FUTURE TRENDS IN STATE COURTS 2005

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NCSC
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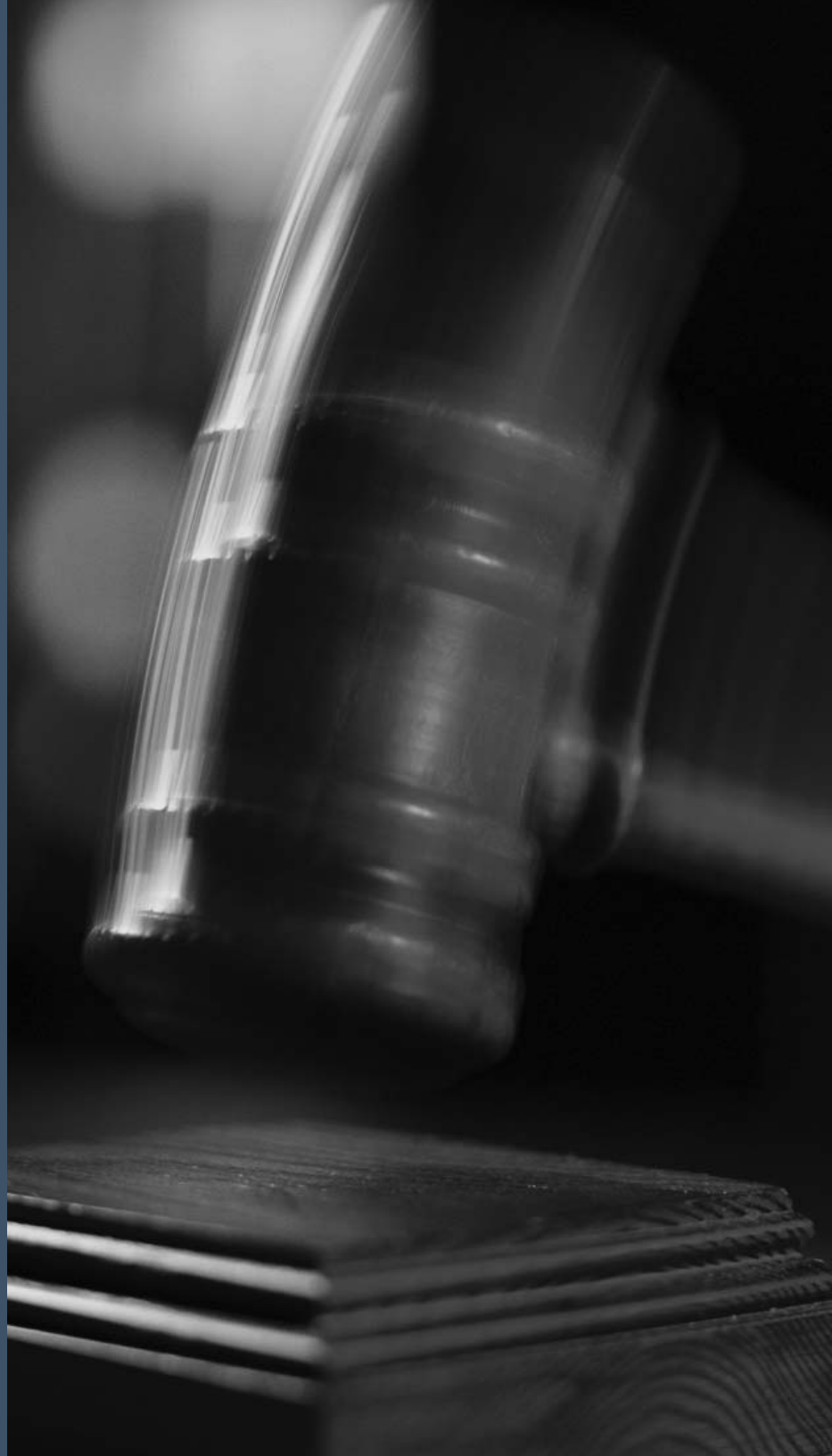

Project Staff

Carol Flango	Director, Knowledge and Information Services
Chantal Bromage	Research Analyst
Madelynn Herman	Knowledge and Information Analyst
Tracy Peters	Research Analyst
Anne Skove	Senior Knowledge and Information Analyst
Lin Walker	Technology Analyst

Knowledge and Information Services, National Center for State Courts, Williamsburg, Va.
VisualResearch, Inc., Richmond, Va.

Edited by

Tracy Peters, Editor-in-Chief
Neal Kauder
Chuck Campbell
Carol Flango

This publication is part of NCSC's "Report on Trends in State Courts" series. Opinions expressed in the Environmental Scan and Trends Articles are those of the authors, not necessarily of the National Center for State Courts.

National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185-4147
ISBN: 0-89656-256-5
Web site: www.ncsconline.org

Suggested Citation

T. Peters, N. Kauder, C. Campbell, and C. Flango. *Future Trends in State Courts 2005* (Williamsburg, VA: National Center for State Courts, 2005).

ACKNOWLEDGMENTS

The editors and project staff of Future Trends in State Courts 2005 gratefully acknowledge the assistance of the many individuals who contributed to this report. It is only through the collaborative sharing of information that this publication can be achieved. A product of the Knowledge and Information Services office (KIS), the support of all of the KIS staff that worked on this project, including Joan Cochet, Megan McQuiddy, Peggy Rogers, Rob Weber, and Cheryl Wright, is greatly appreciated.

We would like to offer a special thanks to our many colleagues and experts at NCSC for their reviews and contributions to sections of the report. Tom Carlson, Pam Casey, Fred Cheesman, Tom Clarke, Jose Dimas, Scott Fairholm, Kay Farley, Timm Fautsko, Gene Flango, Ray Foster, Dan Hall, Paula Hannaford Agor, Dale Kasparek, Laura Klaversma, Jim McMillan, Judge Greg Mize, Brian Ostrom, Wanda Romberger, David Rottman, Dawn Rubio, Richard Schauffler, Brenda Uekert, Nicole Waters, Deborah White, and Chang-Ming Yeh all greatly contributed to the quality of the report. We would like to offer particular thanks to Dick Van Duizend for his tireless and continual reviews and Linda Caviness, the executive director of KIS and Association Services, for her continual support.

We would like to thank VisualResearch, Inc for their contributions in updating the scan, as well as their beautiful work on the layout and graphics of this publication. Consultants Don Hardenbergh (of Court Works), Ann Keith, Douglas Walker, and Tisha Zelner also contributed to this Report.

We are also very grateful for the participation of College of William and Mary professors in interviews regarding trends in their areas of expertise. We offer a sincere thanks to David Aday, Robert Archibald, Jennifer Bickham Mendez, C. Lawrence Evans, David Feldman, William Geary, George Grayson, Deborah Hewitt, Christopher Howard, Kelly Joyce, Thomas Linneman, Linda Malone, John McGlennon, Christine Nemacheck, Graham Ousey, J. Timmons Roberts, Robert Scholnick, Beverly Sher, Kathleen Slevin, Sarah Stafford, Katherine Walker, and Christine Warren. We would like to offer particular thanks to Professors J. Timmons Roberts, Thomas Linneman, and Deenesh Sohoni for additional assistance and review of the contents. We would also like to thank the NCSC interns who conducted these interviews: Courtney Behringer, Tony Benson, Joseph Fonlon, Julie Price, Alicia Roberts, Virginia Suveiu, and Lauren Williams. We would also like to thank Ruth Low for indexing the finished book.

With respect to the Trends articles, we once again have many internal and external contributors for whose efforts we are grateful. Our gratitude also extends to members of the court community who shared information about projects on which they are working; such indirect contributions find their way into the content of this publication 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.

As always, a debt of gratitude is owed to the editorial and production assistance provided by NCSC's Communications office. Lastly, we are indebted to the National Center's senior managers for their continuing support of this important work.

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FUTURE TRENDS IN STATE COURTS 2005

PREFACE

Mary Campbell McQueen
President, National Center for State Courts

Courts are traditionally conservative institutions that run on precedent and procedure. But "the only thing constant is change," and courts also need to anticipate the future, rather than just react to it when it happens. This is why I'm pleased to present the 2005 edition of the National Center for State Courts' *Future Trends in State Courts* series.

As in previous years, the articles in this year's *Future Trends Report* cover a number of important issues. Some of these issues have clear implications for court administration, such as the importance of judicial security and the courts' use of the Internet to reach out to the public. Other issues are developing as our national culture changes, such as ethics for court interpreters, verification of electronic documents, and elder abuse cases. The *Future Trends* articles on these and other subjects will give you a solid perspective on what courts are doing—or need to do—to confront these and other issues.

But what about those issues that are farther out on the horizon? This is where *Future Trends'* Environmental Scan comes in. The Scan gives courts a closer look at that looming horizon. Again, the implications of some issues, such as our aging population, increasing cultural diversity, and identity theft, are fairly clear. But the implications of others, such as bioethics and nanotechnology, aren't as clear yet—but courts need to be aware of them.

Future Trends in State Courts 2005 gives an important look around, and ahead, at forces that are affecting, and will affect, courts. I hope that it proves invaluable to you as your court confronts the challenges and grasps the opportunities of the future.

INTRODUCTION

Carol R. Flango
Director, Knowledge and Information Services, National Center for State Courts

The National Center for State Courts (NCSC) is pleased to present *Future Trends in State Courts 2005*. This report has two parts: the Environmental Scan, which tracks those issues that state courts need to be aware of as they prepare for their future, and the Trends Articles, which are timely pieces that focus on events that will shape the state courts in the years ahead. This is the fourth edition of the report to place the Scan and the Trends Articles together. The report's primary purpose is to help prepare the state courts to face those issues that will affect them in the future.

The Environmental Scan

Environmental scans are a major tool used for strategic planning. The 2005 Scan continues to improve on the layout, the graphic presentation, and the contents of the earlier scans. One big change with this version is its focus on reviewing only those issues *relevant to courts*. Previous versions looked at information and issues that might affect society in general but not the courts so specifically. With this version, we ask the questions: How is this issue going to affect courts? What do courts need to know or do now to plan for the future?

Scanning tries to understand which issues might take a court beyond its current way of doing business. It brings two primary values to planning. First, the Scan helps to suggest the nature of the world in which a court will be deciding its future and what it needs to do. Second, the Scan provides a court with a wider, longer-range view of the future, stretching both creative and strategic thinking beyond normal boundaries.

This year's Scan has just one domain, relevance to courts, which is then broken down into four topic groups: 1) population demographics; 2) political, social, and justice trends; 3) economic conditions; and 4) technology and science. The four topics are further divided into subtopics.

The Trends Articles

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 are written by experts in the selected subject matter; they illustrate how relevant and immediate the issues are with information on what is already happening in some courts.

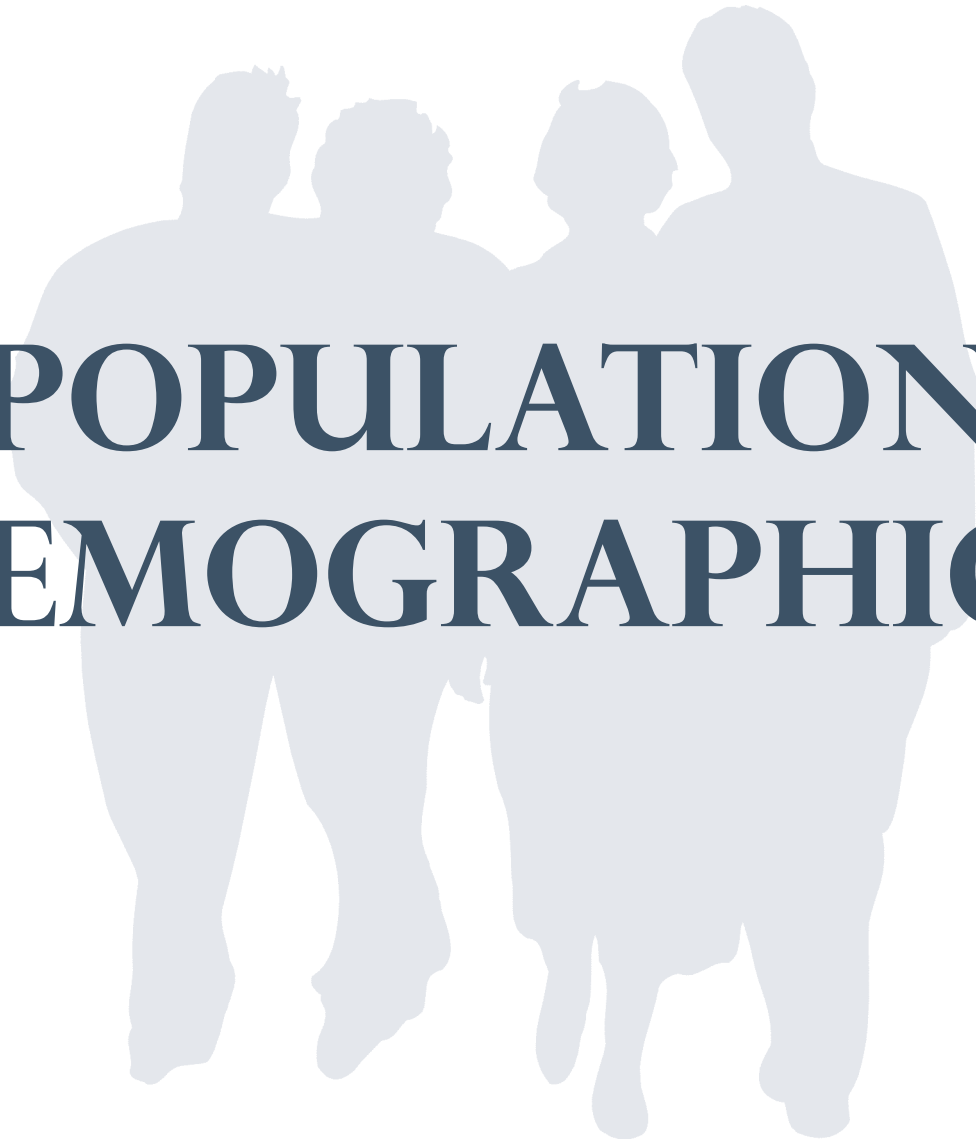
This year's *Report* has several articles that focus on court technology. Leading off are articles on public access and digital rights management security, followed by two articles on appellate technology dealing with technology trends in appellate courts generally and the use of webcasting specifically.

In addition to technology trends, the 2005 edition's articles reflect several other themes: family issues, judicial safety, and issues specifically relevant to courts' work, such as interpreters' ethics, judges' salaries, vanishing criminal trials, international and immigration issues for courts, private judging, and reentry courts.

We have reserved the last section in this report for a discussion of future trends that are identifiable in NCSC's work. This section has two articles: one regarding the digitalization of library collections and another that highlights three NCSC initiatives: CourTools, Justice Reference Architecture, and Collaborative Distance Learning. Articles on same-sex marriage, Court Filing Blue, and electronic filing are "Updates" of articles in earlier editions of Trends. Finally, with this volume, for the first time, we have included an index to help users find what they need.

In an effort to improve this publication, we welcome feedback from our constituents. Comments may be submitted to: http://www.ncsconline.org/D_KIS/Trends/Submit_Trend_form.html. There is an online version of the scan at http://www.ncsconline.org/D_KIS/Trends.

The Knowledge and Information Services Office posts the Trends Articles online as they become available and will continue to do so for the 2006 version, as well. There are more articles available online than in the printed version; articles on immigration, identity theft, and RFID technology are available only online, so please be sure to check out the *Trends* Web site listed above for these additional articles.



POPULATION DEMOGRAPHICS

CHANGING AGES

AGING POPULATION

Present Conditions

As life expectancy increases and fertility rates decline, the percentage of population that is over 65 will increase markedly. While 12 percent of the U.S. population was over 65 in 2000, by 2030 almost 20 percent of the U.S. population will be over age 65. This trend is driven by the aging of Baby Boomers, who traditionally make up a disparately large proportion of the population.

Probable Future

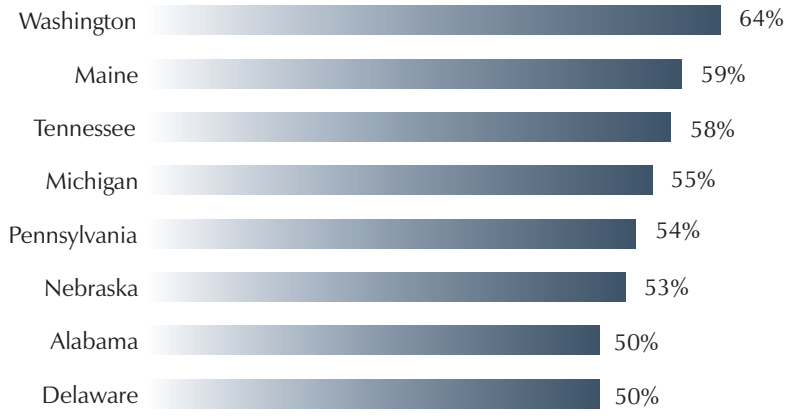
By 2008, the first wave of Baby Boomers will turn 62, a traditional retirement age. A study completed in 2003 concerning federal workers stated that, over the next five years, one in five federal employees will retire, including an estimated 293,000 by 2005. Government funding will reach a crisis point, particularly programs such as Medicare and Social Security, as a smaller percentage of working-age adults will be expected to support a larger percentage of elderly. Traditional retirement ages may be reexamined in the face of the aging population.

Relevance to Courts

Courts will experience an increase of cases involving the elderly, including:

- more probate and guardianship cases for the elderly (particularly in Sunbelt states because of a large number of retirees)
- identity theft and fraud (even within a family)
- elder abuse (both within the home and within institutional homes)
- traffic accidents involving the elderly
- elderly cases of substance abuse and mental-health problems

Percent of Current State Employees Eligible to Retire as of 2015, by State (states with greater than 50%)



Government Performance Project, survey of 37 states

Courts will need to emphasize ADA compliance, such as signs and forms with large print, to accommodate the aging population.

Courts will also face their own staffing crises and need to develop succession plans as experienced career court administrators and managers retire and competition between the private and public sector for a shrinking pool of work-age employees limits replacement options. Some courts may consider offering incentives for extending the careers of managers who may be considering retirement while initiating or expanding management-training and succession-planning efforts. Courts will need to consider collecting statistics on the expected changes in age of both their employees and their customers to prepare for the future. Courts must be prepared for the effect the aging workforce will have on rising health-care costs. People over 50 are responsible for 58 percent of all health-care resources and consume 74 percent of all prescription drugs.

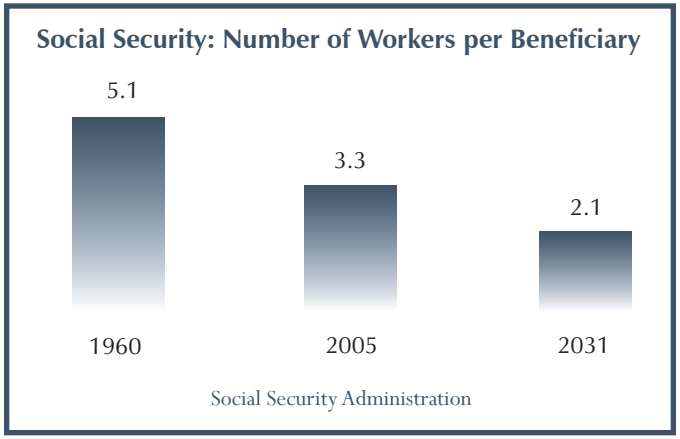
See article on "Elder Abuse" in Trends Section

SOCIAL SECURITY REFORM

Present Conditions

Most agree that something must be done to restrain future Social Security costs or to raise additional Social Security revenues, but few agree on how this should be done or when. The primary factors contributing to the Social Security crisis are:

- Aging of America's population—for example, since 1940 the average remaining life expectancy for a woman at age 65 increased 4.5 years to 19 years. A woman born today, some think, could probably expect to live to be 100 years old. The aging of the Baby Boomers is going to accelerate this trend, causing the Census Bureau to project that by 2030, people 65 and older will comprise almost 20 percent of the population, compared to 12 percent in 2000.
- Declining fertility rates—fewer younger workers will be in the workforce to support future retirees. But if people work longer, much of that decline in the number of workers could be eliminated.
- Increasing life expectancy—health has been improving, and the physical demands of work have been decreasing. In 1971, 27 percent of men age 55 to 59 claimed to have health problems that limited their ability to work. In 2002, that share had fallen to 20 percent.



Probable Future

One way of relieving pressures on the Social Security system would be to encourage workers to delay retirement. By working longer, people produce additional goods and services that can raise their living standards and generate tax revenue to help cover the costs of retirement and other government programs. Working longer also enhances financial security in old age, enabling people to accumulate more savings and more Social Security and pension credits while reducing the number of years that they must draw down their resources.

The President's Commission to Strengthen Social Security, which calls for personal savings accounts and price indexing of the formula that determines initial benefits, could significantly affect poverty rates among older Americans. The size of future benefits that include personal accounts will depend greatly on market returns during workers' careers. Still, personal accounts involve investing only part of the 12.4 percent Social Security tax. The current debate ignores other important challenges facing the system. For instance, today's headlines largely skirt the issue of poverty—the key reason Franklin D. Roosevelt conceptualized the program 70 years ago. Likewise, few discuss the outdated retirement age and inequities across families.

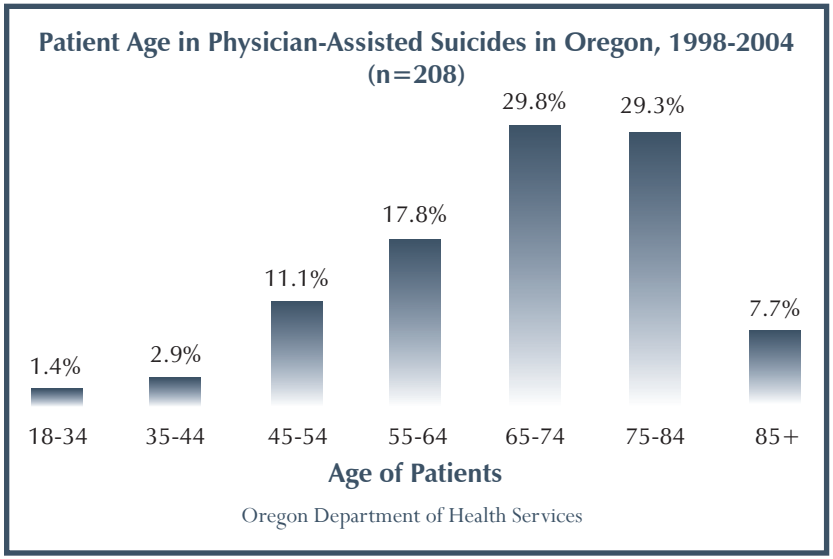
Relevance to Courts

The strength of America and its democracy lies in its promise of the American dream. If the voting strength of senior citizens and the complacency of politicians are such that undue tax burdens are placed on future generations of Americans to support Social Security, our place as the world's economic engine will be in jeopardy. With economic woes comes bankruptcy for both individuals and businesses. Balanced-budget amendments, including the protection of Social Security funding, will be fought in legislatures and courts across the country. An extended working age will require protection for older workers (e.g., age-related discrimination laws, medical insurance costs shifted to businesses for more years, tax breaks for companies that keep older employees) and will call for action by the courts. Probate, age discrimination, and suits against corporations who fail to protect pensions and retirement benefits will increase as more Americans try to preserve even the smallest of nest eggs for their heirs.

END-OF-LIFE ISSUES

Present Conditions

Under the banners of compassion and autonomy, some Americans periodically call for a range of end-of-life options. Such options range from legal recognition of a "right to suicide" and societal acceptance of "physician-assisted suicide" to limiting the artificial means by which one might be kept alive should one become incapacitated. An equally passionate group of Americans are opposed to such measures and believe the sanctity of life must be preserved from the moment of conception until natural death.



The right-to-die/right-to-life arguments came to the forefront in 2005 in the Terry Schiavo case, which focused worldwide media attention on this ethical and political conundrum. Schiavo's husband wanted her to be allowed to die, but her parents fought against it. Both sides received support from across America, including passionate protesters and bloggers; the Florida state governor, legislature, and judiciary; and the United States president and Congress.

The use of advance directives can encompass any type of end-of-life wishes, ensuring that disputes among family members will be avoided. However, few people have such documentation.

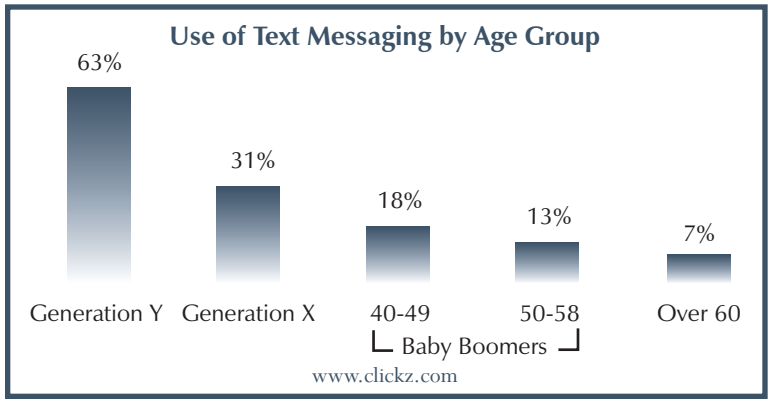
Probable Future

If a person is incompetent to make health-care decisions and has not left clear instructions in a legal document (e.g., "advance directive," "durable power of attorney for health care," "living will"), a surrogate decision maker cannot legally decide to stop food and fluids. Expect more Americans to create advance directives to express their wishes should they become incapacitated—including their wish to die or to be kept alive by artificial means. The advance directive also protects medical caregivers from civil and criminal liability for following its instructions. This is an important consideration, because it removes a major barrier to carrying out the patient's wishes.

Relevance to Courts

In 1997 Oregon established the nation's only assisted-suicide law. California is attempting to enact a similar law based upon the Oregon model.

These laws will continue to be challenged in state and federal courts. State courts will also be at the forefront of enforcing the advance directives triggered by the Schiavo case; issues can arise when such documentation is improperly or unclearly written, or not provided to medical caregivers. Look for courts to also get involved in the debate over the rationing of health care to save money during end-of-life medical treatment decisions, which consume a disproportionate amount of today's health-care expenditures.



Present Conditions

Baby Boomers, born between 1946 and 1964, numbered about 72 million in the United States. While generation X, born between 1964 and 1979, was much smaller, 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.

Probable Future

Beginning in the early 1990s, crime rates, particularly for violent crimes, began an annual 6 to 8 percent decline. Explanations included handgun controls, shifts in the drug culture, and stabilization of the drug market and increased incarceration, but also focused on the demographic shift of the decline in the youth population. Two factors on the horizon, economic dislocations and a shift to a larger youth population with the coming of age of Generation Y, suggest crime rates will start increasing. In 2007 there will be nearly as many teens as at the peak of the Baby Boom.

The influence of Generation Y will grow significantly in the workplace as Baby Boomers retire. 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.

Relevance to Courts

Generation Y 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. As Generation Y reaches their crime-prone years, courts can expect to see an increase in caseload.

However, as a new generation of energized and technology-friendly workers enter and rise in the courts, rapid changes and innovative improvements can be expected in court administration. These workers also place increased emphasis on work/life balance, a trend influenced in part by increasing numbers of women in professional and management positions. Combating the management shortage created by the aging population will involve offering flexible employment arrangements, such as flexible hours, part-time hours, part-year schedules, temporary work, contract work, consulting, work at home, and job sharing. Courts should have less expectation that staff will be willing to work after hours outside a flexible work arrangement.

POPULATION DIVERSITY

INCREASING RACIAL, ETHNIC, AND CULTURAL DIVERSITY

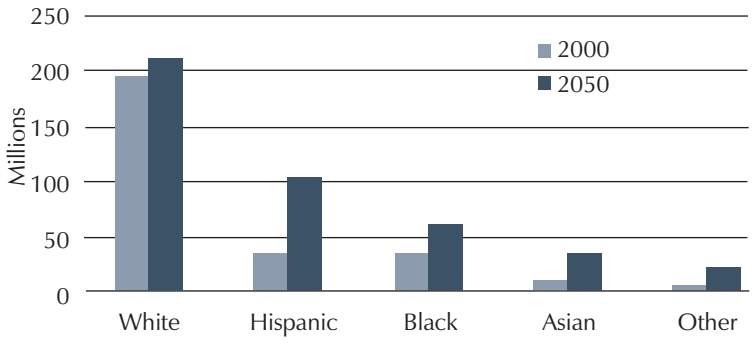
Present Conditions

With the 2000 census, the Hispanic population narrowly surpassed African-Americans as the largest minority group in the United States. Hispanics and African-Americans each comprise roughly 13 percent of the U.S. population, and Hispanics represent the fastest growing minority population. The 2000 census, in recognition of the growth of intermarriage, allowed biracial and multiracial respondents to mark multiple race categories, better measuring the extent of these populations.

The minority population continues to grow due to immigration from historically underrepresented areas. The Census Bureau estimates that at least 33.5 million people in the United States are foreign born, representing 12 percent of the population. Whereas in the past, Europeans made up the majority of immigrants, today 53 percent of the United States' foreign-born population comes from Latin America, 25 percent come from Asia, and 14 percent come from Europe.

The increasing rates of immigration in the U.S. workforce also have global effects as many workers send money back to their countries of origin, creating significant revenue for those countries' economies.

Projected Population of the United States, by Race and Ethnicity



United States Census Bureau

Due to immigration, the United States is also seeing a rise in the number of limited-English-proficient (LEP) persons. Over 300 different languages are spoken in the United States, and 18 percent of people speak a language other than English at home. In addition, nearly 5 percent of people living in the United States report speaking English "not well" or "not at all."

Probable Future

Depending on how people intermarry and label themselves, by 2050 minority groups will make up half of the U.S. population.

The number of limited-English-proficient (LEP) persons will continue to swell in coming years.

In a response to high levels of immigration, issues related to documentation of immigrants will increase. More states, such as California, will explore allowing illegal immigrants to obtain driver's licenses or open bank accounts, balancing economic and security concerns.

Relevance to Courts

The increase in racial, ethnic, and cultural diversity is likely to raise issues in two areas included in the Trial Court Performance Standards: access to justice, and equality, fairness, and integrity in the justice system. Courts will continue to face rising demands for qualified interpreter services, translated forms, and culturally competent judges and

staff. Courts will increasingly rely on established standards and testing for court interpreters (such as the certification offered by the Consortium for State Court Interpreter Certification) and will increasingly emphasize multilingual and multicultural backgrounds in hiring criteria. In addition, cultural education for judges and court staff will be in high demand, becoming mandatory in many jurisdictions.

Changes in diversity will also be reflected in the make-up of juries. 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. Sometimes the lack of skills is not apparent until the middle of a trial. Screening jurors' language skills will become common during the voir dire process. In additions, jurors' cultural differences will need to be taken into account.

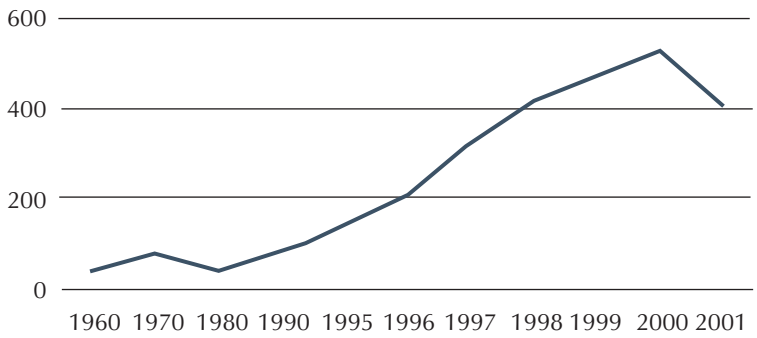
Courts will experience an increase in workload related to immigrant issues. Courts could see challenges based on constitutional implications (e.g., equal protection) and classification of immigrant workers, cases related to funding/benefits, and use of public resources. Issues will also arise surrounding rights of noncitizen parents of children who are U.S. citizens. In addition, courts may also see an increase in conflicts related to immigrants, including hate crimes, as U.S. citizens who feel disenfranchised by illegal immigrants take matters into their own hands.

Finally, increased diversity will cause the need for dispute-resolution methods that accommodate economic and cultural differences. Community courts will increase in number, particularly in large metropolitan areas. 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.

See articles on "Interpreter Ethics" in Trends Section and "Immigration Law" online at www.ncsconline.org

CULTURAL, ECONOMIC, AND POLITICAL DIVISIONS

CEO Pay in Large Corporations as a Multiple of Average Worker Pay, 1960-2001



Business Week, annual surveys of executive compensation.

Present Conditions

The income gap between the richest and poorest members of society continues to increase as the labor market continues its shift from the manufacturer-based economy to the lower-paying and more highly competitive service economy. This trend contributes to the further polarization of the general public along the increasingly clear-cut lines of politics, race, ethnicity, lifestyle, and class.

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

Probable Future

Expect increased tension over shifting social norms and values. Disputes over lifestyles will persist. There may be increased segregation of groups based upon differences in wealth and values.

Politicians will increasingly seek votes among select minority groups. The influence of votes by Hispanic residents will increase as the growth rate of this subpopulation continues to rise. African-

American voters may feel that the issues that are important to them are not being addressed, which may lead to alienation from the democratic process.

Some religious denominations, already polarized along conservative and liberal lines, will break apart over the rights and treatment of homosexuals, especially their roles of leadership in churches.

If states continue to cut primary education spending to compensate for budget tensions instead of raising taxes, then decreased education and health-care spending may increase the income gap. 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, and the disparity between the wealthiest and poorest people will increase. The number of students who are home schooled will also increase.

Relevance to Courts

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

Courts should be paying increased attention to class, ethnic, racial, lifestyle, and linguistic issues, both in performance and in 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.

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

Courts will need to make a conscious effort to obtain enough interpreters in varied languages. Over 30 states are members of the Consortium for State Court Interpreter Certification, a partnership dedicating to developing court-interpreter-proficiency tests, making tests available to member states, and regulating the use of the tests. Membership in the Consortium is expected to continue to grow.

See article on "Same-Sex Marriage" in Trends section

RELIGION

Present Conditions

Americans enjoy a degree of religious freedom unknown in most parts of the world, and they take full advantage of it. The United States is home to more than 1,500 different religious bodies and 360,000 churches, synagogues, and mosques.

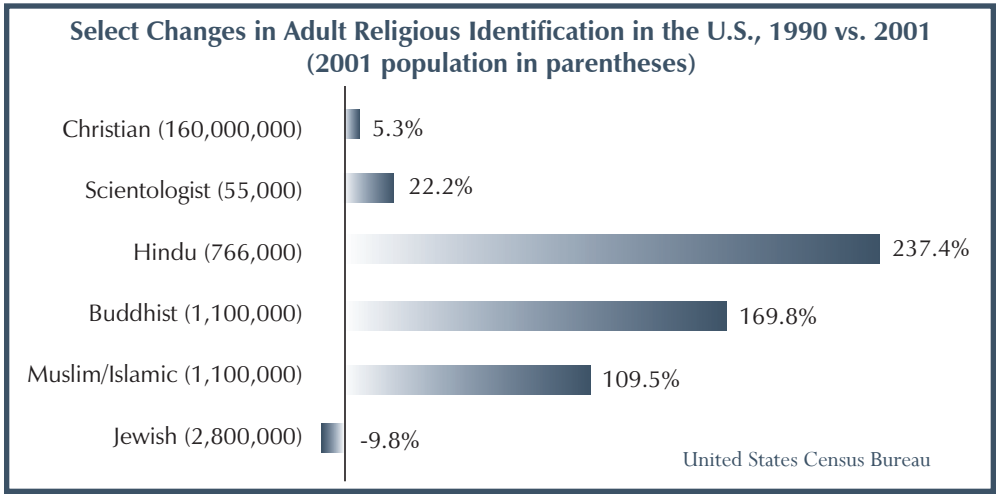
Religion in the American government and American society has moved to the forefront in recent years. While religious issues have always been a significant part of American culture and history, the attacks of September 11, 2001 by religious extremists have brought many religious issues to the mainstream consciousness of America. The presidential election of 2004 resulted in the reelection of President Bush, with religious faith being a pillar of his campaign message and victory.

Politicians will continue to attract members of particular religious groups. The "religious right" could experience more growth based on the success of recent elections and a growing constituency. The "religious left" will continue to try to establish a presence in politics and communities. Their ranks may fuel disharmony among members of their own faiths. They may face hostility from the secular left, particularly on issues from which the religious left might abandon in hopes of attracting more religious voters. People of color who are also religious will be wooed by both political divisions, as will Catholic and other centrist "swing" voters.

Probable Future

The free-exercise clause of the First Amendment guarantees the right to practice one's religion free of government interference. The establishment clause requires the separation of church and state. Combined, they ensure religious liberty in America. Yet conflict on many religious issues continues, both in Washington and in state governments around the country. The conflict between religion and government is wide-ranging:

- Religious profiling of criminal and terrorist suspects
- Conflicts caused by showing disrespect toward or misunderstanding members of a particular religion
- Publicly sponsored displays of religious items (Ten Commandments, Christmas trees, menorahs, etc.)
- Religious dress (e.g., should head scarves be allowed on photo driver's licenses)
- Religious freedom of employees (including court employees)
- Prayer in public schools and at school athletic events
- Abstinence education in public schools
- Evolution v. creationism or "intelligent design" theory, as taught in public schools
- School vouchers to fund private, religious education
- Faith-based initiatives—taxpayer money used to fund religious organizations
- Public services—denial of public services based on personal religious beliefs or beliefs of constituents
- Gay marriage and other rights of sexual minorities
- Stem-cell research
- Parental notification, partial-birth laws, and other legal issues related to abortion
- Public-health debates over vaccinating children



Relevance to Courts

State courts are often the first line of resolution in many of these religion-based issues. Look no further than recent actions by citizens, public entities, and courts regarding religion:

- A state supreme court ruled that a prosecutor violated the state constitution when he removed two jurors from a jury pool, one for wearing Muslim religious clothing and another for having engaged in missionary activity.
- A judge ruled that placing disclaimer stickers warning that evolution is "a theory, not a fact" in public-school science textbooks is an unconstitutional government intrusion on religious liberty.
- A nurse who was employed in a maternity ward sued after she was fired because she refused on religious grounds to scrub for an emergency caesarian section and left a woman "standing in a pool of blood" for 30 minutes.
- A police officer sued after he was fired because he refused to guard an abortion clinic.

In addition, courts will also need to deal with concerns regarding referral of defendants and others to faith-based treatment programs, religious freedom of prisoners (*Cutter v. Wilkinson*, No. 03-9877), and issues surrounding judicial independence and criticism of judges, particularly those who voice opinions about these issues.

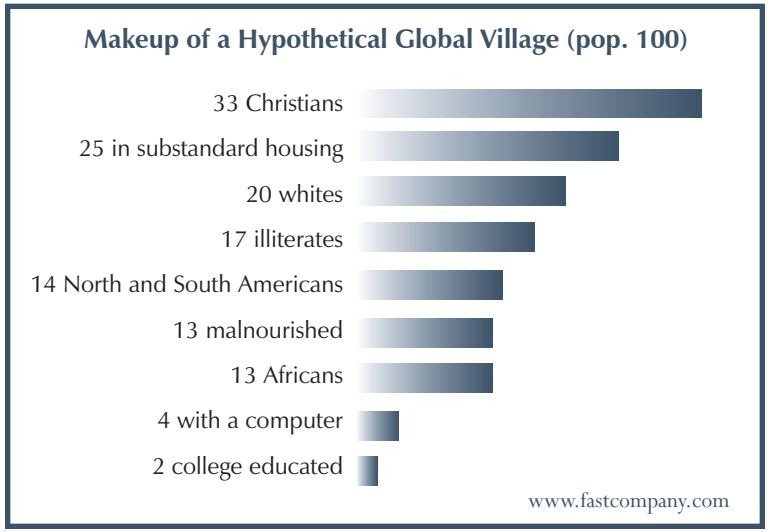
GLOBALIZATION

Present Conditions

Business, travel, communications, scientific research, crime, and justice are all "going global."

As organizations such as the World Trade Organization (WTO) help promote international free trade, the business world transcends borders; large U.S., European, and Japanese corporations increasingly expand their overseas markets, production facilities, and service contracts. For example, McDonald's restaurants are now found in 119 countries, while Japanese auto makers build and sell cars in the United States.

Just as legitimate businesses have become global in reach, so have those engaged in criminal activities. For decades the United States has dealt with international criminal networks, particularly within the illegal drug market. Such organizations will continue to be of concern to U.S. officials as international networks continue to engage in drug, weapons, and human trafficking as well as identity theft and computer fraud. These criminal organizations will originate in new locations and become more sophisticated.



