CASE IN POINT
THE NATIONAL JUDICIAL COLLEGE
2011 ISSUE

CIVICS & THE COURTROOM

JUDGE EVANS & THE ROBEWARRIORS

EFFECTIVE COMMUNICATION WITH SELF-REPRESENTED LITIGANTS

CIVICS and your COMMUNITY


**THE EDITORIAL TEAM**

**A Note of Thanks:**

As this is my last issue as executive editor of *Case In Point*, I would be remiss without thanking the numerous people I have worked with and interviewed over the past 10 years. To the many photographers, guest writers, designers, editors and advertisers who have worked with me to produce this magazine, and of course to Christina Nellemann, my trusted colleague whose talent and dedication set a benchmark of professionalism that is hard to beat – I offer you all my sincere “thanks!”

When I launched *Case In Point* back in 2001, I had no idea that the country would be faced with a homeland attack, or that natural disasters and a severe recession would linger for years. Yet, these issues gave reason for a renewed sense of freedom, democracy and rights that also emerged as issues for our court system. Judges and the justice system will forever be changed by the events of the last 10 years, and I hope that I have brought some positive insight on these issues that the judiciary found helpful.

From re-branding the NJC with a new logo and identity, to incorporating new media into the College’s marketing and communications effort, the NJC Trustees and Communications staff should be proud, as I am, in these many accomplishments.

I’ve been fortunate to serve the College as director of communications for over a decade, and I know that the positive impact the NJC has had on our nation’s judiciary will continue to grow and be felt for decades to come. As I move on to my new professional career – I again say “thanks” to the many colleagues and NJC folks that I’ve come to call friends.

Sincerely,

Trace Robbers, Director of Communications

**Cover:**
The cover photo features the children of NJC staff members Gretchen Alt Sawyer, Laurie Ginn and Trace Robbers. (L to R): Lauren Robbers, Rachel Alt, Thomas Ginn, Hailey Robbers. Thanks kids! On location photography by Jeff Ross.
Civics and the Courtroom
By Trace Robbers, Director of Communications

Projects like iCivics, Project REAL, Classroom Law Project, Civics and Law Academy, and the Rule of Law Project, are helping to teach young people about the importance of democracy and the rule of law.

Judge Evans and the RobeWarriors
By Hon. Peter Evans, 15th Judicial Circuit Court, West Palm Beach, FL

As a judge, a judicial educator and a motorcycle enthusiast, Hon. Peter Evans has had the opportunity to begin teaching other judges about motorcycles and motorcycle law.

Effective Communication with Self-Represented Litigants
By Kelly Tait, University of Nevada, Reno

Communications consultant and instructor, Kelly Tait, lists the steps of good communication with SRLs and helps judges to see the court system from a novice’s perspective.

Judicial Security
By John F. Muffler and Hon. James R. Brandlin

John F. Muffler, National Center for Judicial Security, U.S. Marshals Service and Hon. James R. Brandlin, LA Superior Court list the ingredients of threats and inappropriate communication and the best practices for mitigating them.

10 Ways to Improve Mediation Settlement Rates
By Nancy Neal Yeend, Carol Webster Millie and Michael Kasperzak

After settlement conferences, mediation is the most effective court-connected dispute resolution process. These three authors list the top 10 ways to improve mediation settlement rates.
In this issue of Case In Point, we address civics education. The nation’s schools are facing challenging times and all too often programs like civics education are ignored or eliminated. However, judges, lawyers, the corporate world, and citizens are stepping up to bring civics education back to our youth and the public. The programs reviewed herein are a few of the “amazing” initiatives being conducted throughout the country. We know there are other similar programs and we ask that you please share the nature of these other programs with us (dressel@judges.org). Participation in such a program is an important way to get the word out about the rule of law, fair and impartial courts, democracy, and being an involved citizen. These civics education resources can be replicated in your city or state, and we hope that you will take the time to participate in an initiative in your area.

In addition, you will find a variety of information and articles of interest whether you are a judge, a friend of the NJC, or simply interested in justice. We also invite you to go to the NJC’s website to review 2012’s challenging and enriching courses/programs to be conducted by the NJC. Looking ahead to 2013, we are planning to conduct a series of three symposiums for NJC’s 50th anniversary. These symposiums will address:

- The culture of the American Justice System with a focus on civility – it will examine how the justice system can be the model for resolving issues in a civil fashion;
- How courts really resolve disputes – with a focus on the role of the jury trial in the 21st Century; and
- Who will be the 21st Century jurist? – exploring how best to educate them to be more than competent, prepare them to remain in office with a commitment to be lifelong learners, continuously improving their knowledge, skills, and attitudes, and assume roles as leaders who will improve the delivery of justice.

The NJC could not achieve its level of excellence without outstanding leadership: the people who have given their wisdom, guidance, time, and resources as trustees, or members of the Board of Visitors. The 2011-2012 trustee chairs are an example of those, who for the past 48 years, have provided outstanding leadership. Immediate Past Chair Marybel Batjer was the first nonlawyer to chair the board, no doubt receiving much encouragement from her father, a former Nevada chief justice. Ms. Batjer brought many talents and skills from her experience as a chief of staff/public information officer for high ranking US government officials, state governors, and private industry. Current Chair John Frankovich, Esq. brings his past experience as a trial lawyer and his current work as a managing partner of one of Nevada’s distinguished law firms. Finally, Chair-Elect Judge Sophia Hall contributes her many years of involvement addressing the improvement of justice issues in Cook County, Illinois and nationally.

We remain dedicated and committed to assisting our nation’s judiciary in achieving excellence in providing fair, timely, and impartial justice for all. On behalf of everyone at the NJC, we wish to thank all of you who make the work of the NJC possible: Education, Innovation, Advancing Justice. We also give special thanks to Trace Robbers for his ten years of outstanding dedication and service. Trace we wish you well!

Hon. William F. Dressel
President
Democracy, civics and active participation in the community are not things with which we are born—they must be learned.

Our nation’s school systems continue to focus on the basics of reading, math, science, etc., with little or no attention being paid to developing civic-minded citizens. Declining school budgets and other socioeconomic factors also chip away at the opportunity for young people to learn about the importance of civics. But, projects like iCivics, Project REAL, Classroom Law Project, Civics and Law Academy and the Rule of Law Project, are emerging across the country and reversing this trend by helping to teach young people about the importance of democracy and the rule of law. Judges, lawyers, businesspersons, legal organizations and nonprofits alike, have taken on the challenge of teaching civics and are developing innovative programs with lasting impact.

Why teach civics? In his column “Law Matters,” Former Missouri Chief Justice Michael A. Wolff commented that the public should find it disturbing that a recent Zogby International survey found that more Americans can name the original Three Stooges (that’s Larry, Curly and Moe) than can name the three branches of government. The same survey found that 87 percent of Americans knew the names of at least one of the Seven Dwarfs, but only 39 percent could name one of the justices of the U.S. Supreme Court. In our media-drenched society, where more focus seems to be placed on pop culture than on civic education, it is much easier for our citizens to know all of the judges on “American Idol” than any of the justices of the Supreme Court.

“It is much easier for our citizens to know all of the judges on “American Idol” than any of the justices of the Supreme Court.
music or television stars. However, it is essential for a well-informed and effective citizen to know there are three co-equal branches of government – executive, legislative and judicial – in both our state and federal governments, and to at least understand the role that Supreme Court justices serve,” Wolff said.

In Justice Wolff’s home state of Missouri they are fortunate to have many dedicated teachers ready, willing and able to transmit important civics lessons to the next generation of citizens. To help these teachers, The Missouri Bar has become the hub of some very strong law-related educational programs, including an annual civic-education conference for schools (http://members.mobar.org/MoBar_Educators/Resources.html). It also offers instructional resources, including lesson plans for a variety of programs and a free video-lending library for teachers, available through the Bar’s Web site, www.mobar.org. Missouri’s judges and lawyers across the state have been volunteering to bring instruction and programs about law and the legal system to the state’s classrooms. It seems more and more that individuals and organizations are stepping up to teach civics.

The civics education programs profiled here are but a few of the hundreds of programs being offered across the nation, and we encourage you to explore these resources as a way to help teach civics to the youth in your own hometown.

iCivics
www.icivics.org

One of the most ambitious civics programs to date comes from retired Supreme Court Justice Sandra Day O’Connor. While still on the high court, O’Connor became alarmed at the verbal attacks and threats on judges. What had happened to the sacred constitutional principle of judicial independence? America’s founding fathers deliberately placed the national courts above the fray of electoral politics. To preserve the judiciary’s authority, power, and legitimacy, and to teach students about its place in the U.S. government, Justice O’Connor launched www.iCivics.org, a web-based project featuring interactive video resources about the democratic process. iCivics is designed to teach students civics and inspire them to be active participants in our democracy. Now several years into a productive retirement, O’Connor is devoting her life to teaching American youth about the United States government. As she frequently insists to social studies teachers, “Democracy is not genetic; it must be learned!”

The iCivics project offers educational tools and an array of interactive games and activities that students can use in class or at home. Students can assume the role of a Supreme Court justice and help decide a school dress-code case. Or they might learn how a new immigrant becomes a U.S. citizen by guiding them through the naturalization process. iCivics also provides outlets for students to engage in real-world civics efforts and support community projects founded by their peers from across the country. Thankfully, the Internet can be leveraged to update civics education in the digital age. At its best, the Internet is much more than just a source of information—it can be a powerful platform for students to exchange and debate ideas about what’s going on in their communities. The state of South Carolina under the leadership of Chief Justice Jean Toal, is taking on the challenge of bringing iCivics to the school of South Carolina.

Project REAL – Relevant Education About the Law
www.projectreal.com

Las Vegas businessman, Irwin Molasky, based on a Massachusetts program, conceived Project REAL (Relevant Education About the Law) which seeks to provide elementary, middle and high school students with an understanding of basic democratic principles such as those guaranteed by the First Amendment, Bill of Rights and the Constitution. Molasky, joined by this friend Las Vegas Attorney Samuel Lionel, were keenly aware of the drop in civics eduction nationwide and set about changing that in 2005 by forming REAL. The project began as a Nevada effort, but has seen national attention with REAL projects popping up in other states as well. “Our goal is to educate students of all age levels about the basic tenets of democracy,” Molasky noted. “We need to teach our children to be good citizens.”
The basic mission of REAL is to educate students about the law and the democratic system of justice through real-life contact with the court system, an interactive website, and specialized school curriculum. Curriculum titles include: “Play by the Rules,” “Your Day in Court,” “Foundations of Democracy,” and “REAL Drama.” Students in the program tour county and federal courthouses and talk with judges and other court personnel about the legal system. Project REAL seeks to educate younger students in grades 1 through 4 regarding the foundations of democracy. The special curriculum and related training of teachers emphasizes lessons in the respect for authority, justice and fairness, and responsibility as a citizen. REAL also offers an interactive website (www.projectreal.org) with educational resources and a Q&A section with legal experts.

