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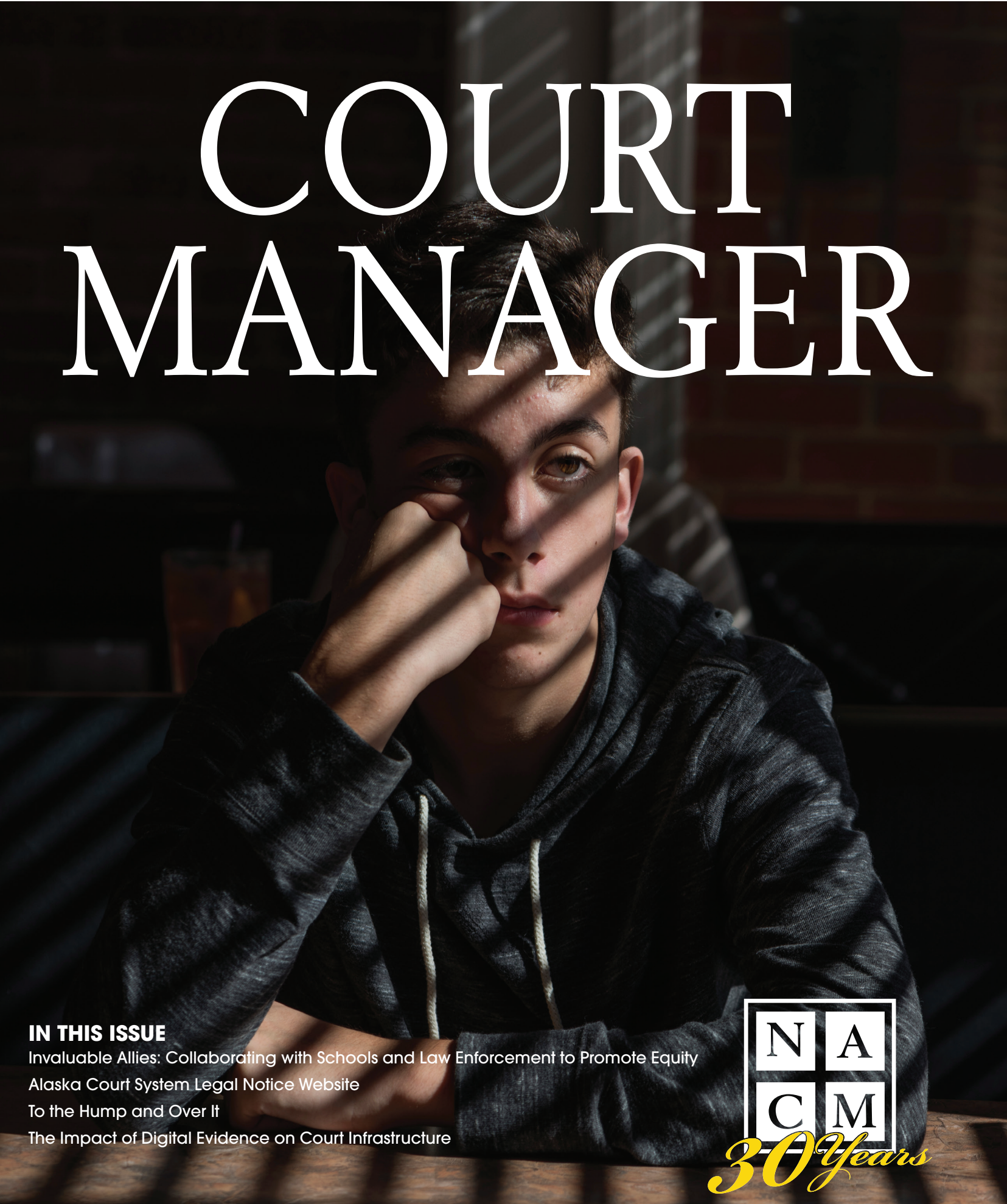

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NACM 30 Years

A PUBLICATION OF THE NATIONAL ASSOCIATION FOR COURT MANAGEMENT

Volume 30 Number 4 Winter 2015/2016

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Court Manager Volume 30 Number 4 Winter 2015/2016

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President's Message

STEPHANIE HESS

You are not here merely to make a living. You are here in order to enable the world to live more amply, with greater vision, with a finer spirit of hope and achievement. You are here to enrich the world, and you impoverish yourself if you forget the errand.