Probable Future

Courts will also be faced with navigating between state and international trade agreements and treaty obligations. For instance, in the United States, in response to the perceived loss of jobs overseas, many states have responded with legislation aimed at preventing critical employment sectors from leaving. These regulations include adding barriers to job and capital transfer by foreign-owned companies and providing state subsidies to ailing industries. Thirty-three states are seeking to pass legislation that would make it illegal for any government agency to outsource its work. On the other hand, scientific research in the United States that faces restrictions, such as stem-cell research and cloning, are likely to move operations overseas.

In addition, international agreements currently being negotiated will likely result in increased instances of state courts being asked to enforce foreign judgments in an array of cases ranging from commercial litigation to child support.

Relevance to Courts

As international trade increases and more litigants have not merely interstate but international presences, state courts may find themselves with jurisdiction over more disputes involving non-U.S. litigants (both individual and corporate) or 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 or the proposed Hague Convention on the Enforcement of Exclusive Choice of Court Agreements. At the same time, special trade tribunals may challenge or disregard the authority of state courts.

Legal challenges and labor disputes about globalization of labor and fair-labor and environmental standards will grow. If bills barring government agency outsourcing are passed they are certain to face challenges in state courts. At the center of the challenge is whether government outsourcing is a matter of foreign policy and interstate commerce, and as such are rights granted to the federal government, rather than states, under the U.S. Constitution. Such bills could also be challenged internationally under current U.S. trade agreements providing for nondiscrimination and use of the least burdensome regulatory options for traded services (including legal services) as well as goods.

State courts, as government entities, will also see these issues from the point of view of employers. Courts, or the companies with which they contract for services, may cut costs by outsourcing data-entry and related jobs to other countries. However, courts should be aware of confidentiality/privacy/security concerns when outsourcing these jobs.

See articles on "Human Trafficking," "International – Family Law," and "International – Judicial Independence" in Trends section

POLITICAL, SOCIAL, & JUDICIAL TRENDS

NEGOTIATING THE ROLE OF THE THIRD BRANCH

JUDICIAL SELECTION

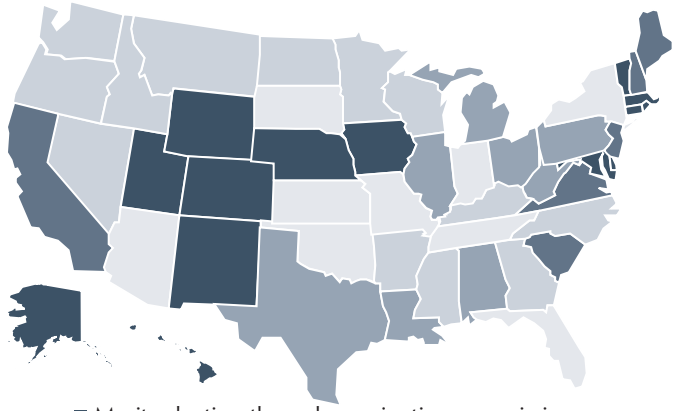
Present Conditions

Some or all judges are selected through elections in 39 states (National Center for State Courts, 2001). Eighty-seven percent of state appellate and trial judges are selected through either a contested or retention election. In recent years, judicial election campaigns have become more and more like those for other government offices, with the level of funds raised in partisan campaigns increasing steadily.

Judicial election campaigns may represent a threat to judicial independence and impartiality, but opponents of selection-reform efforts claim that the other selection methods (such as merit selection or appointment) do not remove politics from selection, that citizens have the right to elect judges, that voters can be trusted to make rational decisions, and that elections increase the representation of women and minorities on the bench.

While regulating election campaigns is difficult, the Statement of the National Summit on Improving Judicial Selection provided recommendations in areas such as judicial election structure, campaign conduct, voter awareness, and campaign finance for states with elected judges to consider. The recommendations are designed to be implemented by state courts, bar associations, and private groups. A few require statutory or constitutional change.

Methods of Judicial Selection in the United States
Appellate and General Jurisdiction



American Judicature Society

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 further called into question. States can explore alternatives for funding judicial campaigns, such as using public funding, developing systems for disclosing campaign contributions and expenditures, establishing limits on campaign contributions, and controlling the contributions of outside groups, candidates, and political parties. More states may establish official judicial-campaign-conduct committees. These monitoring groups can ensure compliance with standards of conduct, review paid advertisements to ensure accuracy and fairness, offer resolution procedures for campaign disputes, and inform the public as to the level of cooperation and compliance from candidates, political parties, and interest groups.

Relevance for Courts

Regardless of the form of judicial selection employed in each state, courts must find a way to ensure that the impartial and unique role of judges as decision makers is not compromised by the political agenda of either the legislative or executive branches or by interest groups and individual campaign donors. One solution to the potential undue influence of campaign donors is to extend the terms of judges in those states that select judges through partisan elections.

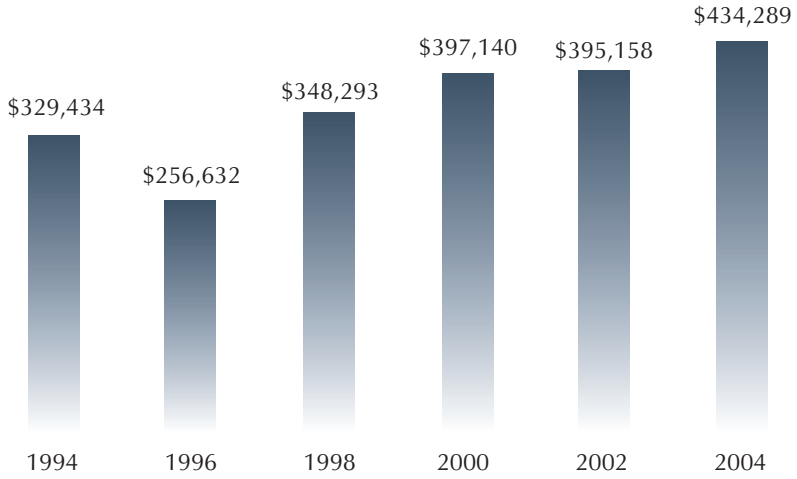
More states will call for "reforms" of judicial selection processes and associated codes of conduct and disciplinary processes to prevent further deterioration of campaigns and the public's impression of judicial integrity.

Monitoring committees could be instrumental in making positive changes to judicial selection policies and improving the public's trust and confidence in the administration of justice.

CHALLENGES TO JUDICIAL INDEPENDENCE

Present Conditions

Judicial independence is being challenged by groups on one side of a single issue to make the judiciary conform to their policies and points of view. When controversial decisions are handed down, negative public reaction can lead to accusations that individual judges are "activists" who should be removed from the bench. General attacks on the judiciary are increasingly taking the form of financial cutbacks or restrictions on judicial discretion or court jurisdiction. This became evident in the wake of the Schiavo case when Congress and others publicly criticized the "activist judges" involved. The American Bar Association and many other groups spoke out against such criticism.



Goldberg and Samis, Brennan Center for Justice at NYU School of Law, and Bender and Weiss, Institute on Money in State Politics

A number of potential threats to judicial independence stem from the U.S. Supreme Court's decision in *Republican Party of Minnesota v.White*, and continue through lower federal court decisions, including *Weaver v. Bonner*. These decisions are changing the traditional distinctions between judicial elections and those for legislative and executive offices. For example, only 25 percent of states that hold contested supreme court elections had television advertisements in 2000 versus 80 percent of these states in the 2004 election cycle (Justice At Stake Campaign, 2004).

The campaign contributions needed to fund the increasingly expensive judicial elections also are having a negative effect on judicial independence. Financial backing for elected judges raises the concern that, like legislators and other elected officials, judges may be beholden to their supporters. Even where judges are appointed rather than elected, their past decisions may come under fire and politicize the review-and-appointment process in some states.

Probable Future

Political battles over court appointments and judicial elections focused on single issues are likely to increase, especially given the moral and value judgments inherent in controversial issues such as biotechnology, privacy issues, and abortion rights.

The growing cost of judicial election campaigns will expose candidates to greater pressure

from special interests. The winning candidates in 2004 raised an average of $651,586 during their campaigns, representing a 45 percent increase over 2002's average of $450,689 (Justice At Stake Campaign, 2004).

The independence of judicial decision making will be further compromised if federal courts continue to strike down barriers to judicial candidates campaigning on specific policy platforms. More state legislatures will call for changes to judicial codes of conduct and disciplinary processes and may roll back judicial selection processes, such as merit selection, that were designed and implemented to limit political influence on the judiciary.

To minimize controversy and adverse effects from sensitive decisions, state courts will continue attempts to improve communication with the public and other branches of government and to demonstrate their accountability to the public and the other branches. The judicial branch will continue to build constituencies among business leaders and bar associations that can speak out in defense of the courts, as well as lobby on behalf of the courts when legislation is introduced that has the potential to harm judicial independence.

The strategies through which courts might improve interbranch relations and relations with the public include providing information to the public via the Internet, using liaison staff and public information officers, forming interbranch task forces, improving community outreach, and using community members as volunteers.

Relevance to Courts

Bar associations and groups, such as the Public Information Officers, can assist courts with public relations. Effective self-governance, and cooperation with appropriate interagency task groups, will also help the courts with public and intergovernmental relations.

Ohio requires a campaign-conduct course for candidates and staffers and answers candidates' ethical questions via a hotline. Both are run by the Ohio Supreme Court's Office of Policy and Programs. North Carolina has shifted from partisan to nonpartisan elections supported by public financing in appellate races. These and related measures can help improve public trust and confidence in the judicial system while preserving judicial independence.

See article on "International – Judicial Independence" in the Trends section

MEDICAL MALPRACTICE AND TORT REFORM

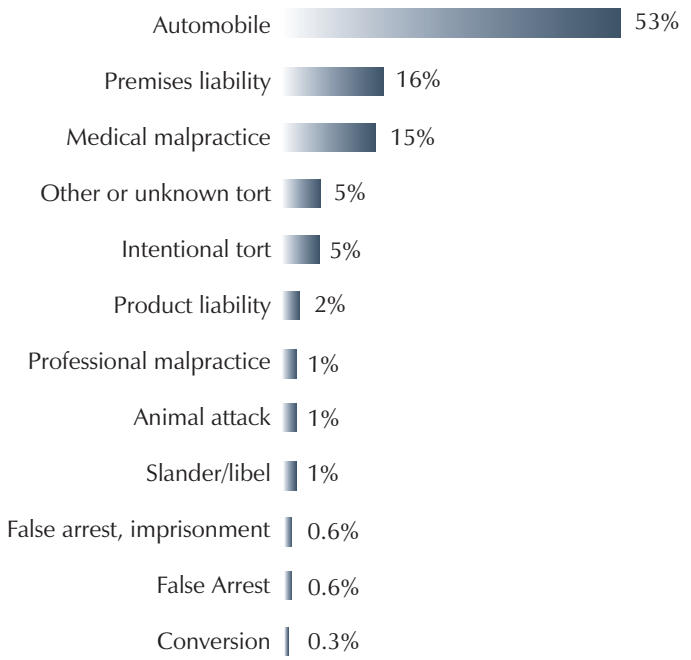
Present Conditions

"Tort reform" was a constant theme in the 2004 presidential election, in Congress, and in state legislatures. Politicians speak of "runaway juries," and trial lawyers counter by invoking the constitutional right to a jury trial. Meanwhile, various reforms, be they useful or counterintuitive, are being implemented.

Objective empirical research shows neither an explosion of tort cases nor any causal connection between insurance rates for health-care professionals and verdicts in medical-malpractice civil trials. A recent NCSC study found that data-collection methods used by jury-verdict reporters systematically skew results toward a higher proportion of plaintiff winners and higher awards, especially when punitive damage awards were compared. Moreover, settlement amounts are usually confidential, making it difficult to tell how much the "average" settlement is. Finally, objective empirical studies show that juries do not routinely award outrageous sums to plaintiffs. Many such stories are stuff of "urban legal legend"—others do not account for remittitur, settlement, or erroneous jury-verdict reporters. And most victims of medical malpractice do not sue.

States have enacted various tort-reform measures. Missouri, for example, limited venue to the place where the incident occurred; this is the strictest definition of venue in the country, as it relates to all tort cases, not just medical malpractice. A recent bill signed by Governor Taft of Ohio caps noneconomic damages in civil actions, includes collateral source provisions and statutes of repose, and provides immunity from obesity claims for potential industry defendants. Twenty-four states had notice and opportunity to repair laws on the books in 2004; it is anticipated that 17 more will modify or introduce new legislation in 2005 (National Association of Home Builders). And in 2004, Florida voters approved a constitutional amendment that would limit attorney fees.

Type of Tort Trials Disposed in State Courts in the Nation's 75 Largest Counties, 2001



Bureau of Justice Statistics

Probable Future

Reforms may come through legislative action or through the ballot box, and may include additional caps on noneconomic damages, caps on overall damages, binding arbitration agreements, limits on attorney fees, and statutes of limitation on cases brought before the courts.

There is evidence that some reforms can have an impact. Measures that may decrease litigation include abolishing the collateral-source rule, punishing frivolous lawsuits, and establishing patient-compensation funds.

Other measures may have no impact; these include caps on economic damages and limiting attorneys' fees. Some proposed reforms, such as periodic payment of damages, pretrial screening of cases, arbitration or other ADR, and no-fault systems, could actually increase the rate of litigation.

Some of the reforms have been held unconstitutional as written. Twenty states found caps on damages to be invalid "special legislation" or unconstitutional violations of rights regarding equal protection, jury trials, open courts, or due process. Four states ruled that structured settlement provisions unconstitutionally favor health-care defendants and violate plaintiffs' constitutional rights to jury trials, equal protection, or due process. Statutes of limitation/repose, mandatory arbitration panels, joint and several liability, and requirements for affidavits or certificates of merit have all been held unconstitutional at some point by at least one state.

Relevance to Courts

Courts across America must handle the many malpractice cases brought before them each year, along with challenges to the constitutionality of any reforms enacted by the legislature. Although more case-management systems are including medical malpractice, many courts do not collect good data on medical malpractice cases.

There will be more specialized medical courts, and ADR will be more prevalent.

CLASS ACTIONS

Present Conditions

Congress passed the Class Action Fairness Act (CAFA) in early 2005, which appears to put most class actions in federal courts rather than state courts. The full effects of the act are not yet known; however, it appears that some mass torts and limited class actions will stay in state courts, while most others will end up in federal courts.

Probable Future

Several issues regarding CAFA remain to be resolved. Among them:

- When does the plaintiff's class action commence—the date the action was first filed in state court, or the date the defendant removes it to federal court?
- How will a drafting flaw in the statute requiring the appeal to be made "not less than 7 days after entry of the order" be interpreted?
- Will courts adopt a narrow construction against federal jurisdiction or follow congressional intent to increase access to the federal courts, when interpreting ambiguities in the statute?

Relevance to Courts

CAFA will force many state-court class-action filings to be pushed into federal courts. State courts should anticipate reduced class-action cases but only after attempts to have the cases filed in their courts.

ELECTIONS

Present Conditions

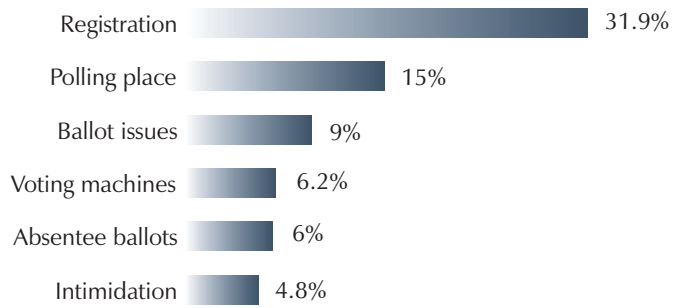
After the 2000 presidential election, a solution to ballot-counting problems, primarily in Florida, was upgrading the hardware and software systems used to cast and count election ballots. The Help America Vote Act (HAVA) of 2002 mandated that states switch to the new electronic machines by 2006 and provided funding to states to do so. Electronic voting machines have been installed in several states.

HAVA establishes several major new federal voting requirements and provides almost $4 billion to states to meet those requirements, which include a centralized statewide electronic list of eligible voters, provisional and "second-chance" balloting, increased voter outreach and education programs, and updated and accessible voting machines. The law specifically calls for replacing lever and punch-card voting machines and improving voting technologies.

Probable Future

Electronic voting is the logical next step in the evolution of voting systems. The American people expect voting machines to be fast, accurate, and reliable. Some segments of society are more skeptical than

Presidential Election 2004
Percentage of all alleged problems that were related to...



Election Incident Reporting System

others about whether their vote "counts" (literally). Others do not expect the technology itself to raise questions or cast doubts on election results. Electronic voting could play an important role in building a stronger democracy for all Americans in that it ensures that every vote is counted. For example, some people request receipts of their electronic votes so they know they have been cast, and some states are obliging.

In the future, expect situations similar to these from recent elections:

- In Georgia, where Diebold Election Systems machines are used, a handful of voters found that when they pressed the screen to vote for one candidate, the machine registered a vote for the opponent. Technicians were called in and the problem was fixed, state officials have said.
- In Alabama, a computer glitch caused a 7,000-vote error and clouded the outcome of the gubernatorial race for two weeks. But more critically, computer scientists charge that the software that runs the machines is riddled with security flaws.
- In Washington State, the race for governor lasted seven months, while lawyers, election officials, courts, and others examined claims by the Republican candidate that the 129-vote Democratic victory was due to election errors, illegal votes, and fraud.

Relevance to Courts

Various state circuit courts, the Supreme Court of Florida, and the Supreme Court of the United States became involved in resolving the disputed 2000 presidential election results (under-votes, over-votes, hanging chads, recounts, absentee ballots, etc.). The impact on the courts, in terms of manpower and cost, was manageable, but the potential impact on the courts' reputation was large. Judges were working in a highly partisan environment, where accusations about judges' ethics and their partisan affiliations were front and center in the media. The justices were worrying not only about their own reputations and their decisions, but also about the reputations of the courts in general and whether they would be able to maintain their integrity in the eyes of the people of Florida and across America. As seen in various state and federal elections since 2000, the issues of election results are still unresolved, and state courts may again be thrust into resolving these highly volatile disputes. Particularly close cases will have voters and candidates demanding recounts, pressuring election (and elected) officials for reform of the process, and taking claims of fraud to court.

CHANGING LEGAL ROLES

CHANGING ROLE OF JUDGES DUE TO PROBLEM-SOLVING TECHNIQUES

Present Conditions

The proliferation of many different types of problem-solving courts represents a new role for some judges in which judges participate in resolving the underlying problems that led defendants to appear in court. In problem-solving courts, judges are more proactive as they speak directly with defendants and attend meetings with attorneys and service providers. While many judges have embraced the problem-solving role, some critics contend that this new role leads to inconsistent results for defendants with similar crimes.

While some members of the court community have expressed ethical and procedural concerns with problem-solving principles, the Conference of Chief Justices and the Conference of State Court Administrators have passed a resolution stating their commitment to extending the evaluation and integration of these principles into the general administration of justice.

A present concern for problem-solving courts is that while ample federal funding may exist for the planning and implementation of specialized courts, administrators must find other sources to sustain the operations of their courts. In states without centralized support systems for problem-solving courts, drug courts in particular have had to patch funding together from a variety of sources, including state grants, county support, and participation fees. Finding sustainable and stable sources of funding is proving to be difficult.

Probable Future

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.

Court researchers are beginning to explore the extension of problem-solving principles to conventional courts. While some judges agree that many elements of problem-solving courts could be applied to conventional courts, there is an argument that these principles should not be extended.

While several problem-solving principles will easily carry over to conventional courts, there are several barriers to the extension of these principles, as well. Principles that may be more easily extended are the problem-solving orientation of the judge, direct interaction with the defendant or litigant, and ongoing judicial supervision through frequent review hearings. The principles that will not be so easily extended include integrating social services with sanctions and adopting a team-based, nonadversarial approach to cases among the attorneys.

Additional barriers include judges having sufficient time and resources to apply the problem-solving principles effectively and conflicting judicial philosophies. These barriers may limit the rate of extension and expansion of problem-solving courts.

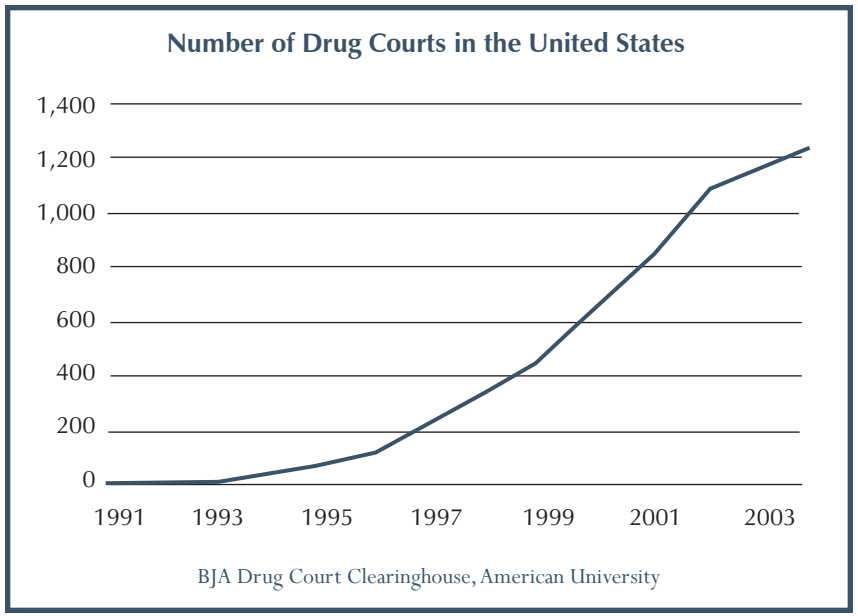
Relevance for Courts

Several factors that might affect the continuing development of problem-solving courts have been identified, many of which are directly related to expanding the role of judges. For example, as more evaluations of problem-solving courts have been completed, there are more-realistic expectations of what can be done by these courts. Integrated information systems permit greater information sharing between judges. There is increased pressure for problem-solving court practices to be standardized to ensure fairness and equality across these specialized courts. Judges presiding over problem-solving courts report improved satisfaction with their work, and their court proceedings are rated highly on dimensions of respect, neutrality, and trustworthiness. On the other hand, "cradle-to-grave" assignments result in lengthy, more-complex cases. Courts may want to monitor the ways in which these trends are apparent in their respective problem-solving efforts.

INCREASING USE OF PROBLEM–SOLVING COURTS

Present Conditions

The past decades have seen an added role for some courts: while traditionally adversarial arenas, some courts are also adding an element of therapeutic problem solving. A number of specialized, problem-solving courts have been established to address substance abuse, mental health, domestic violence, truancy, and other case types. While these courts retain their role of sanctioning the offender, they also focus on the courts' educational and therapeutic roles in upholding the rule of law; defining acceptable behavior;



reinforcing societal values; regenerating a sense of community; and protecting, guiding, and supporting children, the mentally ill, the disabled, and other parties whose welfare depends on court services.

Probable Future

As funding moves from federal agencies to state and local coffers, problem-solving courts will be forced to prove their value. Cost-benefit analyses are difficult due to the relatively young age of most problem-solving courts and the different paths for achieving goals between problem-solving and traditional courts. For example, the long-term health of defendants is a primary objective of problem-solving courts. This can be measured by the level of recidivism, compliance with treatment plans, or other positive outcomes. Traditional courts do not even have the long-term success of the defendant as an objective, so comparisons (particularly in a short-term, cost-benefit context) are difficult.

The cost of not continuing funding for problem-solving courts is another consideration. For example, a case can be made that funding up-front prevention, inherent in problem-solving courts, is a better approach financially and logically than spending on long-term (or repeat short-term) incarceration and probation.

Integration of problem-solving techniques into traditional courts will be ongoing for some case types. This will allow courts to triage cases during arraignment, establish special calendars/methods of handling cases with special needs, and train all judges in the use of problem-solving techniques.

Problem-solving courts will continue to be laboratories for new techniques. As problem-solving courts blend with some traditional courts, judicial educators must teach problem-solving methods and therapeutic jurisprudence to more judges. Law schools will likewise need to refocus their efforts. Bar exams may eventually incorporate therapeutic jurisprudence as they have family law, tribal law, and ADR.

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), as 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.

Relevance to Courts

Problem-solving courts enjoy strong bipartisan and community support, both of which should help sustain such courts as they move from federal to state and local funding. New methods of evaluation should be employed by problem-solving courts not only to obtain or maintain funding, but also to provide for their own improvement. New evaluations of success confirm earlier efforts. Most problem-solving courts have reduced recidivism and saved executive-branch costs for prisons and public services for participants.

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.

See article on "Reentry Courts" in Trends section

THE VANISHING LAWYER

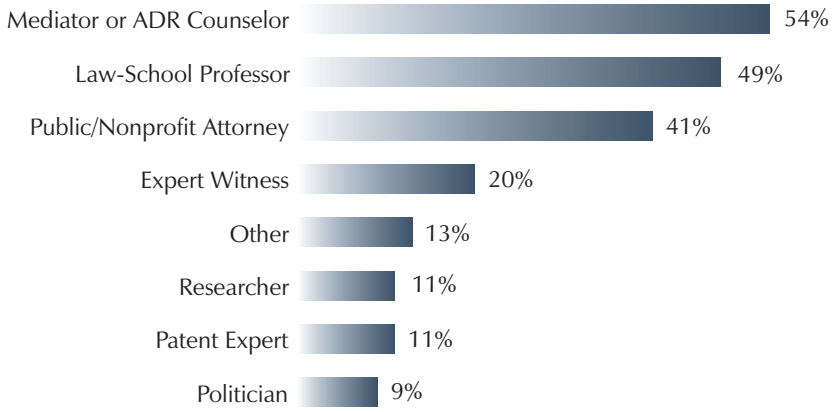
Present Conditions

"Vanishing trials" and increased use of ADR, collaborative lawyering, and international and other multiregional disputes are changing the face of the legal profession.

Law-school curricula are moving away from trial advocacy in favor of theory, client-centered lawyering, and ADR. Large firms are usually unwilling to allow new associates to participate in ever-increasing high-stakes litigation. Fewer jury trials are taking place. As a result, litigation is quickly becoming a lost art.

Lawyers suffer a high rate of burnout, substance abuse, and dissatisfaction with the profession and are, thus, seeking alternative ways to practice law or different professions altogether.

Survey of 1,000 U.S. and Canadian Lawyers
If you were to quit your current job, which alternative career might you choose?



Robert Half Legal

Probable Future

More large firms will become involved in ADR, hiring lawyer-mediators and retired judges, particularly for complex civil cases.

Lawyers, particularly recent graduates, will increasingly value quality of life when seeking employment or remaining in their current positions. Employees will seek not only superior health-care coverage for families, but also child care, alternative work options, and a deemphasis of billable hours, often at the expense of salary or other traditional rewards and perks. The "partner track" will diminish, as parents aim to balance life and family, work part-time, telecommute, or make other nontraditional work arrangements.

Other professions (mediation, consulting, technology, etc.) will see an increase in "recovering-lawyer" applicants. Career counseling for lawyers will extend beyond the law-school placement office, including alumni outreach and private career-counseling firms.

Relevance for Courts

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

Law-school curricula have changed to accommodate client and employer needs by increasing offerings in ADR and negotiation. As legal training and student interest shift from litigation to ADR, traditional trials are becoming even more of a rarity.

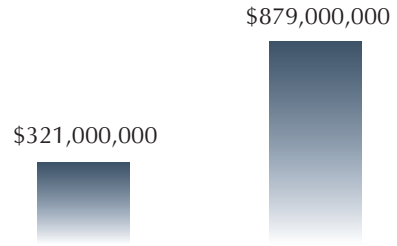
Collaborative law is seen as a way in which lawyers can serve their clients while maintaining multijurisdictional practice, and other rules expanding the practice of law (and further detailing the unauthorized practice of law) may be necessary to accommodate business.

GLOBALIZATION OF LEGAL PRACTICE

Present Conditions

Following the transformation of business into multinational enterprises, the practice of law is becoming increasingly globalized. Many major American law firms now have offices scattered throughout the world. The trade in both inbound and outbound U.S. legal services has more than doubled since 1993. Because of the increase in foreign investment in the United States, as well as the increased number of immigrants, routine legal matters that were once purely domestic are frequently taking on an international character. U.S. lawyers, seeking to increase their opportunities to offer their services overseas, have pressed for liberalization of admission requirements under the General Agreement on Trade in Services (GATS), an international agreement signed as part of the formation of the World Trade Organization. Understandably, the bars of other nations have sought parallel changes by the United States.

Amount Spent on Inbound U.S. Legal Services



Clifton Barnes, "GATS and FLC Rules Gaining More Attention," *Bar Leader*, May/June 2005.

Because admission to the practice of law in the United States is primarily governed by the states rather than the federal government, deciding on the extent to which lawyers who were trained in other countries will be permitted to practice and the qualifications for admission is a necessarily slow and complex process. The American Bar Association developed a model rule on foreign legal consultants (FLCs) in 1993 that provides for FLCs to offer legal advice on international law and the law of the countries in which they are qualified to practice if they meet certain requirements. These requirements include being a member in good standing of a recognized legal profession in a foreign country, being actively engaged in the practice of law, possessing good moral character and general fitness, being at least 26 years of age, and intending to practice as a legal consultant in the state to which the application was made.

Currently, approximately half the states have promulgated an FLC rule. New York's FLC rule has been in place for over 30 years. In 1994 the U.S. Trade Representative formally listed 16 of these rules as specific trade commitments of the United States under GATS and has offered to list most of the rules promulgated since 1994 in the current round of GATS negotiations.

Probable Future

More states will consider amendments to their rules on admission to practice that would allow a non-U.S.-trained attorney to offer legal counsel on international and home-state law. As experience grows, new procedures and adjustments to these rules will be needed to address inevitable disciplinary problems and questions about qualifications and practice requirements.

Relevance for Courts

If in the future a state decides to narrow the scope of its FLC rule and that rule has been listed as a U.S. commitment under GATS by the U.S. Trade Representative, a serious federalism issue may arise. If the model of Section 102 of the implementing legislation for the Uruguay Round of trade agreements holds for agreements reached during the

current Doha Round of trade negotiations, the federal government could seek a declaratory judgment in U.S. District Court nullifying the rule change as a violation of U.S. commitments under GATS. However, a whole series of events and decisions would have to occur before the federal government would seek a declaratory judgment against a state, and the federal government is required to consult closely with the state throughout the process. Thus, the probability of such an override occurring is low, but the possibility remains.

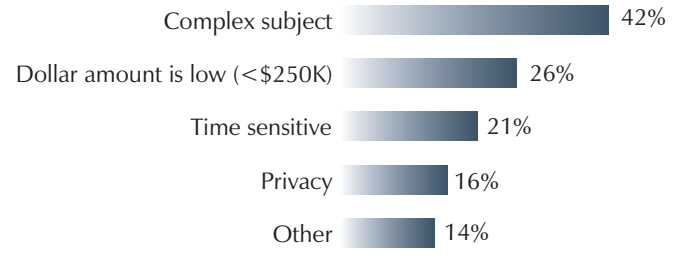
CIVIL CASES MIGRATE TOWARD PRIVATE JUSTICE

Present Conditions

Civil-case filings continue to grow in volume as the United States maintains its reputation as a litigious society. But many civil cases are migrating from traditional courts into an emerging system of private justice, which includes alternative dispute resolution (ADR) and private judging, and tends to be available to wealthier and better-educated litigants.

Despite other increases in the scope of the legal system, there has been a steady decrease in civil jury trials in the United States and other common-law countries (e.g., England). A significant change in judicial management of cases and an increase in the use and availability of ADR are responsible for this trend. Courts are focused on resolving cases before a jury verdict. This is accomplished by performing early and active judicial case management and handling pretrial motions.

Which are the most important case-specific characteristics that prompt you to recommend arbitration to a client?



American Bar Association, 2003 Survey of Lawyers

Mandatory-arbitration agreements are increasingly being challenged in the courts. In addition, courts often invalidate agreements that allow employers independent control over the choice of arbitrator. The courts are considering mandatory-arbitration agreements that call for employees to give up substantive rights, condense limitation periods, limit the nature of relief or amount of damages allowed by employment laws, call for the losing party to pay the arbitration costs and expenses, oblige employees to bear the cost to arbitrate, or preserve employers' rights to unilaterally amend the agreement.

Probable Future

The shift of civil actions to private forums is a serious challenge to the courts. Revenues, such as court fees, are diminished. Equity could be compromised, as poor litigants do not sue in the private system for economic reasons. 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 also inhibits the development of the law via legal precedents. In addition, there is continued concern over due process being compromised if litigants are "forced" or "coerced" into settlements. Secret settlements leave amounts to the imagination of the public and to other lawyers with similar cases. Reduction of citizen participation as jurors in civil trials further distances the public from the realities of the justice system. The constitutional right to a jury trial may be compromised.

Relevance to Courts

While extra-court proceedings are outside the jurisdiction of the court, courts may refuse to enforce certain agreements and may have strict rules about sealing documents.

In South Carolina, U.S. District Court Local Civil Rule 5.03 prohibits filing documents under seal. At the state level, RCPCR 41.1 balances privacy and public access. It requires a motion to seal and forbids a proposed settlement agreement submitted for the court's approval from being conditioned upon its being filed under seal. Moreover, "[u]nder no circumstances shall a court approve sealing a settlement agreement which involves a public body or institution." The rules do not apply to private settlements, but only to those the court is asked to enforce. The effects have not been earth-shattering; generally, few settlements are under seal in federal courts. Courts reportedly have not been swamped by unsettled cases.

See article on "Private Judges" in Trends section

SELF-REPRESENTED LITIGANTS

Present Conditions

Courts of general jurisdiction have seen a tremendous increase in self-represented litigants over the last ten years. Research indicates that the largest number of self-represented litigants appears in family cases, but numbers have also increased significantly in probate and civil cases. This increase has placed a burden on judges, court staff, and court processes and is expected to continue.

To address this issue, courts have developed various forms of assistance to self-represented litigants, such as self-help centers, Web-based self-help assistance, and one-on-one assistance. Some courts have case coordinators to assist self-represented parties. For example, in Washington State, these facilitators refer parties to legal, social-service, and ADR resources; assist in the selection, completion, and distribution of forms; explain legal terms; provide information on basic court procedures; and preview pro se pleadings before hearings to ensure that procedural requirements have been met.

In addition, several courts are adopting protocols to be used by judges during hearings involving self-represented litigants, as well as changing court rules to allow court staff to provide assistance to self-represented litigants.

States are also amending court rules to allow for unbundled or limited-scope legal assistance. Over 30 states have either explored or changed court rules to allow for unbundled legal services. In addition, those states that have rules for unbundling legal services are starting to monitor the implementation of these rules.

Probable Future

Courts will continue to innovate by developing protocols for judges and amending court rules to allow court staff to provide assistance to self-represented litigants. Technology will continue to play an increasing role in assisting self-represented litigants. Web-based document-preparation tools and electronic filing will become more commonplace, and the courts will use videoconferencing workshops or clinics to assist self-represented litigants.

As more courts develop and evaluate programs to assist self-represented litigants, they will consider systematic change to make the courts user friendly for this growing population of court users. Partnerships with legal-service providers, law libraries, and pro bono programs are also expected to increase as communities collaborate to meet the legal needs of their residents.

Relevance to Courts

The nature of conventional legal practice is being altered. Regulatory changes may cause some resistance in the legal community. Once courts realize that programs to assist self-represented litigants can save the court time, they will be more likely to embrace systemic changes in how they handle the self-represented litigant.

INCREASING ACCOUNTABILITY

INCREASED EFFICIENCY AND EFFECTIVENESS THROUGH PERFORMANCE MEASUREMENT

Present Conditions

Courts have long recognized a need to be more efficient and to make administrative structures and processes more rational. This awareness, combined with budget pressures, is leading courts to define and implement performance measures. The evolution of performance-measurement tools that can be applied by courts has continued, focusing on outcome measurement that provides practical information for courts to improve their operations. *CourTools*, a set of ten performance measures designed for the trial courts, were designed by the National Center for State Courts in response to this need. The National Center for State Courts has also developed statewide measurement procedures specifically for drug courts.

CourTools: Ten Core Performance Measures for Courts

Measure 1 - Access and Fairness
Measure 2 - Clearance Rates
Measure 3 - Time to Disposition
Measure 4 - Age of Active Pending Caseload
Measure 5 - Trial Date Certainty
Measure 6 - Reliability and Integrity of Case Files
Measure 7 - Collection of Monetary Penalties
Measure 8 - Effective Use of Jurors
Measure 9 - Court Employee Satisfaction
Measure 10 - Cost per Case

National Center for State Courts

Probable Future

As more courts define and implement performance measurement, baseline data will develop that allows courts to develop empirically based performance standards in multiple areas of court performance. Sustained implementation of performance measures will result in refinement of those measures and the introduction of additional measures. The data requirements of performance measurement will provoke a change in management-information systems in courts, since most legacy case-management systems are very limited in their ability to capture performance indicators and provide useful management reports.

With performance measures in place, courts will be positioned to understand the relationships between caseload, workload, resources, and performance. Courts will have an empirical basis for understanding what organizational structures and organizational cultures allow for optimum delivery of dispute-resolution services to the public.

Relevance for Courts

Court-performance measurements provide a sense of accountability and work as a tool for self-advocacy. Accountability enhances judicial independence. Courts will need to point to specific performance and accountability measures as they compete for scarce public resources and funding.

As courts become more sensitive to performance and accountability issues, they will more routinely collect the data necessary to determine performance through self-measurement.

See article on "Responding to Future Trends in State Courts" in Trends section

COURT FACILITIES, SERVICES, AND SECURITY

JURY SERVICE

Present Conditions

Over half of the states are actively improving jury duty through a variety of innovations throughout the process, from summoning to post-trial. Areas of innovation include:
Summons

- Eliminating exemptions (particularly professional exemptions) and limiting excuses
- Diversifying and more frequently updating source lists
- Making greater use of technology, such as enabling jurors to fill out a questionnaire online to save time, paper, and postage
- Improving treatment of jurors (better parking, increased pay, child care, providing business centers, etc.)

Selection

- Reforming or eliminating peremptories
- Reducing discrimination in peremptories

Trial Management

- Allowing jurors to take notes and create notebooks
- Allowing jurors to ask questions of witnesses
- Pre-instructing the jury
- Allowing jurors to discuss evidence before deliberations
- Rewriting instructions in "plain English" to increase understanding
- Improving management of notorious trials

Probable Future

State court systems will continue to study one another to glean best practices and learn about promising innovations. Evaluating the effectiveness of innovations is a necessary next step.

Juror privacy is an up-and-coming issue in the wake of overall concerns about court security, identity theft, and juror stress. The questions of whether juror information should be made public, and to what extent, are being examined by courts and policymakers. According to Munsterman and Hannaford (2003:9):

> A consensus is slowly evolving in the court community that qualification and administrative information about prospective jurors should be considered internal working documents for court management purposes and should not be publicly accessible, while voir dire information should be considered publicly available.

While some have decried the use of peremptory challenges as discriminatory and call for an outright ban (as Justice Breyer did in *Miller-El*), the bar will resist proposed limits as an infringement on their professional judgment.

Concurrent with such innovations and issues is the decline in the use of jury trials due to perceived costs and delay of trials, judicial management of cases, an increase in the use of ADR, and other issues (see "The Vanishing Lawyer," p. 22). However, the decline should not stymie the innovations, as jury trials constitute an important constitutional right and, after voting, are the most direct means by which citizens can participate in democracy.

Relevance for Courts

States must be aware of a variety of new and innovative practices, including new technologies, studies on effectiveness of innovations, and U.S. Supreme Court decisions that may affect jury trials and jury management.

New technologies range from online questionnaires and orientation programs to use of ATMs to dispense cash payments to jurors after they complete their service. Outsourcing data entry, obtaining new tools, and maintaining databases and other automation are all decisions that must be made by courts with respect to juror technology.

While jury duty is still an unwelcome fact of life for many, juror satisfaction is consistently high among those who serve. Continuous improvement of jury service ensures that such satisfaction will remain high.

COURT SERVICES AND FACILITIES

Present Conditions

Court facilities have a variety of design and functional issues to consider depending on the size and needs of the community they serve. Changing expectations of services and new technology are altering the needs and demands on both new and renovated court facilities.

Consumers are demanding more options for conducting court business and for obtaining legal services. States are amending court rules to allow for unbundled or limited-scope legal assistance. Following the lead of online commerce, courts are rapidly implementing e-government solutions to deliver routine services and permit transactions via the Internet.

The public is also raising expectations for customer service. As a result, courts are presenting a customer-focused image with cleaner and more-attractive surroundings. Court personnel, notably bailiffs at the security desk, are increasingly trained in customer service and how to treat clients with dignity and respect. Courts are becoming more responsive in improving accessibility, as shown by improved directional and informational signs. Art is used to beautify the courthouse and to represent the ethnic diversity of communities.

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, the expectation of convenient 24-hour service grows and traffic congestion increases. The demands on court facilities will change, as some court functions will no longer demand an in-person presence, and more will be accomplished electronically instead.

