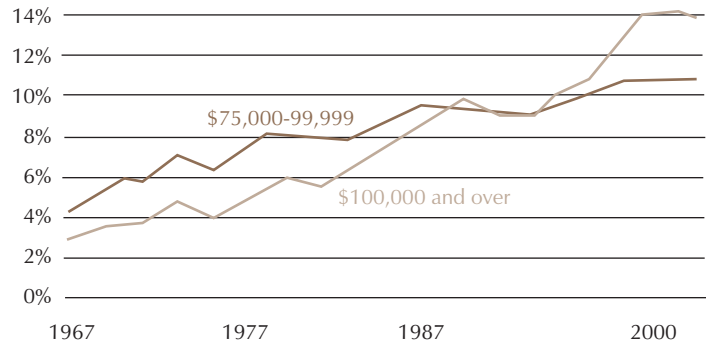
In a Gallup Public Opinion poll, the American public has shown an active interest in balancing the budget to prevent future deficits. The programs cut first are social programs providing relief and support to low-income families. In the same public opinion poll, Americans chose providing more funding to educational and social programs over cutting the programs for a balanced budget.

The federal government attempts to avoid or minimize its own budget problems by issuing unfunded or underfunded mandates to the states. The states then have an extremely difficult time meeting the standards of the mandates, with legal repercussions that appear in the courts and can cause friction between branches of government. States then have to raise revenues to meet their fiscal obligations or cut "nonessential" programs.

Urgency

If states continue to cut primary education spending to compensate for their budget crisis instead of raising taxes, serious consequences could occur. Decreased education and health care spending can increase the income gap and cause mass social unrest throughout the nation. If the gap continues to increase, wealthy families that can afford to send their children to private schools will opt out of underfunded public education programs. This could create more tension as the gap increases between rich and poor.

Median Income of Households
(percent of households in constant 2001 dollars)



Source: U.S. Census Bureau, Statistical Abstract of the United States, 2002.

SCIENCE AND TECHNOLOGY

NANOTECHNOLOGY[13]

Present Conditions

Nanotechnology is the third leg of a technology revolution, along with information technology and biotechnology. In simplest terms, nanotechnology means constructing materials at the molecular or atomic level. Research and development breakthroughs are announced almost weekly. Since 1999 dozens of commercial companies have formed, backed by hundreds of millions in investment. Serious applications are expected first in medicine, electronics, and computing.

Probable Future

"'With the electronics we're talking about, we're going to make a computer that doesn't just fit in your wristwatch, not just in a button on your shirt, but in one of the fibers of your shirt,' says Philip Kuekes, a computer architect at Hewlett-Packard Laboratories. Kuekes and his colleagues are designing circuits based on perpendicular arrays of tiny wires, connected at each intersection by molecular transistors. By the middle of the decade, Kuekes says, Hewlett-Packard will demonstrate a logic circuit about as powerful as silicon-based circuits circa 1969."[14]

Urgency

Justice system implications, beyond those associated with new business ventures, will focus on information technology. Near-term issues of interest will include imbedded and eventually invisible computing. A decade out, perhaps less, will be the development of super surveillance devices. Beginning with "roboflies" and possibly leading to nearly invisible "dust motes" with nanoscale cameras and listening devices, both investigative and privacy issues will be in the forefront.

THE "WIRELESS REVOLUTION"[15]

Present Conditions

Like the Internet a few years ago, low-cost, high-speed wireless communications technology has leapt into the public arena. Offering simple and fast connection to local-area networks and the Internet via unregulated radio frequency transmission, Wi-Fi technology frees users from fixed, hardwired connection points.

Free wireless zones already exist in Oregon, New York City, and New Mexico. Many communities see Wi-Fi technology as a competitive edge for attracting businesses and a high-tech workforce.

Probable Future

Businesses and government organizations will tap this technology to make computer connectivity practical in facilities that are too unsuitable or temporary for traditional communications wiring. Moreover, staff with Wi-Fi laptops can move around freely and connect from almost anywhere within the building or cluster. The general public can connect to the Internet from any number of "hot spots" provided by restaurants, airports, hotels, and even city governments. It is becoming commonplace for individuals to set up simple home networks using low-cost wireless technology.

Both in the U.S. and abroad, Wi-Fi technology will simplify the transition of poorer communities with little or no technology toward the cutting edge.

Wireless technology will increasingly be used to track individuals subject to court orders.

Urgency

The surprisingly rapid spread of Wi-Fi (and the promise of even faster, longer-range wireless technology) will further raise public expectations for immediate access to court information and services. At the same time, courts can use wireless local area networks (WLANs) to save significant installation time and expenses while better equipping their staff to conduct court business. Security concerns are the major stumbling block that may temporarily slow court adoption of wireless connectivity.

Wireless justice will increase the speed of court system operations. Expect a backlash if the public feels that the system is "too fast."

APPLICATIONS OF GENOMICS, LIFE SCIENCES, AND BIOETHICS[16]

Present Conditions

Few developments are more extensively covered by the press and court observers, promise greater improvements in human well-being, or are so fraught with ethical and legal issues than biotechnology. The list of specific issues includes stem cell research; DNA evidence; cloning; genetically modified foods, animals, and people; and genetic screening and discrimination.

Law enforcement efforts to obtain DNA evidence have already been subject to allegations of racial profiling where those asked to submit samples come from one racial or ethnic group without regard to other factors that might exclude them. Questions have also been raised about what is done with samples that do not match those of the person sought.

Probable Future

DNA chips and faster DNA testing will make DNA evidence gathering commonplace. Genetic screening for disease risks will become faster, easier, and more widespread. Stem cell research will lead to applications of stem cell therapies, including the banking of biologically created organs and tissues. The deliberate genetic designing of children will become an issue, as will the redesigning and even age reversal of older individuals.

Concerns, particularly abroad, about the potential dangers of genetically altered foods could open a significant volume of trade disputes. The consequences will depend upon the success of dispute resolution mechanisms built into new trade agreements, which may, in turn, depend on how conflicts with prior laws and adjudicative mechanisms are handled.

Urgency

The next several years will see the application of DNA testing to virtually all criminal investigations. This process, which was being addressed by bills before Congress in 2002, must be sped up.

Applications of Genomics

Molecular Medicine
Design "custom drugs" based on individual genetic profiles

Microbial Genomics
Protect citizenry from biological and chemical warfare

Bioarchaeology, Anthropology, Evolution, and Human Migration
Study evolution through germline mutations in lineages

DNA Identification
- Identify potential suspects whose DNA may match evidence left at crime scenes
- Exonerate persons wrongly accused of crimes

Agriculture, Livestock Breeding, and Bioprocessing
- Breed healthier, more productive, disease-resistant farm animals and crops
- Incorporate edible vaccines into food products

Source: Oak Ridge National Laboratory.

There will be disputes about the limits of cloning, the applications of stem cell therapy, equity in medical treatment, and safety of genetically modified organisms. Arcane issues will be raised about the rights of future persons, liminal persons, and artificially created body parts. Biotech medical research and treatment banned in one country but allowed in another will raise issues of international law. (If reproductive cloning is banned in the U.S., and a U.S. couple "conceives" a cloned child in another country, will the child be denied U.S. citizenship or other rights as an illegal life form?) Commercialization of genetic material as real or intellectual property will continue to be issues. In short, the genetics revolution will increase the number and complexity of cases and challenge court personnel to keep up with the science.

Expect societal divisions between "pure" and "altered" humans to make old divisions over race seem quaint.

CONTINUED DEVELOPMENTS IN INFORMATION TECHNOLOGY[17]

Present Conditions

The information technology revolution continues, despite the collapse of the first dot com economic model and the overbuilding of the global telecom infrastructure. The doubling curves of performance to price for computer chips, memory systems, and data networks continue to speed up. More and more information is digitized, and more information is digital only. There is no reason to expect these trends to abate.

Probable Future

The next decade will see computing and telecommunication increase in capacity five to seven times. Computers will become imbedded in clothing and the physical environment. Many business transactions will involve virtual personalities (avatars) as intermediaries. Translating phones will be common, as will voice recognition systems and automatic language translation in court. Generations X and Y, which implemented the Web and then grew up with it, will constitute the younger workforce, making much more widespread and natural use of network-based communications.

The digital revolution will foment changes in thinking and social interaction not seen since Gutenberg's printing press helped bring about the Renaissance and Protestant Reformation.

More companies will use radio frequency identification (RFID) chips to track purchasing and individuals.

Urgency

The justice system and the public will confront whether and how to use information technology to more fully transform the delivery of justice. Both long-term strategic planning and short-term IT planning must work in tandem to get maximum potential benefits. Specific possibilities include:

- National legal information infrastructure
- Virtual hearings and meetings
- Multimedia transcripts, legal bundles
- Fully accessible case tracking and unified case management
- Legal portal for the public as first access point
- Multidisciplinary systems and services
- Virtual legal teams, international legal teams
- Legal diagnostic systems
- Online legal discussion and learning
- Electronic transcription
- Automatic translation
- Standards for litigation support systems

Information Technology Spending Estimates

Global IT Spending	$872 Billion
United States IT Spending	$372 Billion
Global Software Spending	$200 Billion
Global Internet Users	$945 Million
Global Miles of Fiber Optic Cable	$283 Million
U.S. Workers Using a Computer Daily	$86 Million

Source: ZDNet and PCWorld, 2003

POLITICAL & GOVERNMENT TRENDS

POLITICIZATION OF THE JUDICIAL BRANCH[18]

Present Conditions

Judgeships have always been to some degree political, and there has been increased focus on political affiliation of judges, their stand on single issues, and allegiance to particular political philosophies. This has complicated and sometimes compromised the work of an independent judiciary, as well as limited the number of qualified people willing to face this volatile climate.

Efforts to regulate campaign conduct in judicial elections have been undermined by recent cases in federal courts, and spending in contested elections has risen considerably, raising the specter that judges may feel, or be perceived to be, beholden to special interests.

Nevertheless, some states are improving conditions, introducing legislation to shed more light on interest groups spending to influence judicial elections (Ohio) and shifting from partisan to nonpartisan elections supported by public financing (North Carolina).

Probable Future

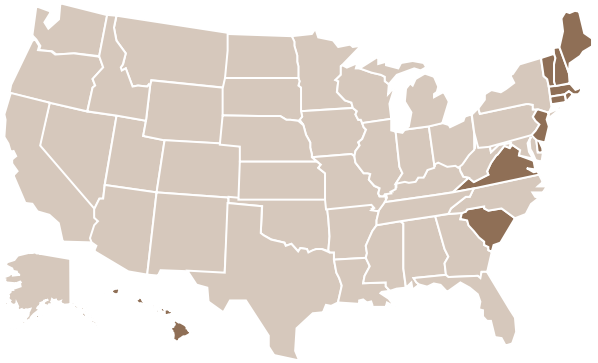
Many quarters are fighting for judicial independence, but the political trend in the other direction is strong. Conditions in some states may deteriorate to the point of scandal, but awareness of the problems and the knowledge of what can be done are sufficient to rectify matters. Public awareness and political will are the key factors in determining how quickly individual states will correct current trends undermining judicial independence. The long-term prognosis is that judicial independence will be maintained.

Improving judicial selection processes will lead to greater use of performance evaluation, which will become an objective issue in retention or reelection campaigns.

Urgency

Communicating the need for independence, producing educational materials, and recruiting judges are all important. One of the primary needs will be to separate legitimate calls for judicial accountability from political and partisan attacks on independence. State court leaders must be vigilant to prevent, if possible, and minimize public harm from misguided attacks on the judicial branch.

How Judges Are Selected in the U.S.



Elections Appointments*

* Probate judges are elected in Connecticut, Maine, and Vermont. Probate, family, and limited jurisdiction court judges are elected in South Carolina.

Source: National Center for State Courts, *Call to Action*, 2002.

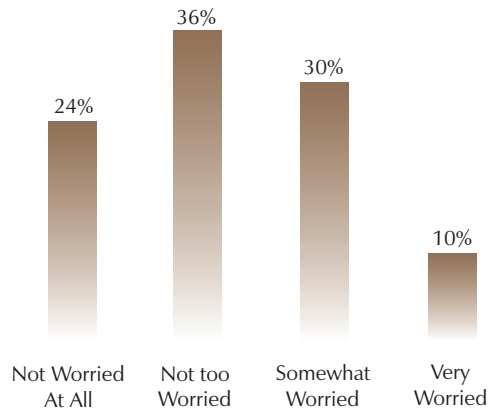
SECURITY AND CIVIL LIBERTIES[19]

Present Conditions

The American law enforcement system has tried to eliminate racial or ethnic bias from its operations. Attempts to measure and eliminate "racial profiling" represent just the most recent steps along this path. The Patriot Act, in response to Sept. 11, 2001, has raised many concerns related to profiling, constitutional protections, and privacy.

Section 215 of the Patriot Act raises some of the greatest civil liberties concerns. It allows for the search of library, bookstore, and Internet sources whenever officials deem there is an interest in protection from terrorist activity. These searches and seizures can occur not only *without* notice to the target, but also *without* a warrant, a criminal subpoena, and any showing of probable cause that a crime has been committed.

Fear of Terrorism in the United States 2004



Source: The Gallup Organization, Inc., *The Gallup Poll* [Online], 2004.

Homeland security efforts have placed little emphasis on state courts, focusing instead on risks to other government, industrial, and infrastructure targets. Realistically, the actual security risks within state courts have probably not changed, but court leaders and the public have a more accurate sense of their vulnerabilities and of the need to improve security measures and business continuity planning.

Probable Future

Controversy will continue over applications of various kinds of profiling to searches, detention, immigration, and so on. State and local challenges to aspects of the Patriot Act, particularly profound issues regarding constitutional protections and privacy, will increase.

Federal legislation will eventually place reasonable limitations on the use of surveillance and search warrants, reducing the most objectionable aspects of the Patriot Act without entirely undermining its security aims.

Urgency

Challenges to profiling continue. Other arenas of law enforcement will likely experience confusing signals that will be sorted out in the courts.

In the War on Terrorism, questions of racial and ethnic profiling and bias will pervade the criminal justice system, further complicated by federal government refusals to accord some suspects the rights commonly recognized as elements of due process.

END OF GOVERNMENT SOLUTIONS[20]

Present Conditions

Over much of the 20th century, the prevailing notion was that government was the best institution for solving large social problems. Over the last quarter of the century, world opinion has turned away from this view, particularly with respect to large, central governments. In a paradoxical way, both public schools and the courts have been asked to take on a greater role in solving social problems, particularly with respect to youth and families.

Nonprofit institutions and faith-based groups have stepped forward to tackle some social problems, which governments would formerly have led efforts to solve. Governments have also attempted to privatize some functions and services, such as support of the military, the operation of some jails and prisons, and the use of collection agencies.

There has been a renewed emphasis on programs developed by states or local governments over ones developed by the federal government. A revival of states' use of interstate and multistate compacts to fashion solutions is seen as evidence of this trend.

Probable Future

The political shift away from assigning social problems to big executive branch agencies is likely to continue. Nonprofits and other institutions are filling the gap, as is a call for volunteerism. At the same time, courts, notably in collaborative local programs, will likely take on an increasing role as the social safety net of last resort. Problem-solving courts are proliferating, with documented successes in some evaluative studies; however, there are fundamental questions about the appropriateness of therapeutic jurisprudence, particularly with respect to expectations for neutrality and separation of powers.

Concerns will continue about the accountability of private institutions for services funded by taxpayers. Questions have also arisen about the line separating church and state when faith-based organizations receive government funding for various programs.

Disaffected individuals will join new communities made possible by the communication revolution to pursue agendas outside traditional government institutions. Some of these alternatives will be beneficial in raising social consciousness and bringing about healthy change, but others will follow extremist courses that threaten social order, fomenting violence and anarchy.

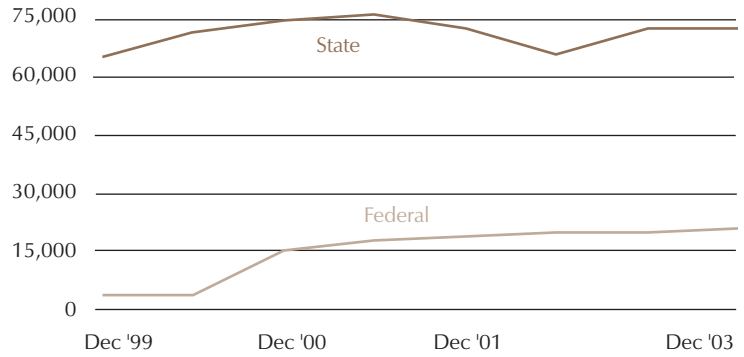
Urgency

Trial courts are likely to play an increasingly central role within a network of government and social institutions attempting to address societal problems in new ways.

Government failures and scandals over the past few decades have eroded public trust and confidence in all institutions of government. The effectiveness of therapeutic justice initiatives can reverse this trend.

As the least political of the three branches of government, the courts have advantages and liabilities for improving public attitudes. Although the courts are less responsive to short-term public whims, judicial distance from the political process also gives some separation from the tawdry aspects of government that disillusion the public. Therapeutic justice initiatives that focus on results—making a difference in people's lives—rather than appearances—e.g., toughness on crime—can influence public attitudes, as can courts' efforts to improve services to the public and to jurors.

Inmates Held in Private Facilities



Source: Bureau of Justice Statistics, *Prison and Jail Inmates at Midyear*, 2000-03.

HOT-BUTTON ISSUES AND INTERBRANCH RELATIONS

Present Conditions

For a number of reasons, courts find themselves caught up in public battles over hot-button issues that anger segments of the public and create friction with other branches of government. Whether dissatisfied with the actions or inaction of the other branches, members of the public call upon the courts for immediate remedies. Where legitimate legal interests can be recognized, courts may find it difficult, if not legally impossible, to turn cases away just because there may be political ramifications. Public ire often leads to accusations that individual judges are "activists" who should be removed or to attacks on the judiciary as a whole, taking the form of financial cutbacks, restrictions on judicial discretion, or other assaults on judicial independence. Such situations are not new in American government, but heightened public expectations regarding how responsive government should be and fixation on single political issues may be increasing the potential for interbranch conflict.

Hot–Button Issues

- Abortion
- Capital punishment
- Gender bias
- Gun control
- High tech courtrooms
- Medical malpractice award limits
- Political redistricting
- Prison privatization
- Racial bias
- Same-sex marriages
- School funding
- Secret settlements
- Technology standards
- Virtual courtrooms
- Water rights

Source: National Center for State Courts.

Probable Future

To minimize controversy and adverse effects from sensitive decisions, state courts will improve their communication with the public and the other branches of government. Public understanding and interbranch relations will improve.

More efforts will be made to acquaint officials in other branches with the operations and purposes of their counterparts. "Ride Along" programs, liaison staff, and interbranch task groups will support cooperative approaches to policy formation and problem solving. Institutions such as the National Center for State Courts, National Conference of State Legislatures, and Council of State Governments will support larger-scale interaction among the different branches of state and local government.

Urgency

The importance of court public information officers will grow, as will the role of liaisons with other government entities.

Public education, both in person and electronic, will increase in sophistication. Communication will emphasize preemption of extremist attacks and acceptance of the legal process and the court's role in government. The bar and other groups will sometimes assist the courts with public relations. Effective self-governance and cooperation with appropriate interagency task groups will also help the courts with public and intergovernmental relations.

REGIONALIZATION AND ADMINISTRATIVE CONSOLIDATION

Present Conditions

Efforts to increase efficiency and reduce costs pressure courts to consolidate and regionalize court facilities and administration. Consolidated courts often find themselves with more facilities than they really need, but closing courthouses is politically sensitive. Issues of access and community identity complicate calculation of the costs involved.

Efficiency pressures and budgetary cutbacks lead to increasing use of appointed magistrates and retired/recalled judges, raising questions about the quality of justice and the integrity of the judicial selection process.

Probable Future

Financial realities will ultimately force court facilities to close where regionalization or historical developments, such as population shift, make them redundant. Nevertheless, political interests will slow this trend, perhaps extracting concessions. Advances in technology will allow increasing amounts of court business to be conducted remotely, so that physical access to the courthouse will be less necessary.

Urgency

The continuing growth of the federal debt and lack of public support for increases in conventional taxes will place unrelenting pressure on governments to improve efficiency.

Technological advances will allow continuing reassessments of the balance point between the costs and benefits from court consolidation, generally allowing more consolidation over time.

States with Unified Judicial Systems

California
Connecticut
Illinois
Iowa
Kansas
Minnesota
Missouri
North Dakota
Puerto Rico
South Dakota
Washington, D.C.
Wisconsin

Unified courts are those in which trial courts are consolidated into a single general jurisdictional court level.

Source: National Center for State Courts, *Examining the Work of State Courts*, 2003.

DECENTRALIZED POPULAR GOVERNANCE

Present Conditions

The Internet and digital revolution are changing communication and approaches to policymaking. Individuals of like minds may be rallied locally or globally in support of various causes or positions, exerting pressure almost spontaneously and outside traditional channels. The public is only beginning to realize this potential, and efforts to sustain high levels of participation and energy are often shaky without the support of traditional institutions.

Probable Future

Popular governance initiatives will vary between the local, national, and global levels. Issues such as open government and corruption will dominate local efforts, while national and global issues will include economic opportunity and world trade, the environment, and immigration rights. Note that some initiatives will be *destructive* as well as constructive. The medium is content neutral.

Urgency

Throughout human history, communication revolutions have tended to precipitate large-scale changes in the established economic and political order.

CULTURAL TRENDS

EMERGENCE OF THE CULTURAL CREATIVES[21]

Present Conditions

Ray and Anderson identify three primary American cultural types. *Traditionalists* are conservative and provincial and characterized by rather rigid belief systems. *Moderns* are the dominant group—materialistic, egoistic, oriented toward consumption and success and the newest technologies. These groups are declining. The last group, the *cultural creatives*

(or "trans-modernists"), is growing and is now about 17% of the U.S. population, or about 50 million people (more than the population of France), with about the same number in Europe. This group has no established leaders, no professed ideology, and no cohesive community. Its members loosely adhere to humanistic/spiritual ideals and eco-friendly lifestyles.

Probable Future

If cultural creatives are the growing segment of society, then we will, in the coming decade or two, see emphasis on traditional religion; an interest in the traditional values of women regarding children, education, family, and relationships, with a matching emphasis on women in positions of power; an emphasis on the search for wholeness, wellness, and community; and a reorientation of the environmental movement from being against pollution to being for new forms of industry.

Urgency

For the justice system, the potential influence of the cultural creatives should not be underestimated. Effects are likely to include less emphasis on litigation; increased interest in community mediation and collaborative law; increased interest in ensuring that government demonstrates excellence, social justice, and environmental justice; and even increased concern for future generations.

Characteristics of Cultural Creatives

- love nature
- aware of the problems of the whole planet
- would pay more to clean up the planet and stop global warming
- value relationships
- value helping other people
- volunteer
- care intensely about psychological or spiritual development
- see spirituality and religion as important in life
- want more equality for women and want more women leaders in business and politics
- are concerned about violence and the abuse of women and children
- want politics and government to emphasize children's well-being
- are unhappy with both left and right in politics
- tend to be optimistic about the future and distrust the cynical and pessimistic view offered by the media
- want to be involved in creating a new and better way of life
- are concerned about what big corporations are doing
- have finances and spending under control
- dislike modern emphasis on success
- like people and places that are exotic and foreign

Source: see Endnote 21.

SOCIAL CHANGE[22]

Polarization of people by class, race, ethnicity, and lifestyle preferences, alterations in family composition

Present Conditions

Less-positive cultural trends include polarization of people by race, ethnicity, lifestyle, and class. The decline in the number of "traditional" families (breadwinner, stay-at-home spouse, children) is frequently noted. Social norms and values are in apparent flux.

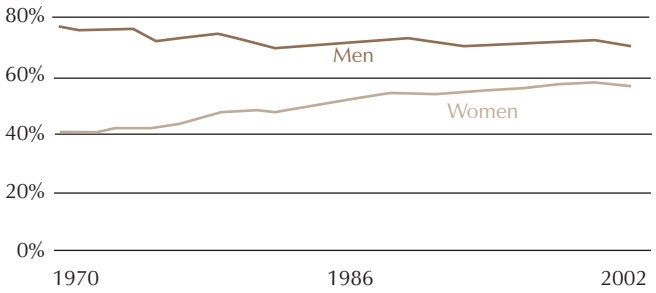
There is an obvious cultural divide over same-sex marriage, homosexual ministers, and the overturning of sodomy laws. Alternative lifestyles also raise issues of marketing niches, the need for shelters for gay victims of abuse, and treatment of transgendered clients (i.e., avoidance of bias).

Probable Future

Expect increased tension over shifting social norms and values. Disputes over lifestyles will persist. Economic restructuring may increase the polarity between haves and have-nots, particularly the digital divide. There will be increased segregation of groups, including gated communities, based upon wealth and values rather than race.

Politicians will increasingly seek votes among select minority groups at the expense of others. Such cherry picking will alienate voters who feel ignored or underappreciated.

Proportion of Women in U.S. Work Force Has Increased



Source: U.S. Department of Labor, Bureau of Labor Statistics, Current Population Survey.

Some religious denominations, already polarizing along conservative and liberal lines, will break apart over the rights and treatment of homosexuals. Many people will simply leave the mainline churches.

Courts will face more challenges in reconciling cultural differences when applying the law: Should legal standards be relative? What is a legitimate defense?

Urgency

Implications for courts include increased attention to class, ethnic, racial, and lifestyle bias, both in performance and composition. There is a need to address tensions between groups, develop good working relationships with other public and private agencies, and provide both public access and public education that accounts for cultural differences and ensures fair access to justice.[23]

Courts will continue expansion of foreign language interpreter certification efforts, with greater emphasis on cultural awareness and ethical standards.

ENVIRONMENTAL TRENDS

SHIFT TO ECO-ECONOMICS[24]

Present Conditions

The Industrial Revolution was brought about by a shift in energy technology to oil and gas, mechanization, and tremendous exploitation of natural resources of all kinds, including clean air, water, and soil, to enable massive production and increases in wealth. Though the spreading of industrialization and wealth has been uneven globally, its benefits and pollution are relatively obvious. Signs say this revolution is near its end: For example, an international conference held in May 2002 found that global supplies of oil will peak in 2010 and then start to decline. About 50 countries, including the U.S., have already passed their peak.

The auto industry, which a few years earlier spoke of hydrogen-based fuel cell cars as science fiction, now speaks as though the shift from the internal combustion engine to fuel cells is inevitable and approaching sooner rather than later.

Probable Future

The next 25 years will probably see the emergence of an eco-economy. This economy will be organized around new energy technologies, just as the industrial revolution was. The most likely source is hydrogen.

Hybrid cars are becoming more available on the mass market. Demand will increase for more environmentally friendly products and services, driven in part by continuing conflict in the Middle East and high gasoline prices in the U.S.

Suburban sprawl will slow, with many older citizens and childless professionals settling in inner cities. There will be greater emphasis on mass transit between urban cores and satellite cities (a convenience for aging boomers).

Water issues of quality and quantity will become more significant worldwide. In the U.S., quantity has been an issue in western states and will be increasingly significant in rapidly growing areas of the southeast. Quality is a familiar issue in many metropolitan areas but will grow in rural areas where pollution taints important aquifers.

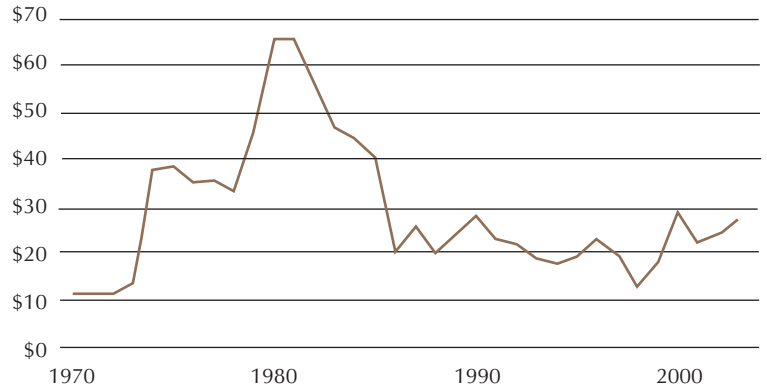
The world will see an increasing number of "environmental refugees" seeking to escape conditions related to degradation of land, pollution, and insufficient quantities of fresh water.

Urgency

Higher and more volatile energy prices are likely to accompany the transition to an eco-economy. An acceleration of related innovations and patents, with conflicts over intellectual and real property issues, will ensue. Business formations and dissolutions will accelerate. Environmental disputes will increase.

More jurisdictions will establish specialized courts to handle disputes related to water and other environmental issues.

World Oil Prices and Projections, 1970-2003 (per barrel)



Source: Energy Information Administration, International Energy Outlook, 2004.

Is the environment a priority issue for women over 60? If so, will Boomer women's political influence be any more significant to eco-economics as they become widows? The answer will depend in part on their economic well-being (with greater wealth paired with greater ecological concern).

GLOBAL WARMING[25]

Present Conditions

It is generally accepted within the scientific community that the planet is warming. The role that human activity plays in the warming remains more controversial.

Environmentally oriented NGOs like Green Peace have been joined by more extreme groups such as the Environmental Liberation Front (ELF) to influence corporations, governments, and even some individuals deemed most responsible for global warming and other environmental problems.

Probable Future

The planetary climate will warm over the next several decades, resulting in sea-level increases of unknown magnitude. Coastal population displacement and property damage will increase, agricultural zones will shift, and habitats (with unique plant and animal species) will be destroyed.

Large-scale economic concerns over global warming will be a major focus of early popular efforts at global governance in the digital age.

Within traditional governments, the presence and influence of "green" parties will increase as perceived threats from global warming, pollution, and the introduction of "foreign"

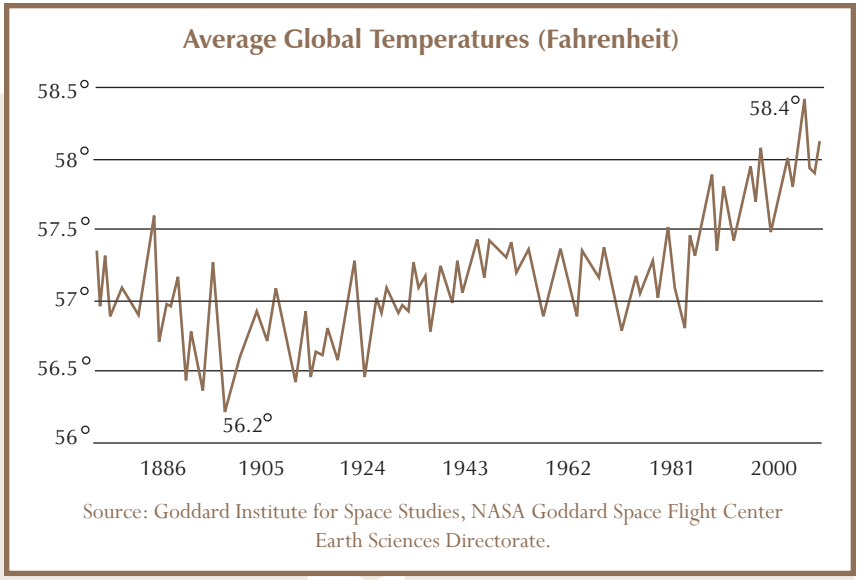
elements to the environment (including genetically altered plants and animals) become more severe.

Urgency

Confirmation of global warming will likely take 7 to 10 years. However, if warming continues and sea levels continue to rise, coastal property owners, including nations, will sue those seen as major contributors to global warming. Many likely defendants will be U.S. interests because of American industrial activity and automotive habits over the past century.

Expect increased restrictions on building on or near coastlines.

Failures within the insurance industry could mean that people will lose the protection for which they have paid.



Source: Goddard Institute for Space Studies, NASA Goddard Space Flight Center Earth Sciences Directorate.

ENVIRONMENTAL ISSUES COLOR VIRTUALLY ALL PUBLIC DECISIONS[26]

Present Conditions

Conflict over the environment constitutes a growing arena for public dispute, including citizen vs. government and government vs. citizen, business law, and even private civil actions. Even mundane issues such as building a sidewalk can spur disputes over the environmental impact. On a large scale, the National Environmental Policy Act (NEPA), along with the Endangered Species Act, generates many local and state disputes. There is a desire to reduce the court-clogging effect of these often complex disputes by using alternative dispute resolution (ADR).

Probable Future

Environmental disputes are almost certain to increase, including criminal cases of terrorism in the name of environmental protection.

International conflict mixing environmental and trade issues (e.g., fishing, logging, Mexican trucks, whaling, ivory trade, and global warming) will likely increase.

The green movement will have increasing influence in local, national, and international politics.

Urgency

Environmental dispute caseloads will continue to increase, as will the need to understand complex environmental sciences. Eco-terrorism will test the definition of terrorism and whether actions such as freeing animals from a mink farm or burning a forest research station may be defined as terrorism.

Congress and the states are encouraging the use of ADR for cases involving environmental issues, but some activists are wary of ADR.

GLOBAL TRENDS

GLOBALIZATION OF COMMERCE[27] AND CRIME AND JUSTICE, TERRORISM[28,29]

Present Conditions

While a globalized economy is not exactly new in human history, its extent and reach today is very great. With global travel, communications, and scientific research and development has come global crime and an increased search for approaches to global justice.

What is particularly new in this age, however, is the reach of the "Super-empowered Angry Men," as Friedman calls them. With the reach of global communication and transportation, and the amplifying power of modern computers and weapons, has come the ability of individuals or very small groups to reach across national borders and wreak tremendous damage. This has not existed before.

Probable Future

Globalization is a powerful and continuing force. Boundaries are likely to continue to become more permeable, even while border security is tightened. The integration of global business and world humanity is likely to intensify. Tremendous pressures to rethink the entire global labor market will increase as those nations that lead the age wave, namely, most of the industrialized world, begin to see labor markets and then whole populations shrink.

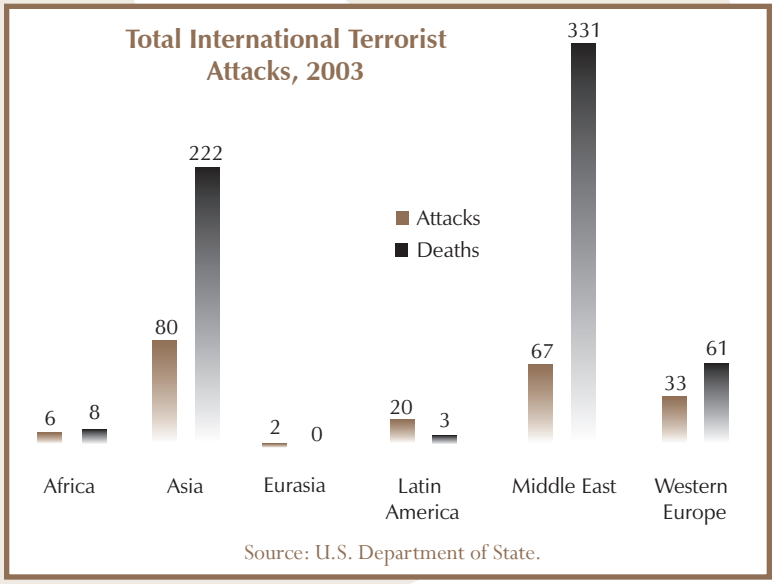
Urgency

Warren concludes as follows:

"It can be argued that during the next decades, globalization will impact no governmental institution more than the courts."

Courts will need to "develop trustworthy, orderly, and efficient ways to resolve conflict at local community levels and among the nations of the world."

Courts will need to "create flexible training modules, abandon rigid assumptions, and learn from the experiences of people in other nations, . . . in order to deal with the increasingly complex range of disputes likely to arise in the [21st] century."



Source: U.S. Department of State.

Present Conditions

Green parties have gained significant backing in European parliamentary elections. NGOs such as Green Peace are international in makeup and activity.

Many of the existing institutions aimed at resolving global problems of war and poverty were conceived around the time of WW II and are arguably unsuited to modern realities in which the number of nations has more than doubled, most wars are fought within rather than among nations, and there is an interdependent global economy with many large trading blocs. The Internet and digital revolution are changing communication, approaches to policymaking, and the achievement of objectives by like-minded individuals. NGOs are becoming more influential participants globally where national governments and business institutions have been the traditional players.

Probable Future

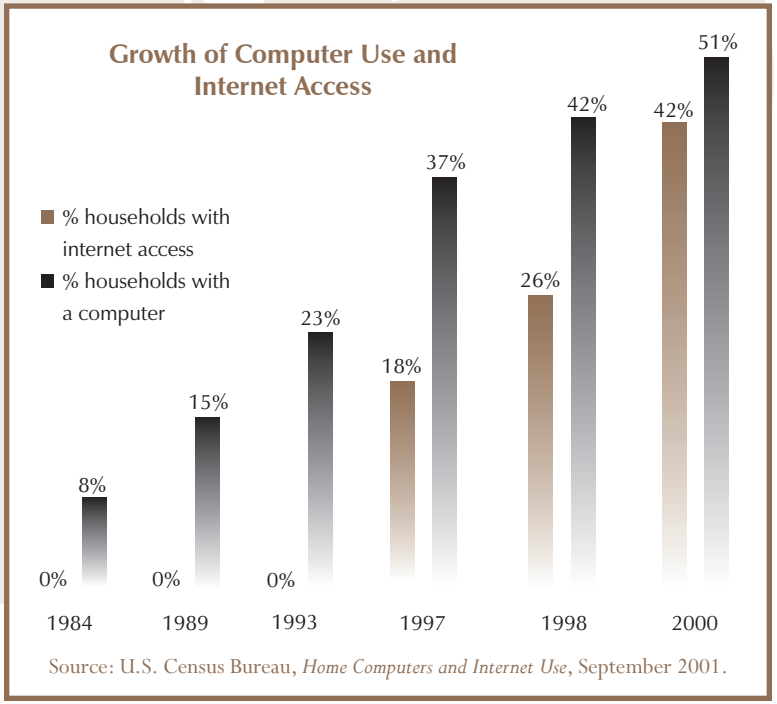
Large-scale concerns related to the environment will be a major focus of early popular efforts at global governance in the digital age. The presence and influence of "green" parties within traditional governments will increase around the world.

The emergence and growth of the Internet provides for unlimited information sharing. With this information superhighway, borders that once separated people culturally are melting thanks to multilingual information sources. As the Internet continues to grow, its increasing potential among the global public will promote both democratic and anarchic trends. Some multilingual issues that have surfaced include education, justice, the environment, and trade. Interpreters, customer service, and pro se litigants are all issues faced by the courts.

Urgency

Environmental groups will draw increasingly upon the resources of their international brethren to target key local elections and causes, leveraging greater influence than they could have managed from members in that immediate jurisdiction.

As the global power and influence of nontraditional groups increases, expect more legal actions, both civil and criminal, related to their activities and objectives.