Woodrow Wilson

Happy New Year, my NACM friends! As we enter 2016, I took a moment to look back on my first six months as your NACM president, and I am so excited about what we have accomplished as an association. One of the most important projects that we have focused our efforts on is to create curriculum for the new NACM Core. Thank you to all of our members who have participated in this effort. As I read through many of the proposed curriculum documents, I became energized, and I resolved to make a difference for those individuals who enter our courthouses each day. It also reminded me of a story from early in my career.

When I first began my career in the judicial system, I was a bailiff—not a gun-toting bailiff but more of a judicial assistant to a judge in a general-jurisdiction court. In that role, I managed the judge's docket. At the time, I worked full-time during the day and was in law school at night—my free time was at a premium. The holidays were fast approaching, and I had hoped to get some shopping done over my lunch hour. Unfortunately, we had a heavy criminal docket on this particular day, and one set of attorneys wanted a jury trial. After some fussing and eye rolling (and maybe some sighing), I finally sent the attorneys back to meet with the judge, who promptly asked me to bring up a jury. I continued my fussing and eye rolling with the judge, who was undeterred—she didn't care much that I had other plans for my lunch hour. We started the trial, and I did my shopping another day.

Why does this matter, you ask? This story embarrasses me on a number of levels, the most important of which is my inability to remember the purpose of courts and the reason for my job. That day I was working my way through a pile of files with no consideration to the people that the pile of files represented. I wasn't concerned about their lives one bit; instead, I was focused on how that trial was going to impact my schedule. Fortunately, my judge never lost sight of our mission. She wasn't merely making a living—she was devoted to providing the highest level of service to all who came before her.

Let's welcome 2016 with a determination to use the purposes of courts as the foundation of our profession and with renewed excitement and devotion to the field of court administration.

Editor's Notes

PHILLIP KNOX

Maintaining **relevance** is an ongoing challenge for courts as they work to meet the needs of a changing **society**. Staying current, responsive, cost-effecient, and **effective** has become the mantra of court leaders.

Responding to the needs of constituents is a theme that runs through the articles in this issue of *Court Manager*. Whether it is developing an understanding of how best to reduce the disproportionate representation of minority children in detention; reducing litigant costs and improving services in filing cases; assisting self-represented litigants; or providing the best evidence to support the facts to prosecute and defend cases, all of these areas are important to those who rely upon courts as the independent arbiter and provider of unique services.

In the first piece, the authors address issues of how the juvenile justice system impacts children through direct contacts. There are a number of decision points that are influenced by subjective measures. The writers urge that there is no better method to bring improvement to these outcomes than to bring together all of the parties that can impact the decisions of referral and through this collaboration reach some level of consistency.

Many of our jurisdictions continue to make use of an antiquated practice of legal notice through publication. The Alaska Court System offers a new approach worth some consideration. The Internet, social media, and other technological advancements may just be the answer for this and other less-than-efficient practices.

The number of self-represented litigants that seek assistance from courts increases every year. Left to fend for themselves and charged to follow the same standards and practices as lawyers, lay persons struggle, and delay is inherent if they are not afforded some direction. Many courts are faced with the same dilemma of staying on the side of offering legal/process information and avoiding the appearance of providing legal advice. In an abbreviated version of a recent ICM paper, we are presented with one jurisdiction's roadmap for the successful traversing of what for some litigants is a labyrinth of mystery and pitfalls.

Finally, in our last article we are presented with information on one topic that is becoming increasingly prevalent in our courtrooms with improvements in technology. The presence of body-worn cameras on law-enforcement personnel brings additional challenges for courts as the means to store and manage the data are added to the balancing of security and privacy issues.

Until next time, thanks for reading.

REMEMBER TO MARK YOUR CALENDARS FOR

THE 2016 MIDYEAR CONFERENCE: FEBRUARY 14-16, MOBILE, ALABAMA

Invaluable Allies: Collaborating with Schools and Law Enforcement to Promote Equity

Kevin Koegel and Natalie Carrillo

The national conversation on race and justice in the United States has resulted in intense public scrutiny of our justice system and its institutions, among them courts. One aspect of these discussions centers on the link between educational outcomes, school discipline, and involvement in the juvenile and criminal justice systems, commonly referred to as the "school-to-prison pipeline." Our nation's youth-of-color are disproportionately affected by disciplinary practices in school as compared to their white, non-Hispanic counterparts (Skiba et al., 2011; Wald and Losen, 2003; Wallace et al., 2008), and they are similarly overrepresented in our juvenile justice systems (Nicholson-Crotty, Birchmeier, and Valentine, 2009; U.S. Department of Education Office for Civil Rights, 2014).