With greater accessibility of information comes concerns regarding the availability of personal information. Courts will develop and modify rules regarding public access to court documents.

As the roles of some courts change to become more therapeutic in nature, court facilities will have to adjust to these new demands. New and renovated court facilities will begin reflecting the need for spaces that provide a less-adversarial dynamic, as well as accommodate new post-adjudication functions.

Relevance for Courts

Courthouse facilities will continue to change to meet improvements in technology and demands from the public. For example, the outsourcing of data-processing tasks changes the needs of facilities within courthouses, as well as the workflow of the courts. Given the scope of electronic services available in many courts around the country, the physical facilities of each courthouse are likely to reflect the extent to which services are available electronically. As the amount of court business conducted electronically increases, the relative number of public transactions physically occurring at the courthouse decreases.

Courts will also have to make difficult choices regarding courthouse facilities as the public demands new services. For example, some courthouses now include secure child-care facilities for children waiting to testify, child victims, jurors' children, and employees' children. Other courts have decided against providing such facilities due to security concerns that courts may become a target for terrorists, discontented litigants, or other dangerous elements. For those courts deciding to include child-care facilities, this opens up new responsibilities for the court in creating a friendly environment. It also provides the courts with an opportunity to serve as a model for good child care and to distribute information on social services to parties who have court business and need such information.

COURT SECURITY

Present Conditions

Homeland-security efforts have placed little emphasis on state courts, focusing instead on risks to other government, industrial, and infrastructure targets. Recent high-profile cases of violence in and near courthouses, and the safety of judges and other court staff, have raised national awareness about court security.

2005 has seen a number of high-profile court-related tragedies. Among the instances of courthouse violence:

- A criminal defendant shot and killed a judge and other court staff in Atlanta.
- The family of a federal judge in Chicago was shot and killed by a disgruntled civil litigant.
- In a city parking lot near a Connecticut court, a disgruntled man on his way to a divorce hearing killed his wife and wounded her attorney before turning the gun on himself.
- In Seattle, a man armed with an inactive hand grenade was fatally shot outside a federal courthouse.

Ten Essential Elements for Courtroom Safety and Security

1 - **Operational Security: Standard Operating Procedures**
2 - **Facility Security Planning: The Self-Audit Survey of Court Facilities**
3 - **Emergency Preparedness and Response: Continuity of Operations**
4 - **Disaster Recovery: Essential Elements of a Plan**
5 - **Threat Assessment**
6 - **Incident Reporting**
7 - **Funding**
8 - **Security Equipment and Costs**
9 - **Resources and Partnerships**
10 - **New Courthouse Design**

Joint Committee on Security and Emergency Preparedness of the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA)

While it is not known for sure whether there is a higher security risk within state courts, court leaders and the public have a heightened sense of their vulnerabilities and of the need to improve security measures and business-continuity planning. In May 2005, more than 100 state court chief justices, judges, sheriffs, court administrators, and policy makers came together for a National Summit on Court Safety and Security sponsored by the National Center for State Courts and the National Sheriffs' Association. Participants started creating a set of approaches to assist courts in identifying and responding to court threats, including a national threat-assessment and incident-reporting database, a national clearinghouse on court security, issue-focused guidelines and best practices, and strategies for leveraging resources. Similarly, in an effort to organize court-security responses, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators' (COSCA) Committee on Security and Preparedness have compiled ten essential elements for courthouse safety and security planning.

In addition, more courts are auditing their security programs to review what's needed to improve security. Efforts to capture this data across jurisdictions face the challenge of how to share security information in a secure way.

Probable Future

This is an opportune time for courts to reexamine security measures. If there is a silver lining to the cloud of recent violence hanging over courts, it is that complacency has been disrupted, allowing improved security measures to be put in place.

Controversy will continue over whether bailiffs and other court staff should be armed, the level of scrutiny to which various court visitors should be subjected, and the level at which court security should be funded. Courthouse security staff will be faced with their own questions regarding profiling. More judges may want to be armed while on the bench. Courts may also request funding for personal-security measures. Federal courts have already requested money from Congress for the installation of private home-security systems for judges, and state courts have requested tax relief for home-security systems.

While most courts do not permit the use of cameras in the courthouse without the permission of the judge, the popularity of new picture phones is causing courts to expand the ban to include cellular phones. The ability of individuals to take pictures of witnesses or jurors without them knowing it and to send those pictures instantly to others creates a sense of vulnerability and threat.

As the reliability of low-cost, biometrics-based security systems (e.g., hand geometry, face and voice recognition of employees) 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.

Both for practical (interstate and international disputes) and for security reasons, more court proceedings will take place by closed-circuit and other "virtual" technologies. 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 and how such materials will be stored and protected against tampering or destruction.

Relevance to Courts

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 the rooms necessary to ensure public security and confidence. Courts will also need to consider a single public entry with screening for weapons and other contraband and three-way public, private, and prisoner circulation within the courthouse. Many rural courts that have not had much security up to now will become more concerned with safety and security.

The safety of various court workers and visitors, including children, is at issue. If potential or current court employees view the courts as dangerous places to work, the pool of employees will shrink. While parties have a right to know who is sitting on their jury, court administrators want to ensure juror safety. Moreover, victim and witness fears of violence can put the entire justice system in jeopardy. Without some guarantee of safety, victims will hesitate to report crimes, and witnesses will fail to cooperate.

Courts should not focus solely on securing themselves from criminal defendants. Although the Atlanta shootings were allegedly committed by a criminal defendant awaiting trial, the majority of defendants remain on their best behavior while in court. More troublesome are family cases, in which intense relationships and high tensions form an often dangerous combination. Recall that the "sniper" case of John Muhammad around the D.C. Beltway area had its roots in a bitter custody battle.

See article on "Court Security" in Trends section and "RFID" online at www.ncsconline.org

THE FIGHT AGAINST TERRORISM

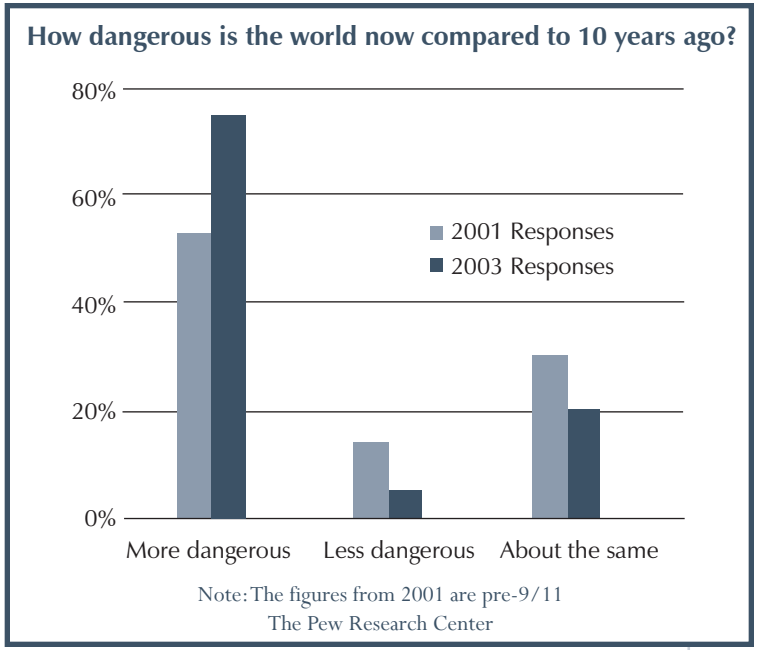
Present Conditions

Terrorism against American interests at home and around the globe has been going on for decades. Many believe that America's democratic principles, buoyed by its economic success, explains why people from the United States are often resented in some parts of the world. These inequities are dangerous, for the study of history shows the unequal distribution of wealth and freedom may cause any social and economic system to implode. Unequal distribution of wealth creates poverty and undermines cooperation, constructive labor, and social cohesion.

The attacks on American soil on September 11, 2001 have forced America to take the fight against terrorism to a new level of intensity, including more-robust domestic security. Homeland security encompasses many areas, ranging from airport and border security to food, water, and power distribution. Integral to these are issues related to immigration control, identification fraud, money laundering, surveillance, and detention and classification of suspected terrorists, just to name a few.

Probable Future

Expect broad use and renewal of the Patriot Act to root out possible terrorist activity in the United States. With this will come court challenges and posturing by public-interest groups to question the legality of Patriot Act provisions. The Patriot Act contains new tools for the government to protect American citizens during the "war on terrorism." Skeptics complain that the White House and Justice



Department used the Patriot Act to set about making radical changes to criminal and intelligence laws that give the government more authority to conduct surveillance, monitoring, and investigations with fewer checks on abuse. For example, the Patriot Act:

- expands the government's ability to execute criminal-search warrants (which need not involve terrorism) and seize property without telling the target for weeks or months
- allows the FBI to seize a vast array of sensitive personal information and belongings, including medical, library, and business records, using secret intelligence tools—with rubber-stamp judicial review.
- lowers the evidentiary standard for "national security letters," which are issued at the sole discretion of the Justice Department, and imposes a blanket gag order on recipients and are not subject to judicial review (these can be used to seize a wide variety of business and financial records)

Relevance to Courts

The impact on courts of the war on terrorism will be seen on several fronts. More law-enforcement agencies and personnel will be investigating more suspects, having the effect of uncovering more criminal activity—whether it is terrorist related or not. The impact on the criminal courts will be clear. Affronts on civil liberties, including racial profiling, will also result in more cases brought through the civil justice system. Liability claims in the event of terrorist acts may also end up in the civil and criminal court systems. And those planning court security must now take terrorist threats into account.

See article on "Immigration Law" online at www.ncsconline.org

SENTENCING

JURY SENTENCING

Present Conditions

US v. Booker (and *US v. Fanfan*), 125 S.Ct. 738 (2005), was decided as quickly after *Blakely* as possible at the behest of many (including Congress) who were concerned about the state of the U.S. Sentencing Guidelines. *Booker* held that the Guidelines were still constitutional under *Blakely*, but that they could not be mandatory.

In the summer of 2004, the U.S. Supreme Court decided in *Blakely v.Washington*, 542 U.S. 296 (2004), that upward departures from sentencing guidelines involved fact-finding, and that such fact-finding must be done by a jury, not a judge. The decision sent state sentencing commissions, defendants, prosecutors, and judges into a tailspin as the future of the U.S. Sentencing Guidelines, as well as various state sentencing schemes, suddenly was unknown.

Generally, the more like the U.S. Sentencing Guidelines a state's guidelines are, the more "at-risk" under *Blakely*. However, most states differed significantly from the U.S. Guidelines. Moreover, it was not even necessarily clear which states would be affected (much less how), because each state has its own method of sentencing.

Probable Future

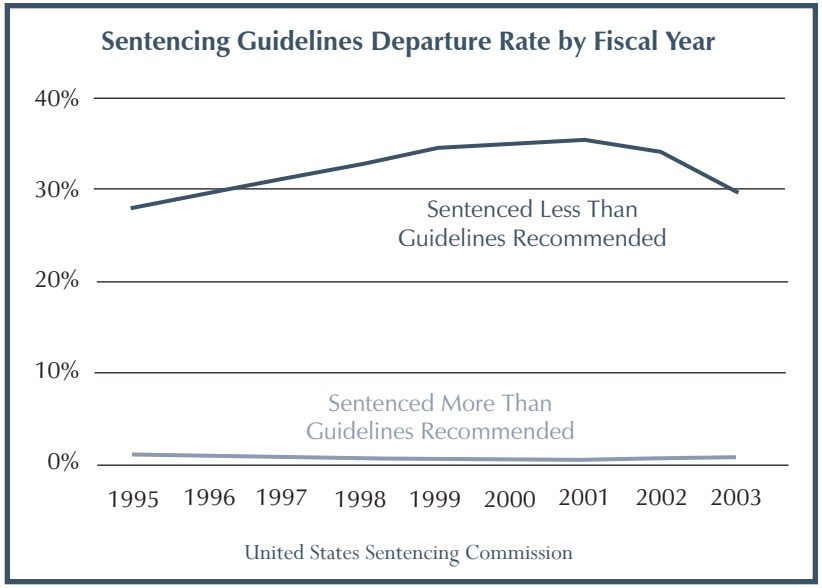
Although some of the major issues (such as retroactivity) have been decided, challenges based on *Blakely* and *Booker* will continue as states attempt to hammer out the meaning of these cases for their own individual state's sentencing scheme.

Following (or in conjunction with) these cases, legislatures will continue to attempt to conform their sentencing schemes and procedures with *Blakely* and *Booker*.

Relevance for Courts

Some state courts of last resort have decided *Booker*-related issues, providing final answers to the looming questions posed by this string of cases, including:

- retroactivity
- the effects on sentencing schemes in their particular state, consecutive sentences
- the imposition of life without parole
- prior conviction exceptions
- increased sentences based on factors such as heinousness



Among the state cases:

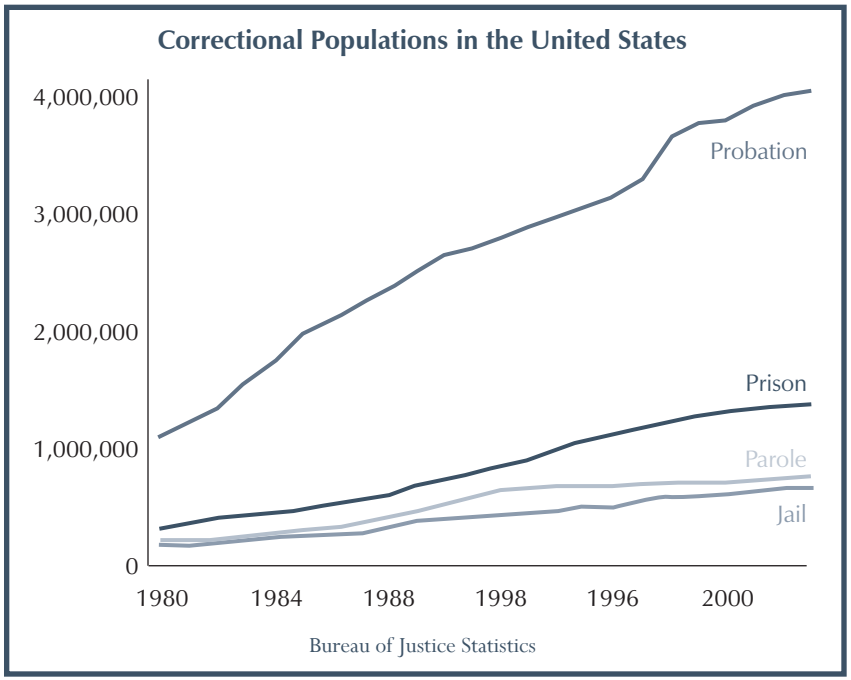
Hawaii v. Maugaotega, 2005 WL 1525107 upheld Hawaii's sentencing scheme.

State v. Schofield, 2005 ME 82 (Maine June 29, 2005), and *State v. Averill*, 2005 ME 83 (Maine June 29, 2005), held that a jury determination is necessary to impose an increased sentence based on heinousness.

Many questions were answered in California by *People v. Black* (no. S126182, filed June 20, 2005) --- Cal.Rptr.3d ----, 2005 WL 1421815. The decision held that there is no federal constitutional right to a jury trial on fact-finding relating to aggravating factors used to impose the upper term under California's Determinate Sentencing Law, and found no right to a jury trial on fact-finding used in the decision to impose sentences consecutively.

Other state decisions from Arizona, Indiana, Minnesota, and Ohio have addressed similar issues pertaining to their respective states.

Legislation in Oklahoma and Tennessee attempts to conform their procedures to *Blakely* and *Booker*. Oregon's bill would require prosecutors to tell defendants upon indictment whether they will bring up enhancement facts at trial, so that such facts could be considered by the jury. Tennessee replaced its presumptive sentencing scheme with advisory guidelines that include consideration of enhancing and mitigating factors.



Present Conditions

The United States has about 6.9 million people under some form of correction supervision, with about 2.1 million in jail or prison. Despite declines in crime throughout the 1990s, incarceration levels continued to increase due to stricter sentencing laws. The United States has an incarceration rate of approximately 700 for every 100,000 citizens, compared to 50 to 150 for other developed countries such as Canada, Australia, Japan, England, Germany, and France.

During the past two decades, about a thousand new prisons and jails have been built in the United States—yet this increase in facilities has not kept up with rising incarceration rates, and prisons are overcrowded. Of the 50 largest local jail jurisdictions at midyear 2004, 20 were operating above 100 percent capacity. States have turned to private, for-profit prisons in the past decade. There were 73,657 state prisoners held across the 30 states that had private facilities at the end of 2003. Private facilities have recently come under fire, however, for problems with security and medical treatment.

Racial disparity in incarceration rates between African-Americans and Caucasians remains high; the risk of incarceration for a black male is about seven times higher than for a white male. The life course of black men is more likely to include time in prison than the completion of a bachelor's degree or service in the military.

Probable Future

There is increasing concern that "tough-on-crime" approaches are not the solution to reducing crime and incarceration rates. Increasing numbers of problem-solving courts attempt to reduce crime by attacking the root sources of criminal behavior. As states face the high costs of incarceration, politicians (liberal and conservative alike) will increasingly stress a "smart-on-crime" approach. This approach will see the review of some of the harsh sentencing laws of the 1980s (such as three-strikes laws); emphasis on the use of probation and treatment for first-time, minor offenders; and increased emphasis on reentry programs. 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 private prisons as the only alternative. However, empirical research regarding the cost savings of privately operated facilities has not provided evidence that contracting prison management to private-sector companies has been cost-effective for states.

Relevance to Courts

Courts are likely to face conflicting demands on sentencing. Budget concerns may result in an interest in less-severe or alternative sentencing, while mandatory sentencing laws

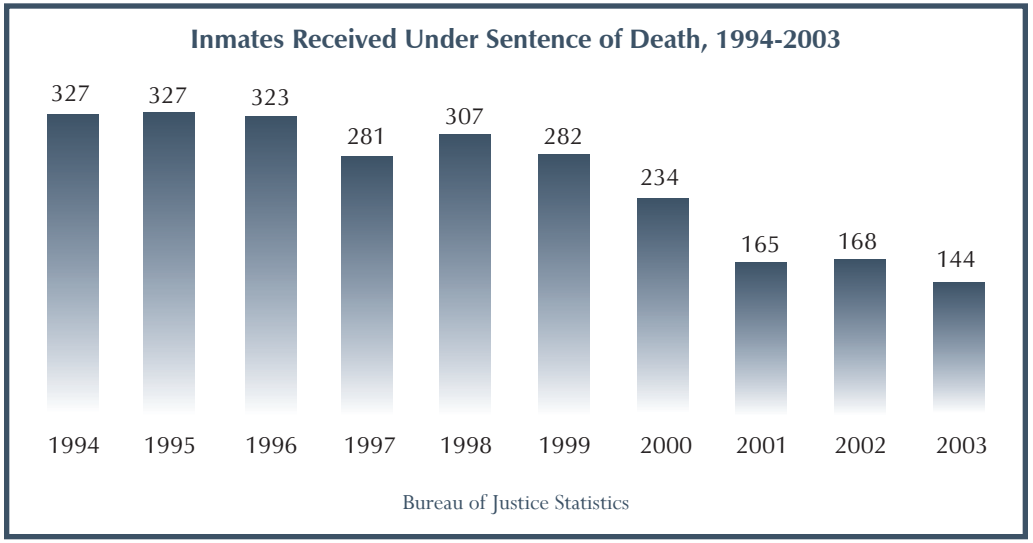
continue to restrict sentencing flexibility in many jurisdictions. "Smart on crime" may help offset rising incarceration rates through the review of mandatory-sentencing laws, but courts should not expect these results soon.

See article on "Reentry Courts" in Trends section

UNCERTAIN FUTURE FOR CAPITAL PUNISHMENT

Present Conditions

The use of the capital punishment has declined in recent years. In 2004, 144 defendants received death sentences, the lowest number since 1973. Fifty-nine death-row inmates were executed in 2004, the lowest number of executions since 1996. Only 12 of the 38 states that authorize the death penalty actually completed executions in 2004, and the majority of these were southern states.



Part of the decline in capital sentences imposed is due to a continuing trend in the narrowing of the applicability of the death penalty under the Eighth Amendment. In 1988 the Supreme Court outlawed the execution of criminals who were 15 years old or younger when they committed the crime, and in 2002 the Court banned the use of capital punishment for mentally retarded criminals. Most recently, in March 2005, the U.S. Supreme Court further restricted age requirements for capital punishment to criminals who committed their crimes before reaching 18 years of age (*Roper v. Simmons*).

Several concerns surrounding the death penalty may contribute to its decreased use. Successions of studies have cast considerable doubt that the death penalty works as a general deterrent for potential criminals. Financial studies have repeatedly shown the prohibitively expensive nature of capital cases. The recent use of DNA evidence to exonerate death-row inmates has created concern regarding the finality of the punishment and the danger of executing an innocent victim. Over 100 inmates have been exonerated since 1973, with 6 exonerations occurring in 2004. The United States has also faced international criticism from both developed and less-developed countries for the continued use of this sanction.

Probable Future

Given the increasing limits on the population of criminals who are eligible to receive the death penalty, it is expected that the number of death sentences imposed on convicted criminals will continue to decrease.

Scientific advances in the use of DNA and other evidence will illuminate incidences in which states have executed innocent individuals, creating more public doubt about the death penalty. As a result of this publicity, more states may call for a reexamination of 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 stricter and more costly and as the public's preference for sentences of life without parole increases. Empirical research has found that while capital jurors support the death penalty as much as the general public, they will choose the alternative of life without the possibility of parole if offered, especially when combined with a requirement of restitution.

Relevance for Courts

Courts are likely to see fewer death-penalty cases in years to come, reducing the high costs associated with these trials. States may choose to reexamine their laws and procedures with respect to capital punishment to ensure that they withstand scrutiny in light of evolving standards. The U.S. Supreme Court has agreed to hear the case of *House v. Bell* to determine standards to be used by federal courts to decide how newly discovered evidence could be used to establish innocence.

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.

FAMILY JUSTICE

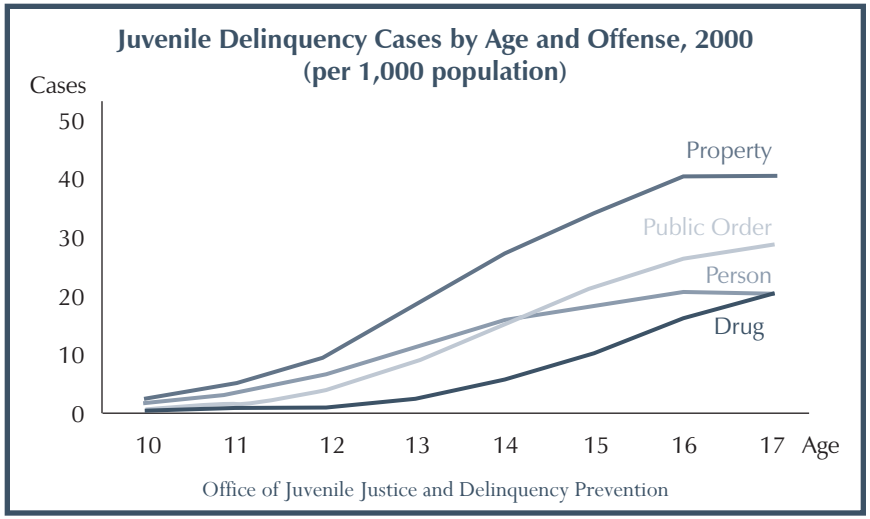
RESTORATIVE JUSTICE VERSUS "GET-TOUGH" APPROACHES

Present Conditions

After juvenile arrests reached their peak in 1994, the number of arrests has dropped each year from 1995 through 2002. In 2002 the number of juvenile arrests was the lowest since 1987. However, as student misconduct in school is increasingly criminalized, more children with learning disabilities are entering the juvenile-justice system.

As the high costs for incarcerating juveniles becomes problematic, there is a great need for mental-health services for juvenile offenders. There is a lack of systematic assessment and mental-health treatment referrals by juvenile courts, as well as a lack of adequate facilities for treatment of juveniles.

"Warehousing" juvenile offenders in various facilities is increasingly being construed to be equivalent to "treatment." When offenders are "warehoused" in congregate facilities, they lose role models, become victims of their peers, and learn even worse behavior, diminishing their prospects of rehabilitation.



Recent scientific findings indicate that juvenile minds do not process information about risks and consequences in the same way as adult minds. The part of the brain that controls reason (the frontal lobe) is thought to develop last, meaning that the part of the brain that inhibits criminal behavior is not fully developed at the time that juveniles are committing their crimes. Such evidence supports arguments that juvenile offenders should not be treated the same as adults.

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.

Youth courts are one method through which young people are being tried for low-level crimes such as truancy, fare evasion, and disorderly conduct. As part of the Red Hook Community Justice Center in New York, young people ages 10 to 15 years appear before a court composed entirely of their peers, and receive sanctions such as community service, letters of apology, and anger-management education. The youth court in Red Hook boasts an 80 percent compliance rate with the sanctions, indicating that the young people trained to work in the peer court are effective at establishing and enforcing standards of behavior for their peers.

Probable Future

Political pressure, generated by subjective fears, media sensationalism, and interests of the prison-industrial complex, will perpetuate "get-tough" approaches in some states. 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 adolescents charged as adults, there is likely to be some recognition of their age. 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). Justice-system professionals will need more education about children with learning disabilities and the opportunities and obstacles that their disabilities present.

Relevance for Courts

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 prevention, such as early intervention programs. Performance measures will reinforce the demands for program accountability.

In some jurisdictions, "zero-tolerance" policies will increase "warehousing" of juveniles in various facilities and fail to distinguish between low-level and serious offenders. Youth courts could play an important role in changing the long-term behavior of low-level juvenile offenders.

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.

PERMANENCY PLANNING AND COORDINATION OF FAMILY CASES

Present Conditions

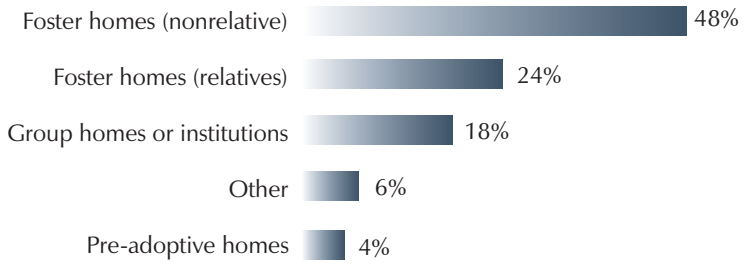
The 1997 Adoption and Safe Families Act (ASFA) required state social-service agencies to place the highest priority on the health and safety of children, focusing on permanency from the beginning of a child-protection case. States have developed detailed plans to accomplish these goals for abused and neglected children. Once again, juvenile courts are in the forefront of ensuring that cases progress in a fair and timely manner. State courts of appeal are recognizing the need to give dependency cases the highest priority and are implementing expedited appellate procedures.

The downside of ASFA may be that the specified timelines are creating a population of legal orphans. Although the number of adoptions is rising, some contend that the overall percentage of children being adopted is actually less due to the increasing number of children free for adoption.

The Adoption, Foster Care Analysis and Reporting System (AFCARS), a federally regulated system implemented in all states, strives to create the most efficient way to increase foster-care child adoptions. 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 the caseflow, organization, automated information systems, and automated or manual case-tracking systems to place foster children in permanent homes more quickly.

Status of Foster Children in the United States, October 2001



National Clearinghouse on Child Abuse and Neglect Information

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, there is an increasing emphasis on hiring court staff as case managers and providing judicial support for screening, as well as institutionalizing family case processing and historical memory of cross-jurisdiction cases involving the same family.

Despite the efforts to move children in foster care into an adoptive family, many youth are "aging out of the system" because they have not been adopted by the time they reach the age of 18.

Recent recommendations for improving the child-welfare system focus on both the federal financing structure and the courts. Recommendations for reforming the financial structure include providing federal adoption assistance and guardianship assistance; eliminating income and location eligibility requirements; reinvesting the dollars saved from reducing the number of children in foster care back into child-welfare services; creating an Indexed Safe Children, Strong Families Grant; improving the Child and Family Services Reviews; and expanding waiver and bonus programs.

Probable Future

The numbers of adoptions and promising practices designed to surmount traditional barriers to moving children into permanent homes will continue to increase steadily. As courts become more resourceful and effective through the 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.

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 an expedited appellate procedure, which may include such cases as termination of parental rights, abuse and neglect, adoption, custody, guardianship, or domestic-violence actions.

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 in-court volunteers such as CASAs can help families navigate the court 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).

Relevance for Courts

The number of kinship and grandparent adoptions will continue to rise with the increasing numbers of single-parent families and higher divorce rates, 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.

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.

Courts that handle child-abuse-and-neglect cases may improve their performance and accurately assess judicial workload needs through specifically developed measurement techniques. The Packard Guide and Toolkit provides the methodology for measuring court performance in four areas (safety, permanency, due process, and timeliness), as well as for assessing judicial workload. Efforts to track workload also track the time that juvenile- and family-court judges spend off the bench because of the necessary interaction between the community and social services to enhance court outcomes for children and families.

The development of court-performance measures in the areas of safety, permanency, timeliness, and due process for cases involving abused and neglected children is in line with recent recommendations by the Pew Commission on Children in Foster Care. The other recommendations for courts include increasing collaboration between the courts and agencies, increasing the funding for CASA programs, creating loan-forgiveness programs for attorneys, and increasing the accountability of the courts for abused and neglected children.

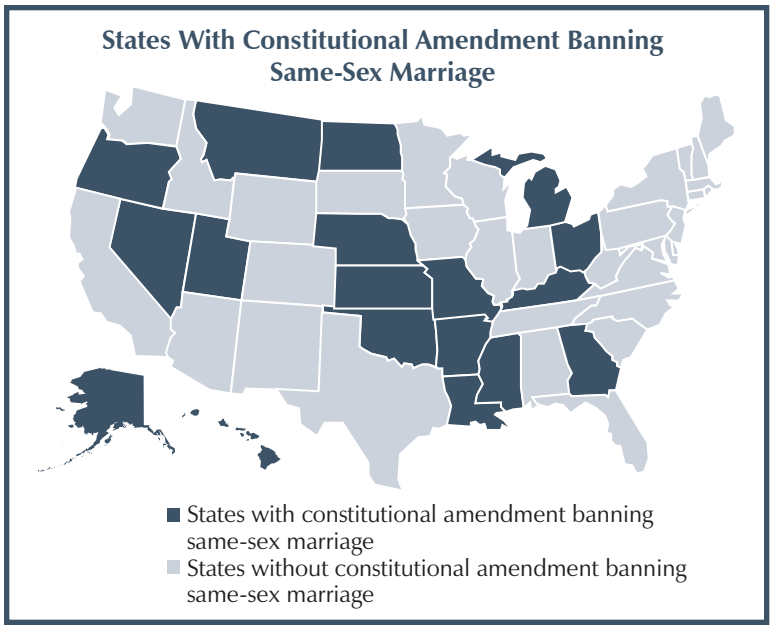
Resources are available for courts and judges to aid in the planning for adolescents in foster care who reach the age of majority.

FAMILY RIGHTS OF SAME-SEX COUPLES

Present Conditions

Rights of same-sex couples vary among the states. Vermont and Connecticut grant same-sex couples the rights and benefits of marriage, but in "civil unions." California has passed a domestic-partnership act, but a pending Supreme Court decision may find that the state's law against gay and lesbian marriage is unconstitutional. In November 2003, the Massachusetts Supreme Judicial Court ruled that same-sex couples are legally entitled to wed under the state constitution. In 2004, 11 states (Arkansas, Georgia, Kentucky, Michigan, Mississippi, Montana, North Dakota, Ohio, Oklahoma, Oregon, and Utah) approved constitutional amendments that codified marriage as an exclusively heterosexual institution. At the federal level, Congress passed the Defense of Marriage Act in 1996. This act established that states are not required to honor same-sex marriages performed in another state.

The Canadian Supreme Court ruled that same-sex marriage is constitutional in December 2004. Same-sex marriage was legalized across Canada by the Civil Marriage Act enacted on July 20, 2005. Canada is the fourth country in the world, after Spain, the Netherlands, and Belgium, to officially recognize same-sex marriage. Canada does not have a marriage residency requirement. The Spanish and Canadian laws are the only nations to eliminate all distinctions between same-sex and heterosexual unions. Same-sex couples across England, Wales, and Northern Ireland will be allowed to register civil partnerships beginning December 21, 2005. Countries that offer a legal status, sometimes known



as a registered partnership, that confers most or all spousal rights to same-sex couples are Denmark, Finland, Germany, Iceland, Norway, and Sweden. On June 5, 2005, about 58 percent of Swiss voters—or 1.56 million people—were in favor of increased rights for same-sex couples, namely, that registered same-sex couples are treated the same as married couples for tax and pension purposes. However, same-sex couples will not be allowed to adopt children or undergo fertility treatment. The vote on rights for same-sex couples was the first time the subject has been put to a national referendum in Europe, but the rights are less extensive than in other countries.

In the United States, where many states do not recognize "common-law" status between couples, employment benefits are not extended to one's partner (whether hetero- or homosexual) unless the couple is legally married. This may influence the desirability of marriage as a practical instead of a symbolic issue.

Probable Future

State and tribal courts will continue to 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 Hawaii 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. There are already an estimated five million children being raised in the United States by gay and lesbian couples.

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

Relevance for Courts

States will continue to 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.

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.

See article on "Same-Sex Marriage" in Trends section

ECONOMIC CONDITIONS

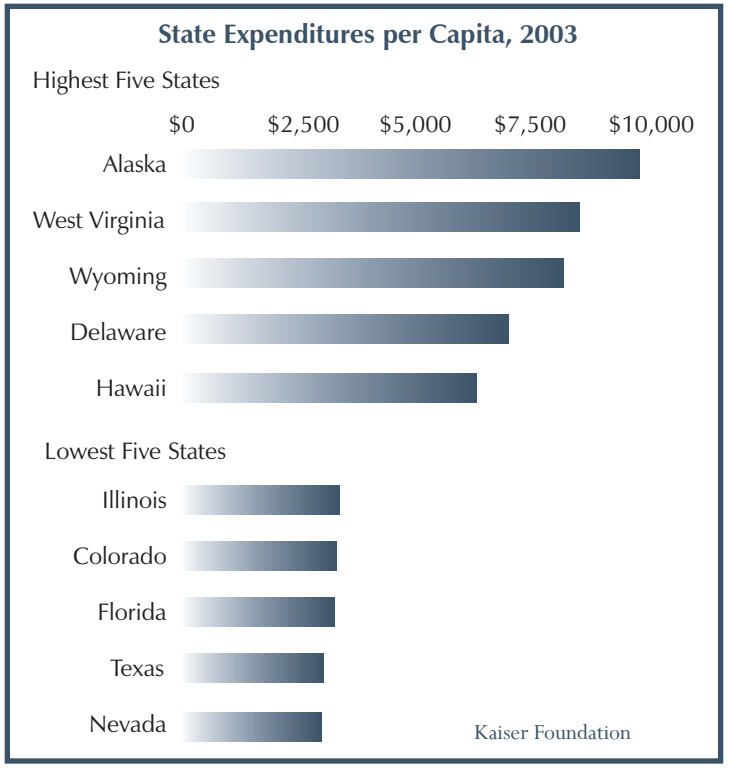
STATE AND NATIONAL ECONOMICS

STATE BUDGETING

Present Conditions

The dollar has stabilized, commodity prices are down, and the worst of inflation is behind us. While the recession may be over, state-government fiscal conditions remain weak. As states write their budgets for the 2006 fiscal year, their revenues are still well below pre-recession levels. Budget shortfalls are already predicted for 26 states for fiscal year 2006 (OMB watch, 2005). 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, as well as 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.

Slow economic growth will increase pressure upon state governments to increase the state share of funding for the trial courts, accelerating an existing trend.

Under financial pressure, courts and legislative bodies will increase court costs and fines and redouble efforts to collect unpaid assessments. Courts will strengthen collection options and reevaluate the merits of some policies regarding revenue generation.

Efforts to secure grants from federal agencies and private foundations will increase.

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. State and local funding of court programs could fill the gap left by the lack of federal funding; however, such programs will need to justify their existence and provide extensive evaluation data to these new funders to survive.

Relevance to Courts

Courts will become more aggressive and sophisticated in competing for funds in state and local budgetary processes. Courts will build coalitions and develop performance measures to demonstrate specific, desirable achievements, and budget requests will have greater credibility. Courts will place greater emphasis on gathering financial information regarding revenues, expenditures, and pass-through accounts as part of efforts to measure performance and demonstrate accountability.

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.

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.

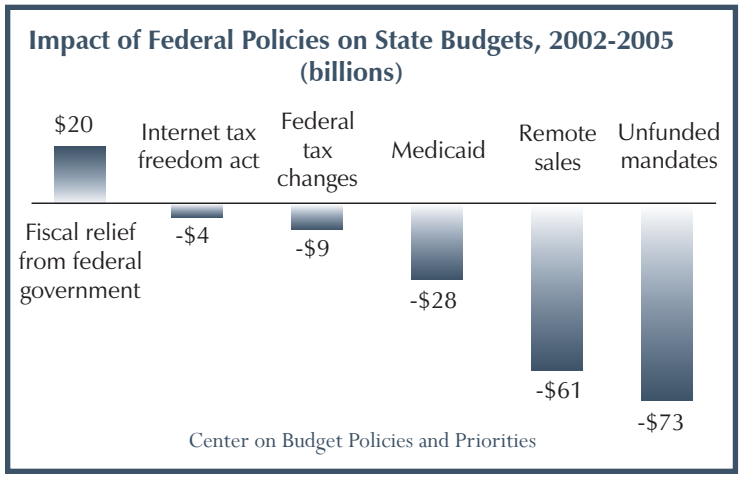
See article on "Judicial Salaries" in Trends section

EFFECTS OF FEDERAL BUDGET POLICIES

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.
- The federal government provided $20 billion in federal fiscal relief to the states in 2003. This 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 from 2002 to 2005.



Federal spending cuts and caps will hurt states that are facing their own deficit problems. The president's proposed 2006 budget includes cuts in nondefense discretionary spending for 2006 and five-year caps on appropriations that could worsen funding cuts to programs.

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.

Budget concerns have also affected federal courts. In fiscal year 2004, federal courts cut 1,350 jobs. According to the Administrative Office of the U.S. Courts, this cut represents 6 percent of district and bankruptcy clerk-of-court or probation and pretrial-services offices. Federal courts in eight states, along with courts in the District of Columbia and Puerto Rico, have lost more than 10 percent of their jobs in the past year. The Judicial Conference approved measures in 2004 with the goal of reducing the number of job losses.

Probable Future

Continuation of federal tax cuts and related policies will force more state and local 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 additional cuts to services, such as child- and health-care programs; increases in college tuitions; and reduced hours when the public can access government services. Such reductions will disproportionately affect low-income Americans who rely more heavily on government programs and do not have the political clout to fight for these services.

Relevance to Courts

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. Courts will continue to struggle with their budgets as states further restrict funding in order to adjust to federal policies.

EMPLOYMENT UNCERTAINTY

Present Conditions

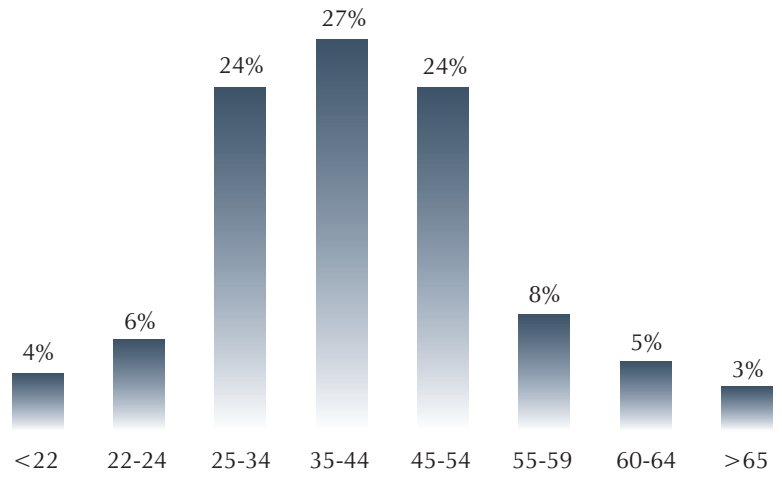
While the U.S. economy has been in recovery from the most recent recession for several quarters, job growth has not rebounded as expected. Although many economists remain confident that job growth will eventually match historical trends, others are beginning to wonder if the U.S. economy has entered new territory. Recovery has been slow, with the overall unemployment rate ranging from 5.2 percent to 6.3 percent from October 2002 to March 2005. Labor-force participation rates are at a half-century low. High long-term unemployment rates have the attention of policymakers and Congress, who are rethinking how policy can more effectively support family income and help those out of work for extended periods of time to return to the workforce. It will take a normal job recovery and GDP growth of 4 percent for several years to recover the 3 million payroll jobs lost from 2001 to 2003.