Classroom Law Project

www.classroomlaw.org

The Classroom Law Project (CLP) in Portland, Oregon provides innovative, timely, practical and fun programs that involve and inspire over 400 teachers and 24,000 students annually from 250 schools in 75 Oregon communities. This benchmark civics program began more than 25 years ago and is still going strong thanks to strong community involvement and support. The Classroom Law Project has emerged as Oregon’s leader in preparing youth to become active, engaged and informed participants in a democratic society. Program titles include “Courthouse Experience,” “Law Day,” “Mock Trial,” “Project Citizen,” “Street Law,” “We The People,” and “Youth Summit,” all focused on the diverse needs of Oregon’s regions and communities.

Recognizing the need to provide civics education to students, CLP works with teachers and school administrators to create an integrated curriculum that meets their needs. And this isn’t just about learning history or how the courts work—CLP’s innovative programs are used to help young people to develop positive attitudes about authority, justice, and the rule of law; to prepare students to think about the common good; and to take action to express their commitment through voting, volunteerism and petitioning the government.

In 2001, the Carnegie Corporation of New York and the Center for Information and Research on Civic Learning and Engagement (CIRCLE) (www.civicyouth.org) convened a distinguished panel to study the decline of civic education. The report of this study, titled The Civic Mission of Schools, identified six promising approaches that research shows can improve civic education.

Every school should:

1. Provide high-quality, formal instruction in government, history, law, and democracy.
2. Incorporate discussion of current local, national, and international issues and events into the classroom.
3. Encourage student participation in school governance.
4. Offer extracurricular activities that involve students in their schools and communities.
5. Have students apply what they learn through community service linked to the curriculum and classroom instruction.
6. Encourage student participation in simulations of democratic processes and procedures.

- In a recent ranking from The Civics Mission of Schools National Assessment of Educational Progress (NAEP), only a quarter of high school students were judged to be proficient in civics and only 4% scored at the advanced level. A third of the students failed to demonstrate even a basic level of understanding. In the NAEP for U.S. history, only 11% scored at the proficient or advanced levels.¹

- In another study conducted by the National Constitution Center, only 1.8% of students could identify James Madison as the father of our Constitution compared to the 58.3% who could name Bill Gates as the father of Microsoft.²

- In a national survey of secondary students conducted by CIRCLE found that 57% were disengaged from civic life and found that only 5% of entering college freshmen regularly followed public affairs.³

for change. The project has grown into an energetic and cost-effective non-profit organization that unitizes the power of an experienced staff and a large group of committed volunteers to reach hundreds of teachers and schools and thousands of students each year.

**Civics and Law Academy, American Bar Association**
www.americanbar.org/groups/civics/about_us.html.

The American Bar Association has also stepped up to tackle the civics education issue by forming the Commission on Civic Education in the Nation’s Schools. The Commission serves as an advocate for civic education in American classrooms and promotes the implementation of effective and high-quality educational programs. Among the recommendations that the commission set forth was the creation of the “Civics and Law Academy,” a model program for middle and high school students that can be replicated in all states. Academies are being organized throughout the country to mobilize judges and lawyers to share their expertise, experience and enthusiasm for the law with young people, as well as encourage them to be active participants in our democratic society. To facilitate the organization of the academies, the Commission published a 20-page Civics and Law Academy Resource Guide with six distinct “Pathways to Understanding,” used as a curriculum framework. Each Pathway contains topics and suggested court cases relative to the subject matter. The Commission has furnished a free online resource with lesson plans samples for those looking to conduct a Civics and Law Academy. A free Program Directory is also available online as a clearinghouse of Civic and Law Academies around the nation.

The six Pathways to Understanding (Law and Justice, Power and Empowerment, Constitutions and Constitutionalism, Rights and Responsibilities, Freedom and Equality, American Identity and Pluralism) offer students a chance to explore the important role that civics plays in American society. At a recent academy held in Washington, D.C., students interacted directly with national leaders in government and law, offering them an intimate and personal perspective on the three branches of government at work. Leaders met with students and discussed the duties of their offices and their roles as public servants. ABA President Stephen N. Zack was quick to note that even hometown civics academies can have a positive impact on students just by exposing students to the governmental framework in their own hometown. “ Judges, lawyers, office holders, government leaders, all can have an impact on the future of civics education just by getting involved and starting the conversation,” Zack continued.

**Rule of Law Project, Virginia Law Foundation**
www.ruleoflaw-vba.org/

Sponsored by The Virginia Bar Association, with financial support from the Virginia Law Foundation, the VBA Rule of Law Project provides a one-day educational program designed to enhance the teaching of the rule of law in public and private schools in Virginia. Taught by volunteer judges and lawyers, working with middle school civics teachers, students learn about the origin, meaning and applicability of the rule of law as the basis for all of the freedoms they enjoy as American citizens.

Since its introduction in February 2009 in all middle schools in the Roanoke Valley, the VBA Rule of Law Project has witnessed steady growth in Virginia’s public schools. During the 2009-2010 school year, the Project was introduced to 43 school divisions through local bar associations across Virginia, with 12 divisions participating. The goal of the VBA Rule of Law Project is to be an annual program in all Virginia middle school classrooms within the next three years. The Project’s curriculum is free and, while designed primarily for middle school civics classes, is consistent with the Virginia Standards of Learning for both middle school civics and high school history and government classes.

*continued on page 8...*
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The VBA Rule of Law website contains all the tools needed to plan and implement the curriculum in the classroom. The interdisciplinary materials are adaptable to different age and ability levels, and are appropriate for use in combined Civics and English/Language Arts classes.

**Featured content includes:**

- “Law Rules” video featuring prominent judges and lawyers discussing the meaning of the rule of law (for classroom use).
- A teacher resource page that includes 16 downloadable political documents; educational links; reading list of plays, short stories, poems, non-fiction and other works for teachers and students; lesson plans and other useful documents.
- “Rule of Law Discussion Points” handout for students.
- Implementation protocols for teachers and volunteer lawyers and judges.
- List of contacts to answer questions and assist with implementation.

This interactive curriculum, combined with robust class discussions on issues related to the rule of law, empowers students at a formative age to become active and engaged citizens as adults. Because the VBA Rule of Law Project curriculum is web-based, it is available to virtually everyone. It is the belief of the Project that we in America need to instill in our youth a much better appreciation of why we continue to live free and why nations around the world continue to look to America as a model.

Unfortunately, as the civic knowledge of young people continues to decline, so does the emphasis on civic education in America’s schools. Although the federal No Child Left Behind Act mentions social studies as a core subject area, the focus on reading and math has put pressure on school districts to give emphasis to these subjects often to the detriment of civics and history. In addition, many states’ testing programs do not include or adequately emphasize civics, further exacerbating the problem.

In short, many of today’s young people lack the basic knowledge and skills to effectively participate as citizens, and they often lack the dispositions to do so. Great international and domestic challenges will continue to face the United States today and in the future. Only with strong democratic institutions, wise leadership, and a thorough and intelligent debate on crucial issues can these challenges be met. All of them require the participation of an enlightened citizenry. These realities have galvanized action around the country for a renewal of civic education in our nation’s schools. But for now, it will be through the volunteering efforts of judges, lawyers, legal associations, nonprofits and business people that our nation’s youth receive any civics education at all. So the call goes out to get involved in civics education projects, and let the NJC know of other civics education projects, so they can be shared. Our future democracy just may depend on it.

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**2011 Dividing the Waters National Conference**

The October 9-12, 2011 Dividing the Waters National Education Conference, “Crossing the Ag-Urban Divide,” will offer participants a deeper understanding of the legal transitions that the American waterscape encounters as rural, agricultural lands give way to urban cities, suburbs and exurbs. Complex water litigation plays a critical role in those transitions, whether the dispute arises out of water rights, water quality or environmental degradation. Conferees will be joined by judges, writers and practitioners who are actively involved in leading communities through the often-times difficult transition from agricultural to urban water use. Interactive general and small groups sessions will draw attention to examples of conflict and collaboration in play around the country, and how judges can best craft an enforceable judgment or decree that ensures a fair and just resolution of the public water controversy. A special introductory water law session will be offered to adjudicators new to the field.

For more information, visit the website at www.judges.org/dividingthewaters.
The NJC is saddened by the recent passing of NJC alumnus and board of visitors member, Hon. Louis E. Condon (Ret.). He was a respected jurist having served the people of South Carolina in a distinguished career spanning more than four decades. Among his achievements at the NJC, is the enduring legacy of learning that he left with each visiting judge that he met. NJC president, William F. Dressel, noted recently that Judge Condon’s approach and commitment to judicial education was unmatched.

“Judge Condon had a natural way of connecting with other judges – which I attribute to his unending effort to make the judicial system better for all,” Dressel said.

Judge Condon attended his first NJC course in 1976, which focused on fundamentals of evidence, with later courses centering on issues such as the courts and media. His professional career saw many highlights including serving as a discussion leader and program moderator at the NJC. His service to the College continued to grow through the years, culminating in a prestigious position on the NJC’s board of visitors in 2005.

“We are grateful to Judge Condon’s participation on our board of visitors. His commitment to the College will continue to benefit our judge-participants for many years to come. Louis every day and in every way demonstrated that a person of civility can promote justice for all while remaining fair and firm. A genteel, caring man has left us and will be missed,” Dressel continued.

Hon. Louis E. Condon (Ret.), Charleston County master in equity of Mount Pleasant, South Carolina, died February 13. He was 83. Condon was born in Charleston on April 3, 1927. He served in the Navy during World War II. After graduating from the College of Charleston in 1950, Condon attended graduate school at the University of South Carolina and Georgia Tech. Condon returned to the USC School of Law in 1959, graduating in 1962. Condon worked in private practice until 1975, serving as a Charleston County municipal court judge from 1967 until 1970. In 1975, Condon was appointed master in equity of Charleston County, a position in which he served for 20 years.

Condon was named a faculty member and judge-in-residence at the Charleston School of Law in 2005. He taught there until 2008. In addition to his career as a lawyer, judge and teacher, Condon served on a multitude of boards, committees and also was a labor arbitrator for many years. He was founder and president of the Charleston County Judicial Council and founding member and president of the South Carolina Equity Court Council. Condon served as past president of the Charleston Symphony Orchestra, the College of Charleston Alumni Association and the Lowcountry Muscular Dystrophy Association. He received the College of Charleston’s Distinguished Alumnus Award in 1984 and an award from the Charleston Lawyers Club in 1987 for his assistance to young lawyers. Condon was predeceased by his first wife, Betty J. Metze Condon. He is survived by his wife Marie Jeffords Condon, three sons and two grandchildren.
I have been a judge for over 22 years. I have been a motorcycle rider and “enthusiast” for about 40 years. I first began to ride when I was a law student. I needed transportation and could not afford a car. A motorcycle became the affordable option. It was not something that interested me before that but necessity brought me into the world of motorcycles. It has been transportation, recreation and therapy all rolled into one.