The significance of the school-to-prison pipeline to court managers and administrators is twofold. First, as public institutions and vital components of the justice system, courts are compelled to address school-to-prison issues and related equity concerns to foster just and equitable outcomes for all. States have been mandated to examine and report on disproportionality in juvenile justice by the federal government for decades. In 1988 Congress instituted a requirement that juvenile courts address disproportionate minority confinement, and the Juvenile Justice and Delinquency Prevention Act of 2002 subsequently broadened the scope of the issue from "disproportionate minority *confinement*" to "disproportionate minority *contact*," emphasizing the need to examine disproportionate representation at all decision points within the juvenile justice system. The U.S. Department of Education released *Guiding Principles: A Resource Guide for Improving School Climate and Discipline* (2014) as part of a larger initiative to reduce discriminatory practices in schools that may violate civil-rights laws.

Second, the school-to-prison pipeline affects a court's bottom line by affecting system use. While the proportion of referrals from schools differs from jurisdiction to jurisdiction based on variable factors like youth behaviors, local school and district disciplinary practices, and law-enforcement-agency procedures, it is safe to say that these school-initiated referrals likely account for a substantial proportion of a jurisdiction's total referrals. Mitigating issues at this entry point into the system is an upstream approach with the potential to save resources by alleviating demands that will eventually be levied on the entire system.

In 2010 Pima County Juvenile Court and its partners, with funding from the Arizona Governor's Office for Children, Youth and Families, initiated the Pima County Disproportionate Minority Contact (DMC) Intervention Model Project, a collaborative, system-wide effort to reduce disproportionate minority contact throughout the juvenile justice system in Pima County. The aims of this project were to identify disproportionality throughout the local juvenile justice system; to recognize the underlying contributing factors unique to specific decision points; and to develop, implement, and evaluate interventions targeted at reducing differences.

This paper illustrates one such intervention: *The Guidelines for Schools in Contacting Law Enforcement*. This collaborative effort by schools, law enforcement, the juvenile court, and other justice system partners in Pima County was intended to address the school-to-prison pipeline and racial and ethnic disparities in the local justice system by providing standardized school protocols for contacting law enforcement. By describing and characterizing the development and implementation of this intervention, it is hoped that this approach and the recommendations for practice gleaned through this experience will inform other collaborative efforts to mitigate the school-to-prison pipeline and reduce disparities in justice systems across the country.

The Setting

Located in southern Arizona, Pima County is the state's second most populous county, with a population of 1,004,516 in 2014 (National Center for Health Statistics, 2015). The vast majority of the county's population lives in the metropolitan area of Tucson, the county's largest city. The county is further characterized by its lengthy border with Mexico and the expansive Tohono O'odham reservation, the country's second-largest Native American reservation.

Regarding the racial/ethnic composition of its justice-system-eligible youth (ages 8-17), Pima County is a "majority minority" region. In 2013, 52 percent of these youth were Hispanic (of any race), while 37 percent were white (non-Hispanic), 4 percent were black, 4 percent were Native American, and 3 percent were of another race/ethnicity (National Center for Health Statistics, 2015).

Pima County Juvenile Court maintains jurisdiction over all children under the age of 18 and their families, who are referred to the court for the fair and just resolution of disputes. The court's mission is to ensure children are protected, youth are rehabilitated, and the community is safe by administering timely and impartial justice and providing innovative services. Notably, Pima County Juvenile Court houses the county's probation division.

Pima County is served by several law-enforcement agencies. The Tucson Police Department (TPD), serving the City of Tucson, accounts for the greatest proportion of referrals to juvenile court (58 percent in 2013). The Pima County Sheriff's Department, which

serves unincorporated Pima County, accounts for one-quarter of referrals, and other agencies (many serving other incorporated areas of the county like Marana, Oro Valley, and South Tucson) account for 10 percent. The juvenile court itself accounts for the remaining 7 percent of referrals.