Unemployment rates may also be affected as globalization increases and companies continue to seek cheaper sources of labor, frequently in other countries. Recently, this has expanded beyond manufacturing jobs and now includes service-sector and IT jobs.

Probable Future

Increased employment uncertainty changes consumer-spending habits, decreasing both spending and state tax revenues. Extending unemployment benefits 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.

Percentage of Unemployed by Age Group, 2004



U.S. Department of Labor

Relevance to Courts

Employment uncertainty will likely continue, even during the economy's growth cycle. Implications of continued 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; and increased need for community and neighborhood mediation and other sources of alternative dispute resolution to decrease the pressures on the official justice system.

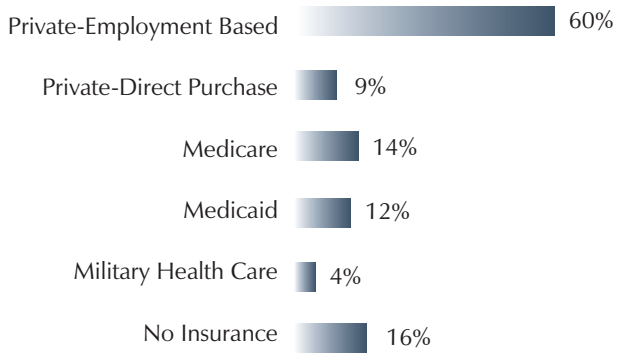
HEALTH-INSURANCE CRISIS

Present Conditions

The U.S. health-insurance system continues to link eligibility for insurance primarily to possession of a full-time job. Eighty-four percent of the U.S. population has insurance, with 61 percent of U.S. residents covered by insurance through their jobs. However 45 million people, or 16 percent of the population, are without health insurance, and millions more are underinsured. 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.

Health-insurance programs in the United States continue to face cuts in benefits. Fifty states have taken action to control Medicaid costs in 2005, including plans to freeze or reduce provider payments, restrict eligibility or benefits, or increase copayments. For example, in June of 2005, the Michigan Senate approved a Medicaid budget with higher premiums and more copayments.

Coverage by Type of Health Insurance 2003



United States Census Bureau
Note: Percentages do not total 100. People can be covered by more than one type of insurance during the year.

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.

Relevance to Courts

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

Health-care access issues will affect court human-resources policies. Courts, as a public-sector employer, tend to offer very competitive benefits. This may give courts an advantage over private-sector employers in attracting and retaining quality employees. Even though private-sector employers are cutting health-care benefits with respect to level of care/service provided to employees, this is not yet an issue in the public sector. Additionally, many private-sector organizations are moving to reduce or eliminate pension plans. This is also not yet seen in the public sector. Accordingly, courts as employers must capitalize on those resources they are able to offer to prospective employees.

IMPACT OF ECONOMICS ON CASELOADS

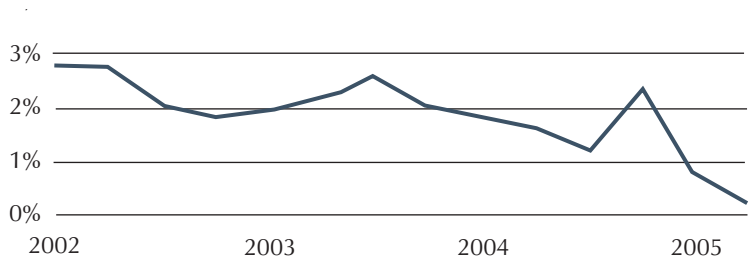
PERSONAL BANKRUPTCY LAW

Present Conditions

Both personal- and business-bankruptcy filings have been rising for many years. Increasing bankruptcy filings are an unfortunate consequence of several structural changes in the American economy. These changes have created a rise not only in bankruptcy, but also in foreclosures, repossessions, utility disconnections, credit-card defaults, and visits to consumer-credit-counseling agencies. Nevertheless, banks continue to record profits, largely from credit-card income.

- 39 percent of those filing for bankruptcy in the United States are women
- 29 percent of those filing for bankruptcy in the United States are men
- 32 percent of those filing for bankruptcy are married couples
- Most common reasons for 90 percent of women filing for bankruptcy include medical emergencies, job loss, and divorce
- In 2003 as much as $95 billion in child-support payments remained uncollected in the United States
- 3/4 of a million women will be affected in 2005 by the bankruptcy system, and it is estimated that as many as 1 million women will be affected in 2006
- Fewer than 4 percent of chapter-7 debtors have anything to distribute to unsecured creditors

U.S. Personal Savings Rate as a Percentage of Disposable Income



United States Bureau of Economic Analysis
Disposable income is income less personal tax payments.

Probable Future

While bankruptcy cases are heard in federal bankruptcy courts, state courts may still see fallout, particularly in child support and other family-law matters. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 could make it more difficult to collect child support. Although it moves child-support to the first priority among unsecured creditors, fewer than 4 percent of debtors have anything left to distribute to unsecured creditors. Thus, the child support obligee is moved to the head of a somewhat meaningless line. The implications for courts are serious, as child support and modifications make up a large portion of court business.

The impact of the new federal legislation on small or closely held business dissolutions in state courts and on stays of state court proceedings is not yet clear. However, new changes in the act exempt certain child-support and alimony collection actions from automatic stay.

Relevance to Courts

Although the federal courts manage bankruptcy filings, tangential legal matters, such as foreclosures, divorce, domestic violence, and child support, are resolved in state courts. Bankruptcy can be seen as symptomatic of other problems and may, indeed, be a "family-law issue" in fact if not at law. Families struggling financially may be more likely to divorce, need child support, and be under stress; hence, they may be more likely to show up in family court for various reasons.

CORPORATE FRAUD

Present Conditions

Our publicly held corporations are an essential component to the economic health of our country. As we have seen over the past few years, ethical or criminal lapses on the part of our corporate leaders have a significant and sometimes crippling effect on the welfare of our nation. Many are arguing for fundamental changes in the current system of corporate oversight to protect Americans.

Big corporations that are criminally prosecuted represent only the tip of a very large iceberg of corporate wrongdoing. For every company convicted of health care fraud, there are hundreds of others who abuse Medicare and Medicaid. For every company convicted of polluting the nation's waterways, there are many others who are not prosecuted because low-level employees often become scapegoats. For every corporation convicted of bribery or of giving money directly to a public official in violation of federal law, there are thousands who give money legally through political action committees to candidates and political parties. Many feel these companies profit from a system that has effectively legalized bribery.

Probable Future

Lawmakers and courts will pursue corporate criminal activity more aggressively to restore investor confidence and ensure the public recognizes that the vast majority of corporate leaders are honest. Current laws will be strengthened and new laws created to provide greater deterrents to corporate crime. For example, the Sarbanes-Oxley Act of 2002 increases the enforcement power of the Securities and Exchange Commission and enhances criminal penalties for securities fraud, as well as mail and wire fraud. Corporate executives and auditors now face imprisonment for knowingly submitting false financial reports, altering or destroying company records, or failing to maintain audit paperwork. The act also creates conflict-of-interest and self-dealing provisions. Under the act it is unlawful for a public accounting firm to audit a publicly traded company while providing the same company with nonaudit services, such as bookkeeping and legal or management consultation.

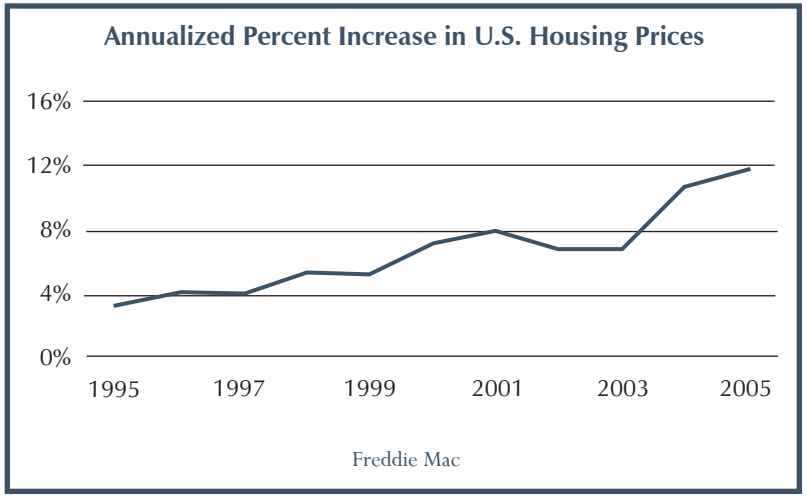
Relevance to Courts

Corporate fraud is wide reaching and includes shareholder fraud, fraud on government agencies, mail fraud, wire fraud, bank fraud, tax fraud, health-care fraud, environmental offenses, securities matters, trade and customs violations, money laundering, and financial structuring matters, just to name a few. With such a wide reach, corporate crime infiltrates courtrooms across the country. As new "get-tough remedies" gather steam and strengthen in the next few years, look for more cases to be filed and tried in courts across America. As more of the population reaches retirement age, more suits may be filed to protect raids on pensions. In addition, high dollar penalties and significant prison terms for convicted corporate executives will throw many cases back to the appeals court process.

REAL ESTATE

Present Conditions

Some highly respected economists have described the current housing market as a bubble. The U.S. housing market has been the biggest beneficiary of foreign investment in U.S. treasury bonds. Demand for U.S. treasury bonds has helped keep mortgage rates near historic lows for several years. Low-interest mortgages, combined with a significant deterioration in lending standards, has made housing seem affordable to millions of new buyers who have scrambled to buy houses at what some consider overvalued prices, often with little or no down payment. Add to this increasing personal debt, a larger share of adjustable-rate mortgages, a higher share of home-price-to-income and home-price-to-rent ratios, and financial scandals, and you have the ingredients for a market correction.



One problem is that real estate, unlike stocks, is much more difficult, and sometimes impossible, to unload in an all-out crash environment. Making matters worse, many mortgage owners will sit through their losses in the vain hope that things will turn around. Further, many homeowners will be fearful of selling out of their depreciated home and losing their low-interest mortgage rate.

The real-estate bubble is no different than the technology-stock bubble of the late 1990s. Widespread public buying has been responsible for pushing housing prices above and beyond reasonable valuations. The 1990s stock-market bubble and today's real-estate bubble both shared the same pivot from the declining trend in interest rates, which justified reckless buying on the part of the general public.

Probable Future

The buyer market for housing will shrink significantly. Interest rates have moved higher during 2005, and higher interest rates reduce demand for housing and other big-ticket items. For potential home buyers, just a 1 percent increase in 30-year mortgage rates from the current 5.5 percent results in an 11 percent increase in mortgage payments without any actual increase in home prices. According to the *Wall Street Journal*, a mere half-point rise in interest rates would price two million households out of the market for the medium-priced home.

With housing prices skyrocketing, renting has become cheaper in many parts of the country, reducing potential home owners. The current home ownership rate is at 70 percent, further eroding the potential market for new buyers. Second-home purchases and home purchases by immigrant families will supply additional home buyers, but not enough to sustain the market.

Modest increases in interest rates and inflation should allow a soft landing rather than a freefall for the real-estate industry. Most local balloons in home prices will deflate rather than pop, though several local markets will pop over the next couple of years.

Relevance to Courts

The impact of the real-estate market on state courts is varied:

- Defaults on mortgage loans will rise as adjustable mortgage rates increase monthly payments to unaffordable levels, leading to court-ordered foreclosures.
- The real-estate boom has thrust many people into the role of landlord, many without any direct experience, which could mean an increase in landlord-tenant cases.
- Major increases in the number of real-estate brokers has resulted in rebates and inducements from real-estate companies—which are under fire in courts as illegal kickbacks.
- Traditional real-estate commissions are under pressure from Internet start-ups, who offer to sell homes at a fraction of the traditional commission rate. Real-estate lobbyists are fighting battles in many state legislatures to enact laws to preserve their high commissions. Anti-trust/anti-competition cases are starting to appear in courts.
- Many jurisdictions are under pressure to reduce tax rates because higher real-estate assessments have resulted in huge backdoor tax increases. These battles may end up in court.
- Right-to-repair bills, which may require homeowners' time to remedy defects, require parties to engage in ADR before filing suit, and allow contractors to include nonadversarial clauses in their contracts, have passed in at least 24 states and are pending in at least 17 others.

TECHNOLOGY AND SCIENCE

IMPACT OF TECHNOLOGY ON SOCIETY

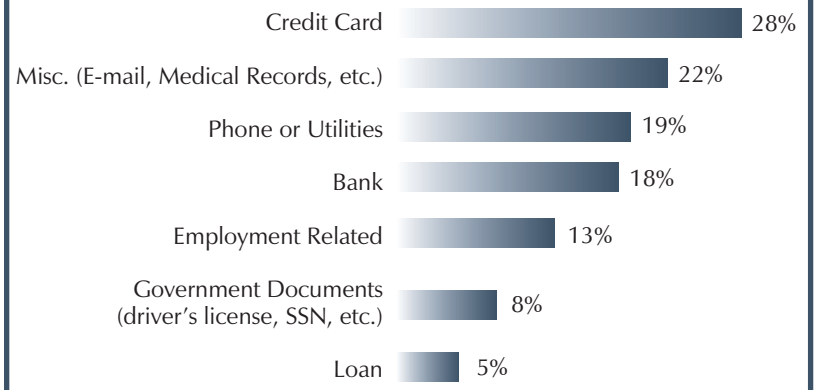
IDENTITY THEFT

Present Conditions

The privacy and financial security of individuals is increasingly at risk due to the ever more widespread collection of personal information by both the private and public sector. Credit-card transactions, magazine subscriptions, telephone numbers, real-estate records, automobile registrations, consumer surveys, warranty registrations, credit reports, and Web sites are all sources of personal information for identity thieves. Data security involves protecting both electronic and traditional hard-copy media, such as mail and trash.

Identity theft is one of the fastest growing crimes in the United States. Criminals who steal personal information, such as Social Security, driver's license, or bank-account numbers, use the information to open credit-card accounts, write bad checks, buy cars, and commit other financial crimes with other people's identities. Identity theft is costly to the marketplace and to consumers. Victims of identity theft must act quickly to minimize the damage. Expeditious notification of possible misuse of a person's personal information is imperative.

Types of Identity Theft Reported to Law Enforcement, 2004



Data from Consumer Sentinel and the Identity Theft Data Clearinghouse

Probable Future

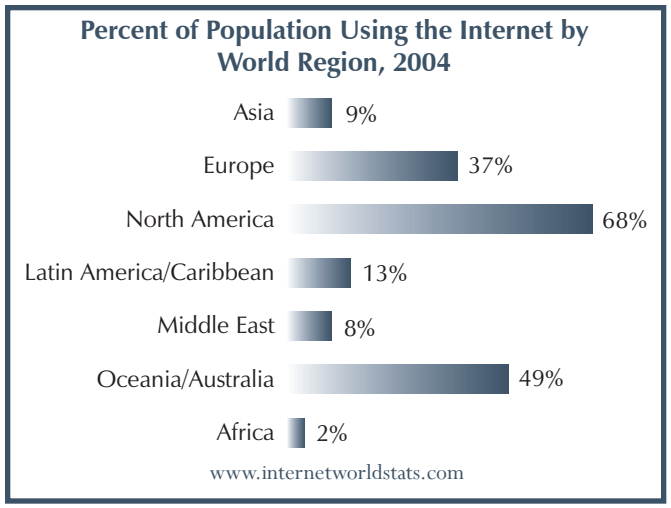
State laws across the nation are being strengthened to confront the issues of personal data security, including:

- Maintenance and dissemination of personal information by state agencies and businesses.
- Requirements to take all reasonable steps to destroy a customer's records that contain personal information when the agency or business will no longer retain those records.
- Requirements of timely disclosure of any security breach related to personal data by any unauthorized person or entity. Disclosure can be through written notice, electronic notice, widespread media notification, or other effective means.
- Civil remedies for violations of these provisions.

Relevance to Courts

Bank of America Corporation and Wachovia Corporation notified more than 670,000 customers that account information was stolen in what may the biggest security breach to ever hit the banking industry. If only a fraction of a percent of these customers had some aspect of their personal identity stolen, the impact would be widespread. Legal restitution from the banks is one impact on courts. Others include prosecuting the thieves and restoring the credit of the victims. With the FBI, Secret Service, Department of Treasury, IRS, state attorneys general, and many other local and state police and regulatory agencies investigating this single case, the potential impact to courts is very broad.

See article on "Identity Theft" online at www.ncsconline.org



IMPACT OF THE INTERNET

Present Conditions

The Internet is impacting the lives of citizens around the world. In North America alone, the Internet is used by 68 percent of the population, an increase of 104 percent since the year 2000. The largest increase in worldwide Internet use since the year 2000 is 266 percent in the Middle East. As one of the most important technological tools of recent history, the Internet is transforming access to information in multiple ways. Secure networks make online banking and bill paying possible, while online shopping for goods and services is commonplace. On the negative side, chat rooms can be potentially dangerous, especially for minors. Terrorist networks, pornographic sites, and "how to" instructions for dirty bombs and other weapons are unsettling to today's society.

Probable Future

As more individuals routinely use the Internet from home and offices, and the expectation of convenient 24-hour service grows, the demand for sophisticated Internet services will continue to increase in most disciplines. Political candidates will continue to use the Internet to reach out to their grass-roots constituents for support and donations. The face of education will change as distance-learning classes increase in quality and acceptance. More businesses will offer more goods and services online. Television shows will become more interactive through online participation. Web "bloggers" will challenge the news industry in reporting on-the-spot news. The impact of the Internet will be limited only by the ingenuity of Web services providers.

Relevance to Courts

With few exceptions, every state maintains a Web presence with a judiciary home page and several state court Web sites. These Web sites provide a multitude of benefits to their users. Services such as online payment of fines and fees and public access to court records have substantially reduced courthouse congestion. Many court Web sites offer direction and forms to pro se litigants filing small claims. Appellate courts combine oral arguments and online instruction to create college-level courses, while jury managers schedule potential jurors online.

As Internet applications become more highly developed, courts of the future will be able to combine their Internet services with their case-management systems.

See articles on "Webcasting," "Digitization of Library Collections," "Appellate Court Technology," and "Responding to Future Trends in State Courts" in the Trends section

INTERNET AS A NEWS MEDIA

Present Conditions

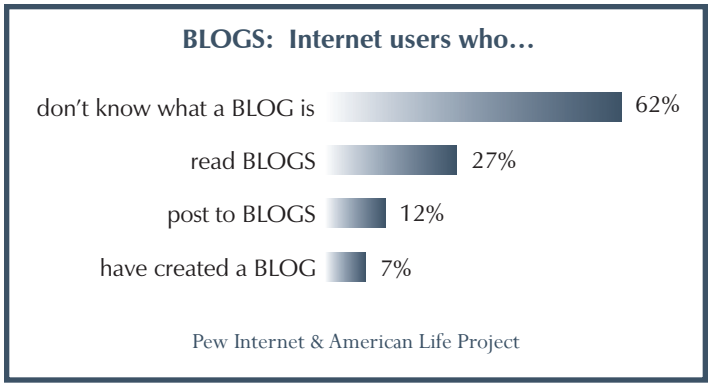
Few things in television caught the public's attention like the low-speed chase of a Ford Bronco across the freeways of Los Angeles in 1994—millions across the country and around the world tuned in to watch the spectacle unfold. Since then, many high-profile cases have hit the media—Robert Blake, Scott Petersen, and Michael Jackson, to name a few. From the moment of the alleged crime to the reading of the verdict, coverage of notorious cases is provided to a news-hungry public in near real time.

Probable Future

Expect an abundance of notorious trial coverage; it will come at great speed by way of television, radio, newspaper, news magazines, and the Internet. In this age of increasing access to instantaneous information, and the merger between news and entertainment, the public is provided with access to events that could not become elements of popular culture in any other way. Courts will need to address the rights of defendants and work to ensure juries remain protected from contamination by inadmissible evidence, opinion, and factual inaccuracies presented by the media.

Relevance to Courts

The Internet, and other new media outlets such as Court TV and 24-hour cable news channels, puts news of notorious cases at the fingertips of Americans. Internet-based news wires and bloggers provide up-to-the-minute case details and verdicts as they are read. Links from these new media outlets provide additional in-depth information, such as background court cases, jury make-up, and judge analysis, formerly restricted to dedicated journalists or researchers. Courts will need to be aware of this new information outlet and establish rules and confer privileges on the participants, both inside and outside the courtroom, including the media, the prosecution, the defendant, the judge, the jury, and the witnesses.



THE INFORMATION AGE (FEDERAL COMMUNICATIONS COMMISSION)

Present Conditions

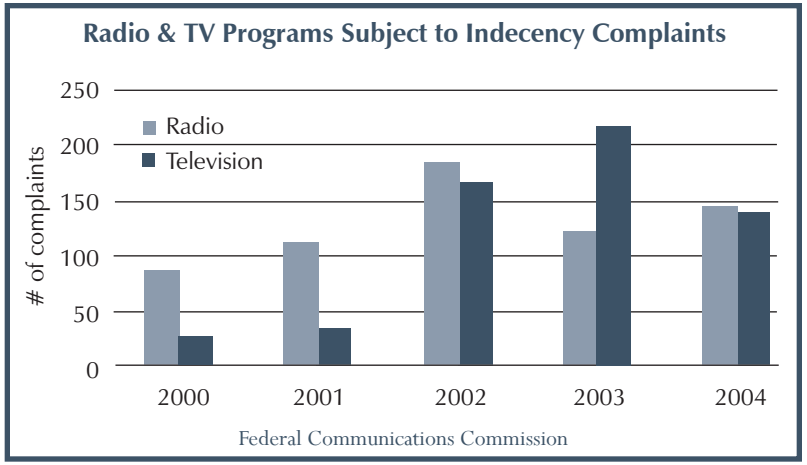
Landline and cellular telephones, cable, computers, the Internet, and satellite and over-the-air television and radio are extraordinarily powerful tools. These technologies have great benefits to society. The information age has made businesses more efficient, improved education, and created online meeting places for people separated by great distances. The new age of technology comes with a price. New avenues for fraud, theft, invasion of privacy, distribution of pornography, and hate speech have emerged. Many regulatory agencies in the federal and state governments are charged with monitoring, controlling, and guiding the materials that are distributed with these expanded technologies.

The Federal Communications Commission (FCC) is one such agency. In the time since the Janet Jackson Super Bowl mishap, the FCC has undertaken a well-publicized campaign against indecency on the airwaves. For Janet Jackson's revealing performance, the FCC slapped 20 stations owned by CBS with fines totaling $550,000. In October 2004, the FCC fined 169 Fox Broadcasting affiliates a whopping $1.2 million, in total, for certain scenes on its short-lived *Married by America* show. In November 2004, Viacom agreed to a $3.5 million settlement with the FCC for a number of broadcasts by radio "shock jocks."

Many restrictions related to program content are likely to be ineffective or ruled unconstitutional. The FCC's restrictions apply only to television and radio stations that have licenses to broadcast over the airwaves. They do not apply to TV or radio signals transmitted via cable or satellite. This means a majority of television programming and, with the advent of satellite radio, an increasing share of radio programming are out of regulators' reach. Increased broadcast restrictions would only accelerate the growth of these noncontrolled media at the expense of the regulated ones.

Probable Future

Expect lawmakers to respond to a concern shared by many Americans that television and radio broadcasts are becoming more offensive. However, the proposed solution, increased government restrictions on speech, could be fundamentally misguided. The push for restrictions on indecency will lead to calls for restrictions on other types of content. Who could, for instance, oppose restrictions on "hate speech"? What about content deemed "insensitive" to others in society? Even controls on political speech are possible. There is already talk of reimposing the "fairness doctrine," which required broadcasters to air both sides of controversial issues. At the same time, public broadcasting has come under fire for being too far to the left.



Recognizing this, some propose extending the FCC's rules to nonbroadcast media. The current rules are made possible only by the presumed scarcity of broadcast frequencies, which courts have ruled justifies more extensive government involvement in content than otherwise would be allowed. Cable and satellite providers face no such scarcity. And if these providers were to be regulated, why wouldn't traditional print media such as newspapers and magazines be vulnerable, as well? What about the Internet, over which audio and video are already "broadcast" today? Such comprehensive government control of the media would likely be too much for the courts, or even lawmakers, to contemplate.

Relevance to Courts

The courts are involved in many aspects related to these information outlets. In addition to broadcast indecency, many tangential areas may present themselves in courtrooms: music-file swapping and other peer-to-peer networking schemes; potential litigation related to physical harm caused by cellular radio waves and "driving-while-talking" automobile accidents; the ever-growing problem of Internet spam, spyware, viruses, Trojans, and other problems. The do-not-call registry has been and will continue to be challenged in courts.

A RETURN TO OUR (GRASS) ROOTS

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. At the same time, the lack of accountability, higher levels of inaccuracy, opinion-based "news," and lack of journalistic ethics make bloggers and other grass-roots commentators suspect.

The 2004 presidential election saw a return to grass-roots networking in such groups as MoveOn.org. Other grass-roots groups, such as community border patrols, are taking charge or taking the law into their own hands, depending on how one views the issue. For years, well-organized father's rights groups have sought to make changes in child-custody decisions. They have been successful in that the "primary-caretaker" presumption has overtaken the "tender-years" presumption.

Moreover, the public is demanding more and better access to court proceedings. New technologies are changing the way we think about news and information. The morning paper and nightly news used to have a monopoly on how the public learned about issues. Today, we can subscribe to e-newsletters, search Google news, read policy-related blogs, and have news feeds delivered to our desktops, PDAs, and Web sites via an RSS feed. What's more, the public has become an active participant in policymaking via these new technologies. Anyone can set up a free blog and begin to opine to the masses. The definition of "journalist" is being stretched as far as cyberspace will allow, and politicians and others have not hesitated to raise funds and awareness by these methods.

Probable Future

Popular governance initiatives will vary between the local, national, and global levels. Issues such as open government 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.

The public will continue to demand access to government, including court information. Rules for public and media access may appear to blur together, making it difficult to tell the difference between the two.

Relevance to Courts

Courts should gauge the public's expectations with regard to privacy and public access, and either meet them or, if expectations are unreasonable, do a better job of explaining the court's work to the public.

Courts should also be aware of the existence of grass-roots groups sprouting up around the country and learn about their various agendas. As more and more inaccurate information circulates, courts need to concentrate on getting out correct information.

TECHNOLOGY IN THE COURTHOUSE

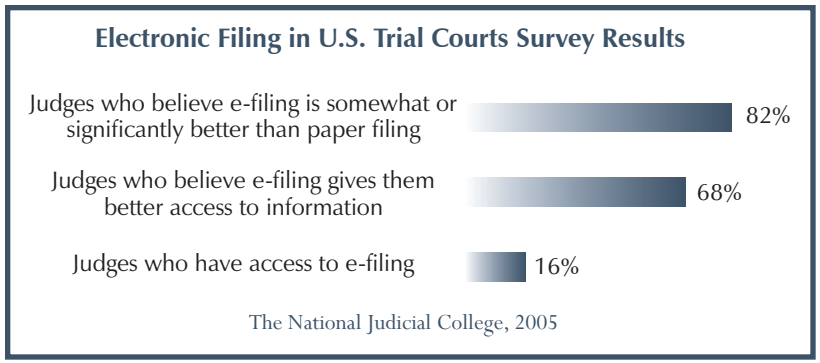
ELECTRONIC FILING

Present Conditions

Many citizens become more familiar with the electronic filing (e-filing) process around April 15 when it's time to file their state and federal income-tax returns. Others may have encountered the process while doing business with other government agencies, such as the U.S. Patent and Trademark Office or the U.S. Citizenship and Immigration Service. Some may have come across the mandatory electronic filing rules of the U.S. Bankruptcy Courts.

Probable Future

Applications of e-filing will continue to multiply. More businesses and government agencies will seek the rewards of improved document management and effective operations that earmark the process. Paper-heavy organizations such as courts are ideal candidates for e-filing. Although less than 20 percent of state courts currently offer e-filing to their users, there is a growing demand for e-filing in the court community, as well as with business and government entities. It is also likely that court rules will be modified



so that documents containing sensitive information will not be available for public viewing and that digital-rights-management (encryption) software will be used to control access to those documents both within and outside the court.

Relevance to Courts

A recent judicial survey of e-filing in the U.S. state trial courts by the National Judicial College indicated that courts were overwhelmed by the increasing volume of paper they need to manage. Over 1,500 judges responded to the survey, and one in four of these judges specified plans to implement e-filing in their courts. The majority of the installations were scheduled to take place during 2006. The judges also strongly agreed that they were well supported by their clerks and the legal community in their choice of an e-filing solution. Top decision factors to implement e-filing included the reduction in the volume of paper, better access to information, improved efficiency of clerks, and paper storage.

See articles on "Electronic Filing" and "Appellate Court Technology" in the Trends section

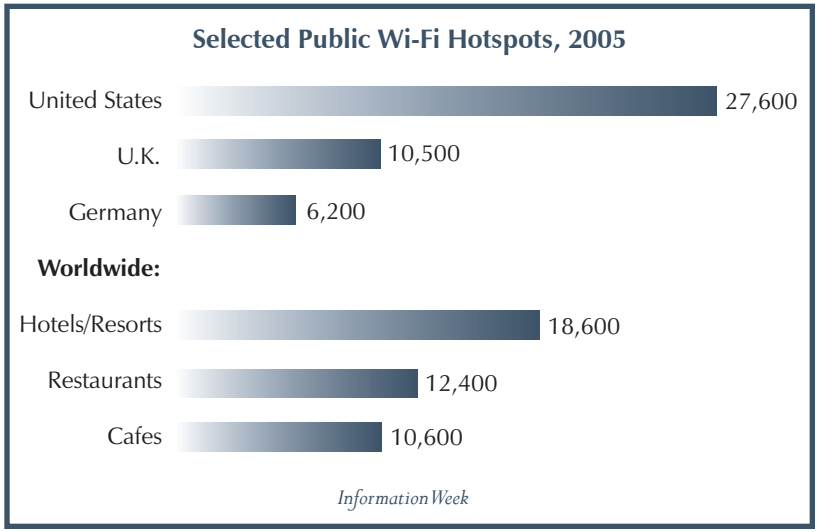
THE "WIRELESS REVOLUTION"

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.

Literally thousands of wireless zones, or "hotspots," already exist in the United States and around the globe, many of which are offered free by businesses and local governments. Most communities see Wi-Fi technology as a competitive edge for attracting travelers, businesses, and a high-tech workforce.

Businesses and other organizations are beginning to tap this technology to make computer connectivity practical in facilities that are too unsuitable or temporary for traditional communications wiring. Moreover, it enables staff with Wi-Fi laptops or handheld devices to move around freely and connect from almost anywhere within the building or cluster. It is now becoming commonplace for individuals to set up simple home networks using low-cost wireless technology.



Probable Future

Wi-Fi availability is expanding rapidly. In addition to the downtown areas, cafes, hotels, and airports where Wi-Fi will become the norm, travelers will be able to connect in flight as systems currently being tested aboard aircraft are rolled out. The move toward almost seamless integration of Wi-Fi, wide-area Wi-Fi, and cellular networks will begin to bring continuous connectivity closer to reality. The line between computers, PDAs, and cell phones is blurring, with more hybrid wireless devices providing multiple capabilities.

Improved wireless security standards will encourage more government and private-sector organizations to implement wireless solutions for their computer networks. Increased bandwidth and range will help make voice-over-Internet-protocol (VOIP) and, eventually, video-over-IP (VIP) practical to extend to the wireless laptop or PDA as part of an enterprise-wide system.

Both in the United States and abroad, Wi-Fi technology will simplify the transition of poorer communities with little or no technology toward the cutting edge. In addition, declining costs of satellite transmission will help extend broadband wireless connectivity to rural areas out of reach of cable or DSL services.

Relevance to Courts

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—especially in historical courthouses—while better equipping their staff to conduct court business. Thanks to the scalability of wireless solutions, courts of all sizes can take practical advantage of its benefits. Security concerns are the major stumbling block that may temporarily slow court adoption of wireless connectivity.

PRIVACY AND ACCESS TO INFORMATION

Present Conditions

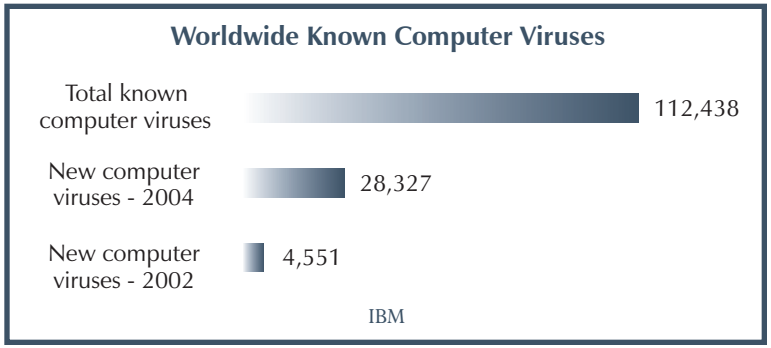
The balance of privacy and public-access interests is one of the most significant information management issues facing today's society. Protecting an individual's right to privacy in the information age is a growing concern for entities such as financial institutions, health-insurance providers, government agencies, and private industry. The frequency of announcements of massive numbers of electronic bank records or credit-card records being stolen creates general unease among financially responsible citizens.

Probable Future

The battle between institutional efforts to protect the personal information of their clientele and the ingenuity of those who seek the sensitive data for dishonest endeavors will continue to escalate.

For institutions like courts that are mandated to keep their records public, the challenge will be one of respecting their obligation to allow public access to their records while concealing potentially harmful data that could fall into unscrupulous hands.

Although keeping public records accessible will probably triumph over arguments to the contrary (especially as electronic tools make some records even more accessible), public agencies will continue to reexamine the more fundamental question of what information belongs in a public record.



Relevance to Courts

In response to court records becoming more readily available via the Internet, the court community has begun to closely examine their responsibilities in regard to the revelation of certain personal information that could likely bring unforeseen damages to individuals. Many states are establishing new rules governing identifiers that could be determined from court records.

The data currently under scrutiny are Social Security numbers, names of minor children, financial account numbers, and dates of birth. Despite the heavy costs involved in protecting this information, courts are adopting such measures as blanking out the first five digits of a Social Security number, referring to minor children by initials only, deleting all financial account numbers, and revealing only the year of birth. Courts are also becoming more sensitive to and sophisticated in protecting records against damage and tampering.

See articles on "Public Access," "Verification of Electronic Documents," in the Trends section and "Radio-Frequency Identification (RFID)" online at www.ncsconline.org

JUSTICE-INFORMATION-SHARING STANDARDS

Present Conditions

The time for criminal-justice-information-sharing standards is now. Disparate computer systems and data structures, coupled with historical barriers, both cultural and political, that have long plagued information sharing between public-safety offices have given way to demands for interoperability and collaboration. The events of 9/11 brought sobering reality to the dangers of inadequate criminal-justice data and incompatible systems.

Commonwealth of Pennsylvania
Justice Network (JNET) Connectivity Update, 2005

JNET is a secure virtual system for the sharing of justice information by authorized users.

20,000+ total users
67 Participating Counties
39 State Agencies
38 Federal Agencies
400+ Municipal Police Departments
200+ State Police Divisions
500+ District Justice Offices

Commonwealth of Pennsylvania

Standards form the foundation for compatibility. The infrastructure standards of the Global Justice Information Sharing Initiative include (1) developing and recommending strategies and tactics for implementing the components of service-oriented architecture (SOA) in support of national justice information sharing, and (2) developing justice enterprise architecture (EA) in collaboration with local, tribal, state, federal, and national initiatives. These goals will be important elements of the standards movement.

One of those standards is Extensible Markup Language (XML). XML makes the exchange of electronic information possible. Using a common XML structure and dictionary enables agencies to exchange information between disparate systems, such as in the Global Justice XML Data Model (GJXDM). Building on XML's basic architecture, the GJXDM is becoming the de facto standard for law-enforcement, judicial, correctional, and related agencies. Developing state standards, such as the Commonwealth of Pennsylvania Justice Network (JNet), are among the more advanced state initiatives for information sharing. JNet features digital mug shots, driver's license information and photos, rap-sheet information, inmate information, and case information. JNet was used to help identify the terrorists on the 9/11 flight that crashed in Pennsylvania.

Probable Future

The vision of the Global Justice Information Sharing Initiative is "getting the right information to the right people in the right place at the right time." We are already seeing the success of the GJXDM impact other national initiatives, such as the National Information Exchange Model. NIEM is an interagency initiative to provide the foundation and building blocks for national-level interoperable information sharing and data exchange. NIEM began as a partnership between the Office of Justice Programs and the Department of Homeland Security. The future will involve maturation of the models, implementations of the XML exchanges, and the enlargement of the XML effort that began in the criminal-justice community.

Relevance to Courts

Courts have an integral role to play in developing justice information standards. Nationally, courts began standards development in 1998 under the auspices of the National Consortium for State Court Automation. That initial work to develop functional requirement standards for case-management systems has been made a part of the work of the Joint Technology Committee of the Conference of State Court Administrators and the National Association for Court Management. Working with the National Center for State Courts, functional requirements have been developed for civil, criminal, domestic relations, and juvenile case types. Work is currently underway to develop requirements for appellate systems.

In addition, electronic filing standards, called "Court Filing Blue," have been submitted to the Joint Technology Committee to consider as a replacement for the older electronic filing standards approved a few years ago. The goal of standards and guidelines is to help state courts build or purchase more effective and efficient technology solutions that help courts achieve their business needs.

The Joint Technology Committee and NCSC are currently engaged in building information-exchange packages around particular data exchanges between courts and other justice entities. Traffic citations, protection orders, and sentencing orders are examples of information exchanges that can use GJXDM. As GJXDM and NIEM development mature, courts will be expected to participate in the information exchanges in accordance with "industry" standards. Courts must understand the technologies and participate in their application.

See articles on "Court Filing Blue" and "Responding to Future Trends in State Courts" in Trends section

COSTS AND EFFECTS OF TECHNOLOGY

Present Conditions

As the expectations of technological capability increase, courts will need greater technological support 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. On the other hand, courts are also using technology to reduce costs. For example, the use of digital-court-recording equipment, language-line telephone-interpreting services, and remote videoconferencing are reducing court costs. In addition, several studies have reported that using technology in the courtroom decreases trial time, thus resulting in savings for both the court and litigants.

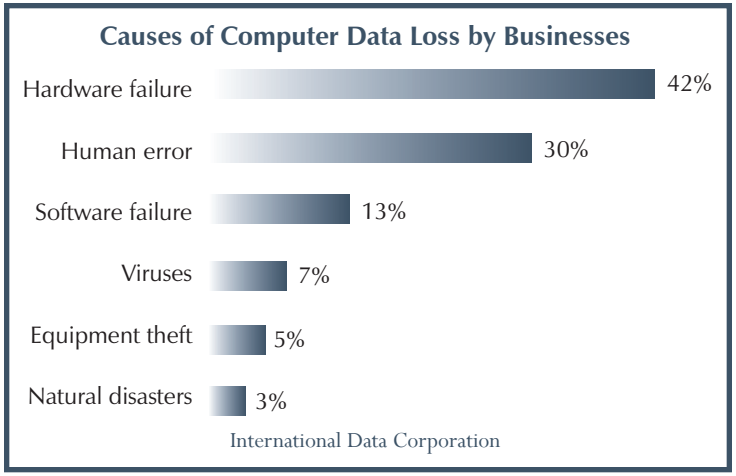
Significant inequities between the technological capabilities of opposing parties raise fundamental questions. Some parties may lack the funds to match their opponent's high-tech presentations or may not know how to use technologies available in the courtroom. In a visually oriented society, is there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

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?

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.

Electronic access to information in all cases, including criminal matters, can also significantly enhance justice by equalizing and identifying better sentencing alternatives. Further, in civil matters the electronic Internet courtroom will continue to develop through the use of collaboration "trial book" software during case preparation and trial.



Relevance to Courts

Justice-system costs will continue to rise as the minimum standards for due process become higher in the technological age. The application of technology also has the potential to improve the quality of justice and the ability of the judicial system to balance workload by moving information electronically to jurisdictions with less work, instead of moving the judge.

