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It is amazing how small the active court community really is. Our community suffered a major loss with the untimely passing of Chris Crawford. In his more than 36 years of court experience, Chris managed municipal courts in California, served as chair of the Forum on the Advancement of Court Technology (FACT) and taught extensively on technology and court-related topics across this country. I considered him not only a respected colleague, but a true friend. He will be sorely missed.

Last July, I penned welcome messages for both this column and the NACM website. In both messages, I set forth the 10 goals for my presidency. In this, my last President’s Message, it seems appropriate to update you on the status of each.

- **To Begin Goal Implementation of the Six-Point NACM 2010–2015 National Agenda**: We have a National Agenda Subcommittee of our Planning Committee hard at work on this initiative. We have dedicated both of our 2011 conferences to this area. CCJCOSCA has a resolution pending in support of the National Agenda. We have added a National Agenda Section to the website. Progress is ongoing.

- **Create a Re-Membering Effort**: This initiative, geared at getting members who have left the organization to come back, is beginning to see results as our total number of members continues to slowly increase. I would like to acknowledge the efforts of Past President Paul J. Burke and Membership Committee Chair Michele Oken in coordinating activities in this area.

- **Implement a Strong Distance Learning Initiative**: With the assistance of the State Justice Institute (SJI), we have completed brief overviews of half of the core competencies that are now in the public area of the website. We have also posted eight videos of workshops from the 2011 midyear conference in the Members Only section. We plan to double that number at the annual conference. Our Early Career Professional (ECP) group has been hard at work planning and delivering a series of webinars to members. Together we have made great progress on this goal.

- **Create a Plan for Updating the NACM Core Competencies**: We wrote and submitted a grant request entitled, NACM Core Competencies Revision Project 2011. I am pleased to report that once again SJI, this time in concert with the Bureau of Justice Assistance (BJA), has funded this important work. This multi-year grant will allow us to update this important body of knowledge. A Request for Qualifications (RFQ) has been developed and is being released to hire a coordinator for this effort.

- **Maintain Budget Accountability by Creating a Financial Plan/Investment Strategy**: We have developed a diversified investment plan with Wells Fargo and it is totally implemented. We have created a new Finance Committee to work not only on this plan and grants, but other important finance issues as well.

- **Continue Focus on Grant Funding**: As reported above, we have been successful in securing funding for core competency updates, distance learning, and our conferences.

- **Improve Communication Through Our Publications, Website, and Social Media**: Court Manager and our e-newsletter Court Express are both world-class publications. In 2011, three mini-guides will be released. 2011 version of Court Administrator: A Manual was released in January. A mini-guide on the 4th National Symposium on Court Management held in Williamsburg, Virginia, in October along with a mini-guide on reengineering in the courts will also be released later this year. NACM is available on Facebook, LinkedIn, and Twitter. We have formed a working group that is actively engaged in forging a communication plan for the organization. We hope to have it completed by the annual conference.

- **Revitalize and Restructure Our Committees**: As reported, we have created a new Finance Committee. A Communication Plan Workgroup is looking at our Publications and Website Committees.

- **Explore Additional Association Partnerships**: I dedicated my last column to this topic. NACM has a host of active partnerships and is working on even more to further our mission.

- **Serve and Represent the NACM Membership**: It is often said that every leader casts a shadow. I hope in the final analysis it will show not only in what is summarized here, but in what comes to fruition in the years ahead, that I have cast a shadow for good for NACM and our members. I can only say that it has been an absolute honor and pleasure serving as the 26th NACM president.

Management guru Peter Drucker once said that managing complex organizations is the work for a team rather than one person. It has proven to be an absolute truism this year. I must thank my fellow officers for their support and guidance. A special thank you goes out to our hard working board members for all of their efforts in providing visionary leadership to the court community. To you, the loyal NACM members, thank you. Your continued support has been one of the real high points of my career. Lastly, to the very talented staff at the National Center for State Courts, thank you for your continued hard work in supporting NACM’s important mission.

I would be remiss if I didn’t conclude this article by reminding you of our 2011 annual conference, July 10–14 at the Red Rock Resort in Las Vegas, entitled, “Pushing the Boundaries: Coming Together to Strengthen and Support the Administration of Justice.” Justice Sandra Day O’Connor will be a special guest at this conference. Hope to see you there.
The lead article in this issue is from the midyear conference in February — Reengineering the Courts for the Twenty-first Century and the Challenges to Court Leadership. I was urged by colleagues who attended the conference to include the full text of Justice Broderick’s speech in CM because it was such a powerful presentation. If you are not experiencing fiscal crisis, you are in a very, very small club! Justice Broderick captured not only our current predicament but forecasts our future, unless we make changes. There really is no choice; some (perhaps many) of the old practices must give way so courts can move to a “brave new world” if we wish to survive and remain relevant.

Dr. John Martin’s session at the midyear referred to an article published in CM in 2000, which listed the trends that would be facing the courts in the upcoming 10 years (through 2010). I encourage you to take that list and see how your court has dealt with each of the six trends listed. On a scale of 1 to 5 (or whatever scale you prefer) score your court on the degree of change that has occurred during the 10 years that have passed. I expect it to be an enlightening exercise — either you have met the challenge or … you have much work yet to accomplish.

As is our tradition, additional synopses of the sessions from the midyear conference are included for those of us who were unable to attend.

The Rural Courts Network article reminds us that there are differences in how courts are considered and how they operate in more close knit communities. Rural courts have distinct issues and the Rural Court Network is one way to ensure that their issues are addressed and not lost among the large courts. Even if you manage/administer a “medium/large” court, there is something in this article for you.

Deconstructing the Phantom Communities article is a different type of article than usually runs in CM. It challenges us to consider a theory of what motivates the criminal and how we/society/courts might be able to intervene in that “phantom community.” This article demands your full attention; it is not one to be read in fits and starts.

We have the usual stellar articles from our regular columnists, including happenings in that other Washington (D.C.) that will affect us all, thoughtful comments regarding juror stress and how we might help our citizens deal with that, as well as ethics, interpreters, and us. The Technology FACTs column is appropriately devoted to Chris Crawford and the legacy he leaves behind — we’ll miss ya Chris!

This issue should come out just before you pack your bags for the annual conference in Las Vegas, I hope to see you there!
Times have certainly changed, but our mutual obligation to keep watch over the critical mission and capacity of the state courts has not changed.

Reengineering the Courts for the Twenty-first Century and the Challenges to Court Leadership

Remarks to the NACM midyear conference
February 7, 2011

By Chief Justice John T. Broderick Jr.
During my years on the bench, I witnessed and participated in an era of incredible change and challenge. Exponential change, really. Much of it was thrust on us and not welcomed or planned for. Before becoming a judge in 1995, I was a trial lawyer for more than two decades. I loved the trial courtroom and all it represented in American life. But the court system seemed more vibrant during my years as an advocate, more accessible to more people and far more affordable for those who sought justice. Times have certainly changed, but our mutual obligation to keep watch over the critical mission and capacity of the state courts has not changed. While our watch is more arduous and lonely than in years past, the obligation to keep watch remains. Much hangs in the balance. Success will require not only that we implement and manage real change but, more importantly, that we embrace it. All of you are critical to that success and well-equipped to achieve it.

During my 38 years as a lawyer and judge, both the importance and professionalism of court management has grown. Today, you are indispensable to the capacity of the American justice system to fulfill its core obligations. You are more skilled, better trained, better educated, and more dedicated than at any time in your distinguished history. What all of you do every day, while often below the radar, makes our justice system possible. You genuinely matter to the rights of a free people. Not many others can say that about the jobs and careers they chose, but you can. You should all be rightly proud of all you do.

For many people, you and those you supervise are the face of justice.
behind the counters in America’s courthouses. You also help to design and manage court operations and court infrastructure and oversee their effectiveness and overall consistency. While the judges may be more visible than you are, in many ways, you are just as important. Because of my admiration for what you do and the incredible commitment and competence with which you do it, I welcome this opportunity to share some thoughts with all of you this morning. I would like to focus my remarks on three areas: the forces I see that demand real change in the systems you manage, the type of systemic change that will be required to meet the demands, and the importance of enhanced court administration to implement and manage needed change.

Let me turn first to the forces driving change. At the top of the list are the expectations of the private marketplace. Technology, time, and money underscore them. Simply stated, we have become a nation of multi-taskers, more anonymous yet more integrated and interdependent. Efficiency, speed, and transparency have become the watchwords of our times. Doing more for less is the new imperative.

Instant communication is the “new normal.” Facebook, Twitter, blogs, Skypes, Blackberries, iPods, and iPhones are the new channels for social interaction. This list is not exhaustive or static, but it is revolutionary. The Internet is the new town square. The fax machine, while not yet an antique, is an endangered species. Once a novel and important invention, it has become dated, and it didn’t take too long for that to happen. In the twenty-first century, even change is at risk. Even change is changing.

Time and distance have been dramatically compressed by our new means of communication. As a result, diligence and efficiency will never be defined as they once were. 24/7 is the growing expectation in our virtual world. Weeks of waiting on a court calendar that was once perceived as timely is now seen as the old equivalent of months or longer by the unrelenting, pulsating world outside our windows.

Paper, still the mainstay of most state courts, is beginning to disappear from the rest of real life at an amazing pace. Just look at the growing financial losses of the U.S. Postal Service over the past decade. Letters are far less common than they once were, and Federal Express carries letters and packages that the postal service once shipped when it was the only game in town. Email has made Federal Express less relevant. Why wait for overnight delivery when the instantaneous click of a mouse will do the job in the blink of an eye — and for a lot less money. We’re in such a rush and so impatient that we’ve developed an Internet vocabulary all its own, with acronyms and abbreviations.

Even libraries are becoming less relevant to community life and knowledge. Some have shuttered their doors, and many others are struggling. Portable electronic reading devices like Kindles and Nooks are replacing books, especially for the millennial generation. Barnes and Noble is for sale. Borders is flirting with bankruptcy. Last year, online retailer Amazon sold more e-books than paper ones. That had never happened before. Indeed, 20 years ago that would have seemed pure fiction.

Many newspapers have been victimized by the “expectations speed bump.” According to a recent edition of The New Yorker, in the past three years, newspaper circulation and advertising revenues have plummeted, a fourth of all newsroom employees have been laid off or have accepted buyouts, and more than 100 free local papers have folded. Even some major city newspapers have disappeared. America Online has hired 900 journalists within the last year and is hiring 40 more each week. The news services we rely upon are changing.

More and more newspapers that have survived are moving to the Internet, but most have yet to figure out a business plan for sustainable profit. Even The New York Times seems to be having trouble finding the “sweet spot” in this new century that shows little respect for longevity, influence, or past importance. Nothing and no one seems indispensible any longer. Even the anchors of the twenty-first century are in trouble: General Motors and Chrysler filed for bankruptcy, and Ford narrowly escaped it. That would have seemed unimaginable 20 years ago; absolutely unimaginable. Just a few days ago, I was having lunch in an upscale chain restaurant — if there is such a thing — in Concord, New Hampshire, that had small, electronic menus on its tables from which you could both place your order and pay for it. It certainly was not good news for the wait staff, yet it catered to the dual realities of this new age: too little time and too little money. Computers don’t have 401(k)s, and they don’t need healthcare. They also don’t call in sick.

A few weeks ago, I read a brief article in a New Hampshire newspaper announcing that Blockbuster had filed for Chapter 11. It didn’t seem that long ago that Blockbuster was the cutting edge of the twenty-first century. Netflix and On Demand television moved it from the “cutting edge” to the “cutting room” floor. The only mistake that state courts and those who lead and manage them can make is to assume they are somehow immune from the riptides and strengthening undertows of these perilous times. The requirement for a smarter, less expensive, and more user-friendly court system will need to be
The only mistake that state courts and those who lead and manage them can make is to assume they are somehow immune from the riptides and strengthening undertows of these perilous times. The requirement for a smarter, less expensive, and more user-friendly court system will need to be fulfilled.

fulfilled. Just like paper, libraries, gas guzzling cars, newspapers, and old-style videos, there are alternatives to the current civil justice system. Either state courts will meet rising marketplace expectations or others will. The private justice system in America has already been flourishing, and the federal courts could handle more “customers.”

In addition to being battered by accelerating marketplace realities, the state courts are also confronting changing generational expectations. They can't be ignored, either. Let me share two brief stories that I hope make a larger point: it’s not whether state courts can survive with yesterday’s practices tweaked at the margins but whether the next generation will tolerate or even understand what most of us with more than 15 years of judicial service at all levels have grown to accept.

Just how real generation change can be was brought home to me last summer. A friend of mine who lives on Cape Cod year round took his family to Vermont over Labor Day weekend. When they were returning home, he told me, they passed through a tiny Vermont town — just a general store and a gas station. My neighbor was startled when his 16-year-old daughter, who was sitting in the back seat, exclaimed:

“Dad, what is that?”

“Where?” he said.

“Over there by the gas station,” she said, pointing out her passenger window.

As it turned out, she had spotted a phone booth. She had never seen one. After the big metal and glass box was explained to her, she went back to quietly texting. For many of us, our yesterday is unknown to others. There’s a lesson in there for state court judges and administrators who are often conflicted about both the need for meaningful change and their obligations to design it and direct its path. It’s not that the telephone in that odd looking booth couldn’t have completed Alyssa’s call, it’s just that it was so dated, unfriendly, exposed, and antiquated as to be unappealing. It actually required conversation to communicate. Now that’s a twentieth century notion! Texting through the ether from the quiet privacy and comfort of the backseat seemed a much better bet. Sixteen-year-old Alyssa will probably need the courts one day herself. If she sees us like that phone booth, she will either use the federal courts or the private justice system or complain about the services we provide her. None are good for public trust and confidence and none are pre-ordained.

Now my second story. Two years ago, I was flying home from Honolulu. My seat mate on that trip was a six-year-old boy named Jack. His parents were across the aisle and asked if I would mind changing seats with their son so he could be closer to them and I would have the window. Not a bad trade, I thought, when taking off from Oahu on a late afternoon picture-perfect day. As we were barreling down the runway a few minutes later, I asked Jack if this was his first flight. “No,” he said, a little exasperated, “I had to fly to Hawaii.” I had the sense Jack was regretting my company. Once we were airborne, Jack watched the movie and ate everything he was offered. At one point he consideredly tapped my forearm to ask if I was enjoying the flight. Jack had apparently decided to give me a second chance. When I asked where home was he replied, “The Chicago area.” No further details were offered. His parents had trained him well.
The final great force for change is state budget freefall aggravated by a growing lack of civic understanding, both inside and outside of state legislatures. Too many citizens and legislators seem not to appreciate the fundamental importance of state courts to the underpinnings of our constitutional democracy.

But what I remember most about that trip is that somewhere in the growing darkness over the Pacific, Jack’s father handed him a small device that he was able to hold comfortably in the palm of his six-year-old hand. He worked it like a fighter pilot. It had icons, text, and streaming video. I had no idea what it was. Given Jack’s earlier reply to my question about whether he was flying for the first time, I didn’t dare to ask him to identify it. But I remember wondering what Jack’s reaction would be if he saw the technology many state courts are using, including my own. To be blunt, I didn’t think he’d be impressed, and I wouldn’t have been proud to show him. Jack, I thought, will likely need the state courts one day himself. We all need to be prepared for his visit. Most of us have a long way to go before we’ll be ready. His expectations will be very high. Ours better rise to meet them, and others will need to join us if we are to make that happen.

The third force demanding change in state courts is the painful reality that more and more people and small businesses can’t afford the services state courts offer. Courts take too long [and] offer more process than is due, and lawyers increasingly cost too much for too many. Just ask yourself: “Could I afford to hire a lawyer and, if so, for how long?” Your answer will no doubt mirror the answers of most Americans. Four years ago, the president of the California State Bar authored an article about the neglected middle class in the state courts. “Of the many challenges that we face as a profession,” he wrote, “the one that should concern us most is that we now have a legal system for which the majority of Americans cannot afford adequate legal services … Either we’ll need to adapt our system to more actively meet more of society’s needs or society will change the system for us.” I agree with him. Delivering a product people can’t afford is not a formula for success in the twenty-first century. The billable hour, while still appropriate in some cases, cannot be the only arrow in the quiver. If it is, “do-it-yourself” lawyering will become even more of a growth industry.

The final great force for change is state budget freefall aggravated by a growing lack of civic understanding, both inside and outside of state legislatures. Too many citizens and legislators seem not to appreciate the fundamental importance of state courts to the underpinnings of our constitutional democracy. In many ways, declining civic knowledge may be the biggest threat to state courts. Combining this decline with the steep decline in state budgets could make for the “perfect storm.”