The educational environment in Pima County is characterized by a variety of public school districts, plentiful charter schools, and private schools. The largest district, Tucson Unified School District (TUSD), has a student population of more than 50,000 students enrolled in more than 90 schools. The second largest district, Sunnyside Unified School District (SUSD), serves more than 17,000 students in 22 schools. There are more than 15 other public districts. In addition, the county has more than 100 unique charter schools serving K-12 students, and private-school options include the Roman Catholic Diocese of Tucson, with its 50 schools.

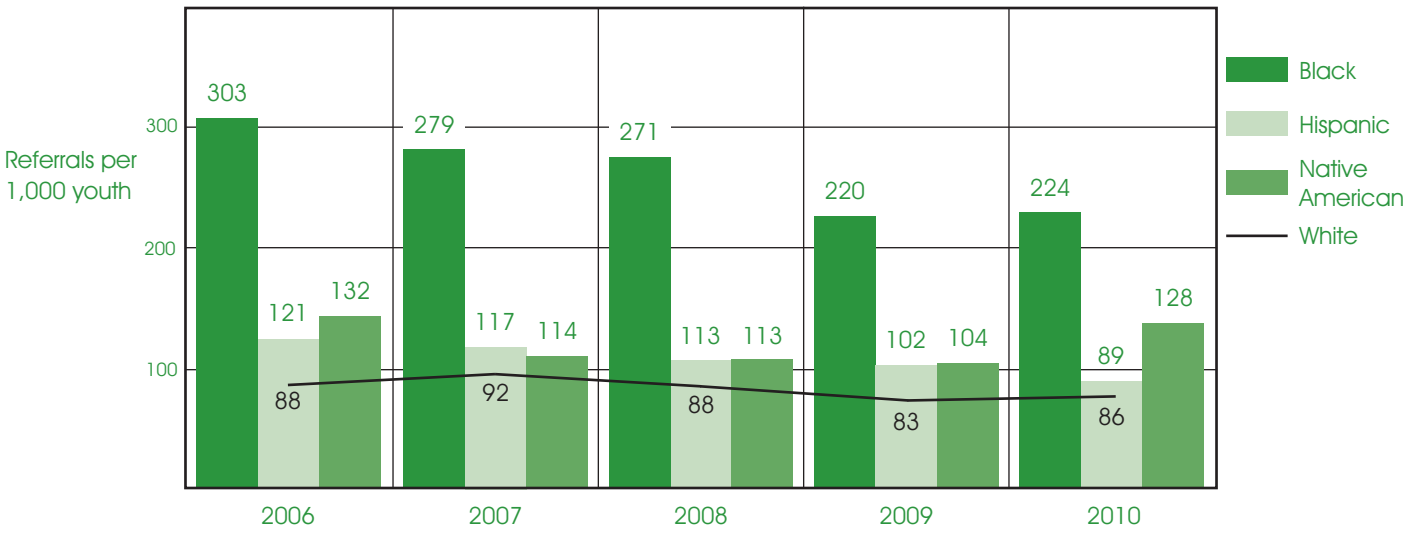
Discussing the Issue

One of the most important assumptions associated with the Pima County DMC Intervention Model Project was that stakeholders had the necessary expertise and experience to identify the causes of disproportionality at every critical juncture in the system and to develop potential solutions to address these causes. Another assumption was that the existence of these differences within the juvenile justice system could be addressed only by the full participation of the agencies and institutions that constitute this system, along with youth and parents involved with the system. Stakeholders were selected because they possessed the experience and expertise for examining and discussing disparities at specific points in the system. School representatives, for instance, were invited to discuss factors that led school administrators to involve law enforcement in disciplinary issues. Other critical stakeholders included juvenile court representatives, attorneys, law enforcement, government agencies, service providers, and community organizations.

The extent and magnitude of disproportionality at each decision point (referral, detention, petition, adjudication, disposition, and probation) was examined by decision-point-specific work groups. Each work group examined data pertinent to its decision point of focus. Data were extracted from the Pima County Juvenile Court's database and used to generate rates of system contact for black, Hispanic, Native American, and white youth over the 2006-2010 period (Pima County Juvenile Court, 2015). These data indicated that disproportionality existed to varying degrees at every decision point, including referral (see graph).