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COURT ENTERPRISE DOMAINS

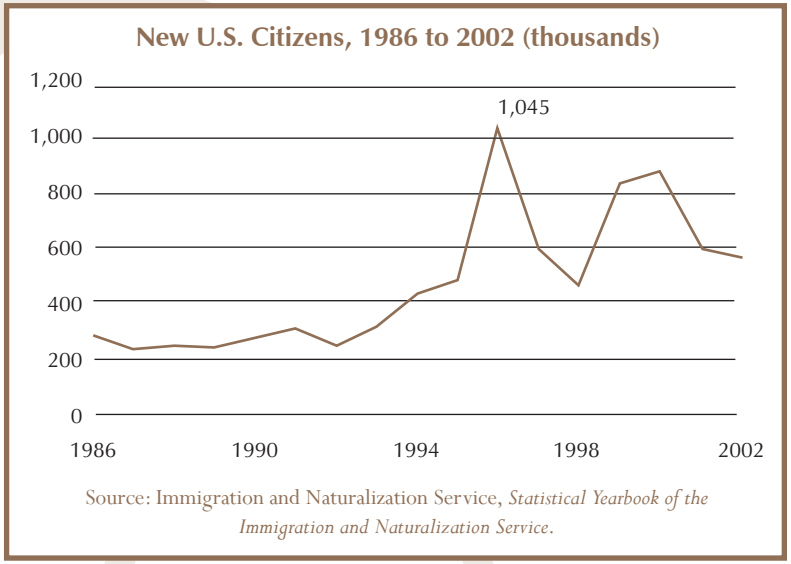
PERFORMANCE ACCOUNTABILITY

INCREASING DEMAND FOR DIVERSE JUSTICE SYSTEM SERVICES[1]

Present Conditions

Immigration today, as high as it has ever been, is weighted toward Latino, Asian, and Middle Eastern populations. Central and Eastern Europeans and Africans also continue to immigrate.

These demographics offer a particularly strong challenge for two of the Trial Court Performance Standards: access to justice, and equality, fairness, and integrity in the justice system.



Source: Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service.*

Probable Future

Increasing population diversity means stronger demands for culturally appropriate court and justice services. These demands and needs will vary by locality, depending on the makeup of local populations and political values.

System-wide communication among courts will be challenged by different local and regional approaches to access and language facilitation. The trend toward specialized courts may extend in some areas to courts for Hispanics or other racial/ethnic groups.

The current practice in a few courts of offering forms and other documents in multiple languages will become common practice in most state courts. Community courts will increase in number, particularly in large metropolitan areas.

Urgency

Courts are challenged as perhaps never before to provide both access and equity to differing language and cultural groups. This means increased need for language and cultural interpreters; for dispute resolution methods that accommodate economic and cultural differences; for more diverse workforces and juries for dealing with particular crime within ethnic communities, such as gang disputes; and for education of the workforce about cultural issues. Time pressures will increase because cases move slowly, and new parts of the community will need to be involved in judicial matters and support of the courts.

Courts will increasingly emphasize multilingual and multicultural backgrounds in hiring criteria. Foreign language interpreters will be a growing presence. Cultural education for judges and court staff will become mandatory.

CHALLENGES TO JUDICIAL INDEPENDENCE[2]

Present Conditions

Performance standards for both trial and appellate courts recognize that judicial independence is critical to producing fair, timely, and consistent decisions that meet the needs of society.

Judicial independence is being challenged, most particularly by politicizing judicial issues, appointments, and elections over a single issue or point of view.

In *Republican Party of Minnesota v.White,* 122 S. Ct. 2528 (2002), the U.S. Supreme Court struck down provisions of the Minnesota Canons of Judicial Conduct prohibiting candidates from announcing their views on disputed legal or political issues. The court left open the issue of whether a similar rule prohibiting candidates from making pledges or promises of particular results in particular cases is constitutional. Since the *White* decision, candidates have received more questionnaires on their opinions on issues such as abortion, the death penalty, and gay and lesbian rights. Judicial candidates have more freedom to answer these surveys, but may be subject to recusal when on the bench, further opening the door to politicization of the judiciary while raising questions about the legality of judicial conduct regulations.

Probable Future

There is no end in sight to the drift toward politicized courts and judicial positions. Political battles over court appointments and judicial elections focused on single issues are most likely to increase, especially given the moral and value judgments inherent in biotechnology, life sciences, and privacy issues.

The growing cost of judicial election campaigns will expose candidates to greater pressure from special interests. The independence of judicial decision making will be more in question.

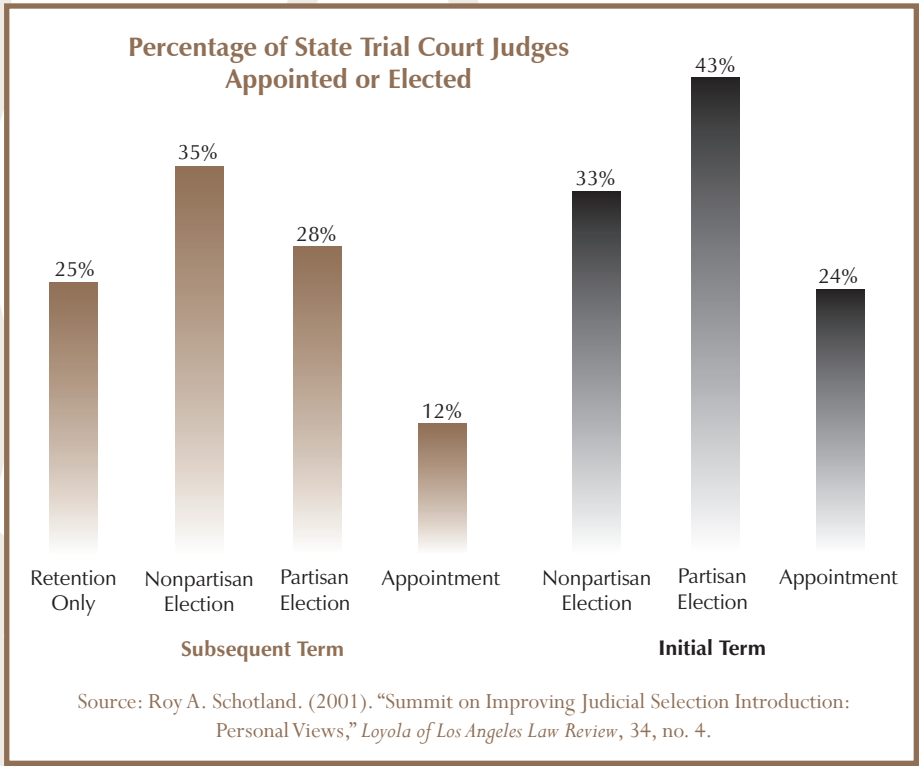
More judges will be subject to disciplinary and impeachment proceedings.

More states will call for "reforms" of judicial codes of conduct and disciplinary processes.

More states will tinker with judicial selection processes in the name of "reform." States will establish campaign conduct oversight committees to educate candidates about appropriate judicial campaign behavior, respond to candidate requests for advice about the ethics of campaign advertisements, and take the initiative to discourage or stop inappropriate campaign conduct.

Urgency

Players in the judicial system need to constantly assess how they can maintain independence through individual and collective strategies.



Source: Roy A. Schotland. (2001). "Summit on Improving Judicial Selection Introduction: Personal Views," *Loyola of Los Angeles Law Review*, 34, no. 4.

DEVELOPMENT OF MULTI-DOOR COURTHOUSE[3]

Present Conditions

The multi-door courthouse was first proposed in 1976 and has become a common but not universal practice. The concept is that instead of adding all cases to the litigation docket, disputants are directed to "intake specialists" who determine the optimal routes to resolution. Those routes may include community resource centers, mediation, arbitration, minitrial, summary jury trial, or litigation.

Probable Future

The multi-door courthouse concept will increase in application, including certain uses of the Web as one of the doors.

Urgency

To achieve access, expedition, fairness, and public trust, courts should explore multi-door approaches in cooperation with other agencies and stakeholders in the justice system.

INCREASING DEMAND FOR JUSTICE SYSTEM PERFORMANCE BUDGETING

Present Conditions

Accountability is an equal part of the same Trial Court Performance Standard as judicial independence. Independence is unlikely if a court is unwilling or unable to manage itself. In competition for scarce public resources, the courts that can demonstrate specific, desirable achievements with budget requests will have greater credibility and long-term success in the budget process.

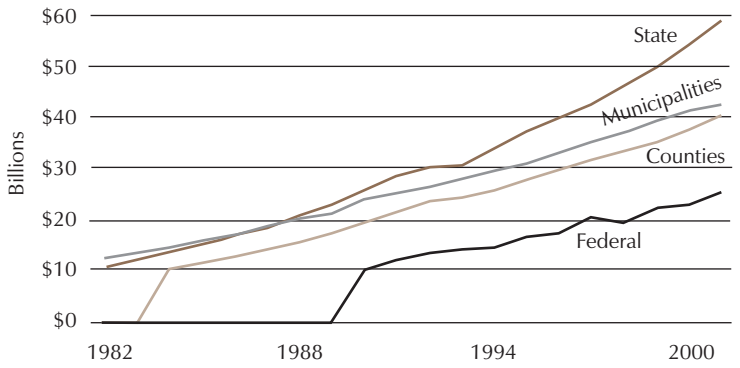
Probable Future

As budget conditions improve, state court leaders will reexamine how they handle budgetary processes. Policies with respect to court expenditures and revenue generation will be revisited. Many courts will assume more aggressive postures in budgetary negotiations, bolstered by greater performance accountability.

Urgency

Although court systems probably cannot hope to compete for dollars against education and various entitlement programs, they may be able to allocate resources among courts, law enforcement, corrections, and other programs related to judicial administration more rationally.

U.S. Justice System Expenditures, 1982-2001



Source: Bureau of Justice Statistics, *Direct Expenditure by Level of Government*, 1982-2001.

DEVELOPMENT OF FUNCTIONAL STANDARDS FOR COURT COMPUTER SYSTEMS

Present Conditions

State courts spend millions of dollars acquiring or developing custom case management software. Analyzing and describing functional requirements for the different case types is challenging, expensive, and frustratingly inconsistent from court to court. Court managers seeking to evaluate and upgrade their systems have no reliable yardstick. Vendors otherwise capable of developing highly effective systems have struggled to produce universal, cost-effective software in the absence of any standards.

The National Consortium for Court Functional Standards is developing guidelines to help state courts use their financial and staffing resources more effectively to obtain state-of-the-art computer systems—either through in-house development or from a software developer. The Consortium has focused on how state courts can:

- Reduce the time needed to obtain a new computer system
- Improve work processes
- Reduce staffing requirements

12 Groups of Functional Standards:

1) Case initiation and indexing
2) Docketing and related recordkeeping
3) Scheduling
4) Document generation and processing
5) Calendaring
6) Hearings
7) Disposition
8) Execution
9) Case close
10) Accounting
11) Security
12) Management and statistical reports

Source: National Center for State Courts, February 2001.

Probable Future

The Consortium has produced the first layer of functional standards describing and specifying the operational capabilities that case management systems should have for civil, criminal, and domestic relations cases, all of which have been approved by the COSCA and NACM Boards of Directors. Proposed standards for juvenile systems are complete and awaiting approval. Development of standards for traffic cases is in progress.

Funding for standards development is likely to remain problematic. The importance to the courts of this effort and the results to date, however, will keep standards development in the spotlight.

Urgency

Vendors of case management systems will increase their efforts to align the designs for their releases with the functional standards. Compliance with the standards will not only help vendors produce universally applicable systems, but also improve their marketing credibility. Court managers will use the published standards in developing RFPs, evaluating products, or assessing or developing in-house solutions.

Functional standards will be needed for appellate court systems and for performance management.

In addition to functional standards, the justice community will need to address data-level standards and standards involving the exchange of information among agencies and organizations more directly.

CRIMINAL JUSTICE

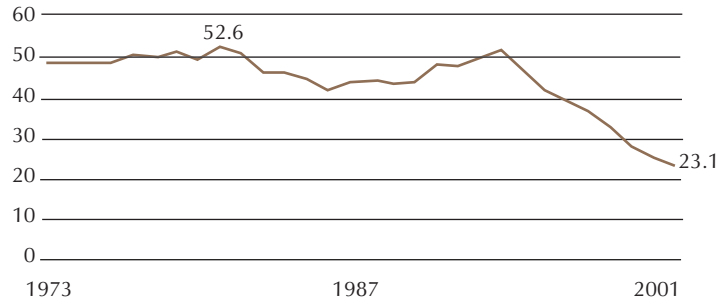
PROBABLE SLOWING OF TEN-YEAR DECLINE IN CRIME

Present Conditions

Beginning in the early 1990s, crime rates, particularly for violent crimes, began an annual 6 to 8% decline. Explanations centered on demographics, handgun controls, shifts in the drug culture, and increased incarceration. This decline slowed to tenths of a percent in the past 12 to 24 months.

Violent and property crime rates continued to drop in 2002. Most violent crime was lower in the first quarter of 2003 than in the same period in 2002, with the exception of homicide.

Violent Crime Victimization (per 1,000 persons), 1973-2002



Source: Bureau of Justice Statistics, Violent Victimization Rates, 1973-2002.

Probable Future

While many factors influence crime rates, two factors on the horizon, economic dislocations and a shift to a larger youth population with the coming of age of generation Y, suggest that crime rates may stop dropping over the next 3 to 7 years. This traditional demographic expectation ought to be tempered, however, because the 1990s decline in crime occurred among juveniles as well as adults, thus raising questions about the inevitability of an increase.

Urgency

The unprecedented and dramatic declines in crime rates of 1993 to 1999 are not likely to be sustained through the next decade, putting added caseload pressure on courts.

Crime rate declines probably depend upon the impact of steps taken to resolve budget constraints—cuts in law enforcement, probation, and various criminal justice programs combined with the early release of prisoners. Collaboration between the courts and the correctional community will allow for more effective correctional outcomes.

ADDITIONS TO THE COURT MISSION, INCREASING DEMAND FOR JUSTICE SYSTEM ACCOUNTABILITY

Present Conditions

Although crime rates leveled off and decreased during the 1990s, the current economic malaise, combined with the coming of age of the Generation Y, may have reversed downward trends. Faced with what could be rising criminal caseloads, the courts, particularly specialized ones that require more time per case for intensive judicial supervision and involvement with offenders, are challenged to avoid backlogs.

Probable Future

The intensive nature of problem-solving courts is likely to create an even greater demand for specialists within the justice system (e.g., for scientific expertise, education, and referrals) if such courts continue to increase in number.

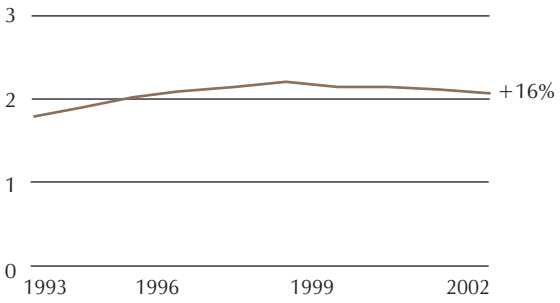
Effective management skills and systems integration will be in even greater demand. Referrals are likely to be an issue for specialized courts—e.g., to faith-based organizations or treatment. Even if long-term performance shows reduced recidivism, short-term pressures may jeopardize funding and interagency cooperation essential to the effectiveness of problem-solving courts. Success by specialized courts in handling upcoming pressures may justify a revolution in all traditional adjudication models in this country.

Homeland-security-funding priorities may support continued advances in interagency criminal justice information systems. Long-term benefits of such systems may extend to the civil justice system.

Urgency

Specialized proceedings, such as drug courts, will raise ethical questions for judges, lawyers, and treatment staff. Deviation from traditional adjudication and its familiar standards for due process and professional conduct (such as in the increased chances for *ex parte* communications) will raise pitfalls for the unwary. In addition, court-ordered treatment, particularly involving the use of certain drugs, poses issues (e.g., liability, conflict of interest, etc.) for courts, judges, medical professionals, and drug companies.

Total Juvenile State Trial Court Filings (millions), 1993-2002



Source: National Center for State Courts, *Court Statistics Project*, 2003.

The intensive involvement of participants in problem-solving courts will raise overall expectations for the justice system. Consequently, the long-term success or failure of these efforts is likely to influence public trust and confidence in the justice system.

Politics and attendant funding prioritization will have a significant impact on special programs affiliated with the justice system. Accountability and communication of successes will be important factors for the popularity and continuation of justice initiatives.

IDENTITY THEFT A GROWING CONCERN, PART OF LARGER PRIVACY ISSUE

Present Conditions

Identity theft is a common crime today. The growing range of personal information that may be learned and recorded electronically and the multiplying uses of and means to access such information continues to fuel conflicting demands regarding what information should be public and what private.

Awareness and public sensitivity to the problem is growing, thanks to legislation and clever promotional ads.

On November 25, 2003, the chief justice of the Florida Supreme Court ordered that courts prohibit access to court documents via the Internet, unless these documents meet certain exceptions. On December 18, Minnesota shut down a massive database of confidential police files out of concern it violated privacy laws.

Probable Future

"Your identity, in whatever form it takes, will increasingly have value and therefore be a target for crime. Identity crimes may be facilitated either by counterfeit identifiers or the misuse of legitimate identifiers."[4]

Crimes related to identity theft and misuse of personal information will proliferate in state and federal law while government and anti-crime interests will lobby for greater access to information to track sex offenders, potential terrorists, and other suspect individuals and groups. Courts will more frequently face questions related not only to the accuracy of scientific and technological means for gathering and using personal information but also to the balance of rights and interests surrounding such science and technology.

Expect increasing concern about the misuse of personal information found in court and other governmental records available over the Internet.

Urgency

Expect new legislation at state and federal levels.

Procedural and technical safeguards (not only to handle questions of access and privacy but also to protect against alteration or destruction) for records and other information that courts maintain online will increase in importance.

With public sensitivity to questions of personal information growing in an ever more "connected" society, the effectiveness with which courts handle questions regarding privacy and public access will have significant impact on public trust and confidence in the courts and government as a whole. Similarly, courts must balance the desire for public proceedings with regulation of cameras and other personal technologies in the courthouse.

REQUIREMENTS FOR PROVIDING COUNSEL TO THE INDIGENT

Present Conditions

In *Alabama v. Shelton*, 535 U.S. 654 (2002), the Supreme Court held that:

1) A suspended or probated sentence that could deprive a criminal defendant of liberty may not be imposed unless the defendant was accorded counsel in the prosecution for the crime charged.

2) An indigent misdemeanor defendant given a suspended jail sentence and placed on probation is entitled to counsel during the critical stages when the defendant's guilt or innocence and "vulnerability to imprisonment" are determined.

3) Probation revocation hearings in which the defendant has no right to counsel, the court need not follow customary rules of evidence, and the sole issue is the defendant's breach of probation cannot compensate for the absence of trial counsel.

Probable Future

The cost of providing counsel for indigent defendants in minor criminal cases, particularly traffic offenses, may lead states that have not already done so to decriminalize minor traffic offenses, making them civil infractions.

More states will use pretrial probation as an alternative to appointing counsel to indigent defendants in misdemeanor cases. Under this arrangement, the offense for which the defendant may be imprisoned is the breach of the probation agreement, not the underlying misdemeanor. Counsel need not be provided unless the defendant is in breach. This would allow circumvention of the problem of a suspended sentence that existed in *Shelton*. Currently, 23 states have some form of pretrial probation.

Urgency

The potential effects of *Shelton* are wide reaching, touching on many of the courts' day-to-day tasks. Courts already coping with funding problems must now fund services that even the most willing indigent defenders are usually unable to perform due to workload and budgetary constraints. States would do well to examine how their justice systems can comply with *Shelton*.

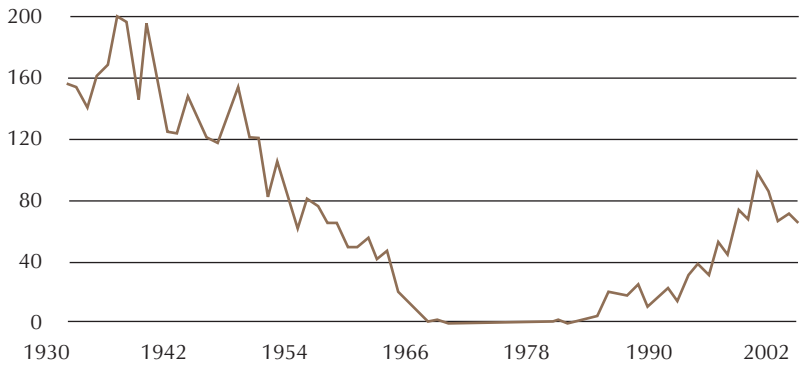
UNCERTAIN FUTURE FOR CAPITAL PUNISHMENT

Present Conditions

Although most Americans still support the death penalty in general, only a slight majority support it when compared to a sentence of life without parole. Almost half the populace doubts that the death penalty is applied fairly.

In recent years, Illinois and Maryland instituted death penalty moratoria out of concerns that the death penalty was not being applied fairly, resulting in the wrongful conviction of innocent people. Bills and reports calling for moratoria in other states have noted similar concerns.

Number of Persons Executed in the United States, 1930-2002



Source: Bureau of Justice Statistics, *Capital Punishment*, 2002.

In the wake of the *Atkins v.Virginia* decision in 2002 declaring that the execution of mentally retarded inmates violates the constitutional ban on cruel and unusual punishment, justices and other experts predicted a similar ban on the execution of juveniles, consistent with "evolving standards of decency in a civilized society." Indeed, in anticipation of such a U.S. Supreme Court ban, the Missouri Supreme Court ruled in 2003 that it is unconstitutional to apply death sentences to people younger than 18 at the time of their crimes.

Probable Future

A national ban on executing those who were juveniles at the time they committed their offenses will occur within the decade, bringing the U.S. more in line with international standards.

Scientific advances in the use of DNA and other evidence will prove more incidences in which states have executed innocent individuals, creating more public doubts about the death penalty.

Although few states will abolish the death penalty by law, an increasing number will reduce or cease the use of capital punishment as due process standards become more strict and costly and as the public's preference for sentences of life without parole increases.

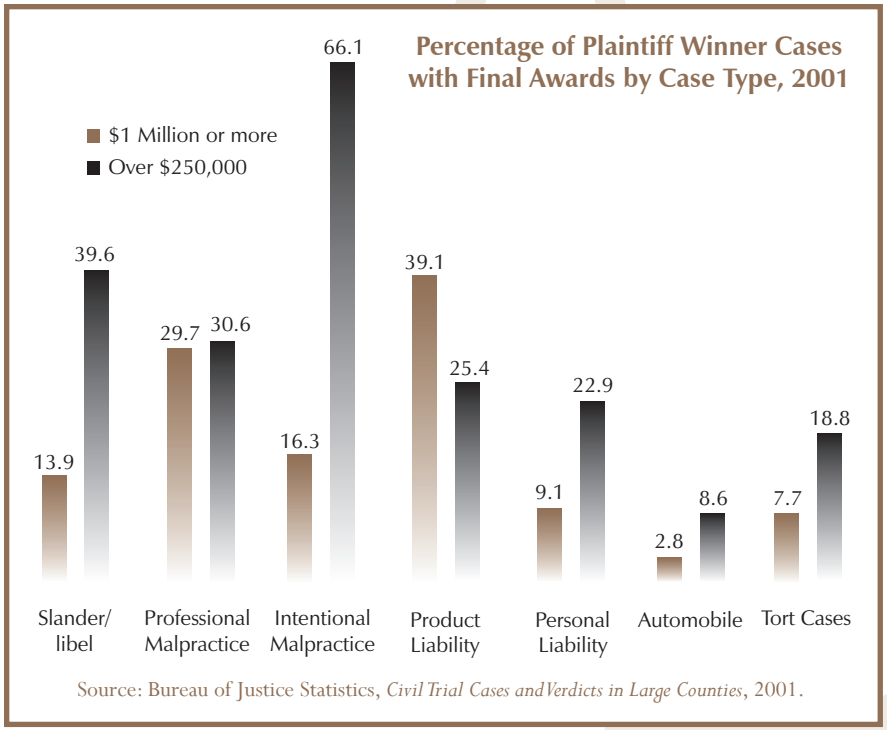
Urgency

Many states will reexamine their laws and procedures with respect to capital punishment to ensure that they withstand scrutiny in light of evolving standards.

States will improve their standards for the preservation of evidence after trial, recognizing that future scientific advances may clarify some questions of guilt or innocence.

CIVIL JUSTICE

CIVIL CASES MIGRATE TOWARD PRIVATE JUSTICE



Source: Bureau of Justice Statistics, *Civil Trial Cases and Verdicts in Large Counties*, 2001.

Present Conditions

Civil cases continue to grow in volume, as the U.S. maintains its reputation as a litigious society. But these civil cases are migrating from traditional courts and into an emerging system of private justice, which includes alternative dispute resolution and tends to be available to better educated and wealthier litigants.

Despite other increases in the scope of the legal system, there has been a steady decrease in civil jury trials in the U.S. and other common-law countries (e.g., England).

Probable Future

Private courts will continue to grow in use and the economic disparity between those who turn to private justice and those who cannot for economic reasons will widen.

Reduction of citizen participation in civil trials further distances the public from the realities of the justice system, making them less able to discern the truth in debates about issues such as tort reform and distorting perceptions of the magnitude and place of criminal justice in the larger justice system.

Urgency

The shift of civil actions to private forums is a serious challenge to the courts. Revenues are lost. Equity is compromised as poor litigants are not included in the private system. Judges lose the variety afforded by civil cases and are left with the relative sameness of criminal cases.

Diversion of significant civil cases from the courts inhibits the development of the law via legal precedents.

EFFORTS TO LIMIT LIABILITY AND ALTER JURISDICTIONS • INCREASED INTERNATIONALIZATION OF DISPUTES

Present Conditions

Objective research has proven there to be no explosion of tort cases nor any causal connection between insurance rates and verdicts in civil trials. Nevertheless, lawyers and "runaway juries" are blamed for increases in medical malpractice insurance and product costs that are supposedly driving doctors out of the profession and causing businesses to fail. Corporate interests are winning the public relations war, convincing political interests of the need to cap damages and erect procedural barriers to "frivolous" claims.

Probable Future

In response to pressure from business interests, the federal government will attempt to limit liability and damages in various types of civil litigation. To do this, the federal government will seek to remove certain types of litigation from state court jurisdiction, much as it has extended federal criminal jurisdiction into areas traditionally reserved to the states.

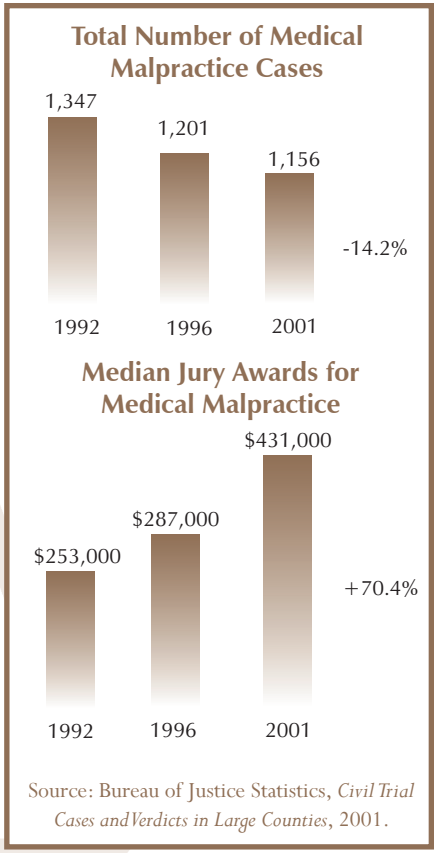
As international trade increases (e.g., through agreements like NAFTA) and more litigants have not merely interstate but international presences, state courts may find themselves with jurisdiction over more disputes requiring the application of unfamiliar laws, such as the U.N. Convention on Contracts of the International Sale of Goods instead of the more familiar Uniform Commercial Code. At the same time, special trade tribunals may challenge or disregard the authority of state courts.

Urgency

Pressures for special courts devoted to business disputes, both domestic and international, will increase.

Increased state-level involvement in international issues will influence already increasing demands for foreign language interpreters, cultural awareness, and flexibility in legal representation. The federal courts' ability to handle more international litigation will put pressure on state courts.

Business courts and other innovations serve as an economic development tool because they assure businesses that they will be treated fairly. The image of "homegrown" justice is likewise a barrier to economic development both here and abroad.



Source: Bureau of Justice Statistics, *Civil Trial Cases and Verdicts in Large Counties*, 2001.

POSSIBLE BACKLASH AGAINST ARBITRATION AS ALTERNATIVE TO COURTS • CONCERNS REGARDING SECRET SETTLEMENTS

Present Conditions

Studies indicate that arbitration is actually far more expensive for consumers and employees who seek redress for discrimination, fraud, and malpractice. In fact, arbitration costs are so high that many people drop their complaints because they cannot afford to pursue them. Furthermore, arbitration is not necessarily any faster than traditional adjudication.

In January 2003, the South Carolina Supreme Court submitted an order enacting new Rule 41.1. Sealing Documents and Secret Settlements to the General Assembly. In September, South Carolina's 10 active federal trial judges unanimously voted to ban secret court settlements "that have made the courts complicit in hiding the truth about hazardous products, inept doctors and sexually abusive priests."

Probable Future

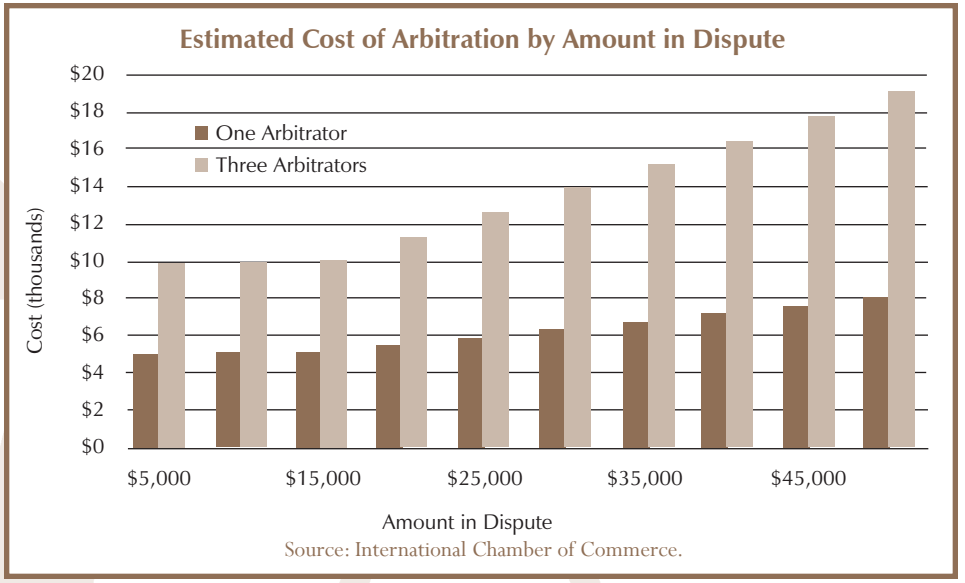
There will be public backlash against contractual language that inhibits access to justice by mandating costly and possibly biased arbitration processes.

Over time, developments in South Carolina and elsewhere will provide better data for evaluating the balance between interests favoring public legal proceedings and protecting the public versus interests encouraging the settlement of disputes without trials and protecting trade secrets.

Urgency

The courts will be encouraged to develop or expand their own arbitration programs, particularly to ensure neutrality of the arbitrators and preserve the right to appeal.

Court decisions will increasingly strike down mandatory arbitration provisions in contracts, essentially for being contrary to public policy.



Source: International Chamber of Commerce.

BUNDLING OF LEGAL AND OTHER SERVICES

Present Conditions

Consumers are demanding more options for legal services. States are amending court rules to allow for unbundled or limited-scope legal assistance.

Probable Future

The ABA Model Rules of Professional Responsibility will be amended further to encourage unbundled legal services.

Urgency

The nature of conventional legal practice is being altered. Regulatory changes and breakdowns will cause some backlashes.

IMPACT ON THE LEGAL PROFESSION

Present Conditions

"Vanishing trials" and increased use of ADR, plus international and other multiregional disputes will change the face of the legal profession.

Probable Future

Lack of trust by Generation Y could lead people to seek a jury trial rather than a bench trial. In the alternative, this attitude could lead to more "do-it-yourself" and "end-of-

government" solutions, such as pro se representation, unbundling, and ADR (especially community mediation or online dispute resolution).

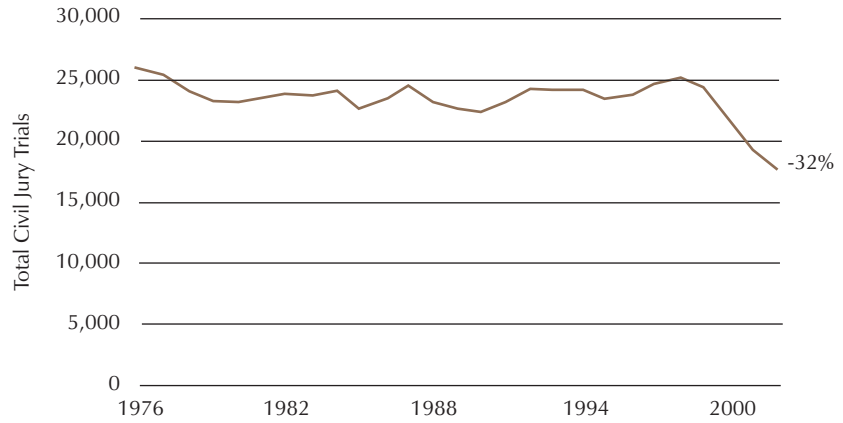
Urgency

The "vanishing trial" could bring about the "vanishing traditional lawyer," as those with JDs seek alternative career paths.

Law school curricula may change to accommodate client and employer needs by increasing ADR and negotiation.

Multijurisdictional practice and other rules expanding the practice of law (and further detailing the unauthorized practice of law) may be necessary to accommodate business.

Total Civil Jury Trials in 22 States, 1976-2002



Source: National Center for State Courts, *Examining Trial Trends in State Courts: 1976 - 2002.*

JUVENILE JUSTICE

JUVENILE JUSTICE • RESTORATIVE JUSTICE GAINING WORLDWIDE ATTENTION[5]

Restorative Justice Programs Are Characterized by:

1. Encounter: Create opportunities for victims, offenders and community members who want to do so to meet to discuss the crime and its aftermath
2. Amends: Expect offenders to take steps to repair the harm they have caused
3. Reintegration: Seek to restore victims and offenders as whole, contributing members of society
4. Inclusion: Provide opportunities for parties with a stake in a specific crime to participate in its resolution

Source: Prison Fellowship International, www.restorativejustice.org.

Present Conditions

Restorative justice is a balanced approach to crime that requires the justice system to devote attention to the victim, the offender, and the community as active participants.

Courts must look at trends in corrections and parole to implement a restorative approach to juvenile justice.

Probable Future

Restorative justice is gaining worldwide attention, interest, and acceptance, particularly when applied in family law cases where a systemic approach is paramount.

The acceptance of restorative justice principles will increase, justifying efforts to increase coordination among justice and social service agencies.

Urgency

In jurisdictions around the country, indeed the world, restorative justice could be subject to more study and use.

Coordination efforts that are currently decentralized will become more centralized, although no single hierarchical model may emerge. Coordination will be assisted by developments of "people-based" information systems that allow for identification/recognition of events/issues related to entire families, not based upon isolated case numbers tied to events/issues.

JUVENILE CRIME RATES FALLING[6] • "GET-TOUGH" APPROACHES COMPETE WITH RESTORATIVE JUSTICE APPROACHES

Present Conditions

The decline in crime rates has been steady for a decade, but may be leveling.

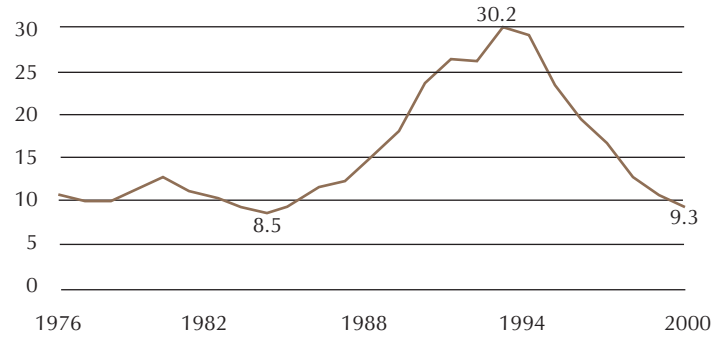
As student misconduct in school is increasingly criminalized, more children with learning disabilities are entering the juvenile justice system.

There is a high need for mental health services among juvenile offenders. There is a lack of systematic assessment and mental health treatment referrals by juvenile courts.

"Warehousing" juvenile offenders in various facilities increasingly equals "treatment." When all offenders are so grouped, they lose role models, become victims of their peers, and learn even worse behavior, thus increasing the cycle of violence.

Recent scientific findings indicate that juvenile minds do not process information about risks and consequences in the same way as adult minds. Such evidence supports arguments that juvenile offenders should not be treated the same as adults.

Homicide Offending Rates Ages 14 to 17 (per 100,000 persons)



Source: Federal Bureau of Investigations, *Supplementary Homicide Reports, 1976-2000.*

Probable Future

The large "echo-boom" generation (Generation Y) will contribute to increasing criminal activity among teenagers and young adults. Political pressure, generated by subjective fears, media sensationalism, and interests of the prison-industrial complex, will perpetuate "get-tough" approaches in some states, where even more minors will be charged as adults for criminal offenses. Criminal justice costs will rise at the expense of higher education and social programs.

Whether youthful offenders are treated as juveniles or adults, courts, jails, and correctional facilities will have to decide how to accommodate them; even for youths charged as adults, there is likely to be some recognition of their age.

International pressure and media coverage will contribute to changes in public attitudes about the death penalty, ultimately resulting in its prohibition for those who commit offenses before the age of 18.

Additional research is needed to assess barriers to treatment for juvenile offenders—a topic that may be complicated by courts' perceptions of a range of environmental factors in youths' lives, including parental custody and school attendance.

Justice system professionals will need more education about children with learning disabilities and the opportunities and obstacles that their disabilities present.

In some jurisdictions, the costs of incarcerating juveniles will become more problematic. Adequate facilities will not be available. Mental health needs will not be accommodated.

Parents of juveniles will increasingly be asked to pay for their incarceration expenses.

The struggling economy, coupled with the rise in youth population, will test the effectiveness of welfare reform efforts of the 1990s. Government, faith-based, and other programs aimed at alleviating poverty, improving job readiness, and reducing other social ills will influence the downstream incidences of domestic violence and juvenile delinquency.

Youth and teen courts will help handle increases in cases involving juvenile offenders. The accountability of such programs and their integration and coordination with the rest of the justice system will be important factors in their success.

Urgency

States in which restorative justice is most strongly embraced will resist reflexive "get-tough" approaches and concentrate on objective performance data, especially rates of overall crime, recidivism, and long-term costs. Aided by greater interagency coordination and innovative methods for handling juvenile and family cases, these states will emphasize preventive efforts, such as early intervention programs. Performance measures will reinforce the demands for program accountability.

Prevention efforts will extend to strategies for handling gangs. Programs that are culturally attuned will attempt to sensitize youth and redirect aggressive behavior. In some jurisdictions, "zero tolerance" policies will increase "warehousing" of juveniles in various facilities and fail to distinguish between low-level and serious offenders.

More juvenile incarceration facilities will provide mental health services individually designed for each child as well as individualized education plans (IEPs) to ensure compliance with the Individuals with Disabilities Education Act (IDEA), http://www4.law.cornell.edu/uscode/20/ch33.html.