About a year ago, The New York Times warned that state courts were at a “tipping point” and were “spiraling into crisis” because of huge state budget deficits. For the 2010 fiscal year, for example, 45 state court systems experienced budget deficits ranging from 2 to 16 percent. In California, Arizona, and Iowa, the deficits have grown even larger. For the current fiscal year, state governments are expecting a collective $180 billion deficit that will certainly diminish court services. State governments are looking at structural deficits that could result in a collective $599 billion shortfall between revenue and expenditures for the fiscal years 2009 to 2012. This is worse than any recession in our lifetime. Even when the tide returns, it is not expected to reach old levels. Even in fiscally responsible New Hampshire, the looming budget gap, let me share a brief story. During
my last two years as chief justice, the state budget problems were severe. I testified twice before House Finance in a short time. Two weeks later, after a close but supportive vote, I ran into a committee member in a state house elevator. I thanked him for his support, and we talked for a bit. At one point, he said, “You know, judge, your testimony was very powerful.” Never having said anything powerful before, I was curious. “What did I say,” I asked, “that you remember?” “When you told us that the courts are actually the third branch of government. That was very powerful.” He responded without a hint of a smile. And he was our friend. Recently, a senior, elected executive branch official described the court system in a public statement as “an important state agency.” Two-thirds of American adults can’t name the three branches of government, and only 15 percent can identify the chief justice of the United States Supreme Court. Many more could name the three judges on American Idol. To paraphrase Thomas Jefferson, no nation can long exist both ignorant and free. If the civic knowledge gap continues, we will soon be road testing the soundness of Mr. Jefferson’s prediction.

It’s troubling that some people believe that courts should reflect the will of the popular majority. Under their view, if court decisions aren’t popular, cutting court budgets is an appropriate response, and in time, judicial independence will be eroded. When they can, some people vote judges out of office for just issuing unpopular opinions. Just look at the recent supreme court elections in Iowa. As I speak to you today, there are some in my home state legislature that would like to curtail or eliminate judicial review — especially where an act of the legislature is declared by the courts to be unconstitutional. Unless the civic knowledge gap is filled, declining budgets may be the least of our problems.

Having identified the forces for change, let me address the kind of systemic redesign that will be needed in the state courts to respond. It is greater than many of you may think. I know it is greater than I once thought. I would point to our experience in New Hampshire to suggest that effective redesign will require that court leadership and management be open to systemic change and that it will be necessary to suspend disbelief that real change is possible. As Mary McQueen, president of the National Center for State Courts, recently said, “Hoping and coping are no longer enough.” In these uncertain times, “failing in place” is a possibility for every enterprise — both large and small, public and private. State courts can “fail in place” too, even if the doors remain open and the lights are on. Some would say they are failing now. Since they handle almost 98 percent of all judicial business in the United States, failure would be catastrophic.

In New Hampshire, 73 percent of our annual judicial branch budget is spent on salaries and benefits for 620 non-judicial staff, 59 full-time judges, 15 marital masters, and 37 part-time judges. We also have numerous court security officers who receive modest per diem payments and no benefits. Still, they consume 5 percent of our budget. We spend about 12 percent of our budget on facilities. Our technology funding comes from a separate dedicated fund. After our essential spending is done, we have virtually nothing left to meet discretionary needs.

When I became chief justice in 2004, our supreme court undertook to modernize and streamline court operations to make them more efficient and more user-friendly for more people. We created a family division for a broad array of cases ranging from divorce to domestic violence, adoption, juvenile
delinquency, guardianship of minors, Child in Need of Services (CHINS) petitions, and termination of parental rights. We drew cases for the family division from all the trial courts in our state. The family division docket now accounts for more than 60 percent of all cases in our system.

We also created a self-funded, first-ever judicial branch Office of Mediation and Arbitration. It operates in all courts, including our supreme court. Many, many cases are being resolved without ever having a judge involved, and litigants overwhelmingly honor the deals they make. We also established a specialized opt-in docket for business cases. Many judges initially resisted it on the basis that every judge should be a generalist, so we asked the legislature to create it and the governor to nominate the first-ever judge to run it. It is now working well. We also made a whole host of changes to accommodate and assist the self-represented, and we dramatically enhanced our website.

When we finished, we thought we could rest for awhile. Certainly, we thought, we had done enough to accommodate changing times. Then state budget deficits grew and our appropriation declined. We were asked to make more cuts to our already reduced budget. Rather than lay off dedicated and experienced staff, all of us, from the chief justice to the newest staff member, agreed to save another $3.1 million through voluntary unpaid furlough days over our two-year budget cycle. This required the courts to close almost one day a month. Many counters are closed to the public, even when the courts are open, to allow staff to process paperwork without interruption. To save even more money, we suspended many civil jury trials, reduced court session days in some courts by 20 percent, and reduced our use of many part-time judges. As non-judicial staff retired, we held their jobs vacant. Today about 92 of our 620 staff slots are empty. Almost 15 percent of our full-time judicial positions remain unfilled, and more than 20 percent of our marital master slots remain vacant. Ironically, because we needed money to keep the court system afloat, we asked our governor not to fill these vacancies. We needed to use the money to pay retirement contributions and rising healthcare costs.

Although the budget deficits continue to grow, it is not, in my opinion, possible for our courts to take any more financial hits and pretend they are providing timely, thoughtful justice. It got so bad last year that four parties filed suit claiming their state constitutional rights to timely access to the courts were being abridged. Although the case was dismissed without a hearing on the merits, the point was made.

To stave off further requested cuts, my colleagues and I agreed that I would sit down with editorial boards to make the case that the hemorrhaging should stop. As it turned out, we received universal support from the newspapers for adequate funding. Mercifully, the cuts did stop. Not convinced, however, that we could hold the line for fiscal year 12 and 13, we established an Innovation Commission in March of last year and asked a successful private sector businessman to chair it. The commission had broad membership — some of it legislative. Its mission was broad, too. After 10 months of serious study and analysis, the commission just issued a 100-page report with significant suggestions for systemic change. Most prominently, the commission recommended a huge infusion of capital budget money for technology needs and also urged the formation of a circuit court, which
In these new times, court management can no longer hope to oversee and expand resources to meet growing demands with a twentieth-century paradigm of modest cost savings and efficiencies to guide them. All of you are in a footrace to keep the state courts viable and relevant.

would result from combining the district, family, and probate courts into a single entity. Judges in the new combined court would serve interchangeably on all types of cases. It also recommended consolidations and centralizations, which, in time, would eliminate 50 middle management positions, including clerks and deputy clerks of court. The commission also recommended that all speeding violation cases be removed from our district courts to our Department of Safety. The commission report promised to save $37 million in budget growth over this decade. It has received near-unanimous support from thoughtful media and legislative leadership. As tough as it would be to implement, it may be the only way out of our burning building. Since 30 percent of our staff will likely retire in five years, it is hoped that we could accomplish personnel savings without laying off any staff.

By March of last year, it was starkly apparent to us, despite our earlier efforts to enhance efficiency and reduce the rate of rising costs, that the court model we had on the ground was not fiscally sustainable. It is hard to justify a budget that is 73 percent people in today’s day and age when technology, centralization, and consolidation can, if used and managed wisely over time, supplant the need for many current court staff and future hires. The challenge now in my state is to make the legislature appreciate that if it gives the courts $5 million in technology money it cannot expect the courts to cut their operating budget by the same amount immediately. However, that will be a more focused discussion to have and perhaps a more successful one than asking the legislature to continually increase the court budget for an outdated system by 5 percent every year forever. Those days are over. We all need to find a new way out.

What does all this mean for you?

In these new times, court management can no longer hope to oversee and expand resources to meet growing demands with a twentieth-century paradigm of modest cost savings and efficiencies to guide them. All of you are in a footrace to keep the state courts viable and relevant. Not just for today’s users but for Alyssa and Jack, too. That’s what’s at stake. You have the unenviable task of doing so in circumstances where many legislatures demand undifferentiated cuts across state government while many lawyers and judges still believe that we’re in a “bad patch” but will one day return to the security and predictability of yesterday. While you’re trying to do your airport redesigns with fewer air traffic controllers than you need, you have to consider that more and more of the planes stacking up overhead don’t have pilots and others are too big for your runways.

I urge all of you to rethink the airport model on the ground. Maybe all the cases in our adversary system don’t need to be there. Maybe every plane doesn’t need to land at our airport. At the very least, maybe they don’t all need to land here in the first instance. Divorce cases come to mind. There has to be a better and less divisive, not to mention less expensive, way to dissolve failed marriages. Presenting each side with boxing gloves, expensive trainers and managers, and a professional scorer and referee might not be affordable or sound. In most cases, it may not work well for the kids, let alone the parties. Divorce cases remain a huge part of state court litigation.

A few years ago, our court heard an appeal involving an attorney’s lien in a divorce case. The narrow legal issue was whether lien procedures had been followed. The case involved a husband and wife who between them had $100,000 in assets. The wife’s legal bill for which the lien was sought was $30,000. In our state, where marital assets are presumptively divided equally, the math in the case demonstrated
that our system for handling divorces might well be broken, quite apart from whether the lien was perfected.

The twentieth-century way to address expanding needs and delayed flights at airports was to hire more people and pay overtime. Both those systems have vanished. You will need to find ways to do more in less time and less expensively than ever before. You may have to advocate for a tiered triage system in our adjudicative model, and you may have to design smaller runways with fewer planes for people to take so they can leave the airport with a solution they can actually afford. Maybe small aircraft have different needs than jumbo jets.

Technology enhancement and the elimination of paper are key. Creating more of a virtual courthouse open for business in one form or another seven days a week should be your target. Video conferencing and video hearings should be a priority, and interactive website capacity should be a goal. Airports don’t close at 4:30 in the afternoon, and I can make reservations online all night long.

Although you will be called upon to make do with fewer people, the people you will need to hire will need to be better trained and more skilled. They will not be inexpensive. Unless legislatures change their view on state employment, they will make your job of attracting high-quality, long-serving staff very difficult.

Judges and court management, as well as state legislators, will need to decide the core mission and expectation for state courts. The types and kinds of cases state courts routinely handle have changed over time, and more of them are jumbo jets. Many more involve families, and many of those small planes approach our runways without pilots. It’s getting more and more difficult to land aircraft. Before our jumbo jets go elsewhere or the small planes begin to crash, we need to figure out a better and more efficient airport design.

That’s really your challenge, your core mission. I know it won’t be easy or without false starts. But, I also know this. There are a lot of passengers in those planes who are counting on you and your incredible skills. And, by the way, our constitution promises everyone a right to land somewhere, and no one has an inexhaustible amount of fuel.

Thanks for listening and, more importantly, thanks for all you do.

ABOUT THE AUTHOR
Chief Justice John T. Broderick Jr. is dean of the New Hampshire University School of Law and former chief justice of the New Hampshire Supreme Court.
Members of the National Association for Court Management gathered in Baltimore this winter for the 2011 midyear conference. This year’s theme, “Looking Back and Thinking Ahead: The NACM National Agenda” provided an exploration of three priorities from the agenda:

- Improving Court Leadership and Governance
- Emphasizing Caseflow Management Improvements
- Preparing for and Responding to Trends

In his conference opening keynote, the Hon. John T. Broderick Jr., dean and president of University of New Hampshire School of Law (and former chief justice of New Hampshire) offered a look at “Reengineering the Courts for the Twenty-first Century and the Challenges for Court Leadership.”

Workshops covered topics such as effective court leadership and business process reengineering. An exhibit show on Monday gave attendees time to talk with exhibitors at their leisure and see many products firsthand. The following day, Dr. John Martin presented a keynote address on “Anticipating Future Trends — Things Court Leaders Can Do to Shape a Better Future.” Tuesday’s workshops included a look at technology, caseflow management, and high-performance courts.

Mark your calendar for the NACM annual conference in Las Vegas, Nevada, July 10–14, 2011
Looking Backwards and Forwards: Status Quo Scenario 2000 – 2020

(continued)

- continued to be challenged by more partisan, and ideologically driven judge selection;
- faced increased costs per case and more and more litigants;
- lost the support of former allies;
- faced increased scrutiny of resources and less flexibility in the use of resources at the courts’ discretion;
- struggled to provide services using a less professional force versed in the unique “justice” mission of the courts;
- experienced declining morale among judges and personnel who felt they had become mere cogs in an increasingly technologically sophisticated but less caring case processing machine.
Keynote Presentations

Monday, February 7
Reengineering the Courts for the Twenty-first Century and the Challenges to Court Leadership  See page 6

Tuesday, February 8
Preparing for and Responding to Trends

Presenter: Dr. John A. Martin, Center for Public Policy Studies
Reporter: Kathleen S. Gross

Anticipating change and making adaptations was the central theme of Dr. John Martin’s keynote address, which began the second day of the midyear conference. Dr. Martin, from the Center for Public Policy Studies, started by examining the trends that have shaped state courts in the past 10 years. He then discussed the trends facing state courts for the next decade, with the overall goal of helping the courts plan for the future. Dr. Martin’s essential message was that the trends facing the courts in the next 10 years can be predicted and that courts must adapt in order to better serve and shape the future.

In their 2000 Court Manager article titled “Courts 2010: Critical Trends Shaping the Courts in the Next Decade,” Martin and Brenda Wagenknecht-Ivey discussed the trends state courts should have then considered in planning. These key trends included: (1) increased demand for culturally appropriate court and justice services, (2) increased expectation of the court’s role in society, (3) changes in family composition and in the roles of societal institutions, (4) separation of people by class, race, ethnicity, and lifestyle preference, (5) increasing demand for justice services and accountability, and (6) rapidly emerging technology.

Dr. Martin emphasized how society has changed within the last 10 years, with increased diversity, increased demand for acceptance of alternative lifestyles, increased reliance on therapeutic approaches in justice services, and rapidly emerging information, telecommunication, and network technology.

Shifting from trends of the past decade to the future decade, Dr. Martin predicted that although expectations for court services will continue to increase, the funding crisis will continue to require the courts to do more with less. He thought that although there would be a decline in caseloads generally, there would be an increasing proportion of complex cases. In general, society will experience a dramatic increase in the use of social networking and similar technology and technology will expand into behavior monitoring and modification. This technology will be used increasingly by government and private insurance to intervene in areas once considered personal choices, such as smoking, dietary styles, exercise, etc.

Because of the change in our society, the local and state justice systems will become more involved in enforcement and adjudication of federal policies such as immigration, healthcare, and response to foreclosures. One of the key trends will be a consolidation or streamlining of the court professional and support systems along with a decline in the capacity for courts to obtain training, technical, and consulting assistance. This will be especially hard in light of aging facilities, equipment, and technology. Given all these challenges, Dr. Martin thought another result would be the need to develop and maintain a well-motivated workforce.

In light of the anticipated acceleration of these trends, Dr. Martin urged court leaders to shape a better future by redefining and clarifying the court’s mission and the scope of its service priorities. Courts should work to develop justice partners who understand and appreciate the court’s mission. These partnerships should be developed with the numerous court stakeholders, including local and state legislative and executive branches, justice partners, media, the general public, and the diverse ethnic/native cultures. The use of technology to improve case processing by the courts should enhance efficiency and allow for greater transparency of the court’s work. Finally, Dr. Martin encouraged development of a new court workforce that understands the unique nature of the court’s mission and the importance of the court’s service and role in society.
Marcus W. Reinkensmeyer

Marcus W. Reinkensmeyer delivered a timely presentation about the fiscal challenges facing courts and shared a variety of budget balancing strategies that administrators can use to address, plan for, and mitigate its impact.

Strategies outlined by Reinkensmeyer included negotiating the appropriation of additional revenue raised through user fees and court-ordered collections. Rather than depositing those monies into a general fund, the court can suggest adding it to their budget to help alleviate the costs of operating the programs. Other ideas proffered were exempting mandated expenditures from the base budget (such as judges’ salaries), prioritizing critical core functions, and outsourcing labor intensive non-core functions.

In another effort, all printed materials were evaluated to determine which could be streamlined or converted to online documents. To the extent that the court has not conducted one, a court mandated study can serve as a pivotal document to ensure reductions do not compromise the court’s ability to fulfill its mandated functions by citing applicable authorities and delineating required resources. Moreover, the text can serve as a starting point for discussion and guide collaboration with funding agencies.

A three-tiered framework was delineated in describing the scope of business process reengineering initiatives: 1) Internal: Court, 2) Justice Agencies, and 3) External: Community Services and Stakeholders. Reinkensmeyer showed how potential benefits and cost savings are enhanced by expanding reengineering efforts to other government agencies and external stakeholders. Rather than competing for limited resources on fixed budgets, changing the paradigm to incorporate all of these entities will bolster efforts to receive necessary funding as well as increase the sustainability of initiatives.