I have also found over the years that the image people have of “bikers” generally does not include short, overweight, balding jurists who carry laptops in their saddle bags. People have found it surprising when they notice the judge who parks the bike in the judicial parking lot. In addition, on a few occasions I have drawn comments and a few surprised looks from lawyers and jurors when I have arrived at one or two out of court “viewings” on two wheels.

I have also found that within the community of bike riders I was an oddity as well. Other riders always expressed surprise that a “judge” would also like bikes. I eventually found that the role of a judge in the community, which certainly extends beyond the bench, gave me visibility and the ability to be a quiet example for safe riding. The “Robe Warriors” were born. A friend, Judge Steve Rushing, drew up the first picture of the “RobeWarrior.” A judge on a motorcycle, tie flapping in the wind, proclaiming the motto “Street Legal.”

I put the graphic on a t-shirt and it became the official “colors” for the “RobeWarriors.” Now I could not claim a national organization, as it was just one lone judge, taking a tongue-in-cheek look at himself. I have generally confined myself to proclaiming my “RobeWarrior” association to judge meetings and lawyer gatherings. It was not long before other judges came forward, confessing a love of motorcycles and requesting that they be granted permission to wear the “RobeWarrior” colors. Okay, maybe they just liked the funny t-shirt and the opportunity to poke a little fun at themselves also. The “RobeWarrior” movement began to grow.

In the past few years, as a judicial educator, I have had the opportunity to begin teaching judges about motorcycles and motorcycle law. As more and more riders take to the road, those of us who sit in the courts who hear these cases, are seeing more and more cases involving motorcycles. In addition, the past few years have seen a large rise in the rate of motorcycle deaths and injuries. Certainly these are not issues that are clogging our courts. However, it is important that judges understand the issues that they will be dealing with. I hope to make every judge who takes the time to look at these issues aware of the importance of the laws that govern motorcycles and the public safety issues that they are meant to address. I want every judge who takes these courses, which will be offered at the NJC and as part of state traffic law training, to become a “RobeWarrior” dedicated to understanding and the proper handling of these types of cases. Further, I hope to encourage judges to promote the “RobeWarrior” ideal by engaging in proper judicial outreach and public involvement in promoting safety and keeping it “Street Legal.”

For more information on Judge Evans and the Robe Warriors, visit the website at www.robewarrior.com.
“The single greatest problem in communication is the illusion that it has been accomplished.”

George Bernard Shaw

EFFECTIVE COMMUNICATION WITH SELF-REPRESENTED LITIGANTS

By Kelly Tuit, University of Nevada, Reno

JUDGES’ communication in the courtroom impacts the quality of information they send and receive, the likelihood of compliance and the overall perceived fairness of the process by court participants. Communication can be particularly challenging for judges in cases involving self represented litigants (SRLs), and the number of these cases is increasing across the country.

One of the keys to effective communication—to creating shared meaning—is being able to understand the perspective of others. It’s easy to forget what a confusing, intimidating environment court can be for people not familiar with it. The procedures, terms, and norms that have come to seem simple or obvious to legal professionals are anything but that to most other people. One of the first steps to improving communication with SRLs is to try to see from a novice’s perspective.
Lessons from Research on Experts and Novices

Judges, even newer judges, are experts in the legal field compared to self-represented litigants, who by and large are novices. Research has clearly demonstrated that experts and novices approach the same content differently (see, for example John D. Bransford et al., *How People Learn* (2000) and K. Anders Ericsson, editor, *The Cambridge Handbook of Expertise and Expert Performance* (2006)). Novices’ short term memories fill rapidly and they tip easily into information overload. This is partly because they often can’t recognize meaningful patterns or “chunk” information appropriately. It’s also difficult for them to determine what’s relevant and important. Judges’ knowledge and experience affect what they notice and how they organize, represent, and interpret information. This in turn can improve their abilities to remember information, analyze situations, and solve problems, but they often forget the time and effort it took for them to get to this level.

SRLs not only usually don’t have the knowledge and experience to navigate the court process as cognitively efficiently as court professionals do, they also typically have greatly heightened emotions. These emotions stem from both the events that led them to be in court as well as from the actual experience of representing themselves in the intimidating, demanding environment of the courtroom. Many times the emotions seem like the most important part to SRLs, and a high level of emotions can interfere with cognitive processing. Judges who recognize this can acknowledge the emotions in a way that maintains the appearance of neutrality and that allows SRLs to know they’ve been heard and to move on, e.g., “Clearly you are upset by what’s happened. What I need from you now in order to make the fairest decision I can is....”

To help you understand the perspectives of self-represented litigants, remind yourself how you felt when you first started law school or how you feel in any situation where there’s a specialized vocabulary, a large power differential, an unfamiliar environment, and something important and personal at stake. The medical context is similar to the legal context in these ways. How do you feel when you have to go to the hospital? Consider how the context influences you cognitively, emotionally, and behaviorally.

Elements of Communication

A major potential barrier to effective communication with SRLs is the specialized language of the law. While the language used in court needs to be accurate and appropriate, it’s just as important that it also be comprehensible if SRLs are to have a meaningful opportunity to represent themselves. Adapting the message to the audience is one of the key skills of an effective communicator. This includes choosing simple, concrete words when possible and giving clear explanations of expectations, processes, and legal terminology (test explanations in advance). Focus on transparency and accessibility.

While language is extremely important, it’s also critical to be aware of the importance of nonverbal communication, which includes all behaviors that communicate except the words (it even includes how people say the words). Decades of studies demonstrate that 60-93 percent of the meaning of a message comes through nonverbal channels such as vocal inflections, tone of voice, posture, gestures, eye contact, facial expressions, pauses, etc.

Remember that if the nonverbal behaviors don’t match the words, people are much more likely to believe the messages they think are being sent nonverbally. So, if the judge says that it’s important that the SRL understands but then speaks quickly, barely looks up or pauses, and doesn’t check for comprehension, the interpretation is likely to be that expediency is more important than comprehension. The most effective messages are ones where the words and the nonverbal communication are congruent—where they’re sending the same message and reinforcing each other.

More Techniques for Improving Communication

- Make sure the courtroom ground rules are clear—it’s a lot easier for people to follow the rules if they know what they are. For instance, let court participants know that while they’re not supposed to interrupt, you might need to interrupt them in order to make best use of the time available. Then if you do interrupt, it doesn’t come across as disrespectful.
• Provide a mental map of the process and be clear about when the SRL will have the opportunity to speak. Letting someone know this ahead of time makes it less likely the person will interrupt and more likely that the person will be ready to interact appropriately.

• Repeat important information, ideally using more than one sense (oral and visual, for instance).

• Use paraphrasing both to confirm or clarify your understanding of what someone said and to check the SRL’s understanding. Keep in mind that you need to pay attention both to the words you use (briefly give the reason you want them to paraphrase) and the way you say the words so you don’t sound condescending.

• Pay attention to your nonverbal behaviors and send the same message with them that you do with your words. For example, when you ask if a court participant has any questions, establish eye contact, use an inviting tone, raise your eyebrows slightly, make sure your body is turned toward the person, and wait a minimum of five seconds. Also treat all parties in as equivalent a manner as possible with your nonverbal behaviors—turning toward them, amount of eye contact, etc.

• Remember that people tend to interpret others’ behaviors through their own individual and cultural filters – this is true for you and all court participants. Diversity-related elements can have a major impact on communication. Consider multiple explanations for behaviors.

Conclusion
Judges’ jobs can be particularly challenging when the cases involve self-represented litigants, but these cases also provide an opportunity for judges to impact the quality of justice through their communication. What judges choose to say and do connects directly to the four major components of procedural fairness: if litigants felt they had a voice, understood what was happening, felt they were treated with respect, and thought the judge was trying to be fair.

Communication is an area where even if you’re already good, you can get better. Work to understand the different perspectives and communication capacities of people in court as well as being aware of your own perspectives and communication habits. Seek ways to improve: study recordings of yourself, get feedback from trusted colleagues, take NJC’s course Best Practices in Handling Cases with Self Represented Litigants (next offered September 18-22, 2011, in Philadelphia, PA).

Make people’s right to represent themselves in court meaningful. Justice demands more than the illusion of communication.

Kelly Tait is a communication consultant and instructor at the University of Nevada, Reno. She has ten years of experience in judicial branch education. Her areas of expertise include courtroom communication skills, communicating with non-legally trained court participants, diversity issues and perceptions of procedural fairness, and faculty development. She can be contacted at ktconsulting@aol.com

DURING CHALLENGING ECONOMIC TIMES, STATE SCHOLARSHIP FUNDS MAKE A DIFFERENCE

NJC’s educational offerings provide our nation’s judiciary with the skills and competencies they need to render fair and impartial justice in courtrooms across America. As funding for education continues to dwindle, the NJC is reaching out to donors in states across the country to establish scholarship funds that will be used for judges to receive excellent education through NJC programs and courses.

A number of states have benefitted from the NJC scholarship initiative, including Colorado, Alabama, Nevada, and South Carolina. The Colorado Judicial Institute (CJI) is in its third year of providing scholarship funding for their judges. Recently, Amy Ostheimer, CJI’s executive director said this about the impact the fund is having on Colorado judges, “The education Colorado judges receive allows them to perfect their legal knowledge and skills, returning to the bench with a higher sense of the commitment required to be more competent jurists.”

The NJC is approaching organizations, corporations and individuals to establish these scholarship funds. Funding is used to assist judges who attend NJC courses, or to defray all or part of the cost of presenting an instate/regional workshop. For more information about establishing a fund in your state or if you would like to donate, please contact Gretchen Alt Sawyer at (775) 327-8257 or alt@judges.org.
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ost states’ Canons of Judicial Ethics largely mirror the ABA Model Code of Judicial Conduct. Judges are required to decide all matters assigned to them unless disqualified. Judges are required to uphold and apply the law fairly and provide all affected parties with the opportunity to be heard. They are to remain patient, dignified, and courteous. These fundamental principles are sometimes difficult to follow when judges are confronted with increasing caseloads and disproportionate numbers of difficult self-represented litigants, particularly in family law and criminal cases. A judge’s ability to master the skill sets needed to balance these competing interests can also directly impact that judge’s safety and well-being. A judge’s ability to be fair is predicated upon his or her ability to preside over cases without fear or favor. When judges and other public safety officials are faced with increasingly inappropriate communications and threats, their impartiality can suffer.

What then are the ingredients of a threat and an inappropriate communication, and what can judges and other public safety officials do to mitigate these problems? What are the best practices? Why do some people, specifically litigants, make these inappropriate communications? What happens when litigants feel they have not had their day in court or feel that they have not been heard?

We have both asked these questions of our colleagues. Judges universally highlight the inherent difficulties associated with litigants suffering from mental illness as well as the ever-present danger associated with any emotional court proceeding involving a loved one. Moreover, whenever a litigant feels that counsel or the judge was unsympathetic or handled his or her grievance inappropriately, anything from a disruption in court to a direct threat can occur.