SCIENTIFIC DEVELOPMENTS

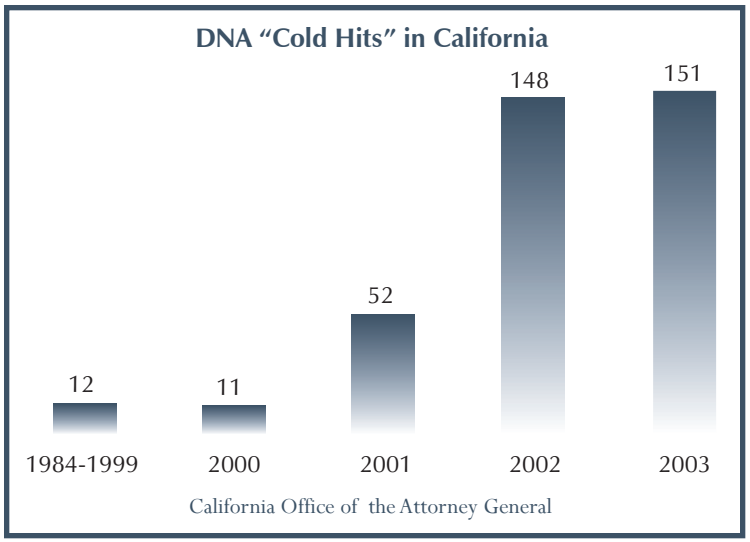
BIOMETRIC METHODS OF IDENTIFICATION IN CRIMINAL INVESTIGATION

Present Conditions

Although in the past DNA use in the justice system has been restricted to purposes such as supporting evidence for linking an individual to a crime or establishing paternity, dramatic strides are being made in DNA testing. All 50 states, along with the federal government, currently maintain databases that include DNA samples of certain convicted felons. Additionally, agencies such as the National Institute of Justice have begun offering grants for state governments that want to improve their DNA-testing facilities.

Supporters of DNA testing argue that this technology will not only help to identify guilty criminals, but also reduce the risk of convicting innocent people. This has already been demonstrated on death row, where a number of convicts have been exonerated based on new evidence from DNA testing that was not available at the time of their convictions.

Debates have arisen over who will be required to supply DNA samples. States such as California already have plans to gather DNA upon arrest for any felony and certain misdemeanors, but civil-rights groups argue that DNA testing on any individual not convicted of a violent crime is an infringement on privacy rights.



Probable Future

Courts will compare the reliability of new biometrical methods for identifying individuals and determine the equivalent stature of long-accepted, though more questionable, means of identification (e.g., fingerprints, police lineups). With recent court cases indicating that fingerprint evidence may be less reliable than formerly believed, DNA evidence will start becoming more popular. However, despite new federal funding, the small number of testing labs and the high demand for DNA evaluations will continue to limit the use of DNA for some time.

Relevance to Courts

Judges, and particularly appellate judges, will increasingly be expected to be informed 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.

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

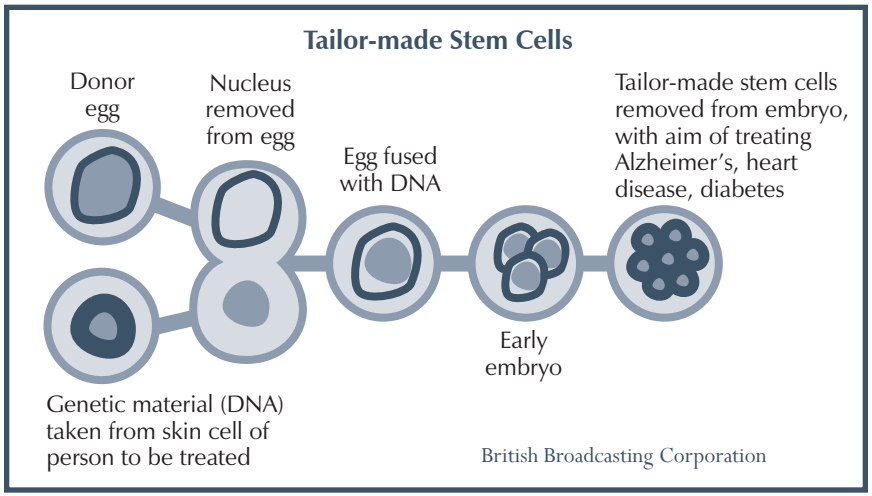
APPLICATIONS OF GENOMICS, LIFE SCIENCES, AND BIOETHICS

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; cloning; genetically modified foods, animals, and people; and genetic screening.

Probable Future

Genetic screening of newborns for disease risks will become faster, easier, and more widespread. This creates the potential for discrimination by future employers and insurance companies against individuals with genetic defects if the results of genetic screenings are disclosed. 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 highly controversial. Supporters will argue that genetic designing can rid children of various diseases and potentially save lives; however, if genetic designing



becomes popular, a new societal division between "pure" and "altered" humans will undoubtedly be created.

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.

Relevance to Courts

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 United States, 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 an issue. In short, the genetics revolution will increase the number and complexity of cases and challenge court personnel to keep up with the science.

NANOTECHNOLOGY

Present Conditions

In simplest terms, nanotechnology means constructing materials at the molecular or atomic level. This is one of the most rapidly growing areas of technology, with over 1,000 new businesses devoted to nanotech opening worldwide since 1999. A number of basic products have already been developed that are enhanced by nanotechnology, including stain-proof fabrics and scratch-resistant paints.

Probable Future

While current nanotechnology products seem relatively simplistic, experts agree that within the next ten years nanotechnology is going to revolutionize society. Because nanotechnology can make almost any product both cheaper and more effective, we will soon see nanotech companies dominating many aspects of commercial life. For example, scientists are already developing molecular nanoprobes that would deliver drugs directly to genetically identified tumor cells.

Relevance to Courts

Rapid developments in nanotechnology risk outpacing legislative regulation. As a result, courts will be left to resolve disputes regarding regulation. In addition, super surveillance devices such as "roboflies" will become cheap, numerous, and easy to produce, causing investigative and privacy concerns.

SOURCES AND FURTHER READING

POPULATION DEMOGRAPHICS

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ARTICLES

PUBLIC ACCESS AND THE NATIONAL LANDSCAPE OF DATA REGULATION

Susan Jennen Larson, Esq.
Larson Law & Consulting, South Dakota

As state courts review and modify public-access policy in response to Internet technology and concerns about privacy, they do so within a new national landscape of data regulation that requires increased compliance, security, and accountability, not only from courts but also from executive-branch agencies and the private sector.

In the year 2005, we find ourselves in a tense climate of competing interests and debate surrounding personal data and electronic records. With data-security breaches in the news on a monthly basis, and heightened concerns about the fraudulent use of personal data for financial gain, national attention has become sharply focused on data regulation and compliance. Congress, state legislatures, and enforcement agencies are busy working to address data-privacy, security, and cyber-crime issues. New bills are drafted and debated every day, often in reaction to an undesired event. The result is a patchwork of laws that are inconsistent and hard to understand.

Court Records

Courts are not new to the debate over how to regulate personal data in electronic records. For the past ten years, traditional concepts of public access to court records have been eroded, largely because of new technology, namely, the Internet, and the outcry of special-interest groups to protect personal information in court records from public Internet access. While just as many special-interest groups oppose the erosion of traditional public-access court rules and favor Internet access to all public court records, concerns about Internet access to personal data have largely won this debate, as we see in court rules recently promulgated in the federal and state court systems.

Some of the first courts to form committees or otherwise begin addressing these issues were New Jersey (1995), Washington (1995), Arizona (2000), U.S. Administrative Office of the Courts (2000), Vermont (2000), and California (2001).[1] In 2002 the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA), with the assistance of the National Center for State Courts and funding from the State Justice Institute (SJI), released *Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts*[2] (hereinafter "CCJ/COSCA Guidelines"). The CCJ/COSCA Guidelines have been a valuable reference to courts that have formed committees or otherwise worked to address these issues since its release, including New York (2002), Minnesota (2003), Florida (2003), Texas (2004), and South Dakota (2005).[3]

A trend that has surfaced in recent court rules from several states is the removal of certain personal information, not only from Internet access, but also from the courts' public paper files. The Minnesota, South Dakota, and Washington State courts have introduced confidential information forms on which parties are to file certain personal and financial information.[4] Florida's *Draft Report on Privacy of Trial Court Records* also concludes that "[c]ourt records frequently contain documents that unnecessarily include: social security numbers, financial information, names, ages, addresses, driver records, information about family members, and medical and other intimate information." Consequently, the Florida Supreme Court Committee on Privacy and Court Records recently urged the Florida Supreme Court to consider a strategy designed to curtail, or minimize, the inclusion of personal information in court files that is unnecessary.

Executive-Branch Records

Executive-branch records have not been the focus of the same recent national debate on public access because state and federal codes have traditionally protected personal information in executive-branch records from general release to the public. Federal executive-branch records are subject to the Freedom of Information Act (FOIA), which provides a mechanism for the public to access federal-agency records; however, it also contains privacy exemptions that protect against the general release of personal and medical data.[5] State executive-branch records are subject to state statutes that are similar in nature to FOIA, with its privacy protections.

As a result of the many different laws that work to protect personal data in executive-branch records, various groups are promoting the adoption of consistent *fair information practices* for all government agencies and courts. Although several different versions of fair information practices have emerged, common to most versions are five core principles of privacy protection: 1) notice/awareness; 2) choice/consent; 3) access/participation; 4) integrity/security; and 5)

enforcement/redress.[6] The General Laws of Massachusetts provide an illustration of the adoption of a variation of these principles, applied to state executive-branch records.[7] Section 8.40 of the CCJ/COSCA Guidelines also includes a recommendation that courts adopt one of the fair information practices principles, namely, access/participation. This principle refers to an individual's ability to both access data about him- or herself and to contest that data's accuracy and completeness. CCJ/COSCA Section 8.40 recommends that the court "will have a policy and will inform the public of the policy by which the court will correct inaccurate information in a court record." It should be noted that Section 8.40 does not create a method for modifying a court record; rather, it relies on existing procedures for introducing and challenging evidence or other information that is part of the court record. Even so, it was included in the spirit of fair information practices.

Private-Sector Records

Unlike court and executive-branch records, private-sector data records have not been the subject of much regulation until recent years. FCRA, HIPAA, SOX, and GLBA all are recent federal acts that regulate private-sector data records, with FCRA being the oldest, enacted in 1970.[8]

Recent new reports of data-security breaches also have contributed to the nation's heightened concerns about the regulation of private-sector records containing personal data. In June 2003, *Security Pipeline Magazine* reported:

> More than 140,000 consumers received notifications as a result of a scam against data broker ChoicePoint, followed shortly after by revelations of security breaches at LexisNexis, which affected more than 300,000 people, and DSW Shoe Warehouse, from which thieves obtained 1.4 million credit card numbers. Then there were a half million Wachovia, Bank of America, Commerce Bank and PNC Bank customers who were hit by a data theft ring that was unearthed in New Jersey in April. Add to that the loss by Iron Mountain of backup tapes containing details of 600,000 current and former Time Warner employees, the 1.2 million federal employees impacted by a loss of data tapes by Bank of America and an additional 200,000 people affected by a similar incident at Ameritrade and we've got an epidemic on our hands.[9]

As a result of these security breaches, Congress and several states have enacted or are considering the enactment of mandatory-disclosure laws for when breaches occur, just as California has done.[10] Many other privacy bills are also in the pipeline. *Wired News* recently went as far as making the sweeping recommendation that Congress 1) require businesses to secure data and levy fines against those who don't, and 2) require companies to encrypt all sensitive customer data, among others.[11]

Compliance Efforts

The new regulatory environment for the private sector has spawned new and extensive compliance efforts. The private sector has quickly developed audits and controls to keep technical and nontechnical systems in compliance and to limit liability. New software tools, security programs, training, risk-management techniques, intrusion-prevention mechanisms, and access controls have emerged to aid in private-sector compliance. Access management has emerged as a new discipline that spans the enterprise and administers technical and nontechnical controls: authorization, authentication, policies and profiles, enterprise single sign-on, user provisioning, alerting, digital-rights management, and others.

Data compliance for government and the private sector has been significantly changed in the past five years by the regulation of data in the private sector. It is interesting that so many tools and methodologies emerged suddenly in response to recent private-sector data regulation, but not earlier in response to government data regulation. It will be interesting to watch the degree to which government adopts these tools and methodologies designed for the private sector. The standards and practices adopted by the private sector to ensure compliance likely will raise the bar and put pressure on courts and executive-branch agencies to do the same.

ENDNOTES

[1] The public-access committee's work and the draft and final rules of these courts are documented at www.courtaccess.org (select "States" from the left menu and then select the specific state of interest).

[2] M. Steketee and A. 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), at www.courtaccess.org/modelpolicy/.

[3] See note 1.

[4] Minn. G. R. Prac. 11.02; SDCL 15-15A-9; Wa. G. R. 22.

[5] Freedom of Information Act (FOIA), 5 U.S.C. § 552.

[6] Federal Trade Commission, *Privacy Online: A Report to Congress*, 1998, at /www.ftc.gov/reports/privacy3.

[7] Massachusetts Fair Information Practices Act (FIPA), G.L. c. 66A, § 1.

[8] Fair Credit Reporting Act, 15 U.S.C. §§ 1681, et seq.; Health Insurance Portability and Accountability Act of 1996; Sarbanes-Oxley Act of 2002, Pub.L. 107-204, § 903(a), 116 Stat 745, 804 (2002); and Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801, et seq. (2000).

[9] P. Allen, "Financial Industry Battening Down Data Hatches," *Security Pipeline* (June 29, 2005).

[10] California Database Breach Act, Senate Bill 1386 (2003).

[11] "Congress Must Deal with ID Theft," *Wired News* (June 15, 2005), at www.wired.com/news/privacy/0,1848,67845,00.html?tw=wn_tophead_1.

DIGITAL RIGHTS MANAGEMENT (DRM) TECHNOLOGY WILL CHANGE THE WAY COURTS WORK

James E. McMillan
Principal Court Technology Consultant, National Center for State Courts

New technology will allow courts to better serve the public by protecting digital information. Court technical staff needs to begin working with policy makers to test and then implement this new technology and modify both court and legal processes to take advantage of these new capabilities.

Overview

Validation and verification of electronic information is a considerably significant subject for the judicial and legal system. It is called by many names, such as digital rights management, digital signatures, secure computing, and others. Courts need to know first, if a document is complete and has not been changed, and second, that the person who has signed the document is actually that person. This article explains how these technologies work for courts and legal processes and lists efforts to date to set standards, rules, and statutes for the use of digital signatures and other affiliated efforts.

The judge's signature is the spark plug in the court's engine. If one looks at a court caseflow or process diagram, it is easy to see that there are many stop points where the judge reviews and approves or disapproves the document before the caseflow process can continue. Similarly, many courts use file stamps to verify that a specific review or fee payment has occurred. Automating the judicial authorization step could facilitate several other improvements to the court system. First, a more secure electronic document can result. Second, better control of a document's content is possible. Third, multiple persons can almost instantaneously receive the document. And fourth, an automated audit trail can be created, thus providing the same level of trust as banking and financial transactions for the resulting legal document.

What Are Digital Rights Management and Electronic-Signature Authentication?

Digital rights management (DRM) is technically the use of encryption[1] (coding) of electronic data so that the creator has control over its use. In a court, a document can be encrypted with DRM control code to:

- Restrict who can read the document (or at least who has rights to log into to that user's account to read the document).
- Restrict how long a document can be read.
- Restrict whether a document can be printed.
- Restrict whether a person must be logged onto a specific network to read the document.
- Restrict whether an e-mail can be forwarded.

While controlling content is important to the courts, authentication and validation of information is equally important. Digital signatures are the answer to this problem in the electronic world.

As defined in *Wikipedia*[2]:

> Digital signatures are a method of authenticating digital information analogous to ordinary physical signatures on paper, but implemented using techniques from the field of cryptography.

Digital signatures differ in some respects from their physical counterparts, however, in that they authenticate the entire document and not just the physical page that the person signed or initialed. This is important because courts are used to altering documents by adding secondary authentication though the use of file stamps and clerk or judge signatures, thus creating a "chain of evidence" or control.[3]

How Could DRM and Digital Signatures Be Used in Courts?

The good news is that digital-signature technology is already being used by the U.S. Federal Courts in their Electronic Case File (ECF) e-filing system. When a document is submitted (using a secure encrypted connection over the Internet initiated by the attorneys when they log into the courts' ECF Web site), the e-filing software creates a digital-signature "receipt" that is e-mailed back to the filer. The same digital signature is also stored in the courts' computer system. Digital

signatures are so precise that if a single pixel (dot) is changed on the document, the digital signature will no longer match the original. This is clearly a much higher standard than what is possible with paper records. And while electronic copies can be made, digital signatures authenticate the content of all copies.

It's important to understand that digital and electronic signatures are different. Digital signatures result from a mathematical formula (a hash) being created from the actual computer file. An electronic signature is a facsimile of a handwritten signature. Now there is wonderful technology available that combines the two, but they are different.

Digital signatures are, therefore, essentially a one-way authentication. However, there is a need for greater control of court information and the court case file through two-way authentication. For example, one user can validate that he or she is the person sending the document and that the person receiving the file is the person meant to receive it.

DRM technology applies the Public Key Infrastructure (PKI) technology to the question of access and control of the court case file. PKI can be simply thought of as a box with two keys. One person locks the box with one key, and the recipient opens it with another. Nobody else has a key to that document nor will they ever have one unless the creator creates another pair of keys. The obvious benefit to this technology is that the recipient cannot create another set of keys to forward your document.[4]

Currently, there is considerable concern in the legal community with the conversion from paper to electronic files. In particular, courts and legislatures are wrestling with the overall question of what information should be made available via the Internet.[5] This problem can be broken down into four direct questions:

- Is the entire case or case type sealed?
- Does the specific document contain personal information that can be used for identity theft?
- Does the document contain names or other information that compromise the personal safety of an individual?
- Will the file be sealed by law at a specific time in the future, such as in juvenile matters?

If the answer to any of these questions is yes, then DRM technology should be seriously considered. Currently database access control through linked records and application security is used to control access to information. However, the data are still completely open to view by computer and database administrators and programmers. As a result, courts have experienced embarrassing moments when computer reports were run and sensitive information was unintentionally released. Encrypting the record, either within or outside the database using DRM, ensures that unintentional release is much less likely to occur. This is because DRM introduces a second and perhaps a third level of security. Level one is the operating system (such as Microsoft Windows or Unix/Linux). Second, if the document or the document link is stored in a database, that security comes into play. And third, access to the document itself is secured using DRM.

The privacy of a paper document depends upon the security of a physical facility—for instance, unlocked file cabinets, files left on desks, etc. Electronic documents can decrease the opportunities for access to sensitive documents. A court that hears cases involving organized crime and war crimes recently updated to a secure electronic-document system. Whereas with a paper-based system information was "leaked" to the press regularly, once full implementation of an electronic system occurred, no more leaks were recorded.

Current Technology Options

Microsoft and Adobe, two major technology corporations whose products the courts use every day, have major DRM initiatives underway. Microsoft Rights Management Services (RMS)[6] provides PKI services for Office and, in particular, the Outlook e-mail client program. One very nice feature of this product set is the ability to mark an e-mail message so that the recipient can read but not forward it. A sender can also restrict an e-mail from being printed. RMS can also be used to protect information sent to a recipient outside the court through the use of their Passport technology. In other words, if you want a person to receive a protected e-mail, all they have to do is to create a free Microsoft Hotmail (www.hotmail.com) account. Similarly, Adobe's LiveCycle Policy Server[7] provides similar services that control access to, as well as the reading, printing, and forwarding of, electronic information. And both systems have "toolkits" that allow them to be used with other software, such as databases. Application of this technology could then provide that extra layer of security to information stored in the court's database. An article

summarizing use and implementation of DRM systems including two other systems offered by Authentica and Liquid Machines, was published in the June 27/July 4, 2005 edition of *eWeek Magazine*.[8]

ENDNOTES

[1] "In cryptography, encryption is the process of obscuring information to make it unreadable without special knowledge. While encryption has been used to protect communications for centuries, only organizations and individuals with an extraordinary need for secrecy have made use of it. In the mid-1970s, strong encryption emerged from the sole preserve of secretive government agencies into the public domain, and is now employed in protecting widely-used systems, such as Internet e-commerce, mobile telephone networks and bank automatic teller machines" (http://en.wikipedia.org/wiki/Encryption).

[2] http://en.wikipedia.org/wiki/Digital_signature

[3] A wealth of information on digital signature legislation is available from the Baker & McKenzie law firm on their E-Transactions Law Resources Web site located at: http://www.bakernet.com/ecommerce/home-transactions.htm.

[4] For a more complete, yet simple explanation of PKI technology, go to http://www.opengroup.org/messaging/G260/pki_tutorial.htm.

[5] The NCSC makes extensive information on this subject available at http://www.courtaccess.org.

[6] http://www.microsoft.com/rms

[7] http://www.adobe.com/products/server/policy/main.html

[8] http://www.eweek.com/article2/0,1895,1830805,00.asp

TRENDS IN APPELLATE COURT TECHNOLOGY

Tom Clarke
Vice President and Chief Information Officer, Research and Technology, National Center for State Courts

The appellate courts are now even with or ahead of many trial courts in their adoption and use of technology such as electronic filing, videoconferencing, and Web-based services.

Current State of Appellate Court Technology

A convenient and meaningful way to demarcate current trends in appellate court technology is to use the American Bar Association's *Standards Relating to Appellate Courts*. Since the ABA stipulated its first set of black-letter standards on technology in 1994 (Standards 3.90, 3.91, 3.92, and 3.93), there have been three important technological developments.

Electronic Filing (E-Filing)

E-filing involves using the Internet and appropriate software to send documents (pleadings, motions, transcripts, trial court records, and briefs) to an appellate court. The "paperless court" is not just a theoretical possibility.

For example, in 1998 the Arizona Court of Appeals, Division Two (Tucson), agreed to allow the Pima County Public Defender's office and the Tucson Office of the Attorney General to transmit motions and briefs electronically. After this effort proved feasible, counsel in other government agencies and private counsel were permitted to participate.

The next major phase, begun in 2001 with funding from the Arizona Supreme Court, permitted electronic transmission of trial court records in criminal cases from Pima County Superior Court, the largest trial court in Division Two. This process was extended to civil cases in 2004, and three other counties are developing this same capacity for submitting the record. Division Two also began accepting transcripts electronically from court reporters; however, their role is limited to filing.

The third phase of Division Two's initiative established access via an electronic link to an entire case file for the Arizona Supreme Court. Currently, the petition for review must be filed on paper, but in 2005 the supreme court will permit this document to be filed electronically.

The North Carolina Supreme Court began a similar initiative in 1999, with the support of the State Justice Institute and a partnership with IBM, to allow law offices, private attorneys, and pro se litigants to transmit a broad range of documents to the court. Users need a PC, access to the Internet, and the full version of Adobe Acrobat software. Documents such as motions, petitions for review, and briefs can be transmitted if scanned into electronic form by a user. Court personnel can scan any paper record or brief, making all records and briefs filed since 1999 available on the Web at no cost. The electronic filing initiative expanded to the North Carolina Court of Appeals in 2001, when it began accepting briefs through the same system, with plans to receive other types of electronic documents in the future.

For both North Carolina courts, e-filing saves time for clerk's office personnel, who no longer have to handle or scan e-filed documents. The courts' law clerks also can access documents on the Web. North Carolina trial courts are now investigating the use of electronic filing. The North Carolina appellate courts hope to see all of the "records on appeal" filed electronically. Currently, approximately 25 percent of all briefs are filed electronically, and this figure is increasing over time.

Videoconferencing

A second development is videoconferencing of oral argument to reduce travel time and costs. The Texas Eighth District Court of Appeals (El Paso) instituted two-way videoconferencing in 1997. Initially, the district's system was integrated into an existing university-based videoconferencing arrangement of equipment and remote facilities. However, the district became independent of this system and chose a videoconferencing capacity able to receive and transmit video and audio from a wide range of remote sites, such as a large law firm or a community college classroom, thus permitting the maximum number and kind of remote locations to reduce time and travel costs for attorneys and parties.

The California Fourth Appellate District, which sits in three locations, also uses videoconferencing. Both the attorney general's office and the offices of contract attorneys for convicted criminal defendants based in San Diego wanted to reduce the time and resources consumed by attorneys driving two hours each

way to appear before the court in Santa Ana. In response, the court established videoconferencing equipment in both cities. Since 1997, oral argument in selected criminal cases has been part of the regular calendar when San Diego-based attorneys appear before appellate panels sitting in Santa Ana.

Other appellate courts that use videoconferencing include the Minnesota Court of Appeals, the Georgia Supreme Court, and the Florida First District Court of Appeals (Tallahassee).

Web-Based Services

The third development is using the Internet to communicate with appellate court users. Every appellate court Web site offers an array of downloadable materials, including:

- Court rules (generally all appellate rules of procedure)
- Court forms (including standard documents to be used in the filing of pleadings and motions)
- Oral argument calendars (including nonargued cases)
- Publications (including annual court reports)
- Slip opinions (which can be sorted by term and keywords)
- Access to online docketing systems (not as common as the other five services, but found in the overwhelming majority of appellate courts)

Somewhat less frequently, the Web sites provide new feeds on cases or related events occurring in-state, nationally, and internationally.

Additionally, a select group of Web sites offer audio and video recordings of oral argument via the Internet. This "Web casting" includes both live video and audio transmissions and archives of past arguments and is available from the following courts: Florida Supreme Court and First District Court of Appeal, Georgia Supreme Court, Indiana Supreme Court and Court of Appeals, Mississippi Supreme Court and Court of Appeals, New York Court of Appeal (state's court of last resort), Ohio Supreme Court, and West Virginia Supreme Court of Appeals. The Louisiana Supreme Court is broadcasting oral argument on a closed intranet basis to legal staff, but plans to provide proceedings via the Web later this year. Additionally, the supreme courts in Alaska, Idaho, Maryland, Missouri, South Dakota, and Wisconsin provide live audio broadcasts of oral argument via the Web. Texas is currently providing audio broadcasts of oral argument at the end of the day, but plans to introduce live video and audio Web casts. The Delaware Supreme Court provides access to audio recordings of oral argument approximately one week after the day of argument.

In the midst of these Web-based information sources is the official blog of the West Virginia Supreme Court of Appeals, developed in 2001 and maintained by the clerk of court's office. This blog provides summaries of all recent court opinions, organized by subject matter (civil, criminal, and family), combined with lists of cases granted review, schedules and notices in high-profile cases, and upcoming dockets. The West Virginia blog permits users to conduct a Google search on the topic of each court decision. Additionally, users can subscribe to an information feed to receive updates continuously and directly by visiting the court's Web site.

Future Trends in Appellate Court Technology

One of the most probable developments will be the heightened importance of technology management, particularly for clerks of court, who are likely to seek "best practices" in technology coordination and control.[1] Individual courts will strengthen their relationship to their in-house experts. The National Conference of Appellate Court Clerks will move in closer tandem with the new Conference of Appellate Technology Officers (CATO).

A second development will be increasing interest in technology and technology management by state supreme courts. They cannot fail to see the connection between calls for greater accountability and the ways in which multiple technologies can enhance how users communicate with them.

A third development will occur in the area of automated docketing systems, which are limited to producing standardized reports. By importing data from the docketing system to PCs, clerks of court will find they can address essential questions that were unanswerable using standardized reports. Data commonly recorded by courts can address basic questions. What aspects of the caseflow process are working as expected? What is not working? What cases are taking a disproportionate of time to resolve? What are the characteristics of cases taking the longest amount of time to resolve? What is the normal attrition rate, when do cases settle, and is there a role for mediation? Has additional staff increased productivity?

The ability to answer these and many related questions will propel courts to establish a management information system on a platform separate from a docketing system platform. Appellate courts will begin to allocate resources to train court staff on how to use readily available software (e.g., Access) to determine caseflow patterns. Appellate courts will increase their efficiency by learning more about caseflow patterns than what they currently know (or think they know).

Conclusion

Inertia is not the greatest force in state appellate courts. Technological changes have occurred in the past, are underway now, and will most certainly arise in the future.

The Louisiana Supreme Court illustrates the multiple ways electronic communication and computer tools are enlarging the opportunities for sharing and using information. One aspect of an emerging technological environment is the accessibility of the court's data network when the justices are on the bench.

Tablet PCs on the bench permit justices to use e-mail, note-taking, and instant-messaging software. The justices can communicate in real time with their staffs during oral argument and have access to legal research tools and staff input to answer questions. This arrangement, which dramatically increases the information available to justices, is part of a video-streaming system providing a live feed to all court staff, which minimizes possible miscommunication. Additionally, the live stream is archived on a server, enabling justices and staff to review oral argument at their convenience.

The outlook for appellate court technology is sunny, not gloomy. However, courts will have to develop true management information systems to realize the benefits of technological innovations.

ENDNOTES

[1] A brief survey sent to members of the National Conference of Appellate Court Clerks in December 2004 asked them to indicate topics of interest to their courts. Best practices in technology management were rated as of high interest as were technologies themselves by the same number of survey respondents. Presumably, clerks of court want answers to some basic managerial questions. What are appropriate criteria of performance for technology professionals? How are those standards to be applied? How should a clerk try to manage technology experts?

WEBCASTING: IT'S NOT JUST ABOUT ORAL ARGUMENTS ANYMORE

Dr. Elizabeth R. Osborn
Assistant to the Chief Justice for Public Education and Court History, Indiana Supreme Court

In recent years numerous state courts have either installed webcast equipment or are considering adding it to their courtrooms. While the broadcast of oral arguments is often the impetus behind the adoption of this new technology, it can also be employed for a wide variety of other educational outreach projects.

Is your court considering the installation of webcast equipment? Has your court already installed this type of equipment? If so, is its maximum potential being realized? When streaming technology first became available, many courts, including the Indiana Supreme Court, embraced it as a way to educate the public about the court by broadcasting oral arguments. In the fall of 2005, the Indiana Supreme Court will begin its fifth year of webcasting. The project has moved far beyond the original mission of webcasting oral arguments, and now includes the broadcast of scripted trials, dramatic presentations, public hearings, bar-admission ceremonies, and other special events held in the courtroom.

When the court originally explored the idea of installing webcast equipment in its 19th-century courtroom, it thought of webcasting oral arguments as a means to invite the public to "visit" and learn about the judicial branch. Over the last four years, the court's concept has broadened considerably. While streaming oral arguments remains a central objective, a wide variety of other educational programming also uses the technology.

This essay will briefly describe the efforts of the Indiana Supreme Court through its "Courts in the Classroom" project to employ webcast technology (primarily through the broadcast of its oral arguments and the creation of related teacher-support materials):

- to educate Indiana citizens about the current action and operation of the Indiana Supreme Court
- to teach about the role of the judicial branch in general and about the history of Indiana's courts through a variety of special events

Who Is Streaming Oral Arguments?

According to information from the National Center for State Courts, 19 state supreme courts employ some sort of technology to broadcast their proceedings.[1] The form of the broadcast varies widely. Some states, such as Florida, use satellite broadcasts over a government-access cable channel as their primary means to reach citizens, and the intended Internet audience is small. Other states provide only an audio stream over the Internet. Some provide only live video feeds, and some only a "tape-delayed" version of their oral arguments. At this writing, the Kentucky Supreme Court records all of its arguments with conventional video equipment, but this tape is only for in-house use. They are considering installing webcast equipment.

Why Webcast?

The Indiana Supreme Court became interested in webcast or streaming technology as a way to educate the public about the operation of the judicial branch. What better way is there to dispel media-enhanced myths and notions about the courts than to bring the court into a citizen's "living room," so to speak, via the Internet? Our colleagues at the Indiana Department of Education assured us that nearly all of Indiana schools had access to the Internet, so webcasting seemed an efficient and cost-effective means of reaching a large audience of Indiana teachers, students, and citizens.

The ability to see Indiana courts in action before the fall of 2001 was fairly limited. Usually, one had to be physically present. Cameras are not permitted in Indiana trial courts, and cameras are allowed in the intermediate appellate court only with special permission. In 1996 the Indiana Supreme Court began allowing print and television news cameras into its oral arguments as long as users followed specific rules. For example, cameras must be mounted on a tripod and must remain in place during the entire argument.

The installation of four webcast cameras in the courtroom allowed everyone with Internet access to view all oral arguments and to see the court in action regularly. From the outset, the court embraced the most far-reaching use of the technology by installing the equipment necessary to broadcast live video and audio over the Internet, as well as creating a permanent archive accessible 24 hours a day.

Since the fall of 2001, the Indiana Supreme Court has broadcast and archived via the Internet all of their arguments held in their courtroom in Indianapolis. Using Real Player software, all material is streamed and accessible in classrooms, boardrooms, libraries, and offices around the state. Between September 2001 and June 2005, the court streamed more then 300 oral arguments. This includes some arguments held before the court of appeals and some held in locations other than their own courtroom.

Getting the Most Out of Your Webcasts

Occasionally, the Indiana Supreme Court holds arguments in locations other than their own courtroom. Sometimes the host facility is able to provide a live webcast, but most only have access to standard video-recording equipment. Our webcast equipment allows for the conversion of a VHS or DV tape to digital format. Using this technology, we have placed a variety of educational videos on our Web site—the most recent is a jury orientation video. We even digitized a video for former Indiana first lady Judy O'Bannon for Indiana's 2016 project (http://www.in.gov/judiciary/webcast/informational.html).

As our collection of archived oral arguments started to grow, we looked for a way to make them even more useful to both lawyers and the general public. "Courts in the Classroom" recently launched a searchable database of these videos. End users can search by keyword, cause number, or a party's name to identify particular oral arguments that might meet their educational or legal objectives. Keywords are created with both the lawyer and the student in mind, for example, both "driving while under the influence" and "drunk driving" are entered as keywords. A one-sentence summary of the court's action regarding each case is entered once the case is resolved; this includes a link to the opinion or other action (http://www.indianacourts.org/apps/webcasts/).

Courts might want to consider expanding their use of webcast equipment. Once the initial capital outlay is made and the equipment is installed, why not use it to showcase the variety of other events that already take place in a courtroom or even to plan events with webcast specifically in mind? The Indiana Supreme Court, for example, hosted a successful Women's History Month presentation in the spring of 2005 and now plans to host and webcast a quarterly lecture series.

Other Uses for Webcast Equipment

Almost by happenstance, the court began to webcast other events taking place in its courtroom. It seemed wasteful not to take advantage of the equipment anytime a special event took place. Over the last four years, the court has hosted broadcasts for a wide range of events to help educate the public about the workings and history of the judicial branch. Here are a few examples.

Plays

Each year the Indiana Supreme Court hosts a live dramatic presentation as a part of Indianapolis's citywide civic festival—*Spirit and Place*. Recent plays focused on trials involving Susan B. Anthony and Sojourner Truth. 2005's offering will be about a famous case from the 1820s that tested Indiana's constitutional prohibition of slavery. These events attract a general audience.

Scripted Trials

"Courts in the Classroom" periodically creates and hosts scripted trials aimed specifically at attracting audiences of school children. These events are written for students in grades 4 through 12. Our most popular scripted trial (so far) is based on the U.S. Supreme Court case of *Ex Parte Milligan*, with an emphasis on its roots here in Indiana. Milligan was an Indiana man charged with treason and sentenced to death by a military tribunal for speaking out against the draft (and encouraging others to oppose it with violence if necessary) during the Civil War. The U.S. Supreme Court eventually overturned the conviction of the tribunal. With funding from the Indiana Bar Foundation, we have also developed a scripted trial about the cases leading up to *Brown v. Board of Education*.

The programs that take place in the Indiana Supreme Court's courtroom are generally free and open to the public. The events are webcast live, then stored on our server and accessible through the "special events" section of the webcast page. When the events are created with schoolchildren in mind, "Courts in the Classroom" also produces background materials and lesson plans for the teachers to use either before or after the event, or even to hold the scripted trial in their own classrooms. We have filled our courtroom to capacity with each of these events. The webcast allows us to reach many more students than the 150 that fit within our doors, including students who, because of budget cuts and the distances involved, might not be able to come to Indianapolis (http://www.in.gov/judiciary/webcast/special.html).

Partnership Opportunities

The Indiana Supreme Court is located in the state capitol building in Indianapolis. This building was completed in 1888. Both houses of the Indiana General Assembly, as well as most of the executive branch's elected officials, also call the statehouse home. Space is at a premium, and the newly refurbished courtroom is used by agencies of the court, as well as the executive and legislative branches. The Indiana State Police, for example, like to hold promotion ceremonies in the courtroom. Once the webcast equipment was installed, the court offered to broadcast these events for them. The response from officers at posts around the state who were unable to come to Indianapolis to watch the ceremony in person was quite positive.

Similarly, the Indiana Board of Law Examiners occasionally holds small bar-admission ceremonies in the courtroom. At one recent ceremony, families from Korea and Spain were able to watch their family members sworn in as new lawyers live via the Internet webcast of the ceremony. When the first group of state-certified court interpreters were sworn in, there was a webcast (http://www.in.gov/judiciary/webcast/ceremonies.html).

Public hearings are another opportunity to use the existing webcast equipment and to build partnerships and goodwill. One of the most watched public hearings to date regarded probation officers. Probation officers from all over the state packed the courtroom for the hearing, and hundreds more watched on computers (http://www.in.gov/judiciary/webcast/hearings.html).

Partnerships do not have to be limited to state government. For the last several years, the "Courts in the Classroom" project has joined with the Center for Civic Education in Calabasas, California, to broadcast the Indiana state finals of the *We the People…Project Citizen* competition. This program encourages middle-school students to identify a public-policy issue, to determine what part of government has responsibility over this issue, and to research solutions to their problem. Indiana's *Project Citizen* director is the only one in the nation who can direct his colleagues to the Internet to watch students in action. When Indianapolis hosted the National Association of Women Judges (NAWJ) conference in October 2004, a roundtable session with a number of international judges was webcast from the courtroom. In November 2005 the court will host a daylong seminar conducted by the national Bill of Rights Institute. All of the sessions will be webcast (http://www.in.gov/judiciary/webcast/).

Sometimes partners are able to help defer part of the cost of the webcast, and lawyers often request a CD or VHS copy of oral arguments. In this way, a modest income might be generated from the equipment.

Conclusion

The justices, lawyers, teachers, students, and citizens all consider the installation of webcast equipment into the Indiana Supreme Court chambers as an unqualified success. Through a wide variety of webcasts, the court is reaching out to the public to educate them not only about how the judicial branch works, but also about the history of the courts and the law in both Indiana and the nation as a whole. While most courts might initially consider installing the equipment necessary for streaming video to broadcast their oral arguments, once the equipment is in place, it only makes sense to get as much use out of it as possible. Generally, the only additional expense incurred to broadcast a wide variety of other events that take place in the courtroom is the cost of the staff person to run the equipment. But the use of the equipment is limited only by your imagination.

ENDNOTES

[1] There were 19 states broadcasting oral arguments as of October 2005, but this number is growing. For more information, contact the Knowledge and Information Services of the National Center for State Courts.

THE FUTURE OF COURT SECURITY AND JUDICIAL SAFETY

Don Hardenbergh
President, CourtWorks, Williamsburg, Virginia

Recent courthouse shootings have raised concerns over the safety of our nation's courthouses and judicial officers. Courts are looking for new ways to improve the security of their facilities, including improving coordination of security management. Courts will also face new security issues, such as the desire among some judges to carry guns within the courthouse.

Summary
Essential to the fair and impartial administration of justice is a safe and secure environment that balances security with openness. Too often, however, it takes someone getting killed or seriously hurt before something is done to protect the users of our courts. With adequate preparation, training, and attention to proper procedures, many of the shootings that occur in our courts can be prevented. Can courts protect everyone in every situation at all times? The answer is, of course, no. But courts can do better. The shootings in Atlanta this past winter provide a valuable lesson that courts should not forget. A well-designed facility with a security presence in the building and courtrooms is not a guarantee of safety. Even the best security arrangements can be compromised by lax procedures, attempts to cut costs, or carelessness.

The long-term trend has been toward the implementation of more and more security in our courts. (For example, an increasing number of small and rural courts are implementing entry screening.) There is a greater awareness of the need to provide judges with more protective tools at home and in the community and of the need to make the best use of limited resources to make courthouses more secure.

Balancing Security with Justice
Free and open access to justice requires a safe and secure environment in which all who come to the courthouse are free from intimidation and fear. This is essential if judges are to conduct themselves in a fair and impartial manner and with a sense of judicial decorum.

Too frequently, though, judges, employees, and others in the courthouse become the victims of hostile acts, ranging from harassment to murder. On June 15, 2005, a Middletown, Connecticut, man killed his ex-wife, wounded her attorney, and then shot himself in the parking lot of the Middletown Superior Court, where they were to appear for a hearing.[1] This past February in Smith County, Texas, a man killed his ex-wife and a bystander and shot his son and three law officers on the courthouse lawn. This led several east Texas courthouses to tighten security.[2] A man carrying what appeared to be a grenade was shot in the lobby of the federal courthouse in Seattle this past spring.[3]

These recent shootings, along with the shootings in Atlanta[4] and Chicago[5] earlier this year, have raised the awareness of the dangers present in our courthouses and have caused judges and other local officials to insist on greater protection. The shooting in Chicago, in particular, has raised the issue of judicial protection outside the courthouse.

With a new awareness of the risks and dangers that exist for those who work and participate in our judicial system, courts and local governments face a problem: how to make courthouses safe and secure while fulfilling the need for greater openness and access to our courts and local government. The following trends are emerging in the field of judicial and court security, partly as a result of recent events.