Collaboration is central in assessing business practices and reengineering initiatives. Reinkensmeyer shared the success his district had with the Regional Court Center (RCC) that was established in 2001. The RCC consolidates multiple settings in superior court through the direct complaint process by co-locating judicial officers, court staff, prosecutors, defense lawyers, interpreters, probation officers, and treatment services with courtrooms and jail detention facilities. Synergy created by bringing the different interests together on a daily basis increases the rate at which cases are resolved. Reinkensmeyer suggested that the same paradigm could be applied with the same efficiencies realized in family court and mental health courts. He concluded by briefly describing how assessing the efficacy of system changes can be developed using the National Center for State Courts’ CourtTools and High Performance Court Framework.

Reinkensmeyer is court administrator for the Judicial Branch of Arizona, Maricopa County.
This session explored the challenges and issues faced by a court, both internal and external. In order to provide effective leadership to the court, the creation of an executive leadership team will enhance efficiency and productivity in a judicial system. At the onset of the presentation, attendees participated in a survey ranking roles and responsibilities. Upon completion, the importance of blending the presiding judge and court manager as an executive team was illustrated.

Using the Denver County Court as the backdrop for discussion, an open dialog highlighted various ways a presiding judge and court manager function in different jurisdictions. The appointment or selection methodology of the presiding judge differs from court to court, such as the criteria being based on seniority, rotation, or qualifications and experience. The idea of caseload adjustment for the presiding judge and whether a reduction is necessary was addressed. Most felt it was beneficial for the presiding judge to have time for administrative duties and responsibilities.

In addition, the importance of supervision of case management from the executive team results in cases moving efficiently and effectively as indicated through performance data of the court. Judicial assignment of cases, calendars, divisions, and locations all play a role in leadership and responsibility.

The session outlined how the executive leadership team creates many positive outcomes for an organized court system with governance and structure. In this model, there is a definition of responsibility for facility and security, a sound understanding of budget and the fiscal administration and authority, standardized court procedures, strategic planning with shared vision and continuity of administration, as well as a liaison to justice stakeholders and the media.

Although many jurisdictions function differently, the interplay between the presiding judge and the court manager is an essential mechanism for effective court leadership.

Presiding Judge Mary Celeste and Court Administrator Matthew McConville are with the Denver (Colorado) County Court.
Role of Judicial Leadership in Caseflow Management

PRESENTER: William Dressel
REPORTER: Kelly Steele

How can we develop effective judicial leadership? How can you help your judicial leaders become better leaders? The National Judicial College convened a summit in 2008 to address these questions through the lens of caseflow management. This session presented the participants’ conclusions and the summit’s work product.

What is caseflow management? Caseflow management is the process through which courts move all cases from filing to disposition and is a core judicial responsibility. Effective caseflow management creates a process that facilitates timely judicial decision making and promotes access, due process, and equal protection; the appearance of doing justice; fair and impartial treatment; timely disposition; economical operations and reasonable cost to users to access court services; and acceptance of the system by stakeholders.

In order to ensure effective caseflow management and the provision of fair, timely, and economic justice, judges must provide leadership, demonstrate judicial commitment, and use administrative skills; document the existing caseload and identify available resources; involve the court administrator and staff; consult and collaborate with stakeholders; develop a caseflow management plan; and monitor the status of cases.

Effective caseflow management needs to be viewed as a work-in-progress that will be impacted by variables such as personality traits, caseload, culture, resources, turnover, size, and societal/economic conditions. Caseflow management is crucial to the effective delivery of justice. Case management succeeds when judges institutionalize an effective and efficient system serving the needs of all.

Dressel is president of the National Judicial College.
This session addressed reactions to the keynote address by Dr. John Martin and presented additional information on key trends that are likely to have the most significant impact on courts in the next decade. The main emphasis was on understanding strategic trends and on exploring what court leaders can do with this information in order to “shape a better future for our courts.”

In looking back at the past 10 years, it is clear that court leaders have been accurate in their understanding of major trends but less successful in deciding how to adapt to or maximize the opportunities derived from these trends. Examples of past trends include major alterations in family composition (e.g. one of every four children in the United States are children of at least one immigrant parent) and the demand for culturally appropriate court services.

In looking to the future, major trends include: use of high technology in the basic business processes of the court, structural deficits leading to a “perpetual funding crisis,” widening expectations for court services along with a substantial decrease in capacity, a declining capacity for courts to obtain training and technical assistance, declining caseloads generally, but an increasing proportion of more complex and difficult cases, dramatic increase in the use of social networking technology, growth of the “private justice system” in civil cases, increasing numbers of pro-se litigants, and increased cost per case.

In seeking to “shape a better future” for our courts, Martin and Wagenknecht-Ivey stated that courts must clearly define their mission and service priorities, streamline court structure and work processes, establish decentralized service delivery, forge new partnerships and collaborations, and embrace evidence-based risk assessment and other research-based practices. Finally, Drs. Martin and Wagenknecht-Ivey suggested that to get a better understanding of future trends and responses to these trends, participants should review *Built to Last* by Collins and Poras and *The Way We Never Were* by Stephanie Coontz.

Dr. Martin is director of the Center for Public Policy Studies’ Immigration and the State Courts Initiative. Dr. Wagenknecht-Ivey is president of PRAXIS Consulting.
The session introduced the High Performance Court Framework (HPCF) that National Center for State Courts (NCSC) staff developed to assist courts become performance-driven organizations. Dan Hall began the session by discussing the genesis of HPCF. As the CourTools have become more widely used, he and other NCSC staff began to look for ways to help tie that data, along with other information, to business decisions courts need to make.

Kasparek reviewed the framework, which uses the following four perspectives:

1. Customer perspective: How should we treat all participants in the legal process?
2. Internal operating perspective: What does a well-functioning court do to excel at managing its work?
3. Innovation perspective: How can court personnel respond and adapt to new circumstances and challenges?
4. Social Value Perspective: What is a court’s responsibility to the public and funding bodies?

The first two perspectives are assessed using tools such as CourTools. The last two perspectives are assessed by evaluating the organization’s strengths in areas such as technology, human resources, and public trust and confidence.

Hall then discussed the final element of the HPCF — “The Quality Cycle” — which links the other concepts into a process that is constantly looking to integrate performance improvement into operations. He suggested that participants implement the HPCF incrementally and stated that an assessment tool is being developed that will help analysis of data in each of the perspectives. The tool is designed to help users consider information in the context of the entire organization and focus on real problems.

Developers of the HPCF are looking for courts to volunteer to test some of the concepts. Anyone interested in being a pilot should contact either Tom Clarke or Dan Hall at the National Center for State Courts. For more information on the HPCF, see www.ncsc.org/hpc.

Dan Hall is vice president and Dale Kasparek is principal court management consultant for the National Center for State Courts.
Impacts of Federal Immigration Law on State Court Operations: What Court Managers Need to Know

Presenters: John A. Martin
Reporter: Caroline Kirkpatrick

You know you are in trouble when the presenter starts off the session with “this is usually a two-day course, and we have one hour.” Despite fears of information overload, Dr. Martin quickly put everyone at ease by clearly and succinctly outlining the purpose of the session — to consider the following:

1. Why we need to understand how immigration issues affect state courts
2. How the federal and state laws in this area intersect
3. What implications there are for what we, as court administrators, do
4. What types of additional resources are available to aid state courts in this area

Dr. Martin polled audience members to see which states were represented and then actively engaged everyone by using state-specific examples and issues. While he shared many important statistics (available on the Center for Public Policy Studies website: http://www.centerforpublicpolicy.org/), he also explained terminology that one must understand in order to meaningfully discuss immigration issues. We then focused on the Immigration and the State Courts Assessment Framework, discussing the conflicts that plague judges and court administrators in trying to manage these cases. We embrace the concepts of transparency, timeliness, equal access, and consistency, among others, but at the same time we must ask ourselves, “how far should state courts go?” For example, should state courts adjudicate cases involving undocumented and illegal immigrants? Should we assist the federal government in regulating immigration? Should we provide services to immigrants?

In terms of additional resources, “Implications of Padilla v. Kentucky for the Duties of State Court Criminal Judges and Court Administrators,” an article coauthored by the presenter and Steven Weller, was released in the winter 2010 issue of NACM’s Court Manager. While Padilla was briefly touched on during the session, this article provides a more in-depth discussion on the potential implications of this decision for state criminal court judges and court administrators.

Dr. Martin mentioned several other resources that are available on the Center for Public Policy Studies website. Under the “Immigration” section, managers can access both the criminal and the family and juvenile bench guides. There are also numerous articles, papers, and reports under the “Resource Library” and “Publications” areas. Finally, a note that may be especially important during this lean budget cycle: free technical assistance is available to state courts through a partnership with the State Justice Institute (SJI).

Dr. John Martin is director of Center for Public Policy Studies’ Immigration & State Courts Initiative. He can be reached at jamartin@indra.com.
Juvenile Courts: Are They the New Dumping Ground for Mental Health Issues?

**Presenter:** Sandra Metcalf  
**Reporter:** Jeffrey Tsunekawa

Metcalf gave conference attendees an in-depth look at how mental health issues are impacting the juvenile justice system. The purpose of the session was to educate those who work in the justice system on the growing trend of mental health issues being “dumped” on the juvenile justice system and in what direction courts should be going in order to address problems.

One of the lesser known facts Metcalf reviewed was how, in general, more mental health issues are manifested by females within the juvenile justice system than males and how females are the least understood and very much under-served due to being a minority number in the system. It is critical to address this population because of the high chances they will move into the adult system, the great birthing potential, and how they are the primary care takers of children.

Responding to our youth’s problem behaviors and disorders should also include attention to strengths on which treatment and rehabilitation can build, and they should also include families, as they can play a crucial role in accountability for youth.

Many children/youth with mental health disorders are entering the juvenile justice system due to limited community or other resources. Even schools are referring parents to the courts due to their lack of resources and training.

It’s time we begin working with youth who require their needs met on an individualized basis rather than the one-size-fits-all approach.

Sandi Metcalf, M.S., is director of Juvenile Services for the 20th Circuit Court in Ottawa County, Michigan. smetcalf@miottawa.org

Reengineering of Trial Courts — From Crisis to Stability

**Presenter:** Daniel J. Hall  
**Reporter:** Nina M. Thomas

Daniel Hall opened this session acknowledging the challenge facing courts across the country: “The courts are in a squeeze. There is too much work and too little resources, and the squeeze is not going away.” Reengineering is a mechanism for courts to implement major changes in times of urgent need. Addressing budget cuts in the usual manner year after year is perilous; cuts made in services, operating hours, and staff members can hollow out the courts’ core. Hall challenges court leaders to set the bar higher and find the opportunity to increase quality judicial services in an ongoing environment of fewer resources. Reengineering prepares courts for the “new normal.”

Struggling against the unprecedented depth and length of the budget crisis, many courts seek an approach that delivers significant operational efficiencies while preserving or improving service and quality. Hall shared seven reengineering ideas:

1. Centralize and regionalize everything possible
2. Identify all functions that can be automated and automate to the maximum
3. Systemically apply case management functions
4. Maximize the number of online transactions
5. Reorganize the back office (top to bottom)
Marlene Martineau’s session title “The Role of Technology in Transforming Courts” is not a surprise to court professionals, since all of our courts are deeply embedded with technology. However, she challenged us to take a new look and asked the question: “Why focus on technology?” She asserted that technology can be transformational, but only if it involves the entire court organization, is wedded to serious efforts to process reengineering, and includes migration from document to content management.

Hall reminded everyone of their continuing responsibility to provide a fair and effective system of justice, even while facing tremendous financial challenges. Reengineering provides courts with the goals, principles, and innovation required to meet this responsibility. Additional resources on this topic may be found at www.ncsc.org/services-and-experts.

Daniel Hall is vice president of Court Consulting Services at the National Center for State Courts.

Role of Technology in Transforming Courts

**Presenter:** Marlene Martineau  
**Reporter:** Thomas G Dibble

Marlene Martineau’s session title “The Role of Technology in Transforming Courts” is not a surprise to court professionals, since all of our courts are deeply embedded with technology. However, she challenged us to take a new look and asked the question: “Why focus on technology?” She asserted that technology can be transformational, but only if it involves the entire court organization, is wedded to serious efforts to process reengineering, and includes migration from document to content management.

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Daniel Hall is vice president of Court Consulting Services at the National Center for State Courts.

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<th>Document Management</th>
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<td>Keeps the records of the court</td>
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<td>Protects the integrity of the case file</td>
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Martineau promoted the idea that it all comes down to data. Where do you get it? How do you access it? What do you do with it? Then she asked the big question: Are you focusing on the wrong thing? She contends that too many courts focus on document management rather than content management and spelled out the difference below.

In summary, Martineau articulated the role of technology: to support not dictate and to provide information when you need it and how you need it. For more information check: http://fact.ncsc.dni.us/

Marlene Martineau is marketing director for New Dawn Technologies and chair, Forum on the Advancement of Court Technology (FACT).
The National Association for Court Management wishes to sincerely thank the vendors who exhibited their products and services. Their contributions helped make the midyear conference a great success.
Along with the population changes, there have been significant changes in the economic life of rural counties. The notion of rural, particularly in the context of the justice system, is elusive — there simply is no commonly agreed upon definition of what constitutes a rural court, and there is no uniformity in how rural is defined. Nonetheless, we have a general understanding of what we think of as a rural court. We tend to think of rural courts as situated in geographically large counties or in counties or judicial districts with low population densities.

Our idyllic vision of rural courts invokes thoughts of Mayberry — few violent crimes, a fairly homogenous population, a sense of community that lends itself to dispute resolution and informal social control, and relatively low crime rates. This vision may have been true at one time, but the context of rural justice has changed dramatically over the decades, and these changes present rural courts with new challenges — challenges that are being addressed through a recently formed Rural Courts Improvement Network (RCIN) that seeks to catalyze information exchange and innovation in courts located in rural areas.

The Changing Rural Environment

According to the U.S. Census Bureau, 59 million people — almost...
20 percent of the total population of the United States — lived in rural communities in 2009. Nearly 70 percent of U.S. counties have populations of less than 50,000, and 42 percent have populations less than 20,000. Although the population has grown in some rural areas, in many areas — notably the Great Plains states — there have been significant decreases in population. The population in rural counties is also becoming increasingly diverse, with Hispanics representing the fastest growing racial/ethnic group in rural America. Other racial/ethnic groups, particularly those of Asian, Southeast Asian, and Middle Eastern descent, are also increasing in rural counties.3

Along with the population changes, there have been significant changes in the economic life of rural counties. No longer is farming the dominant industry; more than 80 percent of rural counties are dominated by non-farm jobs and activities such as manufacturing, services, mining, and government operations. Despite the diversification of industry, job opportunities are limited in rural counties, and in 2009, the unemployment rate of workers in rural areas exceeded the unemployment rate in urban areas. In fact, the number of unemployed workers in rural counties is increasing at a faster rate than in non-rural counties.4 Finally, there is a significant urban-rural gap in wages and in education, with residents of rural areas lagging behind urban residents.

Not surprisingly, the volume and nature of crime in rural areas has also changed. Between 2008 and 2009, when crime rates were dropping across the country, cities with populations between 10,000 and 24,999 were the only ones to experience an increase in crime. Most of this increase was attributable to violent crime.5

The implications of the changing rural environment are significant for rural courts. More diverse populations and poor economies mean courts must be doing more with less — greater numbers of criminal and civil cases, more case complexity, and shrinking budgets. Changing demographics create access to justice issues and the need for more expertise in the courts, particularly with regard to language and cultural barriers. The problems facing rural courts include:

- Variation in resources available to individual courts from state to state and within states
- Lack of legal assistance of persons unable to afford a lawyer, particularly in civil and family law cases
- Lack of timely and adequate indigent defense services in criminal cases
- Language and cultural barriers to fair processes
- Lack of access to substance abuse and mental health treatment services as well as evidence-based alternatives to incarceration
- Inadequate and non-secure court facilities
- Lack of good and accessible continuing education and training for judges and court staff
- Lack of information and communications technology infrastructure
- Geographic isolation from colleagues

Through the Rural Court Information Network (RCIN), a number of promising approaches have emerged to deal with the changing context of rural justice.