By taking full advantage of legal protections and carefully considering the impact that disabilities have on children's behavior, those who work with these children will be in a better position to ensure that the rehabilitative promise of the juvenile justice system is fulfilled and that correctional facilities do not become holding tanks for disabled children.

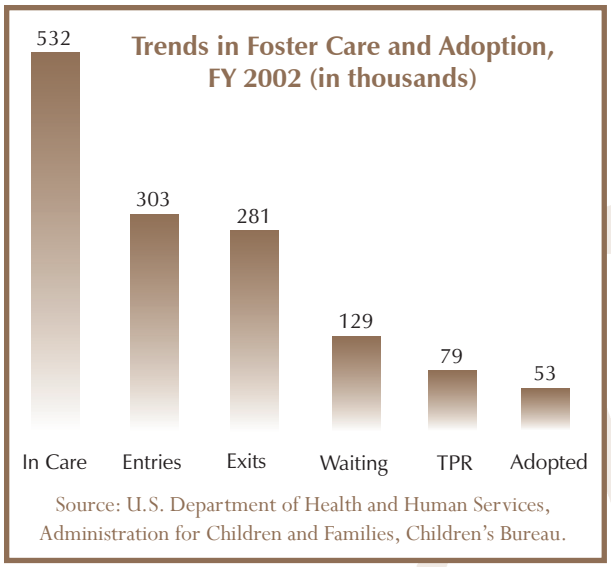
FAMILY JUSTICE

EMPHASIS ON PERMANENCY PLANNING AND ADOPTION[7] • COORDINATION OF FAMILY CASES[8]

Present Conditions

The 1997 Adoption and Safe Families Act (ASFA) requires states to shorten time frames for children in foster care and provide an array of options so that children have stable and permanent homes. Since then, adoptions from public agencies have increased 57%. State social service agencies were called to place the highest priority on the health and safety of children, focusing on permanency from the beginning of a child protection case. States must develop detailed plans to accomplish these goals for children. Once again, juvenile courts are in the forefront of ensuring that cases progress in a fair and timely manner. In addition, state courts of appeal are recognizing the need to give these appeals the highest priority, thus making expedited appeals possible.

Increased federal involvement in family law requires courts to work closely with social services to meet ASFA requirements. A result has been the Adoption, Foster Care Analysis and Reporting System (AFCARS), which, along with federally funded Court Improvement Projects, works to achieve permanency for waiting children faster and more efficiently.



Source: U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau.

AFCARS strives to create the most efficient way to get more foster kids adopted faster. Because of the improvements created by AFCARS, the number of public adoptions is rising.

State-run Court Improvement Projects help states comply with ASFA. Most courts need to improve their caseflow, case organization, and other areas of administration to place foster children in permanent homes more quickly.

To avoid the problems that can result when different judges or agency staff work with an individual or members of the same family over time, comprehensive, "cradle-to-grave" assignments are often advocated for handling members of the same family. The one-family/one-judge or one-family/one-judge/one-social-worker concept stems from this logic.

Court watch programs are growing in the family area.

Probable Future

The numbers of adoptions and promising practices to surmount traditional barriers to moving children into permanent homes will continue to increase steadily.

All states will have expedited dependency appeals, which seek to provide permanency by shortening the time for the appeals process. Currently, all but six states have some aspect of expedited appellate procedure, which may include such cases as termination of parental rights, abuse and neglect, adoption, custody, guardianship, or domestic violence actions.

Safe Haven laws will continue to develop, offering an example of how states are making changes to comply with ASFA.

Subsidized guardianship programs and more kinship care will add permanency to children's lives. The need for court-appointed special advocates (CASAs) for children and the elderly will continue to grow.

Volunteers will continue to help preempt social problems for families and juveniles in court. Organizations such as Big Brothers/Big Sisters can be part of the "village" that helps raise a child. Guardians ad litem and other in-court volunteers can help families navigate the system.

As courts become more resourceful and effective through Court Improvement Projects, more children will be adopted and permanency will be achieved faster. These programs have also made training a priority for judges and other court workers.

"Cradle-to-grave" assignments result in more complex and lengthy cases. Burnout could occur if one person is tasked with the responsibility for the success or failure of entire families going through the legal system.

More states will recognize the importance of success in family-related cases by raising the minimum qualifications, status, and compensation of family judges. (E.g., Vermont and Louisiana classify family court judges as general jurisdiction judges.)

Urgency

The number of kinship and grandparent adoptions will continue to rise due to increasing numbers of single-parent families and higher rates of divorce, teenage pregnancy, incarceration of parents, substance abuse by parents, and parental abuse and neglect. Social service agencies and the courts will provide support for such adoptions.

International adoptions will continue to increase as the number of young, healthy children available for adoption in the U.S. declines. However, the dominant countries of origin of adopted children will vary by politics.

Courts and state governments will seek to increase education and awareness of Safe Haven laws.

Multigenerational abuse and neglect cases will become increasingly common.

Judicial education will extend to family-related issues, including domestic violence psychology, child development, and federal legislative requirements. Court programs that address the mental health needs of very young children will become more common.

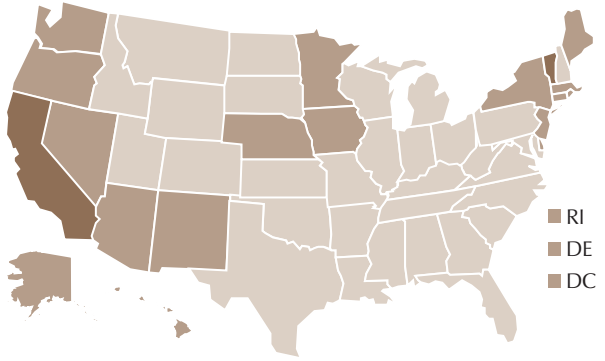
FAMILY RIGHTS OF SAME-SEX COUPLES

Present Conditions

Rights of same-sex couples vary among the states. Vermont grants same-sex couples the rights and benefits of marriage, but in "civil unions." California has passed a domestic partnership act, but it stops short of allowing marriage. In November 2003, the Massachusetts Supreme Judicial Court ruled same-sex couples are legally entitled to wed under the state constitution. Several states will vote in the 2004 election whether to add amendments to their state constitutions banning same-sex marriage. An attempt to introduce such an amendment to the U.S. Constitution was defeated in 2004.

Courts in Ontario and British Columbia recently legalized gay marriage, leading to hundreds of same-sex ceremonies. Belgium and the Netherlands also have legalized gay marriage.

Domestic Partnerships and Civil Unions



Source: National Conference of State Legislatures, 2004.

Probable Future

State and tribal courts will be confronted with legal issues related to banning/allowing same-sex marriages within their borders, as well as whether states must recognize unions and marriages from other states and nations.

Same-sex couples will continue to gain rights related to property and insurance and will experience fewer restrictions on the ability to adopt. Currently, only Florida bans same-sex adoptions, and several states, including Hawai'i and Arizona, encourage same-sex adoptions. Judges will increasingly decide that sexual orientation does not matter in deciding what makes a family and will have more flexibility in defining parental roles.

More former partners from same-sex relationships will be ordered to pay child support after such relationships end.

Urgency

States will be confronted with legal concerns over civil unions and family rights for same-sex couples and the question of how to deal with differing laws throughout the states. A federal law may be on the horizon.

As nontraditional families become more common, the issue before judges will shift from how to define a family to how a child can receive the best support.

ROLE OF JUDGES AND COURTS HAS CHANGED

Present Conditions

The traditional and "problem-solving" roles of the judge may be at odds philosophically, ethically, managerially, and procedurally. Communities expect more from courts—e.g. rehabilitation, reform, and control/cure of substance abuse and other behaviors and conditions.

But some social problems cannot be solved. For example, mental health courts have proliferated as a result of federal funding. However, advocates point out that mental illness is not a crime and, in some instances, may be treatable but not curable. Likewise, domestic violence issues are complex; while courts can address some aspects and implement practices that will not exacerbate the problems, the general dynamics of domestic violence make the problem difficult for courts to solve. Long-term monitoring of substance abusers and sex offenders may be unworkable or unconstitutional.

Goals of Mental Health Courts

- expedite case processing
- improve access to community health resources
- relieve jail overcrowding
- reduce recidivism
- improve monitoring of mentally ill
- protect public
- maintain defendants in least restrictive mental health environments

Source: Bureau of Justice Assistance, *Emerging Judicial Strategies for the Mentally Ill in the Criminal Caseload,* April 2000.

Probable Future

Judges and courts need new ways to handle the transition from traditional to problem-solving adjudication.

Do new terms used in the legal community (i.e., "parenting" vs. "custody") make a difference in the way disputes are perceived, or are they mere semantics?

Restraints on courts (financial, ethical, legal, etc.) may cause advocates of problem-solving courts to be disillusioned and spark a return to agency/community solutions. Early advocates may not have realized the funding and other limits on courts.

Urgency

Case coordination, judicial education, increased importance of continuity of representation, and time standards will conform more and more to the problem-solving mode. Increased use of nonjudicial officers, coordination with social services, less-adversarial processes, and more outreach/communication regarding community resources are needed.

Blending family and probate courts accommodates both the problem-solving model and the growing importance of probate as the population ages.

SCIENCE & TECHNOLOGY IN COURTS

SCIENCE AND TECHNOLOGY ISSUES IN COURT CASES • MORATORIUMS ON CAPITAL PUNISHMENT DUE TO CONTROVERSY OVER DNA EVIDENCE

Present Conditions

Science and technology issues are of increasing importance in court. Judges are working more closely with scientists to ensure that rulings are based on sound science. Differing historical principles govern science and law. Adversarial court proceedings and cooperative scientific inquiry clash as means to find truth. The Federal Judicial Center cooperates with the National Academy of Sciences in their Program in Science, Technology and Law.

In the wake of *Adkins v.Virginia*, scientific standards for what constitutes retardation will determine who is eligible for the death penalty. Current standards and measures are under scrutiny. School and psychological histories are relevant because tests in the time frame of any litigation will probably not be sufficient proof of mental capacity. Appeals on the basis of *Adkins* are expected to increase.

Probable Future

Judicial decisions involving science and technology will increase in frequency, particularly with relation to bio and life sciences and information technology.

Courts will have to decide the reliability of new biometrical methods for identifying individuals (e.g., DNA, retinal and iris scans) and determine the comparable stature of long-accepted though more questionable means of identification (e.g., fingerprints, police lineups). Such advances in identification will be particularly important in death penalty cases. Convicts currently on death row request that crime scene and other biological evidence be subjected to advanced testing methods that were not available at the time of their arrests, convictions, and sentencing.

Courts with significant scientific demands—both in operations and in case subject matter—will hire or retain the services of their own scientific experts/advisors. As more digital natives become judges, some needs for technological support for the bench may diminish.

The increasing use of DNA evidence will lead to higher standards for the long-term storage and protection of records and evidence. Whether the courts or another justice agency will bear the responsibility and cost will have to be resolved to satisfy legal demands related to chains of possession and practical demands regarding what entity is in the best position to perform the function. Given the increasing significance of "cold hits" using DNA evidence in solving crime, when may DNA samples be taken from current offenders and how may they be used?

Urgency

Judges, and particularly appellate judges, will increasingly be expected to be conversant about science and technology and to recognize novel solutions made possible by technological advances. Because deep-level expertise will be impossible across a range of subjects and disciplines, closer cooperation between the judicial and scientific communities will be needed. To this end, the establishment of recognized scientific panels is important, as is education for local jurisdictions regarding their existence, availability, and uses.

States must weigh claims of actual innocence (and the implication that the guilty party may still be free) against the need

Prior to *Atkins v. Virginia* Eighteen States Did Not Execute the Mentally Ill:

Arizona	Kentucky
Arkansas	Missouri
Colorado	Nebraska
Connecticut	New Mexico
Florida	New York
Georgia	North Carolina
Maryland	South Dakota
Indiana	Tennessee
Kansas	Washington

Source: Death Penalty Information Center.

for finality in court processes and limits on expenses. Questions regarding the reliability of long-accepted means of identification could mean reopening thousands of cases. Changes in justice system policies will improve public trust and confidence for courts among minority groups but is likely to shake the short-term confidence of the majority of Americans.

More judicial education will be mandated for handling science and technology issues.

DNA "APPEARANCE PROFILING"

Present Conditions

DNA use in the justice system thus far has been limited to supporting evidence for matching an individual to a crime and establishing paternity, as well as other highly restricted purposes.

Probable Future

Very recent developments in DNA technology suggest that scientists may soon be able to determine certain physical characteristics of an individual (e.g., hair color, eye color, and ethnic origin) on the basis of DNA markers. While it is still in the earliest stages of investigation, some forensic biologists are convinced that DNA-based descriptions may one day be more reliable than eyewitness accounts.

Urgency

Courts will be called upon to deal with complex issues as this technology matures. Not only must they consider a new round of DNA-related reliability and admissibility questions, but they will also face the highly controversial issue of minority profiling by law enforcement on this new scientific basis.

A SOCIETY UNDER SURVEILLANCE

Present Conditions

The general public is increasingly being observed and recorded by a pervasive battery of public and private cameras. In addition to banks, retail stores, and other private surveillance, many municipalities now have video cameras installed at busy intersections and in and on public buildings.

Probable Future

Growing fear of terrorism will fuel this trend, as improvements in digital technology and electronic communications make widespread collection and compilation of surveillance information more practical. As facial recognition and behavior recognition technologies advance, surveillance capabilities will leap further ahead.

Urgency

In the next few years, courts will have to determine the balance point between protecting privacy and increasing public safety as they settle disputes brought by civil liberties groups and decide criminal cases supported by surveillance information. They also must be the watchdog to prevent inappropriate use of these technologies by both public officials and private entities.

Present Conditions

As the expectations of technological capability increase, courts are faced with the need for higher technologies for judicial proceedings, if not in all courtrooms then at least for a certain number within a jurisdiction. The costs for such technologies are hard for some jurisdictions to bear.

Significant inequities between the technological capabilities of opposing parties raise fundamental questions. Some parties may lack the funds to match their opponent's high-tech presentations or may not know how to use technologies available in the courtroom. In a visually oriented society, is there a danger that finders of fact will be unconsciously biased in favor of the higher-technology presentation?

As more court business is conducted electronically, the relative number of public transactions occurring at the courthouse decreases.

Probable Future

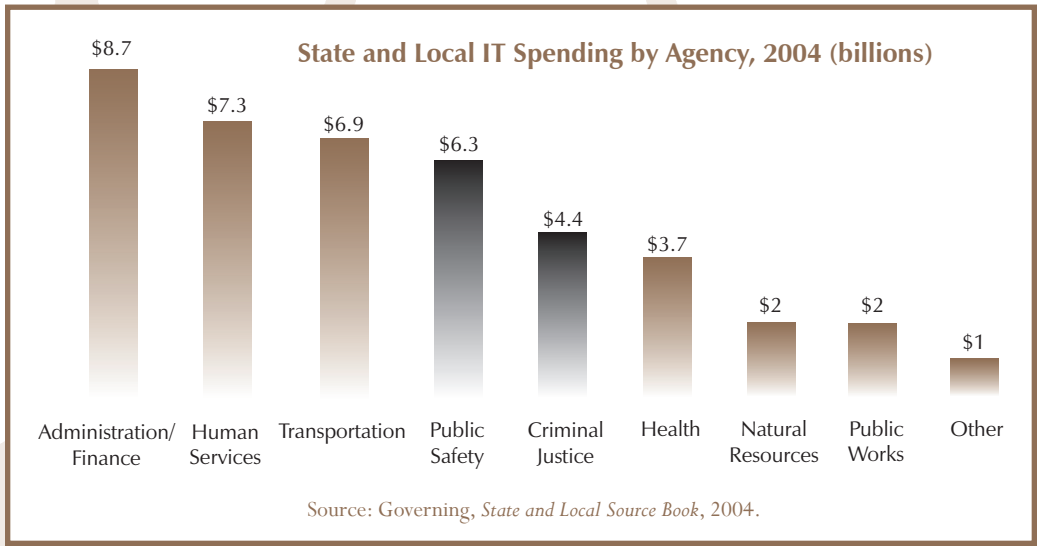
Questions will increase regarding minimal standards for courtroom technology, who will determine what is purchased (the courts or other agencies of state or local government), and who will bear the costs. Will it be fair to tax certain individuals disproportionately (i.e., assessing surcharges against litigants) for high-tech courtrooms that benefit all citizens?

In addition to legal counsel, litigants will need technological support to ensure that they have meaningful access to justice.

The increase of e-business in courts will reduce space and staffing needs for public transactions. New and renovated courthouses will reflect this new reality. Staff will be reallocated to other court functions.

Urgency

Justice system costs will continue to rise as the minimum standards for due process become higher in the technological age.



Source: Governing, *State and Local Source Book*, 2004.

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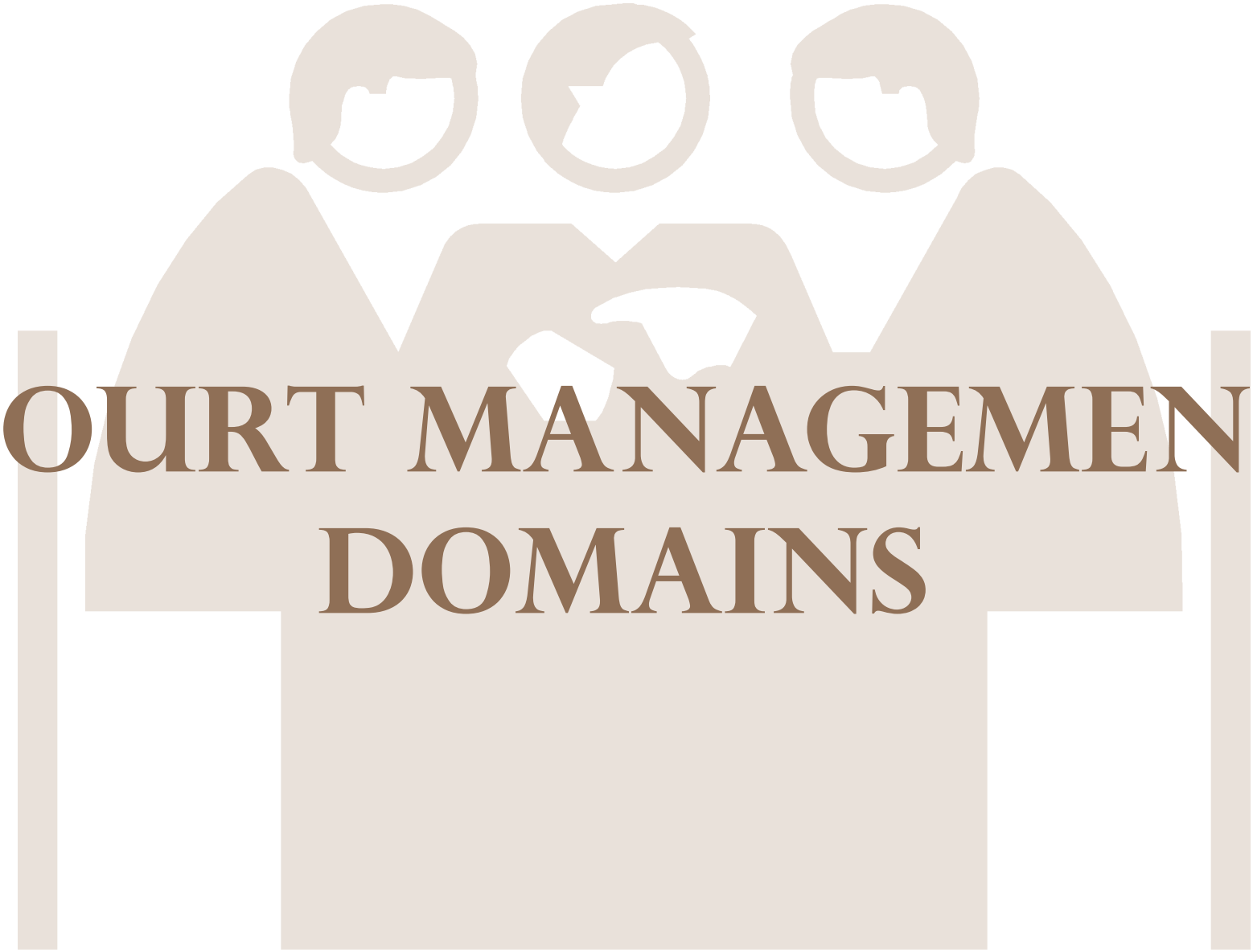


COURT MANAGEMENT DOMAINS

JURIES

JURY REFORM

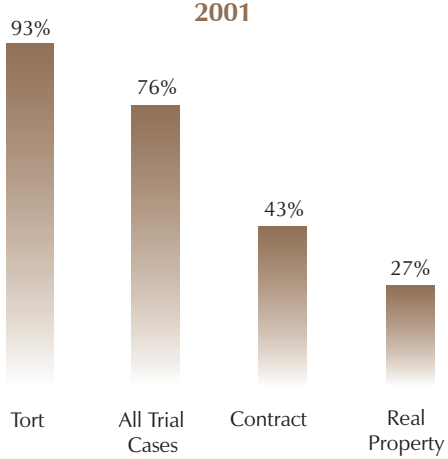
Present Conditions

The U.S. adversarial system is so well accepted that less-than-vigorous advocacy is considered a breach of duty. But the system can leave layperson jurors befuddled. Jury service, along with voting, is one of the fundamental means for public participation in government. For most citizens, it provides the primary window into the U.S. justice system.

New York and other jurisdictions have improved jury service to improve public trust and confidence in the justice system. Better parking and day care; source lists that draw upon wider, more diverse citizen pools; recognition of the importance of citizen service on juries; and better efforts to inform prospective jurors of what to expect all improve satisfaction with jury service.

Despite other increases in the scope of the U.S. legal system, there has been a steady decrease in civil jury trials.

Percent of Trial Cases Disposed by Jury, 2001



Source: Bureau of Justice Statistics, *Civil Justice Survey of State Courts*, 2001.

Probable Future

Technically complex cases will continue to challenge the skills of the average jury, particularly with no change in current practices.

Significant efforts to open the jury process will likely continue, most notably in the area of jury deliberations. Likely developments are increased media coverage, particularly by TV, and sensationalism of cases and processes within courts.

The need for juries in civil cases will continue to decline as the incidence of civil jury trials decreases, further eroding citizen involvement in government.

Urgency

Several reforms for jury empowerment and improvement are recommended, such as improving juror orientation; enabling juries to take notes and ask questions; providing a built-in laptop computer for each juror; enabling multimedia access to testimony; allowing more information to reach the jury; allowing fewer professional exemptions in jury selection, along with limited terms of service and more pay; and using lay and professional judges in "mixed juries."

MANDATORY JURY ROLE IN SENTENCING

Present Conditions

The U.S. Supreme Court decided in *Ring v. Arizona*, 536 U.S. 584 (2002), that juries, not judges, must decide aggravating or mitigating factors during capital sentencing,

because such decisions involve fact-finding. Sentencing schemes in Arizona, Colorado, Idaho, Montana, and Nebraska were found to be an unconstitutional violation of a defendant's Sixth Amendment right to a jury trial.

Arizona and other states have grappled with the outcome of *Ring*.

Probable Future

The Supreme Court should soon resolve the issue of *Ring's* retroactivity. Other questions must be resolved for states that use a hybrid sentencing system in which the jury recommends a sentence to the judge, who may then override it:

1) Can an advisory jury recommendation satisfy *Ring's* requirements?

2) Must jurors be unanimous in deciding aggravating factors? (Juries must decide the death penalty and all elements unanimously, but the requirement of unanimity for deciding the aggravators is unclear. Indeed, it is difficult to know which aggravators the jury focused on.)

3) Do instructions to advisory juries adequately convey the gravity of the jurors' role?

"The right to trial by jury guaranteed by the Sixth Amendment would be senselessly diminished if it encompassed the fact-finding necessary to increase a defendant's sentence by two years, but not the fact-finding necessary to put him to death."

Justice Ruth Bader Ginsburg

Source: *Ring v. Arizona*, 122 S.Ct. 2428 (2002).

Urgency

Whether juries are more or less lenient than judges remains to be seen. However, it is certain that the most immediate effect will be on voir dire, jury instructions, and juror stress. These will become more complicated because the onus of a life-or-death decision is on jurors.

Apprendi has been extended to sentencing decisions by *Blakely*.

DEMOGRAPHICS

Present Conditions

Various demographic factors affect jury duty, jury use, and management of juries.

Probable Future

Income, race, English ability, and other demographic features affect juries.

Urgency

The ability to speak and read English is required for jury service in most jurisdictions. However, there is usually no particular test for these abilities, and the level of English varies from person to person. Sometimes the lack of skills is not apparent until the middle of a trial.

JURY INNOVATIONS THAT HELP JURORS PERFORM

Present Conditions

Following customer service trends in the courts over the past decade or so, courts now value and consider jurors more highly.

Communication with jurors and other court customers must be clear and easy to understand.

The need for information is a common theme for juries and others across the board.

Probable Future

Juror expectations may be shaped by pop culture and increased media attention.

Courts must accommodate jurors with disabilities and make jury duty more convenient for all (hours, scheduling, access, per diem, etc.). At the same time, permissible excuses and exemptions are decreasing. Nevada, for example, has eliminated its excuses. Proponents of the Jury Patriot Act encourage states to adopt the rule and eliminate occupational exemptions and create a lengthy trial fund.

Urgency

Courts are revisiting their jury instructions, making them easier to understand and more accessible (e.g., Plain English and online instructions). More courts are allowing jurors to take written instructions with them into deliberations.

Using a neutral expert to brief jurors increases their grasp of scientific and technological issues.

Innovations to Help Jurors Perform:

- Permitting jurors to take notes
- Giving jurors preliminary instructions on the law
- Using Plain English during the trial
- Post-verdict meetings with the judge and jurors
- Using Plain English jury instructions
- Giving jurors suggestions for conducting deliberations
- Permitting jurors to submit questions to witnesses
- Debriefing jurors after stressful trials
- Responding to juror questions about final instructions
- Providing jurors with written or taped jury instructions
- Providing juror notebooks
- Giving jurors final instructions before closing arguments
- Post-verdict meetings with judge, jurors and attorneys
- Placing time limits on attorneys
- Mini-opening statements/interim commentary
- Permitting juror discussions during trial

Source: G. Thomas Munsterman, "Jury News, Implementing Jury Trial Innovations," *Court Manager* 15, no. 1 (2000).

PERSONNEL, WORKFORCE

A GROWING SHORTAGE OF COURT STAFF AND CHANGING WORK ATTITUDES

Present Conditions

According to Martin and Wagenknect-Ivey, middle and senior ranks in court management are aging, an observation that mirrors many public agencies. At the same time there is a shortage of qualified entry-level workers.

People are searching for different ways to manage their lives, to include work as an important but lesser priority. Those attitudes will alter their relationships with their employers over the coming decade.

The prioritization of family obligations will increase, a trend influenced in part by increasing numbers of women in professional and management positions.

Probable Future

Generational turnover in court management looms over the next decade, while the pool of potential employees shrinks and courts face competition for them in the public and private sector.

Courts will offer incentives for extending the careers of valuable managers who may be considering retirement while initiating or expanding management-training and succession-planning efforts.

Combating a management shortage will involve flexible employment arrangements, such as flexible hours, part-time hours, part-year schedules, temporary work, contract work, consulting, work at home, and job sharing. Technological advances will ease some shortages.

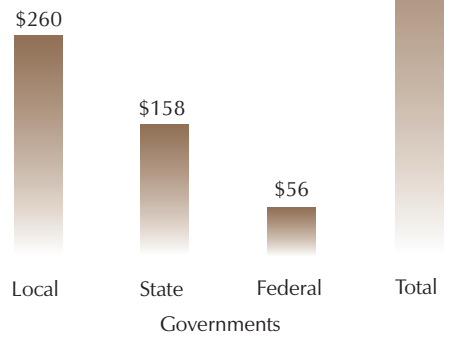
Younger workers, putting family and health first, will not have the same commitment to their work or their employers as earlier generations.

Urgency

Courts should have less expectation that staff will be willing to work after hours outside a flexible work arrangement.

Courts must keep in mind that older workers dramatically increase the cost of labor. People over 50 are responsible for 58% of all health care resources and consume 74% of all prescription drugs.

Total Payroll for All Judicial and Legal Employees (millions)



Source: U.S. Department of Justice, Bureau of Justice Statistics, *2000 Justice Expenditure and Employment Extracts*.

Professional Court Interpreters Are Those Who:

1) possess educated, native-like mastery of both English and a second language
2) display wide general knowledge characteristic of what a minimum of two years of general education at a college/university would provide
3) perform the three major types of court interpreting:
   - sight interpreting
   - consecutive interpreting
   - simultaneous interpreting

Source: National Center for State Courts, Court Interpretation: Qualifications for Court Interpreting, 2002.

DEMANDS OF CULTURAL DIVERSITY

Present Conditions

Less-than-positive cultural trends include polarization of people by race, ethnicity, lifestyle, and class. Decline in the number of traditional families (breadwinner, stay-at-home spouse, children) is frequently noted. Social norms and values are in apparent flux (e.g., the cultural divide over homosexual marriage and homosexual ministers).

Probable Future

Cultural education for judges and court staff will become mandatory.

Courts will increasingly emphasize multilingual and multicultural backgrounds among hiring criteria. Foreign language interpreters will be a growing presence.

DEMANDS FOR SCIENTIFIC AND TECHNICAL LITERACY

Present Conditions

While scientific and technological evidence is invaluable in the search for truth, judges must act as "evidentiary gatekeepers" to ensure that the quality of the science upon which court decisions rest is sound. According to U.S. Supreme Court Justice Stephen Breyer, "The judge, without interfering with the jury's role as trier of fact, must determine whether purported scientific evidence is 'reliable' and will 'assist the trier of fact,' thereby keeping from juries testimony that is not respected by other scientists."

Probable Future

Courts with significant scientific demands—both in operations and in case subject matter—will hire or retain the services of their own scientific experts/advisors.

Urgency

More frequent and substantive interaction will be required between court staff and the scientific community to handle issues related to the storage and security of records and the validity of expertise and scientific testimony.

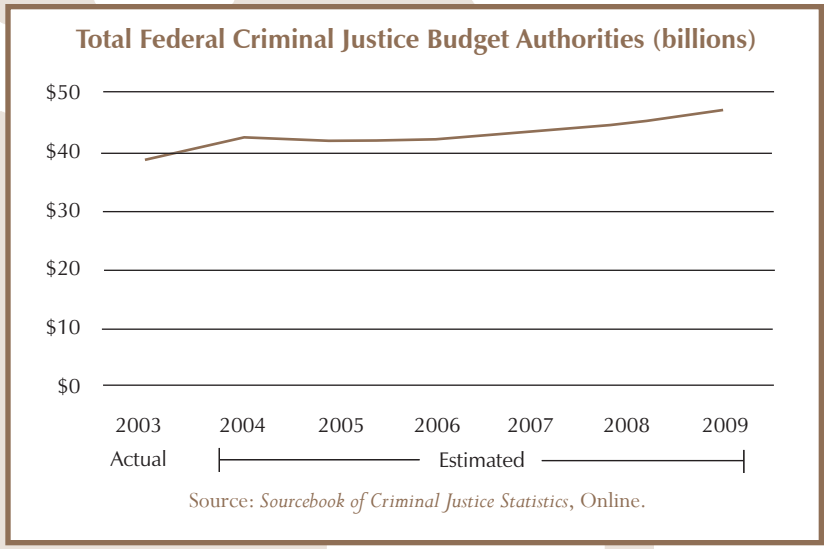
BUDGET

FEDERAL POLICIES IMPEDE STATES' FISCAL RECOVERY

Present Conditions

Federal policies have contributed significantly to the need for states and localities to cut expenditures and increase taxes to balance their budgets.

- Federal policies have cost states and localities more than $175 billion from fiscal year 2002 to fiscal year 2005.
- These costs have averaged 8.4 percent of total state general fund budgets during that time, a large amount.
- The federal government provided $20 billion in federal fiscal relief to the states in 2003. This $20 billion helped states avoid some budget cuts and tax increases, but it pales in comparison to the more than $175 billion in state costs and forgone revenues attributable to federal policies over 2002-05.



Source: *Sourcebook of Criminal Justice Statistics*, Online.

At least five areas of federal policies have contributed to the states' fiscal distress: federal tax policy; federal preemption of state and local taxing authority; the failure of Congress to address Supreme Court rulings that prevent states and localities from collecting taxes owed to them; mandates that require states to spend funds for particular purposes; and federal Medicare and Medicaid policies that have become expensive for states.

Probable Future

Continuation of federal tax cuts and related policies will force more tax and fee increases, as has already occurred in a majority of the states in the last two years. These increases will fall heavily on low- and moderate-income families, because the sales and excise taxes that the states favor tend to be regressive. The slow return of state revenues to pre-recession levels will force still more cuts on services, such as child and health care programs; increases in college tuitions; and reduced hours when the public can access government services, such as courts and departments of motor vehicles. These cost reductions will also largely affect low- and moderate-income families.

Urgency

Courts will see a rise in family, juvenile, and criminal cases as federal policies and state reactions further widen the gap between the poorer and wealthier sectors of society.

IMPROVING ECONOMIC CONDITIONS HAVE NOT REVERSED THE IMPACTS OF RECENT CUTS

Present Conditions

The recession may be over, but state government fiscal conditions remain weak. As states write their budgets for the 2005 fiscal year, their revenues are still well below pre-recession levels. After implementing multiple budget cuts and depleting reserves, states have fewer options to address budget problems. Officials face pent-up spending needs, especially for those programs that have been cut, and growing health care costs.

More significant to the courts may be the long-term effects of government cuts to programs serving families and those receiving treatment for substance abuse.

Probable Future

Recovery will be slow. Given current federal priorities and prevailing political philosophy, states should not expect much help from the federal government in the short-term. Even a change of administrations would be unlikely to alter this scenario, even with different priorities.

In the short-term, the current recession will increase pressure, particularly from local government constituencies, upon state governments to increase the state share of funding for the trial courts, accelerating an existing trend.

State court constituencies will apply greater pressure to the federal government for monetary support (as in recent efforts to save the State Justice Institute), but such funding will not come without strings.

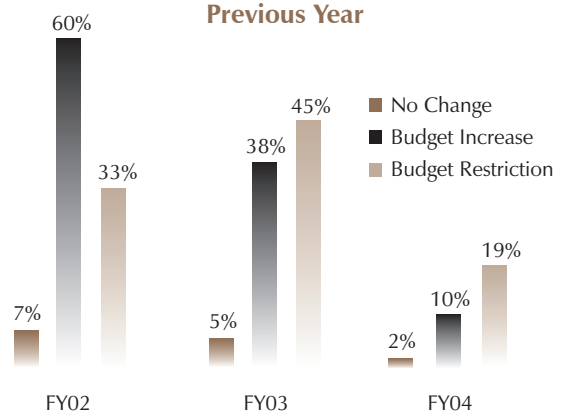
Urgency

Courts will place greater emphasis on gathering financial information regarding revenues, expenditures, and pass-through accounts as part of larger efforts to measure performance and demonstrate accountability.

Courts will become more aggressive and sophisticated in competing for funds in state and local budgetary processes.

More courts will explore alternative funding strategies, including private funding for programs within or affiliated with the judiciary. Some courts have already established 501(c)(3) entities to assist in court initiatives; more incorporated entities will help courts with lobbying and fund raising. Such strategies will raise many potential questions related to conflicts of interest.

Changes in State Court Appropriation from Previous Year



Source: National Center for State Courts, "Funding State Courts: Trends in 2002: Budget Woes and Resourceful Thinking."

FACILITIES & SECURITY

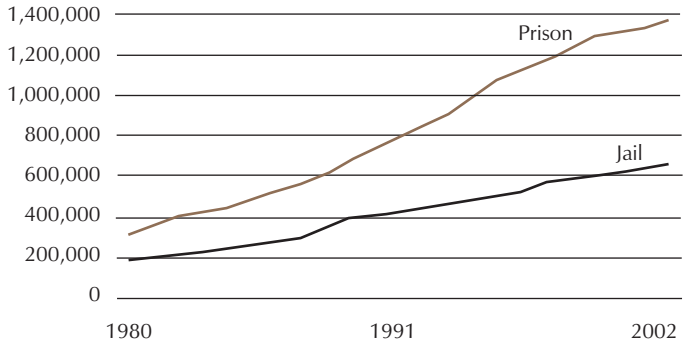
OVERCROWDING OF PRISONS AND SLOWING OF PRISON CONSTRUCTION

Present Conditions

The U.S. has about 1.8 million people behind bars (100,000 in federal custody, 1.1 million in state custody, and 600,000 in local jails). The nation's incarceration rate remained at about 110 inmates per 100,000 people for much of this century; it began to climb in the mid-1970s, doubled in the 1980s, and then again in the 1990s. It is now 445 per 100,000 (among adult men, about 1,100 per 100,000). During the past two decades, about a thousand new prisons and jails have been built in the U.S.—yet prisons are more overcrowded.

States have turned to private, for-profit prisons in the past decade. There are 150 private prisons in 31 states, mostly in the South and West. They have recently come under fire, however, for problems with security and medical treatment.

Number of Persons Under Correctional Supervision



Source: Bureau of Justice Statistics, *Correctional Populations in the United States*, 2002.

Probable Future

Prison construction will slow during the coming decade, as competing budget priorities intervene.

Prison-building moratorium projects, such as those in New York and California, are likely to grow.

Growth in the private prison movement is likely to slow in the coming decade, unless government budget shortfalls and another large increase in prison population combine to push the system toward the privates as the only alternative.

Urgency

Courts will be caught between competing poles of crowded prison facilities and inflexible demands for long sentences.

COURTHOUSE SECURITY CONCERNS AND AN EMPHASIS ON HOMELAND SECURITY

Present Conditions

As public institutions, courthouses would seem as likely as any government buildings to be the targets of terrorists. In the short run, courthouse security may actually suffer: Budget cuts will reduce funds available for security, and individuals responsible for homeland security give the courts lower priority in funds and other assistance than they do "first responders" and other public and private institutions.

Secure waiting rooms are needed for plaintiffs and defendants, children who are waiting to testify or appear in court, and parties involved in arbitration.

How Can a Courthouse Be Made Safer?

- A single point of public entry to the building
- Installation of weapons-screening checkpoints with walk-through metal detectors and x-ray devices at all public entrances
- Properly sized and configured lobbies to permit appropriate queuing at entry screening checkpoints without making people wait outside
- Separate judicial entrance from a secure parking area with separate access to offices for elected officials
- Separation of public, judicial/staff, and prisoner circulation systems
- Secure vehicular sally port for transfer of prisoners to and from the building
- Use of central and court-floor prisoner holding areas accessed by secure prisoner circulation for the quick and safe delivery of prisoners to courtrooms
- Sufficient public waiting space to separate opposing parties, particularly in domestic cases
- Elimination of blind areas and dead ends within the building or places where people can hide

Source: National Center for State Courts, "Court Security," CourTopics.

Probable Future

Both for practical (interstate and international disputes) and security reasons, more court proceedings will take place by closed-circuit and other "virtual" technologies.

Concerns that courts themselves may become targets of violence—beyond the existing concerns for individuals within the courts—will lead to greater attention to security in court design and staffing. Screenings of individuals entering the courthouse will become more frequent and invasive.