By definition, all threats are inappropriate communications, but not all inappropriate communications are threats. An inappropriate communication can be defined as something that does not respect the boundaries or procedures established in that forum or it may reflect an unusual interest in the recipient of the communication. A threat can be an indication of danger or an attempt to control another through expression of an intention to inflict pain, injury, evil, or punishment. The difference is a defining line for law enforcement. For threat assessment professionals, these inappropriate communications are markers along the continuum of risk and are indicators for the application of different threat management techniques.

In the past year alone, U.S. marshals have investigated 1,390 inappropriate communications to federal judges, assistant U.S. attorneys, justices of the U.S. Supreme Court, and other government officials. In the past eight years, that number has exceeded 10,000. The Administrative Office of the United States Courts (AOUSC) reports that there were 96,000 self-represented litigant filings in the past year in the district
Courts and circuit courts of appeals. Approximately 10 percent of the inappropriate communications investigated stem from these self-represented litigants. Judge Michael S. Kanne, Seventh Circuit Court of Appeals, is chair of the Committee on Judicial Security, Judicial Conference of the United States. His committee and the AOUSC are working on ways to assist these litigants with legal advice so they have a fuller understanding of the complexities and nuances of court proceedings. This type of effort is essential to the education of self-represented litigants and lessens the potential for inappropriate behavior or communications.

The U.S. Marshals Service utilizes a robust and innovative protective methodology to mitigate threatening and potentially threatening behaviors. Educating protectees is the first step in the proactive law enforcement process, as the judge or other public safety official will be the likely recipient of the behavior or communication. It is important to note that persons who pose an actual physical risk of danger often do not make advance threats, especially direct threats to the target. Educating protectees in risk behaviors will enhance reporting and the prevention of harm. This educational process is a critical step in risk management. With timely reporting, protective intelligence measures function more effectively and proper security assessments can be conducted in order to ensure safety. The successes of these protective measures rely heavily on the ability of law enforcement to be proactive in a reactive situation.

There are four bedrock, proven principles of a protective investigation: (1) identify the communication to ensure that it meets the definition of an “inappropriate” communication and determine whether there was a triggering event; (2) assess the communication to determine if the subject poses a risk and whether the risk is immediate, conditional, or delayed; (3) investigate to determine the appropriate response to the threat or inappropriate communication; and (4) manage the case to include all updates and status of the activity. The key to this protective investigation is that it is a “behavior-based approach.” Threat assessment professionals are more focused on the actions of the threatener than on merely looking at the words he or she used.

In the findings of their groundbreaking Exceptional Case Study Project (ECSP), Robert A. Fein, Ph.D., and Bryan Vossekui stated, “Frequently, thinking about assassination is compartmentalized; some potential assassins engage in ongoing internal discussions about attacks while maintaining outward appearances of normality. In every ECSP case, assassination was the result of an understandable and often identifiable process involving the attacker’s pattern of thoughts, decisions, behaviors and actions that preceded the attack.” Barry Spodak, a licensed independent clinical social worker (LICSW), trains the U.S. Marshals Service, U.S. Secret Service, and other federal agents on behavioral threat assessments and is director of Action Training Institute. He states:

This finding has significant implications for individuals conducting threat assessment interviews. Rather than focusing on the difficult goal of getting the subject to admit to planning an assassination attempt, an interview can take the form of an unthreatening conversation that allows the subject to vent . . . his anger, frustrations, hopes or fantasies. Working from the assumption that people act in their perceived best interest, the interviewer can frame the conversation as a rare opportunity for the subject to share his perceptions and beliefs with a receptive audience. In this way, without raising the issue of illegal activity, the interviewer can influence the subject to talk openly about a broad range of noncriminal behaviors that serve as markers along a path to violence and help to identify a “pattern of thoughts, decisions, behaviors and actions” that can identify people who pose a threat to a protectee.

Assessing these behaviors is paramount to providing quality protective measures. The next step is to ensure that the threatened official understands the risks, measures, countermeasures, and level of security.
that will be provided and for how long. None of these measures are cookie-cutter, as each threat, inappropriate communication, and person under protection is unique and must be handled as such. Behavioral threat assessment methodologies are consistent whether the threat is to the president of the United States, a judge, or an elected official. All public officials are at risk from individuals who perceive that they have been wronged and want to inappropriately affect change by their actions in a way that favors their cause. Judges are part of a system that decides winners and losers in the court of law. The amount of loss and the type of court hearing are largely insignificant, as the reason for the attack may only make sense to the attacker alone.

Judge Joan Humphrey Lefkow of the U.S. District Court for the Northern District of Illinois was the fourth federal judge since 1978 known to be the target of assassination as a result of her work on the bench. Her husband and mother were murdered in February 2005 by self-represented litigant Bart Ross. Ross wanted to exact revenge for Judge Lefkow’s dismissal of his medical malpractice case. Judge Robert S. Vance, Eleventh Circuit Court of Appeals; Judge Richard J. Daronco, Southern District of New York; and Judge John H. Wood Jr., Western District of Texas, were the other federal judicial victims of assassination. Also victimized were their spouses, children, and family (not to mention their judicial families). What we have learned from these murders is that: (1) all attacks happened as a result of involvement over a specific court case, (2) none of the assailants conveyed a threat prior to the attack, (3) all attacks occurred away from the courthouse, and (4) three of the attacks stemmed from civil cases.

In the book Murdered Judges of the 20th Century, Judge Susan P. Baker chronicles the deaths and disappearances of 42 judges from 1908–99 in the United States. Of those 42 individuals, two went “AWOL” while under investigation for corruption and six were killed by family members whose deaths were not job related. Of the 34 remaining murdered judges, 13 were killed at the courthouse (prior to modern-day weapon screening programs) and 21 were killed away from the courthouse. Of those 21, 11 died in transit and 10 died at home. It must be noted that four spouses of these targeted judges were also killed at the time of the fatal attacks.

We can glean from this that judges are at risk both in and away from the courthouse, but that the risks are higher away from their security details. What can judges and other justice personnel do to make themselves and their families safer? Here are some suggestions.

1. Treat others with respect and do not become embroiled in the controversy or allow things to become “personal.”

Interviews with a number of suspects who have carried out violent attacks against judicial officers reveal that the suspects felt they were being treated unfairly and were not provided an opportunity to be heard during the court proceedings. Many felt they had no recourse other than to respond with violence. Judges are advised to do their best to explain the process, particularly to self-represented litigants. Sometimes even using terms like “The Court is required to impose a mandatory sentence of...” instead of “You richly deserve the punishment that I’m going to impose...” helps communicate that you are just doing your job and that it is not personal.

2. Become invested in your own security.

Judges who develop mindsets that they are powerless to stop an attack or that they have a predetermined fate are doing themselves a tremendous disservice. Join your court’s security committee if one exists. If one does not exist, create one. That committee should include not only judges but your court’s security provider, administrators, and staff, as well as facilities personnel. Work collaboratively with your court’s security provider and local law enforcement to share information, evaluate your vulnerabilities, and develop appropriate mitigation strategies. Your court security provider can also obtain assistance and guidance from the U.S. Marshals Service.
3. Be cautious of exposure in the public arena.

Being away from a secured site makes you vulnerable; this is compounded when your appearance is broadcast. While it is best to keep your schedule unpredictable when out in public, many judges and public officials must be out in the public arena to allow their constituency to feel connected, in accordance with a fundamental part of the democratic process. Speeches and meetings at nonsecured sites may require advance law enforcement notification and/or a special security detail. The deterrent effect of law enforcement is hard to measure, but it stands to reason that an agent or police officer present at a function and visual to all may deter someone with bad intentions. For example, in the past year U.S. marshals secured over 400 off-site conferences and speeches for their protectees with minimal incidents reported.

4. Be aware of your surroundings.

Whether you are on the bench, driving your car, or sitting in a restaurant, it is important to be aware of your surroundings at all times. Stay near the exits if possible, and sit with your back to a wall. If you carry judicial identification, carry it in a separate wallet so you can discard it during a robbery. When driving, select an outer lane so you can escape if necessary by driving over a curb or median. Stop with enough distance to see the car’s tires in front of you touching the ground. This will leave enough room to drive around that car. Remember: if confronted in public, your priorities should be, first, to escape and evade and go to a secure location; second, to barricade and wait for help if you can’t escape; and last, to stand and fight where there is no other choice.

5. Practice “what if” scenarios.

To stay sharp and prepared, do what law enforcement officers do: envision possible dangerous scenarios and think about your reactions and alternatives. Involve your spouse and staff with these scenarios for a collaborative and coordinated outcome. In this way, you pre-plan your responses, and your reaction times become much faster in emergencies.

6. Harden the target.

Courthouses are attractive targets for disgruntled litigants and terrorists alike. New facilities should be designed, and older facilities should be modified if possible to utilize modern threat mitigation standards, including set-backs to minimize damage from bomb blasts, bollards to prevent vehicles from ramming the buildings, weapons screening, controlled access points, and personnel flow patterns to segregate members of the public, staff, judges, and inmate populations.

7. Beef up the security measures at home.

The measures you employ at work should also be considered to make your home safer. Do you have adequate exterior motion-sensor lighting? Have you installed deadbolt locks on your doors that are “pick” and “bump” proof? Do you have a “safe room” with a solid core door and deadbolt to barricade yourself inside and await help in an emergency? Is there an alarm system that has sensors on all exterior doors and windows? Do you and your family members activate it every time your home is occupied and unoccupied? Is it hard-wired? Is there a monitoring service available to dispatch the police? Do you have a surveillance system to continuously record what is happening around the perimeter of the house? Does this system provide Internet password-protected access and viewing capabilities through a smartphone or similar device?

8. Utilize all available privacy protection techniques.

Meaningful privacy protection, namely being able to “hide in plain sight,” should be the first, and not the last or only, line of defense. Privacy protection is important even in small communities. Potential stalkers or attackers could be strangers from out of town as well as locals. Keeping an unlisted phone number is important, as is maintaining a post office box, rather than having your name and home address listed on your checks, correspondence, and bills. Consider doing the following:

- Hold title to your residence in a trust not containing your last name to avoid being discovered by someone simply searching public records. You should confer with counsel before creating the trust to avoid potential tax consequences.
Get off the “X” or “Bull’s Eye.”

The idea is to move and place time and distance between you and an attacker, be it inches, feet, or miles.

• If your state permits it, apply for home address and telephone confidentiality on public records such as your driver’s license and registration, voter record, marriage license, etc.

• If possible, opt out of all Internet postings which display your home address, telephone number, or other personal identifying information. Over the last decade, California has enacted some of the most advanced privacy protection laws for “public safety officials” in the nation. These laws were enacted in response to the 1999 murders of Los Angeles Superior Court Commissioner George Taylor and his wife Lynda at their home. California public safety officials have the right to have their home addresses and home and cellular telephone numbers removed from Internet websites. The failure to comply with a public safety official’s written demand to remove his or her home address and telephone numbers from the Internet website puts the information data vendor at risk for civil damages of a minimum of $4,000, up to treble damages, attorneys’ fees, and injunctive relief. Intentionally posting the home address or telephone number of a public safety official on the Internet with the specific intent to cause intimidation or harm is a felony/misdemeanor. (See Cal. Gov’t Code § 6254.21 et seq.)