Responding to the Changing Environment: Building on the Strengths of Rural Courts

There are many strengths that rural courts have that make them particularly well-suited to adapt to their changing environments. In many smaller communities, the courts are at the center of community life. Judges, court clerks, and court managers are generally highly respected figures in the community, and they have a natural leadership role in shaping how justice is administered. In addition, because smaller communities tend to be more closely knit, there are often long-standing interpersonal relationships among the leadership in the courts, prosecutors’ offices, defense bar, law enforcement agencies, and community groups that create opportunity for collaboration, innovation, and problem solving. These strengths provide a foundation for improvement in rural courts that focuses on three key themes for the future: leadership, collaboration, and education.

Leadership

The focus on leadership is multidimensional, with efforts aimed at both the state and local levels. At the state level, it seems clear that state administrative offices of the courts (AOCs) need to play a strong role in addressing the needs of rural courts. The AOCs can work with rural trial courts in developing statewide programs that take account of the unique needs of rural courts, can organize and facilitate in-state and multi-state seminars and workshops, can conduct in-state and multi-state
Technology also helps minimize “down” time for training. For example, using such technologies as Skype, Moodle, Blackboard, and other Web-based formats, the Nebraska Judicial Education Branch offers training for judges and staff for everything from issues facing the courts and court operations to skill-based training on use of software and technologies.

Research on rural court issues, and can provide enhanced technical assistance and infrastructure development.

Many state AOCs already take an active role in working collaboratively with rural courts, overcoming the inherent state-local tensions that can affect any system. For example, the South Dakota State Court Administrator’s Office has developed a multi-faceted approach that includes increasing communication, providing training, and supporting multi-court resource sharing. AOC staff now conduct frequent visits to courts in each of the seven judicial circuits in the state and have prepared new materials to better inform court personnel and the public about the work of the state’s unified judicial system. These materials include a newsletter, a guidebook, an improved website, a descriptive brochure, and orientation materials. The AOC has also sponsored a number of events designed to encourage network and information sharing about rural courts that include in-service trainings, an orientation program, a recognition program, annual retreats, and leadership institutes.

To help address staffing needs across the state and to help rural courts in particular with their staffing constraints, the South Dakota AOC has helped facilitate resource sharing across courts. The AOC periodically examines the “need” for staff in all of the South Dakota courts (taking into account filing volume and other factors) in comparison to actual staffing levels, to determine if there are clerks’ offices in need of additional staffing support. Concurrently, they also consider whether any offices potentially have an excess of staff that could be “donated” or “lent” on a temporary basis to those offices with staffing needs. Arrangements for resource sharing are typically initiated by a circuit court administrator and initially began as exchanges between counties within a single circuit. Now exchanges can take place statewide. The types of tasks that have been assigned have included processing traffic tickets, prepping/cleaning files for microfilming, and processing/opening small claims files. Resource sharing has helped provide staffing to smaller, one- or two-person offices in the event of a vacation, sickness, training requirement, or similar occurrence that would have previously meant the clerk’s office would need to close. Additionally, some types of clerical work in busy courts can be electronically shipped to under-utilized clerks’ offices, enabling the work to get done while the court remains open.

In Georgia, the AOC has created the Georgia Commission on Interpreters to recruit, train, and certify interpreters across the state, with a special focus on meeting the needs in rural areas. Interpreters are recruited from schools, healthcare organizations, law enforcement, and other institutions that serve diverse constituencies. The commission’s staff provides Web-based training for interpreters in rural areas. The staff also provides assistance to judges in rural areas to assist them in implementing the state’s guidelines for ensuring that non-licensed interpreters are properly instructed in their roles and the interpreter’s code of responsibilities.

At the local level, judges (especially chief and presiding judges) and court administrators/clerks can provide leadership for innovation and problem solving. In Somerset County, Pennsylvania, a county that faces a host of challenges as a result of natural gas drilling in the Marcellus Shale Formation, the court is taking a leadership role in addressing emerging
issues that affect the entire community. Key issues include the potential impact of an increased population of drilling company employees on crime in the county, the environmental hazards of the drilling, quality of life issues (such as increased traffic and damage to roads by drilling equipment), increased traffic at the courthouse, and increased civil litigation over mineral rights. The court is working with the state AOC and with county-based entities to develop a community-wide impact statement and action plan that will help prepare rural courts statewide, and in other states in the Marcellus shale basin, for addressing the new challenges.

Collaboration

Collaboration is a necessity in rural courts and continues to be a focal point for addressing the changing environment in rural areas. Many of the rural courts in the RCIN have initiated unique collaborative relationships designed to address a host of issues. For example, in Nebraska, where the technological infrastructure to support distance learning was limited, the courts formed a partnership with the Nebraska Department of Roads that enabled both that department and the courts to obtain volume use discounts for an online distance learning platform.

In New York, then Chief Justice Judith Kaye convened a Tribal Courts Committee to begin a process of outreach and information-sharing with the tribal nations and territories in the state that resulted in the establishment of a Tribal Courts Forum. The forum is a collaborative effort between the state and the tribal nations to address three main issues: the placement of Indian children under the Indian Child Welfare Act; resolution of jurisdictional conflicts arising from rulings in federal, state, and tribal courts; and the need to educate state and federal judges on tribal laws and culture. In Maryland, the courts in five counties on Maryland's rural Eastern Shore started a nonprofit consortium to help address the lack of lawyers to handle the pro bono needs of litigants. The consortium essentially enables the courts to pool the pro bono resources across all five counties.

In Eau Claire, Wisconsin, court leaders interested in evidence-based practices have helped spearhead a county-wide effort to implement the principles of evidence-based decision making throughout their county to help reduce recidivism. This is a collaborative effort that brings together representatives from all sectors in the justice system with treatment providers, community members, and county management. The broad objectives are to increase overall justice system efficiency and effectiveness through use — by the courts and by practitioners in the agencies involved in criminal justice processes — of decision-making practices grounded in research on their effectiveness.

Education

The focus on education spans not only internal education for judges and court staff, but also education about court-related issues for legislators, policymakers, and the public at large. For internal audiences (judges and court staff), the challenge has been how to overcome geographic isolation, the time demands of in-person trainings, and limited access to training resources. Technology is having a major impact on how training is delivered in rural areas. Through the use of Web-based technologies, access to training and to other court colleagues across the states has been substantially increased.

Technology also helps minimize “down” time for training. For example, using such technologies as Skype, Moodle, Blackboard, and other Web-based formats, the Nebraska Judicial Education Branch offers training for judges and staff for everything from issues facing the courts and court operations to skill-based training on use of software and technologies. Web-based technology is also used to support online meetings and conferences involving judges, magistrates, and attorneys across wide geographic areas. The Missouri State Court Administrator's Office emphasizes the use of distance learning to ensure that court personnel across the state and in rural areas receive standard, consistent training in core subject areas.

An important component of the education challenges that rural areas face is the dissemination of information to the public about the courts and court processes. Courts in rural areas have used a variety of technological approaches to ensure that the public has access to the information it needs and, particularly for pro se litigants, that they have instruction on how to prepare and file the appropriate paperwork for their cases.

In Vermont, New York, and many other states, the courts have implemented Web-based software packages that provide form templates and step-by-step instruction on form completion using a “Turbo Tax” approach. In Idaho, the supreme court has established an Internet-based self-help center that contains information sheets, forms, and instructions for litigants involved in divorce, child custody, landlord-tenant, and small claims cases. Petitions for temporary protective orders in domestic violence cases are also available. In Alaska, the AOC uses a combination of Internet-
based instruction and materials along with a telephone “help line.”

The Superior Court in Clayton County, Georgia, has partnered with local libraries to provide outreach and instruction to the public. Older computers that are being replaced in the court are cleaned of all court-centered information and then recycled for educational uses. They are loaded with a computer program that allows members of the public to have Internet access to various types of information about the court and court operations. The computers are placed in public libraries throughout the county, and training is provided to librarians to help answer questions about the forms and the justice system.

Thinking Ahead

Clearly, the environments in which rural courts operate are dynamic and will continue to change in the future, presenting new challenges for the administration of justice. Continuing demographic changes will further impact the types of crimes and the types of criminal and civil litigation coming into the courts. Aging populations in rural areas and the outmigration of younger workers will pose a significant challenge for succession planning. Increased use of technology and, in particular, increased public access to court information creates new concerns about privacy and security issues. Finally, as the movement toward the implementation of evidence-based programs and decision making in the criminal and juvenile justice systems takes hold nationwide, courts and agencies in rural areas will be further pressed to identify sufficient resources for addressing offender needs and reducing recidivism. On the other hand, the strengths of rural courts and the availability of networking opportunities within and across states will help continue the tradition of innovation in rural justice.

Rural courts and AOCs in many states are already making use of the opportunities for improved communication, education, and resource sharing that can be achieved through imaginative use of modern technologies. With effective leadership at both the state and trial court levels, thoughtful collaboration with others interested in justice-related issues, and a commitment to development of a well-trained workforce, the challenges can be overcome. Initiatives like the Rural Courts Improvement Network enable practitioners in rural areas to overcome the barriers of space and distance and to learn about effective ways of addressing common problems. Similarly, opportunities for interaction at regional and national conferences of court leaders — as at sessions on rural justice issues at recent National Association for Court Management (NACM) conferences — can be very valuable in catalyzing peer-to-peer exchange of information and ideas about challenges facing rural courts and ways to overcome them.

NOTES

1. In the first major study of rural courts, the authors noted that the term “rural” connotes different things for many people. They observed that agencies gathering data on various aspects of rural life seldom agreed on a definition of rural, with some of them including information on cities with a population of 23,000 while others used a population limit of 2,500. See E. Keith Stott, Jr., Theodore J. Fetter, and Laura Crites, Rural Courts: The Effect of Space and Distance on the Administration of Justice (Denver: National Center for State Courts, 1977). pp. xi, xv. Stott, Fetter, and Crites pointedly declined to suggest a specific definition of rural courts. In a 1982 article, two other authors suggested that a useful definition of a rural court would be any court of general jurisdiction that has less than two full-time judges authorized. Kathryn Fahnestock and Maurice Geiger, “The Neglected Majority” in Court Management Journal 1982.

2. The Rural Courts Information Network is funded by a grant to The Justice Management Institute (JMI) from the Bureau of Justice Assistance, U.S. Department of Justice (Grant No. 2010-DG-BX-K029). Network activities bring together court personnel from rural courts and state court administrative offices for a peer-to-peer learning exchange about different challenges they face and promising strategies for overcoming these challenges. For more information on the project, the approaches discussed in this article, and updates on RCIN meetings, see http://www.jmjjustice.org/network-coordination/current-projects/rural-courts/.

3. For an overview of issues related to immigration issues in rural areas, see Leif Jensen, New Immigrant Settlements in Rural America: Problems, Prospects, and Policies (Durham, NH: Carsey Institute, University of New Hampshire, 2006).


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Research collected by (FBI) shows that violent crime has generally decreased over the past two decades.

Deconstructing the Phantom Communities of Violence-Prone Defendants and Their Implications for the Courts

By Giuseppe M. Fazari
The Violent Crime Problem

On November 8, 2010, jurors in New Haven, Connecticut, unanimously voted to send Steven Hayes to death row. In the course of thanking the jurors for their service, Judge Jon Blue remarked, “You have been exposed to images of depravity and horror that no human being should have to see.” The codefendant, Joshua Komisarjevsky, is scheduled for trial this year.

According to officials, Hayes contacted Komisarjevsky to assist him in a home invasion. Authorities stated that the defendants, both of whom were on parole at the time, broke into a home where they kidnapped and held the family hostage while the mother, Jennifer Hawke-Petit, was forced to withdraw money from the bank. Hawke-Petit was then sexually assaulted and strangled by Hayes. The codefendant is charged with sexually assaulting the youngest daughter, Michaela, an 11-year-old. Michaela and her sister, Hayley, a 17-year-old, died of smoke inhalation after the men strapped them to their beds, doused them with gasoline, and set the house on fire. The father, who was beaten severely, was the sole survivor. Defense counsel implored the jury to spare Hayes the death penalty by focusing on Komisarjevsky, who they purported to have orchestrated the crime. Among other factors introduced, they cited his writings where “he described how his dark shadow was let loose as he beat the doctor and the pleasure he got from terrorizing the man’s wife and two daughters.”

The literature on the etiology and effects of violence is copious, yet the answer(s) still seem shrouded because the most heinous of crimes such as the one committed against the Hawke-Petit family and the more recent case involving congresswoman Giffords continue to exist. Administrators have become subsumed in the day-to-day process of data, budget line items, organizational charts, meetings, and the list goes on. A not-so-novel diversion of thought that has perhaps become more difficult to contemplate for practitioners mired in fiscal crisis is presented here to momentarily regain and wet their intellectual appetite for why and how the most violent individuals become who they are and whose lives end, figuratively speaking, at the courthouse. Consider it a sort of mental gymnastics that concludes with some practical implications for the policies, practices, and programs the court advocates. To that end, this essay offers an introduction to Lonnie Athens’ violentization theory and delves into what he terms the “phantom community” to explain behavior in general, but more specifically, violent criminal actions. The purpose is to provide court managers with insight about the root causes of violent crime in a way that is not traditionally fixated. It aims further to serve as a pivot for the courts, particularly those that manage domestic relations and juvenile delinquency cases, to thoughtfully consider when policies are being developed in the processing, diversion, sentencing, and other sanctioning of defendants.

Research collected by the Federal Bureau of Investigation (FBI) shows that violent crime has generally decreased over the past two decades. Table 1 indicates that between 1990 and 2009, total violent crime declined by more than 40 percent. Murder and non-negligent manslaughter in 2009 was reduced to almost half of what it was in 1990.

<table>
<thead>
<tr>
<th>Year</th>
<th>Murder &amp; Non-negligent Manslaughter</th>
<th>Forcible Rape</th>
<th>Robbery</th>
<th>Aggravated Assault</th>
<th>Total Violent Crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>9.4</td>
<td>41.1</td>
<td>256.3</td>
<td>422.9</td>
<td>729.6</td>
</tr>
<tr>
<td>1993</td>
<td>9.5</td>
<td>41.1</td>
<td>256.0</td>
<td>440.5</td>
<td>747.1</td>
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<tr>
<td>1996</td>
<td>7.4</td>
<td>36.3</td>
<td>201.9</td>
<td>391.0</td>
<td>636.6</td>
</tr>
<tr>
<td>1999</td>
<td>5.7</td>
<td>32.8</td>
<td>150.1</td>
<td>334.3</td>
<td>523.0</td>
</tr>
<tr>
<td>2002</td>
<td>5.6</td>
<td>33.1</td>
<td>146.1</td>
<td>309.5</td>
<td>494.4</td>
</tr>
<tr>
<td>2005</td>
<td>5.6</td>
<td>31.8</td>
<td>140.8</td>
<td>290.8</td>
<td>469.0</td>
</tr>
<tr>
<td>2009</td>
<td>5.0</td>
<td>28.7</td>
<td>133.0</td>
<td>262.8</td>
<td>429.4</td>
</tr>
</tbody>
</table>
Although the FBI data depicts a promising picture, violent crime continues to be prevalent in several major cities and shows profound differences when compared to the general population. Table 2 enumerates the violent crime rate in selected metropolitan areas. The 2009 murder rate in Detroit, for instance, was eight times higher than the national rate. New York, on the other hand, is safe compared to other metropolises such as Baltimore, where the robbery rate is more than twice as high. The data suggests that violence is community-centric (a correlation); as such, vulnerability and exposure to violence is based in some part on where one works and resides.

As of 2008, the United States had the highest documented incarceration rate in the world at 754 persons per 100,000. More than 7.3 million people were on probation, imprisoned, or on parole, which comprised 3.2 percent of all adult residents (1 in every 31 adults). Table 3 shows the distribution of the correctional population since 1980. Overall, the prison population increased by more than 375 percent between 1980 and 2008. Roughly 70 percent of the persons under correctional supervision in 2008 were supervised in the community (probation or parole).