Courthouse security staff will be faced with their own questions regarding profiling.

Particularly as more records are handled electronically and the importance of preserving certain types of evidence for future forensic examination (e.g., DNA analysis) increases, courts will have to devote greater attention to where such materials will be stored and how they will be protected against tampering or destruction.

Courthouses are places of dispute resolution for adversarial parties. Separate waiting areas for those awaiting adjudication, domestic violence victims, and children will be included in courthouse planning, despite limited resources. Courts will have to find creative ways to finance and support rooms necessary to ensure public security and confidence.

Urgency

As public institutions and as venues for trying suspects, courts will be potential targets for terrorists. Courtroom and courthouse security measures will increase.

As the reliability of low-cost, biometrics-based security systems (e.g., hand geometry, face and voice recognition) continues to improve, more courts will find them cost-effective to install at control points to increase the security of their facilities.

RFID (radio frequency identification) tags and automatic readers may prove effective in securing and tracking case evidence.

COURTHOUSE CONSTRUCTION AND CHILD CARE

Present Conditions

Court facilities have always had different needs from office buildings serving comparable numbers of people. Changing expectations place new demands on courthouses that must be contemplated whether one is building new or renovating old facilities; e.g., courts must consider the accommodation of new technologies and the needs of citizens with disabilities.

Courts need secure child care facilities for the children of parties and children waiting to appear in court.

As more court business is conducted electronically, the relative number of public transactions occurring at the courthouse decreases.

Probable Future

Courts will need secure child care facilities for children waiting to testify, child victims, jurors' children, and employees' children. This need opens up new responsibilities for the court in creating a friendly environment, and will be an opportunity for courts to connect with the community. The courts will be able to serve as a model for good child care and distribute information on social services to parties who have court business and need such information.

Courts will have to use diverse funding for these day care facilities, including victim advocates and bar associations.

Urgency

Courthouses that feature child care facilities and spaces for other dependent family members will have an advantage in recruiting and retaining staff. Improving day care in the courts will improve court and community relationships and develop public trust and confidence.

To make the most out of its resources, courts will have to consider flexibility in room use.

TECHNOLOGY

IMPLEMENTATION OF NETWORKED JUSTICE INFORMATION SYSTEMS

Present Conditions

Although much progress has been made in exchanging data between justice-related agencies, most automated court systems operate in isolation. Data entry continues to take place independently in law enforcement, prosecution, judicial, and corrections systems.

Probable Future

Integrated justice systems that link the courts with local, state, and national criminal justice and social services systems will support efforts to track people in criminal and domestic cases. Such system developments will improve government efforts to find suspects and witnesses in criminal cases, improving arrest rates and reducing delays. Similarly, such developments will assist in interjurisdictional matters involving protection orders in domestic violence, custody, and support. Finally, the systems will provide more effective means for exploring the links between the civil justice system (particularly domestic cases) and crime.

Urgency

Justice system leaders in most jurisdictions realize the need for interconnectivity and are taking some steps to find solutions. While a few jurisdictions have successfully implemented integrated systems serving most of the key players, a more attainable goal is exchanging information between separate systems through standardized data and communications interfaces.

Relevant Issues for Selecting a Courthouse Site Include:

- Ease of public access
- Availability of public transportation and parking
- Proximity to other government buildings and programs
- Relationship to other services such as restaurants, office supplies, libraries, copy centers and attorney offices
- Relationship to civic center
- Impact on surrounding neighborhoods
- Prominence of site
- Availability and cost of site
- Expansion potential
- Site amenities
- Physical constraints of the site
- Site use restrictions

Source: Utah Judicial System Master Plan for Capital Facilities.

What is ICJIS?

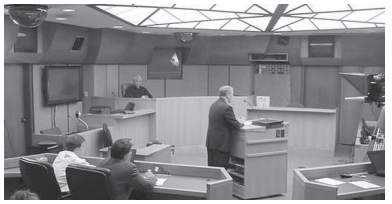
"A comprehensive ICJIS system draws its data from many sources, such as court case files, mug shots, fingerprints, driver's licenses, correctional facilities, and criminal histories. The ideal of an ICJIS begins with the information that law enforcement gathers from a crime scene or an offender—information from as close to the source as possible. . . . Each entity controls the information that it adds to the data pool and also may control who is allowed to view their data. The result is a comprehensive offender-tracking system complete with biometric identifiers and criminal histories. Extensive information-sharing networks are the backbone of this type of data interchange."

Source: National Center for State Courts, "Integrated Criminal Justice Information Systems, Trends in 2002: Communication, Collaboration, and Cooperation."

TECHNOLOGY UPDATES TO COURTROOMS

Present Conditions

The majority of courtrooms across the country are poorly equipped for today's evidence presentation techniques, accommodation of the hearing impaired, and even effective connection to information systems.



Courtroom 21, College of William & Mary Law School

Probable Future

Technological advances and reduced technology costs will change courtrooms and overall justice system operations. Specifically, more of the advanced features found in demonstration projects like Courtroom 21 will be added to courtrooms around the country—initially perhaps to only one courtroom in a larger courthouse, but eventually to most. Such advancements will lead to more "virtual courthouse" proceedings.

Urgency

As new courthouses are constructed, most jurisdictions are incorporating some degree of advanced technology in many of their courtrooms. At the very least, new courtrooms are being designed to accommodate future installation of such technologies as budgets permit. Continued improvement in price/performance ratios—as well as rising expectations among the legal community—will accelerate this trend.

IMPLEMENTATION OF IMPROVED INFORMATION ANALYSIS

Present Conditions

Caseload analysis and distribution tend to focus on total cases. Most legacy case management systems are very limited in their ability to capture performance indicators and provide detailed court management reports.

Probable Future

Appropriately applied technology will enable the parsing of cases into "case events," which reflect some significant work or activity that moves the case forward through the case-processing stages.

Urgency

By counting case events rather than cases, court administration might aid in creating efficient and equitable workloads. Capturing and comparing the dates for such events can identify case management bottlenecks.

ADVANCES IN INTERPRETATION TECHNOLOGY

Present Conditions

The growing instance of litigants and witnesses for whom English is not the primary language has caught many courts unprepared. Our justice system demands equal access to justice for linguistic minorities who—unaided—would be unable to fully comprehend court proceedings.

Probable Future

Courts are already taking advantage of telephone interpretation systems, such as the AT&T Language Line Services and the federal courts' Telephone Interpreting Program (TIP), to address this need. TIP uses a Web site and a two-line telephone system to provide interpreter services for a variety of languages with no travel expenses and minimal delay.

Advances in interpretation technology will be spurred by demand that outstrips the available supply of certified language interpreters for court proceedings. Some individuals will also perceive automated interpreters as being more consistent and less likely to introduce biases—at least ones that cannot be easily identified—in the interpretation process.

Urgency

Simultaneous translation of speech requires tremendous computing power and sophisticated software. Systems that may be acceptable for limited phrases used in business transactions or tourist exchanges will not meet the rigorous demands of court interpretation. As advances in hardware and software continue, automated interpreting systems may become acceptable for some purposes.

Expenditures for Court Interpreters

States	2003	2004
California	(FY 01-02) $58 million	$68 million
Florida	$5 million	$8.5 million
New Jersey	$2.4 million	$3.9 million
Maryland	$1.2 million	$1.65 million
North Carolina	$708,260	$1.7 million
Nebraska	$300,000	$500,000
Colorado	Unknown	$300,000

Source: National Center for State Courts, "The Growing Need for Qualified Court Interpreters," *2004 Report on Trends in State Courts*.

USE OF VIRTUAL COURTHOUSE

Key Technologies in Virtual Courthouses

- Evidence presentation systems
- Internet and remote broadcast
- Real-time court reporting
- Plasma display monitor
- Video annotation
- Video conferencing
- Digital court reporting
- Computer legal research
- Advanced audio
- Touch screen integration
- Wireless network

Source: Ninth Judicial Circuit Court of Florida.

Present Conditions

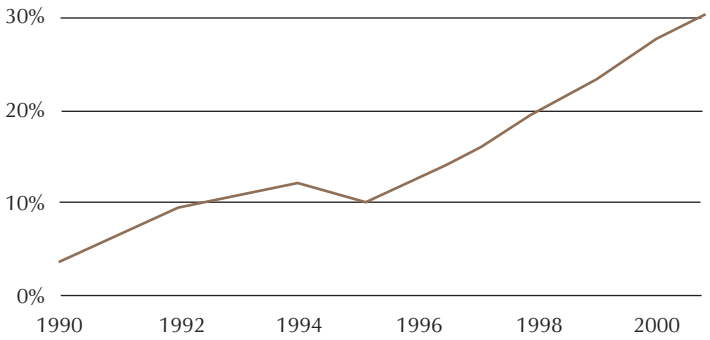
With a few exceptions, courts today require the physical presence of all parties to conduct proceedings. In addition, the bulk of nonlitigation transactions (e.g., licenses, deeds, and permits) are conducted in person. The expense of facilities to accommodate this volume of traffic and the cost of productive time wasted in travel and waiting are a growing concern.

Probable Future

Global trade and travel will increase the demand for virtual courthouse capabilities that allow at least some if not all participants in litigation (judges, witnesses, attorneys, parties, and even jurors) to participate remotely. Safety concerns will also contribute to increased demand for such capabilities.

Urgency

Courts will work through the remaining legal and procedural barriers to permit more widespread use of videoconferencing and electronic transactions to carry out their mission more effectively, as the supporting technologies continue to improve in capabilities and decrease in cost.



Source: http://www.usatoday.com/money/perfi/taxes/2002/02-15-efiling.htm.

DEMAND FOR E-SERVICES

Present Conditions

Following the lead of online commerce, local, state, and federal government agencies are rapidly implementing e-government solutions to deliver routine services and permit transactions via the Internet. More citizens are filing taxes and filling out government forms online, as well as conducting banking and purchasing merchandise from online businesses.

Probable Future

Although many courts now have a Web presence and some courts provide limited public transactions through their Web sites, the need to provide more extensive services will accelerate. As more individuals routinely use broadband Internet from home and offices, traffic congestion increases, and the expectation of convenient 24-hour service grows, public pressure will demand that courts provide better electronic services.

Potential savings in staff, facilities, and security costs will help courts justify the investment in technology.

Urgency

From online parking ticket payments to rescheduling appearances, courts are rushing to provide better and much more extensive services to their customers. Although Web-based video appearances by individuals will be a ways off for most courts, conducting routine transactions through interactive voice response (IVR) telephone systems and the Internet will become commonplace.

WEB SERVICES

Present Conditions

Courts currently must choose between developing their case management systems in-house (at the state or local level), contracting for software development services to build a custom system, or purchasing a system from a commercial vendor (frequently with some customization required). Any of these alternatives require that the software reside on hardware owned or controlled by the court. Medium-to-large courts usually have a data center and staff to support the system, even where a vendor provides maintenance and updating services. Modifications to and replacement of such case management systems are costly and disruptive.

Probable Future

Web services use standardized communications protocols to permit business processes and computer systems to communicate automatically via the Internet. Business functions needed by the end user are delivered transparently over the Internet by service providers, rather than by software applications running on a local system.

What is XML?

- XML stands for Extensible Markup Language
- XML is a markup language much like HTML
- XML was designed to describe data
- XML tags are not predefined. You must define your own tags
- XML uses a Document Type Definition (DTD) or an XML Schema to describe the data
- XML with a DTD or XML Schema is designed to be self-descriptive

Source: www.w3schools.com

XML (extensible markup language) is a key component of the Web services model, providing a standard method to exchange data. Specific communications protocols and automatic service location and connection methodologies constitute the rest of the model.

Though fairly simple in concept, the Web services model must successfully navigate through a sea of conflicting and overlapping standards as technology industry giants rush development for what they perceive as a major market opportunity.

Urgency

Major industry players and standards-setting groups are transforming Web services from concept to consistent reality. Court managers will begin to consider the advantages of Web services architecture (whatever its final form) for future generations of case management systems and other administrative systems needed to support court operations.

At some point, a court may be able to pick from a menu of desired functions and have those functions delivered directly to the desktops of the appropriate staff from service providers hundreds of miles away. The only technology requirements may be a PC and broadband Internet connectivity!

Customer service is important to consider when creating court Web sites. Accessibility, design, readability, user friendliness, navigation, and the purpose and audience should all be considered carefully.

SSL VIRTUAL PRIVATE NETWORKS

Present Conditions

Virtual Private Networks (VPNs) have been around since the mid-1990s, performing a vital function in numerous organizations. VPNs allow secure connections between a remote computer and an organization's private network, using the public Internet as the communications pathway. However, VPNs require that the remote computer (e.g., laptop, employee's home computer, or PC in a small branch office) be specially set up with a properly configured client application to enable it to connect to the private network.

Probable Future

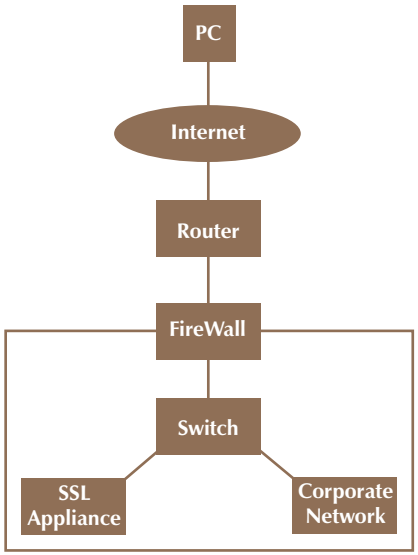
Secure Sockets Layer (SSL) VPN gateways have very recently emerged to offer the advantages of VPN without the necessity of specially configured client software. Moreover, they permit secure, controlled connection down to the individual application layer rather than to the entire network.

This seemingly modest development has tremendous implications for numerous organizations struggling with how to provide low-cost, high-speed, secure connectivity to a wide range of individuals and organizations who need to interact with its information systems, especially legacy systems that do not have a robust Web interface.

Urgency

In addition to simplifying the connection between remote court locations, this technology reduces the time and complexity of enabling judges and court staff to connect to the court's systems—even legacy systems—from any number of locations. The approach also will be useful for connection between law enforcement, prosecution, courts, and related agencies, perhaps obviating the need for traditional wide-area networks (WANs) in many cases.

Secure Sockets Layer Illustration



Source: Sans Institute, 2003.

BLOGS

Present Conditions

Weblogs, blogs, or "blawgs" with legal information are entering the mainstream as a means to convey and pool information online.

RSS feed makes the technology user and reader friendly.

Probable Future

Courts can post summaries of opinions, increase public outreach and awareness, and communicate with internal staff.

Increased public awareness will hopefully lead to greater public trust and confidence. And the better understanding the public has of the court's work, the more likely they will be to promote court funding.

Urgency

West Virginia's appellate court and the Fourth District in California use blogs to summarize recent decisions.

How Blogs Are Used

- Knowledge sharing/management
- Customer service
- Interactive journalism
- Communication
- Self-expression
- Learning
- Self-marketing
- Campaign/social reform
- Community building
- Experience tracking
- Storytelling

Source: Siemens, 2002, *The Art of Blogging - Part 1* www.elearnspace.org.

COMMUNITY & CUSTOMER SERVICE

COMMUNICATING COURT INFORMATION TO THE PUBLIC

Present Conditions

With public sensitivity to questions of personal information growing in a society that is ever more "connected," the courts' effectiveness in handling privacy and public access will affect public trust and confidence in the courts and government as a whole.

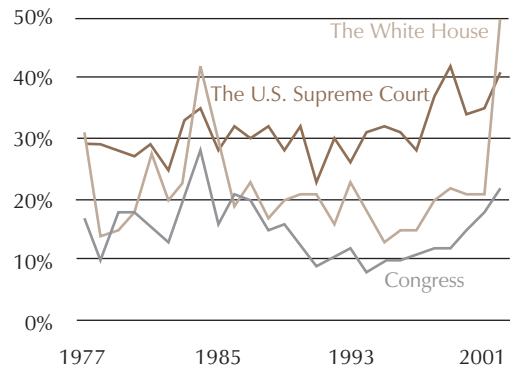
Consumers are demanding more options for obtaining legal services. States are amending court rules to allow for unbundled or limited scope legal assistance.

Probable Future

The intensive involvement of participants in problem-solving courts will raise overall expectations for the justice system. Consequently, the long-term success or failure of these courts is likely to have a magnified effect on public trust and confidence in the justice system.

Politics and funding priorities will have a significant impact on special programs affiliated with the justice system. Accountability and communication of successes will be important to the popularity and continuation of justice initiatives.

Percent Reporting "a Great Deal of Confidence" in Those Running Various Institutions



Source: *Sourcebook of Criminal Justice Statistics*, Online.

Emphasis on improving access to the justice system will result in more and better online services and, where practical, more convenient presences in the community.

Courts are becoming more innovative in improving accessibility, as shown by improved signs and use of courthouse facilitators.

Court personnel, notably bailiffs at the security desk, are trained in customer service and how to treat clients with dignity and respect.

Courts are presenting a customer-focused image with cleaner, more attractive surroundings. Art is used to beautify and represent ethnic diversity in the community.

Urgency

The courts must more effectively communicate their role in government and society and the details of their current and proposed new programs. Courts must emphasize communications and customer service training for staff who interact with the public regularly and support these staff by improving the design and provision of forms, signs, and instructional materials.

As courts emphasize customer service to improve public trust and confidence, there will be a conscious melding of the multi-door courthouse concept with problem-solving approaches. The courts cannot and should not try to be all things to everyone; however, they can, in cooperation with local agencies (public and private), ensure that appropriate internal and alternative processes and programs are available to serve their respective communities.

COURT CORE VALUES RELATING TO CUSTOMER SERVICE

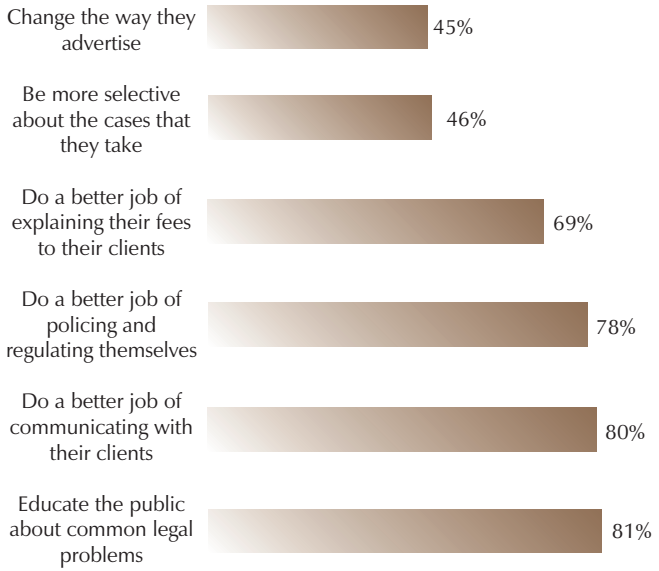
Present Conditions

Core court values, including convenience, accessibility, and affordability, mirror the Trial Court Performance Standards and aim to increase service to the public.

Probable Future

Clear communication with customers will become a higher priority. Better signs and attention to the availability and usability of information (online, in print, and in person) will increase public awareness and improve customer service. Court staff will also benefit from such efforts (e.g., use of a court facilitator or user-friendly signs reduces customer demands for directions and assistance from other staff).

How Important Do You Feel It Is that Lawyers…?



Source: National Center for State Courts, *Perceptions of Lawyers Consumer Research Findings*, 2002.

FACILITIES

Present Conditions

Clean, well-lit, accessible facilities improve the customer experience.

A positive or negative interpretation of courthouse artwork and design can influence public trust and confidence and raise diversity concerns. Attention to such details shows respect for the customer.

Probable Future

Courthouse design and furnishing will reflect greater sensitivity to the values and needs of a diverse public.

Urgency

Judges and court staff will receive more training in cultural awareness as part of larger efforts to address ADA compliance, diversity goals, and customer service.

The Courthouse

"But above all, the courthouse: the center, the focus, the hub; sitting looming in the center of the county's circumference like a single cloud in its ring of horizon, laying its vast shadow to the uttermost rim of horizon; musing, brooding, symbolic and ponderable, tall as a cloud, solid as a rock, dominating all: protector of the weak, juditiate and curb of the passions and lusts, repository and guardian of the aspirations and hopes…."

Source: William Faulkner, *Requiem for a Nun*.

SERVICES

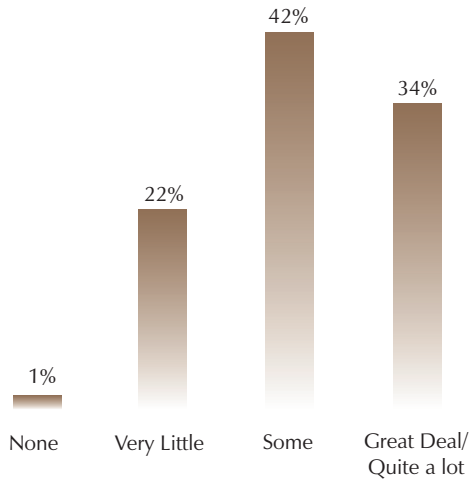
Present Conditions

Courts provide more services than ever on tighter budgets and hope that increased services will reduce the number of FTAs and increase public trust and confidence in the justice system. Better service leads to happier customers, which may result in more willing taxpayers/funders.

Probable Future

Courts and governmental agencies will emphasize customer service as a component of accountability.

Reported Confidence in the Criminal Justice System, 2004



Source: *Sourcebook of Criminal Justice Statistics*, Online.

COURT CULTURE

Present Conditions

The court is a monopoly; however, independence and accountability are required.

Courts must institute a culture of respect. This is a two-way street: customers who do not feel respected by the court are not likely to return respect.

In some areas, there is a sense of nihilism and depression that results in disrespect for the court and justice systems.

Probable Future

The "broken windows" theory (although it has been discredited to some extent) is useful in this context; clean, well-maintained facilities can improve customer service.

Urgency

Dress codes and decorum rules are often provided to parties and staff by the court.

ETHICS

ETHICAL ISSUES OF INCREASING IMPORTANCE AND FOCUS

Present Conditions

In recent years, judicial election campaigns have become more and more like those for other government offices, with funds raised in partisan campaigns rising steadily and the nature of campaign conduct declining in quality. At the same time, recent federal court decisions have further undermined long-established state restrictions intended to preserve judicial integrity by keeping the tenor of judicial campaign speech above that of other political campaigns. Recent cases include *Republican Party of Minnesota v.White*, 122 S. Ct. 2528 (2002); *Weaver v. Bonner*, 309 F.3d 1312 (11th Cir. 2002); *In re Raab*, 793 N.E.2d 1287 (N.Y. 2003); and *In reWatson*, 794 N.E.2d 1 (N.Y. 2003).

Probable Future

The growing cost of judicial election campaigns will expose judicial candidates to greater pressure from special interests. The independence of judicial decision making will be more in question. States will explore alternatives for funding judicial campaigns. More states will establish official judicial campaign conduct committees

More judges will be subject to disciplinary and impeachment proceedings.

Financial disclosure requirements will be expanded in association with codes of judicial conduct.

Urgency

More states will call for "reforms" of judicial selection processes and associated codes of conduct and disciplinary processes to prevent further deterioration of campaigns and the public's impression of judicial integrity.

Principles Affecting the Application of the ABA Code of Judicial Conduct:

- Judicial Independence
- Judicial Economy
- Fairness
- Effectiveness

Source: Marla Greenstein, "Ethical Relativity," *Judges' Journal* 21, no. 4 (2002): 38.

INCREASING USE OF PROBLEM–SOLVING COURTS

Present Conditions

The past decade has seen a shift in thinking about the roles of courts, from adversarial arenas to problem solvers. More attention is focused on courts' educational, moral, and therapeutic roles in upholding the rule of law; defining acceptable behavior; reinforcing fundamental values; regenerating a sense of community; and protecting, guiding, and

"As problem-solving courts become more of a fixture… they are capturing the attention of the established legal community. As a result, more discussion and debate about proper role of the court, judge, attorneys, and other professionals in problem-solving courts is expected. …[B]roader vetting of the problem-solving approach is an important step in the acceptance of the approach by the more mainstream judicial and legal community."

Source: Pamela Casey and David Rottman, *Problem-Solving Courts: Models and Trends* (Williamsburg, VA: National Center for State Courts, 2004).

supporting children, the mentally ill, the disabled, and other parties whose welfare depends on court services. A number of specialized, problem-solving courts have been established to address drug use, DUI, guns, and other cases.

Probable Future

Any shift in the role of the courts alters the role of the judge. Rules of judicial conduct have evolved with the expectations for judges as neutral arbiters in traditional adjudicative forums. The newer problem-solving courts demand that judges become more involved in all aspects of cases, including those outside the courtroom. Such involvement may challenge judges' ability to maintain traditional neutrality and strain existing limits for judicial conduct.

Urgency

Specialized proceedings such as those in drug courts will raise ethical questions for judges, lawyers, and treatment staff because deviating from traditional adjudication and its familiar standards for due process and professional conduct (such as in the increased chances for ex parte communications) will create pitfalls for the unwary.

Changes in the roles of courts have implications for the institution of the judiciary and its place in society and government and will require more careful study. With many changes being fueled by federal funds, we must know whether they are the result of conscious policy choices or unconscious reactions to resource availability.

BUDGET SHORTFALLS

Present Conditions

State and local budgetary shortfalls are forcing courts to reduce expenses and increase revenues.

Probable Future

Under financial pressure, courts and legislative bodies will increase court costs and fines and redouble efforts to collect unpaid assessments. Efforts to secure grants from federal agencies and private foundations will increase.

Courts will strengthen collection options and reevaluate the merits of some policies regarding revenue generation.

Urgency

More courts will explore alternative funding strategies, including private funding for programs within or affiliated with the judiciary. Courts will establish or work with existing 501(c)(3) entities to assist in court fund-raising initiatives; more incorporated entities will help courts with lobbying and fund raising. Such strategies will raise many questions related to conflicts of interest. Courts must make it clear that support for the courts will not result in special treatment.

"As institutions, the courts are in no immediate danger. Less certain is how courts will position themselves during this period of austerity and how their actions, and developments in other areas, will affect the long-term quality of justice."

Source: Kenneth G. Pankey, Jr., "Funding in State Courts: Trends in 2002: Budget Woes and Resourceful Thinking," online at www.ncsconline.org/WC/Publications/KIS_FundCt_Trends02_Pub.pdf.

CHANGING LEGAL STANDARDS

Present Conditions

The character of the legal profession is changing, particularly as a result of international trade pressures. Long-established restrictions on multidisciplinary and multijurisdictional practice are undergoing change.

Probable Future

Admission to the bar and ethical requirements for lawyers will become more uniform. Controls customarily exercised under the authority of the state courts will be eroded by federal and international actions.

Urgency

State, local, and individual interests and ethical standards will be sacrificed to national and international demands for comparable standards in support of free trade.

ORGANIZATION VISION & VALUES

SEARCH FOR EFFECTIVE VISION AND PLANNING TOOLS

Present Conditions

Between 1980 and 2000 the American criminal justice system grew by more than a factor of 3. It did this without effective strategic planning to manage growth.

Current budget shortages undermine planning efforts. Planning is often one of the first functions cut, along with training and evaluation.

Probable Future

While system growth will slow, as has been noted, it is not clear that more effective strategic thinking will take place across the system, though it will in local areas.

Responding to both budget constraints and the need for continued staff development, distance-learning planning efforts and offerings will increase and evolve to meet the needs of court staff.

Urgency

The need for more effective and coordinated strategic thinking is evident. More thinking about appropriate preferred visions and values for the courts and the justice system is also needed.

Performance Based Strategic Planning: A Nine Step Approach

Step 1. Introduce Strategic Planning in an Organizational Context. Create a Sense of Urgency
Step 2. Initiate and Agree on a Strategic Planning Process
Step 3. Formulate Goals
Step 4. Manage and Communicate the Planning Process
Step 5. Clarify Guiding Ideas
Step 6. Formulate Strategies
Step 7. Review and Adoption of Emerging Strategic Plan
Step 8. Prepare an Implementation Plan
Step 9. Prepare an Effective Learning Plan

Source: Ingo Keilitz, *Performance Based Strategic Planning (PBSP) in the Courts: A Planning Process Anchored in the Trial Court Performance Standards.*

MOTIVATED TO PROVIDE FOR HIGHER PERFORMANCE

Special Issues Related to Community Courts:

- Use of treatment and services as a sanction
- Court commitment to macro-level change
- Criminalizing the inconvenient and disorderly
- Vagueness of what represents the community of a court
- Court participation in business improvement projects

Source: Pamela Casey and David Rottman, *Problem-Solving Courts: Models and Trends* (Williamsburg, VA: National Center for State Courts, 2004).

Present Conditions

Courts recognize a need to be more efficient—to make administrative structures and processes more rational. Courts must improve dispute resolution and act as service centers. Use of technology to help pro se litigants, as well as outreach to a diverse constituency, must be increased.

Although problem-solving courts offer improved justice system solutions to common societal problems, fundamental questions arise concerning what is a core judicial branch function and what should be an executive branch responsibility. Such questions have implications for separation of powers and judicial independence and impartiality. The answers also have implications for funding, oversight, and accountability in areas such as probation and legal services.

Probable Future

More courts will recognize the need for regional redistricting. Such changes will make it possible to pool human resources, information technology, budgeting, and other functions by providing services from a central office. A hub-and-spoke approach to functional consolidation, with the larger central entity supporting the smaller ones, will be the simplest model. In-person services to the public could still be offered from multiple sites.

Urgency

Court performance measurements provide a sense of accountability and work as a better tool for self-advocacy. Accountability protects judicial independence.

Courts will need to point to specific performance and accountability measures to justify additional funding and resources.

The public wants programs that work and services that are convenient. From a practical standpoint, the public will not care whose budget pays for what service, but they will expect related services to be accessible—preferably under one roof to allow for "one-stop shopping."

As courts become more sensitive to performance and accountability issues, they will become technically sophisticated at self-measurement.

GROWTH OF SCENARIO PLANNING IN PUBLIC SECTOR

Present Conditions

Public agencies are using "scenario planning" as a planning tool, rather than traditional strategic planning.

Probable Future

Public agencies will engage in planning practices that account for the rapid nature of change and allow for flexibility.

Urgency

Administrators will want to learn more about this new approach to planning and how it might be used in the courts.

INFORMATION MANAGEMENT

SEEKING BETTER INFORMATION

Present Conditions

Studies suggest that courts are citing academic literature, including legal scholarship, less than in the past. This suggests a disconnect between courts and academe.

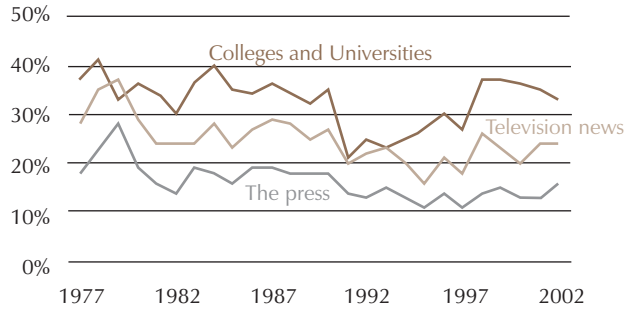
Probable Future

Without intervention, the disconnect between the court system and legal and other scholarship will likely increase.

Urgency

Rebuilding a closer relationship between the justice system, law schools, and other academic disciplines is needed.

Percent Reporting "a Great Deal of Confidence" in Those Running Selected Institutions



Source: *Sourcebook of Criminal Justice Statistics*, Online.

MANAGING DIGITAL DATA

Present Conditions

While progress is being made, the judicial system remains top-heavy with paper, with systems that do not communicate, and with piecemeal approaches to computerizing and the world of justice.

Probable Future

Courts and other institutions, both public and private, will continue to struggle with how best to preserve data. In the short-term, electronic records offer advantages in space requirements, search capabilities, and speed of transmission compared to paper records. However, electronic records are subject to degradation from a range of electromagnetic radiation sources and, more significantly, can become virtually inaccessible in less than a generation as their storage technologies become obsolete. Paper, on the other hand, can last hundreds of years and still be perfectly readable.

Urgency

Some even argue that more effective information management is now critical to survival.

To manage the growing volume of paper and electronic records, institutions will more frequently consider outsourcing tasks such as data entry and storage. Courts must maintain public records and sensitive information that may not be public, so issues of privacy and security (both misuse and damage) will interfere with otherwise cost-effective approaches.

MANAGING MIXED-MEDIA RECORDS

Present Conditions

As electronic records gain ground, courts must continue to track information in physical files and coordinate it with related electronic records. Misplaced or incomplete case files continue to be a problem in most courts.

Probable Future

Development of records management and document-managing systems has continued, with emphasis on automated file tracking and integrated indexing of physical, imaged, and electronic records.

Urgency

In addition to inexpensive and reliable bar-code file-tracking systems, radio frequency identification (RFID) technology is dropping sharply in price and increasing in reliability. RFID tracking systems use record tags that do not require line-of-sight scanning, increasing their utility in high-volume courts.

Courts that ensure the tight integration of their case management systems with advanced record and document management systems will be the most successful in implementing this technology.

Court Information That Can Be Remotely Accessed by the Public:

a. Litigant/party indexes to cases filed with the court
b. Listings of new case filings, including the names of the parties
c. Register of actions showing what documents have been filed in a case
d. Calendars or dockets of court proceedings, including the case number and caption, date and time of hearing, and location of hearing
e. Judgments, orders, or decrees in a case and liens affecting title to real property

Source: Martha Steketee and Alan Carlson, *Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts* (Williamsburg, VA: National Center for State Courts, 2002).

BALANCING PRIVACY AND ACCESS WITH A CONCERN FOR SECURITY

Present Conditions

The balance of privacy and public access interests is one of the most significant information management issues facing the courts.

Probable Future

Although keeping public records accessible—in fact, making them more so by way of electronic tools—will probably triumph over arguments to the contrary, the courts and other branches of government will reexamine the more fundamental question of what information belongs in a public record. Certain sensitive identifying information, such as Social Security numbers, will be absent or otherwise rendered unreadable to the public on new records. A greater question will be how to handle older public records where the cost of removing or hiding sensitive information may be prohibitive.

Urgency

Courts will become more sensitive to and sophisticated in protecting records against damage and tampering.

Courts will be expected to develop and regularly test their recovery capacities against the prospect of disasters, both natural and intentional. Preservation of both active and back-up records will be a central issue.

Providing Public Access to Court Records

1. Maximizes accessibility to court records
2. Supports the role of the judiciary
3. Promotes governmental accountability
4. Contributes to public safety
5. Minimizes risk of injury to individuals
6. Protects individual privacy rights and interests
7. Protects proprietary business information
8. Minimizes reluctance to use the court to resolve disputes
9. Makes most effective use of court and clerk of court staff
10. Provides excellent customer service
11. Does not unduly burden the ongoing business of the judiciary

Source: Martha Steketee and Alan Carlson, *Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts* (Williamsburg, VA: National Center for State Courts, 2002).

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ARTICLES

THE ROAD LESS ANGRILY TRAVELED: AGGRESSIVE DRIVING LEGISLATION*

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What Is Aggressive Driving?

Aggressive driving usually refers to a disregard for others on the road and is distinguished from the more extreme "road rage," which involves violent, criminal acts. Nevertheless, aggressive driving is a national problem that is responsible for more than 27,000 fatalities per year, as well as over 3,000,000 injuries, costing over $150 billion dollars.[1]

The incidents that trigger aggressive driving in the average driver are usually simple matters of discourtesy—hand and facial gestures, loud music, overuse of the horn, tailgating, speeding, and failure to signal when changing lanes. These driving behaviors are just the trigger points, while the actual causes of aggressive driving can be traced back to all forms of stress in an individual's daily life. "Road warriors" are the result of a flashpoint of all the accumulated stresses in life.[2] Like driving under the influence, aggressive driving is not a simple action, but a behavioral choice drivers make.

The National Highway Traffic Safety Administration (NHTSA) defines aggressive driving as follows: "when individuals commit a combination of many traffic offenses as to endanger persons or property." A more specific definition is the operation of a motor vehicle involving "three or more moving violations as part of a single, continuous sequence of driving acts which is likely to endanger any person or property."[3] Driving acts are ones you would expect: running stop signs, disobeying red lights, speeding, tailgating, weaving in and out of traffic, passing on the right, unsafe lane changes, going around railroad gates, flashing lights and blowing horns, facial and hand gestures.

A National Highway Traffic Safety Administration (NHTSA) survey of 6,000 drivers found that 60 percent of the drivers interviewed believed that unsafe driving by others is a major personal threat to them and their families.[4] A December 2, 2003 American Automobile Association (AAA) survey found aggressive driving to be the top threat on Washington, D.C., area roads. Forty-three percent of the respondents said that aggressive driving was more of a danger than traffic congestion and road conditions, and even impaired driving.[5] Moreover, AAA notes that aggressive driving has been increasing 7 percent per year since 1990.[6]

A Survey of States That Have Aggressive Driving Laws

Although nine states have enacted laws specifically directed at aggressive driving, most states do not distinguish aggressive driving from other traffic offenses. Table 1 summarizes the aggressive driving legislation in states that have specific aggressive driving laws.

Experiences with the current aggressive driving laws in Florida, Maryland, Nevada, Rhode Island, and Virginia are described below.

Florida

Florida has two applicable statutes: reckless driving and aggressive careless driving. The reckless driving statute requires intent be proven. The aggressive careless driving statute requires only that the offender to be guilty of two or more of the following acts simultaneously or in succession: exceeding the posted speed; unsafely or improperly changing lanes; following another vehicle too closely; failing to yield the right-of-way; improperly passing; or violating traffic control and signal devices.