• There are two types of information on the Internet to be concerned about: personal identifying information and threats or inappropriate communications. Most sites offer ways to “opt out” from having your personal identifying information displayed. In addition, law enforcement can investigate and attempt to remove inappropriate, threatening, or dangerous communications, but it generally cannot keep personal information completely off the Internet. According to Carl Caulk, U.S. Marshals Service deputy assistant director for judicial security, social networking sites belonging to a protectee, family member, or staff member are a constant source of concern and vulnerability to protected officials. Since these are private sites, they need constant self-policing. Often, sensitive information such as personal schedules or future plans of a judge or family member are broadcast, not to mention photographs that are placed on the site by family or friends. This type of information is particularly dangerous in the hands of a stalker.

• If your state does not have similar privacy protections, consider motivating your association to lobby your state’s legislature or congress to enact these types of protections.

Essentially, the aforementioned protective modalities incorporate what law enforcement and military personnel call getting off the “x,” or bull’s eye. The idea is to move and place time and distance between you and an attacker, be it inches, feet, or miles. Education, protective investigations, and intelligence techniques are ways to protect you when on the “x.” However, attackers can’t hit what they can’t find. Privacy protection and hiding in plain sight are goals, but when you can’t totally become invisible, you should try to move off the “x” even by staggering entrance and exit times and routes of travel, and by not engaging in routines where patterns of your behavior become predictable to the attacker.

Partnering with judicial and law enforcement entities has been a force multiplier when it comes to protective intelligence information sharing. These multipliers have strengthened the American justice system. Communication and collaboration among marshals and state entities have resulted in greater awareness and readiness on both levels. Marshals are members of the National Sheriff’s Association (NSA) and International Association of Chiefs of Police (IACP) and present at their national conferences. Executives from the NSA and the IACP hold membership with federal and state judges on the Executive Advisory Committee of the U.S. Marshals Service’s National Center for
Judicial Security, a national think tank on best practices for security and safety in the courts. The AOUSC has funded two educational “Project 365” security videos. These videos were designed to educate judges, their families, and law enforcement on how to lower their profiles, as well as raise their security awareness, and they were produced using federal and state judges, marshals, and sheriffs.

The recent tragic shooting in Tucson and the murders of Commissioner Taylor, his wife Lynda, and Judge Lefkow’s husband, Michael, and mother, Donna Grace Humphrey, have all been seminal events highlighting the profound importance of protecting the court system, its judicial officers, and their loved ones. These events have led to comprehensive and positive protective mitigation strategies. As a result of these horrific murders and attacks upon our system of justice, stronger bonds, friendships, and new partnerships have been and continue to be forged, laws passed, and strategies shared. These measures have helped make our justice system safer and have intrinsically improved the quality of justice provided by our courts.

John F. Muffler is the administrator of the National Center for Judicial Security, U.S. Marshals Service Headquarters, Washington, D.C. He has a master’s degree from St. Joseph’s University, is a faculty member of the National Judicial College, and has conducted security assessments and speaking engagements worldwide on judicial protection. He can be reached at John.Muffler@usdoj.gov.

Judge James R. Brandlin has been a judge for more than 18 years and serves as the chair of the Los Angeles Superior Court’s Judges Security Committee. He is a retired Santa Barbara County sheriff’s deputy and Los Angeles County deputy district attorney. Judge Brandlin teaches privacy protection and personal security techniques to judges and law enforcement personnel across the country. He has authored six privacy protection bills for California public safety officials. He can be reached at 310-222-8868 or jbrandlin@lasuperiorcourt.org.

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SEPTEMBER
Sept. 7 . . . . . . . . . . Notable Decisions of the U.S. Supreme Court, 2010-2011 Term (Webcast)
Sept. 11-15 . . . . . . Handling Capital Cases (JS 623) (Phoenix, AZ)
Sept. 12-Oct. 28 . . Ethics, Bias and the Administrative Law Judge (Web)
Sept. 26-. . . . . . . . Special Considerations for the Rural Court Judge (Web)

OCTOBER
Oct. 3-Nov. 18 . . . . Evidence Challenges for Administrative Law Judges (Web)
Oct. 16-27 . . . . . . General Jurisdiction (JS 610)
Oct. 17-20 . . . . . . Judicial Philosophy and American Law

2012 PREVIEW
This course preview is provided as an advance viewing of 2012 courses and does not reflect the full schedule or prices to be offered. All courses are subject to change.

March 26-29 . . . . Conducting the Trial
March 26-29 . . . . Essential Skills for Appellate Judges
March 26-29 . . . . Essential Skills for Tribal Judges
April 9-13 . . . . . . . . . . . . . Court Management for Tribal Court Judges and Personnel (JM 690)
April 10 . . . . . . . . . . . . . NHTSA WebEx: "Motorcycles" (Web)
April 11-13 . . . . . . . The Fourth Amendment for Appellate Judges
April 23-26 . . . . . . . The Leader Judge
April 23-26 . . . . . . . Appellate Skills for Tribal Judges
April 29-May 10 . . . General Jurisdiction (JS 610)
April 30-May 3 . . . Commercial Driver's Licensing Laws: A Judicial Outreach Program
May 3-4 . . . . . . Technology Assisted Crimes Against Children: Computer Search & Seizure and Other Pretrial Issues
May 7-10 . . . . . . . The Fourth Amendment: Comprehensive Search & Seizure Training for Tribal Judges
May 7-10 . . . . . . . Advanced Evidence (JS 617)
May 21-24 . . . . . . . Tribal Court Management of Alcohol and Drug Cases
May 21-24 . . . . . . . Logic and Opinion Writing
June 4-14 . . . . . . . Special Court Jurisdiction
June 4-14 . . . . . . . Special Court Jurisdiction: Advanced (JS 611)
June 4-7 . . . . . . . . . Traffic Issues in the 21st Century
June 4-7 . . . . . . . . . Best Practices in Handling Cases with Self-Represented Litigants
June 11-14 . . . . . . . Domestic Violence (JS 636)
July 9-12 . . . . . . . Judicial Writing (JS 615)
July 16-19 . . . . . . . Decision Making (JS 618)
July 16-20 . . . . . . . Civil Mediation
Aug. 20-23 . . . . . . . Tribal Court Practice and Procedure
Oct. 1-4 . . . . . . . . . . Handling Domestic Violence Cases in Tribal Court
Oct. 1-4 . . . . . . . . . . Advanced Issues in Cases Involving Co-Occurring Mental and Substance Abuse Disorders
Oct. 14-25 . . . . . . . General Jurisdiction (JS 610)
Oct. 15-19 . . . . . . . Management Skills for Presiding Judges
Oct. 22-25 . . . . . . . Dispute Resolution Skills (JS 625)
Oct. 22-25 . . . . . . . Ethics, Fairness and Security in Your Courtroom and Community
After settlement conferences, mediation is the most effective court-connected dispute resolution process.

Participants like mediation, because they retain control over the outcome, discussions are confidential and it conserves resources—time, money and stress. Courts are satisfied with the process because it conserves judicial resources: settlement and compliance rates are high. With the current rate of success, why are courts reevaluating? As custodians of the process, courts must be mindful of procedural and ethical considerations.

A successful court-connected mediation program demands solid administration. Comprehensive policies, procedures and rules enhance any program. Periodic program review may increase settlement and satisfaction rates. The 10 essential points of evaluation are: process, timing, confidentiality, mediators, case analysis, client participation, opening remarks, caucus practices, settlement agreements, and evaluations.

1 PROCESS

There are nearly a dozen different court-connected ADR processes, and not all attorneys or their clients are familiar with the distinctions of each. The court must define all of its ADR processes; clarify the role of the neutral; identify types of cases that might be best suited to a given process; develop intake forms; standardize the confidentiality agreement; and provide practice tips for attorneys. Check state and local rules, or for a quick overview of different processes go to: www.cand.uscourts.gov/adr.

2 TIMING

Court-connected mediation can also be an effective case management tool as long as cases are not referred too soon. Mandatory programs often send cases prematurely, resulting in lowered settlement rates. Developing a questionnaire or conferencing with the program administrator will help avoid premature referral. For research on the topic of timing see: Roselle L. Wissler, Court-Connected Mediation in General Civil Cases: What We Knew from Empirical Research, 17 Ohio St. J. Disp. Resol. 641 (2001-2002).
When discussions are confidential, participants may make disclosures that enable settlements to occur. Admissions and unprompted, heart-felt, apologies get cases settled, but should all discussions be confidential? A recent California Supreme Court decision, *Cassell v Superior Court of Los Angeles County*, suggests that confidentiality is absolute. In this case, broad interpretation prevented a client from suing his attorney for malpractice. A judge may wish to review confidentiality rules, with an eye to determining if exceptions are necessary, raising the question, “Should confidentiality be so privileged that attorney or mediator malpractice is shielded?” About 20 percent of the states have adopted the Uniform Mediation Act, which contains confidentiality exceptions: www.united-adr.com/rules/UMA2003.pdf.

With apologies to the reader, courts must resist the shortcut of basing qualifications solely on degrees or titles. Florida, a state that has enjoyed mandatory mediation for 25 years, prohibits mediators from using “prior adjudicative experience, including, but not limited to, service as a judge” to imply that an individual is a “better or more qualified mediator.” For Florida’s Rule 10.610, Marketing Practices, and other standards see www.flcourts.org/gen_public/adr/brochure.shtml. A court has a duty to place only qualified individuals on its roster. National trends are 40 hours of instruction for civil mediators and from 40 to 60 hours for family mediators. Requiring prior “hands-on” mediation experience will help improve settlement and satisfaction ratings.

When attorneys do not take mediation seriously, they neglect to prepare and consequently fail to properly assess their cases. Settlement rates are higher when attorneys conduct a 360-degree analysis of their cases: honestly determining the strengths and weaknesses, and identifying all topics for discussion and negotiation. The “good faith” rule is subject to abuse. What does “good faith” mean, and who will make that determination? What about confidentiality and determining “good faith”? Creating policies and procedures for attorneys to follow, when representing clients in court-connect mediation, is often the better way to accomplish the goal of getting attorneys to prepare.

Failure to prepare the client is a missed opportunity to take full advantage of the court’s bias toward facilitative mediation, which requires active participation by the client. Unlike the common settlement conference format, clients must be prepared to participate: they do not just sit in the hallway like potted plants. Surveys show that involved clients tend to be more satisfied with the process, even if there is no settlement. Having the opportunity to talk about their case, or where relevant, the impact it has had on their lives, provides significant cathartic value. The client who will be a great witness can be showcased, helping to move settlement discussions to resolution. The private caucus may be better for volatile clients, where they can vent for the eyes and ears of the mediator, while allowing for damage control by counsel. If courts provide tips and suggestions to attorneys on how to prepare themselves and their clients, settlement percentages could rise, and clients may be more satisfied with the experience.