1. Greater Emphasis on Judicial Safety Both Inside and Outside the Courthouse
The judge remains at the center of our judicial system. The integrity of our courts and judicial system depends on judges who can remain independent and impartial, free of intimidation or coercion. While few federal, state, or local judges have been killed, judges are threatened daily by inappropriate communications, approaches, or even attacks. The recent shootings have only heightened the anxiety of judges who are looking for greater protection and safety.[6]

One of the outcomes of the recent events is a greater awareness of the need to provide judges with better tools for protecting themselves at home and in the community. Greater emphasis will be placed on enhancing the security of judges' homes and training judges on how to protect themselves. The U.S. Marshal Service has long provided 24-hour protection to federal judges on an as-needed basis. Local sheriffs and police departments, however, have fewer resources to spare, and such protection of state or local judges may be extremely limited or short-lived.

Among the actions judges can take to protect themselves is to install, or have their local government install, intrusion detectors and alarm systems in their homes and to make sure that their property is well lit. Local law-enforcement agencies also should be encouraged to conduct security reviews of their judges' homes.

A simple measure is for judges to become more aware of their surroundings and of people approaching them while out in the community. This, however, may take some training in how to identify threatening situations and how to handle them. Judges who feel particularly vulnerable may wish to take an executive-protection course.

2. Greater Emphasis on Improving Courthouse Security

Just as those east Texas courthouses have taken new measures to improve their security, other judges, court officials, and law enforcement will pressure their local governments to improve the security of their own courthouses and workplaces.

While many courts screen the public entering the courthouse, there are still many courts, especially in rural areas, and court-annex offices that have little or no security. Metal detectors may be available but are only operated during hours that court is in session; likewise, bailiffs or court-security officers may be present in court only when court is in session, leaving the building and employees unprotected at other hours of the day. Some courts have found gang members taking pictures of witnesses with their cell phones and transmitting them to others outside. This has led to stricter controls on the use of cell phones and the banning of picture cell phones from some courthouses. Local governments should expect pressure to secure all court facilities with metal detectors and x-ray machines and provide minimum levels of personal protection during all working hours of the day.

Enhanced security also means examining and securing all entrances to the building (staff entrances and loading docks). It means improving the glazing and even replacing windows with bullet-resistant materials in some cases. Most important, it means reviewing policies regarding who must pass through security checkpoints and who may bypass security. Many jurisdictions allow attorneys and employees with ID tags to bypass security screening. This can create a serious security breach. Everyone entering the courthouse should anticipate more-invasive searches to ensure no weapons enter the courthouse.

Greater emphasis also may be placed on the exterior of the courthouse, as many of the recent shootings have taken place not in the courthouse, but outside on the steps or in the parking lot. Greater use of surveillance cameras, gated parking areas patrolled by security, and better lighting may improve safety somewhat.

3. Judges Carrying Guns in the Courthouse

For many years this writer has been aware of judges who have admitted to carrying a firearm while on the bench. This may have been done informally and without specific authorization. More judges now appear interested in arming themselves, and courts need to address this issue through development of specific policies that govern how and when judges may carry weapons. Courts might consider requiring any judge wanting to carry a firearm to receive regular police firearms training and be certified. Additionally, all court-security staff should be informed of which judges are carrying firearms.

More broadly, courts and court-security professionals need to have specific policies regarding who may or may not carry weapons in the building and provide gun lockers for law enforcement and others who may be permitted to carry a weapon to store their guns while in court. It is a common observation that the one way an unarmed assailant can obtain a weapon is to take it from a careless security officer. Lax procedures and carelessness make this all too easy. By restricting who is permitted to carry a weapon, the likelihood that a gun can and will be used is lessened considerably.

4. Threat Assessments

Courts and local communities cannot afford to be just reactive. The threat environment continually changes, and they need to anticipate threats and actively plan to counter them. Resources are limited, and there is too much to protect to try and protect everything.

It is smarter for law-enforcement and court-security officials to target resources where they can be most effective and where they are most needed. To this end, each court, or local governing body, needs to conduct its own threat assessment aimed at identifying the most likely targets, their vulnerabilities, and the likeliest attackers or assailants. Only by understanding the threats will they be able to rationally allocate resources to prevent violence and attacks.

For example, knowing which judicial jurisdictions and judicial officers or individuals are most at risk; what types of courts are most susceptible to violent acts (i.e., civil, criminal, domestic, juvenile, traffic); and who most often initiates threatening actions and violent behavior and their motives allows security officials to plan and act to prevent such attacks.

Where should security officers be located within the courthouse to best respond to violence; is it criminal court, family court, or some other location? Should security officers roam the corridors, or should they be stationed near judicial chambers? Can we "predict" which cases or individuals are most likely to be the source of violence? Answers to these and other questions will aid in devising counter-strategies and targeting resources to prevent attacks. It will even allow us to design safer courthouses.[7]

5. Security Management

There must be greater coordination among those who protect the courts, the judiciary, and local governing bodies. They must place greater emphasis on security inside and outside the courthouse, develop policies governing the carrying of firearms in the courthouse, and use intelligence and local threat assessments to improve security. This can only be achieved through better local coordination, organization, and management of all aspects of court security. The key element is the creation of a local policy-making body consisting of the major stakeholders, including the judges, court administration, law enforcement responsible for providing court security, the local governing body, and other major occupants of the courthouse, such as the prosecutor and public defender's office.

Together, the interested parties should assess the threats to the courthouse and its users and occupants; assess the vulnerability of the building; use intelligence and other information to assess possible sources of threats; develop policies and procedures for improving security for judges, other government officials, and the public; and monitor or evaluate the effectiveness of operating procedures and make recommendations for improvement. The policy-making body may also find it important to be involved in public education to inform the public and local communities of the nature of threats and what needs to be done to ensure a safe and secure environment for justice.

ENDNOTES

[1] William Yardley and Avi Salzman "Shooting Tied To Divorce Leaves 2 Dead And One Hurt," *New York Times* (June 16, 2005).

[2] Patrina A. Bostoc, "Courthouse Security Upgrades Continue in Area," *Longview News Journal* (June 6, 2005).

[3] *Seattle Post-Intelligencer* and KOMO 4 Staff, "Man Shot Dead at Federal Courthouse," *Seattle Post-Intelligencer* (June 20, 2005).

[4] "Suspect Sought in Courthouse Shooting," WSBTV.com (March 11, 2005).

[5] Associated Press, "Court Shooting Puts Judges on Defensive," *Northwest Herald Online* (March 12, 2005).

[6] David Finkel, "Judges Are Seeking Cover on the Bench," *Washington Post*, June 5, 2005, p. A01.

[7] For further information on designing the safer courthouse, see Michael Griebel and Todd S Phillips, "Architectural Design for Security in Courthouse Facilities," *Annals of the American Academy of Political and Social Science* (July 2001): 118-31.

BEYOND THE VANISHING TRIAL: A LOOK AT THE COMPOSITION OF STATE COURT DISPOSITIONS

Shauna M. Strickland
Court Research Analyst, Research Division, National Center for State Courts

The composition of case dispositions in the nation's state courts is changing. As the use of trials declines, knowledge of the use of non-trial dispositions becomes increasingly important as a means of maintaining public trust and confidence in the courts.

As documented in "Examining Trial Trends in State Courts: 1976-2002," the use of trials by the nation's general jurisdiction courts has been declining over the past two decades.[1] From 1976 to 2002, jury trials decreased by 15 percent for criminal cases and 32 percent for civil cases while bench trials declined 10 percent and 7 percent, respectively. This decline in trials took place at the same time as dispositions increased by over 100 percent for both case categories.

The phenomenon of the "vanishing trial" has prompted interest in the manner in which court cases are disposed and has led to varying theories as to why the use of trials is declining.[2] In anticipation of these discussions, the NCSC included in its State Court Disposition Trends database information on non-trial dispositions, and this article presents the first findings related to non-trial disposition trends in the state courts.

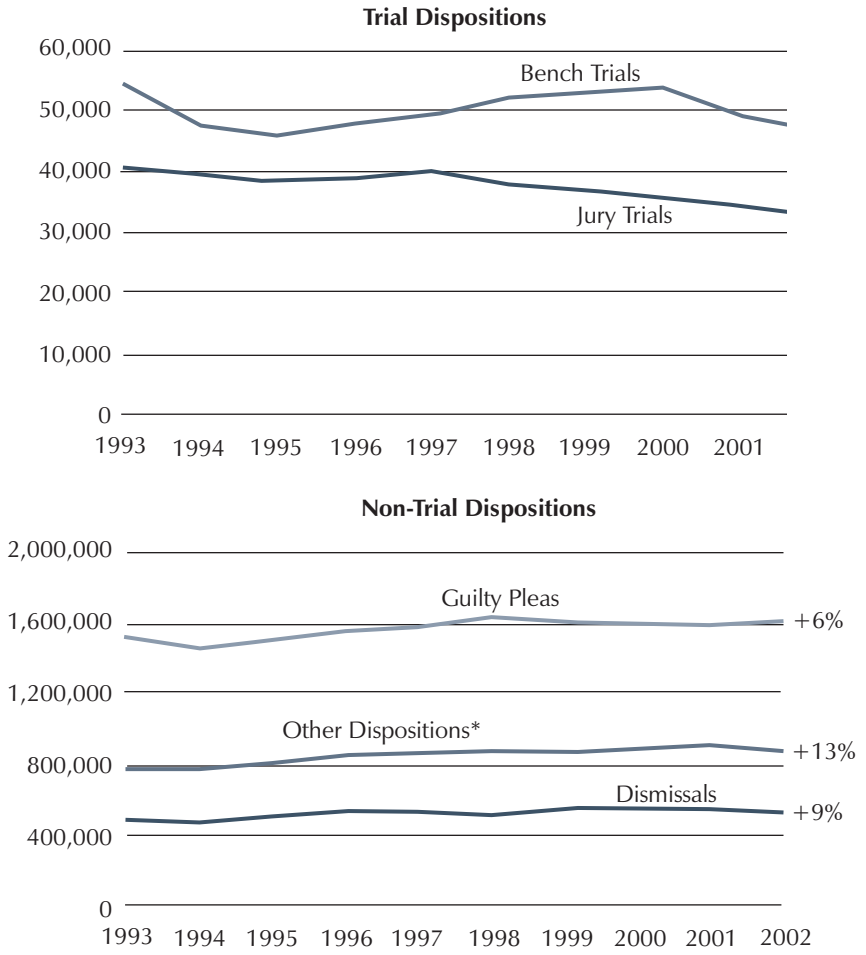
Non-Trial Dispositions

The NCSC's State Court Disposition Trends database classifies criminal non-trial dispositions as guilty pleas, dismissals, and nolle prosequi (or not prosecuted). Civil non-trial dispositions are classified as default judgments, settlements/dismissals, and arbitration. Dispositions such as deferred or summary judgment are included in the database as well, but are not identified separately from "other" dispositions. Using the Disposition Trends database, 19 states provided criminal non-trial disposition data for the years 1993-2002 while 15 states provided civil data.[3]

Criminal Dispositions

As expected, total criminal dispositions increased (7 percent) during the period 1993 to 2002 for the 19 states included in the trend. Trial dispositions decreased during this time period, with jury trials falling by 20 percent and bench trials declining by 14 percent. Non-trial dispositions, e.g., guilty pleas, dismissals, and other dispositions, increased. Figure 1 below illustrates these changes.

Figure 1: Criminal Dispositions Trends in 19 States, 1993-2003



*Other includes such dispositions as nolle prosequi, deferred judgment, transfers, and inactive cases.

Criminal trials, while consuming a vast amount of court resources, actually comprise very little of a court's disposition activity. In fact, trials accounted for no more than 4 percent of all criminal dispositions during the time period examined. Of the non-trial dispositions, guilty plea dispositions are the most common, comprising about 60 percent of all criminal dispositions. Dismissals account for 21 percent of dispositions while the remainder of disposition activity is captured as "other" dispositions.

Table 1: Criminal Manner of Disposition in 19 States, 1993-2002

		Trial Dispositions		Non-Trial Dispositions		
Year	Total	Jury	Bench	Guilty Pleas	Dismissals	Other
1993	2,391,251	2%	2%	63%	21%	33%
1994	2,321,848	2	2	63	21	33
1995	2,382,011	2	2	63	21	33
1996	2,497,638	2	2	63	21	34
1997	2,526,890	2	2	62	22	34
1998	2,592,804	2	2	62	21	34
1999	2,581,549	1	2	63	20	34
2000	2,574,782	1	2	62	21	34
2001	2,571,918	1	2	62	21	35
2002	2,566,600	1	2	61	21	35

In addition to showing the composition of criminal dispositions, Table 1 also shows how that composition has changed over time. One assumption regarding criminal dispositions was that trials were decreasing as a result of increased plea bargaining (an increase in the entering of guilty pleas). For the states included here, however, this assumption is not true, as guilty pleas have actually decreased as a proportion of total criminal dispositions, from 63 percent in 1993 to 61 percent in 2002. The only disposition category that has seen an increase in proportion is the category of "other," which was 35 percent of total dispositions in 2002.

The "other" category includes criminal dispositions such as nolle prosequi, deferred judgment, transfers, cases placed on inactive status, and post-judgment activity that most likely relates to probation/parole violations. The State Court Disposition Trends database does not capture these dispositions individually since first, many states do not report such detail, and second, the states that do report such detail do not all report the same disposition categories.[4] Because of this, it is not possible to determine the proportional change of these dispositions over time. It is, however, possible to determine if there are states with high percentages of "other" dispositions and investigate whether or not those states report their dispositions in finer detail.

For 2002, six states (Delaware, District of Columbia, New Mexico, Ohio, Texas, and Vermont) reported more than 20 percent of their dispositions in the "other" category. These states also reported detailed manner-of-disposition information for 2002. As seen in Table 2, the composition of the "other" category varies greatly from state-to-state. Vermont reported the highest percentage of cases that were nolle prosequi (75 percent) while Texas reported the highest percentage of deferred judgments (42 percent). The majority of Ohio's "other" dispositions are for cases that are placed on inactive status, and three-quarters of New Mexico's "other" dispositions are reported as being post-judgment activity.

Table 2: Composition of "Other" Dispositions in 6 States, 2002*

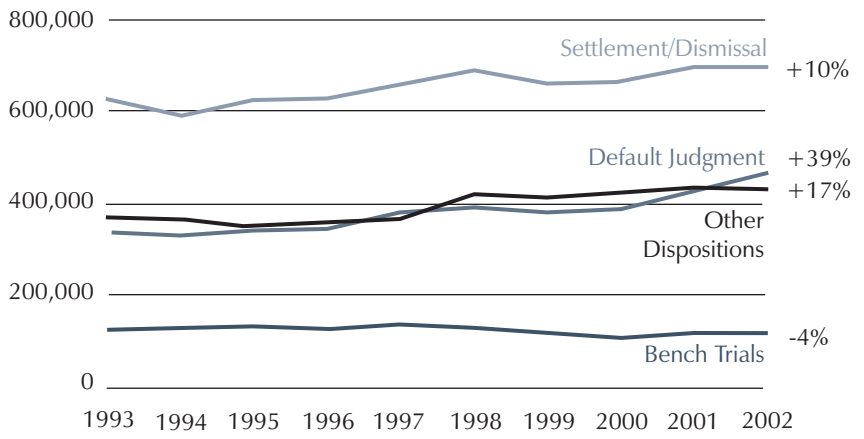
	Total	Nolle Prosequi	Deferred Judgment	Transferred	Placed on Inactive Status	Post Judgment	Misc.
Delaware	2,326	48%	29%	1%	0%	0%	23%
DC	11,450	19			36		45
New Mexico	7,953	25				75	20
Ohio	16,123		14	33	43		10
Texas	85,187		42	1		57	10
Vermont	5,051	75	22	2			

*Blank cells indicate that the state did not report that disposition.

Civil Dispositions

Civil dispositions followed the same pattern as that seen in criminal dispositions. For the period 1993-2002, total civil dispositions increased by 17 percent while trial dispositions decreased and non-trial dispositions increased. Civil jury trials experienced a much larger decrease (27 percent) than civil bench trials (4 percent). For non-trial dispositions, default judgments saw the biggest increase (39 percent) followed by "other" dispositions (17 percent).

Figure 2: Civil Dispositions Trends in 15 States, 1993-2002*



*Jury trials are not included as there were less than 16,100 jury trials per year.

The composition of civil dispositions is shown in Table 3. The most common disposition is settled/dismissed, which accounted for 40 percent of all civil dispositions in 2002. Default judgments and "other" dispositions each comprise approximately 25 percent of all dispositions, while trials have never been more than 10 percent of dispositional activity.

The most apparent change in the composition of civil dispositions is the increase in default judgments. Beginning as 23 percent of all civil dispositions in 1993, default judgments accounted for 27 percent of 2002 dispositions. The increase in default judgments was accompanied by a corresponding decrease in settlements/dismissals, which fell from 43 percent of all civil dispositions in 1993 to 40 percent in 2002. The proportion of "other" dispositions (alternative dispute resolutions, summary judgments, transfers, cases placed on inactive status, etc.) remained 25 percent of total dispositions.

Table 3: Civil Manner of Disposition in 15 States, 1993-2002

		Trial Dispositions		Non-Trial Dispositions		
Year	Total	Jury	Bench	Default Judgment	Settlement/ Dismissals	Other
1993	1,540,258	1%	8%	23%	43%	25%
1994	1,495,466	1	9	23	41	26
1995	1,524,432	1	9	23	43	24
1996	1,534,395	1	9	23	42	24
1997	1,629,312	1	9	24	43	23
1998	1,718,197	1	8	24	42	25
1999	1,655,373	1	7	24	42	26
2000	1,665,557	1	7	24	42	26
2001	1,757,143	1	7	25	41	26
2002	1,748,307	1	7	27	40	25

Conclusion

The nature of dispositional activity in state courts is changing. Trials, though never a substantial proportion of dispositions, are being held even less frequently than 10 years ago. This decline in the use of trials has been accompanied by an increase in various types of non-trial dispositions. While guilty pleas remain the most common form of disposition for criminal cases, courts seem to be disposing of more cases by means of dispositions such as nolle prosequi and deferred judgments. In civil cases, settlements/dismissals remain the most common disposition, but the use of default judgments seems to be increasing.

This analysis provides preliminary insights into the composition of state court dispositions. Small, but consistent shifts in composition are occurring, and

additional research, particularly in the use of "other" criminal dispositions, is needed in order to better understand the impact that these changes are having on the courts.

ENDNOTES

[1] See Brian J. Ostrom, Shauna M. Strickland, and Paula L. Hannaford-Agor, "Examining Trial Trends in State Courts: 1976-2002," *Journal of Empirical Legal Studies* 1, no. 3 (November 2004): 755-82.

[2] See *Journal of Empirical Legal Studies* 1, no. 3 (November 2004) for articles presented at the American Bar Association Section of Litigation's "Vanishing Trials" symposium, and *Civil Action* 4, no. 1 (Spring 2005) for highlights of the NCSC's 2004 Annual Justice Roundtable.

[3] The states included in the trends are as follows: Criminal—Alaska, California, Delaware, District of Columbia, Florida, Indiana, Iowa, Kansas, Michigan, Missouri, New Jersey, New Mexico, North Carolina, Ohio, Pennsylvania, South Dakota, Texas, Vermont, and Washington; Civil—Alaska, Arkansas, District of Columbia, Florida, Indiana, Kansas, Michigan, Missouri, New Jersey, New Mexico, Ohio, Texas, Vermont, Virginia, and Washington.

[4] The exception to this is nolle prosequi, which is captured within the Disposition Trends database. However, since only five states reported cases as being nolle prosequi, this data was combined with the "other" dispositions category for the purpose of initial analysis.

JUDICIAL SALARIES: CURRENT LEVELS AND FUTURE EXPECTATIONS

Neal B. Kauder
President, VisualResearch, Inc.
Patrick K. Davis
Senior Research Associate, VisualResearch, Inc.

Many have speculated that current judicial pay levels will soon cause experienced judges to seek positions that are more lucrative. Some say this has already begun, and that the services courts are required to provide will soon become more mediocre. To attract and retain the most capable judges, governments must align judicial pay with future market rates.

Survey of Judicial Salaries

The pay provided to our country's state judges is always a topic of interest; the attention is not limited to judges, but also extends to court administrators, legislators, and other officials who are responsible for lobbying on behalf of judges or setting judicial salaries. An informed public will also be concerned about the future of judges' salary levels to ensure one of our most important public services is provided by well-qualified persons, many of whom have other lucrative career options.

With the assistance of the state court administrative offices, the National Center for State Courts (NCSC) regularly gathers and publishes information about the salaries of judges.[1] The salary information is analyzed and compared to historical trends in judicial salaries. This article extends the analysis to include projections of future judicial salaries, including comparisons to salaries of other professionals.

How Do Judges' Salaries Compare to Salaries of Other Professionals?

While it is important to monitor and assess judicial salaries over time and across different jurisdictions, it can also be constructive to compare judges' salaries to the earnings of other similar occupations in the United States. This is difficult, however, because judges have very distinct job duties and roles, with no real equivalent counterparts in either the private or public sectors.

A comparative analysis of salary compensation can be very complex; consultants, think tanks, dedicated businesses, and government agencies spend millions of dollars per year studying salaries across all spectrums of the economy. The salary information presented here provides a high-level view of judicial salaries within the context of the larger economy. The analysis is not intended to be a specialized analysis of judicial salaries, but rather a *general gauge* of pay rates for others who have a similar level of job responsibilities, knowledge, and complexity, as compared to general jurisdiction judges. To carry out the task, the NCSC accessed the United States Bureau of Labor Statistics (BLS) occupational leveling study for hundreds of occupations in its annual *National Compensation Survey*.[2]

Occupation Leveling

The BLS occupational leveling study involves ranking all occupations using work levels to reflect the different intellectual, physical, and responsibility requirements within a field or job type. Job levels are assigned a rating from 1 through 15, with 1 being the lowest or "least difficult" job and 15 being the highest or "most difficult" job. For example:

- Civil engineer salary data are provided for levels 6, 7, 8, 9, 10, 11, 12, and 13
- Physician salary data are provide for levels 7, 8, 9, 10, 11, 12, 13, and 14
- Real estate sales agent salary data are provided for levels 3, 4, 5, and 8
- Lawyer salary data are provided for levels 7, 8, 9, 10, 11, 12, 13, and 14

How Levels Are Assigned

Each occupation examined by BLS is scored using the following 10 factors:

- Knowledge
- Supervision received
- Guidelines
- Complexity
- Scope and effect
- Personal contacts
- Purpose of contacts
- Physical demands
- Work environment
- Supervisory duties

For example, the *Complexity* factor is assessed by determining which of the following most closely describes the occupation being evaluated.

- Tasks are clear cut and easily mastered. No decision making. 25 points
- Tasks involve related steps requiring employee to recognize different steps. 75 points
- Tasks involve unrelated methods, employee must recognize them and choose based on relationships. 150 points
- Tasks involve unrelated methods, employee must assess approach. 225 points
- Tasks involve unrelated methods, decisions deal with uncertainty. 325 points
- Tasks involve broad functions; decision making involves undefined issues. 450 points

This process is completed for all 10 factors, the scores are totaled, and a work level of 1 to 15 is determined on a fixed-point scale. As mentioned above, the work levels for lawyers range from 7 to 14. A level-7 lawyer might be a new law-school graduate working as a public defender, and a level-14 lawyer might be a high-level specialist attorney who routinely files briefs with upper-level appellate courts.

General Jurisdiction Judges Assigned Level 13

For the BLS analysis to be most relevant to decision makers, it was necessary to identify an occupation level for general jurisdiction judges (GJJs) to determine which occupations had similar duties and responsibilities. Three assumptions were used to assign GJJs to level 13:

1. The current average state GJJ salary is between level 12 and 13 for the general BLS "Lawyer and Judge" category. It is reasonable to infer an efficient labor marketplace, thereby making a GJJ either a level-12 or -13 occupation. Since a single comparison level was needed, the salary figure was rounded to a level 13, which places the GJJ salary in the middle of level 13 as opposed to the top of level 12.

How Do General Jurisdiction Judge Salaries Compare to Others with Similar Job Responsibilities, Knowledge, and Complexity? (BLS level 13)

A level-13 financial manager might be a high level broker working on Wall Street.

A level-13 mechanical engineer might work for NASA and be responsible for key components of the space shuttle.

	U.S. 2003 Mean Salary
Lawyer	135,778
University Medical Science Teacher	131,594
Financial Manager	130,624
Electrical Engineer	130,338
Manager - Marketing, Advertising, Public Relations	125,190
Physician	122,766
University Law Teacher	122,440
Manager - Medicine and Health	118,173
University Engineering Teacher	115,243
Personnel and Labor Relations Manager	115,235
University English Teacher	114,332
General Jurisdiction Judge*	**112,724**
Computer Systems Analyst	111,753
University Theology Teacher	111,342
Mathematician/Computer Scientist	111,099
Administrator - Education	110,103
University Business and Marketing Teacher	110,099
Mechanical Engineer	109,096
Accountant and Auditor Managers	108,888
University Art/Drama/Music Teacher	104,218
University Biological Science Teacher	102,662
University Mathematical Science Teacher	96,953
Biological Scientist	90,517
University History Teacher	90,208
University Social Science Teacher	87,320
University Psychology Teacher	86,834
University Health Specialties Teacher	81,819
Administrator - Public Administration	78,874
University Chemistry Teacher	73,843
Civil Engineer	72,192
Average	107,075

* 2003 NCSC Data

Survey of Judicial Salaries, Volume 28, No. 2, (October 1, 2003) - National Center for State Courts; National Compensation Survey - Bureau of Labor Statistics

2. Identifying a GJJ as a level-13 occupation appears reasonable considering the complete range of levels (1-15) and the overall job responsibilities for different types of state judges. An intermediate appellate court judge and supreme court justice would be at a higher level in terms of responsibilities, likely at level 14 and 15, respectively; limited jurisdiction judges could be at a lower level, likely level 12.
3. An informal survey of GJJs and court management experts was conducted using the BLS scoring exercise. Each respondent assessed a GJJ's job using the ten factors. The fixed-point scale results placed the GJJ in the middle to upper range of level 13.

The table to the left shows the annual salary for all major, white-collar, level-13 occupations as reported by the BLS. This table permits a comparison of the average GJJ salary to that of other occupations functioning at the same level.

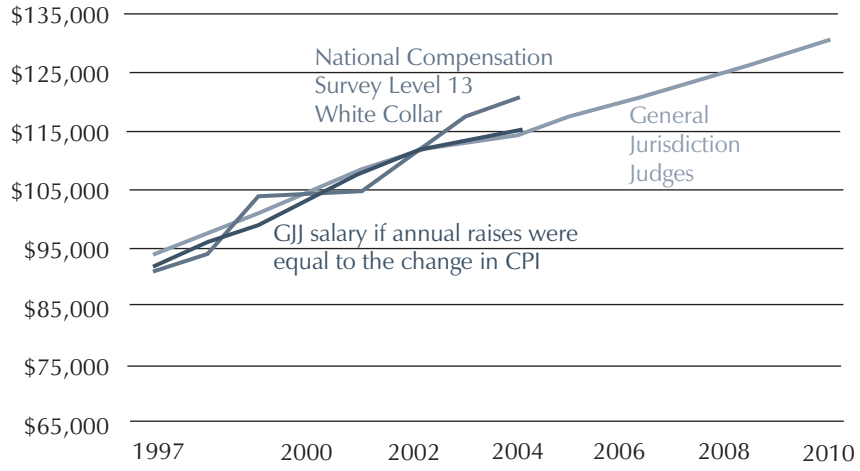
- Overall, the salaries of general jurisdiction judges, when compared to peers working at the same level in other occupations, are slightly above the middle of the range.
- The table shows the average level-13 lawyer salary at about $136,000 compared to $113,000 for judges—a 20 percent lag in judicial salaries when compared to lawyers with comparable occupational qualifications and responsibilities.

What Trends in Judicial Salaries Can Be Expected in the Years Ahead?

The graph on the right compares the trends in judicial salaries to the average salary for all level-13, white-collar occupations as determined by the BLS survey. Additionally, the graph extends the salaries to the year 2010 using annual changes in the forecasted consumer price index as a measure of inflation.[3] Finally, hypothetical average salaries of GJJs based on annual increases matching annual inflation as measured by the annual change in the consumer price index (CPI) are shown from 1997 to 2004.

- As the GJJ (lightest line) trend line indicates, the salaries for general jurisdiction judges have increased in a manner similar to all level-13, white-collar occupations (medium-shaded line).

Have Judicial Salaries Kept Pace with Other Level-13 Occupations and Inflation?



Source: National Center for State Courts, National Compensation Survey - Bureau of Labor Statistics, Congressional Budget Office

- The average annual salary for GJJs between 1997 and 2003 is $104,224 and for all level-13, white-collar occupations, $103,700.
- The 2003 average salary increase for all level-13, white-collar occupations was $6,303 compared to just $1,463 for GJJs, an unusually large difference. However, the general trend indicates that this difference in salaries could narrow in the future.
- The darkest trend line shows what the GJJ annual salary would have been if the annual raises in GJJ salaries from 1997 to 2003 were based on inflation, as measured by the annual change in CPI. This trend reveals that salaries of GJJs were being increased slightly higher than the level of inflation from 1997 to 2001 and equal to inflation in 2002 and 2003.
- Projections for 2004 to 2010 are based on average annual inflation rates (measured by the annual change in the CPI).[4]

If historical trends continue, the GJJ annual salaries would reach $125,000 by 2008, and roughly $131,000 by 2010. Although these estimates do not account for any possible realignment in judicial salaries due to compensation policy changes, they do appear reasonable given the historical patterns in salary increases. Determining whether judicial salaries are fair, given judges' duties and responsibilities, is a difficult determination to make, but it is one that may lead experienced judges to seek better financial opportunities if their salaries are not competitive with the private sector.

ENDNOTES

[1] *Survey of Judicial Salaries*, National Center for State Courts, www.ncsconline.org.

[2] *National Compensation Survey: Occupational Wages in the United States*, July 2003, published September 2004, U.S. Department of Labor, Bureau of Labor Statistics, www.bls.gov/ncs/home.htm.

[3] The consumer price index is for all urban customers. U.S. Congressional Budget Office, *The Budget and Economic Outlook*, September 2004, Appendix C, "Economic Projections for 2004 Through 2014."

[4] The forecasted annual salaries are calculated by multiplying the previous year's salary by one plus the forecasted annual change in the consumer price index. The inflationary impact becomes cumulative over the forecasted period.

DEVELOPMENTS IN PRIVATE JUDGING—THE CALIFORNIA EXPERIENCE

M. Sue Talia
Private Family Law Judge, Danville, California

As state courts struggle to meet the challenges presented by limited resources and overcrowded dockets, many litigants are simply opting out of the system entirely and using private judges. This trend is having a profound effect on civil litigation and altering the mix of cases that remain in the state courts.

The Trend

In California litigants are increasingly turning to private judges as an alternative to the state courts for civil, non-jury actions. Private judging allows litigants to choose a judge with expertise in the subject matter of the litigation, schedule trials without regard to court dockets, and remove these matters from the state courts.[1]

Private judging used to be limited to a small group of retired state trial judges and reserved for complex multiparty litigation. In those cases, the retired judge would be retained to manage and try the case. In recent years, as the state courts have struggled to meet vastly increased demand with shrinking budgets, a growing number of experienced private attorneys have "hung out their shingles" and announced their availability to serve as private judges, even though they were never appointed to the state court bench. As a result of this trend, private judging has quietly entered the mainstream in some areas, as litigants and their attorneys select from a pool of qualified potential judges and match an individual private judge to a specific type of case.

As done in California, private judging is not some lesser form of justice. The private judge has all of the authority of a state-appointed one, is bound by the rules of evidence, and takes the same oath of office as a state court judge.[2] This phenomenon is made possible by the California Constitution, Article VI, §21, and Rule 244 of the California Rules of Court. All parties must stipulate to the appointment, which, when approved by the presiding judge of the court in which the matter is pending, provides the private judge with all of the powers of a state court judge for that case.[3] This stipulation is entirely voluntary, and the parties and their attorneys must agree not only that a private judge will be used, but also on the identity of the specific private judge. Additionally, they must agree on the scope of the private judge's authority. Failure to agree on any of these points leaves the case in the state court system for all purposes. The assignment can be limited to serving as a settlement judge, but usually involves assigning the case to the private judge. Private judges swear to follow the law and are bound by the Canons of Judicial Ethics and all state procedures and other rules. To ensure that private judges remain neutral fact finders and do not develop a special relationship with one attorney or firm, they are required to disclose, on a case-by-case basis, all matters which they have judged involving either an attorney or a law firm within 24 months prior to the appointment. They are also required to disclose any conflicts or potential conflicts that a state court judge would be required to disclose and to recuse themselves whenever required by the Canons of Judicial Ethics.

Procedures can be relaxed by agreement of the parties and the judge, or can remain as formal as necessary, especially if there is a concern to preserve appellate rights.

Once a case is assigned to a private judge, it is taken out of the state court system at the trial level. However, appellate rights can be preserved, and if the private judge's decision is challenged on appeal, the state appellate courts will hear the appeal. There are numerous appellate decisions that review private-judge rulings and have become precedent in the state courts.

How It Works

Once limited to complex, multiparty business or construction litigation, private judging is now reaching middle-class litigants, who often find it less expensive to use a private judge, where time is set aside just for their case, rather than making multiple appearances at the public courthouse, only to run out of time before their matter is concluded or find that the judge does not have time to hear them and they must return another day.

Private judges tend to fall into two categories. Traditionally, a private service would recruit retired judges with expertise in specific areas, and the service would provide the facilities, billing, and promotion.[4] Such services used to limit themselves exclusively to retired judges and did not offer individuals who had not been appointed to the bench. Increasingly, they are expanding to recruit private practitioners with desirable areas of expertise in a substantive field of law or with specific skills. Judges with good settlement skills are particularly in demand. The

service, rather than the individual judge, then markets the availability of the newly recruited private judges.

Private judging is an attractive "preretirement" option for many California state court judges. After serving 20 years, they are eligible for full retirement benefits. Upon retiring, they can then supplement that retirement with private-judging fees, creating a significant financial incentive. The only restriction is that judges who choose to do private judging are prevented, as of December 2002, from serving in the state courts on temporary assignment in the Assigned Judges Program. They must choose one or the other.[5]

In a parallel development, a growing number of private practitioners are simply announcing that their practices will henceforth be limited to private judging in their specialty area. One of the fastest growing areas for private judging is family law, where the huge numbers of litigants often overtax limited judicial resources. California certifies family-law specialists, and a number have made themselves available as private judges. When individual lawyers serve as private judges, they tend to focus on a narrow area of practice or a special type of litigation.

This phenomenon is having an impact on state courts across the board. Much of the complex, civil non-jury litigation is finding its way to private judges, who can give a case as much time as it needs and move a case at its own pace, rather than forcing it to fit into the court's busy docket. In many areas, private judging is the norm for multiparty litigation that requires more-active management than the state courts can provide.

There are some practical considerations, of course. Since a private judge must meet the same ethical and professional standards as a publicly appointed state judge, neutrality must be strictly preserved. For that reason, it is rarely possible to combine private judging with a litigation practice. For obvious reasons, an attorney would not want to have the same individual be their judge in one case and opposing counsel in another. As a result, most private judges who are not affiliated with a group (and most family-law private judges are not) either limit their practices strictly to private judging or include other types of neutral legal functions, such as mediation and arbitration, and decline to represent individual clients.

Another practical consideration involves facilities. While most private judging still takes place in conference rooms, some cases and litigants require more of the traditional trappings of authority than can be supplied with judicial presence and a black robe. Private judges are prohibited from using the state court facilities in California. As a result, a few private judges have built their own courtrooms, complete with a judge's bench, witness stand, court reporter's stand, and counsel tables, such as the private courtroom maintained by the author.[6]

In family law, the practice has moved from complex litigation, where it is the norm in some counties, to the middle classes, who find it a more streamlined alternative to the state courts. Increasingly, when attorneys first consult with each other at the beginning of a new case, one of the first questions they ask is "who do you think our private judge should be?" As a result, much family-law litigation is proceeding outside the state courts on a parallel system. Because of the efficiencies built into private judging, where multiple court appearances and double- or triple-set time can be avoided, it is often less expensive for litigants to use and pay for a private judge's time than to pay their attorneys to wait in the queue for a "free" judge in the state courts.

Effects

Private judges can ease the pressure on the state courts by removing some of the most time-consuming matters and allowing limited judicial resources to be conserved for the cases that remain. However, since most of the cases going to private judging involve attorneys, the balance in the state courts may shift from attorney cases to pro se matters, accelerating the current trend toward high volumes of self-represented litigants.

One of the factors driving the trend is the manner of appointment and assignment of state court judges in California. They are appointed by the governor and assigned to a specific calendar by the presiding judge in the county in which they are appointed. They may or may not have experience in the legal field to which they are assigned. This is particularly an issue in counties where the bulk of new appointees are former prosecutors who must learn not only civil procedure but also complex areas of civil law in a short time. Of course, new judges receive training from the Judicial Council, but many attorneys feel more comfortable with a judge who is a known quantity and who has significant experience in the subject matter of the

litigation. This is particularly apparent in family law, where many judges have little or no experience before taking over a family-law court.

Concerns

The expansion of private judging has occasioned a lively debate. Some question whether this practice creates a two-tiered justice system, where the wealthy can afford more "justice" than the poor. There is concern that this trend will turn the state civil courts into poverty courts and move everyone else into a private system.

It remains to be seen where the practice of private judging will lead. As the state courts struggle to find new sources of funding at a time when they are already seriously overburdened, short-term options are few. Private judging may be a short-lived phenomenon if the state courts find the systems and resources to allow them to address the needs of all litigants adequately. If not, it is likely that more and more litigants will find alternative means to resolve their legal issues.

This, in turn, raises a plethora of questions, which go to our very core assumptions about the purpose and function of the state courts and our justice system:

- Does this option threaten the assumptions of the current system in which courts should be free to all litigants?
- Does a parallel system create two-tiered justice system where those who can afford it obtain a higher level of service?
- Are those who can't afford this service forced to forgo legitimate legal remedies for lack of financial resources?
- Is it possible to preserve a transparent, impartial, and reliable system of justice as a cornerstone of civilized society without sufficient funding?
- And most fundamentally, what is the meaning of access to justice, and how do we guarantee that it is protected and preserved?

These questions, and many more, will form the basis of a lively debate for years to come.

ENDNOTES

[1] As used in California, the term "private judge" means "privately compensated," not closed to the public. The use of a private judge is not a way to shield a case of public interest from the press. Indeed, the private judge is required by the California Rules of Court to allow the press, as well as members of the public, to attend, unless the law would otherwise allow the proceedings to be sealed if held in a state court. As a practical matter, this issue only arises when the pending matter has some appeal to the press or a specific group.

[2] Private judging is distinguished from arbitration or administrative proceedings, where different rules and procedures may apply.

[3] The practice varies widely, and in a few counties the presiding judge declines to approve private-judge stipulations, despite the constitutional authority, thereby making this practice unavailable to the litigants in that court.

[4] A good example of a traditional service is JAMS at http://www.jamsadr.com, which has a national presence. Attorneys and litigants can access their Web site and search for qualified private judges by location and specialty.

[5] It is unclear whether this rule applies only to retired state court judges or whether retired commissioners are similarly bound. It is likely that they will be, for the same reasons.

[6] For a virtual tour of the courtroom, visit http://www.privatefamilylayjudge.com/floorplan.html.

RICHLAND COUNTY MODEL REENTRY COURT

David S. Leitenberger, CPO
Program Director, Richland County Common Pleas Court/Adult Court Services

For the last five years, Richland County, Ohio, has operated one of the first, and largest, model reentry courts, which provides for court oversight of offenders as they proceed through the criminal-justice system.

The Reentry-Court Concept

Traditionally, the involvement of the criminal court with the offender ends following incarceration—at least, until the offender returns home, usually on parole, and commits a new crime. A reentry court, however, maintains active oversight of an offender regardless of custody status; plans for the offender's release; and sets goals for and remains involved with the offender during probation or parole.

In September 1999 the U.S. Department of Justice called for concept papers on the idea of establishing a reentry court that would manage the transition of offenders from prison to their communities. Basically, the Justice Department recognized that courts and judges have no role in the broad array of activities that carry out the terms of a sentence, prepare offenders for release, and help offenders with the transition back into their communities as productive citizens. A reentry court asks judges to play a more active role in ensuring that offenders carry out the terms of sentence both during and following release from prison. This nontraditional view began with the therapeutic-jurisprudence concept, as implemented most notably in the drug-court movement.

The Richland County Reentry Court Model was one of the most comprehensive of the original nine sites selected in working with other criminal-justice entities and offenders.[1] This model targeted all adult felony offenders sentenced to prison from Richland County and returned to their communities as reentry participants. Reentry planning began at sentencing with the implementation of "reentry plans" that followed the offenders to the institution. The court continued oversight by monitoring the offenders' adjustment and program participation during incarceration and evaluating their eligibility for release to probation or parole, at which time a variety of services and specialized supervision programs would be put in place.