### Table 2

<table>
<thead>
<tr>
<th>City, State</th>
<th>Murder and Non-negligent Manslaughter</th>
<th>Forcible Rape</th>
<th>Robbery</th>
<th>Aggravated Assault</th>
<th>Total Violent Crime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlanta, GA</td>
<td>14</td>
<td>24</td>
<td>493</td>
<td>618</td>
<td>115</td>
</tr>
<tr>
<td>Baltimore, MD</td>
<td>37</td>
<td>25</td>
<td>580</td>
<td>871</td>
<td>1,513</td>
</tr>
<tr>
<td>Boston, MA</td>
<td>8</td>
<td>43</td>
<td>365</td>
<td>576</td>
<td>992</td>
</tr>
<tr>
<td>Dallas, TX</td>
<td>13</td>
<td>38</td>
<td>426</td>
<td>315</td>
<td>792</td>
</tr>
<tr>
<td>Detroit, MI</td>
<td>40</td>
<td>37</td>
<td>651</td>
<td>1,239</td>
<td>1,967</td>
</tr>
<tr>
<td>Los Angeles, CA</td>
<td>8</td>
<td>23</td>
<td>317</td>
<td>276</td>
<td>625</td>
</tr>
<tr>
<td>Miami, FL</td>
<td>14</td>
<td>16</td>
<td>500</td>
<td>660</td>
<td>1,189</td>
</tr>
<tr>
<td>New York, NY</td>
<td>6</td>
<td>10</td>
<td>221</td>
<td>315</td>
<td>552</td>
</tr>
<tr>
<td>Newark, NJ</td>
<td>29</td>
<td>24</td>
<td>472</td>
<td>405</td>
<td>930</td>
</tr>
<tr>
<td>Philadelphia, PA</td>
<td>20</td>
<td>58</td>
<td>584</td>
<td>577</td>
<td>1,238</td>
</tr>
<tr>
<td>Phoenix, AZ</td>
<td>8</td>
<td>33</td>
<td>235</td>
<td>271</td>
<td>547</td>
</tr>
</tbody>
</table>
Violent crime continues to be a significant problem in American society, although it is more of a quandary for particular enclaves.

The decrease in the general violent crime rate may be a manifestation of this substantial increase in the correctional population. The reduction may not be fewer violent persons, but fewer opportunities brought about by the confluence of several factors including: incapacitating a greater number of offenders who commit a disproportionate amount of the total crime, more aggressive policing, such as enforcing quality-of-life crimes, which precludes offenders from committing more serious-level crimes, and detaining offenders for longer periods of time so that they have fewer opportunities to commit crime.

Violent crime continues to be a significant problem in American society, although it is more of a quandary for particular enclaves. The perfunctory response has resulted in a staggering correctional population. Apart from other community entities such as schools, police, and neighborhood groups, the courts, particularly those situated in urban areas, need to address these realities (to the extent that they have not already done so). The answer, as is later outlined, is for the courts to resolve this pernicious problem at the earliest possible opportunity, that is, whenever a child is implicated. The approach thereafter needs to be tailored.

The Connecticut home invasion crime and others like it demonstrate

<table>
<thead>
<tr>
<th>Year</th>
<th>Probation N</th>
<th>% Change</th>
<th>Jail N</th>
<th>% Change</th>
<th>Prison N</th>
<th>% Change</th>
<th>Parole N</th>
<th>% Change</th>
<th>Total N</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>1.12</td>
<td>–</td>
<td>183,988</td>
<td>–</td>
<td>319,598</td>
<td>–</td>
<td>220,438</td>
<td>–</td>
<td>1.84</td>
<td>–</td>
</tr>
<tr>
<td>1990</td>
<td>2.67</td>
<td>138</td>
<td>405,320</td>
<td>120</td>
<td>743,382</td>
<td>132</td>
<td>531,407</td>
<td>141</td>
<td>4.35</td>
<td>136</td>
</tr>
<tr>
<td>2000</td>
<td>3.82</td>
<td>43</td>
<td>621,149</td>
<td>53</td>
<td>1.32</td>
<td>77</td>
<td>1.32</td>
<td>36</td>
<td>6.45</td>
<td>48</td>
</tr>
<tr>
<td>2008</td>
<td>4.27</td>
<td>11</td>
<td>785,556</td>
<td>26</td>
<td>1.52</td>
<td>15</td>
<td>1.52</td>
<td>14</td>
<td>7.31</td>
<td>13</td>
</tr>
</tbody>
</table>
the very worst in society — a segment of the community whose violence so counters the norms and values that its existence when it rears its ugly head is often suspended in disbelief. Indeed, the complete and utter reprehension for the Hayes' and Komisarjevskys of the world confounds the mind from reaching a rational explanation for their behavior. It is in the media, the talk among congregations, and the brief discourse at the local coffee shops where the thoughts and feelings of the community are vocalized. Words such as “crazy,” “baffling,” and “inexplicable” are used to describe the person and the wrath unleashed. The tendency to communicate thoughts about violent crimes in this way is often shared among not only laypersons, but experienced professionals as well. For instance, following the sentencing of a notorious New Jersey multiple murder case, the county prosecutor commented that “Without provocation or cause he shot four defenseless young people on a beautiful August night as they gathered on a playground to listen to music. It is difficult to imagine anything more senseless.” Judging an individual or his or her behavior crazy, however, is shaped by one's cultural processes where values, beliefs, motivations, and attitude are constructed and intersect.

Over the centuries, existing theories proffer a myriad of explanations that attempt to make sense of the violent crime that has beleaguered the human condition from its beginning. Although research overlaps a variety of disciplines, including law, sociology, psychology, and criminology, the literature generally differentiates the causes of violence into two categories: social environmental and biophysiological. The reasons why all of this research has not translated into identifiable causes and subsequent solutions are just as bountiful. The objective of this essay does not rest here, but it is presented as a peripheral matter so that one can bear it in mind when contemplating the more central theme.

Part of the problem centers in the information policymakers rely on when formulating policy and developing programs. For instance, countless studies show the relationship between violent behavior and plausible correlates such as socio-economic status, unemployment, genetics, and geography, while others show the connection to the more remote and absurd, like the fullness of the moon. Correlations however are not causes. A significant number of violent offenders may be unemployed, but there are many unemployed folks who are not violent and employed folks who are violent. In fact, their frequent stints of unemployment may be caused by their violent propensities. Research provides the empirical data that support correlations to specific environmental and/or physiological variables, policy is tailored to the recommendations, and then programs are funded to address the ostensible causes. The courts frequently follow suit, diverting defendants to the flavor of the day. Ultimately, the justice system continues to be frustrated by record-setting incarceration rates and its failure to resolve the violence problem despite gargantuan efforts and vast amounts of money expended to reduce it.

Violentization Theory (In Brief)

Athens’ theory of violentization was developed using extensive interviews with prison inmates who had engaged in violent behavior. The theory is based on symbolic interactionism, in which social interaction, the self, role taking, and the meanings ascribed to symbols are the main foci. Symbolic interactionism is one of the foundational theories in sociology that examines small scale patterns within society. The theory proposes that behaviors are dependent on meanings individuals derive and interpret from their interaction with others. In this vein, individuals who behave violently learned to be violent from their primary group in which violence was fundamental to their social norms and cultural context. Described another way, individuals define circumstances based on their socialization and then respond in accordance with the meaning ascribed; thus, individuals who have gone through violentization are prone to interpret and then respond to situations violently.

Violentization is a process and, akin to other courses of development, it shows how individuals learn to be violent through social experiences. Although all individuals comprise society, learning is a more intimate process that occurs in smaller groups created by members within larger society. These smaller groups can be classified as either a primary group or secondary group. The primary group (the more influential of the two) includes one's family and friends. Charles Cooley referred to this group as the “springs of life.” Their values and attitudes become a part of a person’s thought processes and induce a perspective in how they come to view and understand the world. Secondary groups are a larger and more indistinguishable type of group. These groups form due to specific roles, interests, and/or activities. A deeper layer within these groups is the phantom community. The phantom community “refers to the audience of real or imaginary people whose conception … of communal life, especially our and other people’s
place in it, we always hold close to our hearts and usually take for granted.12 Individuals will feel conflict when decision making contradicts the values espoused by their phantom community because they use that belief system as a yardstick to judge themselves and others.

Just as individuals learn to greet one another and have good table manners, so too do they learn how to behave and respond violently. If socialization is responsible for the decorum in person A, then it should be equally as important in person B, who demonstrates the opposite behavior. Similar to other skill sets, violentization is a gradual, developmental process requiring a sufficient amount of time to complete. Moreover, beginning the process is not an end in and of itself; one can be subjugated to the early stages of violentization without ever having completed the entire process and consequently never become a violent criminal. Violentization encompasses the following four stages:13

1. Brutalization: The initial stage incorporating three essential experiences: violent subjugation, personal horrification, and violent coaching. The person is exposed to the teaching and demonstration of violent behavior, which includes threatening violence, observing the use of violence, and learning how to use violence. Brutalization usually begins during childhood; that is, the child is violently subjugated and/or witnesses other loved ones being subjugated to violence and is taught to respond violently to conflict.

2. Belligerency: In response to his/her violent treatment, the individual resolves to use “serious violence” when provoked, if they believe the outcome will be successful.

3. Violent Performances: The transition from resolution to actual use of violence is completed.

4. Virulency: The final stage in which the actor is prepared to use extreme violence on another with little to no provocation. They are defined by others and ultimately define themselves as being dangerous and violent after successful performances.

Phantom Community

One of the most influential ideas of George Herbert Mead14 was his theory of the formation of the mind and self in relation to communication dynamics. Mead believed that the self is a social product that emerges from the individual’s specific interaction and experience within his or her environment.15 Mead proposed that society is sustained through this communicative process, that is, the ability to take the role of another and to assume the perspective of the “generalized other,” which allows for the cooperation within society, as well as in controlling antisocial behavior.16 The generalized other refers to the actor’s perception of community expectations and general attitudes while contemporaneously driving his or her behavior. In addition, Mead posited that the generalized other allows one
Behavior, therefore, is not elicited by the perceived expectations of the generalized other (which is constantly changing), but instead based on one’s phantom community, which he or she carries to all social situations.

to construct expectations of how other individuals (including unfamiliar persons) will behave in various social situations.

Mead’s generalized other concept for explaining behavior falls short in two respects. First, it does not account for the difference between the conformist and non-conformist, considering that the generalized other leads people to satisfy community values and expectations during the performance of a social act. Second, it fails to explain the permanence of the self that perseveres over a lifetime of this continual dialogue. More simply, the generalized other cannot explain why different people in the same corporal community would act differently when faced with essentially the same situation. Athens’ violentization theory fills these critical gaps by showing behavior is not precipitated so much in response to the generalized other, but rather is produced in reaction to one’s “phantom community,” which is constructed from the individual’s significant social experiences. Behavior, therefore, is not elicited by the perceived expectations of the generalized other (which is constantly changing), but instead based on one’s phantom community, which he or she carries to all social situations.

In a recent article, Are All Murderers Mentally Ill?, a defense attorney of more than 20 years arguing against capital punishment opined:

“I truly believe that murderers are mentally ill … their brains don’t work like the rest of ours do. To deliberately kill someone requires crossing a profound boundary. Most of us couldn’t do it. We couldn’t even think about it. But they can. They do. Why? Because they’re mentally ill.”

She explains the paradox — the psyche of living in what is ostensibly a civilized, law and order society, but with a willingness to kill:

“Murderers seem to have no appreciation of boundaries … and it shows up in all aspects of their lives. Most criminals I deal with are very narcissistic. They’re blameshifters, manipulative, and can’t feel anyone else’s pain but their own. These people are always the victim, it’s always someone else’s fault, they have no sense of other people’s boundaries, and they really can’t see how twisted that view is. It’s a disorder. Until a crisis precipitates a dysfunctional episode, a mentally ill person can appear perfectly rational and normal … yet, their internal world is very different. What is irrational or unreasonable to most of us can seem very reasonable to them.”

Counsel’s perspective, albeit the purpose of sharing it was to oppose the death penalty policy, is not a novel one. In fact, her remark about a killer’s severe narcissism and inability to value another person’s life or property has been recounted in other interviews with murderers. Consider the explanation provided by Perry Smith (one of the two murderers in Truman Capote’s nonfiction novel, In Cold Blood) to Donald Cullivan (his only character witness at the trial):

“Am I sorry? If that’s what you mean – I’m not. I don’t feel anything about it. I wish I did. But nothing about it bothers me a bit. Half an hour after it happened, Dick was making jokes and I was laughing at them. Maybe we’re not human. I’m human enough to feel sorry for myself. Sorry I can’t walk out of here when you walk out. But that’s all … It’s easy to kill — a lot easier than passing a bad check. Just remember: I only knew the Clutters maybe an hour. If I’d really known them, I guess I’d feel different. I don’t think I could live with myself. But the way it was, it was like picking off targets in a shooting gallery.”

Again, the killer’s frame of mind is perplexing — maddening as such — but to substitute “crazy” with “mentally ill,” while it makes the problem more politically salvageable, leaves the cause unknown because the perspective is still from the same side of the prism. Referring to a violent criminal as
mentally ill is inconsistent with Athens' research findings, but the statement that "their brains don't work like the rest of ours do" is partly right. Their brains work, the difference lies in their phantom communities. Individuals become what their significant experiences entail, which in turn have the potential to impact the significant experiences of others.

After interviewing scores of dangerous violent criminals and participant-observing a few — all of whom demonstrated an ultra violent self-image — Athens showed that human behavior is precipitated by one's self portrait, which is cultivated by one's phantom community. Contrary to the opinions proffered by the media and political pundits, this theory demonstrates the individual's deliberation (and the process by which this occurs) in choosing to commit a violent act. Athens remarked:

"Once people have formed violent plans of actions, whether they carry them out depends on what happens during the process of interpretation, that is, on whether they stay in a fixed line of indication or form a restraining or overriding judgment. Unsurprisingly, people form restraining judgments far more often than they form overriding ones or become locked in fixed lines of indication. Consequently — and fortunately — far more violent criminal acts are begun than are ever completed."20

In accord with this observation, Athens contends that most killers are calculating and measure the instant frustration against past challenges. They interpret social experiences in a malignant way and then respond violently. Those interpretations emerge after consulting with their phantom community. Persons with "unmitigated violent" phantom communities are misguided and commit heinous crimes because of the moral framework from which the counsel is based. Consequently, the victim is oftentimes incidental to the action. They are deemed deserving of the violence, as in "she was asking for it," and (in the mind of the perpetrator) are responsible for their own demise.

In The Self As a Soliloquy, Athens outlines the metamorphosis of the self that develops through the stream of consciousness — a concept all individuals can relate to because everyone hears voices and talks to themselves. Before children learn to internalize their thoughts, they will soliloquize aloud. Mead conjectured that individuals converse with themselves and the generalized other, which, as noted earlier, represents the attitudes of society-at-large. In expanding on Mead's concept, Athens proposes the following 13 principles that govern soliloquizing within the phantom community:21

1. People communicate with themselves using an efficient, shorthand approach.
2. When conversing with others, individuals are simultaneously talking (silently and/or out loud) to themselves.
3. Connected to the second point, as one is being spoken to, they must simultaneously tell themselves what is being communicated.
4. Soliloquizing converts superficial daily experience into emotions. But for this, individuals would not completely exist because their experiences would merely be occurrences without the sensation of joy, sadness, etc. that accompanies it.
5. When soliloquizing, individuals converse with interlocutors (the people actually present undergoing the same social experience and phantom others). The phantom other is conversed with and has the same impact on the experience as the persons physically present. The phantom other is omnipresent, accompanying people (typically without their knowledge) wherever they go and personifies the self so long as it remains intact.
6. The phantom other is both a single and plural entity. It is singular in the sense that generally one can only converse with one phantom other. At the same time, it is a multiple entity because there exists an aggregate of phantom companions each of whom are at the disposal of the individual when soliloquizing about different social experiences. Together, it embodies the "phantom community, which provides people with a multi but unified voice and sounding board for making sense of their varied social experiences."22 The phantom community as a whole is greater than the sum of its parts "because phantom circuits or relations inevitably emerge between the separate phantom companions."23
7. Soliloquizing functions on two parallels — a shallow, more obvious one and a deeper, more entrenched one. Individuals are aware of the conversations that they have with themselves. This awareness, however, does not extend to the presence (or even existence) of phantom companions, because they operate on such a deep, unassuming level that they are taken for granted. Nonetheless, the phantom community influences our most genuine thoughts and
emotions and does so without one’s knowledge. The phantom community remains absent from our conscious purview until dramatic self-change occurs, whereby it compels one to move it to the surface and scrutinize its makeup.

8. The phantom community is a hidden source of emotions that can be either a benefactor or malefactor that turns thoughts into reality. Unfortunately, the question of how to reveal the malevolency and the critical role it plays in one’s life remains unanswered (except that it is exposed during dramatic self change).

9. The individual’s self-portrait is created through soliloquizing. Self-portraits are painted in a two-step process. The first step involves perception. Individuals select persons with whom they have or had an intimate relationship with and ask themselves how those people think and feel about them. To answer the question, individuals take the perspective of their intimates. The second step involves judgment. During this process, individuals judge themselves on the basis of what they believe would be the thoughts and sentiments of their intimates about them. If there is no consensus among the phantom companions, an inconsistent self-image will emerge. Self-portraits, however, are generally consistent and stay in the background as opposed to the foreground of our daily experiences. During rare periods of “dramatic personal change,” when individuals question who they are, the self-portrait moves to the foreground and becomes the centerpiece of discussion.