The Florida Highway Patrol's policy seems to be to cite the most serious offense. Reckless driving is the more serious offense because the only ramification of aggressive driving is that the officer checks off a box on the citation indicating that the driver has met the statutory definition of "aggressive driving." Aggressive driving is not a punishable offense under Florida law. In 2001, the Florida legislature passed a new designation, "aggressive careless driving." However, this offense is a designation of existing offenses as constituting aggressive careless driving, and is used only to collect data, which is noted on a checkbox on Florida's uniform traffic citation, on the number of such instances that might arise.[7]

Maryland

Reckless driving citations are clearly more frequent than aggressive driving citations in Maryland. Aggressive driving is much more difficult to prove because three

TABLE 1: COMPARISON OF AGGRESSIVE DRIVING STATUTES BY STATE

	Year Enacted	Penalty	Is Anger Management or Aggressive Driving Education Specifically Stated in the Statute?	Additional Penalties Specific to Aggressive Driving Conviction	Other Information
Arizona	1999	Class 1 Misdemeanor punishable by up to 6 months in jail, a fine up to $5,000, or both.	Yes. Mandatory traffic school and education sessions may be ordered.	1st Offense: traffic school and possible suspension of driver's license for 30 days. 2nd Offense: within 24 months results in 1-year license revocation.	Reckless driving is a Class 2 Misdemeanor punishable by up to 4 months in jail, a fine up to $750, or both.
California	2000	Punishable by not less than 5 days in a county jail nor more than 90 days or a fine of not less than $145 nor more than $1,000.	Yes. Anger management or road rage courses may be ordered.	1st Offense: 6-month suspension of driver's license and/or anger management or road rage course. 2nd Offense: 12-month suspension of driver's license and/or anger management or road rage course.	"Road Rage" (or aggressive driving) is part of the reckless driving statute.
Delaware	1999	Fine $100-$300 or jail 10-30 days or both.	Yes. Mandatory anger management course is ordered.	1st Offense: $100-$300 fine or jail 10-30 days or both. 2nd Offense: within 36 months results in $100-$300 fine or jail 10-30 days or both. Mandatory suspension of driver's license for 30 days.	Suspended sentences are not permitted for aggressive driving violations.
Florida	2001	None	No	No	The designation of aggressive careless driving does not create a new violation or offense. The purpose of the designation is to provide a method to collect data of such instances that might arise through the inclusion of a checkbox on uniform traffic citations.
Georgia	2001	Points are assessed against driving record.	Yes. Anger management course may be ordered.	If assessed points meet prescribed levels, suspension of driver's license is ordered.	Penalties are based upon cumulative points assessed against driving record.
Maryland	2001	Fine not exceeding $500.	No	5-point penalty on driver's license.	
Nevada	1999	Misdemeanor	Yes. Traffic safety course is ordered.	1st Offense: Traffic safety course and possible suspension of driver's license for < 30 days. 2nd Offense: within 24 months, revocation of driver's license for 1 year.	
Rhode Island	2000	Fine not less than $20 nor more than $500.	Yes. Anger management course may be ordered.	Possible suspension of driver's license for 30 days.	
Virginia	2002	Class 2 Misdemeanor punishable by up to 6 months in jail, a fine up to $1,000, or both.	Yes. Anger management course may be ordered.	1st Offense: Anger management course may be ordered.	Aggressive driving with the intent to injure another person is a Class 1 Misdemeanor. Reckless driving is a Class 2 Misdemeanor.

violations must occur consecutively. The fine for reckless driving is also much higher ($575) than for aggressive driving ($355). Law enforcement contacts reported that the distinction between the two laws was clear, but that aggressive driving was rarely used because of the difficulty in prosecuting those cases. Consequently, aggressive driving cases rarely appear in court, and judges are uncertain about how clear the distinction is between aggressive and reckless driving. A court contact said sentencing options were sufficient, although fines were the most common sanction. Only in cases involving younger drivers were driver improvement classes and treatment programs used to any extent. No information on recidivism was available.

Nevada

As in Maryland, aggressive driving offenses are cited much less frequently in Nevada than reckless driving offenses. In the Reno Municipal Court, since the enactment of the aggressive driving law in 1999 until November 2003, there have been four aggressive driving charges initially filed, but only one has resulted in a final charge of aggressive driving. Prosecutor contacts suggested that because of evidentiary problems and the technical nature in proving aggressive driving beyond a reasonable doubt, aggressive driving charges are often plea-bargained or reduced. In the same court, over the same period of time, there have been 621 initial reckless driving charges and 213 reckless driving final charges. The number of reckless driving charges grew from 19 in 2000, to 211 in 2001, and to 224 in 2002, but dropped to 167 in 2003. Both prosecutors and law enforcement reported that the distinction between aggressive and reckless driving laws was clear, and prosecutors found the Nevada Highway Patrol to be very thorough when it made attempts to cite aggressive driving over reckless driving. Aggressive driving can have a greater penalty than reckless driving, in that the driver's license can be suspended. If the experience of the Reno Municipal Court is representative of other Nevada counties, then aggressive driving is hardly ever used, and the charge is amended down over half the time.

Rhode Island

The aggressive driving law in Rhode Island went into effect in August 2000. Aggressive driving is distinguishable from reckless driving because it is defined as two or more violations in sequence, e.g., tailgating, rapid lane changes, etc. Where it is possible, police would prefer to cite reckless driving because it carries a greater penalty. Aggressive driving requires excessive speeding or two other violations and is a summons offense, whereas reckless driving is a misdemeanor. Since the law was enacted in 2000 until November 6, 2003, there have been 52 aggressive driving convictions. In the same time period, there have been 222 reckless driving convictions. Law enforcement tended to believe that one citation was not necessarily more difficult to prove than the other. All were clear on the distinction between reckless and aggressive driving, and noted that intent is not needed to convict on aggressive driving. Most contacts replied that the law was effective to the extent it was used, but it is used infrequently.

Virginia

On April 7, 2002, the governor of Virginia approved legislation that makes aggressive driving punishable by up to six months in jail, a fine up to $1,000, or both.[8] Virginia is the first state that empowers judges to order violators to take a course in anger management. The governor also approved legislation to establish a driver improvement clinic program. Section 46.2-490 provides for a curriculum, which includes instruction on alcohol and drug abuse, aggressive driving, distracted driving, and motorcycle awareness. According to the legislation, approved on March 22, 2002:

> The driver improvement clinic program shall be established for the purpose of instructing persons identified by the Department and the court system as problem drivers in need of driver improvement education and training and for those drivers interested in improving driving safety.

A Web-based survey of law enforcement, prosecutors, and judges in Virginia produced the following conclusions:[9]

- The aggressive driving law is rarely used. Law enforcement officers rarely, if ever, write tickets for aggressive driving; prosecutors rarely charge the offense; and judges rarely see these offenses in court.
- About half of the judges believed that reckless driving laws were sufficient and that there was no need for specific aggressive driving legislation. About a quarter of police officers agreed, but commonwealth's attorneys were much more likely to believe that the legislation was necessary.
- Most often the offense is clear, so the officer will cite either reckless driving or aggressive driving; therefore, the commonwealth's attorney

does not often have to decide between the two offenses. When the option is available, law enforcement and prosecutors both prefer to cite or charge reckless driving. Aggressive driving requires a proof of intent that reckless driving does not. About half of the police and prosecutors and three-quarters of the judges said reckless driving is easier to prove than aggressive driving.

- Overall, law enforcement officers did not believe that changes in the law or in the penalty would result in them writing more tickets for aggressive driving. Most commonwealths' attorneys came to the same conclusion with respect to charging.
- Overall, judges were satisfied with the sentencing alternatives available, but more judges than law enforcement officers or prosecutors said a change in the aggressive driving law, but not in the penalties, was needed. Most judges believe that the reckless driving offense is sufficient and that an aggressive driving law was not needed, although a strong minority (21 percent) believed that aggressive driving should be a lesser-included offense under reckless driving.

Conclusion

Currently, nine states[10] have enacted aggressive driving laws. An additional 17 states have introduced aggressive driving bills from 1999-2003: Connecticut, Hawaii, Illinois, Kansas, Louisiana, Massachusetts, Michigan, Missouri, New Hampshire, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, and Washington. The impact of aggressive driving as a public health problem will continue to serve as a catalyst for legislation to improve enforcement efforts to ensure safety on roadways.

Aggressive driving laws are a relatively new experiment that bears watching. Many states are struggling with the issue of aggressive driving and there is an opportunity for states to learn from each other the relative effectiveness of various aggressive driver programs in reducing the incidence of aggressive driving.

Legislative efforts combined with rigorous enforcement, media stigmatization of aggressive driving, public education, and intervention classes for repeat offenders are a combined approach to aggressive driving.[11] The idea of employing anger management techniques to reduce the incidence of aggressive driving remains promising. However, until states are able to identify a sufficient number of aggressive drivers who may benefit from such treatment, an assessment of the types of treatment that are most effective is not yet possible.

Online at www.ncsconline.org/WC/ Publications/KIS_AggDri_Trends04.pdf

ENDNOTES

*This article was abstracted from a study done for the Virginia Department of Motor Vehicles: "The Status of Court-Based Aggressive Driving Programs in Virginia," April 12, 2004. The authors are grateful to Vincent Burgess, director of Transportation Safety Services, Virginia Department of Motor Vehicles, for his help and support.

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DWI COURTS: THE NEWEST PROBLEM-SOLVING COURTS

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Problem-Solving Courts

Problem-solving courts, or more accurately, specialized dockets, are established to deal with problems that may benefit from focused and sustained attention. They usually include a treatment component in an effort to reduce recidivism, which in turn reduces the number of future arrests, prosecutions, and court cases.

Specialized drug courts appeared in the late 1980s in response to the dramatic increase in drug offenses.[1] Some drug courts, often referred to as "drug treatment courts," emphasize treatment to reduce recidivism. Essential elements of drug courts include (1) immediate intervention, (2) nonadversarial adjudication, (3) hands-on judicial involvement, (4) treatment programs with clear rules and structured goals, and (5) a team approach that brings together the judge, prosecutor, defense counsel, treatment provider, and correctional staff.[2] Although there are variations, drug treatment courts usually include judicial supervision of community-based treatment, timely referral to treatment, regular status hearings to monitor treatment progress, mandatory and periodic drug testing, and a system of graduated sanctions and rewards.[3]

The success of drug courts has sparked interest in other types of problem-solving courts, including community courts, domestic violence courts, and mental health courts.[4]

DWI Courts

The high incidence of crimes committed while under the influence of alcohol, including driving while impaired, has prompted several jurisdictions to develop sobriety or driving while impaired (DWI) courts,[5] most based on the drug court model. Threats of punishment alone are not likely to change the behavior of individuals, and the philosophy of DWI courts is to treat the problem as well as punish the offender. DWI courts were established to protect public safety and to reduce recidivism by attacking the root cause of impaired driving—alcohol and substance abuse. The mission of sobriety and DWI courts is "to make offenders accountable for their actions, bringing about a behavioral change that ends recidivism, stops the abuse of alcohol, and protects the public; to treat the victims of DWI offenders in a fair and just way; and to educate the public as to the benefits of sobriety and DWI Courts for the communities they serve."[6]

At a national conference of Mothers Against Drunk Driving, Dr. Jeffrey Runge announced that one of the three impaired driving priorities for the National Highway Traffic Safety Administration (NHTSA) was DWI adjudication and supervision.[7] Part of this priority is to establish DWI courts, expand drug courts, or apply the drug court model to DWI cases.

Specialized DWI courts, which are in effect specialized dockets in most states, are reputed to be better equipped to handle DWI cases, permitting swifter resolutions, reducing backlog, and improving outcomes. Judges also believe that the use of DWI courts should be expanded, allowing experienced judges to use treatment resources and to sentence, sanction, or reward offenders with greater consistency.[8]

Common characteristics of sobriety and DWI courts include intense alcohol addiction treatment and heavy court supervision, with jail sentences as a last resort. Compliance with treatment and other court-mandated requirements is verified by frequent alcohol and drug testing, close community supervision, and interaction with the judge in non-adversarial court review hearings.

How Many DWI Courts Are There?

The National Association of Drug Court Professionals provided a list of 68 DWI "courts," which are essentially specialized dockets.[9] All of these courts were contacted in early 2004 and asked to provide information about the year they were established, the types of cases they heard, the volume of cases heard, and recidivism rates. Five of the courts were specialized courts but not DWI courts, leaving a total of 63 DWI courts.

Most of the DWI courts appear to have been developed from drug courts, but there are exceptions. Seven of the 63 DWI courts reported being established as separate courts. More than a third of adult drug courts in the United States are in California, New York, Missouri, and Florida.[10] Half of the family drug courts are in the large states of California, New York, and Florida, and a third of the juvenile drug courts are found in these three states plus Ohio. A third of the DWI courts,

however, are in Michigan (10), Idaho (6), and Indiana (6), so although DWI courts were created from drug courts, the states with the largest number of drug courts do not have the most DWI courts. DWI courts are also not more prevalent in states that have an unusually high number of alcohol-related fatalities.

All of the courts were established rather recently (after 1994), except for the Los Angeles Superior Court DUI Program and the Hancock County, Indiana, DWI Court, both established in 1971. Forty of the 63 were established in 2000 or later.

Most DWI courts (53 of 63) do not accept violent offenders into the program. A much smaller number (14) do not accept juvenile offenders or sex offenders (8) into their programs. Caseloads are, and perhaps need to be, small. The vast majority of DWI courts (45 of the 63) handle fewer than 100 cases per year.

DWI Courts and Drug Courts

Although the multiple-DWI offender shares some characteristics with the typical drug offender (for example, they each share substance abuse problems that require treatment and a strong support system to succeed), they also have differences. DWI offenders tend to be male, employed, and slightly older than drug offenders and are more often able to draw on emotional resources, including family, that are helpful to recovery.[11] A careful evaluation of the effectiveness of DWI courts, both those using the drug court model and those created separately, is needed.

Unlike drug offenses, DWI offenses are not perceived as "victimless" crimes because public safety is more of an issue, and community impact must be kept in mind when designing a DWI court system. Monitoring DWI offenders is more difficult than monitoring drug court participants because alcohol goes through the body quickly and is harder to detect than drugs. Alcohol is also legal and easier to obtain than drugs.

DWI Court Issues

Issues still under discussion include the role of the judge, resources needed to support a DWI court, and ways to measure the effectiveness of DWI courts.

Role of the Judge

Despite the use of problem-solving courts in many arenas, the concern persists that judges are more involved with defendants, so it is more difficult for them to remain impartial. Judges need to praise and sanction defendants but must avoid getting so involved personally that their impartiality is at risk. Could this monitoring task be outsourced to treatment agencies that report violations to the court? Sanctions may appear to be coercive because judges may have to tell a defendant where to live or where to work. Judges may set such guidelines to some extent, but this role goes beyond the traditional judicial function. Likewise, sanctions that require defendants to use prescription drugs, such as Naltrexone and Antabuse, or require invasive treatments, like acupuncture, may be perceived as coercive and beyond the scope of judicial authority.

On the cost side, an integrated information system is required to track individuals through case-processing stages and to determine whether they have met the various screening, treatment, and other requirements imposed by the court.

Resources

Would nonspecialized courts perform as well if given the same resources and access to treatment as specialized DWI courts? Critics may argue that specialized DWI courts are indeed more successful than other courts because they have so many more resources, which they require if they are to have frequent review hearings, frequent testing for alcohol use, and progress reports from probation officers and addiction counselors. To determine the appropriate workload levels for specialized DWI courts, as well as for other courts having jurisdiction over DWI cases, workload assessments are necessary.[12]

Effectiveness

An impartial evaluation of special DWI courts is needed to determine just how effective they are in reducing recidivism over time. Reported recidivism rates from the DWI courts that tracked them were impressive. How do those rates compare with recidivism rates in nonspecialized courts? More generally, is the relationship between specialized DWI courts and other courts related to an outside factor, such as speed of processing, so that recidivism is related to processing speed in general rather than to a specialized court? What decrease in recidivism would be necessary to justify the additional resources needed by a specialized DWI docket?

DWI courts use some criteria to screen offenders eligible for drug court. Do screening criteria affect the success rates of DWI courts? Should they be limited to misdemeanors? Nonviolent offenders? (This debate is parallel to the debate over a strategy to reduce alcohol/drug-related crashes. Is it better to focus on

the relatively small proportion of the driving population responsible for a large percentage of alcohol/drug-related crashes, i.e., the hard-core offenders, or on the much larger number of moderate drinking drivers whose very numbers contribute significantly to the problem, although their individual risk of crashes is relatively low?) The assessment of all convicted DWI offenders for alcohol problems is an expensive proposition. Does the reduction in recidivism make it a worthwhile investment?

Online at www.ncsconline.org/WC/ Publications/KIS_SpePro_Trends04-DWI.pdf

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THERAPEUTIC JURISPRUDENCE: IT'S NOT JUST FOR PROBLEM-SOLVING COURTS AND CALENDARS ANYMORE

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Four years ago, in an important joint resolution, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) endorsed the notion of "problem-solving" courts and their use of the principles of therapeutic jurisprudence. According to the resolution, these principles include "integration of treatment services with judicial case processing, ongoing judicial intervention, close monitoring of and immediate response to behavior, multidisciplinary involvement, and collaboration with community-based and government organizations."[1]

The resolution noted that well-functioning drug treatment courts are the best example of problem-solving courts. Now, four years later, drug courts not only have continued to proliferate, but, as a recent publication notes, have become increasingly institutionalized—or "mainstreamed"—within the American court structure.[2] In fact, they are gaining international attention. For example, there is now an International Association of Drug Court Professionals listserv, coordinated by Justice Paul Bentley of the Toronto Drug Treatment Court.[3] A recent issue of the National Center for State Courts' *Problem-Solving Reporter* discusses some of the international activity and, in fact, categorizes problem-solving courts as a growing American "export."[4]

At the same time, there is a related trend with international dimensions that constitutes the focus of the present essay: the use of therapeutic jurisprudence principles in courts generally, outside the context of problem-solving courts and calendars.

Therapeutic Jurisprudence and Problem-Solving Courts

Therapeutic jurisprudence (TJ) and problem-solving courts were basically born at the same time, and have always been closely connected, but they are actually close cousins rather than identical twins. Drug treatment courts originated with the efforts of practical, creative, and intuitive judges and court personnel, grappling to find an alternative to revolving door justice, especially as dispensed to drug-addicted defendants.[5] TJ, by contrast, developed as an interdisciplinary perspective interested in how the law and the legal system produce therapeutic and antitherapeutic consequences.[6] Drawing on insights from psychology, criminology, social work, and like disciplines, TJ studies different legal arrangements and their therapeutic outcomes.

The growing body of therapeutic jurisprudence thinking regarding courts includes principles noted in the CCJ/COSCA resolution, such as ongoing judicial monitoring, as well as many other strategies, such as how to help an offender develop problem-solving skills, how to spark motivation to change, how to enhance compliance with probation conditions, how to reinforce desistance from crime, and much more.[7] It is only natural that these two close cousins would have much interaction: TJ, being interested in "what works" and "why," has much to learn from well-functioning problem-solving courts. And problem-solving courts can improve their mission by invoking insights developed in the TJ literature.

Therapeutic Jurisprudence in a General Judicial Context

In our recent edited book, *Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts*, Bruce Winick and I note how this interaction has worked to bring TJ into more general judicial contexts:

> The new problem solving courts have served to raise the consciousness of many judges concerning their therapeutic role, and many former problem solving court judges, upon being transferred back to courts of general jurisdiction, have taken with them the tools and sensitivities they have acquired in those newer courts. Indeed, the proliferation of different problem solving courts, and the development of various "hybrid" models [e.g., juvenile drug courts, dependency drug courts, domestic violence-mental health courts], suggests to us that the problem solving court movement may actually be a transitional stage in the creation of an overall judicial system attuned to problem solving, to therapeutic jurisprudence, and to judging with an ethic of care.[8]

The use of TJ principles in the more general judicial contexts will also be useful if budgetary constraints hamper the future development of concrete problem-solving courts. As Judge William Dressel (ret.), president of the National Judicial College, has put it, "the principles of therapeutic jurisprudence can be applied by judges whenever they engage in addressing societal problems, no matter how framed on a docket."[9]

Thus, Judge William Schma, formerly a drug treatment court judge in Kalamazoo, has returned to the general bench with a TJ approach to judging, which he believes should constitute "judging for the new millennium."[10] Judge Michael Town of Hawaii, long an advocate for unified family court, has now put TJ principles to work in felony trials in Honolulu.[11] The use of TJ generally, and especially in the criminal and juvenile context, is fully consistent with another emerging trend: a bit of a pendulum swing away from mandatory minimums and toward alternatives to incarceration, toward increased correctional rehabilitation, and toward more effective prisoner reentry, matters recently underscored in the ABA Justice Kennedy Commission Report.[12]

International Developments

The international activity relating to therapeutic jurisprudence in general settings has been fascinating. Sensitive and creative judges are applying basic principles of therapeutic jurisprudence not only in urban areas, such as Melbourne, Australia,[13] but also in remote geographical areas and in jurisdictions with rather meager resources. For example, Magistrate Michael King, from Western Australia, has instituted interesting approaches and is writing prolifically about applying therapeutic jurisprudence "in the bush."[14] He and Magistrate Stephen Wilson are instituting creative sentencing schemes and are incorporating aboriginal dispute resolution elements into their day-to-day work as magistrates.[15]

Indeed, regions with dispersed populations are taking the lead in thinking about applying therapeutic jurisprudence in general settings. In July 2004, I had the privilege of participating in a New Zealand judicial workshop titled "Therapeutic Interventions." In that country of four million people, there is only a single specific problem-solving court—a youth drug court, created in Christchurch by Judge John Walker. That court is now presided over by Judge Jane McMeeken, Judge Walker having returned to the "general" bench in the capital city of Wellington. Judge Walker, however, is now trying to carry TJ principles with him and to expose his colleagues to the approach.[16] The written "aims" of the "Therapeutic Interventions" workshop put the matter clearly:

> Many recent developments in therapeutic jurisprudence have focused on the establishment of specialist courts, e.g. drug, domestic violence. This seminar aims to increase your capacity to identify and use therapeutic interventions in general court work. Day one will focus on understanding therapeutic jurisprudence and the options that it provides. Day two will focus on the practice of engaging with those appearing in courts and opportunities to make therapeutic interventions.

Closer to home is an ambitious project sponsored by the National Judicial Institute (NJI) in Canada, which has a handful of specialized problem-solving courts (drug treatment courts, mental health courts, etc.), especially in Toronto. But the concern of NJI is nationwide, and much of the country has a dispersed population, often in areas with a predominantly aboriginal population.

NJI is accordingly drafting a handbook, tentatively titled "Beyond Problem-Solving Courts: Taking a Therapeutic Approach into Canadian Courtrooms." It is specifically designed to provide some practical suggestions and guidelines for Canadian judges in nonspecialized courtrooms on how to incorporate TJ principles in their work. The manual will likely deal with matters such as a proactive problem-solving orientation, judicial demeanor and direct interaction with the defendant, judicial supervision, rewards and sanctions, and referrals to treatment.[17]

Conclusion

The developments in Australia, New Zealand, and Canada seem to me to reinforce the speculation offered earlier that the development of problem-solving courts reflects a general dissatisfaction with the "ordinary" judicial system—that the problem-solving court movement may be merely transitional, serving as a stepping-stone to an eventual broad-based reform in the judicial profession as a whole. In essence, much of what seems to be happening in these other countries is that they are cutting to the chase of judging with an ethic of care, sometimes skipping altogether the creation of problem-solving courts.

Of course, the U.S. thinking and writing about problem-solving courts has been extraordinary, and much of those ideas are exceptionally worthy of continued export. But what Australia, New Zealand, and Canada are engaged in will be of interest and use to each of those jurisdictions—and, indeed, should be of enormous interest and use to the United States as well. Their thinking, writing, manuals, and programs about the use of therapeutic jurisprudence in general judicial settings deserve the status of a major U.S. import.[18]

Online at www.ncsconline.org/WC/ Publications/KIS_SpePro_Trends04.pdf

ENDNOTES

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[2] Aubrey Fox and Robert Victor Wolf, *The Future of Drug Courts: How States Are Mainstreaming the Drug Court Model* (New York: Center for Court Innovation, 2004), available online at http://www.courtinnovation.org/publications.html#future.

[3] See http://www.nadcp.org/iadtc/.

[4] James Cooper, "Problem-Solving Courts: A Growing U.S. Export," *Problem-Solving Reporter* 1, no. 2 (Summer 2004), available online from the National Center for State Courts at http://www.ncsconline.org/Projects_Initiatives/ProbSolving/vol1No2.htm#Cooper.

[5] Bruce J. Winick and David B. Wexler, eds., *Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts* (Durham: Carolina Academic Press, 2003). See http://www.cap-press.com.

[6] For an orientation to therapeutic jurisprudence, a comprehensive bibliography, links to a TJ listserv, announcements, and a list of upcoming activities, see the Web site of the International Network on Therapeutic Jurisprudence, http://www.therapeuticjurisprudence.org.

[7] Winick and Wexler, *Judging in a Therapeutic Key.*

[8] Id., at 87.

[9] Dressel, foreword to *Judging in a Therapeutic Key*, ed. Winick and Wexler.

[10] Judge William Schma, "Judging for the New Millennium," *Court Review* 37, no. 1 (Spring 2000): 4. Reprinted in Winick and Wexler, *Judging in a Therapeutic Key*, 87.

[11] Winick and Wexler, *Judging in a Therapeutic Key*, 92.

[12] Terry Carter, "End Mandatory Minimums, ABA Commission Urges," *ABA Journal eReport* 3, no. 25 (June 2004), available online at http://www.abanet.org/journal/ereport/jn25death.html.

[13] Jelena Popovic, "Judicial Officers: Complementing Conventional Law and Changing the Culture of the Judiciary," *Law in Context* 20, no. 2 (2002): 121. (Law journal of La Trobe Law School, Vic., Australia. Correspondence to O. Mendelsohn@latrobe.edu.au.)

[14] Michael S. King, "Geraldton Alternative Sentencing Regime: Applying Therapeutic and Holistic Jurisprudence in the Bush," *Criminal Law Journal* 26 (2002): 260; "Applying Therapeutic Jurisprudence in Regional Areas: The Western Australia Experience", *E Law–Murdoch Univ. Electronic Journal of Law* 10, no. 2, (June 2003), http://www.murdoch.edu.au/elaw/issues/v10n2/king102nf.html; "Applying Therapeutic Jurisprudence from the Bench: Challenges and Opportunities," *Alternative Law Journal* 28, no. 4 (2003): 172; "Roads to Healing: Therapeutic Jurisprudence, Domestic Violence and Restraining Order Applications," *Brief* 30, no. 7 (2003): 14 (published by the Law Society of Western Australia); "Innovation in Court Practice: Using Therapeutic Jurisprudence in a Multi-jurisdictional Regional Magistrates' Court," *Contemporary Issues in Law* (in press) (U.K. journal); and Michael S. King and Stephen Wilson, "Magistrates as Innovators," *Brief* 29 (2002): 7.

[15] Interestingly, both therapeutic jurisprudence and western-style problem-solving courts bear substantial similarity to concepts such as restorative justice, family group conferencing, and circle sentencing—concepts that originated in tribal justice systems of Australia, New Zealand, and North America.

[16] Judge Walker is pleased to share his unpublished remarks on the matter with interested persons. He may be contacted at walkerj@courts.govt.nz.

[17] I serve as a member of an NJI working group charged with reviewing the manual. For more on NJI, go to http://www.nji.ca. For further information on the manual, interested persons may contact Justice Paul Bentley at paul.bentley@just.gov.on.ca.

[18] Those interested in pursuing this area can keep abreast of TJ developments through the Web site of the International Network on Therapeutic Jurisprudence, http://www.therapeuticjurisprudence.org, and the TJ listserv, linked to on the Web site, which has many judicial (and other) members worldwide. Bruce Winick and I are currently consulting with social work professor Carrie Petrucci who, as principal investigator, is conducting an international study of judges engaged in therapeutic jurisprudence work. The first step of the study surveys involved judges and tries to glean from them the "how" of TJ. For example, they are asked to answer a question, such as "I practice therapeutic jurisprudence by…." Some representative answers, which surely can and do apply in general judicial settings, include "speaking directly to the defendant in language and tone of voice that I think he or she will understand"; "finding something positive to say about the defendant"; "learning as much as I can about each defendant so they feel I know them and care about them"; and "explaining my decision to all parties." When the study is complete, information about it will be posted to the TJ Web site and listserv.

A-COURTING WE WILL GO: THE STATE OF SAME-SEX MARRIAGE

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State courts have made more rulings on same-sex marriage and civil unions in 2004 than ever before. Since the early 1990s state courts and the federal government have considered whether same-sex couples should be allowed to marry and be provided the same rights as heterosexual married couples. Over 1,000 distinct rights, benefits, and responsibilities are recognized for married couples under federal law alone, and when combined with state laws, marriage laws touch on nearly every aspect of a couple's relationship.[1] As courts and legislatures grapple with the type of legal recognition same-sex couples should have for their unions, state court decisions will most likely continue to have little uniformity within and among the states.

Same-sex relationships may be protected as a domestic partnership, civil union, or marriage, but the rights and availability of these alternatives vary greatly.[2] Domestic partnerships have no federal protections, but benefits are available in many states and cities as offered by employers. Benefits may include health care, hospital visitation, and the right to meet with a nonbiological child's teacher. Civil unions also have no federal rights, responsibilities, or protection and are currently only available to same-sex couples in Vermont. Couples in a civil union in Vermont are provided access to all state benefits. Marriage is afforded federal protection under federal laws and policies, such as Social Security, federal income tax, immigration, parental recognition, inheritance, and family medical leave, as well as state benefits. Currently, only Massachusetts recognizes same-sex marriage after the Massachusetts Supreme Court's ruling in *Goodridge v. Department of Public Health*, 798 N.E.2d 941 (2003). However, the Massachusetts state legislature has begun a process to place a constitutional amendment banning same-sex marriage on the ballot in 2006.

At the federal level, Congress passed the Defense of Marriage Act in 1996. This act states that no state is required to honor same-sex marriages performed in another state. In 2003 six representatives introduced a resolution to amend the U.S. Constitution to define marriage as between a man and a woman. President Bush endorsed a constitutional amendment banning same-sex marriage in February 2004, but the Senate failed to pass the amendment in July. However, before their summer break, the House of Representatives passed legislation to prevent federal courts from ordering states to recognize same-sex unions sanctioned in another state. Although the bill is not expected pass in the Senate, it is a strong indication that the same-sex marriage issue will continue to be addressed in the legislative branch.

State legislatures are also attempting to pass state constitutional amendments to ban same-sex marriages. Thirty-eight states have laws defining marriage as only between a man and a woman, but amendment supporters fear a court could toss aside a state law, and believe a state would be on firmer legal ground if an amendment banning same-sex marriage is made part of the constitution. The amendments will be on the November ballots in 11 states: Arkansas, Georgia, Kentucky, Louisiana, Michigan, Montana, Mississippi, Missouri, Oklahoma, Oregon, and Utah (Ohio and North Dakota are attempting to collect enough signatures to put an amendment on the November ballot). An amendment will appear on the September ballot in Louisiana. Massachusetts, Tennessee, and Wisconsin must reapprove amendments that were passed in 2004 in the next legislative sessions. Five states, Alaska, Hawaii, Nebraska, Nevada, and Missouri, already have similar amendments in their constitutions.

State courts that have ruled on same-sex marriage are listed below in chronological order to give a historical reference to diverse trends in the decisions.[3]

Hawaii

In 1993 the Hawaii Supreme Court ruled that banning same-sex marriage may violate the state constitution's ban on sexual discrimination and must be justified by a compelling reason. Three years later, the Hawaii trial court ruled that banning same-sex marriage is not justified, and the case returned to the supreme court. However, before the supreme court could consider the case, the state constitution was amended by popular vote to allow the legislature to restrict marriage to heterosexual couples.

Alaska

In 1998 the superior court ruled that denying marriage licenses to same-sex couples is unconstitutional, but the state amended the constitution to ban same-sex marriage that same year.

Vermont

In 1999 the Vermont Supreme Court ruled that the state constitution gave same-sex couples the same rights as heterosexual couples; however, the decision was suspended until the legislature could consider and enact law consistent with the ruling. In 2000 the governor ratified a civil union bill, and Vermont became the first state to legally recognize same-sex couples, but not same-sex marriage.

Massachusetts

In 2003 the Massachusetts Supreme Judicial Court ruled that the state constitution provides marriage equality for same-sex couples. In February 2004, the supreme judicial court notified the legislature that only marriage, not civil unions, would provide equal protection under the constitution. In March, the legislature approved a constitutional amendment that will ban same-sex marriages but legalize civil unions. The amendment will need to be approved a second time in the next session to appear before voters in November 2006.

California

In February 2004, the mayor of San Francisco began issuing marriage licenses to more than 2,000 same-sex couples. In March, the California Supreme Court ordered a halt to same-sex marriages in San Francisco and announced it would decide whether the city had the authority to issue marriage licenses in defiance of state law. The supreme court heard oral arguments in May.

The governor signed a bill in October 2001, enhancing the domestic partner law by extending health care, estate planning, and adoption benefits to unmarried couples who have registered as domestic partners.

New Mexico

In February 2004, the Sandoval County clerk issued 60 marriage licenses to same-sex couples. The attorney general declared the licenses invalid under state law. In March, the county obtained a temporary restraining order against the clerk to prevent her from issuing marriage licenses to same-sex couples. The New Mexico Supreme Court denied the clerk's request to lift the temporary restraining order in July.

New York

In February 2004, the mayor of New Paltz married 21 same-sex couples. A temporary restraining order was issued barring the mayor from performing any more unlicensed weddings. On June 7, a state supreme court justice agreed and made the order permanent. In July, another restraining order was issued after village trustees were designated "marriage officers" and wed same-sex couples. The latest order bars any village official from solemnizing an unlicensed wedding and goes a step further than the previous suit in seeking to have all same-sex weddings performed in New Paltz declared null and void.

Oregon

In March 2004, Multnomah County officials issued marriage licenses to same-sex couples. In April, a state judge struck down an Oregon law that blocked 55 couples from marrying and ordered the state to recognize the 3,000 marriages of same-sex couples that had already took place. A Multnomah County circuit judge issued a 90-day stay of same-sex marriage until the legislature can decide whether to allow same-sex marriage or civil unions in the future.

New Jersey

In March 2004, the deputy mayor of Asbury Park married a same-sex couple. The state attorney general sought an injunction to halt the issuance of marriage licenses to same-sex couples and deemed the one marriage ceremony performed invalid. On July 10, the New Jersey Domestic Partnership Act took effect. Same-sex couples can register as domestic partners, provided they can prove they live together and share finances, are at least 18 years old, and are not already married or in another domestic partnership. The law will not sanction marriage, but it permits same-sex couples and unmarried heterosexual couples age 62 or older to sue under the state's antidiscrimination law, visit each other in the hospital, make medical decisions for an incapacitated partner, file state tax returns together, and avoid inheritance tax like a spouse. State workers will be able to include partners on their health benefits plans. Public employees, such as police officers and firefighters, also will be eligible to collect state pensions if their partner dies on the job.

Washington

On March 8, 2004, the Seattle mayor signed an order granting legal recognition to same-sex couples in Washington who had been married elsewhere. The order acknowledged those who had recently married in Oregon, San Francisco, and Canada. A group of Seattle-area residents tried to sue the mayor over the executive order, but a King County Superior Court judge rejected their claims.

On August 4, Judge William Downing of the King County Superior Court ruled that same-sex marriage is legal in Washington. In the ruling, the judge said the state's Defense of Marriage Act, which limits marriage to one man and one woman, is unconstitutional. However, the decision is stayed—and no local marriage licenses can be issued—until the state supreme court reviews the case.

Virginia

Virginia's Affirmation of Marriage Act, effective July 1, 2004, reinforces a seven-year-old ban on same-sex marriage and voids any "civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage."

Maine

On July 30, 2004, the Domestic Partner Registry went into effect and allows a domestic partner to inherit property in case one of the couple dies without a will, trust, or other estate planning. It also considers a domestic partner the next of kin when determining the right to make funeral or burial arrangements, and considers that person a guardian when the other partner is incapacitated.

Maryland

In July 2004, the ACLU and Equality Maryland filed a lawsuit in Baltimore City Circuit Court, alleging that Maryland's ban on marriage between same-sex couples violates the state constitution. Earlier in 2004, the Maryland Legislature defeated proposals to amend the state constitution to ban marriage rights for same-sex couples and to prohibit Maryland from recognizing marriages between same-sex couples from out of state.

Online at www.ncsconline.org/WC/ Publications/KIS_FamJus_Trends04.pdf

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[1] Jill Schachner Chanen, "The Changing Face of Gay Legal Issues," *ABA Journal* (July 2004): 47-51.

[2] "Ways to Protect Same-Sex Relationships," National Gay and Lesbian Task Force. Available from http://www.thetaskforce.org/marriagecenter/MarriageDifferences.pdf.

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PROBATE GUARDIANSHIP

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As the number of children entering foster care steadily increases, the need for lasting solutions for those children is more pertinent than ever. Although most children are reunited with their families following foster care, those who cannot return home must look for alternatives. Most states have answered this need for more homes and have doubled the number of adoptions from foster care over the guidelines established by the federal government between 1995 and 1997.[1] Still, older children and minorities remain less likely to be adopted. Legal guardianship by kin or foster parents is becoming a promising alternative to long-term foster care for children when adoption is not viable.

Guardianship vs. Adoption

Probate, or legal guardianship, is a lawfully binding, supervisory relationship between an adult and child who may or may not be related. Every state permits the transfer of guardianship authority from a parent to another adult, but the type of legal guardianship discussed here focuses on children who have been taken away from their parents and are in foster care. Authority may or may not have been voluntarily transferred, but at the time of the guardianship, returning home is not an option. In most cases, the parental rights of the biological parent have not been terminated, and when capable, the biological parents maintain financial responsibility for the child. This is different from adoption, where parental rights are permanently ended, and the legal relationship between adoptive parent and child is permanent and exactly the same as with the birth family.[2] A guardian is responsible for all decisions regarding the child's well-being, including medical treatment, education, and visitations with parents.[3]

Subsidies are available to guardians when financial support is not available from the birth parent or if the child has special needs. Such subsidies make guardianship a more viable option for relatives who would otherwise be unable to care for their kin or for foster parents without the necessary resources. At least thirty-four states and the District of Columbia have developed a form of subsidized guardianship programs.[4] The families that apply are expected to meet the same requirements as traditional foster parents. States using this plan have reported that it has been helpful for children who need permanency, but only when adoption and reunification with parents have been ruled out. Administrative costs for guardianships are lower than for foster care, and little supervision from social service agencies is required, although the courts are responsible for overseeing the guardianships.[5]

Data from AFCARS shows that 10,341 children were released from foster care into legal guardianship in 2000.[6] This was a 77 percent increase from 1998. These children tended to be older and more often members of a minority race than children who were adopted. In California 37.5 percent of children over age 11 were discharged to legal guardianship in 1999, as compared to 8.3 percent of children over age 11 who were adopted. Sixty-six percent of children under age 6 were adopted, whereas 21.5 percent of children under 6 were discharged to guardians.[7] Additionally, a greater number of children of a minority race were released to guardianships than adopted. The greater number of African-Americans achieving permanency may be a result of more relatives choosing to become guardians when unable to adopt. These findings are in line with the prevalent belief that guardianship is a more viable option for older children, who in many cases wish to maintain family ties. It is also the case that children with special needs or of a minority are more likely to be taken in by kin than adopted by nonrelatives.[8]

Kinship Care

Legal guardianship is a tool state agencies can use if there is opposition to kinship adoption. Innovative efforts to create alternative permanency options have brought about the realization that relatives will adopt their kin if they are informed of their options. Kinship care can be legally lasting, and financial support is available to kin caregivers through guardianship subsidies. The benefits of kinship care lie in the interest of keeping familial ties and creating a lasting and binding situation in which the child's environment is permanent and rooted in cultural norms and social identity. These benefits and the efforts by states to increase awareness of the alternatives to adoption have resulted in an increase in kin caregivers from 18 percent in 1986 to 31 percent in 1990. Guardianship, unlike adoption, allows kin to retain their extended family identities as grandparents, aunts, and uncles, and children may retain rights of sibling visitation.[9]

According to the 2000 census, 5.9 million children were relatives of the householder other than son or daughter.[10] Forty-two percent of grandparent

households also reported that they are responsible for grandchildren under the age of 18. Sixteen percent of those grandparents have been caring for their grandchild for five years or more.[11] All of the caregivers in these situations may not have legal status over the children in their care, but these figures help illuminate the number of children not living in traditional settings with biological parents. Many relatives can obtain government support, and possibly financial support, to increase the stability of kinship care.