The old adage “you get more with honey than vinegar” is appropriate for opening remarks. Assailing the other side, using disparaging language and blame are not tactics that persuade people to settle. Opening statements can be effective when jointly given by the attorney and client. Less is more: keeping the opening to ten minutes or less; outlining the key topics, issues or points to be addressed during the mediation; and acknowledging a willingness to jointly work out a resolution, is a great beginning. From these statements a roadmap for the mediation will emerge. Even if one party’s tactic...
is to burn rather than build, taking the high road can be beneficial. This and other advice from the court, through its program policies and procedures, will have significant value for the attorneys representing clients in mediation, and may even increase settlement rates and improve process satisfaction evaluations.

**8 CAUCUS PRACTICES**

A caucus is a private discussion between two or more mediation participants, usually including the mediator, a party and its counsel. The experienced mediator knows the value of keeping parties focused, even when he or she is meeting with the other side. Assignments to the parties between caucuses move the settlement discussions along. To avoid errors during caucus, mediators must protect that which is confidential, establish an environment of open-mindedness and then, get out of the way and encourage participants to present their own offers. Skilled negotiators understand that only seven percent of a communication occurs through words; 93 percent through body language, facial expressions and voice intonation. Unless counsel fears the consequences of allowing the client’s true feelings to be “read” by the other party and its counsel, facilitative mediators may want to encourage participants to present, discuss and evaluate directly. On the other hand, evaluative mediators give opinions regarding case value, or predict how a particular judge might rule. The concern—will this style result in a sense of investment in the outcome? When establishing its preferences a court might ask, “Is the evaluative model mediation or a settlement conference?” By clearly defining the process, setting standards for neutrals by promulgating specific rules, policies and procedures, courts can heighten satisfaction with the process while conserving court resources.

**9 SETTLEMENT AGREEMENTS**

Settlement potential is greatly increased when attorneys work in advance of the mediation to develop a proposed settlement agreement, including boilerplate language, and leaving open points to be resolved during the mediation. Coming with at least a settlement outline may help avoid problems of selective memory. All parties should seek to avoid new litigation or a court disadvantageous interpretation of a surviving bullet point memo. Courts might wish to consider making available a “fill in the blank” settlement document for pro se and low amount in controversy matters. Such forms should include an exception to any confidentiality prohibition of admissibility of the document to provide for enforceability.

**10 EVALUATIONS**

As soon as parties complete the mediation, evaluations should be distributed to the participants or be referred to the forms on-line. The shorter the deadline for returning evaluations, the higher the response rate. All attendees, including the mediator, need to provide feedback to the program administrator. The court is encouraged to evaluate other court-connected ADR programs, paying particular attention to those that have compliance numbers for observing rules and guidelines, and success in settlement of cases assigned. For examples of forms and other court-connected mediation program information, go to: www.aboutrsi.org/programs.php.

If a court-connected mediation program has been running for more than five years, and/or has an average settlement rate of less than 65 percent, then a closer look at the administration of the program; qualifications of the neutrals; rules, policies and procedures needs to be undertaken. When court-connected programs have satisfaction ratings less than 80 percent, then a complete review may benefit the program.
The NJC is proud to partner with Humanity United to provide faculty development workshops that enable the Liberian judiciary to develop internal judicial teaching talent, with the goal of establishing the nation’s own judicial training institute and ultimately, forming an independent judiciary after years of civil war and public distrust.

In 2008, the Liberian Supreme Court mandated the creation of a judicial training institute to promote the highest level of professional standards of integrity, competence and leadership within the Liberian judiciary. In 2009, the Institute’s Board of Governors drafted a strategic plan, with one of its priorities being the creation of a comprehensive training program for judicial staff and officers that acknowledged “the need to have a systematic and responsive approach to the design and delivery of all training programs, reference and resource materials.” The American Bar Association’s Rule of Law Initiative (ROLI) was engaged to help the Institute work toward this goal and the NJC was called upon to develop a program to educate members of the Liberian judiciary in adult learning theory and best practices. To help the NJC fulfill this role, they sought assistance from Humanity United, a staunch supporter of Liberia’s efforts to build a democratic nation.

Humanity United’s first grant to the NJC in 2008 supported a visit to the NJC by members of the steering committee who were working to establish the new judicial Institute. A second grant from Humanity United later that year allowed Liberian judges to attend the NJC’s Judicial Writing course to observe how the NJC conducts its education programs.

With remaining funding from the 2008 Humanity United grants and additional funding provided by the ABA’s Rule of Law Initiative, NJC staff members William Brunson, Esq. and Joseph Sawyer traveled to Liberia in June 2009 to present faculty development workshops at the newly established James A.A. Pierre Judicial Institute in Monrovia, Liberia. The NJC’s and ABA’s 4-day Instructional Design and Facilitation Skills for the Liberian Judiciary along with a half-day advanced workshop educated 24 justice system professionals from both the executive and judicial branches of government. The foundational workshop focused on adult learning theory, drafting learning objectives, program planning and presentations techniques, opening and closing sessions, material selection, and conducting effective evaluations. The half-day advanced workshop built on the work of a 2008 faculty development workshop conducted by the Federal Judicial Center and had three primary components: adult learning experiences, learning style inventories and selecting appropriate learning activities.

Because the NJC received an overwhelmingly positive response to these sessions, NJC staff returned to Liberia again in January 2011 and presented both the foundational and advanced workshops to 23 judges and court personnel with the help of a third grant from Humanity United. Plans are currently underway to return to Liberia in 2012 to continue this work. Of his experience in Liberia, NJC staff member William Brunson stated that “The judges, who have endured more than 13 years of civil war, are extremely gracious and motivated students. Despite the challenging environment which is still in disarray after so much conflict, the judges are joyful.”

Humanity United has supported Liberia’s transformation since 2007, engaging in efforts aimed at helping to reduce the likelihood of a return to mass violence and to help build a successful democratic state. Established in 2005 by founder and Board chair, Pam Omidyar, Humanity United is an independent grant making organization committed to building a world where modern-day slavery and mass atrocities are no longer possible. Humanity United invests in the power of ideas and individuals, bringing together the best in research, policy and advocacy to activate local and global solutions to alleviate human suffering on a broad scale.

For more information about Humanity United, visit its website at www.humanityunited.org.
JUDGE LESLIE HAYASHI OF HONOLULU is proud to say that her “night job” allows her to tap into her creative side, and delve into the history and fables of her home in Hawai‘i. Judge Hayashi is the author of seven children’s books and uses her books as a tool to help teach children writing and literacy skills. The books are A Fishy Alphabet, Fables from the Garden, Fables from Beneath the Rainbow, Fables from the Sea, Fables from the Deep and Aloha Oe: The Song Heard Around the World about Hawai‘i’s first major hit song in 1883. Her latest book is called Celebrating Holidays in Hawai‘i.

WHEN AND WHY DID YOU DECIDE TO BECOME A CHILDREN’S BOOK AUTHOR?
I wanted to be a writer since I was seven years old. In first grade, I met my best friend, Kathleen Wong. One day I saw a picture she drew of a girl on a swing and it looked so realistic compared to the stick figures I was drawing. I told Kath that when we grew up, we would create books together – I would write the stories and she would do the pictures. Years passed and we kept in touch. I wrote a couple of stories and mailed them to Kath in Arizona to illustrate, but didn’t hear from her. One day she called me and apologized. “I can’t paint,” she confessed. I reminded her that I had this all planned out since first grade, so she took a few watercolor classes and discovered she could paint beautifully.

WHERE DO YOU GET YOUR IDEAS FROM?
I get ideas from everywhere - newspapers, magazines and conversations. Hawai‘i offers a rich cultural diversity, but I’m also working on a few law-related books. Stephen Zack, current president of the ABA, is focused on improving civics education in our country, so he asked me to write a book for middle grade students on the Declaration of Independence, the U.S. Constitution, The Bill of Rights and the separation of powers.

After doing an enormous amount of research, I created the story of a young boy, Thomas Harrington, during the American Revolution. The story begins with loud pounding on the door in the middle of the night. British soldiers barge in and arrest Thomas’ father accusing him of being a spy. Thomas’ father is convicted and imprisoned on a floating ship in New York Harbor. More men and women died on those floating prisons than all those killed in battle. As Thomas tries to rescue his father, he comes to understand why so many are willing to sacrifice their lives for freedom. I managed to work in the documents; for example, General George Washington had the Declaration of Independence read to his men at Valley Forge.

* Hawai‘ian for “join together.”
WHAT HAS BEEN THE RESPONSE TO THE BOOKS?
I’m happy to say that our books are popular. Teachers appreciate the resource information included in our books. People purchase them to send to friends and family who have moved to the mainland.

WHAT DO YOU LIKE BEST ABOUT YOUR “NIGHT JOB?”
There are four great things about my night job. First, writing gives me a chance to use my right brain. If anyone has attended the course I teach at NJC, they may remember my brain information. The brain is truly fascinating, and I’m lucky to have an opportunity to tap into my creative side. Second, I visit schools and encourage students to write. Literacy skills are so important today even in our high tech society, and students are surprised to learn that a person can have both a day and a night job! Third, writing remains a family project. My two sons – Justin who is at Duke Law School and Taylor who attends Boston University – read my drafts and provide suggestions. Even Alan, my husband, will read manuscripts. Finally, creating these books with Kath, my best friend since first grade, is a precious gift. One day I will write the story about our friendship and Kath will do the illustrations!

Hon. Leslie Hayashi is a full-time district court judge for the First Circuit in Honolulu, Hawaii. She has been a faculty member for Administrative Law: Advanced since 1995.
The College is saddened by the loss of Cameron M. Batjer, an outstanding judge of great integrity and thoughtfulness. Justice Batjer passed away on June 1, 2011 at the age of 91 at home with his three daughters by his side. Justice Batjer’s commitment to the College lives on through his youngest daughter, Marybel Batjer, who just completed a term as chair of the College’s Board of Trustees. Justice Batjer was extremely fond of the College and made generous contributions for 25 years. In addition, a scholarship endowment has been established in his name that will provide judges the opportunity to attend courses at the College in perpetuity. At his passing, he left funding for the College to establish this scholarship endowment – the Cameron M. Batjer Scholarship Endowment.

Justice Batjer was a native Nevadan born on a cattle ranch in Smith Valley. He had a tremendous career, starting out as a school teacher, then serving with the U.S. Navy in the Construction Battalion (Sea Bees) until 1945 when he returned to Nevada and resumed his teaching career. During that period, he decided to attend law school. He graduated in 1950 from the University of Utah Law School and was named chief counsel of the Utah State Senate. A year later, he was asked to serve as Nevada Senator George “Molly” Malone’s chief counsel. He again returned to Nevada and established a private law practice in 1954 and was soon named Ormsby County district attorney. He was appointed to the Nevada Supreme Court in 1967 and retired in 1981 to accept an appointment by President Ronald Regan as chairman of the United States Parole Commission. He retired from that post in 1991, when he and his wife Lura chose to live in both Nevada and Maui, Hawaii.