One of the fundamental tasks undertaken by the workgroups was to identify factors that contribute to disproportionality at each decision point. Work group members identified

Referral Rates in Pima County by Race/Ethnicity, 2006-2010



contributing factors through discussion that was informed by decision-point-specific trend data generated from the court's database, diagrams of decision point procedures that were generated by work group members, and ad hoc research and data requests made by work group members. In the case of the referral decision point, representatives from schools (SUSD and TUSD) and law enforcement (TPD) also contributed critical school- and agency-specific data displaying disproportionality in student discipline and juvenile referrals.

Discretionary decision making arose as an overarching factor that was common to all decision points. Discussions suggested that while discretion was a necessary element of many juvenile justice positions, there was often a lack of guidance and monitoring, including the lack of standardized definitions and valid risk assessment instruments. Among schools, district and school representatives compared discipline policies and procedures to understand differences in practices between districts, charter schools, and private schools. Through this analysis, stakeholders learned that some policies afforded school administrators wide discretion in responding to student violations. Further, policies varied greatly between the different schools and districts.

Following identification of disproportionality and discussion of theorized causes, work groups developed recommendations designed to mitigate these "contributing factors." Group discussions were used to propose recommendations, and work group members voted by ballot to determine the viability of recommendations. Work group members were also asked to determine the expected impact (i.e., high, moderate, or low) for each recommendation that was passed.

Task Force Members

Assistant Principal, Cienega High School (Vail United School District)

Assistant Public Defender

Assistant Superintendent, Diocese of Tucson, Catholic Schools

Assistant Superintendent for Student Services, Sunnyside Unified School District

Captain, Tucson Police Department

Community Liaison, Luz-Guerrero Early College High School*

Director, Family and Community Outreach Tucson Unified School District (TUSD)

Director of School Safety and Security, TUSD

Administrator, Pima County Juvenile Court

Presiding Judge, Pima County Juvenile Court

Researchers, Pima County Juvenile Court

Principal, Eastpointe High School*

Representative, Office of the Pima County School Superintendent

Superintendent, Continental Elementary School District

*Charter School

Two closely related recommendations arose out of the discussions regarding the absence of standard protocols for school discipline across the county:

1. Create school-district/charter-school protocols for standardized responses to youth misconduct and referral processes with options for interventions and consequences.

2. Create a training program for school-district and charter-school personnel to implement the standardized guidelines for student misconduct created from above recommendation.

3. Because stakeholders prioritized these efforts by estimating their projected impact as high (relative to the other recommendations), the juvenile court and its partners decided to dedicate resources (i.e., employee time) toward implementation of these two recommendations.

Creating the Guidelines

An initial summit to encourage buy-in from school-district superintendents and administrators was held at Pima County Juvenile Court in May 2013. Then, in September 2013, a task force was formed with representatives from public, private, and charter schools; law-enforcement agencies; juvenile court; and the public defender's office. The composition of this group was diverse in terms of ideas and agenda; while it included the county's largest law-enforcement agency and two largest school districts, representatives from several smaller districts, and charter and private schools, were also integral participants. The goal was to invite divergent perspectives, based on expertise at

various points in the process as a juvenile is arrested at school. These differing perspectives helped the task force to consider all aspects and agree on what is best for the student, the school, and the community.

The task force initially discussed the original recommendation, which broadly called for creation of "protocols for standardized responses to youth misconduct and referral processes with options for interventions and consequences." After considering the scope of this task, the group agreed to focus more narrowly upon developing protocols for when schools contact law enforcement, as these instances lead more directly to justice system contact than school-based responses to student violations.

The task force used the Arizona Safety Accountability for Education (AZ SAFE) violation list and definitions to guide its discussions (Arizona Department of Education, 2009). These guidelines, issued by the Arizona Department of Education (ADE) to guide disciplinary decision making in schools statewide, provided an established framework upon which the task force was able to develop its own county-specific protocols regarding law-enforcement contact. AZ SAFE guidelines provided clarification regarding the most severe offenses that require mandatory reporting from schools to law enforcement. There was no clear direction from ADE regarding less severe violations.