Implications for the Court

Guardianships require greater and lengthier involvement from the court than the adoption process because children in legal guardianships remain under the court's jurisdiction. Courts assume supervisory roles over guardians and regulate involvement between birth parent and child in cases where birth parent and guardian do not agree on visitation and financial support. The courts must consider requests from birth parents to have their rights reestablished and the guardianships vacated. This could mean removing a child from a fairly secure and seemingly permanent environment. Additionally, the court is responsible for seeing that subsidies and child support are provided to the guardian. Most financial support still comes from parents, but the court may be involved in collecting and determining payments.

The benefits of guardianship are numerous, but there are problems as well. In most states, there must be court supervision of the guardian, and many adults do not want their lives monitored by the court. The outside involvement in guardianship is much greater than in adoption because the situation is not permanent and is subject to change. A guardianship can be vacated if the biological parents' rights are reinstated. Depending on the length of time the child was in guardianship, a seemingly permanent home may be disrupted again. The court must weigh the benefits of reunification with permanency and lasting solutions.

As the use of the alternative of legal guardianship increases, more children will exit foster care into healthy, lasting, and possibly permanent situations. Kinship care will continue to rise, and there will be increased involvement of the court in helping provide permanency and beneficial situations for children in the foster care situations.

Online at www.ncsconline.org/WC/ Publications/KIS_Adopt_Trends04.pdf

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REACHING OUT TO SELF-REPRESENTED LITIGANTS THROUGH VIRTUAL REFERENCE AND EDUCATION

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As noted in *Beyond the Boundaries: The Report of the Special Committee on the Future of Law Libraries in the Digital Age*, the number of attorneys using court and county law library services is decreasing while the number of public patrons, particularly self-represented litigants, is rapidly increasing.[1] When the majority of court library users shifts from the bench and bar to the public, the value of a public law library in the courthouse may be questioned, yet members of the public rely on the resources and services of a public law library to answer basic questions about the law, provide a better understanding of the judicial system, and locate legal information online. At the same time, the availability of legal information on the Web, be it from a government or commercial Web site, has expanded exponentially; yet many individuals are not prepared to navigate an increasingly complicated World Wide Web or evaluate the credibility of legal information they find online.

The mission of court law libraries is to provide direct access to accurate, timely, and reliable legal information in a format that can be understood and used by the greatest number of users, ranging from a justice to the average citizen. Despite budget cuts and ever-increasing costs of maintaining print and electronic resources, many law libraries serving courts and the public view this trend as an opportunity to expand their traditional role in the legal community. Ever mindful of the unauthorized practice of law, librarians are not able to provide legal advice or interpret judicial opinions, statutes, regulations, or other documents, but can direct individuals to sources of legal information in print or online, share the best method of accessing this information, and refer them to appropriate legal service providers or state agencies. The following services developed and provided by public law libraries illustrate the ways law libraries are collaborating to meet the needs of today's law library users, including self-represented litigants.

Virtual Reference

For some years, a number of court and county law libraries have offered library patrons the ability to submit their legal reference questions to the library via an e-mail address. Typically, a law library employee responds to these requests within a day or two, depending on the nature of the question and the staff resources devoted to this service. Recognizing the public's growing expectation for immediacy and the specific concerns of the self-represented litigant, some law libraries are developing virtual reference services.

What is virtual reference? Not long ago, a visit to the law library was required for access to legal reference assistance. Even if the law library maintained a variety of electronic resources, many available remotely to library users, most conversations with the law librarian occurred in the law library. Self-represented litigants with questions about how to use their state's code or how to locate a relevant case might have to take time off from work to visit the law library during the day or attempt to use the materials in the law library while accompanied by their young children. E-mail reference services improved services by allowing patrons to submit questions at their convenience, from a location of their choosing—no matter the time of day. Of course, patrons would have to wait for the library to open before receiving any response from a library employee. If the librarian's response triggered other questions, patrons would need to submit a second e-mail message and, again, wait for the answer. Virtual reference, also referred to as chat reference, takes this exchange one step closer to traditional library reference services by offering live digital reference—that is, a librarian will seek to assist individuals through a live digital "conversation" much like an in-person reference session. During this electronic conversation, the law librarian will guide patrons to resources relevant to their questions and, often, will recommend that individuals visit their closest public law library for information not available online.

In California "AskNow Live Chat" connects the individual to an online reference service staffed by law librarians at California's public law libraries from 8:00 a.m. to 5:00 p.m., Monday through Friday, with extended hours on Monday evenings. The King County Law Library in Seattle offers "Live Help Chat" in collaboration with the Seattle Public Library and the University of Washington's Health Science Library under a grant. Partnering with the Washington State Law Library, legal reference "Live Help Chat" is available Monday through Friday from 10:00 a.m. to 5:00 p.m. The New England Law Library Consortium offers real-time, online "chat" with a law librarian through "Library LAWLINE"; the consortium includes the 17 Massachusetts trial court law libraries that offer a link to the service from their Web

site. "Maryland AskUsNow" is available to the residents and students of Maryland and is staffed by professional librarians ready to answer questions. The majority of questions are those of a general nature, but the service also receives a number of legal reference questions. The Maryland State Law Library is 1 of 26 libraries working together to provide this invaluable service 24 hours a day, 7 days a week.

Educational Opportunities at the Law Library

The reference librarians at the San Diego County Public Law Library in California offer a two-hour course for the public, "Law Made Public: An Introductory Course in Legal Research," which provides a basic understanding of the court system and teaches introductory legal research. A nominal fee is charged to register for the class, which is held monthly on a Saturday afternoon and occasionally during the week at branches of the public law library. Class participants learn how to locate statutes and cases, as well as how to determine if a statute has been repealed or if a case has been overruled. The session introduces participants to legal research online, demonstrating what is available on the Internet and what is not, and why. As a complement to their Family Self-Help Center, the Dakota County Law Library in Hastings, Minnesota, offers educational sessions throughout the year at the law library and two public libraries. In his "2004 State of the Judiciary" message, Chief Justice Elliott E. Maynard of West Virginia highlighted the services provided through a pilot program creating ten legal research centers in six public libraries, three law libraries, and the West Virginia Supreme Court Law Library. At these centers, funded through a grant from the State Justice Institute, "trained librarians assist the public with legal research questions. Patrons can use LexisNexis for up to one hour at a time free of charge and have access to written legal research materials. An informational video and brochure for self-represented litigants also is available." [2]

Conclusion

Expanding law library services to include virtual reference and educational opportunities to meet the needs of the self-represented litigant is a trend that will continue to grow. The ability of the professional law librarian to explain and clarify the process of legal research or to assist a patron who is trying to access the world of legal information on the Web is essential to the self-represented litigant's successful navigation of the courtroom and the judicial process. What is the role of the law library when providing services for self-represented litigants? Perhaps Frank Broccolina, Maryland state court administrator, says it best:

> Public law libraries are a mainstay within the nation's state court systems. Not only do they provide essential research and reference services to trial and appellate court judges and their support staff, they are an increasingly critical resource for self-represented litigants engaged in the judicial process. The role of the public courthouse library must not be overlooked as a legitimate gateway to an individual's access to justice. [3]

Online at www.ncsconline.org/WC/ Publications/KIS_CtLibr_Trends04.pdf

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SELF-REPRESENTED LITIGANTS IN CALIFORNIA: COURT PROGRAMS HELPING LITIGANTS HELP THEMSELVES

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Following the national trend, California's courts are facing an ever-increasing number of litigants who go to court without legal counsel largely because they cannot afford representation. Under the leadership of Chief Justice Ronald M. George and Administrative Director of the Courts William Vickrey, California's courts are taking a multifaceted approach to this emerging issue.

Agenda for Action

In February 2004 the Judicial Council adopted a Statewide Action Plan for Serving Self-Represented Litigants designed to improve access and quality of service offered to the public as well as to increase court efficiency and effectiveness.[1] This action plan builds upon community-focused strategic plans developed by local courts[2] and reports by experts in court administration and legal services. The plan recognizes that services for self-represented litigants must be a core function of the courts if they are to address the changing needs of the public.

Self-Help Centers

Family Law Facilitators

Effective January 1, 1997, California Family Code section 10002 established an Office of the Family Law Facilitator in each of the state's 58 counties. The Judicial Council administers the program, providing over $11 million per year in Title IV-D federal funds to court-based offices that are staffed by licensed attorneys. These facilitators, experienced attorneys working for the superior court, guide litigants through procedures related to child support, maintenance of health insurance, and spousal support. They assist with cases involving the local child support agency, many of which are public assistance reimbursement cases. In addition, most courts provide additional funding that enables facilitators to assist self-represented litigants in other family law areas, including divorce, custody, and visitation. Facilitators assist over 450,000 litigants each year and have been the backbone of self-help programs in the courts.

Family Law Information Centers

In 1999 the legislature funded three pilot Family Law Information Centers to help low-income litigants better understand their obligations, rights, and remedies and to provide procedural information to enable them to better understand and maneuver through the family court system. The Judicial Council administers these pilot centers in Los Angeles, Fresno, and Sutter counties. The centers are supervised by attorneys and assist low-income, self-represented litigants with forms, information, and resources concerning divorce, separation, parentage, child and spousal support, property division, and custody and visitation. An evaluation of the project was completed in March 2003 and demonstrated that it was a resounding success in providing cost-effective services and in assisting both litigants and the courts.[3]

Five Model Self-Help Pilots

In 2001 the legislature provided funding to establish five pilot self-help centers to determine the effectiveness of court-based self-help programs to meet major challenges facing courts in California and to provide information to the legislature on future funding needs. These five programs are providing models for replication in other counties, in addition to translated materials and technological solutions. The evaluation of these programs will be completed in March 2005. The five programs are:

1) Technology, http://www.cc-courthelp.org/

2) Spanish-speaking, http://www.co.fresno.ca.us/2810/sshc_esp.htm

3) Multilingual, http://sfgov.org/site/courts_page.asp?id=19649

4) Rural collaboration, http://www.glenncourt.ca.gov/court_info/self_help.html

5) Urban coordination, http://www.lasuperiorcourt.org/familylaw/

Partnership Grants

The Judicial Council administers an Equal Access Fund created by the legislature to provide $10 million to IOLTA-eligible legal services programs each year. Ten percent of these funds must go to "partnership grants" where legal services agencies work with their local courts to provide self-help assistance at the courts. Twenty-one programs have been started in courts throughout the state to assist litigants in

cases involving domestic violence, guardianships, family law, landlords and tenants, and general civil assistance. These partnerships have afforded great opportunities for legal services and the courts to identify and resolve critical needs in their communities.

Small-Claims Advisors

No attorneys are allowed in California's small-claims courts, which have a jurisdictional limit of $5,000. By statute, counties must provide some level of assistance to small-claims litigants, and most large counties provide in-person assistance with small-claims advisors who are often attorneys. Others provide telephone hotline assistance, pamphlets, and materials.

Other Self-Help Centers

A growing number of courts have established self-help centers. These centers generally provide assistance with general civil matters as well as family law. None of these programs charge fees for service, and all are open to all members of the public regardless of income, immigration status, or other common factors that can restrict services elsewhere. Restrictions relate to how much assistance can be provided and the types of law that can be covered.

Self-Help Web Site

The Judicial Council provides a comprehensive Online Self-Help Center (www.courtinfo.ca.gov/selfhelp/) for court users who do not have attorneys and others who wish to be better informed about the law and court procedures. This Web site provides more than 1,000 pages of information on legal issues that come before state courts, with step-by-step instructions for many common proceedings. It has over 2,400 links to other resources that provide additional legal information, including resources for areas of law, such as bankruptcy and federal claims, that are not within the jurisdiction of state courts. The entire Web site has been translated into Spanish.[4] Domestic violence materials are also available in Vietnamese, Chinese, and Korean.[5] New features include short videos describing service of process, presentation at hearings, and other concepts.[6] The Web site now has over two million visitors each year.

Forms

California has nearly 600 forms that must be accepted by all courts throughout the state. Forms adopted for mandatory use must be used in the types of actions to which they pertain; forms approved for optional use must be accepted by the courts, although litigants may choose, instead, to craft their own pleadings. Many types of cases are completed solely through the use of mandatory forms, including family law, domestic violence, guardianship, probate, juvenile dependency, and landlord/tenant matters.

The Judicial Council has embarked upon an ambitious redesign of forms that are primarily used by self-represented persons. Working with a firm that specializes in "plain English" to revise domestic violence forms, an entirely new "look and feel" for forms was established. The forms were adopted after extensive user testing and comment. The new "plain language" format is designed for litigants at the fourth-to-fifth-grade reading level. It is being incorporated into a wide variety of forms commonly used by self-represented litigants, including small claims, landlord/tenant, and civil harassment.[7]

All Judicial Council forms can now be filled out online. A growing number of document assembly programs for the Web are being developed by the courts and legal services. Litigants in each county can now fill out small-claims, guardianship, landlord/tenant, and basic family law forms using either fillable PDF documents or a document assembly program.[8]

Unbundling (Limited Scope Representation)

Based upon the recommendations approved by the State Bar Board of Governors,[9] the Judicial Council approved California Rules of Court 5.70 and 5.71 to clarify that an attorney providing ghostwriting services in a family law matter does not have to disclose his or her assistance and to provide a simplified procedure for an attorney to be relieved of representation in a case in which a client agrees to limited representation but does not sign a substitution-of-attorney document upon completion of the case. The council also approved forms to clarify the scope of the representation if an attorney is providing limited scope representation at a court hearing and to provide a clear procedure for relieving an attorney.[10]

The California Administrative Office of the Courts (AOC) developed an educational piece, "Twenty Things that Judicial Officers Can Do to Encourage Attorneys to Provided Limited Scope Representation (or How to Get Attorneys to Draft More Intelligible Declarations and Enforceable Orders for Self Represented Litigants)," which has been published in the *California Judges Journal*.[11] The state bar and AOC

have worked cooperatively to support presentations on unbundling at over 50 training sessions, including the state bar's annual meeting and ethics symposium, legal services conferences, self-represented litigants regional conferences, and training sponsored by local courts, local bar associations, or local lawyer referral services. A Webcast version of the training is being developed in collaboration with the Practicing Law Institute.

JusticeCorps

The AOC has recently received a grant from AmeriCorps to hire and train 100 "JusticeCorps" members from four local universities to provide assistance in ten Los Angeles-area Self-Help Legal Access Centers. Volunteers will work closely with legal aid and court-based self-help attorneys and will provide legal assistance through direct contact with self-represented litigants, legal workshops, and the use of self-help computer terminals.[12]

Training for Court Clerks

The AOC has developed a broadcast training program to help clerks determine the difference between legal information and legal advice and encourage them to be more helpful to the public. The training is one-and-a-half-hours long and includes an introduction by the chief justice, John Greacen's analysis of this issue, and a live discussion by court clerks, a judge, and an attorney about taped vignettes featuring court clerks providing legal information.

All California courts now have equipment to receive satellite broadcasts. This enables court staff to receive training and updates without leaving their courts. This training was the first offered to court clerks, and feedback forms indicated that over 2,500 people watched the training the first week it was offered. It has been offered 14 times in the last three years, and many courts tape the broadcast to play when new clerks are hired.

The Access and Fairness Committee developed a handbook, *May I HelpYou*, that answers more frequently asked questions.[13]

Judicial Education

Workshops on handling cases involving self-represented litigants are available each year at California's judicial college, as well as at the Family Law Institute and other locations. Sensitivity to the issues of self-represented litigants has been built into the training plan for many workshops.

The AOC has recently received a grant from the State Justice Institute to develop a benchbook for judicial officers on best practices in cases involving self-represented litigants. In preparation for developing that benchbook, a two-day policy forum was held in which 30 innovative judicial officers and representative attorneys discussed best practices. A report on the forum will be produced this year. AOC staff will also be holding focus groups of judges, clerks, interpreters, and others regarding their ideas for how judges can most effectively serve the needs of self-represented litigants.

Equal Access Web Site

The AOC has developed a Web site for court-based self-help programs and legal services to share sample instructional material, translations, and program materials and to learn more about providing self-help programs at http://www.courtinfo.ca.gov/programs/equalaccess/. It has information about all the programs described in this article.

Online at www.ncsconline.org/WC/ Publications/KIS_ProSe_Trends04-SRL.pdf

ENDNOTES

[1] The plan is available at www.courtinfo.ca.gov/programs/cfcc/resources/publications/actionplanfinal.htm.

[2] These local plans are found at www.courtinfo.ca.gov/programs/equalaccess/localplans.htm.

[3] The evaluation can be found at www.courtinfo.ca.gov/programs/cfcc/resources/publications/FLICrpt.htm.

[4] See www.sucorte.ca.gov.

[5] See www.courtinfo.ca.gov/selfhelp/languages/.

[6] For example, see www.courtinfo.ca.gov/selfhelp/family/guardianship/overview.htm#video.

[7] For example, see www.courtinfo.ca.gov/forms/fillable/dv110.pdf.

[8] For example, see: http://www.courtinfo.ca.gov/selfhelp/smallclaims/fillout-marin.htm.

[9] See http://www.calbar.ca.gov/calbar/pdfs/unbundlingreport01.pdf.

[10] See appendices to: http://calbar.ca.gov/calbar/pdfs/accessjustice/Risk-Management-Packet_2004-01-12.pdf.

[11] See http://www.unbundledlaw.org/States/twenty_things_that_judicial_offi.htm.

[12] See http://www.courtinfo.ca.gov/programs/justicecorps/.

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THE GROWING NEED FOR QUALIFIED COURT INTERPRETERS

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As America's population becomes more diverse, the need for quality court interpretation in several languages steadily grows. According to the "2002 American Community Survey," published by the United States Census Bureau, more than 45 million people in the United States speak a language other than English at home (see http://factfinder.census.gov). Qualified interpreters in all languages are needed, but the level of a court's demand depends on the frequency of the language used. For example, Spanish is greatly needed by a vast majority of states, yet there are many occasions when less widely spoken languages require qualified interpreters. All states grapple with the challenge of finding qualified interpreters, regardless of the language.

Growing Numbers of Limited English Proficient (LEP) Populations in the United States

All fifty states have some need for qualified interpreters. States that in the past have not seen much immigration are now experiencing sizable increases in their LEP populations (see, for example, http://www.acebo.com/papers/report.htm), evidence of which can be seen in southeastern and midwestern states:

- Georgia, with the third fastest growing Latino population in the country, has seen its Latino population in the last decade increase by more than 300 percent (http://www.fcs.uga.edu/extension/impacts/2001/hispanic.html).
- Michigan needs more certified interpreters of Arabic. According to Michigan's interpreter roster, http://www.courts.michigan.gov/scao/resources/other/ccilst.htm, only two are certified. According to the Arab American Institute, there are 490,000 people of Arab or Chaldean ancestry in Michigan, a state that has the largest concentration of people of Arabic descent outside the Middle East (http://www.aaiusa.org/demographics/Midemographics.pdf).
- In Minnesota, there are estimates of more than 60,000 Hmong living in the state (http://mplsfoundation.org/immigrants/laos1.htm), with Minneapolis seeing the highest concentration of Hmong speakers. This summer, thousands more Hmong refugees are expected to arrive in Minnesota as part of a family reunification initiative (http://news.minnesota.publicradio.org/features/2004/06/03_randolpht_hmong/).
- Somalis also have a large presence in Minnesota. The Confederation of Somali Community in Minnesota estimates a population of more than 35,000 Somalis in the state (http://www.cscmn.org).

These estimates do not take into account that many people living in immigrant communities do not fill out census forms because of their distrust or fear of government institutions. Thus, the numbers could be higher.[1]

Quality of Interpretation Questioned

These large increases in LEP populations pose problems. What can states do to prepare for the increased demand for qualified interpreters due to the influx of immigrants? There is no "quick fix" to compensate for the shortage of qualified interpreters. According to Peter Aronson's *National Law Journal* article "Subject to Interpretation," volunteer bilingual "interpreters" are part of a nationwide problem rather than the solution. The lack of understanding of the set of skills required of court interpreters and the shortage of qualified court interpreters in all states put in jeopardy the quality of the interpretation given, thus undermining access to justice and increasing court costs (e.g., appeals made because of faulty interpretation). Quality interpretation should not be assumed as a given merely because someone is bilingual. Qualified interpreters have an extraordinary set of skills, including superior command of English and another language (or languages) and an understanding of legal terminology and courtroom proceedings—criteria that set them apart from amateurs. The Consortium for State Court Interpreter Certification, supported administratively by the National Center for State Courts, helps the state courts identify qualified court interpreters through certification by testing simultaneous interpreting, consecutive interpreting, and sight translation of documents. The consortium provides objective testing standards to try to find people who are truly qualified to be court interpreters.

States vary in their certification requirements but not all states have certification programs. The use of noncertified interpreters raises the issue of the quality of the

interpretation because most are not qualified to work. The problem is compounded in states experiencing recent immigrant migration, since no certified interpreters are available for Spanish or less widely spoken languages like Hmong, Somali, or Laotian. Moreover, when a certification program does exist, tests are not available in all languages. When they are available in a given language, not enough candidates pass the difficult, rigorous tests. Another reason for the lack of qualified interpreters is that the "recognition of the need for and value of the interpreters has been absent; thus, there has been no market demand and no policy associated with resource development" (Hewitt, 2004). Without steady, well-compensated employment, most people will commit neither the time nor the expense to become qualified. As courts face several situations where they have to use uncertified interpreters, they are almost guaranteed low-quality interpretation. The following examples demonstrate that justice is denied to defendants when an unqualified interpreter is used:

In October 2002, 16-year-old Guatemalan Petrona Tomas was charged with first-degree murder for the death of her newborn in Florida. Tomas was then incarcerated for 18 months in an adult facility before being released to volunteer guardians and then kept under house arrest. Tomas's situation shows a system ill-equipped to ensure her due process. Lake Worth police arrested Tomas after questioning her twice in Spanish; Tomas speaks only Canjobal. The Palm Beach County State Attorney's Office then took the interviews to the grand jury. During at least three court proceedings no Canjobal interpreter was available. Tomas's attorney, Robert Gershman, founded his case on the inadmissibility of the police interrogation, as well as important cultural factors, which accounted for Tomas's behavior after the death of her low-birth-weight baby (2.77 pounds). The case generated such widespread negative publicity for the criminal justice system and the courts that the grounds for prosecution are being reconsidered.

Ahmed Seid Musse, a 25-year-old Somali immigrant living in Minneapolis, was convicted in Hennepin County District Court earlier this year for molesting a minor. However, his relatives believe that severe mistakes by the court-appointed interpreter were made, since the interpreter did not have a good grasp of the English language.

Costs

For several states, the expenditures for court interpreters are rising due to increasing demand for court interpreter services. To illustrate this point, the following table shows combined annual expenditures for some state courts:

States	2003	2004
California	(FY '01-'02) $58 million	$68 million
Florida	$5 million	$8.5 million
New Jersey	$2.4 million	$3.9 million
Maryland	$1.2 million	$1.65 million
North Carolina	$708,260	$1.7 million
Nebraska	$300,000	$500,000
Colorado	Unknown	$300,000
Delaware	$130,000	$152,125
Missouri	$86,500	$162,000
Arkansas	Unknown	$75,000

Note: According to the 2003 and 2004 Consortium for State Court Interpreter Certification surveys.

According to Virginia's Office of the Executive Secretary, the cost of interpreters for non-English speakers in that state has almost tripled in the last decade (http://www.courts.state.va.us/csi/courts_in_motion_031504.pdf).

Some financial assistance may be on the way. The State Court Interpreter Grant Program (S 1733), legislation introduced in the 108th Congress by Senators Kohl and Kennedy, and currently referred to the Committee on the Judiciary, would authorize the Attorney General to award grants to states to develop and improve state court interpreter programs. If approved, it would authorize the appropriation of $15 million for each fiscal year between 2005 and 2008, allowing states to apply for an allotment of this amount to develop, implement, or improve state court interpreter programs.

Conclusion

The consortium continues to develop procedures and test materials to help courts find qualified court interpreters and then manage those resources optimally. This year, for example, the consortium developed a Somali examination in Minnesota and is currently working on oral examinations in Portuguese and Bosnian/Serbo-Croatian. In light of the success that the consortium has had with setting objective standards through certification, the next challenge is attracting qualified examinees. To do this, "the creation of Public Service Interpreting Centers" (PSIRCs) in local and regional service areas" would "pool the demand for interpreters into a single coherent system that can improve the quality of service, increase the availability of interpreters in more languages, and increase the efficiency of locating and scheduling interpreters" (Hewitt, 2004). By taking the philosophy of resource sharing and collaboration, states would be on the road to finding more qualified court interpreters.

Online at www.ncsconline.org/WC/ Publications/KIS_CtInte_Trends04.pdf

ENDNOTES & SOURCES

[1] The Immigration Reform Act of 2004 (S 2010), introduced in the Senate in January 2004 and currently referred to the Committee on the Judiciary, would establish a guest worker program. Authorities say that the Immigration Reform Act of 2004 could encourage more migration to the United States because, if passed, it would permit individuals from abroad to apply for the right to work legally for a renewable three-year term, as well as conditionally allow their dependents to stay in the United States. The Safe, Orderly, Legal Visas and Enforcement Act (S 2381), introduced in the Senate in May 2004, would also establish a guest worker program if passed. To see the most recent status of both proposed pieces of legislation, please see thomas.loc.gov.

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DIAL "M" FOR MISCONDUCT: THE EFFECT OF MASS MEDIA AND POP CULTURE ON JUROR EXPECTATIONS

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A lawyer presents a well-structured, interesting argument to the jury in four or five minutes.

Two jurors spend the night together and watch a Discovery Channel documentary on how the juvenile brain works. Later, they discuss their findings with their fellow jurors during deliberations in a case where the defendant is a juvenile.

A new, scantily clad associate smokes pot in the firm's file room and kisses a coworker in the library.

Surprise evidence consisting of thousands of letters to the defendant is dumped out in the courtroom.

Sound familiar? If so, you are like many who may have watched *L.A. Law* in the 1980s, Fox's legal drama *The Jury*, the last season of *The Practice*, or the classic film *Miracle on 34th Street* during the holidays. People watching these various views of the justice system in action are prospective jurors who may, in fact, be making critical judgments about justice in real courts of law. Their perceptions impact our system of justice not only as possible triers of fact but also as future parties in court with expectations about how they are supposed to act and how the legal system works.

Shaping Expectations

While lawyers, judges, and court staff are too savvy to believe these shows, others often may shape their expectations based on dramatic presentations that cut out much of the bread and butter of actual trials. A day in the life of James Spader's character Alan Shore on *The Practice* and *Boston Legal* is more interesting than that of your run-of-the-mill lawyer. Viewers rarely see a TV lawyer or judge read volumes of briefs, file motions, type, or attend bar courses. As a consultant from one legal TV drama admitted once, if the producers must choose between accuracy and drama, drama wins.[1]

The reality is that the pace of courtroom litigation is far slower than anything permissible in our television culture. Most courthouses are not as wonderfully appointed as their television counterparts. Most bailiffs wisecrack far less than their portrayers. Courtroom shows entertain but are rarely accurate with respect to procedure or atmosphere.

Admittedly, such misinformation is not limited to the legal profession. For example, the sight of doctors coming out into the snow to help patients from the ambulance on *ER* is pure fantasy. People who call 911 may believe that if they get to the hospital via ambulance, a doctor will see them immediately. Similar misinformation is produced by the "order" part of crime dramas. Several commentators have noted the adverse effects of such shows on public perception and, hence, public policy about crime.[2]

Evidence

It is often a shock to the public that irrelevant and prejudicial evidence, the mainstay of legal dramas, is forbidden.[3] Relevance, not shock value, is the measure of admissibility. The reality is that the rules of evidence are complex and take months, if not years, to learn. Moreover, many procedures are derived from protections to the parties and to the cause of justice that have been developed over centuries. Conveying this level of complexity to an audience in under an hour, while maintaining the excitement and pace the audience has come to expect, is difficult.

Misconduct

The notion that jurors can simply investigate the cases they are charged to judge, whether by talking to family members or neighbors, taking information from a television special viewed during a trial, or going down to the local store to buy a similar weapon—all events seen in various television or film depictions of trials—is devastating to the system of justice. In most instances, the juror committing the misconduct is extremely sympathetic and only searching for the truth. At worst, the sense is that the party yelling the loudest has the advantage, and litigants believe they have to be entertaining to win. Because juror misconduct is rare, the media report such stories at a very high rate. The public, however, may assume from reading such reports that misconduct is common.

Does It Matter?

Reports of the effects of television programs on the public's perception of courts and the legal system are largely anecdotal. However, there is some evidence that knowledge of the legal system is inversely proportional to viewing habits. A recent ABA study of 800 high school students showed that those who were regular watchers of the lightweight *Ally McBeal* were likely to score "medium low" or "low" on the survey of law and the legal system. However, the authors note:

> Such habits as the amount of television viewing, sources for news and legal information, working outside of school, doing community service work, and the availability of the Internet in school or home are not related to students' having more or less knowledge about the legal concepts we surveyed.[4]

Moreover, students who watched *The Practice, Law and Order, NYPD Blue,* and *X-Files* were actually better informed. Do "such shows . . . successfully teach important lessons about law, or are already well-informed students more likely to watch shows such as 'Law & Order' and 'The Practice' (than 'Ally McBeal')? Indeed, perhaps both causal links are true." [5]

Much of the theory about the effects of television is based on the experience of lawyers, judges, and court staff. If we combine these experiences with empirical data from related fields, such as crime, the situation warrants concern.

Civility

We are all injured when the rough-and-tumble of daytime TV court cases are deemed to be the standard expected by the public. Television judges who yell at the parties or demean one side's presentation are clearly atypical. Interestingly, there are more complaints to the California Commission on Judicial Performance regarding Judge Judy than there are regarding "real" judges. In fact, the Knowledge and Information Services Office (KIS) at the National Center for State Courts has also fielded complaints about Judge Judy. However, the cost to the justice system that real judges now see is evidenced by parties who are now increasingly coming into court with a combative air that is derived from their view of the battles vocally waged in show after show.

Responsibility of Bench and Bar

As members of the legal community, we have an obligation to ensure the accuracy of public perceptions of "courtroom reality." On many levels, from jurors assessing the quality of evidence by its entertainment value or committing misconduct by conducting their own investigations, to litigants performing in the legal arena as if on television, the potential impact of the media on the public perception of justice is enormous. Certainly it is something we ignore at our peril, and it remains incumbent on those of us schooled in the system to educate the public whenever the opportunity is presented. We all will gain by such efforts, and we all lose if drama trumps reality. The toughest part of the problem is that if this does happen, if parties are impacted and perhaps denied justice, they, and we, will never know.

Online at www.ncsconline.org/WC/ Publications/KIS_JurDec_Trends04.pdf

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[1] Personal conversation with a researcher on a prime time legal series.

[2] "Both news and entertainment media consistently portray a more violent and dangerous view of our world than exists in reality [. . .] The figures in these non-fictional and fictional criminal justice systems on television may be representative of reality for many viewers who may use these roles to develop their own ideas and beliefs about who should be feared in society, how crimes are solved, and how criminals should be punished." Sarah Escholz, Matthew Mallard, and Stacy Flynn. "Images of Prime Time Justice: A Content Analysis of 'NYPD Blue' and 'Law & Order.'" *Journal of Criminal Justice and Popular Culture* 10 (Winter 2003-2004): 161. 164. http://www.albany.edu/scj/jcjpc/vol10is3/eschholz.pdf.

[3] See Federal Rules of Evidence 401,402, and 403.

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SEVERING THE TETHER: THE RISE OF WIRELESS NETWORKS

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Wires: the bane of technologists, architects, builders, remodelers, decorators, and building occupants—all of whom have to contend with their existence and the inherent constraints they impose on our use of facilities. Whether they take the form of copper or fiber, the wiring or cabling necessary to connect today's essential computer technology throughout an organization's facilities is a major headache for many and affects most of us in some way.

While new construction and major renovation projects can include from the outset planning and designing for cable runs, wiring closets, wall jacks, and other physical requirements of technology connectivity, these requirements impose additional complexities and costs. Even with advanced planning, occupants of this sparkling new building are faced with workstation placement and room arrangements constrained by the location of wall or floor jacks and network connectors.

Older existing facilities, which frequently house courts and other justice organizations, present formidable obstacles to network cabling. Retrofitting these buildings with technology often involves huge expense or unsightly solutions in the form of surface-mounted cabling or clumsily boxed-in conduits and chases. Courtrooms of historical or architectural significance too commonly are degraded, if not damaged, by the installation of the technology needed for current operations.

In either older or newer facilities, many a clerk's office has been hampered in its attempt to rearrange open-office layouts to increase staff efficiency or better serve the public by the realities of tethered workstations and printers.

Those darn wires! We can't live with them, and we can't live without them . . . or can we? Wi-Fi, for Wireless Fidelity, offers an increasingly practical solution.

What Is Wi-Fi and What Can It Do?

Fueled by emerging standards, better performance, and sharply reduced costs, wireless local-area network (WLAN) technology has been growing by leaps and bounds during the last three years. Like cordless and cellular phones, wireless network connectivity depends upon radio frequency (RF) signals rather than physical wires or fiber optics for transmitting data. Wi-Fi refers to a set of standards for wireless network interoperability based on the Institute of Electrical and Electronics Engineers (IEEE) 802.11 specifications (at http://www.ieee.org/portal/802_11gen). With certification administered by the Wi-Fi Alliance, a nonprofit international association of over 200 member companies (http://www.wi-fi.org/OpenSection/index.asp), Wi-Fi is by far the dominant type of wireless network connectivity available.

What does Wi-Fi mean in practical terms? An individual using a computer equipped with a Wi-Fi adapter can connect to a wireless network without a network cable from anywhere within range of the nearest wireless access point (a transceiver usually operating as part of a network-controlling component physically attached to the network), which typically is 200-300 feet inside a building. Workstations and printers equipped for Wi-Fi can be located anywhere without regard for plugging into a network connector. With a laptop computer and a network with multiple access points, a user can move around even a large building without ever losing connection. But wireless transmission doesn't stop at the exterior walls. (Indeed, that is one reason security is so important!) In addition to the fact that connection usually can be achieved in the immediate vicinity of a Wi-Fi-equipped building, wireless network bridges can beam the signal to the corresponding network in a nearby building, creating in effect a seamless network throughout an entire campus or office complex.

Imagine a judge being able to move from chambers to courtroom to conference room, all while maintaining ready access to the information both on a laptop and in the case management system on the court's network, and remaining connected to e-mail and the Internet as well. A court administrator with a wireless-equipped PDA (personal digital assistant) could send and receive e-mail from anywhere in the courthouse or cluster of court buildings—even while walking down a hallway or riding in an elevator. But these are not "what-if" scenarios. All of this can be accomplished today using inexpensive, off-the-shelf products and without incurring the monthly service charges associated with cellular phone and cellular-based wireless data services.

In addition to connecting its own staff to the court's network, a court may provide a controlled level of access to selected outside users, such as attorneys or jurors waiting to be called for a trial. Such access usually is limited to connection to the Internet rather than the court's internal network. Another option is to permit a commercial Wi-Fi provider to offer fee-based Internet connectivity to the public in the courthouse, thus separating not only the internal and external networks, but also the responsibility for administration and service. This kind of service is rapidly becoming commonplace in airports, restaurants, urban centers, and other public places, where Wi-Fi hotspots permit connecting to the Internet with a properly equipped laptop or other device within the vicinity.

Court Use on the Rise

A surprising number of courts around the world already have been tapping into wireless technology. Some are using it internally to connect staff with the court's network, while others are partnering with commercial providers to offer Wi-Fi Internet connectivity.

As early as 2001, the North Carolina Administrative Office of the Courts (AOC) began piloting wireless technology in five counties. The initial project furnished judges and district attorneys with wireless laptop computers and installed wireless access points throughout the courthouses. The approach increased convenience and productivity, and the district attorneys found it particularly effective during trials. When Hurricane Isabel struck coastal Hyde County in September of 2003, flooding and severely damaging the courthouse, the AOC installed a Wi-Fi network in a temporary courthouse. The WLAN was operational in less than an hour, even before furniture could be moved in. DirecTV was tapped to provide Internet access, permitting the AOC to connect the WLAN to the statewide case management system in Raleigh. The AOC now plans to install Wi-Fi in all of the state's courthouses.

The Bernalillo County Municipal Court in New Mexico began testing Wi-Fi in February 2004 in its new ten-story, $67 million courthouse, and went live with the system in August. The wireless network includes 65 access points and ties into the existing wired network. The initial purposes for the WLAN are to provide Internet access to prospective jurors waiting for a trial, increase online research by judges and attorneys, and support communications for court security personnel. This last goal is being addressed through wireless telephones using voice-over-IP (VoIP) technology to send audio via the network. The 36 Wi-Fi telephones replace the unsatisfactory standard cordless phones that had been in use for this purpose. The court prohibits the use of cell phones in the building.

The U.S. Bankruptcy Court in the Western District of Texas has set up its own WLAN for its courthouses in Austin, Waco, San Antonio, and El Paso. Attorneys, trustees, paralegals, and staff can register for access to the Wi-Fi network at no cost.

Many courts are partnering with commercial Wi-Fi service providers to offer a commercial Wi-Fi hotspot in court buildings. In some instances, the court receives free connectivity in return for housing the provider's fee-based service. Fee-based services offer a range of subscription options, from daily to annual plans. For attorneys and other court-related professionals, these fees are negligible compared with the gains in productivity and effectiveness that result from instant, portable connectivity. If courtroom Wi-Fi is not routinely available, some providers offer a temporary courtroom Internet access service to a trial team for the duration of a particular trial, with permission from the judge.

Courts offering commercial Wi-Fi services include:

- New York (has commercial networks in 21 state or municipal courts)
- Baltimore City Circuit Court (jointly with the state's attorney's office)
- Philadelphia Court of Common Pleas
- Orange County Courthouse in Orlando, Florida
- Harrison County courthouses in Gulfport and Biloxi, Mississippi
- Royal Courts of Justice in London, plus six other courts around the U.K.

Security

Security issues become a major concern for courts turning to Wi-Fi for their internal networks, as connectivity is no longer restricted to an observable, physical location with a hardwired adaptor. Although wireless standards have included security measures from the outset, these have not been sufficiently robust for general, enterprise-level computing until recently. In fact, security concerns have been one of the chief impediments to more widespread adoption of Wi-Fi beyond home and casual or temporary use.

Beginning in September 2003, Wi-Fi-certified components had to include Wi-Fi Protected Access (WPA) capabilities, which are designed for interoperable, enterprise-class security and encompass much more robust authentication and encryption techniques. WPA itself was intended as an interim measure until IEEE ratified the new, even tougher 802.11i draft security standard, which it did in June 2004. Wi-Fi certification after September 2004 includes the requirement that products meet the 802.11i standard, which the Wi-Fi Alliance refers to as WPA2. Industry analysts predict a resulting pronounced surge in wireless implementations during the next year or two. What 802.11i or WPA2 means for courts is that, although neither wired nor wireless networks can be made absolutely secure, a properly configured Wi-Fi network using current components should provide more-than-adequate security for courts.