Reentry Court Requires Partnerships

The program itself consists of a partnership with the Ohio Department of Rehabilitation and Corrections and Adult Parole Authority (state government, executive branch) and Richland County legal, social services, law enforcement, and probation, led by the Richland Common Pleas Court (local government, judicial branch). The partnership members agreed to work together and in some cases modify each other's authority to develop a successful system of planned offender reentry into the community.[2] This partnership bridged the gaps in the justice system, as offenders moved from one entity to the other, by focusing on what each partner could do to implement and expedite offenders' reentry plans to ensure a smooth and seamless transition back into their communities, thereby increasing the offenders' chances for success.

Supervision required that county and state conditions of release be standardized to make compliance easier to measure and enforce. This resulted in the Enhanced Supervision Agreement, which, in turn, made enforcement and supervision compliance easier to verify and enforce with local law enforcement. A partnership between Richland County law-enforcement agencies and municipal, county, and state probation and parole (Richland County Community Policing, Probation, Parole Partnership Program) was incorporated to monitor supervision compliance and to maintain supervision-adjustment data on all reentry offender participants.

Core Elements of the Reentry-Court Program

Offender assessment and planning begins at sentencing by identifying an offender's needs for treatment and behavioral adjustment, as well as restorative-justice obligations. Before release, a planning team, along with the judge, parole-board member, or both, identifies an offender's needs and supervision issues and adjusts and finalizes the reentry plan.

Active offender oversight includes specialized supervision and a monthly review with the offender and the judge, parole-board member, or both (joint authority) for the first year of release.

Accountability to the community ensures that the offender makes a concerted effort to address restorative-justice issues, such as restitution to the victim and community.

Graduated and parsimonious sanctions are established for violations of the conditions of release that can be swiftly, predictably, and universally applied.

Access to an array of support services includes substance-abuse treatment, job training and employment, education, social services, family intervention, and housing services through both local government and private resources.

Positive judicial reinforcement is applied through monthly review with the offender of progress with the judge, parole-board member, or both, which encourages continued positive adjustment, recognizes success, and rewards completion with graduation recognition.

ENDNOTES

[1] For more information please contact the Richland County Court Web site at: www.richlandcountycourtservices.com at Programs, Richland County Reentry Court.

[2] That is, the Ohio Department of Rehabilitation and Correction/Adult Parole Authority allow the judge to take oversight of a reentry offender out on parole. The judge, working with a member of the parole board, can recommend a sanction or revocation of the offender's parole to the parole board for implementation.

ELDER ABUSE AND NEGLECT

Brenda K. Uekert
Senior Research Associate, Research, National Center for State Courts

As the American population ages, the courts will see an increase in the number of elder abuse and neglect cases. Courts will face the challenge of identifying and documenting such cases and drafting appropriate responses.

Elder abuse may include physical, sexual, or emotional abuse; financial exploitation; neglect in providing material items like food, shelter, or clothing; and withholding medicine or transportation for medical appointments. While damage inflicted by physical abuse may be obvious, the effects of emotional or psychological abuse—humiliation, intimidation, and fear—may be less apparent. Elder abuse falls into the general categories of domestic elder abuse (occurring in a person's own home), institutional elder abuse, and self-neglect or self-abuse.

Estimates of the Problem

The need for national data on elder abuse is critical, and interest in collecting such data is growing. For example, in 2004, the National Center for State Courts added "elder abuse" as a case type to its *State Court Guide to Statistical Reporting*—yet only two courts were able to provide elder abuse data in the recent collection of annual court data.[1] Estimates of elder abuse are confounded by varying definitions and legal mandates to identify and report elder abuse. For instance, Jogerst et al. found that states that mandate reporting and tracking of domestic elder abuse reports have much higher investigation rates than states without these mandatory requirements.[2] In general, elder abuse laws tend to fall into four areas: adult protective services (APS), institutional abuse (in some states where APS law only covers individuals who reside in the community), long-term care ombudsman programs, and criminal statutes. In addition, other state laws may be relevant to elder abuse, such as code provisions addressing guardianships, durable powers of attorney, and domestic violence. Finally, in some states, such as Oregon, crimes against the elderly cannot be distinguished from crimes against the disabled because these crimes are reported in a single category.[3]

Although no comprehensive and timely national-level studies have been conducted, various surveys have found considerable consistency in the character of elder abuse. Among the most compelling findings, primarily gathered from the *National Elder Abuse Incidence Study*,[4] are the following:

- A 2000 survey of APS investigations across the United States revealed a troubling 61 percent increase over 1996 in the number of elder abuse allegations nationally—and a staggering 300 percent increase since the first national survey in 1986.
- Female elders are abused at a higher rate than males, after accounting for their larger proportion in the aging population.
- Our oldest elders (80 years and over) are abused and neglected at two to three times their proportion of the elderly population.
- In almost 90 percent of the elder abuse and neglect incidents with a known perpetrator, the perpetrator is a family member, and two-thirds of the perpetrators are adult children or spouses.

These statistics are alarming. In 2001 the first National Summit on Elder Abuse called it "a crisis requiring full mobilization." Two years later, the National Elder Justice Act was introduced in Congress.[5]

Systemic Responses to Elder Abuse

Two major intervention systems for elderly victims of domestic violence are APS and the justice system (civil and criminal). Unfortunately, many older victims do not seek services of any kind. When victims do seek assistance, they may be "helped" by professionals with little understanding of elder abuse, especially as it occurs in a domestic setting. For instance, APS caseworkers have focused mostly on frail elderly and incompetent victims, often defining the problem of domestic abuse as an overwhelmed family caregiver who simply needs help.[6] The problem is compounded by the lack of professional training. A survey of 42 state APS administrators conducted in 2001 by the National Adult Protective Services Association (NAPSA) on behalf of the National Center on Elder Abuse found that the lack of funding for staff training was one of the most serious problems facing state APS programs.[7]

Criminal prosecution of elder abuse cases is particularly challenging. In a survey, APS workers cited a "lack of interest or cooperation from prosecutors in bringing cases of elder abuse to court."[8] In 2002 the American Prosecutors Research Institute conducted a national survey of prosecutors' offices. According to the national survey, the most difficult challenges facing local prosecutors in elder abuse cases revolve around the victims' physical and mental capacities, as well as the victims' degree of cooperation in their cases.[9] While a substantial number of elder abuse cases never reach the courts, the courts deal with elder abuse daily—often in the guise of other case types, such as adult guardianships, civil commitments, and domestic violence.[10]

The problem of elder abuse is becoming increasingly apparent to judges and court staff. In 1997 the first curriculum for judges and court staff was published by the American Bar Association.[11] In 1999 Florida's 13th Judicial Circuit Court established the first Elder Justice Center to assist the elderly with issues related to guardianship, criminal, family, or other civil matters. In 2002 Judge Julie Conger of the Alameda County Superior Court (California) founded one of the nation's first specialized dockets for elders—the Elder Protection Court Program, designed to improve and expedite access to the court for seniors needing protection and restraining orders. In 2004 the state of Louisiana provided elder abuse training for its entire bench at the annual judicial institute, and the American Judges Association offered its first seminar on elder abuse.

Views from the Bench

Two judges who have been particularly active in the area of elder abuse and neglect were asked to respond to two questions. **Julie Conger** is a judge in Alameda County, California, and founder of the Elder Protection Court Program. **John Kirkendall** is a judge of probate for Washtenaw County (Ann Arbor), Michigan.

What are the major challenges to the courts in identifying and responding to cases of elder abuse and neglect?

Judge Conger: One of the major challenges is the lack of coordination within the court system itself, so that elder abuse cases are filed in numerous different locations within the court, such as probate, criminal, family law, restraining orders, and civil filings. Additionally, the red tape and bureaucracy of the court can be a daunting barrier to elder access to the courts and should be streamlined or eliminated. Training of both guardians ad litem and judicial officers to recognize signs and symptoms of elder abuse remains a major challenge to most courts. Finally, the recent case of *Crawford v. Washington*, 124 S. Ct. 1354 (2004), has eliminated the viability of statutes, which provide an exception to the hearsay rule in cases of elder abuse. Thus, it is critical that the statutory preference for criminal cases with elderly victims be enforced strictly. Furthermore, there will be an increase in the need for judicial staff to handle alternative procedures for ensuring testimony, such as conditional examinations of elderly, potentially terminal witnesses.

Judge Kirkendall: All courts know they are operating in a financial and resource atmosphere of diminishing support. This has implications, of course, for identifying and responding to cases of elder abuse. To identify such cases, those guardians ad litem appointed by the court to investigate guardianship applications should be trained to identify abuse. Such training tools are not generally available to courts. Such development and dissemination is critical to elder abuse reduction or elimination.

What strategies can the court take to improve responses to elder abuse and neglect?

Judge Conger: The name of the game is outreach, outreach, outreach! Some of the strategies we have employed include (1) forming an Elder Access Committee, which includes all segments of the community that deal with elders' needs[12]; (2) visiting senior centers to give presentations on elder abuse and distribute literature; (3) creating liaisons with each law-enforcement agency to highlight and facilitate reporting of elder abuse; (4) conducting a symposium for elder-care providers to receive suggestions on how the court can better respond to elder abuse; (5) creating a specialized calendar for seniors with simplified procedures for getting cases on the calendar so that seniors have easier access to the court; and (6) creating the position of Elder Case Manager and hiring knowledgeable and competent staff for that position.

Judge Kirkendall: Responding to elder abuse cases, once discovered, is even more complicated. The abuse is often being perpetrated by a trusted loved one. To jump at once to prosecution for an admittedly known crime may result in the removal of the elder's most beloved and important resource. The challenge to the

justice system is to retain as much integrity and support for the elder as possible while at the same time reducing the likelihood of preying on the elder, even by their closest relatives. How exactly this can be accomplished is a challenge to the Elder Abuse and the Courts Working Group, which was recently created by the National Center for State Courts.

Looking Toward the Future

The National Center on Elder Abuse (http://www.elderabusecenter.org/) is an excellent online resource with special sections on laws and legislation; national action agenda; statistics, research and resources; outreach to special populations; and promising practices. The Web site is funded by the U.S. Administration on Aging.

The National Center for State Courts is bringing a multidisciplinary group of experts together through its Elder Abuse and the Courts Working Group. The goal of the Working Group is to help courts identify elder abuse and neglect and to improve court responses. Updates can be found at NCSC's Center for Family Violence and the Courts (http://www.ncsconline.org/famviol/index.html), which also houses a Resource Guide on Elder Abuse.

ENDNOTES

[1] The guide can be found at http://www.ncsconline.org/D_Research/csp/2003_Files/CompleteGuide11_02_04.pdf.

[2] G. J. Jogerst, J. M. Daly, M. F. Brinig, J. D. Dawson, G. A. Schmuch, and J. G. Ingram, "Domestic Elder Abuse and the Law," *American Journal of Public Health* 93 (2003): 2131-136.

[3] See Elderly and Disabled Person Abuse Prevention Act (ORS 124.005-040).

[4] The National Elder Abuse Incidence Study (September 1998) was based on a survey conducted in 1996 by the National Center on Elder Abuse at the American Public Human Services Association, in collaboration with Westat, Inc., for the Administration for Children and Families and the Administration on Aging in the U.S. Department of Health and Human Services.

[5] Congress has held over 20 hearings on elder abuse, neglect, and exploitation. In 2003 Senators John Breaux (D-LA) and Orrin Hatch (R-UT) introduced the Elder Justice Act, which has not yet been enacted.

[6] Bonnie Brandl and Loree Cook-Daniels, "Domestic Abuse in Later Life," Applied Research Forum, National Electronic Network on Violence Against Women, December 2002.

[7] Joanne Otto and Susan Castano, "Report on State Adult Protective Services Training Programs," report prepared for the National Center on Elder Abuse, Washington, D.C., March 2002.

[8] B. E. Blakely and R. Dolan, "Perceptions of Adult Protective Services Workers of the Support Provided by Criminal Justice Professionals in a Case of Elder Abuse," *Journal of Elder Abuse and Neglect* 12 (2000): 87.

[9] Mark L. Miller and James L. Johnson, *Protecting America's Senior Citizens: What Local Prosecutors Are Doing to Fight Elder Abuse* (Alexandria, VA: American Prosecutors Research Institute, 2003).

[10] See United States Government Accountability Office (GAO), *Guardianships: Collaboration Needed to Protect Incapacitated Elderly People* (Washington, DC: GAO, 2004).

[11] Lori A. Stiegel, *Elder Abuse in the State Courts—Three Curricula for Judges and Court Staff* (Washington, DC: American Bar Association, 1997).

[12] The Elder Access Committee includes APS, service providers, government officials, bar representatives, law enforcement, public defenders, district attorneys, agencies dealing with the elderly, and Legal Aid to Seniors.

HUMAN TRAFFICKING: A GROWING CRIME TO HIT THE STATE COURTS

Virginia Suveiu
Research Assistant, Knowledge and Information Services, National Center for State Courts
Brenda Uekert
Senior Court Research Associate, Research, National Center for State Courts

Human trafficking is a global problem with local implications. As state anti-trafficking legislation efforts increase, state court judges will begin to hear human-trafficking cases in their courtrooms.

Human trafficking, sometimes referred to as "modern day slavery," is a global problem. According to the State Department's Human Smuggling and Trafficking Center, the crime of human trafficking includes an element of force, fraud, or coercion where the victim is enslaved and subjected to limited movement or isolation, including having his or her documents confiscated or being held under debt bondage.[1] Human trafficking does not require crossing an international border or transporting the victim from one locale to another. Traffickers can move victims within the same community and sell the victims to other trafficking organizations.

It is estimated that about 900,000 people are trafficked each year globally. Human trafficking disproportionately victimizes females—80 percent of those trafficked are women and girls, and 70 percent of those are forced into sexual servitude.[2] While the majority of trafficked victims are sold into sexual slavery, victims are also forced into domestic servitude, sweatshops, construction, farmwork, fisheries, hotel/tourist industries, restaurant and janitorial services, and panhandling. The U.S. Department of Health and Human Services states that human trafficking is the second largest criminal industry worldwide (after drug dealing) and the fastest growing.

Trafficking estimates for the United States vary considerably. The State Department estimates that between 17,500 and 18,500 people are trafficked each year into the United States, while the CIA estimates 40,000 to 50,000.[3] The prevalence of trafficking is particularly challenging to document as the crime is difficult to recognize, and victims are often unable to contact or communicate with authorities. The Department of Justice estimates that roughly half of all international victims trafficked into the United States are under 18 years of age. Major countries of origin include Thailand, Vietnam, China, Mexico, Russia, Ukraine, and the Czech Republic, with an increase in the number of victims from sub-Saharan African and Central American nations. American citizens are also victims of trafficking—one study estimated that at least 10 to 15 percent of all homeless and street children are trafficked nationally.[4]

Federal and State Anti-Trafficking Efforts

On October 29, 2000, Congress passed the Victims of Trafficking and Violence Protection Act (VTVPA), allowing the issuance of T and U visas to victims of trafficking.[5] The VTVPA established an interagency task force to monitor and combat trafficking, authorized programs to prevent trafficking, and offered protection and assistance for victims of severe forms of trafficking. Services available to victims under the VTVPA include medical care, food stamps, housing and cash assistance, and immigration relief. From 2000 to 2003, over 400 adult victims received certification for benefits eligibility.[6] The act also established country reports to monitor trafficking and authorized assistance to foreign governments to meet minimum standards, as well as actions against governments failing to meet minimum standards.

Passage of the VTVPA created national awareness of the human-trafficking problem. However, limitations of the act soon became apparent. In particular, relief was not provided to trafficking victims who were unable to demonstrate that their situations were severe.[7] In response, several states began to introduce and enact laws to cover all forms of human trafficking. As of June 2004, four states had adopted anti-trafficking criminal statutes carrying harsh sentences: Texas, Florida, Washington, and Missouri. The Department of Justice built on these efforts and provided a model template of an effective state anti-trafficking statute.[8] The Senate supported the template by passing a resolution to encourage states to adopt the model statute. By May 2005, at least fifteen states had enacted or were attempting to adopt anti-trafficking legislation.[9]

The successful prosecution and conviction of human traffickers requires coordination between the federal, state, and local systems. Currently, the Department of Justice has 20 anti-trafficking task forces, primarily located in the

Southwest or East Coast, with ten more to start in 2005.[10] The task forces include representatives from federal and local agencies who work together to investigate cases and provide victim services.[11] Examples of task-force efforts include the following:

- Federal authorities called upon the Los Angeles Police Department for help to fight the trade in human smuggling and trafficking in Los Angeles and disbursed $450,000 to train officers to better identify signs of immigrant exploitation.
- Atlanta created the Human Trafficking Detection Program with federal support. In a joint operation, more than 1,000 Asian women and girls were found in "prison-like" conditions in an area brothel, under watch by gang members.

Challenges for State Courts

Law enforcement and the courts face multiple hurdles in addressing the problem of trafficking. Challenges include the identification of cases, information-sharing difficulties, investigative challenges, low penalties for the traffickers, lack of trafficking laws, and overlooking of smaller trafficking cases. Currently, the greatest challenge to the justice system is the identification of human-trafficking cases. Many trafficking victims are isolated, held under debt bondage (with confiscated documents), and told they have no legal recourse. Additionally, fear, cultural, and linguistic factors, as well as the emotional and psychological harm caused to victims, may inhibit them from testifying against the perpetrators.

Law enforcement and the justice system often fail to understand the complexity and seriousness of human trafficking in their own communities. In particular, trafficking rings may be overlooked for years because they are hidden under the guise of prostitution. In these cases, the justice system may view victims of trafficking as co-conspirators or willing participants in the crime. In addition, it can be very difficult for investigators to penetrate trafficking groups, particularly when groups are ethnically based and have language differences. Finally, the investigation may be plagued by jurisdictional battles that limit access to important information.

Human-trafficking experts and victim advocates stress the importance of education. Judicial training on human trafficking, particularly on the identification of cases, would be helpful. For example, judges may be prompted to ask specific questions (for example, about the means of entering the state and country, payment of services, and living conditions) in certain types of cases. While there currently are no bench books on human trafficking specifically, there are some helpful tools available.

- The Department of Justice's *Tips and Tools from the Field* provides information on how to use interpreters effectively in cases involving limited English-proficient victims.[12] The report also notes an Atlanta-based organization, Tapestri, as a reference for building collaborative court-community relationships.
- The American Bar Association's *A Judge's Guide to Immigration Law in Criminal Proceedings* provides a helpful section on cultural dynamics that judges should consider in criminal proceedings.
- The State Department, in conjunction with other governments and NGOs, sponsors international training programs on human trafficking. Recent programs were held in Central/Eastern Europe, Africa, and Southeast Asia, where training for judges included how to spot the signs of trafficking and the legal and psychological issues.[13]

Human trafficking is a hidden but growing crime that is beginning to receive national attention. Laws are being shaped that will lead to the criminalization of human trafficking at the state level. As awareness increases and more cases are identified, judges and court managers will benefit from training that includes an overview of human trafficking as well as problem-solving approaches that may be used to address this sensitive crime.

ENDNOTES

[1] Human trafficking and human smuggling are frequently linked crimes since they have similar underlying causes. However, smuggling, unlike trafficking, always includes the factor of crossing an international border.

[2] Janice G. Raymond, Donna M. Hughes, and Carol J. Gomez, *Sex Trafficking of Women in the United States: International and Domestic Trends* (Amherst, MA: Coalition Against Trafficking in Women, 2001).

[3] CIA briefing, "Global Trafficking in Women and Children: Assessing the Magnitude," 1999.

[4] Richard J. Estes and Neil Alan Weiner, "The Commercial Sexual Exploitation of Children in the United States, Canada, and Mexico," University of Pennsylvania, 2002 (revised).

[5] The T visa is for noncitizens who are "victims of severe forms of trafficking," as well as for the victim's spouse, children, and parents. The U visa is a nonimmigrant (temporary) visa allowing noncitizens victims of crime to stay in the United States and obtain an employment authorization. It is intended to protect victims of "serious crime" who came forward to authorities to report and assist in the investigation and prosecution of the perpetrators (see 22 U.S.C. 7102 for legal definition).

[6] Child victims do not need to be certified to receive benefits.

[7] "Hidden Slaves: Forced Labor in the United States," Washington, D.C., U.C. Berkeley Human Rights Center, 2004, p 23.

[8] This model legislation can be viewed at http://www.usdoj.gov/crt/crim/model_state_law.pdf.

[9] As of May 2005, some states have already passed anti-trafficking laws: Texas, Washington, Florida, Missouri, and Arizona (see each amended Penal Code for further details). Pending legislation includes California, Connecticut, Louisiana, Maryland, Idaho, North Carolina, Nebraska, Maine, Minnesota, New Jersey, and the Northern Mariana Islands (please check each legislature's Web site for the most recent status).

[10] Current task forces are active in Houston, El Paso, and San Antonio, Texas; San Francisco; Los Angeles; San Diego; Albuquerque; Las Vegas; Phoenix; Miami; Orlando; Tampa; Atlanta; northern Virginia; Philadelphia; Newark, New Jersey; New York; Connecticut; Washington, D.C.; and St. Louis.

[11] The DOJ also distributed $7.6 million in grants to local law-enforcement agencies to fund costs associated with their participation in these task forces.

[12] For the entire report, go to http://www.usdoj.gov/crt/cor/lep/tips_and_tools-9-21-04.htm.

[13] Another good source is the American Bar Association's Central European and Eurasian Law Initiative (CEELI) program, see http://www.abanet.org/ceeli/home.htm. CEELI's office in Moldova, for instance, works to facilitate communication among law enforcement, investigators, NGOs, prosecutors, and judges.

COURT INTERPRETER ETHICS PROGRAMS: WHERE WE ARE AND WHERE WE SHOULD BE GOING

Madelynn Herman
Knowledge Management Analyst, Knowledge and Information Services, National Center for State Courts
Wanda Romberger
Manager of Court Interpreting Services, Research, National Center for State Courts

As the demand for qualified interpreters in the courts grows, there is a great need for interpreter programs that have provisions for monitoring and handling ethics violations.

The need for qualified court interpreters has never been greater in the state courts. As public trust and confidence continue to be a concern for state courts, a code of conduct can serve as a minimum standard for all judiciary interpreters and might help prevent ethical problems. While most courts have codes of conduct for interpreters, many lack the provisions for handling ethics complaints.[1]

The Importance of Court Interpreter Codes of Ethics

Interpreter codes of conduct can help interpreters recognize and avoid unethical behavior, such as charging for their services outside the courtroom, offering legal advice rather than just legal information, improperly interpreting a client's testimony, or acting as an advocate rather than as an interpreter. Judges can ascertain the qualifications of an interpreter based on the interpreter's knowledge of the code of ethics. In addition, interpreters can cite the code of conduct in the event someone asks the interpreter to perform a task or action that is considered unethical.

Where We Are Today

The model Code of Professional Responsibility for Judiciary Interpreters and Translators was published in 1995 in *Court Interpretation: Model Guides for Policy and Practice in the State Courts*, by William E. Hewitt (Williamsburg, VA: National Center for State Courts, 1995).[2] Nearly all of the 34 member states of the Consortium for State Court Interpreter Certification have adopted a Code of Professional Responsibility for Judiciary Interpreters and Translators that is similar in nature to the model Code. Today, many of the member states provide a two-day orientation program, which devotes some period of time to a review of the Code of Professional Responsibility, allowing discussion between facilitators and the interpreters and illustrations of ethical and unethical behaviors.

To date, the focus for most states has been on identifying, training, testing, and certifying qualified court interpreters. The need for those scarce resources is huge and growing every year, in every state. Since the 1990s, several states have successfully identified a number of qualified court interpreters and have instituted a process for certifying such interpreters and encouraging (or in some cases, requiring) the courts to use a certified interpreter if one is available. With that success, however, comes the responsibility to enforce the Code of Professional Responsibility in a fair and standard way.

A number of states are drafting standards and rules governing the discipline of court interpreters who fail to perform in a professional and ethical way. The tension, of course, stems from the extreme need for qualified court interpreters; once identified, it is difficult to deprive the state court system, via a disciplinary action, of the services of an otherwise qualified interpreter for some length of time.

In 2000 the Consortium for State Court Interpreter Certification's Professional Issues Committee developed a "model" process for discipline of court interpreters, which includes reasons for discipline, a complaint process, possible sanctions, an appeal process, and an avenue for reinstatement. Any consortium member state can use the model process to develop its own statewide policy.

What the States Are Doing

At least two states, Minnesota and Massachusetts, have taken proactive steps toward the establishment of a grievance procedure and disciplinary policy for interpreters accused of behaving unethically or of being in violation of the Code. Massachusetts has a section in its standards addressing the removal of interpreters from their work and reinstatement, as well as describing an appeal process. Grounds for discipline of court interpreters consist of a range of behaviors, from conviction of a felony to violations of the Code of Professional Responsibility for Court Interpreters.

Minnesota recently created a new grievance procedure that will apply to all interpreters on the state's roster, certified and noncertified. The "Enforcement Procedures for the Code of Professional Responsibility for Court Interpreters" clearly identifies who is subject to enforcement procedures and for what behaviors.

Directions for filing and review of complaints and the procedure for investigation, hearing, and decision on the allegations are provided. Sanctions, and the method of determining the appropriate sanction, are also described. Finally, an appeal-and-reinstatement process is provided within the document. The draft procedure is awaiting approval from the Minnesota Supreme Court.

Where We Should Be Going—Ethics Programs

Having a written code of conduct is the first step in developing an ethics program. The next step is to put the code into practice. Ethics programs comprise four elements: written standards of conduct, ethics training, ethics advice and hotlines or offices, and systems of anonymous reporting of misconduct. According to the *2003 National Business Ethics Survey*, the presence of ethics-program elements is associated with increased reporting of misconduct by employees.[3] Employees are most likely (78 percent) to report in organizations with all four program elements in place. Employee reporting declines steadily in organizations with fewer program elements.

Ethics programs are designed to make sure that everyone in an organization knows the values and principles of the organization and how to apply them to their work. A more formal program might include an ethics committee at the board level, an ethics management or review committee, and ethics training, or an ethics officer, ombudsperson, commissioner, or counselor. Ethics hotlines or other advisory services can give employees impartial and confidential help with ethical concerns. They can also provide an avenue for receiving ethics complaints.

Strategies for Ethics Programs

The success of an ethics program is determined largely by the effectiveness of court leadership, the quality of educational programs, and the consistency of enforcement rules. In order for court leadership to be effective, it is vital to create an environment that supports ethical behavior and encourages communication of unethical behavior. To achieve this goal, court leadership should:

- Establish accountability for violators of established codes
- Publicize that unethical conduct will not be tolerated
- Provide a confidential point of contact for interpreters to ask about unclear situations
- Emphasize that reporting of any wrongdoing is expected
- Set good examples by demonstrating honesty, fairness, and open communication
- Be aware of unintentional unethical behavior (such as prejudice) or conflicts of interest
- Provide comprehensive resources, such as an ethics help desk, written materials, or information on the court's Web site

Inclusion of ethics training in educational programs not only educates employees regarding polices, but also helps establish court commitment to this issue. Ethics training should be included in interpreter certification or testing processes, and refresher training should be offered periodically. Content of ethics training should include comprehensive information describing acceptable and unacceptable behavior. The use of scenarios during training can help reflect the practical realities of ethical dilemmas that court interpreters face regularly. Training can also increase an interpreter's investment in codes of conduct by highlighting how ethics programs protect interpreters.

Enforcement procedures are vital to ensuring ethical behavior. In addition to creating an atmosphere of trust to encourage reporting of ethical violations, courts should consider expanding ethics codes to include a formal complaint policy and standard procedures. Established hotlines or designated individuals to investigate violations can encourage reporting of ethics violations. Courts should investigate ethics complaints in a timely manner and periodically report on complaints to show that ethics violations are taken seriously. Disciplinary procedures should be in place to hold violators accountable, and interpreters/employees who demonstrate ethical behavior should be rewarded.

Conclusion

One of the best ways to handle ethical dilemmas is to avoid them in the first place. Including court interpreters in the development of an ethics program can help implement the program and ensure compliance with the codes. The bottom line of an ethics program is to encourage preferred behaviors that are clearly set forth in a code of conduct. An ethics program for court interpreters should reflect the practical realities of ethical dilemmas that interpreters are facing. Finally, ethics programs should help people recognize and address their mistakes, and then support them as they strive to operate ethically.

The trend to close the gap between having a code of interpreter conduct that sits on the shelf and one that is integrated and living in organizational processes is growing. Formalized ethics programs, which include enforcement procedures, will help ensure that court interpreters understand and abide by the existing codes of conduct. The end result may be more accurate, complete, and impartial court interpreting. That, in turn, will help increase public trust and confidence in the justice system's ability to dispense fair and impartial justice.

RESOURCES

Court Interpretation. NCSC CourTopics: http://www.ncsconline.org/WCDS/Topics/topic1.asp?search_value=Court%20Interpretation

Consortium for State Court Interpreters. NCSC Research Services: http://www.ncsconline.org/D_Research/CourtInterp.html

ENDNOTES

[1] Codes of Conduct are frequently referred to as Codes of Professional Responsibility or Codes of Ethics.

[2] *Court Interpretation: Model Guides for Policy and Practice in the State Courts,* available online at http://www.ncsconline.org/wc/publications/Res_CtInte_Pub.pdf (Chapter 9).

[3] 2003 National Business Ethics Survey—Executive Summary. Ethics Resource Center, electronically accessed on July 12, 2005 at http://www.ethics.org/nbes2003/2003nbes_summary.html

INTERNATIONAL TRENDS—FAMILY LAW

Dennis Wendel
International Programs, National Center for State Courts

Developing world countries are improving and updating family laws or personal status laws that govern the status of women, families, and personal relationships. Northern Africa and Middle East Countries especially are searching for ways to balance modern-day realities and global economies with cultural and local traditions.

Throughout the world, especially the developing world, there has been a growing interest in reviewing, improving, and updating a series of laws, practices, and procedures that govern the status of women, families, and personal relationships. These laws, known in many countries as Family Laws or Personal Status Laws, have come under increasing scrutiny and are seen as outdated—as not consistent with modern-day realities and the circumstances of a global economy and interlinked worldwide political and social economies. Nowhere is this more apparent than in the Middle East, North Africa, and the emerging Gulf States. Recent changes that have been made or attempted in the region include Morocco's 2003 revision of their 1957 Mudawwana or Code of Personal Status; Egypt's Law 10 (Family Law 2004); constitutional interpretations providing greater rights to women in Turkey dating from the late 1990s; and the most recent women's rights development in Kuwait, where some predict future directional changes in family laws. However, Jordan's unsuccessful effort (2002-03) to revise their family laws also indicates that there are significant concerns and challenges ahead.

Many see the changes in family laws within the region and elsewhere as a shift that recognizes broader cultural issues emphasizing different religious, social, and economic circumstances and local traditions. Accompanying the shift to a broader recognition of the role of women and their rights is a recognition that laws alone will not serve justice for women or families. What is needed is broader support and resources for helping families solve problems and responsive and more-efficient courts to identify and address special circumstances and needs of families. In some countries in the region, mediation and counseling activities are seen as necessary adjuncts to new family laws. In some cases, family-outreach services are helping women from different socioeconomic backgrounds to access services.

Accompanying these changes is a need to speed justice. Some family cases have languished in the courts for decades. They have clogged and bogged down the courts, and incomplete laws have created unnecessary burdens on the administration of the courts in dealing with antiquated procedures and limited resources to assist families and resolve problems. There is a realization that courts need not only updated family laws but also new administrative and management procedures to track and support family cases and ensure speedy disposition. Revised administrative and management procedures and case-tracking-and-information systems are now necessary to follow the cases through mediation, counseling, and other family services. Enforcement of court decisions, especially for family support, custody, and other decisions, will be required in most cases where new family laws are being enacted. In addition, assessment services will be necessary to determine whether the combined improvement of laws, the development of supporting services, and the strengthening of court administration and management are actually having the intended impact.

Women and families from different socioeconomic cultural backgrounds will also require differentiated and more-nuanced supporting services. The courts also will have to recognize that religious laws, tribal and local practices, and other cultural traditions will continue to influence family cases. And religious and cultural issues will continue to drive highly sensitive political conditions in many parts of the region. These situations will place additional demands on supporting court services and family mediation.

Other directions for the improvement in Family Status Laws and Programs might include:

- Searching for working models for the management of family courts and services to families
- Identifying and supporting changes in family laws in emerging countries
- Developing technical capacity within the legal and justice system
- Tracking the status of family laws in the region, identifying common approaches and complementarities and lessons
- Identifying special status conditions and circumstances for families in a global society
- Promoting outreach, public information, and community advocacy

INTERNATIONAL TRENDS—STRENGTHENING JUDICIAL INDEPENDENCE AND ACCOUNTABILITY

Heike Gramckow
Deputy Director, International Programs, National Center for State Courts

Many countries in Latin America, Africa, Eastern Europe, and Asia are undergoing significant changes to enhance judicial independence. Even established democracies struggle to ensure an independent judiciary. While there are different assumptions about how to structure an independent judiciary, there is general agreement on a number of key elements that must be structured to fit the needs and situation of any country striving to ensure judicial independence within a well-balanced democratic system.

Many countries in Latin America, Africa, Eastern Europe, and Asia are undergoing significant changes to enhance judicial independence. Even established democracies, like the Netherlands, have made significant changes to remove the judiciary from the influence of the executive branch. Still, how to structure and organize the third branch to guarantee the judiciary's independence is a topic of debate.

There is growing emphasis on the fact that judicial independence can exist only where the judiciary is responsible and accountable for its operations and decisions. This means that, in addition to developing and sustaining a capable and ethical judiciary, structures need to be in place within the judicial governance structure that reflect key elements of democracy, such as broad-based participation in all governing processes, democratic selection of the judicial leadership, transparent operation of the leadership, and leadership commitment to accountability and ethical conduct.

Achieving judicial independence and accountability is a complex undertaking and has proven a significant challenge in many countries. Reform efforts are often hampered by lack of funding, huge case backlogs, inadequate facilities and information technology, insufficient training, corruption and lack of political will, and resistance from the judiciary itself to becoming more open and transparent in its operations and decisions.

Judiciaries in many countries in transition are struggling to break free from their historic domination by elites, the military, political parties, or the executive. Ultimately, the judiciary has to take a stand and, like any other institution of democratic governance, has to be accountable to the public for both its decisions and its operations.

There are various ways in which countries have sought to attain this goal. Much depends upon local customs, expectations, and institutional arrangements. However, there is general agreement on a number of key elements that must be structured to fit the needs and situation of any country striving to ensure judicial independence within a well-balanced democratic system.

Selection and promotion of judges—The use of an objective, merit-based, and transparent process for promotion and selection of judges can be an important step toward enhancing professionalism among the judiciary and increasing the public's confidence in its integrity and abilities.

Security and length of tenure—Security of tenure means that a judge cannot be removed from his or her position during a term of office, except for good cause (e.g., an ethical breach or unfitness) pursuant to formal proceedings with procedural protections. Security of tenure is basic to judicial independence. Generally, the longer and more secure tenure is, the higher the requirements for an objective, merit-based selection process, probation periods, and regular performance reviews.

Disciplinary procedures—In a democratic context, disciplinary procedures are as much a mechanism to ensure judicial integrity and professionalism as they are important tools for securing a judge's tenure. A well-designed, transparent disciplinary process reduces the vulnerability to abuses that affect judicial independence.

Governance of the judiciary—To be independent and effective, a judiciary must demonstrate strong internal leadership that upholds democratic principles.

This requires, among others:

- Efficient and democratic managerial capacities and administrative and operations systems on all court levels
- Democratic, participatory, and forward-looking national leadership

Judicial capacities and ethics—Only a judiciary that garners high professional regard can fully function as a third branch of government and be accepted by the legislature and executive as an equal power. Judges who lack sufficient commitment to an independent judiciary, or who do not have adequate training and skills, are more vulnerable to outside influence.

Transparency of court decisions and operations—The organization and procedures of a court can create a transparent operation with built-in checks that reduce opportunities for interfering with court decisions. Good records management and features such as random case assignment can greatly decrease opportunities for bribery, intimidation, or manipulation. Requiring that judges state the reasons for their decisions in published opinions deters rulings based on considerations other than law and facts.

Independence and accountability—No judiciary in the world is free to act according to its own lights, nor should it be. The judiciary is accountable for its decisions according to the law and to the public for both its decisions and its operations. Accountability means having mechanisms in place by which the judiciary as an independent body is required to explain its operations. This includes disclosure about private finances, which is internationally considered an effective means of discouraging corruption, about conflicts of interest, and about misuse of public funds.

Adequate judicial budget and responsibilities—An adequate judicial budget is essential to ensuring judicial independence. Judiciaries with inadequate resources cannot offer the salaries, benefits, and pensions needed to attract and retain qualified candidates and, in some cases, to diminish the likelihood of corruption. Removing executive-branch control over the judicial budget is an important step to ensuring independence. However, budget control and increased budgets have not always resulted in improved performance or greater independence. A common problem that needs to be addressed is poor allocation of and accounting for resources within the judiciary.

There is increasing agreement that the establishment of any of these elements alone does not guarantee judicial independence. The ability of the judiciary itself to shape the ongoing development of these key elements and to take responsibility for their implementation and institutionalization is what matters most.

DIGITIZATION OF LIBRARY COLLECTIONS: THE FUTURE IS NOW

Tisha Zelner
Visiting Assistant Professor, University Libraries, University of Southern Mississippi

As the trend toward online delivery of information continues, expect the libraries serving courts to digitize rare and scarce materials in their collections into forms that may be delivered to users 24/7 via intranets and the Internet.

As people become accustomed to searching for information of all types on the Internet, it becomes increasingly important for all types of organizations, including courts, to provide as much information as possible online. Digitization is one technique that libraries, including state, court, and county law libraries, are using to respond to this challenge.

Google Print Puts Library Digitization in the News

Digitization in libraries is nothing new, but the digitization of materials housed in library collections has been in the news more frequently since the expansion of Google Print to include the Google Print Library Project (http://print.google.com/googleprint/library.html). On December 14, 2004, Google announced plans to digitize print materials from the collections of five major research libraries—Harvard University, Stanford University, the University of Michigan at Ann Arbor, the University of Oxford, and the New York Public Library. Only the University of Michigan (http://www.lib.umich.edu/mdp/index.html) agreed to allow Google to scan all of its books; the other four libraries agreed to allow scanning of only portions of their collections. According to John P. Wilkin, associate university librarian at Michigan, digitizing all of the approximately seven million books in Michigan's collection will take approximately six years, and storage of the digitized collection will require hundreds of terabytes.[1] When the project is completed, the full text of the scanned books from each participating library will be searchable using the Google search engine. Those scanned books in the public domain will be available online in their entirety, while only limited portions of copyrighted books will be available as part of the search results.

What Is a Digital Collection?

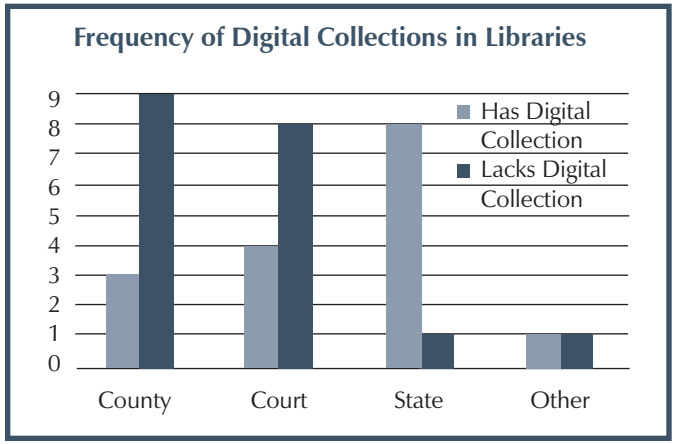
The most recent trend in digital library collections is being spearheaded by libraries themselves.[2] Libraries are identifying rare or scarce materials within their collections (materials not easily available from other libraries or from commercial sources) and converting these uncommon printed and manuscript materials to a digital format that may then be accessed via the Internet or an intranet. The actual scanning or conversion process may be executed by library staff, in-house information technology staff, or an external vendor that specializes in digitization. While digitization has several benefits, arguably, the benefit most valued by the end user is the ability to search the full text of the document to locate every instance of a specific word or phrase. The ability of a library to provide multiple, simultaneous users with remote access to a digital document twenty-four hours a day, seven days a week via the Internet is another advantage of digital formats over traditional paper formats. A third advantage, one that may be appreciated more by librarians than by end users, is preservation of the original paper document when a digital surrogate is available; this is achieved through reduced handling of the original. These are just a few of the benefits realized with the creation of a digital library collection.