Development Director Gretchen Alt Sawyer said, “Justice Batjer was one of the College’s most dedicated supporters. He believed that the College was one of Nevada’s greatest assets. Justice Batjer supported scholarships for many years and even had the opportunity to have lunch with one of his scholarship recipients at the College’s dining commons. His amazing legacy will live on forever through a scholarship endowment that he and his family have established in his name.”

Donations to the Cameron M. Batjer Scholarship Fund may be mailed to the NJC.
For more information, contact Gretchen Alt Sawyer at alt@judges.org or (775) 327-8257.

Retired California Superior Court Judge Peggy Hora’s current report, “Smart Justice: Building Safer Communities, Increasing Access to the Courts, and Elevating Trust and Confidence in the Justice System” is available online. Judge Hora is an NJC faculty member and a senior judicial fellow for the National Drug Court Institute and a judicial outreach liaison for the National Highway Traffic Safety Administration. Download the publication at www.thinkers.sa.gov.au/lib/pdf/Hora/smartjustice_LO.pdf
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*MINIMUM GROUP SIZE: 5 MEMBERS. FIFTY PERCENT OF THE GROUP MUST BE NEW MEMBERS. ADDITIONAL ELIGIBILITY REQUIREMENTS MAY APPLY.
The NJC would like to thank The Hearst Foundations’ for its recent gift to the NJC, the latest in the Foundations’ 25-year history of support for the College. This donation will provide scholarships for judges from across the country to attend NJC courses and programs during the 2011-2013 academic years through the NJC’s Financial Assistance/Judicial Scholarship program.

Since 1986, the Hearst Foundation has been a generous supporter of the NJC. The Hearst Foundations’ early gifts in 1986 and 1991 supported the growth of NJC’s institutional endowment. In 1998, the Hearst Foundation pledged a two-year grant to fund the newly-created William Randolph Hearst Endowed Scholarship Fund, which was followed by a second grant to the Fund in 2003. The William Randolph Hearst Endowed Scholarship Fund stands today as one of the largest endowed scholarship funds at the NJC, awarding over 90 scholarships since 1998. The Fund will continue to provide scholarships in perpetuity and is projected to award over $18,000 in 2011.

After successfully building the endowed scholarship fund, The Hearst Foundations focused on the programmatic needs of the College. A 2007 Hearst Foundations grant funded the highly successful Bench-Bar-Media Workshops facilitated by the Reynolds National Center for the Courts and the Media that was attended by sitting judges and practicing journalists from 30 states. The 2007 grant also provided the NJC with much needed funding for the NJC’s Judicial Scholarship/Financial Assistance program and provided 64 scholarships during the 2007-2010 academic years. This funding proved critical in assisting judges, especially administrative law judges, to attend the NJC despite cuts for judicial education at the state level. The Hearst Foundations’ latest grant in support of the Judicial Scholarship/Financial Assistance program will help judges continue to access educational opportunities at the NJC while state budgets recover and funding for judicial education is gradually restored.

The Hearst Foundation, Inc. was founded in 1945 by publisher/philanthropist William Randolph Hearst. In 1948, Mr. Hearst established the California Charities Foundation, renamed the William Randolph Hearst Foundation in 1951. With offices in New York City and San Francisco, The Hearst Foundations make grants to organizations and institutions working in the fields of education, health, culture and social service. Additionally, the Foundation administers two operating programs, the United States Senate Youth Program and the Hearst Journalism Awards program. The Foundation’s goal is to ensure that people of all backgrounds have the opportunity to build healthy, productive and inspiring lives.

For more information on the work of the Hearst Foundation, please visit its website at www.hearstfdn.org.
C A S E  I N  P O I N T

H on. Peggy Bird, chief judge of the Laguna Pueblo Court in New Mexico recently attended the Tribal Court Management of Alcohol and Drug Cases course and was able to utilize information from the course immediately afterwards. The course contained information regarding sentencing: what to look for when sentencing, what factors should be considered and the purpose of the sentencing. Soon after, she had a sentencing hearing and used those aspects of the course to decide on the sentencing.

Judge Bird attended the course with a team of five from the Laguna Pueblo Court and she said that it was wonderful to be able to get away from their court to plan and work together in a different environment.

She enjoyed various aspects of the course including the time spent with her team, the discussion groups and meeting and sharing information with participants from other tribes.

Judge Bird has also attended Court Management for Tribal Judges and Personnel, and the web course, Ethics and Judging: Reaching Higher Ground.

From the Alcohol and Drug course Judge Bird said she got a lot of in-depth information about alcohol and drug abuse. She also got a better idea of where people are coming from in their struggles with substance abuse and how the court can provide assistance. Most cases that come through Tribal courts are drug and alcohol related and her court struggles with the “revolving door” syndrome.

“The Laguna Court is always looking for alternatives to incarceration,” she said. “And we are always looking for ways in which to collaborate with other providers and agencies in order to assist people.”

TEAM COLLABORATION IN TRIBAL COURT COURSES

In August of 2011, the National Tribal Judicial Center at the NJC is sponsoring the 27th Annual Alaska Tribal Court Development Conference along with the U.S. Department of Justice, Bureau of Indian Affairs, Tanana Chiefs Conference, the University of Alaska, and the University of North Dakota. This year’s theme is titled “Strengthening Tribal Courts: Tribal – State Relations” and the conference is to be held in Fairbanks, Ala.

The NTJC has been involved with the Conference since 2009. This year the focus is on the implications from the recent Tanana and Kaltag cases, best practices for tribal courts, and tribal-state relations. Tribes fall into a wide range of tribal court development, and this conference is intended to provide information to tribes just beginning tribal court development, for tribes that want to enhance or make modifications to their courts, as well as for tribes pursuing on-going tribal court information specific to Alaska.

“Alaska tribes are at an exciting point in tribal court development as the State of Alaska begins to recognize tribal jurisdiction,” Lisa Jaeger of the Tanana Chiefs Conference said. “Tribal jurisdiction, demographics, and political circumstances in Alaska are unique which the NTJC recognizes. The Alaska tribes appreciate the collaborative partnership the NTJC has formed with the Tanana Chiefs Conference the past few years to provide critically needed Alaska-specific tribal court development training.”

NTJC ASSISTS IN THE DEVELOPMENT OF ALASKA TRIBAL COURTS
Presiding over a Capital Case: A Benchbook for Judges
William J. Brunson, Esq.
Daphne A. Burns, Esq.
Robin E. Wosje, Esq.
Editors
The judge-authors have expertise presiding over numerous death penalty trials, and also have a breadth of experience from teaching NJC courses on capital cases in partnership with states nationwide.
490 pages softcover / $25

Logic & Legal Reasoning
2nd Edition
Professor Douglas Lind
This book builds on Professor Lind’s efforts to provide the best and latest methods to intertwine logical legal arguments in an easily accessible format. Through the cases, Lind demonstrates how to integrate logic into decisions.
410 pages softcover / $48

Inherent Powers of the Court
Felix F. Stumpf, Esq.
In this 2008 revision, Mr. Stumpf has updated the subject matter and has provided a short historical and general overview. The coverage is principally a division of inherent powers cases in four major categories: Separation of Powers, Court Governance, Implementation or Conduct of the Adjudicative Function and Logistical Support.
202 pages softcover / $60

Search & Seizure Sourcebook for State Judges
Professor Kenneth R. Evans
Professor Evans presents a unique book designed to illuminate the intricacies of the U.S. Supreme Court and state supreme court decisions on search and seizure issues. Professor Evans correlates the courts’ decisions in a coherent and meaningful way.
684 pages softcover / $60

Anatomy of a Trial: Public Loss, Lessons Learned from The People vs. O.J. Simpson
Jerrianne Hayslett
The People vs. O.J. Simpson ranks indisputably as the trial of the century. The trial also shaped the judicial system, the media and the public’s access to the courts. An insider reveals the untold story of the most widely followed trial in American history and the indelible impact it has had on the judiciary, the media and the public.
272 pages softcover / $28

Resource Guide for Managing Complex Litigation
This book presents, in a step-by-step format, matters a judge should consider following during complex civil cases. This guide references the Manual for Complex Litigation, Fourth and other useful resources for the judge who wants to perform additional research on the area in question.
177 pages softcover FREE + shipping

Inherently Powers of the Court
Judge James D. Garbolino
273 pages softcover / $35

International Child Custody Cases: Handling Hague Convention Cases in U.S. Courts
Judge James D. Garbolino
273 pages softcover / $35

Judicial Discretion: A Text
J. Eric Smithburn
This text provides a practical examination of the meaning of discretion, why discretion exists, the levels of discretion, and the standard by which to define and review the abuse of discretion. This unprecedented work is a timely resource to guide any analysis and application of judicial discretion.
303 pages softcover / $60

Anatomical of a Trial: Public Loss, Lessons Learned from The People vs. O.J. Simpson
Jerrianne Hayslett
The People vs. O.J. Simpson ranks indisputably as the trial of the century. The trial also shaped the judicial system, the media and the public’s access to the courts. An insider reveals the untold story of the most widely followed trial in American history and the indelible impact it has had on the judiciary, the media and the public.
272 pages softcover / $28
The NJC is pleased to announce that Alf W. Brandt of Davis, Calif., was recently appointed executive director of the Dividing the Waters program at The National Judicial College. Dividing the Waters is a collaboration of a network of judges, special masters and referees who preside over water adjudications and other complex water litigation.

According to William F. Dressel, president of the College, “Mr. Brandt’s background in water resource law and policy development will help position DTW as a leading resource on water law issues.”

Brandt’s experience includes service as director at the Metropolitan Water District of Southern California (the largest water agency in the world), and as water attorney with the U.S. Department of the Interior. He previously co-chaired the American Bar Association’s annual Water Law Conference, testified in Congress on climate change and water, and has spoken at numerous water law and policy conferences in California and across the nation. He led development of California’s 2009 Delta/Water Legislation package and its 2007 flood protection legislative package. Both achieved landmark change in addressing key water issues facing the legislature. Brandt is also a senior water expert for the California State Assembly where he will continue to serve full-time. Brandt will serve Dividing the Waters on non-State time.

“This is an opportunity of a lifetime, to serve with such inspirational leaders of the western water law community who share my passion for water law and making water management more effective, for the good of the people and the environment of the United States,” Brandt noted.

In explaining his vision for Dividing the Waters, Brandt emphasized the importance of building on the growing connection among water supply, water quality and the environment.

“We used to divide water policy between east and west, which have different kinds of water law. But, today, we see a growing concern across all of our traditional divisions in the water world. Concerns about quality, quantity and the environment have converged, here and all around the world. Dividing the Waters enjoys a unique position to help judges from all over the United States with all kinds of experience – mostly not in water – to understand and adjudicate the growing number of conflicts over water. I’m excited to be able to help Dividing the Waters build on its history of success,” he continued.