With the exception of these crises, soliloquies are engaged in the experiences of persons, places, and things other than oneself.

10. The phantom community always plays the leading role in soliloquies. While communicating with individuals who are present during social experiences is important in uncovering its meaning, the meaning of these experiences ultimately relies on the dialogue with the phantom community. Self-portraits are layered, but their basis is dependent upon the phantom community. Athens explains: “Although telling ourselves how our intimates see us is also absolutely essential in portraitureing ourselves, the self portrait we ultimately paint comes from telling ourselves how our phantom community would presumably react upon hearing what our intimates said about us.”

11. Soliloquies are multi-partied dialogues wherein conflicts can arise or coexist in close harmony. In addition to the person’s physically present and phantom companions that the individual communicates with during social experiences, he or she may also converse with Mead’s “generalized other” (what he believed was the voice of the community). Mead labeled it the “me,” which Athens more appropriately identifies as the “them” and characterizes the phantom community as the “us.” If the “them” and “us” are in accord with one another, they will be indistinguishable and will come across as a single voice. Alternatively, if they are in conflict — the “us against them” — the voices will be discernible, but the octave of one chorus may have a higher tone to the individual.

12. Individuals vary between being an individualist and a conformist. Meeting the expectations of the “them” depends upon the “us” communicating with the individual. If the “us” is in close harmony with the “them,” then the individual will behave as a conformist. Conversely, if they are at odds, the individual’s behavior will depart from the “them’s” expectations and be considered a maverick of sorts.

13. The phantom community is developed through the individual’s significant social experiences. Most experiences are inconsequential beyond the immediate impact when they are being experienced. Phantom companions, on the contrary, are constructed from momentous experiences — those that have an enduring impression on the individual notwithstanding their desire to purposely recollect or disregard them.

Relevance to the Courts

Beginning in the 1970s, a myriad of criminal justice programs have been spearheaded for defendants under the aegis of probation services, attorney general offices, community service groups, think tanks, and other governmental agencies. Pre-trial diversion programs, as they have come to be generally known, filter candidates for eligibility on the basis of several factors, including instant offense, criminal history, drug dependency, etc. The specifics vary, but programs generally require superficial screening and the consent of the court that may or may not hinge on some
legal mandate(s). Once admitted, the defendant is prescribed an action plan over a specified timeframe that may include, among other things, drug screening, community service, periodic visitations, vocational training, and job placement. Individuals who are successful in the program, that being adherence to the course of directives without recidivating, have their charges dropped.

Typical pretrial diversion as described above centers around dispositions so as to expedite the movement of cases out of the system. They frequently target the offender with the lowest-grade infraction who poses a minimum risk of re-arrest. If the machination of diversion programs is solely to keep the least serious cases from backlogging the system, then it has been successful indeed. Alternatively, if the intent of diversion is treatment that ultimately reduces recidivism, then the court may be targeting the wrong group (low-risk defendants), who are not likely to re-offend with or without the program. To the extent that the right group is targeted, the program’s scarce resources are being misdirected unless efforts are concentrated on cognitive therapy in a way that brings the phantom community to the foreground and causes the defendant to undergo dramatic self-change.

For the court that seeks to resolve cases (find a solution) rather than merely adjudicate them, the violentization theory provides insight in determining where on the spectrum the defendant is located. Deciding whether a defendant will be incarcerated or offered some form of rehabilitation on the basis of his or her criminal history is not by itself effective because it does not accurately characterize the individual's level of criminality. Instead, one's criminal record depicts the criminality for which he or she has a record of supposedly committing, which in most instances comprises only a small percentage of crime actually committed. Uncovering the defendant's phantom community is the key to understanding and correcting his or her behavior because it requires the sort of in-depth level of analysis that is warranted, especially in studying violent criminality. The phantom community fosters one's values and belief system and is the source of his or her self-image. Choices, as noted in The Self As The Soliloquy, are determined
The social context of where defendants are coming from (literally and metaphorically) and subsequently placed — especially those who come before the court during the early stages of violentization (juvenile offenders and children of domestic violence victims) — should be carefully taken into account.

via consultation with one’s phantom community. Persons with mitigated and unmitigated violent phantom communities have more of a propensity to behave violently than those with non-violent and anti-violent phantom communities. The phantom community explains behavior in the criminal, pacifist, and everyone in between. For the courts, in particular, this is important because it shows that violent behavior is first, not a senseless act but logically driven, and second, socially created, which makes it preventable.

Athens contends that an interpretative approach is needed that pinpoints the “recognition that violent criminal action is situated and that it operates on a model of the violent criminal as an actor.”25 The approach “assumes that criminals’ actions are a product of the individuals’ interpretations of these situations, which past experiences always influence in important ways but never completely determine.”26 Part of the emphasis must therefore be in scrutinizing these past experiences to determine the relative importance and overall impact on behavior. For some, this therapeutic jurisprudence may come too late, but for others who have not completed the four-stage violentization process, it can yield the outcomes needed to forestall the path to becoming a violent or even ultra-violent criminal. Athens noted that most violent criminals complete violentization by their mid-teens. Consequently, social change for most defendants vis-à-vis the deconstruction of the violent phantom communities does not lie in the criminal justice system at all, but rather needs to be linked to the juvenile justice system and other family-centric case types. Clearly, in terms of prevention, it is most effective to ensure that the detrimental experiences do not transpire in the first place.

The social context of where defendants are coming from (literally and metaphorically) and subsequently placed — especially those who come before the court during the early stages of violentization (juvenile offenders and children of domestic violence victims) — should be carefully taken into account. Consider the following excerpt from a televised interview with Athens in which he demonstrates the relative importance of the immediate social environment (including the social actors that occupy it) on the metamorphosis of violent criminals:27

**ATHENS:** Although crime is in the mind, it is not solely in the mind. And I think that violent criminals are made through a brutalization process during which they make choices, but at certain points they have greater control over these choices. And it starts with the process of being brutalized. And they don’t make the choice to be brutalized. Their brutalizers make the choices for them. They’re the subject of violent subjugation. They’re subject to personal horrification, where mentors violently coach them. Then in the second stage, if they get there, they get in a defiant stage, they become belligerent. And as a result of reliving their brutalization they have an epiphany that the only way they can stop their brutalization is to become violent themselves. And then they enter into a violent performance stage where they test their resolve. People become fearful in your presence and then you can come to embrace that, having the experience of malevolency, deciding that you enjoy your violent notoriety. You delight in social trepidation.

**INTERVIEWER:** Not withstanding the punishment that may ensue.
ATHENS: Right. And then you decide at this point that for the slightest dominative provocation you will attack people with the serious intention of killing them or gravely injuring them. But here’s the irony. When they began the process they were just a hapless victim of brutalization, but at the end they become the ruthless aggressor who you earlier had despised. And so this is the context in which the decisions are made. They’re not made out of the blue. They are made in a larger social context and you can’t ignore that. If you do, then you’re like an ostrich putting your head in the sand.

The research method employed in the violentization theory demonstrates both the causes and effects of violent socialization. Accordingly, the most effective way in curtailing the violent crime problem would be to focus programs and policy on preventing the brutalization of children and adolescents. There are many brutalized children, however, who do not mature to become violent criminals, because there are three subsequent stages that must be completed. Therefore, intervention by the court during the latter years may still demonstrate efficacy so long as the treatment diverts the individual from embracing a violent phantom community. Research has shown that diversion programs that provide intensive and comprehensive services were deemed to be the most successful.28

The following presents some suggested ways the courts can address violence-prone defendants in a relatively immediate fashion.

1. **General Education Program and Partnerships:** A general education program where the court partners with the schools and community groups to educate and clarify misconceptions that adolescents and preadolescents have regarding the use of violence and the consequences of such use. The courts and educational institutions can partner (in a similar vein as Law Day) to sponsor programs that instill the values of responsibility and restraint, advocate zero tolerance for bullying, and highlight the importance of mentoring.

2. **Family Justice Centers:** The ongoing development and support for family justice centers whereby at-risk families are targeted for home visitations, school outreach, and other forms of support. Levels of risk vary, of course, but the overriding purpose is to strengthen the family unit to make it self-sustaining and ensure that children receive the appropriate rearing. The Regional Court Center (RCC) that was established in 2001 in Maricopa County, Arizona, demonstrates the efficiencies and benefits of collaborative efforts under which the phantom community concept could be incorporated. The RCC consolidates multiple settings in superior court through the direct complaint process by co-locating judicial officers, court staff, prosecutors, defense lawyers, interpreters, probation officers, and treatment services with courtrooms and jail detention facilities. Although the model has been centered on the criminal justice system, Marcus Reinkensmeyer, the Maricopa County court administrator, suggested that the same paradigm can be applied to family court.29

3. **Belligerency Onset:** Truancy, bullying, and minor violent performances that judges encounter with juvenile offenders relate directly to the belligerency stage of violentization. To that end, the courts should intervene with the knowledge that the methods employed in response to the child’s behavior can mean the difference in continuing to stage three, violent performances, or stopping at stage two, belligerency, or even stage one, brutalization. For instance, it is not uncommon for belligerent students to be expelled from school; with no alternative, it will only exacerbate their aggression by giving them more time to spend in the same milieu that was responsible for their violent behavior’s inception. The courts can work in tandem with schools and social agencies to consider academic alternatives that are consented to at the very first signs of belligerency.

4. **Non-violent Coaching:** Athens highlighted the critical aspect that violent coaching plays in forming a violent resolution. The opposite would seem to be equally true. Nonviolent coaching in terms of mentoring can be a viable method of intervention that the courts can require. Research has long supported and espoused the benefits of mentoring programs in reducing delinquency and diverting youth from the crime continuum.30

5. **Further Research:** The data demonstrates that most violent crime is committed by individuals between the ages of 15 and 30. After reaching 30 years of age, however, violent behavior drops considerably. Some of this reduction is attributable to reaching
a point where offenders are permanently incapacitated. There are, however, other instances when they simply age out for reasons unknown. It is important for the courts to play a central role in the continued collection and analysis of data so that policy is developed and carried out in the most effective and appropriate way.

In summary, the outlook of crime and delinquency must change. Policymakers continue to focus on crime as more of a legal problem than a public health or social problem.31 The resulting legislation has produced an unprecedented corrections population and diversion programs that are not successful in the true sense of the word. None of this is to suggest enhancing current “problem-solving courts” nor does it advocate developing more boutique-type courts — that is, mental health courts, juvenile drug courts, domestic violence courts, etc. Therapeutic jurisprudence (TJ) need not be synonymous with specialized courts. In fact, “the most basic and informal level is when a judge interacts with the individuals involved in a particular court case.”32 Moreover, the considerable resources that are often devoted to these courts should be validated by empirically tested ends that are produced. Among other things, but most importantly, these ends include the derived benefits received by the conglomerate of general trial courts to which these special courts belong.33 In light of the fiscal climate of the past two years, this would seem paramount.

Arguably, every court should be following TJ tenets rather than creating a series of specialized courts to handle specific societal ills. The purpose of TJ is to use “social science to study the extent to which a legal rule or practice promotes the psychological and physical wellbeing of the people it affects.”34 TJ implies an approach that judges use to gauge the advantages and disadvantages of their decisions and evaluate their effectiveness. It is “what good judges do anyway on a daily basis.”35 Whatever approach is used should be obviously anchored in the law and, to reiterate, measurable so that outputs (results of incarceration and/or diversion) justify inputs (tax dollars).

Apart from tailoring the sentence to the violence development of the individual, Athens identified the following types of communities that should be considered when determining the necessary level of intervention.37

1. Civil minor community:
A community in which nonviolent strategies are used in conflict. This includes psychological, economic, and legal situations.

2. Turbulent minor community:
A community in which both violent and nonviolent strategies are used to resolve conflict, with chaos the predictable result.

3. Malignant minor community:
A community in which violence predominates and ultra-violent behavior may occur.

The Broken Windows Theory, while it explains the basis of societal order using a different paradigm, shows the importance of community distinctions on overall crime. The crime rate differences of cities such as those noted in Table 2 are indicative of these variations. The courts may not appreciate the linkage and value, but as Wilson asserted, the “judge sees a snapshot of the street at one moment; the public, by contrast, sees a motion picture of the street slowly, inexorably decaying.”

Athens’s research findings belie the notion that violence exists for reasons such as social class, race, ethnicity, genetic predisposition, and media influence. Rather, violence persists across all human divides because of social experiences; and so, thoughtful consideration must be given to one’s experiences because eventually that is what he or she becomes. Think of the mind and self as a malleable prism wherein all individuals begin life with the same form, color, and cut. Experiences — both those within and outside one’s span of control — shape, shade, notch, and score the prism through which decisions are based. Accordingly, the courts have an obligation to protect the most vulnerable — children — from those baneful experiences that shape their phantom community and transform them into the criminals society will eventually grapple with as adolescents and later as adults. Athens’s theory straddles that of personal responsibility (individuals choose to commit violence but only after the violentization process is underway) and communal responsibility (obligation on the part of society, including the courts, to guard the welfare of children to the extent possible so that their brutalization is not tolerated). Although prevention outcomes are sometimes nebulous, benefits are present even if they are seldom studied and recognized in a meaningful way. The decision to prevent is no less important than the decision to react; as Rhodes commented, “just as a disease epidemic would be implicitly our choice if we failed to provide vaccines and antibiotics.” Thus, the court should exercise available options to fulfill its communal obligations. At the same time, the court must appropriately sentence those already on the violentization path using the
necessary means to rehabilitate, but also protect the public while their rehabilitation is still a work in progress.

ABOUT THE AUTHOR

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NOTES


2. Loc. Cit.


11. An American sociologist and the son of Thomas M. Cooley. He was a founding member and the 8th president of the American Sociological Association. He developed the concept of the looking glass self, which is the concept that a person’s self grows out of society’s interpersonal interactions and the perceptions of others.


13. See Note 7 supra.

14. One of the notable American sociologists of the 20th century and founder of social psychology and American sociological tradition.


16. See Note 15 supra.


20. See Note 7 supra, pages 52–53.


23. Loc. Cit.


30. Fazari, G. M. 1998. Violent criminal acts and the 8th president of the American Sociological Association. He developed the concept of the looking glass self, which is the concept that a person’s self grows out of society’s interpersonal interactions and the perceptions of others.

31. Loc. Cit.


33. See Note 32 supra.


36. See Note 32 supra.


Federal Tax Intercept Legislation

On April 7, legislation was re-introduced to allow an offset against federal income tax refunds to pay for restitution and other state judicial debts that are past-due. In a coordinated effort, the Crime Victim Restitution and Court Fee Intercept Act (H.R. 1416 and S. 755) was introduced in both the House and Senate. In the House, Representatives Erik Paulsen (R-MN) and Peter DeFazio (D-OR) are the lead sponsors. Senators Ron Wyden (D-OR) and Jeff Sessions (R-AL) are the lead sponsors in the Senate.

This measure would provide federal authorization for the U.S. Department of Treasury to intercept federal tax refunds to pay overdue court-ordered financial obligations such as fines, fees, and victim restitution. This is the first time companion bills have been introduced in both chambers. As noted above, both bills were introduced on the same day, which shows the degree of coordination and collaboration between the House and Senate co-sponsors.

Efforts are underway to secure additional co-sponsors for this important legislation. As of this writing, 25 additional representatives have signed on to co-sponsor H.R. 1416, and nine senators have signed on to co-sponsor S. 755. Individuals in the court community are encouraged to contact their members of Congress to encourage them to also co-sponsor the legislation. If you have questions about communicating with your congressional delegation, please contact José Dimas at (202) 684-2645 or jdimas@ncsc.org.

Efforts are also being made to secure support from organizations. The following organizations have formally adopted resolutions in support of the legislation:

- Conference of Chief Justices
- Conference of State Court Administrators
- National Association for Court Management
- American Bar Association
- American Probation and Parole Association
- Fraternal Order of Police
- Government Finance Officers Association
- Mothers Against Drunk Driving
- National Alliance to End Sexual Violence
- National Association of Counties
- National Association of Crime Victim Compensation Boards
- National Association of Victims of Crime Act Assistance Administrators
- National Center for Victims of Crime
- National Crime Victim Law Institute
- National Network to End Domestic Violence
- National Organization for Victim Assistance
- National Organization of Parents of Murdered Children, Inc.
Revised Form for Income Withholding of Child Support

On May 16, the Office of Child Support Enforcement (OCSE) published an action transmittal (AT-11-05) distributing the revised Income Withholding for Support (IWO) form. The action transmittal also included instruction for use of the form and an overview of the federal requirements related to income withholding and state distribution units (SDUs). A copy of the action transmittal and attachments can be found at http://www.acf.hhs.gov/programs/cse/pol/AT/2011/at-11-05.htm.