Reliability

Today's Wi-Fi products offer generally high reliability as well as low cost. Nevertheless, Wi-Fi data transmission, like all radio frequency communication, is susceptible to interference from other electronic devices that share the airwaves. Microwave ovens, cordless phones, radio-controlled toys, and some wireless audio and video transmitters operate on the same frequency and can cause interference if in close enough proximity to the path between a wireless access point and a wireless workstation or printer. Wireless peripheral devices based on Bluetooth, another wireless technology employed mostly for short-range purposes such as linking a PDA or printer to a PC, also operate on this frequency and can cause problems. The usual effect of interference is to slow, rather than completely disrupt, data flow or to reduce the range at which the equipment can operate satisfactorily. Taking a little care in planning, providing sufficient numbers of access points, and occasionally employing special directional antennas usually eliminates any serious interference problems. Just don't expect to browse the Web on your laptop while microwaving your soup!

Configurations

Commercial Wi-Fi Internet access services aside, how are courts most likely to implement wireless networking? The most common configuration for the immediate future will be a combination of wired and wireless components. Particularly where an extensive wired network already exists, Wi-Fi is likely to be used initially for expansion into new office locations and for special purposes, such as supporting laptops and handheld devices, VoIP phones, and wireless cameras. Areas that require frequent or radical rearrangement of workstations, such as training rooms or multipurpose rooms, are also prime candidates.

In older buildings without a comprehensive category-5 or better wiring infrastructure already properly retrofitted, a hybrid network is more likely to comprise a wired backbone (the main network transmission line and the routers, hubs, and switches that control the flow of data) connecting wireless access points that communicate with the Wi-Fi-enabled workstations and printers deployed for the majority, or at least a substantial percentage, of the users.

For very small courts or divisions in small buildings (e.g., less than 5,000 square feet), and for courts operating in temporary facilities, an essentially all-wireless network may be the best solution. In addition, courts in developing countries where implementing an elaborate wiring infrastructure is difficult may be able to springboard their court technology plans by going with wireless networks.

Wi-Fi State of the Art and Future Developments

The current set of best-selling Wi-Fi products meet the 802.11g standard. These products transmit data at a theoretical rate of up to 54 megabits per second, nearly five times the speed of the previous 802.11b products (which are still being sold during the last half of 2004 but are losing market share quickly) and fast enough for even data-intensive network operations. Happily, 802.11g products are designed to operate on the same 2.4 GHz frequency as 802.11b products and can coexist on the same network. Since Wi-Fi-certified products must be interoperable regardless of brand, competition among leading vendors helps keep prices down on the latest equipment.

Although many technology areas are advancing rapidly, wireless networking is receiving an extra push from the industry's recognition of its enormous market potential. As manufacturers ramp up production to achieve even more economies of scale, the IEEE 802.11 WLAN working group is busy moving forward with new standards to improve performance and security. As mentioned above, the 802.11i draft standard just ratified in June 2004 deals with increased security. However, the working group is also developing the 802.11n standard, which will contain specifications for further increases in speed and reliability. This new standard should be completed by 2006 and is expected to replace the current 802.11a/b/g

standards, with a goal of delivering actual throughput in the range of 100 megabits per second.

The benefits of wireless technology are demonstrable and significant. Courts not already considering wireless networks should begin investigating the potential value of this maturing technology with all deliberate speed.

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TIME FOR ELECTRONIC COURT RECORDS

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In articles published in the *Justice System Journal* and the *Court Manager*, Washington State Bar Association executive director Jan Michels, King County Superior Court judge Dale Ramerman (now retired), and I identified "Lessons Learned" from implementing the first stages of our Electronic Court Records (ECR) Program in the King County Superior Court in Seattle.[1] Five of six stages of our ECR program are nearly completed. It is time to revisit some of the "Lessons Learned."

The Problem Was Paper

The problems of space and time led us to electronic court records. Paper, the calendar, and the clock had always been major sources of stress on the court, court personnel, clerk's office staff, and the public. The case file, composed of documents from litigants, attorneys, judges, court staff, the clerk's office, other officials, and other interested parties, constitutes the "official record" around which everything revolves. Despite our using all the tools and tricks available for managing them, 8,000 paper documents filed daily for thousands of case files could not be tweaked to fix the problems we had.

Every court has similar problems when the official record is on paper: Only one copy of the file is available at a given time, and many people want to use it simultaneously. No matter the number of staff, it takes a lot of time to process paper documents and physically sort and move them to their respective folders. Paper records are subject to loss, misfiling, and even defacement or theft. Before going to electronic records, our standard turnaround time for new filings was five working days, from submittal to the file folder. People daily cursed "the clerk" for the time it took, for delays, for missing or unavailable materials, and for all the other frustrations associated with "the file."

On to Electronic Court Records

Since the 1990s, the concept of "electronic filing" has swept through courts. It has been the tag line for conferences, products, and publications. But the tag line focuses attention on the delivery of filings by electronic means. While that is a critically important element, it is but a piece of the answer to issues of paper, space, and time. The better term is "electronic court records."

In King County, we named our effort the "ECR Program," to be achieved step-by-step through the "ECR Project."[2] We identified six phases, realizing we could not do everything at once. They were:

- Core ECR, in which we scan incoming documents, have clerks process them using images rather than papers, and store them in an electronic document management system, keeping paper files for everyone else's use.
- Court Support, wherein the judges and court staff would have access to the images, from bench, chambers, and desktop.
- Law, Safety, and Justice Connectivity, extending the same electronic access to the county's prosecutors, defenders, and law enforcement, with public electronic access in the clerk's office; during this phase we would make the transition from routinely retaining paper filings.
- Electronic Filing, where filers would submit digital documents directly to the clerk's electronic filing manager system, bypassing the scanning work, at first with PDF and image formats, but later using standardized XML-based "smart" documents that would support automated processing.
- Document Access and Distribution, where electronic records would become accessible to litigants and the public remotely via the Internet.
- State Initiatives, wherein King County cooperates with other courts and the Administrative Office of the Courts on standards for electronic court records, including electronic filing, so litigants won't have to learn and adapt to a different kind of technology for each court; without standards, people would not want to adopt the new technology and would continue filing paper documents.

Central to all of these projects was the concept of making the "official record" electronic. We have now demonstrated that when the official court record is electronic, most of the problems caused by having paper "official" records are ameliorated or eliminated.

In our 1999 articles, we wrote about "three critical issues that, if unresolved, may prevent courts from realizing the full potential of digital electronic records:"

1. There is a real difference between working with hard copy and with electronic court records.

At King County we learned that the difference strongly tips in favor of electronic records, although not at first with every user. Many users who resisted ECR in 2000 are among its biggest fans today. Why?

- More than one person can view the same item at the same time from different locations; no competing for the one-and-only case file folder.
- Indexed correctly, an electronic record is not going to be misfiled or lost.
- An electronic record system, properly designed, provides at least one reliable back-up copy; a paper file system has only the "original" record.
- The time required to access a record is measured in network and computer time, not in the hours or days required to order, locate, retrieve, check-out, deliver, return, check-in, and reshelve paper records; staffing dedicated to paper-handling tasks can be (and has been) substantially reduced.
- The electronic case record is inherently more secure when designed to keep the "original" electronic objects in the secure and impenetrable custody of the clerk's office, serving up copies to requesters, avoiding the possibility of interception of pages, and reducing suspicion about documents being altered; paper documents might be more suspect because they often pass through many hands even after being placed in the official court file.
- The delivery of an electronic document can be made more secure than a physical delivery, albeit electrical outages, network "downtime," and other computer-related problems are hard to compare against routinely successful, though costly, physical paper deliveries by trusted messengers and services.
- The ongoing retention of an electronic record, originally an issue of great concern due to lack of long experience, has come to be seen as a necessary commitment by courts that choose electronic records technology, a problem that has a variety of solutions.

2. While the technology for electronic court files is here now, the business infrastructure is not.

We noted specific issues of concern. We predicted controversy over how to treat public records that, when available electronically, would be seen by many as having lost a de facto level of privacy; that controversy has been focused in our state over a proposed new state court rule. We believed controversy would develop around whether a document's content was valuable in itself or because of the structured document and familiar appearance given it; this has not been a focus of much discussion, but the advent of XML-based "smart documents," where data elements are easily extracted for reuse, may bring it to the surface. We knew that archiving electronic documents would be challenging; since then, technologists, records managers, archivists, and others have been addressing the issue, because preservation of electronic records and information encompasses a much larger problem than just the court files. The underlying business issues have been examined and, to a great degree, skillfully addressed in a "proposed standard" now adopted by the COSCA and NACM boards.[3]

3. Important legal practice questions need rethinking.

We urged attention to issues such as how attorneys would cite other documents and records when they became digital objects without being pages, documents, and books. We asked whether and, if so, when pen-and-ink signatures might be omitted in electronic documents. We asked about validity and authenticity and whether data not "frozen" in document form have legal meaning. We wondered about "multimedia" documents with animation and "special effects." Many of these issues remain unresolved.

In the 1999 articles, we identified "Project Lessons," the truth of which time seems to have reinforced:

- **The vision is not the plan**. Tackling project management and technology planning proved to be an entirely different animal from dreaming about possibilities with electronic records, workflow, Internet access, and "smart" documents. Skilled technology project managers and careful management of bids and vendor contracts have been essential elements of the formula for progress and success.
- **Cost/Benefit analysis and accountability are important for funding**. Promising cost savings from new technology was important, but actually

delivering on those savings by eliminating tasks and positions has proved the best demonstration of benefit. Many savings and changes that don't show up on the balance sheet are nevertheless real and need to be talked about, measured where possible, and recognized as benefits.

- **The success of ECR is in the hands of those who file and use court records**. This principle will play out for us in how well we promote use of e-filing, now being deployed. The underlying technical standards, we knew, had to be national standards developed for state courts,[4] and our applications had to be user-friendly, intuitive, and responsive if litigants were to use them. If they don't use them, we save nothing; when they do, we all save substantially in time, space, and money.
- **There is no single "right" place to start, no "perfect" direction to go**. We have taken advantage of available opportunities to move into electronic court records. Now we have begun to realize its real benefits. For others who are thinking about this technology, I urge action, experimentation, pilot projects—any opportunity to move forward should be tried and turned into a basis on which the electronic record might be built.
- **You can't include too many or educate too much when engaged in a process that will change legal culture**. To justify the initial investment in ECR we had to have backing from many sources: the bench, the bar association, county officials, and representative litigants and records users. While the clerk's office staff was closely involved in the design of ECR and its subsequent expansions and enhancements, we learned that every user has enough of a stake in the application that they all need to be included in some way in planning, testing, revising, and planning for upgrading. Responsive training, open doors for complaints and suggestions, and a strong commitment to customer service are keys to success.
- **Maintaining support for a project takes constant review and concrete resources**. Committing to an electronic court record means not going back to old technology again. To keep moving forward, there must be ongoing support. What was seen as a "project" or "experiment" had to become at some point an established way of doing business, deserving quality support, review, and improvements.
- **A "proof of concept" approach helps to mitigate risks and overcome fears and resistance**. Working from 1999 through 2004, we have seen resistance, and we have seen the continued expansion of modern technology and its wider and wider adoption. Resistance to business changes persist, but selling, for example, desktop access to images versus long waits for hard copy files is no longer so difficult. Yet there are radical changes still ahead for which careful experimentation and testing approaches will be needed to prove their worth.
- **The technology and the environment will not hold still**. We wrote: "It is important to . . . avoid the temptation to wait for the next iteration of technology to come along." We urged modular and flexible platforms and sequenced, project-focused approaches: "It is always easier to go from something to something than from nothing to something." Technological change is a given for projects like ECR; responsiveness to change must be part of the plan, for change is unavoidable. We learned to be flexible and even abandoned one effort to implement electronic filing because it wasn't working out.

In King County's ECR program, when the electronic case file was acknowledged as the "official" record, the greatest obstacles to information, efficiency, and cost reduction were undermined and began to be eliminated. File retrieval became swift, sure, and decentralized. Work was greatly speeded by eliminating the slow crawl of stacks of papers from desk to desk. With LegalXML-based electronic documents that point to and identify the meaning of their contents, applications will locate and reuse information freely. Automating rote manual functions is coming. Many still hold onto paper documents; we have concluded it is time to let go. The day of the electronic court record has come.

Online at www.ncsconline.org/WC/ Publications/KIS_DocMan_Trends04.pdf

ENDNOTES

[1] See "Management Note: Working to Build an On-line Court Records Program," *Justice System Journal* 20 (1999): 181-189; and "Building an On-line Court Records Program: Lessons Learned," *Court Manager* 14, no. 3 (1999): 12-16.

[2] As of October 2003, we had scanned 48.4 million pages, enough to make a stack of paper over 12 miles high. If the papers were laid end-to-end, they would go one-third of the way around the globe. Those statistics are for one court in a populous county—so far! We do not now keep most papers after scanning, verifying, and indexing them into the ECR document management system.

[3] See this important document at http://www.ncsconline.org/D_Tech/Standards/Documents/pdfdocs/Recommended_%20Process_%20standards_02_26_03.pdf.

[4] See http://www.oasis-open.org/committees/tc_home.php?wg_abbrev=legalxml-courtfiling for information about ongoing standards development in the Organization for the Advancement of Structured Information Systems' LegalXML member section, particularly the Electronic Court Filing Technical Committee.

WEB LOGS: INCREASING COURTS' ABILITY TO QUICKLY COMMUNICATE WITH CONSTITUENTS

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Communication is as important to courts as it is to for-profit businesses. Advances in technology enable courts to communicate more easily with the various groups who participate in court business, and the result—more information—increases trust and confidence in the courts.

The courts' traditional means of communicating with court users are the postal service, the organized media, fax machines, and telephones. In the past decade courts have increasingly used e-mail and Web sites to communicate internally and externally. Web logs, or "blogs," can be useful communication tools for courts because they are easy to use and accessible to anyone with an Internet connection.[1] Blogs are Web pages

> made up of usually short, frequently updated posts that are arranged chronologically—like a what's new page or a journal. The content and purposes of blogs varies [sic] greatly—from links and commentary about other web sites, to news about a company/person/idea, to diaries, photos, poetry, mini-essays, project updates, even fiction.[2]

Blogs can be easily tailored to suit a communicator's needs.

Businesses can use blogs to increase awareness of a product or service.[3] News organizations use blogs to augment their traditional news coverage. Nonprofits use blogs to spread information.[4] The legal community also has "bloggers," which is the popular name for those who own a blog. Attorneys and other legal practitioners use blogs not only to spread their ideas and discuss their practices but also to market their knowledge and skill. One prominent example is Goldstein & Howe, a Washington, D.C., law firm that practices before the U.S. Supreme Court.[5] Legal scholars also use blogs to discuss ideas and developments in their field of study.[6]

Some courts have also experimented with blogs. Rory Perry, the clerk of the West Virginia Supreme Court of Appeals, publishes three official court blogs. These blogs discuss civil case news, criminal case news, and family case news.[7] Perry also maintains an unofficial blog that addresses the intersection of the law, technology, and the courts.[8] In a presentation at the Eighth Court Technology Conference (CTC8), he discussed the impact of his court's official blogs as well as the ways in which they have helped spread information:

> By far the most effective and interesting strategy for improving public access to understandable information about court decisions has been the publication of an official court weblog. . . . Using this approach, I re-publish the topical summaries of opinions to static HTML pages. It's also an easy way to post news about upcoming developments. What's more, I include a feature allowing users to automatically run a Google search on the topic of the court's decision. In addition, each weblog entry is also automatically published as an XML information feed others can subscribe to and re-use. The format for these news feeds is called RSS . . . , which is an increasingly common method to share the information published on Web pages without having to visit the pages themselves.[9]

Judge Gil Jones of Texas also uses blogs in his judicial district, creating what he refers to as a "24/7 bench-bar conference."[10] The blogs are a part of Judge Jones's Content Management System (CMS), which he hosts on a site separate from the official site of Texas's 33rd Judicial District.[11] He is able to track the number of visits to his blogs' posts. While all of them receive hits, "some get quite a few." His goal for this project is "to provide a central location for the practicing attorney to find and use all information relative to a successful practice before the 33rd District Court."[12] Judge Jones uses his site to post local forms, information on local legal customs, and rulings on unusual cases. The site also helps the judge become aware of the concerns of those who practice in his court.

Judge Jones categorizes his blogs into "Court Clips," "Court Info and Procedure," "Random Rulings," and "Law of Interest." Attorneys are allowed to register with the site and respond to Judge Jones's posts.[13] Judge Jones directs members of the practicing bar to use his site to "[m]ake suggestions of areas of local practice where you feel a rule is needed for guidance, discuss existing local rules you either love or hate, or recommend court rules under which you've practiced that you feel are especially effective."[14]

The ability for attorneys to leave comments is "both good and bad and the judge

who uses it needs to be both personally and professionally secure in himself to put that option out there." Even though Judge Jones's site is not a high-traffic Web site, he believes it is successful and that the increased accessibility is a good thing: "I've made myself far more accessible in many ways than judges typically do, but I think it's the fair thing to do."[15]

Blogs are one of the tools that courts can use to become more accessible to an increasingly technology-savvy society. This relatively new technology allows content to be easily shared with anyone who has Internet access. The software needed to set up a blog is relatively inexpensive, and "[n]o extensive knowledge of HTML, XML, or programming is required."[16] If your court is contemplating how to increase accessibility to, and interaction with, court users and the broader public, then you should consider the benefits of setting up a blog.

Online at www.ncsconline.org/WC/ Publications/KIS_IntCts_Trends04.pdf

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[1] Legal blogs are sometimes referred to as "blawgs." Bev Butula, "Blogs—Another Online Resource," *Wisconsin Lawyer* (May 2004): 24. To find a list of "blawgs," visit Blawg.org (available at http://www.blawg.org).

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[3] "Gates Backs Blogs for Businesses," *British Broadcasting Corporation News*, available at http://news.bbc.co.uk/2/hi/technology/3734981.stm; Farhad Manjoo, "Flash: Blogging Goes Corporate," *Wired News*, available at http://www.wired.com/news/culture/0,1284,52380,00.html; and Jena McGregor, "It's a Blog World After All," *Fast Company* (April 2004), available at http://www.fastcompany.com/magazine/81/blog.html.

[4] Peter Panepento, "Advocacy Groups Discover the Power of Blogs to Spread Their Messages," *Chronicle of Philanthropy* (August 5, 2004), available at http://philanthropy.com/jobs/2004/08/19/20040819-32353.htm.

[5] SCOTUSBlog, available at http://www.goldsteinhowe.com/blog/index.cfm. The blog focuses on the U.S. Supreme Court.

[6] Some prominent examples include Prof. Eugene Volokh et al., at "The Volokh Conspiracy" (available at http://www.volokh.com), and Prof. Douglas Berman's "Sentencing Law and Policy" blog (available at http://sentencing.typepad.com).

[7] Available at http://www.state.wv.us/wvsca/Clerk/Topics/Civil; http://www.state.wv.us/wvsca/Clerk/Topics/Criminal; and http://www.state.wv.us/wvsca/Clerk/Topics/Family.

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[10] Available at http://dajudge.us/dr/main/?PHPSESSID=17bdc73eda43dcd2d0c39aa1c3e74871.

[11] Available at http://www.courts.state.tx.us/district/33rd/index.htm and role of discussed at http://dajudge.us/dr/main/?q=about&PHPSESSID=6795be2a865badc6fade904575a5d242.

[12] Judge Gil Jones, e-mail to author, sent July 29, 2004.

[13] Available at http://dajudge.us/dr/main/?q=taxonomy/view/or/4 ; http://dajudge.us/dr/main/?q=taxonomy/view/or/6; http://dajudge.us/dr/main/?q=taxonomy/view/or/5; http://dajudge.us/dr/main/?q=taxonomy/view/or/52; and http://dajudge.us/dr/main?q=user&PHPSESSID=a71caec3ed0c13dfc51a72ea91f807a4.

[14] Main Page, available at http://dajudge.us/dr/main.

[15] Judge Gil Jones, e-mail to author, sent July 29, 2004.

[16] Perry, "Building Better Public Access," available at http://www.ctc8.net/showarticle.asp?id=65.

THE FUTURE OF COURT SECURITY

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Importance of a Safe Environment

The courthouse is a hub of public activity. While many people are required to be in the courthouse for court cases (e.g., defendants, witnesses, attorneys, judges, and court personnel), many others go there to file deeds, record real estate transactions, change their names, register their businesses, and obtain a variety of licenses, from marriage to dog tags.

Free and open access to justice requires a safe and secure environment in which all those who come to the courthouse are free from fear and intimidation. Judges, employees, and the public need to feel safe if they are to conduct themselves in a fair and impartial manner and in accordance with a sense of judicial decorum.

Threats and Risk Assessment

Judges, judicial employees, and others in our nation's courthouses often become the victims of hostile acts. Most of this violence is interpersonal, in that it is an attack by one person against another. It may include family members or friends of a crime victim who suddenly attack the defendant in the courtroom. It may involve a party in a divorce or other domestic case who suddenly attacks his or her spouse. It also can involve a spouse or coworker who brings a weapon into the building to harm someone. Or it may involve gang members attempting to intimidate a witness or juror. What characterizes most courthouse violence, though, is that it is related to a specific court case.

Some violence, however, is symbolic: it is an attempt to make a general statement, using a public setting such as the courthouse as the platform. Such was the case with the bombing of the Oklahoma City Federal Building in 1995. That attack spurred an extensive review of the vulnerability of federal facilities by the Department of Justice. On the day after the bombing, the president directed the Department of Justice to assess the vulnerability of all federal office buildings in the United States.

Fifty years ago there were no metal detectors in our courthouses. Courts, especially county and municipal ones, were open public buildings where people were free to come and go. Many courthouses served as the seat of local government and included the municipal or county offices, such as the property assessor, tax collector, public works department, and the voter registrar. Courthouses were a center of the community where people obtained their fishing, dog, and marriage licenses and probated their wills.

Today we add terrorism to the list of threats to our society, institutions, and citizens. To truck bombs we add chemical, biological, and even nuclear weapons to the list of threats that need to be considered. How has this changed the need for security in our courthouses? Are these threats credible when applied to a local trial court?

Over the years more and more courthouses have Installed metal detectors and x-ray machines to keep weapons out of the building. Today, many of our local courts have instituted at least minimal security measures, even in our most rural courts, that limit the public's access to some areas of the building and prohibit firearms in the courthouse. The standard has become to create a secure perimeter with one public entry where everyone is screened for weapons. Many communities, however, still resist even minimal security measures because of the expense.

The good news is that new concerns about terrorism have renewed interest in making our courthouses safer places in which to work and conduct our judicial business. But do we need to make them into fortresses with blast protection barriers, chemical and biological sensors, video surveillance using face recognition software, and armed security patrols?

We need to realize that the most frequent incidents will still be minor altercations between individuals involving some harsh words, some threats, and maybe some pushing and shoving. The worry in such situations is that they can become more serious where someone gets injured. Historically, violent acts where someone gets killed are rare, but they do occur.

But, with the exception of a few high-profile court buildings, the current heightened sense of threat from terrorism should not dramatically change the nature of the most common risks and the actions needed to counter them for most county and municipal court facilities. Most local courthouses are unlikely to become the target of an outside terrorist strike. Such targets are more likely to be chosen for their value as a national symbol. The risks of the future likely will remain

similar to the risks of the recent past. That is, almost all situations will be related to a particular court case or other activity in the building.

What are the most frequent risks that courts must protect against? Threats run the gamut, starting with minor vocal outbursts from frustrated persons who are angry about appearing in court, such as traffic violators who direct their anger at cashiers in the clerk's office. These incidents still create stress in the office, and many clerks often mention such incidents when they request some type of barrier between them and the public. Usually, though, violence results from animosity between opposing parties (including friends and family members) or from family members of a defendant or victim. It is most likely to break out in the courtroom or corridor and take the form of an attack on the defendant or attorney. One particularly stressful time is criminal sentencing. Most of these incidents can be prevented through architecture that separates parties and provides sufficiently spacious areas for people to wait. Knowing which types of cases (domestic violence, divorce, child custody, etc.) are most prone to violent outbreaks allows security officers to prepare by having additional security on hand.

It is important, therefore, for each community and court to conduct its own risk and vulnerability assessment. The sheriff (or office responsible for security in the courthouse), in cooperation with the judges and local government officials, should periodically review the risk situation in each facility and develop a security plan to address the needs. Not every building needs to be secured in the same manner. Risk assessments should consider the type of case, the likely location of incidents, the nature of the perpetrator, who the victim is, and the nature of the violence. For example, when assessing risks, we know that some of the most violent incidents occur in domestic cases between domestic partners. Emotions run high when dealing with issues of divorce, child support, and child custody.

An understanding of potential victims is also important. We often focus on the judge, but the most common target may be the defendant, a witness, or even a member of the defendant's family. Other targets may include defense attorneys, prosecutors, and spectators.

How should courts respond to potential risks and threats? Overt security measures evoke an image of justice held hostage. In this age of increased threats to public safety, general court security measures remain a prudent necessity, but security measures should remain as unobtrusive as possible.

Effective court security is achieved through:

- Architectural elements, such as separate public, private, and prisoner circulation systems, holding cells, and blast resistant construction
- Equipment and technology, such as surveillance cameras, metal detectors, and x-ray machines
- Personnel and operating procedures, including staff training, weapons policies, and emergency procedures

Minimum Countermeasures

Among the issues that should be considered when developing countermeasures to risks are:

- Site and setback of the courthouse
- Perimeter control
- Glazing—bullet resistant, shatter resistant
- Public entry screening
- Staff entry
- Central security
- Central holding/Sally port
- Staffing of holding cells
- Prisoner escort
- Court-floor holding
- Duress alarms
- Lighting
- Door/Access controls
- Surveillance cameras
- Retail space, motion, and heat sensors
- Intrusion alarms
- Chemical sensors
- Biological sensors
- Trash removal, deliveries, and loading docks
- Emergency power and generator

In general, architectural and equipment standards that enhance safety include:

- A single point of public entry to the building
- Weapons-screening checkpoints with walk-through metal detectors and x-ray devices at all public entrances
- Properly sized and configured lobbies to permit appropriate queuing at entry screening checkpoints without making people wait outside
- A separate judicial entrance from a secure parking area with separate access to offices for elected officials
- Separation of public, judicial/staff, and prisoner circulation systems
- Secure vehicular sally port for transfer of prisoners to and from the building
- Central and court-floor prisoner-holding areas accessed by secure prisoner circulation for delivering prisoners to courtrooms safely and quickly
- Sufficient public waiting space to separate opposing parties, particularly in domestic cases
- Elimination of blind areas and dead ends or places where people can hide within the building

A major element in improving safety is entry screening to keep all weapons out of the courthouse. This policy often is seriously compromised by court staff, attorneys, and law enforcement officers. Too often when a weapon is fired in the courthouse by a defendant or other person, they took the weapon off of a security guard. The best policy is to prohibit all weapons, even those carried by law enforcement, from the courthouse. To make this policy work, gun lockers need to be located at entrances used by law enforcement officers in which they may place their weapons.

It must be remembered that employees, just as in other workplaces, can be the source of domestic or workplace violence. While it is an inconvenience, all persons, including staff and law enforcement, should be subject to the same security requirements as the public.

Conclusion

Even with the threat of terrorism, the primary risks to the integrity and safety of our nation's state and local courts will continue to be the same tomorrow as they have been in the past. In fact, most courts will be more likely to sustain damage

Entry screening station, San Francisco Civic Center Courthouse.

from a natural disaster, such as a hurricane, flood, fire, or tornado, than from a planned terrorist attack. The violence perpetrated in our courts will be caused by individuals related in some way to a case before the court—the fight that breaks out between the parties or a victim, family member, or friend who takes revenge against a witness or defendant. Most attacks will be spontaneous and unplanned. Our responses to these types of risks will remain as they have been: the prudent use of security personnel, architectural elements, and appropriate technology, such as surveillance cameras and metal detectors.

But there is a threat out there, and, while the probability of a terrorist attack is very low, the consequences are horrific to contemplate. Prudence requires us to give it consideration when planning countermeasures. Minimum security measures (physical, technological, and personnel) provide protection against most threats and should lend at least some protection against many of the more violent threats if implemented properly. There are, however, some things that are just outside the ability of court security officers and others responsible for court security to protect against, requiring the courts to become more involved in larger, community-wide security planning efforts involving the local and state police, disaster relief planners, and others concerned with assessing and responding to terrorist attacks.

Online At www.ncsconline.org/WC/ Publications/KIS_CtSecu_Trends04.pdf

TRENDS IN COURTHOUSE DESIGN

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Recent state and local budget crises have required courts to do more with less while trying to manage larger and more complex caseloads. At the same time they are struggling with dramatic changes in their service populations and technology that are fundamentally affecting the way in which they operate, as well as their relationship with the citizenry.

We need only look at the profound changes the Internet has had just within the past decade on how courts conduct business and exchange information. Electronic filing, electronic documents, document imaging, and electronic data interchange are affecting, and will affect, how work is processed by courts. It will reduce the need for litigants, attorneys, and the general public to visit the courthouse. Allowing litigants and the public to access court records, retrieve information, obtain court forms, submit pleadings, and pay fines all without coming to the courthouse reduces the need for space and staff to accommodate large numbers of courthouse visitors. At the same time, while the need for public counter staff may decline in relative terms, there may be a greater need for technical staff conversant with e-commerce to develop and maintain court Web sites or to manage contracts with outside vendors. There also will be a greater need for "data managers," rather than clerks who retrieve, process, and file papers.

The burgeoning number of pro se litigants are having a dramatic impact on courts. Nationally, the responses to the flood of pro se litigants have been many, from placing court forms, instructions, and other information on the Internet to developing self-help centers where pro se litigants can receive personal assistance and information. In general, courts are developing more of a service orientation and treating the public more as customers and clients. This service-oriented approach is changing how the courts interact with the public and litigants and will affect the types of employees and facilities needed in the future.

Trends toward greater use of specialty courts, such as drug courts, DUI courts, family courts, domestic violence courts, and mental health courts, affect court staffing, judicial assignments, staff needs, and courtroom requirements. Specialty or problem-solving courts are labor and judge intensive, with intensive supervision of offenders who require drug or alcohol testing. The goal is to treat the underlying problem (such as drug or alcohol use) to produce better outcomes, reduce recidivism, and reduce crime.

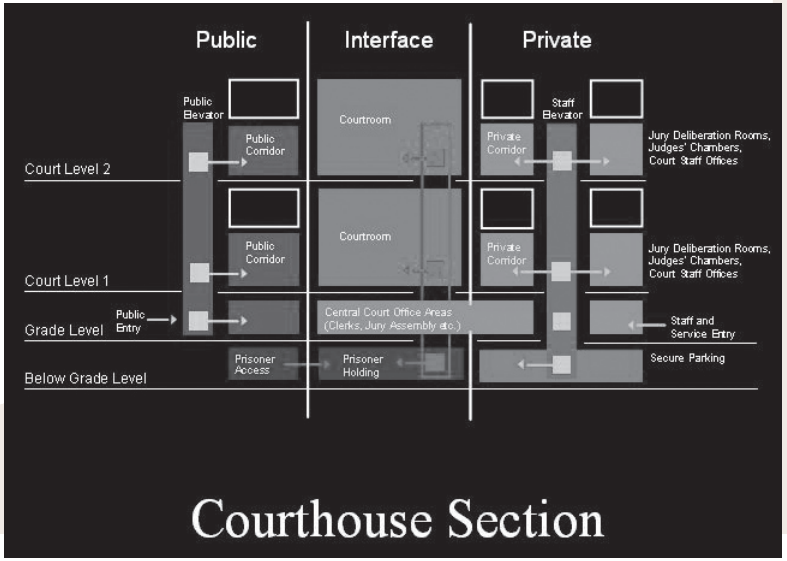
Among the many other issues that tomorrow's court facilities will need to accommodate are:

- Improving public trust and confidence
- Providing greater transparency of justice
- Improving public access and accommodation
- Making greater use of ADR and mediation to reduce judicial workloads

Design Responds to Changing Operational Needs

Courthouse design has evolved over the past 50 years in response to changing operational needs. As communities have grown, as courts have grown larger, and as

Figure 1



Reprinted from *The Courthouse: A Planning and Design Guide for Court Facilities* (Williamsburg, VA: National Center for State Courts, 1998). Diagram prepared by HOK.

government has grown more complex, courthouses have grown from simple facilities to large, complex, multi-occupant structures. Changes have included the development of three separate zones and circulation systems within the courthouse for the public, prisoners, and judges and staff (see Figure 1). As safety and security concerns have increased, more courts are using entry screening to exclude weapons from the courthouse. The growth in the size of courts and the need to maintain flexibility in judicial assignments has led to a tendency to separate judicial chambers from courtrooms to enhance the ability to assign courtrooms based on the requirements and needs of individual trials.

To accommodate the many changes in society and judicial operations systems, courthouses have been changing and will continue to change. One trend during the past decade that will continue to spread is the desire to make the judicial system more accessible, inviting, and transparent. This has grown in part out of a recognized need for not just courts, but all government, to become more service or "customer" oriented. Maybe it's a realization that with the rise of private mediation and adjudication services, courts no longer hold a monopoly on the adjudication business. In any event, courts and clerks are viewing themselves as providing a service and are finding ways to treat people as customers or clients. In the physical environment, this manifests itself in better, more spacious, and more comfortable waiting areas; better public information and signage in buildings; easier access to information and assistance; a concern for victims and witnesses; a safer and more entertaining environment for children; a desire to make the jury experience more pleasant and less burdensome; and efforts to reduce the time defendants and litigants need to wait to have their cases heard.

Public-waiting area, Fenton Judicial Center, Lawrence Mass., designed by Leers Weinzaphel Associates, Boston. Photograph by Steve Rosenthal, Auburndale, Mass.

Public Access and Accommodation

Traditionally the approach to the front door of the courthouse has been grandly processional. Throughout the 1970s and 1980s, however, we saw a retreat in many instances to more modest entrances with emphasis on efficiency and functionality. This is changing, and we will see more courts built with grander and more important entrances as communities seek to make a statement about the importance of the courthouse and to accommodate all the security and orientation activities that must take place at the entrance. Many of the more recent facilities built around the country, such as the Scott M. Matheson Courthouse in Salt Lake City, the Clayton County Courthouse in Georgia, the San Francisco Civic Center Courthouse, and the Brunswick County Courthouse in North Carolina, use large, spacious lobbies to make a statement about the importance of the proceedings and to offer a transition from the outside world. Lobbies are a place for parties to meet, where attorneys may talk with clients and where persons may find information about navigating the building.

Entry lobby, Scott M. Matheson Courthouse, Salt Lake City, designed by HOK. Photograph by Nick Merrick, Chicago.

In many courthouses of the past 20 years, entrance lobby areas often contained freestanding and undisguised security-screening devices; many had clearly been added after the buildings had been designed. Recent projects have attempted to soften the appearance of security devices by integrating them into millwork and walls, and the future will see greater efforts to incorporate security into the design to make it less intrusive and to make the public spaces more attractive and inviting, while maintaining proper levels of security and safety.

Just as entries and lobbies show the public how to use the building, the approaches and exterior spaces also orient the public to the building and help to create a proper

judicial atmosphere. Greater attention is being given to outdoor public spaces and approaches to give the courthouse a sense of place within the larger community. This needs to be done in ways that are inviting to the public while at the same time enhancing the overall security and safety of the building. This can be accomplished through the creation of long vistas and open plazas and the elimination of hiding places and blind areas. Safety also can be enhanced while also creating important public spaces and plazas through the use of setbacks from the street that allow the public to gather.

Child Care

Child care areas in courthouses are becoming more prevalent in courts around the country. Recent state guidelines in both Colorado and California recommend the inclusion of child-waiting areas in courthouses. They need to be equipped with child-sized furniture, restrooms, and quiet toys to keep children entertained. Child care areas also need space for parents or other family members who are supervising the children. The space or room should be easily found and accessible from the main entrance but also convenient to the courtrooms.

Child play room, San Francisco Civic Center Courthouse.

At the same time, more attention is being given to child victims and witnesses who require space that is both comfortable and safe. These spaces need to be located in secure areas out of the public circulation zone of the building and are usually included as part of the prosecutor's spaces.

For a number of years now planners have recommended using closed-circuit TV in the courtrooms to allow child abuse victims to testify from remote locations within the courthouse. With newer technologies, remote witness testimony is available from any location.

Public Counters and Work Spaces

Most citizens encounter the court through the clerk's office and, in many cases, need not proceed further. Public counters where citizens and clerks interact are an essential part of the courthouse and designs that enhance efficiency and provide sufficient space for litigants to prepare documents, research cases, and conduct business with the clerk make for a more pleasant and efficient experience. Public counter areas need space for public access computer terminals, where the public may look up cases, a work surface where litigants may complete forms, and sufficient waiting area for people to line up at the counter for service. Provision also needs to be made for individuals who may need to sit while waiting.

Pro Se Litigants

One area of the courthouse that is rapidly developing is space devoted to public information geared to the growing number of pro se, or self-represented, litigants. It is known that the challenges posed by pro se litigants, many of whom do not speak English, are being addressed by at least a dozen states, and many more local courts, that have established court information centers. As law libraries are being eliminated from courthouses because of the use of online legal research and legal CDs, many courts are converting their law libraries into self-help or pro se information centers. Numerous courts also are using the Internet to spread public information. But the architectural impact of these spaces may be minimal, and such spaces need not be located within the courthouse in all cases.

Public Art

Public art, such as large-scale murals, sculpture, and decorative motifs in a building's design, enhance the sense of community, openness, and welcome in courthouses. "Public art creates a sense of place, contributing to a community's identity. It speaks to local values and cultural diversity." (Richard Newirth, director of cultural affairs for the San Francisco Arts Commission, found in "Public Art: Changing the World Around US," California Arts Council.)

Many cities and counties have "percent for art" ordinances that typically set aside 1 percent of the construction cost for public art as part of the project. Cities such as Toledo, Ohio; Richmond, Va.; San Francisco; New York; and Phoenix, Ariz., are only a small fraction of the cities nationwide that set aside money for public art. Twenty-seven states and nearly 200 municipalities have established such programs, and more are likely to do so in the future. Projects may range from murals and sculptures to stained glass windows, ornamentation on doors, and landscaping. The tradition goes back 150 years when Congress commissioned Constantino Brumidi to paint frescoes in the committee-hearing rooms of the U.S. House of

Representatives. The federal government continued this tradition with the WPA art of the Depression era and the GSA's Design Excellence Program and Art in Architecture Program of the 1990s, which saw a tremendous construction boom in federal courthouses.

Public art in a courthouse plays an important role in creating an inviting and pleasant environment, as well as in transmitting information and the values of our judicial system. Art can also be instructive when it incorporates the ideas and idealism of justice into the project, as shown by with the glass wall in the jury room of the San Francisco Civic Center Courthouse. As such it is a trend that will remain with the courts for a long time, enhancing the image of justice, its sense of importance, and central role in our society.

Future Growth and Flexibility

Courts, like other public institutions, need to adapt to changing community and societal needs. They need to grow as communities grow, and they need to adapt to new operational needs as evidenced by the growth of electronic technologies in the workplace. Owners and other stakeholders in the facilities, along with the planners and designers, need to develop designs that anticipate future growth and changes. All new courthouses should have a strategy for accommodating future growth built into the design. It could be the conversion of administrative space into new courtrooms, the construction of an addition, or the eventual separation of the court into separate civil and criminal facilities. The plan will depend on local circumstances and jurisdictions. Spaces should be designed not just for the needs of today, but the many possible needs of the future. Over time a space may house several different functions and operations. Rooms should be sized not just for the present occupant but for the potential future occupant.