The central purpose of the Dividing the Waters project is to improve the management and outcome of general stream adjudications and other complex water-related litigation affecting people and the environment. State trial judges are most directly served by this project although state appellate judges, federal trial and appellate judges, and U.S. Supreme Court special masters are also involved in project activities. Dividing the Waters is a program of The National Judicial College.

More information about DTW can be found at www.judges.org/dividingthewaters.
**NEW RESOURCE: Mental Competency Website**

A new resource for judges, attorneys, criminal justice and mental health system professionals will soon be available titled Mental Competency – Best Practices Model. An estimated 60,000 competency evaluations are court-ordered each year. Approximately 20 percent of the evaluations lead to findings of incompetence – roughly 12,000 defendants are found incompetent to stand trial in the United States each year.

The purpose of the Mental Competency – Best Practices Model is to present a body of practices deemed to be most effective and efficient for handling mental incompetency issues in the criminal justice and mental health systems. The Mental Competency website provides practices, protocols, and other recommendations for the various stages in the criminal justice-mental health systems continuum, such as:

- Practices and protocols for the initial competency hearing and order for competency assessment;
- Competency evaluation and report, including what a judge may expect to see;
- Competency treatment plan – to keep the judge and all the stakeholders apprised;
- Practices and protocols for the hearing on the competency determination;
- Competency restoration, including the judge’s role in the referral, staying apprised of the status, and complying with *Jackson v. Indiana*, 406 U.S. 715 (1972);
- Standards and protocol for a hearing for the involuntary administration of medication in accordance with *Sell v. United States*, 539 U.S. 166 (2003);
- Establishing a competency court or docket; and
- Providing specialized education for judges, attorneys, and all of the stakeholders who handle competency issues.

The Mental Competency – Best Practices Model will be published later this summer at www.mentalcompetency.org. For further information, or to be notified via e-mail when the website launches, contact Daphne A. Burns, Program Attorney, National Judicial College, at (916) 676-9876 or burns@judges.org.

**STAFF & FACULTY NEWS**

William J. Brunson, the Director of special projects of the NJC was presented with the Karen Morris Staff Excellence Award by the NJC Faculty Council in September of 2010.

The NJC Faculty Council nominated Hon. Amy B. Karan of Florida as the 2010 V. Robert Payant Award for Faculty Excellence recipient. Judge Karan is a former member of the Faculty Council and has served as the administrative judge of the Domestic Violence Court in Miami, Florida, since 1997. She stepped down from the bench in January of 2010.

Joseph Sawyer, NJC distance learning and technology manager/program manager was recently named the new National Association of State Judicial Educators (NASJE) president.

Christine Folsom Smith was promoted to director of the National Tribal Judicial Center at the NJC.
The NJC Welcomes New Board Members, Positions

During the June 2011 Board of Trustees meeting, John Frankovich of Reno, Nev. was welcomed in as Board of Trustees chair. Hon. Sophia H. Hall of Chicago, Il. is the new chair-elect, Peter J. Neeson, Esq. of Philadelphia is the new Board Treasurer. Lydia I. Beebe, Esq. of San Francisco retained her position of secretary. The NJC also welcomed two new Board members: Hon. Paul J. DeMuniz of Salem, Ore. and Hon. John M. Vittone of Silver Spring, Md. For information on the NJC Board of Trustees visit the website at www.judges.org/about

John Frankovich, Chair
Mr. Frankovich is managing partner of McDonald Carano Wilson LLP, Reno with a practice focusing on real property development and transactions, litigation, and public utilities law. He joined the firm in 1973 after two years with the Washoe County District Attorney’s Office. He is admitted to practice in state and federal courts in Nevada and California, including the Ninth Circuit Court of Appeals.

Hon. Sophia H. Hall, Chair-Elect
Judge Hall has served as administrative presiding judge of the Resource Section of the Juvenile Justice & Child Protection Dept. of the Circuit Court of Cook County, Illinois since 1995 and was presiding judge of the Juvenile Division from 1992-1995. Elected to the Circuit Court in 1980, she served for four years in the Criminal Division, five years in the Law Division, and now serves in the Chancery Division.

Peter J. Neeson, Esq., Treasurer
Mr. Neeson, a practicing attorney for over 30 years, is a senior partner and chair of Rawle & Henderson’s Environmental, Toxic and Mass Torts Department. Mr. Neeson is a frequent writer and speaker on litigation issues and is the author or co-editor of a number of publications in his field.

Hon. Paul J. DeMuniz
Hon. DeMuniz has been Oregon’s elected chief justice since January 2006 after an election to the Supreme Court in 2001 along with a 1990 election to the Oregon Court of Appeals. Justice DeMuniz began a private practice in 1977 after starting his career as a deputy public defender. He was raised in Portland, OR, and after high school enlisted in the U.S. Air Force serving in Vietnam (1968-69). He earned his BS from Portland State University in 1972 and his JD from Willamette University in Salem, OR.

Hon. John M. Vittone
Hon. John Vittone was appointed by the Secretary of State to serve on the Foreign Service Grievance Board upon retirement as the chief judge of the U.S. Department of Labor in March 2010. He served 15 years as chief judge, first becoming an administrative law judge in 1980. Prior to becoming a judge, he served on the legal staffs of the U.S. Department of Justice (Antitrust Division) and the Federal Trade Commission. Judge Vittone is also an active member of the ABA.
NCJFCJ Names Mari Kay Bickett as Executive Director

The National Council of Juvenile and Family Court Judges (NCJFCJ) recently hired Mari Kay Bickett as its executive director. Since its founding in 1937 by a group of judges dedicated to improving the effectiveness of the nation’s juvenile courts, the National Council has pursued a mission to improve courts and systems practice and raise awareness of the core issues that touch the lives of many of our nation’s children and families.

“We had some very highly qualified candidates and we chose Mari Kay from among them for a reason,” Judge R. Michael Key, President of NCJFCJ, said. “She has a stellar 23-year record in judicial education at the state and national level. Our goal from the beginning was to select someone whom we would be excited to present to our membership and our partner agencies, and we have accomplished that goal.”

Ms. Bickett has served as CEO/executive director of the Texas Center for the Judiciary, the Supreme Court of Texas Permanent Judicial Commission for Children, Youth, and Families, and as an officer on the Texas CASA Board of Directors. She is a former academic director for The National Judicial College, and is a long-time member of NCJFCJ, currently serving on the National Judicial Institute on Domestic Violence Advisory Committee.

Hon. W. Terry Ruckriegle Honored by Colorado Judicial Institute

Hon. W. Terry Ruckriegle, 5th Judicial District and a member of the NJC’s Board of Trustees was awarded a 2010 Excellence Award by the Colorado Judicial Institute. This award recognizes Ruckriegle’s dedication, innovation, volunteerism and leadership.

Hon. Karen Arnold-Burger Appointed to Kansas Court of Appeals

Hon. Karen Arnold-Burger of Overland Park was appointed to the Kansas Court of Appeals by Kansas Governor Mark Parkinson. “Throughout her career, Karen has demonstrated a respect and passion for the law that will honorably serve the people of Kansas on the Court of Appeals,” said Parkinson.

Hon. Susan G. Sexton Presented with Judicial Service Award

Hon. Susan G. Sexton of the 13th Judicial Circuit Court in Tampa, FL was awarded a Judicial Service Award for outstanding and sustained service to the public, and especially pro bono services.

Randall Sarosdy Named Executive Director of Texas Center for the Judiciary

Randall Sarosdy of Austin, TX was named Executive Director of the Texas Center for the Judiciary in August of 2010 by the Center’s Board of Directors.

IN MEMORY


Justice Marian Opala of the Oklahoma Supreme Court died in October of 2010. Justice Opala took his first NJC course in 1975 and continued taking courses until 2010.
### Professional Certificate in Judicial Development Graduates

**Administrative Law Adjudication Skills**

- **Hon. Kiersten W. Jedlicka**  
  Dept. of Administration (AK)

- **Hon. Barbara B. Kimmelman**  
  Social Security Administration (TN)

- **Hon. Kristen S. Knudsen**  
  Workers’ Compensation Appeals Commission, Ret., (AK)

- **Hon. Kynda C. Nokelby**  
  Alaska Unemployment Insurance Appeals (AK)

- **Hon. Marjorie A. Rasmussen**  
  Dept. of Insurance, Administrative Hearing Bureau (CA)

- **Hon. Dena C. James Smith**  
  Dept. of Taxation (NV)

- **Hon. Elizabeth Vasquez**  
  Dept. of Health and Human Services/Hearings and Appeals (AK)

**Dispute Resolutions Skills**

- **Hon. William F. Buchanan**  
  Supreme Court (NV)

- **Hon. Gary L. Clingman**  
  Chief Judge, District Court (NM)

- **Hon. Carl B. Ingram**  
  Marshall Islands High Court

- **Hon. Barbara B. Kimmelman**  
  Social Security Administration (TN)

- **Hon. Kynda C. Nokelby**  
  Alaska Unemployment Insurance Appeals (AK)

- **Hon. O. Eugene Powell, Jr.**  
  Social Security Admin., Ret., (SC)

- **Hon. Elizabeth Vasquez**  
  Dept. of Health and Human Services/Hearings and Appeals (AK)

- **Hon. William F. Buchanan**  
  Supreme Court (NV)

- **Hon. Daniel J. Daugherty**  
  Cherokee Court (NJ)

- **Hon. Denise P. Lindberg**  
  District Court (UT)

- **Hon. J. Matthew Martin**  
  Eastern Judicial Circuit, U.S. Navy-Marine Corps Trial Judiciary (NC)

- **Hon. David L. Welch**  
  Circuit Court, Ret., (IN)

**Special Court Trial Skills**

- **Hon. Amy J. Berling**  
  Municipal Court (OH)

- **Hon. Pat A. Casados**  
  Magistrate Court, Los Alamos (NM)

**Tribal Judicial Skills**

- **Hon. April E. Attebury**  
  Karuk Tribal Court (CA)

**General Jurisdiction Trial Skills**

- **Hon. Jack W. Smith**  
  Superior Court (AK)  
  *Master’s Degree*

- **Hon. Naman L. J. Wood**  
  Magistrate Court (GA)  
  *Master’s Degree*

- **Hon. John Milton Young**  
  Court of Common Pleas (PA)  
  *Master’s Degree*

### NJC Faculty Awards

**30 Year Award**

- Hon. W. Michael Gillette (OR)

**20 Year Award**

- Hon. Brent T. Adams (NV)
- Hon. Adam Fisher, Jr. (SC)
- Hon. Michael E. Keasler (TX)

**15 Year Award**

- Mr. William J. Brunson Esq. (NV)
- Hon. Louis B. Butler, Jr. (WI)
- Prof. Raymond J. Clay (TX)
- Prof. Joseph L. Hoffmann (IN)
- Prof. John M. Lacey, Ph.D. (CA)
- Dr. Kenneth D. Robinson (TN)

**10 Year Award**

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