Federal statute and regulations require use of the Office of Management and Budget (OMB)-approved IWO form in all IV-D income withholding orders and in non-IV-D income withholding orders for cases in which the child support orders were initially issued on or after January 1, 1994. (IV-D cases are those cases that are assigned to and enforced by the state child support agency or their contractors. Non-IV-D cases are those cases handled by private attorneys, private collection agencies, and self-represented litigants.) Additionally, federal statute requires employers and other income withholders to send all child support payments (IV-D and non-IV-D) collected through income withholding to the appropriate state disbursement unit (SDU).

The form is used to notify employers to withhold child support from obligors’ income. The federal requirement applies to all entities, including state and tribal child support enforcement agencies, courts/tribunals, private attorneys, and custodial parents.

The action transmittal provides the following guidance to employers regarding how to respond to IWOs that do not comply with the federal requirements.

For IWOs issued on or after May 31, 2011

1. Effective immediately, if the IWO does not direct payments to be sent to an SDU, the employer is advised to reject the IWO and return it to the sender.

2. Effective May 31, 2012, if the employer receives a document to withhold income that is not issued on the revised OMB-approved IWO form, the employer is advised to reject the document and return it to the sender.

For IWOs issued before May 31, 2011

1. If the IWO does not direct payments to be sent to an SDU, the employer is advised to contact the state child support enforcement (CSE) agency in the state that issued the underlying support order to request a revised IWO directing payment to the SDU. The employer is advised to continue to send payments to the non-SDU address until the employer receives a revised IWO directing payment to the SDU.

2. If income withholding was not issued on the OMB-approved IWO form and the order presents a problem for the employer or the order has been modified, then the employer is advised to contact the sender of the IWO to request the new OMB-approved IWO form. The employer is advised to continue withholding income until a new OMB-approved IWO form is received.

The action transmittal instructs states, tribes, and others to begin using the revised IWO form immediately. Recognizing that some entities will need time for implementation, entities are advised to honor the previous version of the OMB-approved IWO form. States, however, must use the revised OMB-approved IWO form by May 31, 2012.
Federal Appropriations

The fiscal year (FY) 2011 budget was signed into law (P.L. 112-10) April 15. Some law/justice programs suffered significant cuts. The Byrne Justice Assistance Grant (JAG) program, juvenile justice programs, and the Community Oriented Policing (COPS) program suffered a 17 percent across the board cut. The final funding figures for these programs in FY 2011 are: Byrne JAG ($235 million), Juvenile Justice ($276 million), and COPS ($496 million). The Violence Against Women program fared better and received $419 million, which is the same as they received in FY 2010. Funding for the State Justice Institute (SJI) also remained at the FY 2010 level of $5.1 million. The budget agreement eliminated the $20 million Weed and Seed program, a multi-agency effort to prevent, control, and reduce violent crime, drug abuse, and gang activity.

Grappling with trying to reduce the deficit, both chambers of Congress are now focused on the FY 2012 budget. The House approved their FY 2012 Budget Resolution (H Con Res 34) April 15 by a vote of 235-193, which was along party lines. In the federal budgeting process, if the House and Senate agree to a joint budget resolution, the level set for appropriations is binding. The Senate is not expected to agree to the House-passed budget resolution and is, as of this writing, considering alternate proposals.

The budget resolution is an outline that details assumptions about how much revenue will be collected, the sources of the revenue, and how much will be spent. The next step in the federal budgeting process is for allocations, known as the 302(b) numbers, to be determined, which provide the Appropriations Subcommittees with parameters within which they can develop their respective budget proposals. On May 24, the House Appropriations Committee approved allocations for each of the 12 annual spending bills in a largely party-line vote of 27-21. Overall, the plan would provide for $1.019 trillion in regular fiscal 2012 discretionary spending, which the Appropriations Committee reports is $30.4 billion less than the enacted FY 2011 level and which is $121.6 billion less than requested by President Obama for FY 2012.

Child Welfare Waiver Legislation

On May 17, Sen. Max Baucus (D-MT), chairman of the Senate Finance Committee, and Sen. Orrin Hatch (R-UT), ranking member on the committee, introduced the State Child Welfare Innovations Act (S. 1013). The measure would renew the authority of the U.S. Department of Health and Human Services (HHS) to grant waivers of federal foster care regulations to states to enable them to use funds flexibly to develop innovative strategies for serving children in the child welfare system as alternatives to traditional foster care. The act (S. 1013) would extend the HHS waiver authority through 2014 and is considered to be cost neutral. Other co-sponsors of the bill are Senators John D. Rockefeller (D-WV) and Michael Enzi (R-WY).

The hope is that this bi-partisan bill will move fairly quickly. We are advised once this bill is approved, attention will turn to reauthorization of the Promoting Safe and Stable Families (PSSF) Program, of which the court improvement programs are a set-aside.

Under S. 1013, states that apply for a waiver to use federal foster care funds would be required to address at least one of three goals listed in the legislation:

1. To increase permanency for children and promote the successful transition to adulthood;
2. To increase efforts to better serve children and families being served in-home or in placement by improving safety; and/or
3. To prevent abuse and neglect and the re-entry of children into foster care with a special focus on the services provided in-home and in communities.

Applicants for the waiver must also demonstrate that they have implemented or plan to implement at least three child welfare program improvement policies. The policies included in the measure are:

1. The establishment of a bill of rights for infants, children, and youth;
2. The development and implementation of a plan for meeting the health and mental health needs of infants, children, and youth in foster care;
3. The establishment of procedures and protocols for promoting educational stability for children and youth in foster care;

4. Including the option of entering into kinship guardianship assistance agreements in the state plan;

5. The development and implementation of specific procedures for protecting children and youth from inappropriate use of psychotropic medications;

6. The development and implementation of a plan that ensures congregate care is used appropriately;

7. Increasing the number of cases of siblings who are placed in the same foster home, kinship guardianship, or adoptive placement;

8. The development and implementation of a plan to improve the recruitment and retention of high quality foster family homes;

9. The establishment of procedures designed to assist older youth as they prepare for their transition out of foster care;

10. Including a description of the state’s efforts to assist older youth transitioning out of foster to develop transition plans and reconnect with biological family members;

11. The establishment of programs designed to prevent infants, children, and youth from entering foster care; and/or

12. Including the option of extending foster care up to age 21 in the state plan.

The goals of this legislation are to: (1) reduce the number of infants, children, and youth in foster care, (2) keep families together, and (3) improve well-being and services for those individuals in foster care.

ABOUT THE AUTHOR

Kay Farley is executive director of Government Relations for the National Center for State Courts.

NOTES

1. Section 466(b)(6)(i) and (ii) of the Social Security Act, 45 CFR 303.100, and 45 CFR 309.110

2. Section 466(b)(6)(A)(i) of the Social Security Act
A New Option for Addressing Juror Stress?

One issue with which trial courts struggle is how to assist jurors who have served in particularly difficult trials, especially trials involving gruesome evidence or emotional testimony, lengthy trials, and high-profile trials. These types of trials can provoke serious stress-related symptoms in jurors, including anxiety, depression, nightmares, and even physical symptoms such as nausea, elevated blood pressure, chest pain, and shortness of breath. For most jurors, these symptoms disappear on their own shortly after the trial, but some jurors continue to experience symptoms for weeks or even months after the trial has concluded. Most courts have only limited resources to offer jurors in terms of post-trial assistance, but the Employee Assistance Program (EAP) offered to federal government employees by the U.S. Department of Health and Human Services may provide a useful model for state courts to emulate.

What is Juror Stress?

The term “juror stress” generally refers to an emotional or physical reaction to jury service. For most jurors, stress is perceived as a sudden event (jury service) that causes feelings of a loss of control and predictability. To some extent, stress can be a positive reaction that enhances psychological and physical functioning, helping jurors pay close attention to the trial evidence and deliberate effectively with their fellow jurors. But stress that persists for an excessive length of time or occurs in excessive degrees can result in anxiousness or depression. An estimated 70 percent of all jurors report some stress from jury service, but less than 10 percent report high levels of stress. Juror stress is caused by a number of factors: disruptions to daily routine, the invasiveness of voir dire, trial evidence and testimony, restrictions on jurors’ behavior, and the difficulty of jury deliberations. In other words, stress accumulates over the course of jury service.

Efforts to prevent juror stress, therefore, include steps to return control and predictability to jurors’ lives throughout the jury trial, including providing information about daily expectations, using jurors’ time efficiently and effectively, providing tools to facilitate informed decision-making, and minimizing the impact of especially stressful trials. Post-trial treatment options range from purely informational brochures (e.g., “Tips for Coping After Jury Duty,” see pg. 55) that alert jurors to the potential symptoms of juror stress and suggest common-sense coping techniques to “debriefing sessions” or referrals to local mental health agencies. Debriefing sessions consist of a short group counseling session in which jurors have an opportunity to explore and better understand their emotional reaction to the trial and to jury service. The debriefings also include a description of symptoms commonly associated with juror stress and make recommendations to the jurors about appropriate stress-management techniques. (Information about juror debriefing sessions and about juror stress generally are available on the NCSC Center for Jury Studies website at http://www.ncsconline.org/WC/Publications/Res_Juries_JurorStressPub.pdf).

There are a couple of drawbacks to these approaches, however. First and foremost is simply the lack of resources addressing juror stress. Most courts that have provided this type of assistance to jurors in high-stress trials have done so on an ad hoc basis using pro bono assistance from local mental health practitioners. Consequently, the quality of assistance can vary considerably depending on the training and expertise of those practitioners. The fact that these services are offered on a purely ad hoc basis inevitably means that jurors in some high-stress trials receive no assistance at all, either because the judge and court administrators do not realize the need to provide such assistance or they don’t know how to access these services. Moreover, some jurors are not interested in attending a debriefing session immediately following the trial. Often they are emotionally numb and physically exhausted by the ordeal.
The Jury Duty Experience

Thank you for serving your community. Being on a jury is a rewarding experience which in some cases may be quite demanding. You were asked to listen to testimony and to examine facts and evidence. Coming to decisions is often not easy, but your participation is appreciated.

Serving on a jury is not a common experience and may cause some jurors to have temporary symptoms of distress. Not everyone feels anxiety or increased stress after jury duty. However, it may be helpful to be aware of the symptoms if they arise.

Some temporary signs of distress following jury duty include: anxiety, sleep or appetite changes, moodiness, physical problems (e.g. headaches, stomach aches, no energy, and the like), second guessing your verdict, feeling guilty, fear, trouble dealing with issues or topics related to the case, a desire to be by yourself, or decreased concentration or memory problems.

Symptoms may come and go, but will eventually go away. To help yourself, it is important to admit any symptoms you may have and deal with any unpleasant reactions.

Coping Techniques After Serving On A Jury

• Talk to family members and friends. One of the best ways to put your jury duty experience in perspective is to discuss your feelings and reactions with loved ones and friends. You may also want to talk with your family physician or a member of the clergy.

• Stick to your normal, daily routines. It is important to return to your normal schedule. Don’t isolate yourself.

• Before you leave the court, you may wish to get the names and numbers of at least two of your fellow jurors. Sometimes it is helpful to talk to people who went through the experience with you. This can help you to remember that you were part of a group (jury) and are not alone.

• Remember that you are having normal responses to an unusual experience.

• You can deal with signs of distress by cutting down on alcohol, caffeine, and nicotine. These substances can increase anxiety, fatigue and make sleep problems worse.

• Relax with deep breathing.

• Breathe in slowly through your nose.

• Breathe out through your mouth.

• Slow your thoughts down and think about a relaxing scene.

• Continue deep breathing until you feel more relaxed.

• Cope with sleep problems.

• Increase your daily exercise, but do not exercise just before bedtime.

• Decrease your caffeine consumption, especially in the afternoon or evening.

• Do “boring” activities before bedtime.

• Listen to relaxation tapes or relaxing music before bedtime.

Final Thoughts

• Remember that jury service is the responsibility of good citizens.

• Resist negative thoughts about verdict.

• No matter what others think about the verdict, your opinion is the only one that matters.

• You don’t have to prove yourself to anyone.

• Sometimes it takes a lot of courage to serve on a jury. Some cases are very violent and brutal and hard to deal with. The case is now over and it is important for you to get on with your life.

• If you are fearful of retaliation or if you are threatened after the trial, tell the court and/or law enforcement immediately.

If signs of distress persist for two weeks after the jury service has ended consider contacting your physician.
and just want to go home to decompress. Others are just uncomfortable with the idea of group counseling; they would rather work out their emotions in private. For some, the desire for counseling doesn’t come until days or weeks later.

**A New Model for Accessing Mental Health Services for Jurors**

Beginning sometime in mid-2005, the federal courts initiated a program to provide assistance to jurors serving in high-stress trials in federal courts. That program extends a mental health benefit offered to federal employees through the Employee Assistance Program (EAP) administered by the U.S. Department of Health and Human Services to jurors serving in federal jury trials. The EAP can provide both “critical incident debriefing” services to jurors as well as up to six free counseling sessions annually with a licensed mental health worker. If jurors require additional assistance after the six counseling sessions, the EAP can help identify other local mental health agencies. According to the eligibility criteria, EAP counseling services can be provided as long as the jurors are serving, but they are not available once jurors have been dismissed from service. Accordingly, in cases where the trial judge wants to authorize these services for jurors at the conclusion of the trial, the judge enters an order near the end of the trial extending the jurors’ term of service “for administrative purposes” for a long enough period to allow individual jurors to obtain counseling. At the conclusion of the trial, the judge provides a letter thanking the jurors for their service and providing the EAP contact information for those jurors who want to access these services. The counseling sessions are completely free to jurors, and there is no insurance “paper trail” showing that the juror requested mental health assistance, which still carries some stigma for many individuals.

I first heard about the EAP counseling services at a jury management workshop for federal court employees this past March. Most states have equivalent EAP programs for state employees through their state HHS agencies, so it occurred to me that this approach might be replicable for jurors serving in high-stress trials in state courts. In most jurisdictions, the costs to the state HHS department would be fairly negligible — typically only a couple dozen jurors would access these services each year — but the consistency and quality of service would be greatly improved. Ed Juel is the attorney advisor at the Administrative Office of the U.S. Courts who acts as the liaison between the federal courts and the U.S. Department of Health and Human Services for this program. Readers who want additional information about this program can contact him at edward_juel@ao.uscourts.gov.

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Celebrating a Life Well-lived: Chris Crawford

Many of you have shared fond memories and kind thoughts on the passing of Chris Crawford. He was genuinely a pillar in the court community. Respected wherever he went, even if he didn't agree with you, Chris effectively shared his passion for what he loved — improving court systems around the world.

I was fortunate to attend Chris's memorial service. His passion touched many lives. He was a driving force for change wherever he went. I am lucky to count Chris among my friends and am saddened he was taken so young; he had much more to give.

On Saturday, March 26, 2011, Chris Crawford, 58, passed away at home after a brief battle with cancer. What is written here can only serve as a short excerpt in the life of a man who was larger than life. Chris was a man of big ideas and exceptional work ethic.

Christopher Crawford was born June 25, 1952, at St. Luke's Hospital in Pasadena, California, to Ingaborg and Clifford Crawford. Chris grew up in Pasadena and lived in the Los Angeles area for many years and attended Citrus College in Glendora. He later became a Fellow in the Court Executive Development Program at the Institute for Court Management, National Center for State Courts.

Chris's career began as managing director of numerous courts in Southern California, including Torrance Municipal and Superior Courts, Beverly Hills Municipal Court, and Catalina Justice Court. In 1994, Chris founded Justice Served, a court administration and management consulting firm with expertise in a wide variety of court disciplines, including streamlining organizational systems. Chris was recognized nationally and internationally as a leading expert in his field and was instrumental in transitioning court systems into wireless technology in places like Hong Kong, the Republic of Rwanda, The Federation of Nigeria, Costa Rica, and Taiwan.

Chris married Elaine, the love of his life, in 1980. Together they built a life rich in friendships and community activities. Chris and Elaine made an annual summer pilgrimage to the Humboldt County Fair, where they enjoyed the horse races. Among Chris's regular activities were weekly racquetball games with friends, but his real hobby was Humboldt County. “Justice Served” was the business. “Community Served” was his life. Chris is survived by his wife of 31 years, Elaine, siblings John Crawford of Yucca Valley, Maureen Davidson of Newport Beach, Clifford Crawford of San Diego, Gerald Crawford of Thailand, and numerous nieces and nephews.