Results of NCSC Survey on Library Digitization Projects

Libraries serving court constituents have already begun to respond to the digitization trend. On May 19, 2005, the National Center for State Courts (NCSC) distributed a survey to the members of the State, Court, and County Law Libraries Special Interest Section (SCCLL) of the American Association of Law Libraries (AALL). The survey was distributed via e-mail using the SCCLL discussion forum. NCSC received forty-six responses, including a few returned via fax or postal mail. Survey respondents were asked to identify their library type as either bar association, county, court, state, or other. Responses were received from eighteen (39 percent) county law libraries, sixteen (35 percent) court libraries, ten (22 percent) state law libraries, and two (4 percent) libraries identifying themselves as "other" (a state prison and a county district attorney's office). The chart on the following page shows results from the survey.

Among the thirty-eight valid survey responses, libraries were split exactly 50-50 between those that have or are planning a digital collection and those that lack a digital collection.[3] Among the twelve county law libraries responding, three (25 percent) have digital collections, while nine (75 percent) do not. Approximately

one-third (four) of the fifteen court libraries responded that they have or are planning a digital collection, while eight court libraries reported no such collection or plans to implement one. Not surprisingly, state law libraries were the only type surveyed in which a digital collection was commonplace. Among the nine state law libraries responding, eight have digital collections and only one lacks it. The "other" library types responding were evenly split, with one having a digital collection and the other lacking such a collection.



According to the survey results, most digitization projects, or those in the planning stages, include court opinions, orders, records, and briefs, as well as various government publications produced within the jurisdiction served by the digitizing library. Below are some atypical digitization projects described in the survey results.

- The Law Library of the Washington State Attorney General's Office is digitizing internally produced legislative histories of Washington state legislation, internal documents, and government publications (local, state, and federal).
- The Maryland State Law Library has digitized nineteenth- and early twentieth-century legal treatises, as well as selected Maryland task force/study commission reports.
- The Civil Court of the City of New York Law Library has digitized some newsletters and secondary reference materials created by local authors.
- The State of Oregon Law Library is in the early stages of creating a digital collection of pre-statehood, territorial laws and statutes.
- The California Judicial Center Library is in the early stages of digitizing collections of California Supreme Court papers. They are also digitizing historical documents and photographs.
- The State Law Library of Michigan is working with the Law Library Microform Consortium (LLMC) to digitize a small collection of Michigan House and Senate bill analyses for the years 1973 to 1996.

The NCSC Library Digital Collection

The NCSC Library began planning for its own digital library collection in 2003, and document scanning began in 2004. This first digital collection includes NCSC reports and publications. One of the reasons NCSC publications were chosen, in addition to their scarcity, is that NCSC already held the copyright to these publications. Initially, a process was established to select a subset of items to be digitized as a sort of pilot project. From among all NCSC publications, specific titles were selected if the paper version in the library had a relatively high level of use; if references to the title already existed within the NCSC Web site; and if the Web pages containing such references received a significant number of hits. Scanning was outsourced to an external vendor, who delivered a PDF file of each document to the library, who then made it available to NCSC constituents through the NCSC Web site. A list of the first titles to be digitized is at http://www.ncsconline.org/D_KIS/Library/Titles.html. This initial digitization of a limited collection was well-received, and a process in now underway to digitize the entire back file (nearly 2,000 titles) of NCSC paper publications by the end of 2006. As of this writing, 425 titles have been scanned, and plans are underway to implement a software package to manage the growing digital collection. The creation of the NCSC digital library collection is an ongoing process. For more information about how the National Center for State Courts Library created its digital library collection, or for help planning the digitization of a court library collection, contact the NCSC Library at: library@ncsc.dni.us.

Conclusion

In the past, libraries constantly updated their collections to remain relevant and to meet the changing expectations of their users. Now, they must update their delivery methods, as well, by offering new means of access to information. One of the next

major trends in library modernization is the creation of digital collections based on a library's own distinctive resources. To remain relevant and useful in an increasingly digital world, where often the same information is available from a variety of sources, each library needs to focus on the resources that make it unique. Libraries should make those resources easily accessible to those who may benefit from them by pursuing well-planned digitization projects.

ENDNOTES

[1] Scott Carlson and Jeffrey Y. Young, "Google Will Digitize and Search Millions of Books from Top 5 Research Libraries," *Chronicle of Higher Education* 51, no. 18 (Jan. 7, 2005): A37.

[2] While online research services such as LexisNexis, Westlaw, and others have provided access to digitized materials for years, that type of commercially produced content is not the focus of this article.

[3] Eight survey responses were invalid due to missing or corrupted e-mail attachments or missing responses to all questions other than identification of library type.

RESPONDING TO FUTURE TRENDS IN STATE COURTS: A REVIEW OF THREE NCSC INITIATIVES

In recent years there have been increasing demands on the courts, as well as on other branches of government, for improving efficiency and services. These increasing demands, in combination with recent fiscal crises and developments in technology are requiring courts to reexamine and reform their systems.

NCSC Initiatives

Courts are constantly adjusting to a changing environment; as the world changes, society's demands on courts also change. Several factors, including recent developments in technology and the strain of fiscal crises, have caused renewed demands on, and opportunities for, courts to increase and demonstrate efficiency and effectiveness, including improving communication and collaboration between agencies.

This article highlights some of the current initiatives at the National Center for State Courts that are helping courts respond to these demands. The first initiative, *CourTools*, presents ten performance measures that allow courts to evaluate the effectiveness of their management and service to the public. In addition, these measures can help support initiatives for improvement, both through the knowledge generated regarding court operations and through the availability of statistics to support requests for funding. The second initiative has been a push to advance the development of Service-Oriented Architecture (SOA). SOA offers a framework for the technological sharing of information between jurisdictions and agencies. This increased communication assists in the administration of justice and offers courts access to information from different agencies at a single point of contact. The third initiative, customized distance learning classes, expands training opportunities for court personnel. By developing distance learning classes, courts can reduce travel time and costs, as well as the time and cost for instructors. By collaborating with NCSC, courts can develop customized classes to achieve the benefits of distance learning without the prohibitive start-up technology costs that would be needed if courts developed the courses independently.

This article highlights selected initiatives in which the NCSC is currently engaged. Other salient NCSC initiatives focus on court security, court interpreting, workload assessment, court culture, juries, family violence, problem-solving courts, court improvement projects, Best Practices, and international work to help bring the rule of law to developing countries. Information on these NCSC projects can be found at www.ncsconline.org.

CourTools

Improving the public's trust and confidence in the justice system presents numerous challenges—one of the most daunting has been identifying the responsibilities for which courts can, and should, be held accountable. State and local courts have long needed a balanced and realistic set of performance measures that are cost-effective and practical to implement.

The 10 *CourTools*

1. Access and Fairness
2. Clearance Rates
3. Time to Disposition
4. Age of Active Pending Caseload
5. Trial Date Certainty
6. Reliability and Integrity of Case Files
7. Collection of Monetary Penalties
8. Effective Use of Jurors
9. Court Workforce Strength
10. Cost per Case

CourTools builds on the Trial Court Performance Standards published in 1990 and represents the culmination of three years of work by a 12-member community of practice of state and local judges, court administrators, and scholars in the area of judicial administration.

CourTools outlines ten court performance measures and provides a step-by-step guide on their use. This new measurement system will help improve the administration of justice by offering court managers a few core measures that are practical and provide a balanced perspective on court operations. *CourTools* provides a set of independent measures for courts; however, the standardization of measurement can also allow for comparisons with other courts.

CourTools' ten measures:

- Follow the fundamental mission and vision of the courts in the areas of access and public service, prompt and efficient case administration, and fairness and equality
- Provide a necessary and important balanced perspective
- Are outcome focused
- Are feasible, practical, and few

NCSC has provided training in the use of *CourTools* since its release in spring 2005. NCSC has also provided direct assistance within some courts for the implementation of these measures. Ongoing progress is being made on developing software tools for implementation and reporting for diverse audiences. NCSC will be developing data models and Internet data standards based on XML for each of the *CourTools* measures. Vendors and courts will then be able to implement the measures in a more standardized way at the data-element level. *CourTools* can be accessed at www.courtools.org.

The Justice Reference Architecture Is Coming

Many in the court community first heard about service-oriented architecture (SOA) a couple of years ago in the *2003 Report on Trends in the State Courts*. Since then, NCSC has continued to lead developments in this area. SOA makes use of open Web standards to expose services gradually (data exchanges, queries, underlying online transactions) as courts can afford to add them. Perhaps the most important and recent development in this area was the publication on September 28, 2004, of a report by the Global Information/Standards Working Group (Global) on SOA: "A Framework for Justice Information Sharing: Service-Oriented Architecture (SOA)," online at it.ojp.gov/documents/20041209_SOA_Report/pdf. In essence, the report recommends that Global determine what actions are needed to create a Justice Reference Architecture that is service oriented. Global subsequently agreed to make the creation of a Justice Reference Architecture using SOA principles its major goal for the next few years.

Terminology

SOA – Service-Oriented Architecture
Global– Global Information/Standards Working Group
GJXDM – Global Justice XML Data Model
NIEM – National Information Exchange Model
IEP – Information Exchange Packages

These actions build on Global's influential work to create the Global Justice XML Data Model (GJXDM), or Justice Reference Data Model. Extensions of the GJXDM continue to grow rapidly. New Information Exchange Packages (IEPs), what used to be called "reference documents," are being created each month for key justice data exchanges. Data objects continue to be added to GJXDM as work on the IEPs reveals data gaps. GJXDM itself is now up to Version 3.02.

In addition, both the Department of Homeland Security and the intelligence community have officially adopted GJXDM. Homeland Security is using the GJXDM and its governance process as the core of a much broader National Information Exchange Model (NIEM) initiative. NIEM brings a new level of formality, resource support, and participation to the modeling effort. NIEM is now vetting the first draft of its proposed Concept of Operations, including processes for change management and version control, as well as methods to harmonize new content.

But where does SOA fit into all of this activity? Both Global and NIEM are starting to understand the importance of filling in other parts of a Justice Reference Architecture beyond the data model embodied by the GJXDM and its IEPs. For example, several Global working groups are now investigating methods to convert privacy and security business rules and policies into technical pieces of a Justice SOA. Out of these pilots will come a more general way of representing policy in the service architecture.

Global is drafting a road map for the implementation of a Justice SOA. The road map will identify what parts of a Justice SOA are missing and will make recommendations about how those gaps should be filled. It is already clear that additional guidance is needed in the areas of management, business policies, registries, and repositories. A second set of reports from Global will provide guidelines for implementing the Justice SOA at the state and local level. These snapshots of governance best practices will include advice on what steps to take first and how to best ensure their successful implementation.

Amid all of this activity, the idea of standardized services is critical. Such services should map to key business processes and support necessary information sharing among both justice and non-justice groups. As the Global community is coming to realize, the data model alone does not guarantee sufficient interoperability for successful information sharing. Transactions between justice information systems are technical exchanges that require compatibility of business rules and clear understanding of technical messaging issues. Messaging is the delivery mechanism for information. GJXDM content can be delivered in two ways: over the Internet using several different protocols; over dedicated wired, wireless, or cell networks using open, custom, or proprietary protocols; or by hand using "sneaker nets."

Why is messaging so important? Most justice exchanges will not be permitted unless they comply with local business rules for security, reliability, public access, and privacy. In most cases, these policies are implemented at the messaging layer—not in the data itself. Further, early adopters of SOA approaches, particularly using Web services, have found that the underlying standards are too flexible to ensure compatibility. Users must specify more restrictive messaging profiles to guarantee that the technical exchanges will be truly interoperable.

As justice agencies begin to build information-sharing exchanges based on SOA principles, proper governance is critical. One can easily imagine a situation where many organizations create unique and incompatible transactions or services that do essentially the same thing. Without effective governance to coordinate the design and implementation of these services, a digital Tower of Babel will emerge, and much of the business value of open standards and SOA will be lost.

Global initiatives actively involve industry groups and implement many of their projects using such groups. Private vendors are among the primary providers of technical assistance for users of the evolving Justice SOA. Vendor products are beginning to support the GJXDM and will certainly include additional parts of the Justice Reference Architecture in the future.

In a path-breaking move, both the Global and NIEM efforts are inviting and partially reusing work done by an open-standards-setting body normally dominated by commercial vendors—OASIS. Although ceding no governance authority, Global and NIEM are making use of lessons learned in the SOA areas where commercial vendors have the most experience.

To keep up on the SOA work being done by Global, go to the Web site of the Department of Justice's Office of Justice Programs periodically and see the latest publications, events, training opportunities, and news. To provide input to your court representatives on Global, contact the Technology Division of the National Center for State Courts (www.ncsconline.org/D_Tech).

A number of state court administrative offices and trial courts are now undertaking pilot projects to test GJXDM and other prospective parts of a Justice SOA. You will have to hurry if you want to be the first in your neighborhood to test drive the Justice Reference Architecture! Call 1-888-846-6746 or e-mail tech@ncsc.dni.us.

Collaborative Distance Learning

Developing education and training programs has always required substantial investments in time and resources, and the use of technology as a delivery mechanism increased these investment costs. The expectations of savings from reduced travel and lost work time were not realized because of the expenses required for infrastructure development and technology purchases. The introduction of some newer versions of existing technologies and the increased availability of broadband service are tipping the balance toward the increased use of technology in the development and delivery of educational programs. However, the investment costs remain high. Using a new education and training model, state courts can take advantage of the NCSC's educational technology infrastructure to offset these costs while meeting the challenge of developing programs quickly and affordably. Many may find this model an effective choice, although no single strategy works for every court.

Typically, courts have training needs that are met using their own staff experts or trusted consultants with the necessary expertise and knowledge. These trainers develop programs by creating PowerPoint slides and other presentation materials that are used in face-to-face classes. Multiple sessions of the class are held in various locations to train all of the appropriate staff. In this model, the course-development cost may represent a small percentage of the overall training budget if the class is presented repetitively and both presenters and participants are required to travel to remote sites.

Anyone familiar with this training model recognizes that there are substantial costs in travel planning, hotel negotiations, cost reimbursement, presentation hardware, schedule coordination, etc. Some of these expenses are not reflected in training budgets and cost accounting as they are difficult to capture. Many presenters and participants are expected to "absorb" these expenses into other budget lines. Calculating the "true" costs of education and training programs requires recognition of these expenses.

The limitations of this approach are many, and often training for court staff is limited due to cost and lost time from work. Other consequences may be the elimination of training topics and a lengthy development cycle that prevents timely training on salient topics.

An alternative model uses NCSC's expanded educational technology infrastructure. There are two essential ingredients in this model:

1. A court's training content and an experienced trainer who has content expertise.

2. NCSC's technology infrastructure to record and disseminate this content.

The first "ingredient" is necessary for any education and training program. The development expenses required are necessary for either face-to-face presentations or electronic dissemination. The dissemination "ingredient" can be met by utilizing ICM's education-technology capability. This can reduce both development cost and time.

On the surface, the process for this model is simple. The court trainer makes a presentation, which is recorded using specialized hardware and software. For best results, the presentation should be made in the Education Technology Center at the NCSC. It is possible, however, to record the presentation at any location with standard training-room capabilities. The presentation emulates a typical face-to-face presentation, including PowerPoint slides and other visual materials. The finished recording is an encoded file, which contains all of the audio, video, PowerPoint slides, and other visuals. The encoding process is completed in a matter of minutes, and the entire presentation is then loaded on the Web where it can be accessed using Windows Media Player.

Using this model, many topics that are taught repetitively can be recorded and delivered anywhere, anytime. Additionally, presentations that require quick development and dissemination may also benefit. Economic and strategic decisions will dictate when this education-and-training model is most effective. Like every education decision it should be viewed as one dissemination mode that can be used either by itself or as a blended element of a larger education and training strategy. In many situations, it could be a cost-effective alternative or an expedited model of education and training programs reaching the court audience.

Every organization is challenged to stretch the limits of geographical learning to meet the knowledge demands of the workplace. Using electronic tools, the courts have the potential to create collaborative "learning systems" by working in partnership with state providers and the NCSC. Imagine a learning system that creates a judicial library of e-learning courses available to every court employee with Internet access. If this learning system responds to the needs of the learners, leverages technology, and is efficient in the development process, it can transform not only education and training programs but also the way courts conduct business.

UPDATES

SAME-SEX MARRIAGE UPDATE

Ann Keith
Consultant, Knowledge and Information Services, National Center for State Courts

State legislatures and voters are passing laws and constitutional amendments banning same-sex marriage. State courts are grappling with the constitutionality of the legislation, reaching different conclusions about same-sex marriage, civil unions, and full-faith-and-credit issues stemming from the federal Defense of Marriage Act.

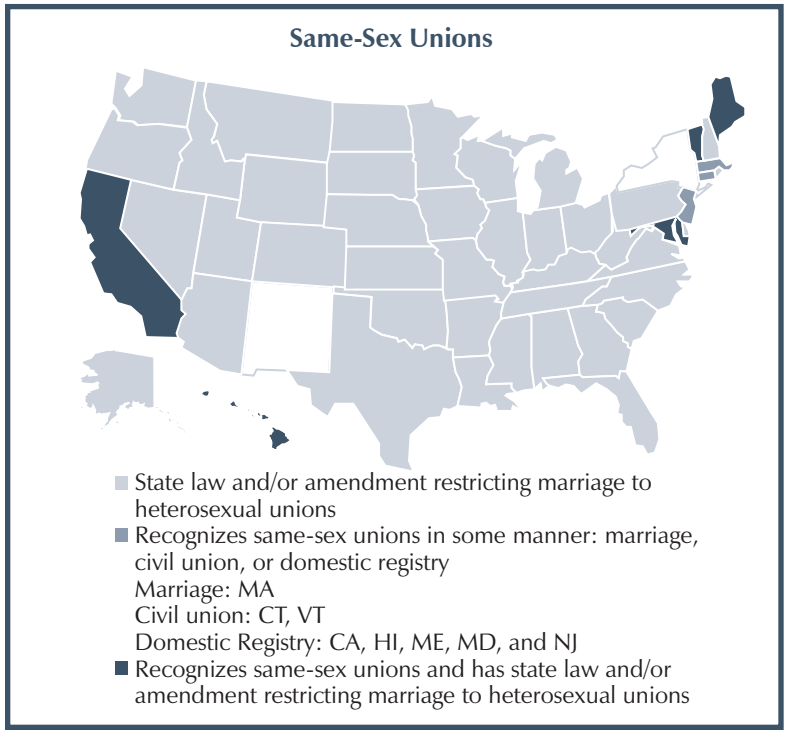
Legalizing same-sex marriage and civil unions continues to be a controversial issue for voters, legislators, and state courts. Since the early 1990s state courts and the federal government have considered whether same-sex couples should be allowed to marry and be provided the same rights as heterosexual 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] Another emerging issue is whether same-sex marriages and civil unions legally performed in Massachusetts, Vermont, Connecticut, or foreign countries will be recognized in other states

Same-Sex Marriage, Civil Unions, and Domestic-Partnership Registries

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.

Two states allow civil unions. In April 2005, Connecticut became the first state to voluntarily adopt a statute similar to Vermont's civil-union law, allowing same-sex civil unions beginning October 2005.

Five states, California, Hawaii, Maine, Maryland, and New Jersey, have statewide domestic-partnership registries. Domestic-partnership registries, which are more commonly found in municipalities, permit a couple who live together in a committed relationship and who meet various qualifications to publicly register their status as "domestic partners." The registries permit partners to have a symbolic recognition of their union, and some registries confer certain benefits, usually workplace and health benefits reserved for spouses, to the registered partner.



Proposed Constitutional Amendments

Eighteen states have state constitutions that codify marriage as a right exclusive to heterosexual couples. Similar constitutional amendments will appear on ballots in four states: Alabama, South Carolina, South Dakota, Tennessee, and Texas. Constitutional amendments banning same-sex marriage are pending in 11 states: Arizona, Connecticut, Delaware, Illinois, Iowa, Maine, Massachusetts, Minnesota, New Jersey, North Carolina, and Oklahoma (banning civil unions). Four states will

require a second legislative vote before placing similar amendments on the ballot: Indiana, Massachusetts, Virginia, and Wisconsin.

Proposed Changes to State Statutes

Only six states have no laws explicitly banning or allowing same-sex marriage, civil unions, or domestic partnerships, and of these, four states have pending statutes banning same-sex marriage: New Jersey, New York, Oregon, and Rhode Island. Conversely, four states have introduced bills legalizing same-sex marriage, civil unions, or both: California, Connecticut, Maine, and Rhode Island (the only state that has proposed laws on both sides of the issue).[2]

Court Rulings

State courts in California, New York, and Washington have ruled that same-sex marriages are legal. These rulings are stayed pending appeals.

In the federal courts, a judge struck down the same-sex marriage ban written into Nebraska's Constitution on May 12, 2005, saying the measure goes beyond banning marriage and denies gay couples fundamental rights guaranteed in the U.S. Constitution. The judge did not order Nebraska to recognize same-sex marriages. The state will appeal the ruling to the U.S. Court of Appeals for the Eighth Circuit.

For more information on this topic, visit the "Same-Sex Marriage" module found on the CourTopics database at www.ncsconline.org.

ENDNOTES

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

[2] See www.stateline.org.

COURT FILING BLUE UPDATE

Tom Clarke
Vice President and Chief Information Officer, Research and Technology, National Center for State Courts

Courts are increasingly required to become more efficient and make their services more convenient using technology. OASIS ECF 3.0 will lower the costs of doing this for e-filing by standardizing the requirements, interfaces, and exchanges in a way that multiple vendors can support and courts with different business models can use.

Court Filing Blue Update

You may think that someone forgot the trailing "s" and this is a lament about the difficulties of filing a case document in a court. Not so. The title refers to an OASIS project to update an open national standard for court electronic filing. The code name "Blue" was originally chosen because the sponsoring group had not decided on a version number. Let's pick up the story after a brief recap.

OASIS is an open-standards-creation body for Internet protocols of all kinds. Several Legal XML technical committees have been working for some years within OASIS on a set of justice-related open standards for sharing information and exchanging data.

The OASIS Legal XML Electronic Court Filing Technical Committee (TC) originally submitted a proposed national standard to the COSCA/NACM Joint Technology Committee (JTC) a few years ago. Version 1.0 was updated a year or so later to incorporate the latest XML schema approach and become compatible with an early version of the national justice data model, or GJXDM.

Legal XML is planning to release a partial update of the previous e-filing standard to the JTC. Blue will officially be known as OASIS Legal XML Electronic Court Filing 3.0 when it is submitted to JTC this summer. The specification is not yet complete. Almost all of the functional requirements are contained in the proposed specification, although some of them are deliberately limited in scope for the first iteration of Blue. These requirements are described in an extensive set of use cases. It is still undecided if a full-electronic-service capability will be supported in Version 3.0 or left for a later release.

A full set of messages are also included in the specification. In fact, the interfaces and messages between them constitute the main contents of the proposed standard. The messages are divided into filing transactions, queries, and responses to both. All filings can be done by case type. Because this is first attempt to provide a consistent set of case-type-specific filing information across a variety of actual court practices, the TC expects the JTC to carefully review its specification for completeness and usefulness.

The Blue specification will also include a set of messaging profiles that embody the "nonfunctional" or technical requirements. These requirements include such things as the security model, the approach to reliable messaging, and any privacy requirements. All messaging profiles must support the set of technical requirements. The TC decided to start with a Web-services profile, since it is widely supported by industry vendors. Other profiles are planned for future releases.

The TC will not complete the messaging profiles until fall 2005, so the complete specification will be available to the JTC at the winter meeting. The TC expects its proposed standard to undergo the new JTC review process for prospective standards. Most important, that process requires several implementations, so that the court community has an opportunity to learn some lessons about how well the proposed standard really works. The TC fully supports this approach, which is consistent with the requirements of OASIS for its own standards.

Policy

Why should courts consider using Blue instead of the earlier version of the standard? There are several important reasons. First, the scope of the standard is greatly expanded from the original, very limited content. It now explicitly handles the major case types in different and appropriate ways. It includes a full set of message types that match and support the use cases. It supports a fairly complete set of technical requirements with its modular messaging profiles.

Second, this expanded scope has been carefully mapped to the also greatly expanded GJXDM. Further, GJXDM guidance on the creation of so-called Information Exchange Packages, or IEPs, is being followed to create the standard specification documentation. To other consumers of GJXDM-based exchanges, court transactions based on this specification will be compatible with their other exchanges.

Third, Blue attempts to be very flexible in all areas. This goal reflects the reality that courts differ significantly in the business models they use to implement e-filing. Their vendors exhibit a similar range of approaches. A national standard must support all of these business models in a consistent way without any particular bias. Doing so is not an easy feat, but it provides significant new value to users of the standard.

Finally, the idea of essentially equivalent messaging profiles that can be chosen among to underlie the functional part of the specification is a powerful new idea. Courts are not forced into one technical architecture—even one as popular as Web services. It may prove to be a model for standards work by the broader justice community on messaging in the coming years.

Note that Blue is not yet complete and has not yet been implemented anywhere. It is true that many vendors with extensive court-implementation experience are working on the specification, so we should expect it to be relatively mature. Still, no specification gets everything right the first time, so we should expect a lengthy learning curve. As each new version comes out, it should respond to lessons learned. So, there is no reason to feel blue about Blue.

CONTROVERSY AND COMPROMISE ON THE WAY TO ELECTRONIC FILING

Roger Winters
Program and Project Manager, King County Judicial Administration, Washington

Electronic court records and electronic filing are more than technological challenges. They entail changes in practices and presumptions about documents, records, signatures, and many related things. Controversy over a state rule to authorize electronic filing in Washington showed how key nontechnical issues must be resolved.

The King County Superior Court, a court of general jurisdiction headquartered in Seattle, Washington, with 51 elected judges, serves the twelfth-largest county in the United States. The superior court and the Department of Judicial Administration (DJA, the superior court clerk) instituted electronic court records (ECR) in 2000: the official file for cases opened in 2000 or later is electronic. Submitted paper documents are scanned, creating electronic images, and (with some exceptions) hard copy has not been retained since 2002. This fundamental reform in the medium for retaining the "official" case record yielded many practical efficiencies for the court, clerk's office, other heavy users of court files, and the public, who access the case records at terminals in the clerk's office.

Despite early concerns, resistance, and uncertainty, convenience (desktop access vs. waiting for file-room retrieval), enhanced security (through duplicate records, password access, and heightened security over sealed records), and ease of use (requiring only an Internet browser) made electronic court records a near necessity for most. Leaving the document-creation process unchanged, King County effected a radical change whose practical benefits posed few challenges to basic beliefs.

Electronic filing was the next step, to give filers a secure way to send documents to the clerk over the Internet for entry into the official case file. With each "e-filed" document, there would be less work to receive, sort, prepare, batch, and scan papers by adding them as images to the electronic case file. This was squarely in line with technology trends in court management. In recent years, many federal district and bankruptcy courts had mandated electronic filing, which was also of great interest to state and local courts. To promote similar approaches and mutually compatible systems, on recommendation of their Joint Technology Committee, the boards of the Conference of State Court Administrators (COSCA) and the National Association for Court Management (NACM) adopted detailed national technical and functional standards for electronic filing.[1] The State of Washington's standards for electronic filing reference those standards.

"Electronic filing" has been the term most used to label the overall process of which it really is but a part: "electronic court records." In King County, electronic filing, understood correctly as a delivery mechanism, elicited more objections than had been voiced when the clerk stopped keeping paper file folders. The controversy was not over technical issues, standards, or implementation details. It arose from differing beliefs about how people might use or abuse it.

Proponents of electronic filing justify it based on business reasons, sometimes with a vision of more efficient information management, but most often as a response to practical necessities, like having to do more with limited resources. To advocate for new technology, they must seek support in a calm and rational way. Emotions, like excitement about the technology itself, are usually not emphatically expressed because such advances won't (and shouldn't) happen based on enthusiasm alone.

Those who question electronic filing may do so feeling that fundamentals may be rashly changed. Seeing only clear, rational business reasons, advocates of electronic filing may be dismayed about the opposition they meet from those who feel the changes are not necessarily advantageous or benign. It is in everyone's interest that the issues raised by applying electronic technology to court records are discussed, analyzed, argued over, and, in time, settled.

Why would a labor- and time-saving way to put documents into electronic court files spark more concern than the shift to the electronic record had caused? What fundamental change lurked in electronic filing that hadn't come out before? It was an important change in process that brought out the controversy. With scanning, so long as documents were created and delivered to the clerk in traditional ways, how the clerk preserves them and makes them available for use is not much of a problem. Electronic filing introduces a critically important difference, something that scanning does not entail: when documents come to the clerk electronically, no official is in a position to see whether there are "original," pen-and-ink signatures on the documents being submitted for inclusion in the case file. This was a hot issue

because it raised questions about a fundamental thing that most people take for granted—signatures.

In 2002 an ad hoc committee was formed to develop a rule to authorize electronic filing in Washington State. One superior court already had a form of electronic filing, and others were planning to implement electronic filing in a year or two. A state rule would prevent courts from building radically different electronic filing systems for which filers with cases in more than one court would have to own and master multiple programs, techniques, passwords, and practices. Several things in the proposed rule were not controversial: Electronic filing would be voluntary. Electronic service would be okay if the parties agreed to be served electronically. Wills, negotiable instruments, and foreign documents could not be filed electronically. Clerks could electronically notify parties who had agreed to that. The end of the filing day would continue to be at the closing of the clerk's office.

The proposed rule said that the person who owned the user name and password logged in at the time of the electronic filing thereby signs the filed document. That filer would retain the signed paper-and-ink version of the document (the "original") on file, able to produce it for the court and others if there is ever any question about its authenticity. Digital signatures would not be used to authenticate signatures on electronic documents. Judges' working papers, proposed orders, and other courthouse documents would not be handled through the electronic court filing system, at least not yet.

Rules similar to those followed by others, most notably federal courts, were proposed for additional signatures on a document by third parties, such as affiants and declarants. This would be similar to how the state's GR 17, which went into effect in September of 1993, authorized filings by fax: "The attorney or party sending the document via fax . . . shall retain the original signed document until 60 days after completion of the case."

Reaction to the proposed rule was strong. Proponents of electronic filing seemed surprised by its intensity. Objections were most fervently voiced by practitioners in the area of family law. Attorneys, staff, commissioners, and judges, who were intimately familiar with the workings and dynamics of family-law cases, were very concerned by the proposed rule. They felt the signature methods would be highly destructive in family-law cases and perhaps elsewhere. The controversy over this at times made it seem unlikely there could ever be a basic agreement to allow electronic court filing.

Family-law matters are intense due to their highly personal content. If parties have not found resolution outside of court, they are typically in heightened emotional states when they bring their disputes before the court. In most family-law cases, one or both sides are self-represented (pro se) litigants. Pro se litigants lack the training of attorneys, and they also lack the professional incentives attorneys have to comply strictly with court rules. With children, abuse allegations, and personal and courtroom safety to think about, court officials, staff, and family-law workers face one potentially critical situation after another every day.

The advocates for electronic filing were well prepared to present the business case. They may have been taken aback by the strong feelings voiced against it. It must be noted that the opposition did not come from a nostalgia for paper records, nor did it arise from hostility and suspicion about computer technology. Those who questioned the proposed rule frequently voiced support for electronic filing, saying they hoped a workable solution could be found so all could enjoy the practical benefits. (Remember, almost all of the actors had by this time two or three years' experience accessing court files electronically thanks to King County's ECR system.)

Hypothetical examples were offered to illustrate the defects of the signature proposal. Citing experiences in other courts was not a sufficient counter. No response seemed to get at the underlying feeling that there would be serious problems. Proponents of electronic filing could not overcome the expectation that, given motive and opportunity, a filer would be tempted to cheat, and the cheating might well go undetected. Significant personal damage to families and children could be the result.

In February 2003 the Administrative Office of the Courts engaged a national expert who conducted a daylong presentation about electronic filing—how it worked, the experience of other courts, the business and technical standards that had been built, and more. Representatives from many areas of legal practice, including family-law commissioners, attorneys, and advocates, attended. The presentation included a detailed review of a variety of techniques and tools that have been employed to handle signatures on electronic filings, from recorded voice markers to personal numbers/passwords, biometric tokens, pictures, and more.

The family-law group voiced strong support for one method—they were willing to require filers to digitally scan documents that had been signed in pen and ink and then, and only then, file them electronically. It was argued that the resulting scanned images in the file would show that the signatures existed as represented. A technical answer to this was that a scanned image of someone's signature could be cut and pasted as a graphic into an electronic file or onto an imaged page. This proposal, despite its appeal to the family-law community, was resisted mainly due to concerns about access to justice: litigants who could not afford their own scanners would be forced to pay to have their electronic filings scanned before they could enjoy the efficiencies from submitting them electronically for filing.

Exchanges about electronic filing continued through the summer and into the fall. In September 2003, the Washington Supreme Court issued the final version of GR 30. It required that to sign a document filed electronically, one would have to link one's user ID, password, and a personal information number (PIN) with the record of the electronically filed document. Electronically filed documents signed under penalty of perjury would require extra identifying information.[2] This would apply to third-party signers, affiants, declarants, expert witnesses—anyone whose signature would need to be demonstrably linked with a filing.

The case for GR 30 rested on business issues, including savings in work and time, and pointed to standards and precedents for support. Opponents believed that litigants in heightened emotional states would be tempted to abuse e-filing if signatures were accepted as proposed. Whatever the proponents' responses, they could not prove that the opponents' belief would be groundless. The rule was adopted without a public-comment period (since a great deal of comment had taken place during its development), and electronic filing in Washington was authorized. The strictures adopted to discourage abuse by filers in family-law matters would apply to filers across all case types. As the clerk's office staff fanned out to demonstrate the new electronic filing system, they learned how such strictures would likely keep many from using and relying on electronic filing. All this means that the State of Washington, like many other states, had to build in complexity that manifested itself as a disincentive for the many who might otherwise be willing to use electronic filing.

The lesson? Business cases do not address the objections many voice. The beliefs on which objections are based must be understood, acknowledged, respected, and addressed skillfully and thoughtfully; otherwise, there might be no electronic filing at all.

ENDNOTES

[1] These standards can be found at the National Center for State Courts' Web site: www.ncsconline.org. First, select "Technology," then "Standards" to reach the page where they are located.

[2] Washington now requires filers to provide their Washington driver's license or state ID card number if they want to file affidavits, declarations, and the like. Clerks have to record information demonstrating that anyone signing an electronically filed document has done so by personally logging on to use the court's electronic filing program.

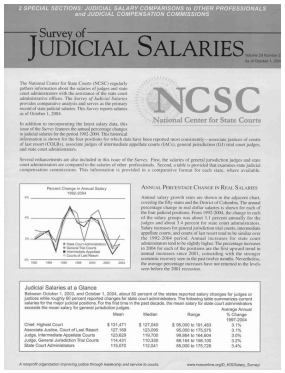
NCSC SERVICES AND RESOURCES

COURT CONSULTING SERVICES

NCSC's Court Consulting Services Division (CCS) provides direct consulting services to improve the management and operation of state appellate courts and state and local trial courts. CCS maintains a team of experts in a variety of disciplines, who provide services in many areas, including:

- Court Governance and Management
- Workload Assessment
- Court Facility/Security
- Caseflow Management
- Court Technology
- Jury System Management
- Technical Assistance

To learn more about CCS, please check the National Center for State Courts' Web site at www.ncsconline.org/consulting; call 1-800-466-3063; or e-mail Laura Klaversma at lklaversma@ncsc.dni.us.



SURVEY OF JUDICIAL SALARIES

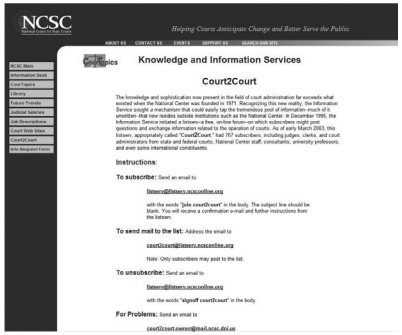
The NCSC regularly gathers information about the salaries of judges and state court administrators with the assistance of the state court administrative offices. The *Survey of Judicial Salaries* provides comparative analysis and serves as the primary record of state judicial salaries. Each edition includes a special section that addresses current judicial issues, such as judicial salary comparisons to other professions, judicial compensation commissions, and judicial leave.

COURTOOLS—GIVING COURTS THE TOOLS TO MEASURE SUCCESS

CourTools is a realistic set of 10 performance measures that are practical for courts to implement and to use. *CourTools* supports efforts to improve court performance by helping to:

- Clarify performance goals
- Develop a measurement plan
- Document success

Download a copy of *CourTools* at www.courtools.org.



COURT2COURT

Court2Court is a free, online forum where subscribers post questions and exchange information related to the court operations. Subscribers include judges, clerks, and court administrators from state and federal courts; NCSC staff; legal experts; and university professors.

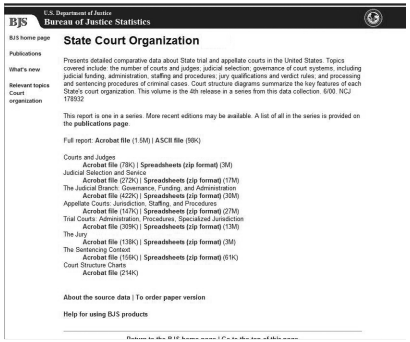
To subscribe, send an e-mail to listserv@listserv.ncsconline.org, with a blank subject line and the words "join court2court" in the body.

EXAMINING THE WORK OF THE STATE COURTS

This publication provides a comprehensive, nontechnical analysis of the business of state trial and appellate courts. Accurate, objective, and comparable data across states provide a yardstick against which states can consider their performance, identify

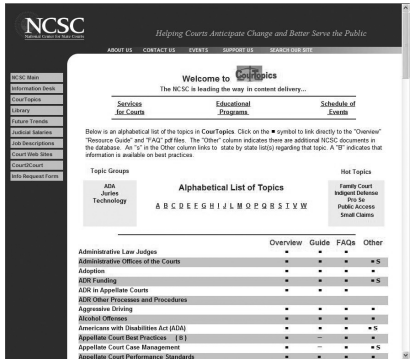
emerging trends, and measure the possible impact of legislation. *Examining the Work* provides the baseline data from each state needed to answer the most important questions facing the state courts.

STATE COURT ORGANIZATION



State Court Organization presents detailed comparative data about state trial and appellate courts in the United States. Topics include the number of courts and judges; judicial selection; governance of court systems, including judicial funding, administration, staffing, and procedures; jury qualifications and verdict rules; and processing and sentencing procedures of criminal cases. Court structure diagrams summarize the key features of each state's court organization. This publication can be found at www.ncsconline.org/D_Research/publications.

COURTOPICS

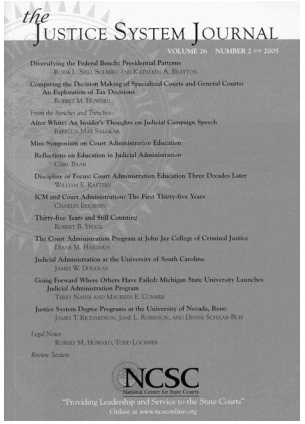


NCSC's online database at www.ncsconline.org is your first source for finding the information your court needs in more than 120 subjects, including

- Court Security
- Indigent Defense
- Financial Management
- Jury Management

CourTopics is a service of NCSC's Knowledge and Information Services office.

THE JUSTICE SYSTEM JOURNAL



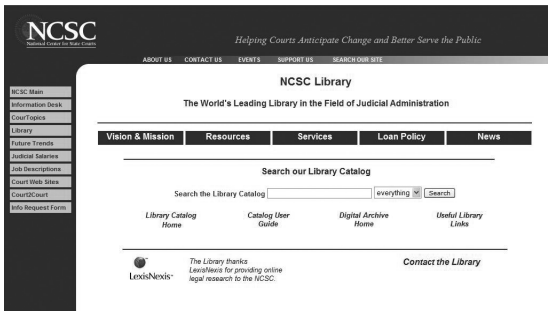
The National Center for State Courts' *Justice System Journal* is a refereed, scholarly journal dedicated to judicial administration that features the latest scholarship on topics of interest to judges, such as "alternative" courts, court administration and management, and public perceptions of justice.

Published three times per year; rates are $40/1 year, $70/two years (international subscribers, except Canada, should add $30 for delivery via air mail PMT). For more information and to subscribe, go online to http://www.ncsconline.org/D_Comm/Services/Submissions/JSJ1.htm.

NCSC'S LIBRARY

The National Center for State Courts' Library hold the largest collection of materials relating to court administration—more than 32,000 volumes in various formats, such as print, video, and CD ROM. Many of these materials are available for loan to the court community, with some posted online in NCSC's new Digital Library. Users can search the Library's collections via NCSC's online catalogue, iBistro.

For more information, e-mail library@ncsc.dni.us or phone NCSC's Knowledge and Information Services at 800-616-6164.



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DENVER, CO
707 17th Street, Suite 2900
Denver, CO 80202-3429

ARLINGTON, VA
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Arlington, VA 22201

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111 2nd Street, NE
Washington, DC 20002-7303

www.ncsconline.org

Knowledge and Information Services (800) 616-6164

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