One way in which new technologies are helping to solve these problems is through wireless applications. While the lack of power outlets remains a limitation in many older buildings, wireless connections within the courthouse permit the adoption of new, high-speed electronic technologies without the need to tear down the building.

Natural Lighting

A final area of change in courthouse design is in the use of natural light in the design. Because of the need for three separate circulation systems and for adjacent jury rooms and attorney client rooms, courtrooms have become "landlocked" within the courthouse, with no natural lighting available in most instances. Another concern over the past several decades has been to avoid windows in courtrooms for security reasons.

There is today a greater realization of the importance of having natural lighting and outside views in workspaces, including courtrooms. Designers will take greater effort to develop layouts that make it possible to introduce natural lighting into the courtroom while dealing with security and controlled circulation issues. This will create a more pleasant and less stressful environment within the courtroom for spectators and litigants, as well as those who must work there everyday.

Conclusion

The future will see a greater emphasis on public or customer service on the part of courts and the judiciary, and in making the court environment more pleasant and less stressful. We have seen how this translates into better and more comfortable public-waiting areas, larger and better defined entry environments, better public access, the addition of child-waiting and child care areas, the inclusion of space for pro se litigants, natural lighting, and the use of public art to convey values and a sense of place. Courthouses are, as are all public buildings, a statement of our common cultural values, and as the nature of courts and their relation to the citizenry change, our courthouses also will change.

Online at www.ncsconline.org/WC/ Publications/KIS_CtHous_Trends04.pdf

PLANNING FOR THE FUTURE: STRATEGIC HUMAN RESOURCE MANAGEMENT

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The creation of new jobs, the departure of aging employees from the workforce, slow population growth, and a shortage of employees who have the skills needed to perform the jobs in greatest demand will result in a demand for employees that will exceed supply. This "war on talent" is a great concern of organizations that wish to attract and retain top employees. Organizations will need to put greater effort into selecting and retaining talented employees, providing employee training and development, and changing traditional organizational structures that limit employees' abilities to be innovative to meet the changing needs of their organization. Strategic planning will be critical to meeting these challenges.

Top Ten Human Resource Trends

On June 30, 2004, the Society for Human Resource Management released their workplace forecast that projects the top ten trends affecting the American workplace according to a survey of human resource professionals. These top ten trends are:

1. Rise in health care costs
2. Focus on domestic safety and security
3. Use of technology to communicate with employees
4. Growing complexity of legal compliance
5. Use of technology to perform transactional HR functions
6. Focus on global security
7. Preparations for the next wave of retirement/labor shortage
8. Use and development of e-learning
9. Exporting of U.S. jobs
10. Changing definition of family

Strategic Human Resource Management

> Court leaders set the right tone for Human Resources when their management of the court is cohesive and strategic. The connection between caseflow management; education, training, and development; budgeting and finance; information technology; and human resources is seamless.[1]

Regardless of whether courts take full or partial responsibility for human resource activities, the role of human resource management has evolved over time and is now at a crossroads. What began as purely an administrative function is now seen by most human resource management executives as being much more strategic. Increasingly, courts and organizations are realizing that one of the most important roles that human resource departments can play is that of a strategic partner. This means aligning human resource management strategies with organizational goals and strategies. Human resources can best accomplish this by ensuring that the employees make their best possible contributions. A strategic human resource plan should include:

- Managing talent by attracting, selecting, and retaining talent, as well as developing careers and managing performance and succession
- Developing leaders by assessing, coaching, and developing both leaders and teams within the organization
- Assessing organizational performance by executing strategy and managing change[2]

Attracting and Retaining Top Performers

> People are making choices to find more meaning in their work and become more employable as job security decreases. Attracting and retaining employees in today's tight labor market is one of the main challenges as we begin the new millennium.[3]

Human resource efforts must raise the bar in developing competencies and selection criteria for hiring top talent. But keeping talented employees once they arrive is not easy. One way organizations can try to instill commitment in their employees is by designing and promoting long-term career paths and employee development programs.

The organizational culture must also be conducive to attracting, retaining, and developing top performing employees. Salary and benefits must be competitive; training and development must be encouraged; career ladders must be in place; communication and feedback must be open and honest; and there must be opportunities for employees to advance within the organization. If these are not in place, top-performing employees will look elsewhere for an organization that recognizes their talent and potential.

Before an employee retention program can be put into place, organizations should benchmark retention rates and costs and identify and document the reasons why employees leave. They must also determine which practices for improving retention are the most effective in their organization, and how retention affects organizational effectiveness. Key indicators that show that high levels of employee retention are attainable include:

1. Strong relationships between managers and their employees

2. A flexible workplace

3. Employees who feel that they are making a difference and doing meaningful work

4. A high level of cooperation, trust, and fairness in the workplace

Workers today are demanding more from their employers than they ever have in the past, not just in terms of salaries and benefits, but also in terms of the work experience, such as a supportive and flexible environment. Creating retention strategies that appeal to the three distinct generations that currently make up the workforce also presents a unique set of challenges for courts and organizations today.

Development of Employees

> In today's tight labor market, education and training may be necessary for a whole host of reasons. A company that offers employees the opportunity to improve and add new skills, thereby making them more valuable to current and future employers, may be more successful in attracting new hires and even retaining existing ones than those lacking such programs.[4]

Employee development, through ongoing training, education, performance evaluations, and feedback, enables employees to understand the values they offer the organization and know what is expected of them. It is important for courts and organizations to evaluate these assets in a strategic manner to optimize their value to the organization. Employers often use development programs as a hiring tool. In addition, employees are more likely to join an organization and stay longer if training is provided.

> With the nature of employee development changing in response to the evolving needs of today's workers and the knowledge-based economy, many employee development programs are beginning to focus on "self-directed" learning. By providing accessible education within the organization, employees can be encouraged to control what they learn and when, instead of the traditional method of controlled learning where the knowledge provider determines when and what knowledge would be transferred. Self-directed learning can be on self-paced CD-ROM instruction, audio or video cassette learning, or the Internet or an Intranet.[5]

Web-based training, or distance learning, has become more prevalent and popular due to the reduced travel costs for training. Mentoring and in-house training are other ways that organizations can train and develop their employees. Whatever strategy is used for training and development, if organizations want employees to embrace learning, they need to offer choices and let them decide how they want to learn.

Succession Planning

> To promote stability and continuity in their daily operations in the face of change, reduce the risk of a brain drain due to turnover, and keep the existing workforce productive and motivated, the right thing right now is to abandon the traditional staff replacement practices and engage in succession management.[6]

Succession planning is a formal planning process by which employees are prepared and trained for the jobs of tomorrow. The process is not only for grooming key executive personnel, such as a court administrator or judge, but also for preparing other staff. Before succession planning can take place, an assessment must be done of the current workforce, including:

1. Evaluating current competencies

2. Identifying gaps in competencies

3. Determining future needs

4. Formulating strategies to meet those needs

Conclusion

> Court leaders must actively lead judicial branch education in their courts. Education, training, and development are not pleasurable diversions from daily routines, training for the sake of training, or a luxury. Effective court leaders ensure that education, training, and development are recognized as essential and build a culture to support it. This means excellence in programming; demonstrable results both inside and outside the courts; and reliable and consistent funding.[7]

Effective strategic human resource management can enhance organizational performance by contributing to the satisfaction of employees and stakeholders, innovation, productivity, and the development of a favorable reputation in the community. In turn, such achievements play an important role in attracting and retaining employees, engaging in succession planning, and enhancing public trust and confidence in the courts. This new role of human resource management in court performance is starting to be recognized.

A human resources strategic plan can increase the effectiveness of the court's human resource functions and align human resource management with the court's objectives. This plan can support the court's overall strategic plan and objectives and specifically address methods for recognizing and retaining key employees, identifying and putting in place a process to replace key talent, and including effective development programs.

Examples of Proactive Court Programs

The Michigan Judicial Institute has developed numerous online seminars for judges and court employees. See their "Model Curriculum for Court Personnel," at http://courts.michigan.gov/mji/resources/model_curriculum/curr_index.htm.

The California Judicial Council issued an RFP in 2002 to begin succession planning. See http://www.courtinfo.ca.gov/reference/rfp/sucplanrfp.htm.

The State Court Administrative Office in Minnesota requires 15 hours of training and personal development each year.

The Circuit Clerk's Office of St. Louis County, Missouri, sends employees to a "Leadership Academy" program to enhance the leadership skills and knowledge of capable individuals in their current workforce. See http://www.co.oakland.mi.us/intranet/leadership/. They also have computer-based training on subjects such as etiquette, organization, and telephone use.

The 19th Judicial Circuit, Lake County, Illinois, has incorporated the Training and Orientation of New Employees (TONE) program. This program is in accordance with the court's strategic plan and provides new employees with the resources they need to become trained, oriented, and motivated. The program encompasses seven orientation and training steps, as well as performance measurement. A mentor is assigned to the new employee on his or her first day of employment who will guide the employee through the initial introductory period of six months. The mentor's services are a resource to the new employee throughout his or her employment with the court. All new employees are required to complete the TONE program.

The Tempe (Arizona) Municipal Court encourages a positive work environment by doing business the "Tempe Way": "To make Tempe the best place to live, work, and play." Their values include people, integrity, respect, openness, creativity, and quality. The "Tempe Test" is "Have I done everything today The Tempe Way?" The "Tempe Way" is also printed on the back of business cards. The Tempe Learning Center (TLC) supports the city's mission, values, and strategic initiatives through employee training and development. See http://www.tempe.gov/tlc/about_tlc.htm. The Tempe Municipal Court also uses a 360-degree performance appraisal tool for employees at all levels.

The Austin (Texas) Municipal Court has an "Outstanding Employee Recognition Program." This quarterly employee recognition program recognizes employees who have demonstrated problem-solving skills; did something that shows initiative; performed some type of special customer service; had exceptional productivity; or volunteered outside their regular work group. A selection committee rates the nominee on day-to-day qualities of teamwork, customer service (internal and external), productivity, job knowledge, communication skills, and reliability.

The Institute for Court Management has a distance-learning program and offers various Webinars and courses online. See http://www.ncsconline.org/D_ICM/icmindex.html.

Online at www.ncsconline.org/WC/ Publications/KIS_HumMan_Trends04.pdf

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WHERE WE'VE BEEN

PRO SE INFORMATION TRENDS

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In the 1990s, as the number of pro se litigants using the courts was noticeably increasing, courts began to address the problems of guaranteeing self-represented litigants equal access to justice in the face of a difficult system they might not know how to navigate. Since 1995, the National Center for State Courts has received an increasing number of technical assistance questions related to pro se litigants. State administrative offices of courts (or AOCs), the press, and court staff have, in the past, been the groups most likely to ask for assistance pertaining to pro se litigants; however, private citizens have been responsible for many of the requests in recent years. By examining the trends in the questions asked over the past nine years about pro se litigants, we can draw some conclusions about the state of pro se assistance and predict what issues will be relevant, or cease to be relevant, in the future.

Changes in Pro Se Information Requests Over Time

As courts and communities recognize the court's responsibilities toward helping pro se litigants face the barriers that they must overcome as they navigate through the courts, more pro se self-help centers will be created, and courts will become more accessible to pro se litigants. During the 1990s, many states (California, Connecticut, Delaware, Florida, Hawaii, Idaho, Indiana, Maine, Maryland, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, Oregon, Pennsylvania, Utah, and Vermont) developed pro se programs and increased pro se assistance in their courts. During the mid-1990s, California, Connecticut, Hawaii, Maryland, Michigan, Minnesota, New Hampshire, New Jersey, and Vermont all requested information on developing a pro se program or asked about programs in other states. Since more states now have pro se programs in place, the questions in recent years lean toward fine tuning those programs, evaluating those programs, and reporting on those programs.

Since 1995 the number of information requests has remained steady—around 20 a year. However, the types of information requested have changed. In the mid-1990s, questions concentrated on information about development of pro se programs and other states' programs. Instead of involving one or two topics, as was the case in the mid-1990s when pro se programs were beginning to be developed, questions are now spread across a number of different topics that had little or no activity ten years ago. In addition, new groups of people who were not interested in pro se litigants ten years ago are requesting information. Citizens calling for legal assistance accounted for 11 requests between 2001 and 2003, compared to zero requests between 1995 and 1997. Journalists and other members of the press accounted for only 3 information requests before 1998, but 25 after. We can assume that after courts began paying more attention to pro se litigants in the mid-1990s, the press was reporting more frequently on pro se litigants, and private citizens were more likely to consider going to court pro se. Questions about how pro se litigants fare in the court system; the availability and readability of court forms; access to interpreters for pro se litigants who do not speak English; funding for pro se programs; methods of evaluation for pro se programs and the accessibility of the court to pro se litigants; and statistics about pro se litigants have all increased slightly in recent years.

Changes in the Affiliation of the Requestor

When we look at data on where the information requests are coming from, other trends emerge. The AOCs tend to ask for information on other states' pro se programs and for assistance in developing their own pro se programs. However, these requests have tapered off in recent years. Between 1995 and 1997, the first three years the National Center collected data on pro se technical assistance questions, 23 requests were made for information about other states' pro se programs or for assistance with developing a pro se program, 10 of those coming from AOCs. However between 2001 and 2003, only 6 requests were made for information on the same topics, and only 1 of those requests came from an AOC. AOCs are responsible for fewer information requests in recent years than in the past. Of the 31 requests the AOCs have made about pro se litigants since 1995, only 5 of them are from 2000 or later. With the limited number of requests received from AOCs recently, it is difficult to determine what areas are of the greatest importance to the AOCs, but we can say that the focus of their inquiries has noticeably shifted from general development to fine-tuned questions about court forms, judicial resources, statistics, and interpretation.

Court staff members are the group that most frequently asks questions about pro se litigants. Court staff also ask most often for information about other states' pro se programs and on how to develop a pro se program. Unlike the AOCs, the requests from court staff on these topics have not tapered off much in recent years. Between 1995 and 1997 court staff accounted for 7 of the requests made for these topics, and between 2001 and 2003 they accounted for 5 of the requests. While court staff still request information about other states' pro se programs and development at roughly the same rate as in the mid-1990s, they also have recently been requesting information on a number of topics they did not ask about in the past, including ethics and unbundling and funding. In addition, some topics seem to be of interest only to court staff, with nearly all the information requests on the topic over the past nine years coming from only court staff members. Some of these topics are evaluation, funding, and training.

Aside from a couple of outliers, the press was responsible for almost no information requests on this subject before 1998 when their presence exploded and we received 25 information requests in five years, most having to do with statistics. These types of requests have continued to come in steadily, and it is reasonable to assume that these levels will be sustained in the future.

Like the press, private citizens were inactive in this area until 2000. Between 2000 and 2003 citizens were responsible for 17 information requests, 14 regarding legal information and assistance.

Conclusions for the Future

From the information above, two conclusions become apparent. First, there has been a shift from the general to the specific in the types of questions asked about pro se litigants. While many information requests in the mid-1990s had to do with finding out what other states were doing and how to help pro se litigants generally, more questions in recent years have dealt with specific problems the courts might face when dealing with pro se litigants. Instead of general calls for information, questions deal specifically with topics like document preparation, court form translation, plain language initiatives, judicial resources, foreign language interpretation, ethics, unbundling, funding, evaluation, and frivolous filings. In addition, many recent information requests have to do with pro se litigants themselves, perhaps in an attempt to fine tune programs to better meet the needs of the people who use them. Second, there has been a shift in the types of people requesting information. In the mid- and late 1990s, many of the requests came from AOCs, who were looking for information on developing pro se programs. However, after the turn of the century, the number of requests from the AOCs declined while the number of requests from the press and private citizens increased and the number of requests from court staff remained relatively constant. This could signal a shift in questions away from topics that are more relevant to AOCs, like development, and toward topics that are more relevant to private citizens and the press, like statistics and legal information.

By examining the different information requests received by the National Center for State Courts over the past nine years, we can develop a picture of the changing landscape of pro se assistance. As AOCs develop more comprehensive and effective programs for pro se litigants, more people will decide to go to court pro se. Naturally, this will increase the public interest in pro se litigation and the amount of media devoted to pro se litigants. These changes will shift the issues the courts will have to address in the future to include dealing with larger numbers of pro se litigants and fine tuning their programs so that no pro se litigant is denied access to justice. The National Center should expect more information requests from private citizens asking for legal assistance, legal information, or information on unbundling as going to court pro se becomes easier and more acceptable. The AOCs and court staff members will make more information requests about ensuring access to the larger and more diverse group of people who are pro se litigants.

Online at www.ncsconline.org/WC/ Publications/KIS_ProSe_Trends04-Been.pdf

UPDATES

MIAMI'S INFANT AND YOUNG CHILDREN'S MENTAL HEALTH PROGRAM: A CASE STUDY

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Presiding Judge, Juvenile Court, Miami-Dade County, Florida

In the 2003 Trends Report, *Judge Lederman described Miami's Mental Health Program for Young Children. Below is a case study showing the effectiveness of this program.*

The children who enter our child welfare system come before the court bearing the well-documented results of neglect and maltreatment. Infants and toddlers are no exception. In fact, it is rarely the case that a maltreated infant has no symptoms.[1]

How can we expect a young mother who was never made to feel safe and nurtured as a child, whose basic needs were not met, and who is unfamiliar with the secure feeling of parental love to know how to comfort, protect, and help her baby to flourish? The Miami-Dade Juvenile Court's Infant and Young Children's Mental Health Program has an answer.

Brianna was 12 years old when her baby son was born in 1999. She had only finished the eighth grade in school. As a child mother, she did not even know she was pregnant until halfway through her pregnancy. She did not receive prenatal care. Because Brianna was a minor, the baby was released from the hospital into the custody of her mother. The baby's father was 19 years old and, not unexpectedly, abandoned Brianna and her baby. He had wanted Brianna to have an abortion. After the baby was born, he was arrested for statutory rape.

We know little about Brianna's life before she had the baby; however, after the baby was born, her life was extremely chaotic. She lived with her mother, who would not allow her to go to school. They moved from motel room to motel room as her mother tried to find work. Because Brianna's mother was an alcoholic who also used cocaine, it was difficult for her to find work. One of the ways that Brianna's mother supported her drug habit was by shoplifting, and she used her grandson as a decoy. Following in her mother's footsteps, Brianna was arrested for petty theft in 2000 and 2001 after first stealing clothing for herself and then jewelry.

In 2001 Brianna's mother was arrested for child neglect and possession of cocaine when Brianna's two-year-old son was found wandering around a motel parking lot unclothed at 4:00 in the morning. When searched during the arrest, cocaine was found in Brianna's mother's pocket, and worms were found in the baby's bottle. Brianna's mother was placed on probation. The situation worsened and finally the Department of Children and Families intervened. At that time, the family had moved to a trailer in an open field. There was no electricity or water, and the trailer was insect infested, lacked windows, and had one bed.

At the time Brianna appeared in juvenile court in the spring of 2002, she had not seen or heard from her father in three years. She was a 16-year-old mother of a 3-year-old son. She was distraught and confused. At that time, Brianna and her son were adjudicated dependent. Brianna told the court what she truly believed—that she was a good mother who loved her son and that she had not done anything to harm him. She asked over and over at every hearing, "When can I have my son back?" Because Brianna had never had adequate mothering herself, she did not know what it meant to be a good mother. She had never had a positive parenting role model. What was blatantly evident in court was that she did not understand what she had done to result in the removal of her child; however, she was highly motivated to work to get him back.

The judge recognized the strong motivation in this mother and had learned from her collaboration with child development/clinical specialists that change was possible, even when circumstances might seem almost impossible. Therefore, the court asked Brianna and her son to participate in an Early Childhood Relationship Assessment to learn more about their current relationship and evaluate the potential for change. The court was particularly concerned about Brianna's son after it was reported to the judge that he had violently killed a cat. The judge believed that the evaluation would help her decide what the prospects might be for success in changing the negative parenting behaviors of this young mother that likely resulted in the very aggressive behaviors of this young child.

During the evaluation, it became obvious very quickly that Brianna had no idea about how to parent her son. Throughout the play period of the evaluation, Brianna

tried to engage her son; however, she repeatedly neglected his leads, was very directive, and didn't know how to play with a child. This behavior is common in mothers who have received little attention and negative parenting themselves. Further, Brianna was passive in response to his negative behavior, could not set limits or provide boundaries or guide him, and did not attempt to intervene or comment to him. When he did not want to clean up the toys and refused to surrender the toys he was playing with, Brianna took no action.

As always, during the evaluation, we look for strengths in the parent and the dyad in addition to obvious weaknesses. At the end of the evaluation, the psychologist concluded that Brianna was able to keep her composure when dealing with her angry and difficult child, but she failed to set limits for him. There was no spontaneous affection between mother and son.

Brianna had some unusually positive characteristics not often observed in juvenile court. Despite the fact that she could only read at a fourth-grade level, she was engaging and bright. She also was insightful enough to realize that she needed to make changes in her life to grow as an individual and as a parent. What was also evident was that she genuinely wanted to improve her situation for her son. At that time, Brianna was exceptionally fortunate to be in a nurturing foster home, where she had a loving relationship with her foster mother. The IDEA Part C screening for her son indicated that he was delayed not only in language development, but also in social and emotional development and cognitive skills. He could not draw a circle, did not know his colors, and did not know his gender. His medical needs had been neglected as well.

After the evaluation, Brianna and her son were referred for dyadic child-parent psychotherapy. Both the judge and the therapist observed that Brianna clearly loved her son but had little understanding of his developmental needs. Brianna failed to understand how important structure, boundaries, limit setting, and discipline were in the life of a child; yet she was motivated to be a good parent. In dyadic therapy, Brianna was forthcoming with the therapist about her son's behavioral challenges and her weaknesses as a parent. After fifteen weeks of dyadic therapy the improvements were significant. Brianna was initiating developmentally appropriate play with her son. Her increasing knowledge of developmental milestones helped her to respond to her child's needs. She was learning to respond to his nonverbal cues. She connected and communicated with her child, showed an ability to follow his lead in play, set limits for the first time, and praised him for appropriate behaviors.

The court began to allow an increasing amount of unsupervised visitations between Brianna and her child. When asked by the judge what she was learning in her dyadic therapy, she said, "I am learning that being a good parent is really hard." That is the day it became clear to the court that Brianna could overcome her past, and with continued assistance and services, become a good mother to her child.

Brianna did not wish to be reunified with her mother, but, at the same time, she was repeating what she had learned from her mother. Brianna's mother still would not accept responsibility for her neglect, substance abuse, and abuse of her daughter and grandchild. She wanted her daughter and grandson back.

Brianna had learned enough to know that she did not want to live with her mother or live the life of her mother; however, it was difficult for her to learn that there is another way. Being independent seemed impossible.

A string of good fortune, including the intervention by the court, the dyadic therapy, the nurturing foster mother, along with Brianna's strong interpersonal skills and motivation to provide a better life for her son, bodes well for her son's future. All of this progress and growth occurred despite the fact that Brianna is still a child.[2]

Online at www.ncsconline.org/WC/Publications/KIS_CtFutu_Trends04_Update.pdf

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UPDATE: CHANGES IN THE JUVENILE DEATH PENALTY*

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The appropriateness of the death penalty for juveniles is the subject of debate despite several U.S. Supreme Court decisions upholding its use. Nearly half of the states allow those who commit capital crimes as 16 and 17 year olds to be sentenced to death, but many question whether the juvenile death penalty is compatible with one of the principles on which the juvenile justice system was established: that is, to respond to the concern that youths could be tried and punished as adults.

Thirty-nine states and the federal government allow the death penalty. In 21 jurisdictions (52 percent), offenders must be age 18 at the time of the crime to be eligible for that punishment; in 5 jurisdictions (12 percent) the minimum age is 17; and the other 14 jurisdictions (36 percent) use 16 as the minimum age.[1] Since 1976 when the Supreme Court reinstated the death penalty, Alabama, Florida, and Texas have sentenced more juveniles to death than the other jurisdictions. There are 79 juvenile offenders on death row, and 22 have been put to death since the high-court ruling.[2] Although all were age 16 or 17 at the time of their crimes, their current ages range from 20 to 43. There has been minimal political consideration of lowering the minimum age to 16 in the past few years. Conversely, much legislative activity is under way to raise the minimum age to 18.[3]

Part of the argument against juvenile executions focuses on how developing brains in juveniles differ from adults. Such research helped persuade lawmakers in some states to raise the age for the death penalty to 18. Proponents of this argument contend that because the part of the brain that might inhibit criminal behavior is not fully developed, teens lack the ability to make sound decisions and are more prone to impulsive behavior. Psychiatrists point to brain research that shows that the frontal lobe, the part of the brain that controls reason, develops last.[4]

There is currently renewed focus on the juvenile death penalty stirred by the United States Supreme Court's decision to accept certiorari in Roper v. Simmons. (See http://www.deathpenaltyinfo.org/article.php?scid=38&did=885.) The Simmons case is an appeal from a decision of the Missouri Supreme Court declaring the execution of a person for a crime committed before he reached his eighteenth birthday to be in violation of the U.S. Constitution. Christopher Simmons was 17 when he committed a murder and was sentenced to death. After exhausting all of his appeals, Simmons petitioned for further relief on the grounds that execution for a crime committed as a juvenile was cruel and unusual punishment under the Eighth Amendment. The Missouri Supreme Court agreed and resentenced Simmons to life without parole.

In October 2004, the United States Supreme Court will consider the Simmons case and decide whether executing juveniles is cruel and unusual punishment; the Court could issue an opinion as early as spring of 2005. The legal argument is expected to center on what previous Supreme Court rulings have called the "evolving standard of decency," or the idea that as a society matures so does its concept of what constitutes cruel and unusual punishment. (Congo, Iran, Nigeria, and Saudi Arabia are the only other countries with a juvenile death penalty.) The current trend is to abolish the death penalty for juveniles, and the reargument of this issue before the U.S. Supreme Court will affect the state courts.

Online at www.ncsconline.org/WC/Publications/KIS_CtFutu_Trends04_Update.pdf

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UPDATE: ALTERNATIVE RESOURCES

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In the *2002 Report on Trends*, the article "Budget Woes and Resourceful Thinking," http://www.ncsconline.org/WC/Publications/KIS_FundCt_Trends02_Pub.pdf, included a list of strategies that budget-challenged courts might employ to augment their resources. Among these was "collaboration with state education institutions to develop meaningful intern scholarship programs and to explore the use of faculty for special initiatives and of student volunteers to help with court public service efforts."

Courts and justice system agencies are increasingly turning to volunteers or to individuals whose services are subsidized by third parties. These individuals provide valuable assistance, often serving in very specific areas such as guardianship, alternative dispute resolution, and pro se assistance, but sometimes serving in almost all facets of court work, as in San Diego County, California. Examples of volunteer programs are:

- Superior Court Volunteer Opportunities, http://www.sandiego.courts.ca.gov/superior/public/volnteer.html, San Diego, California
- District Court Volunteer Program, http://www.courts.state.mn.us/districts/fourth/General/volunteer.htm, Fourth Judicial District Court, Hennepin County (Minneapolis), Minnesota
- Volunteer Lawyers Project, http://www.nycourts.gov/courts/nyc/housing/vlp.shtml, New York City Civil Court Housing Part
- Superior Court Volunteer Opportunities, http://www.metrokc.gov/kcsc/Volunteer.htm, King County (Seattle), Washington

The need for assistance with legal aid and pro se matters is particularly acute as the demand for such services continues to grow and must often be met by more highly skilled individuals, including attorneys. Special programs have been created to help subsidize such services:

Equal Justice Works Fellowships Program

http://www.equaljusticeworks.org/fellowsmainpage.php

> Recognizing that many dedicated attorneys forego practicing public interest law because of scant entry-level opportunities and significant educational debt, Equal Justice Works (formerly NAPIL) created its Fellowships Program in 1992. In doing so, Equal Justice Works aimed to address the shortage of attorneys advocating on behalf of traditionally underserved causes and communities in the U.S. and its territories. With the generous support of the Open Society Institute. . . , Equal Justice Works is now the nation's largest postgraduate legal fellowship program. . . . Any non-profit with 501(c)(3) tax status may serve as a host organization.[1]

JusticeCorps

http://www.courtinfo.ca.gov/programs/justicecorps/

> A coalition of court, college, and community representatives in California has formed to better help self-represented litigants navigate the court system and resolve legal matters. In 2004, 100 JusticeCorps members will be recruited from four local universities to provide assistance in 10 Los Angeles-area Self-Help Legal Access Centers. Volunteers will work closely with legal aid attorneys and will be trained to provide legal assistance through direct contact with self-represented litigants, legal workshops, and use of self-help computer terminals. In exchange for a 300-hour, one-year commitment, JusticeCorps members will receive a living allowance and/or a cash education award. JusticeCorps is funded through an AmeriCorps, http://www.americorps.org/, grant.[2]

For courts and related justice system agencies, such programs demonstrate that there are many individuals who are able and willing to provide valuable services with little or no significant compensation. To take advantage of such resources, the key investments must be in program planning and effective public outreach. There are numerous programs from whose experiences other courts may learn.

Online at www.ncsconline.org/WC/Publications/KIS_CtFutu_Trends04_Update.pdf

ENDNOTES

[1] Sarah Hilton, "Equal Justice Works Fellows Do Good Work," *Pass It On* (Spring 2004): 1-2.

[2] Online at http://www.courtinfo.ca.gov/programs/justicecorps/.

UPDATE: BIOMETRICS

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Since our last report on biometrics in the *2002 Report on Trends in the State Courts*, this area of technology has continued its expansion in both public and private sectors. Overall, the biometrics industry is estimated to have grown by 50 percent in 2003 and is expected to grow even more strongly through the end of 2004.

Fingerprint systems continue to dominate the biometrics field, springing from their well-grounded law enforcement roots and capitalizing on rapid technical advances to gain widespread application as a maturing technology. Fingerprint recognition is expected to retain its lead for the next few years at least, as cost-performance ratios improve with each product generation. The technology is used in everything from massive border-control applications to a pay-by-touch system at the corner video store. The National Institute of Standards and Technology (NIST--http://www.nist.gov/) evaluated 34 commercially available fingerprint systems and determined that the top-ranking off-the-shelf systems perform with nearly 99 percent accuracy on single-finger tests and up to 99.9 percent accuracy on four or more fingers.

Despite some recent adverse publicity, however, face recognition systems are gaining ground and capturing headlines, with market revenues projected to double by the end of 2005. A big push comes from the U.S. government's Visa Waiver program, which is requiring the next generation of passports to use facial recognition biometrics, even though significantly less accurate than fingerprints, because these systems are minimally invasive for the 13 million visitors and may be easier for the 27 affected countries to implement. Countries are free to add fingerprints and iris scan data as well. The complexity of such an international undertaking forced the federal government to move the deadline (again) back to October 26, 2005, with discussion continuing about delaying it yet another year. While most countries have said they cannot be ready before 2006, some are making the transition already: Italy is issuing identity cards containing fingerprint and facial biometric data. The United Kingdom is testing facial and fingerprint biometrics in its passport service, and Australia is conducting an "ePassport" pilot program in cooperation with the United States.

State and local justice organizations have continued to expand their use of biometrics. The Pinellas County (Florida) Sheriff's Department has begun using a wireless facial identification system in its patrol cars to match individuals they are questioning with a facial image database of previous arrestees. Several states are using face-recognition technology to detect attempts to obtain multiple driver's licenses by giving a false identity. Some of these efforts involve integrating existing systems and databases. For example, the Arizona Public Safety Department is already using facial recognition to search against criminal databases, but now is expanding that capability to search against a database of driver's license images.

As an example of private-sector facial recognition applications, the major casinos are using it to identify patrons at blackjack tables who are known to be cheaters or card counters.

Facial recognition systems may be getting a significant and much-needed boost in accuracy from the integration of skin texture recognition technology. Rather than using patterns of facial geometry as standard facial recognition does, this approach captures the skin patterns from facial images for comparison. Identix, a leading biometrics company, claims that combining the two approaches improves facial identification up to 25 percent, a huge gain from a single development. Further incremental improvements in facial recognition accuracy—especially in surveillance applications, which offer little control over lighting and positioning—are resulting from advancements in 3-D technology. Particularly valuable are transformational techniques that convert 2-D images to 3-D, as they permit 3-D systems to make use of extensive, established image databases.

Fingerprint and facial recognition systems are not the only biometric solutions being pursued, of course. For example, the United Kingdom has begun work on an iris recognition system to be installed in its five largest airports to enhance immigration controls. If fingers, eyes, hands, faces, and voice don't cover enough biometric bases, recent research by the University of Leicester has led to the development of a biometric system based on ear image and ear print identification! Finally, in an innovative approach combining biometrics with GPS (Global Positioning System) and other technologies, a Northern Ireland company is marketing a system called KinderGUARD that enables parents to use the Internet to track their child's location and be alerted if the child may be in distress.

Developments such as this one may have far-reaching implications for general security applications, law enforcement, and corrections systems, in addition to the consumer market.

The financial impetus to develop successful large-scale biometric solutions is considerable. In addition to the rising demand from the commercial sector, the federal government is giving the industry a tremendous shot in the arm. In June 2004, the Department of Homeland Security awarded a contract potentially worth $10 billion to a management consultancy to build and manage a comprehensive border-control system heavily involving biometrics. Courts applying biometric identification technologies to improve court security and the positive identification and tracking of defendants stand to continue benefiting from the spin-off of products and development advances fueled by Homeland Security initiatives and growing commercial adoption of biometric solutions.

Online at www.ncsconline.org/WC/Publications/KIS_CtFutu_Trends04_Update.pdf

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UPDATE: JXDD AND BEYOND

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Since the official publication of the Global Justice XML data model (GJXDM) and Global Justice XML data dictionary (GJXDD) Version 3.0 in early 2004 (http://it.ojp.gov/topic.jsp?topic_id=43), a number of vendors have adapted their products to support the national justice XML data model and dictionary, previously called the JXDD. An increasing number of justice organizations (http://it.ojp.gov/topic.jsp?topic_id=107) have also mandated its use as a standard for justice data exchanges in their jurisdictions. In an important next step, several national justice associations are working on new versions of their data exchange standards that will be fully compliant with Version 3.0, including the OASIS Legal XML Court Filing Technical Committee in support of the Joint Technology Committee of the Conference of State Court Administrators and the National Association for Court Management. Finally, several groups are beginning work on key "reference documents" for data exchange content that use the data model and elements from Version 3.0.[1] Court groups have recently held two meetings to begin work on reference documents for traffic citations, domestic violence protection orders, felony dispositions, and felony-sentencing documents. Expect this phase to pick up steam over the next year or so.

Online at www.ncsconline.org/WC/Publications/KIS_CtFutu_Trends04_Update.pdf

SOURCES

[1] Successful data exchange is greatly facilitated by the development and adoption of standards that enable transparent integration of disparate systems. The Global Justice Information Sharing Initiative (Global) Infrastructure/Standards Working Group (GISWG) is implementing a coordination process to identify information-sharing standards within the justice community. This effort includes publishing, cataloging, and sharing these standards to promote collaborative efforts and offer blueprints to those beginning the information-exchange-planning process.

WHAT TO WATCH

E-COURTS: PROMISING, BUT PROCEED WITH CAUTION

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In their efforts to automate services and provide greater quantities of information online, courts must be careful not to alienate the public they serve. Although courts have historically been slow to change, even they have not been able to avoid the increasingly rapid rates of change driven in large part by technological advances of the last decade. In increasing numbers, state courts at all levels are benefiting from the information-sharing capabilities of the Internet. As one of the most important technological tools of recent history, the Internet has become a seemingly ideal mechanism by which courts may implement time- and cost-saving services and promote good customer relations. Courts of last resort offer opinion searches, court schedules, oral arguments, court rules, and supreme court justices' biographies on their Web sites. Trial courts, on the other hand, may provide public access to their records, electronic filing capabilities, court calendars, directions to the court, juror assistance, downloadable forms, and much more on their sites. Limited jurisdiction courts favor detailed "how-to" instructions and forms for small-claims litigants and provide options that allow traffic offenders to render bond payments for outstanding citations.

Obviously, the Internet-based changes taking place in the courts have occurred, at least in part, in an effort to provide better services to constituents in addition to perhaps making possible time- and labor-saving changes within the courts. Nevertheless, with changes occurring so rapidly, the courts may not appreciate all their possible consequences. The privacy concerns that have been raised as more "public" information has become available online is one example of such unexpected developments. Four target areas in the privacy arena are Social Security numbers (now protected by federal law), financial account numbers, names of minor children, and full dates of birth. Led by Indiana[1] and closely followed by New York,[2] states are scrutinizing their policies governing open court records.

Aside from jury service, the principal exposure of citizens to the justice system has been through interaction with limited jurisdiction courts. Apart from filing an occasional small-claims action or satisfying a traffic citation, the average citizen is somewhat detached from the justice system as a whole. With many courts now providing online payment services for traffic citations, even the historical methods of public familiarization with court decorum and procedures are giving way to a computer and mouse click. In recent years, the courts have put forth an effort to build a stronger community presence and reacquaint citizens with the merits of the judicial process in a free society. The Internet has even proven to be a powerful ally in this endeavor. Several appellate courts provide unprecedented glimpses into the workings of the court by video streaming oral arguments via the Internet. Indiana[3] and Florida[4] do outstanding work in drawing on oral arguments as a base for online college-level courses. At the other end of the spectrum, several states, like Alabama,[5] offer court Web sites for youngsters that feature games and other activities relating to the courts, and still others provide online publications such as Maine's "Citizen's Guide to the Courts."[6] The question is whether such educational efforts and virtual contact with the courts make up for diminishing in-person interaction and exposure.

Equal access to justice is another concern that is prevalent throughout the court system. The majority of court Web sites feature an abundance of information directed toward pro se litigants, and many Web sites accept small-claims forms electronically. The value of such services to the public, particularly those without legal representation, is significant. Nevertheless, pertinent issues for courts to consider include the availability of computers to pro se litigants, the cost or waiver of filing fees, and the ease of use of the filing forms. Web sites particularly helpful for pro se litigants include selfhelpsupport.org, http://www.selfhelpsupport.org/index.cfm, and the California Self-Help Center, http://www.courtinfo.ca.gov/selfhelp/.

During the evolution to the Internet, the court community is challenged to maintain a delicate balance between traditional judicial values and ever-emerging technological breakthroughs. Whether it is to define an "open court record," to build public trust and confidence through increased court-community relations, or to provide equal justice under the law, the court community must work painstakingly to preserve judicial ideals while it reengineers its methods of conducting business.

Appropriate attention to such concerns requires investing time in strategic planning. As the word "global" gradually becomes an everyday reference in today's society, the Internet is helping to unify the world community. The blending of judicial values with global communication capabilities will continue to challenge the court system for years to come.

Online at www.ncsconline.org/WC/Publications/KIS_CtFutu_Trends04_Watch.pdf

SOURCES

[1] See http://www.in.gov/judiciary/orders/rule-amendments/2004/0204-admin-rule9.html.

[2] See http://www.courts.state.ny.us/ip/publicaccess/index.shtml.

[3] See http://www.in.gov/judiciary/citc/.

[4] See http://www.flcourts.org/sct/cybercourt/index.html.

[5] See http://www.judicial.state.al.us/kidstuff/.

[6] See http://www.courts.state.me.us/courtservices/citizen_guide/index.html.

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