Chris's loss has been widely felt throughout the court community. Some thoughts from the community…

Chris will be missed is an understatement — his good nature, hearty laugh and the insightful way he approached issues in the courts and our beloved justice system. His legacy will be through those he taught and touched on so many levels for many years to come.

— THOMAS DIBBLE, SOMERVILLE, NEW JERSEY

All of us are richer for having Chris in our lives, either as a personal friend or as a committed friend of the courts. He will be truly and deeply missed.

— MARTI MAXWELL, OLYMPIA, WASHINGTON

I met Chris through my interest in procurement especially for information technology. Always willing to assist, to share his knowledge and his many contacts. Just about a month ago I sent my last hello to Chris. My sincere condolences to his family and friends.

— CARLENE CROSS, TRINIDAD
Chris was an uncommon combination of initiative, intelligence, insight, passion, sensitivity and kindness. While we shared many confidences and judgments of individuals and organizations I always trusted his discretion about what we shared. He always did his fair share on every project and team and was moved by and an effective champion of the important things and issues. I will deeply miss our exchanges of good cigars and the latest gossip. He recognized and honored the true contributions of others whatever the conventional wisdom. A true friend is the rarest and most valuable of all things. Chris was a true friend. I feel profound loss with his passing to the house on the hill and look forward to meeting him there.

— GEOFF GALLAS, PHILIDEPHIA, PA

Chris had a booming voice and tremendous laugh. We used to hang out in the garden in Lantau until 3 am after work, and I expect he woke up half the building. Chris loved dim sum and sushi and chicken feet. He loved his work in the court even more. He will be missed.

— TIM DIBBLE, ABU DHABI

Words cannot express the loss we all feel with Chris’ death. It’s hard to believe I’ll never see his big Irish smile or hear his infectious laugh again. But I will always remember his generosity of spirit and his love for the work of the courts. When I first went on the road, it was by the grace of God that I got paired up with Chris. He mentored me and taught me how to be successful on the road and for that I am deeply grateful. But more than that, I’m grateful for his friendship, his grace, his quick wit and humor. Chris was a ‘gentle giant’ in our field and a trusted and loyal friend. Although I will miss him always, I think the best way to honor Chris is to take up his charge and try to emulate him. I will give it my best for Chris.

— MARY SAMMON, NCSC.

Chris was more than a consummate professional. While his contributions to the judiciary and his community were significant and noteworthy, it was his love of life and friendship that made him the special person that he was. His sense of humor, good nature, and passion for life were special and will be missed by everyone that knew him. The relationship he shared with Elaine was something few people have the privilege to experience. My thoughts, prayers and love go out to Elaine and the rest of the family during this difficult time.

— RICH JOHNSON, SEATTLE, WASHINGTON
Legal Immigration Status of Interpreters

Court leaders are committed to the principle that the development of comprehensive language interpreter programs is critical for ensuring equal access to justice for limited English proficient (LEP) people. Great care has been taken to draft local and state language assistance plans that ensure that a list of qualified (certified/registered) interpreters is available; commonly used forms are translated and regularly employed; court service counters are open and meaningfully accessible; and local LEP communities are periodically consulted for further service enhancements. The degree to which these plans have been implemented in individual courts and individual states varies based on geography, demographics, frequency of LEP service needs, and the availability of resources either to test or hire qualified interpreters. Notwithstanding Herculean and widespread efforts, it is safe to say that not all interpreter programs are created equally.

Simultaneously, the public’s outcry for more active immigration reform has had a significant impact on court operations. Local and federal court processes are more regularly beginning to overlap, leaving court leaders in local and state systems perplexed at the breadth and scope of immigration enforcement in pending cases. Drawn from real-life events, the work of court interpreters is inherently affected by this growing overlap, raising questions regarding their ethical obligations when faced with potential immigration issues and questions regarding court leaders who look to the most available LEP resources when ensuring equal access to justice.

The Scenario

Court Commissioner Marjorie is scheduled to preside over a juvenile dependency matter in which a child has been temporarily removed from her mother’s custody. On a request from juvenile court staff who believe the mother speaks only Spanish, Court Administrator Bob arranges for James, a certified Spanish interpreter, to ensure the mother is able to meaningfully participate in the hearing. However, at the time set for hearing, the mother arrives with Sandra, a non-certified Mam language interpreter she knows on a personal basis, from the local Guatemalan community. No one has been able to advise the mother that the court will provide an interpreter, and she knows that Sandra has provided Mam and Spanish interpretation for the court previously. She arrives not knowing that James will be there, and hopes that Sandra’s broken English will be sufficient to communicate with the court. Commissioner Marjorie, who has worked with cases involving Mam interpreters previously, immediately recognizes the need to have both James and Sandra involved in providing relay interpretation — Sandra from Mam to Spanish, and James from Spanish to English.

On his arrival, James learns of Commissioner Marjorie’s expectations and discretely advises the courtroom clerk, off the record, that he refuses to work with Sandra. When the courtroom clerk advises him that there is a sense of urgency to the hearing, James informs her that he will not work with Sandra because, through interpreting assignments at the immigration court, he knows Sandra’s legal status in the United States is pending. He cites the specific provisions of the state’s adopted interpreter ethics code and commentary that cause him discomfort, including:

CANON 4. PROFESSIONAL DEMEANOR

Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

Commentary: Interpreters are encouraged to avoid personal or professional conduct that could discredit the court.
**CANON 8: ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE**

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.

*Commentary: Interpreters should notify the appropriate judicial authority of any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately... Interpreters should notify the presiding officer of any personal bias they may have involving any aspect of the proceedings.*

**CANON 9: DUTY TO REPORT ETHICAL VIOLATIONS**

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal translating.

Since Sandra is not a certified interpreter, James is unsure to what extent she must abide by the adopted code, but he concludes that his knowledge of Sandra’s pending immigration status warrants his immediate withdrawal from this assignment to protect his own integrity.

In the absence of other available resources, Commissioner Marjorie is compelled to continue the hearing for 48 hours and notifies Bob to find an alternate Mam interpreter. After several days, Bob locates someone who will provide telephonic Mam interpretation from another state. In the process, however, Bob is dismayed to learn that many of the local Mam interpreters hail from the same immigrant community, and none of them will accept further court interpreting assignments. Bob is similarly advised by local interpreter agencies that Mam interpreter assignments are indefinitely suspended while “visa issues are worked out.”

While the immediate case is ultimately resolved, Bob is left to wonder about the countless times in which he has secured Sandra to interpret in other cases without consideration of her legal status, and the number of times he has referred Sandra and other members of this community to interpret in other courts around the state.

**The Respondents**

I invited respondents with substantial experience in court interpreter services, immigration issues, or both: David Slayton, court administrator for the Lubbock County District Court and County Courts at Law in Lubbock, Texas; Martha Cohen, manager of the Office of Interpreter Services and court certified Spanish interpreter for the King County Superior Court in Seattle, Washington; and, Eric Silverberg, deputy court administrator for the Pima County Superior Court in Tucson, Arizona, to review this scenario and respond to questions.

**The Questions**

1) **Does Bob have an ethical obligation to verify the immigration status of language interpreters when he provides them for limited English proficient (LEP) parties? Why or why not?**

David did not believe that Bob had an ethical obligation to verify the immigration status of language interpreters when he provided them for LEP parties. He pointed out that Bob was not a law enforcement officer or other governmental entity required to inquire about the legal status of an interpreter. However, if Bob learned from a law enforcement agency or through some other means about the questionable legal status of an interpreter, he should take that into consideration so as not to violate the ethical code.

Martha agreed that Bob did not have an ethical obligation to verify the immigration status of language interpreters. She suggested that if Sandra had a social security number through which she could receive compensation, this should sufficiently address any obligation Bob might have. Additionally, like David, Martha noted that Bob was not an “immigration detective” and indicated that there may be extenuating circumstances around someone’s legal status that might not be readily evident from looking through an immigration court file, even if Bob were to access it.

However, Martha was more concerned that Sandra might have a personal relationship with the mother from the Guatemalan community, which potentially challenges her impartiality, as required by the code of conduct. Martha felt this should prompt an inquiry by Commissioner Marjorie to determine whether Sandra’s preexisting relationship should exclude Sandra from providing services. Martha concluded that, “The commissioner and Bob should seek a Mam interpreter from another part of the country who can appear by phone and who will not know the mother or have knowledge of the case.”
Court leaders are committed to the principle that the development of comprehensive language interpreter programs are critical for ensuring equal access to justice for limited English proficient (LEP) people.

Eric emphasized the urgent nature of juvenile dependency actions and insisted that the emergent nature of this situation warranted prompt resolution. He also suggested that cultural and language misunderstandings may have led to the removal of the child in the first place. Eric also noted the need for a Federal I-9 Form to facilitate compensation, and he felt that the absence of an I-9, and completion of a proper background check, would have uncovered this issue prior to the urgency of the dependency action.

2) Is an interpreter’s immigration status a fundamental qualifier that should be considered by the court agency responsible for certifying interpreters? If not, should a different standard be applied to interpreters in more exotic languages where certification is not possible?

Martha and David both believed that the interpreter’s immigration status should not be a fundamental qualifier to be considered by the court agency responsible for certifying interpreters. David suggested that the more important qualifier would be if the individual being sought to interpret is violating the law, the same standard that should be applied to other business transactions within the court.

David and Martha also agreed that the same standards should apply to interpreters of all languages — certified or not — and that the court should strive for consistency in the implementation of its policies. They independently concluded that the ability of a court agency to test and “certify” in a particular language should not carry a more significant standard.

Eric seemed to suggest that an external agency charged with certifying interpreters should have a process in place to more closely vet the backgrounds and legal statuses of interpreters as they are certified and added to the available court resource lists.

3) With the knowledge of Sandra’s immigration question, could Commissioner Marjorie have proceeded with the hearing if another Spanish interpreter was available?

David questioned whether Commissioner Marjorie had a legitimate reason to know the legal status of Sandra. He was unconvinced that hearsay from James should be considered legitimate. Having considered that issue, David opined that it would be an ethical violation for Commissioner Marjorie to proceed with a hearing if the court contracted with someone violating the law. Since Sandra’s immigration status is a pending issue before the immigration court, he was uncertain whether Sandra was currently in violation of the law. Rather, her case was pending, and she should be afforded the same rights as other individuals until such time as her immigration status is settled.

Eric agreed and also noted that Sandra’s immigration status had not yet been adjudicated by the immigration court. From his perspective, without a finding by the immigration court, there should be no immediate problem. At this point, the court is only faced with James’ accusations. Eric also pointed out that if the immigration case had already been concluded, it would likely be very easy for Bob to verify the outcome so that Commissioner Marjorie would have sufficient factual information to determine whether she could proceed or not.

Finally, Eric reiterated the urgent nature of the juvenile dependency proceeding and firmly encouraged the court to address the immigration status issue, raised only by James and not corroborated by any immediate materials, at the conclusion of the dependency hearing. “If James refused to proceed, then use a telephonic service.” After the hearing, Eric felt Commissioner Marjorie should direct Bob to verify with Sandra her immigration status and right to work.

Martha agreed and stated, “In an emergency, the commissioner might have proceeded, but only after inquiry and careful
admonishment to Sandra of her ethical duties (especially in light of her personal relationship with the mother) and after securing a different certified Spanish interpreter for the relay.” Martha reminded us that given the challenging nature of relay interpreting, the commissioner should conduct the hearing sentence by sentence, pausing after each sentence to allow the interpreters to interpret to ensure accurate and appropriate interpretation. Martha felt strongly that James had “taken himself out of the case” by disclosing his personal bias and opinion, which may affect his ability to carry out his duties. As a result of this disclosure, James may have set himself up as a potential witness in any further court discussion concerning Sandra’s qualifications to serve as an interpreter.

4) Does James’ disclosure of Sandra’s immigration challenges, information that James has obtained through other unrelated interpreting assignments, raise any ethical concerns? Does his conduct warrant further scrutiny and/or discipline?

Eric, Martha, and David agreed that James’ disclosure of Sandra’s immigration challenges raised ethical concerns because it was information gathered in the context of an unrelated hearing in an unrelated court. All three felt strongly that Bob should meet with James and impress upon him the importance of confidentiality as outlined in the code of conduct. Martha felt the State Interpreter Commission or other governing body should also note this indiscretion and issue a formal warning to James. “The seriousness of this conduct and the potential consequences for the case as well as for his future interpreting career should be impressed upon him.”

5) Ethically, does the need to protect and promote equal access to justice outweigh any other consideration, including an interpreter’s immigration status? Why or why not?

David did not believe that protecting and promoting equal access to justice specifically outweighed any other consideration, including an interpreter’s immigration status. He offered, “While equal access to justice is critical, courts and court employees should not violate ethical trusts to promote and protect that access.”

Eric agreed with David and framed his response in the context of the possible outcomes of the immigration court. If the legal status of the interpreter is ultimately determined to be illegal, the integrity and credibility of the court’s interpreter program may be called into question because it did not sufficiently vet the interpreter’s background before hiring her.

Martha disagreed and concluded that equal access to justice does outweigh the consideration of an interpreter’s immigration status. While she believed that Bob need only verify an interpreter’s social security number to facilitate compensation, she indicated that the court might infrequently have to consider some deviation from that requirement, particularly where the court is in need of an extremely rare language that is known by only a few people, perhaps only other family members. In such rare circumstances, the most effective interpreter may not even reside in the United States. Martha insisted that the court would need to figure out how to facilitate appropriate compensation so that the case could be heard. Martha concluded, “… it is not acceptable to say to a litigant: ‘I’m sorry we can’t hear your case because we can’t find any interpreter who can communicate with you.’”

In closing, I extend my personal thanks to David, Martha, and Eric for their insightful responses to this growing area of concern. As the debate regarding immigration reform moves forward, it will become incumbent on court leaders to evaluate the rules and criteria through which interpreters are selected to effectuate equal access to court services, while simultaneously approaching issues where local and federal issues overlap with greater caution, predictability, and consistency. One response that was offered several times by our respondents was to place great weight on the availability of a social security card or a completed I-9 form as proof of legal status. But, what if you happen to contract with a local interpreter “broker” and compensation is paid directly to him/her rather than the assigned interpreter? What do you know about the interpreters that they hire and assign in your courtrooms? And should you be asking for more?

As always, I am curious to hear what you think about this issue. Please forward your thoughts regarding this scenario, or ideas for future columns, to me at fmaiocco@co.kitsap.wa.us.

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NACM NEW MEMBERS  March — April 2011

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National Association for Court Management

The National Association for Court Management is a nonprofit organization dedicated to improving the quality of judicial administration at all levels of courts nationwide. In carrying out its purpose, the association strives to provide its members with professional education and to encourage the exchange of useful information among them; encourages the application of modern management techniques to courts; and, through the work of its committees, supports research and development in the field of court management, the independence of the judicial branch, and the impartial administration of the courts.

Membership

The National Association for Court Management needs your help to reach our membership goal this year. Help us reach out to the next generation of court leaders and staying true to our goal of “Excellence in Court Administration.” Let’s sponsor new members!

Several categories of membership are offered in the National Association for Court Management: Regular, any person serving as clerk of court, court administrator, or in any court management, court education, court research, or court consulting capacity ($125); Retired ($95); Associate, any person interested in the improvement of the administration of justice ($125); Student, any person enrolled full time in a degree program related to the field of court administration ($95); Staying True, any person, group of persons, firm, or corporation interested in furthering the goals of the organization ($350).

For more information about NACM or about joining the organization, please write to the president or the National Center for State Courts, 300 Newport Avenue, Williamsburg, Va. 23185, or call (757) 259-1841.

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☐ STUDENT
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Retired from judicial system
New $80 ☐ Renewal $95 ___________

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Person, firm or corporation supportive of NACM goals
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*SUSTAINING memberships not included.

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FORUM ON THE ADVANCEMENT OF COURT TECHNOLOGY (FACT) is a consortium of private sector companies and senior court representatives dedicated to strengthening the dialogue between courts and their providers of technology. Visit http://fact.nscsc dni.us/ for more information.

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<tr>
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<tr>
<td>FACT Independent or nonprofit</td>
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Payment Information

Send application and payment information to: National Association for Court Management, c/o National Center for State Courts, 300 Newport Avenue, Williamsburg, VA 23185. Make checks payable to: NACM in U.S. dollars.

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