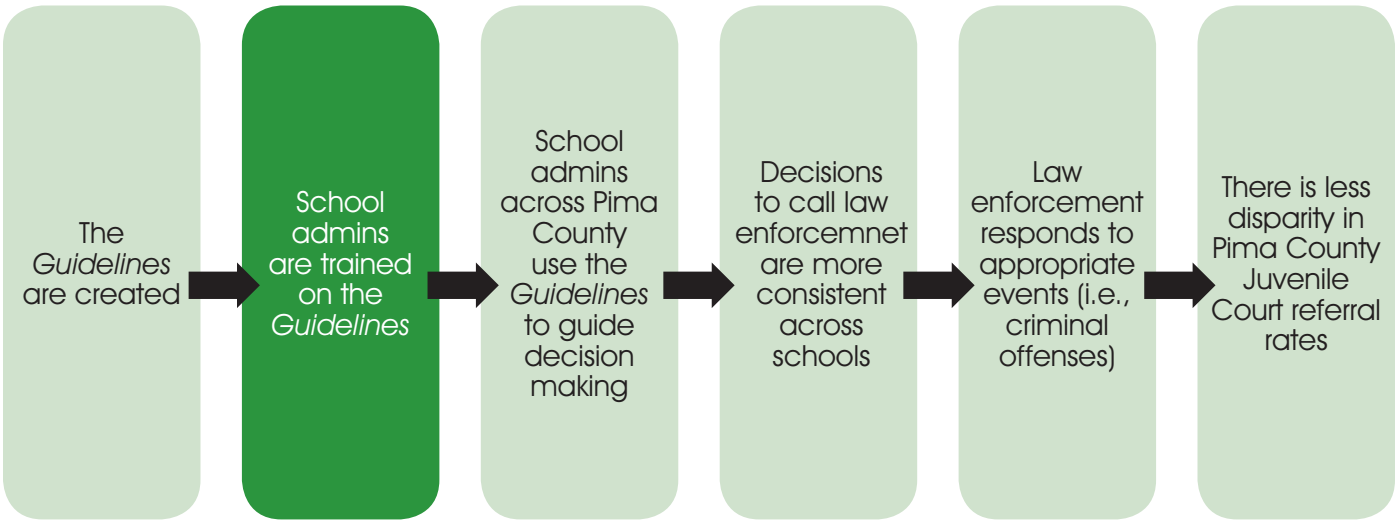
During more than 20 meetings spanning eight months, task force members met and dissected each nonmandatory report violation to determine whether there were any situations that would warrant law-enforcement contact. Discussions of specific violations focused on criminal intent regarding a current violation (independent of the individual's disciplinary history). These discussions were documented and used to develop a master list of guidelines recommending a specific action to school administrators for each AZ SAFE violation.

In May 2014, *The Guidelines for Schools in Contacting Law Enforcement* were finalized. The initial set of resources included:

- a letter from juvenile court leadership to Pima County school superintendents and leaders introducing the *Guidelines*;
- the full six-page version of the *Guidelines*, organized alphabetically by AZ SAFE violation name and including the recommended action (call for law-enforcement presence, file online police report, school-based consequence/intervention) and any necessary explanations or exceptions (see table); and

Court, School, and Law Enforcement Collaborative Task Force: Guidelines for Schools in Contacting Law Enforcement

Violation	Guidelines			Explanations and Exceptions
	Call for Law Enforcement Presence	File Police Report (Online)	School Based Consequence /Intervention	
A				
Aggravated Assaults**	✓			
Air Soft Gun^ (dangerous item)			✓	Do not call law enforcement unless they use it or threaten to use it.
Alcohol Violation^	✓			Call law enforcement unless: • The alcohol was not consumed -and- • The alcohol was not shared or sold -and- • You have school security/personnel to handle the situation
Armed Robbery^	✓			
Arson, of a structure or property^	✓			Call law enforcement unless: • It does not cause damage and • There are no saftey concerns
Arson, of an occupied structure**	✓			
Assault^	✓			If defined as unwanted physical contact with injury, then call for police presence. A violation that schools classify as sexual harassment with contact, law enforcement would classify as an assault. If the violation meets the guidelines for sexual harassment with contact, law enforcement should be contacted. (See Appendix A)



- a two-page reference guide of "grey area" violations for which the need for law-enforcement contact was determined by the task force to be situation-based.

Implementing the Intervention

In May 2014 a "rollout" event for the *Guidelines* was convened at Pima County Juvenile Court. Task force members, including the court's presiding judge, and school, law-enforcement, and public-defender representatives, introduced the set of resources to an audience of school administrators and law-enforcement officers from across Pima County. Along with physical copies of the *Guidelines*, attendees were provided with examples of how the resources could be used with existing school discipline protocols to respond to specific student violations. School representatives were encouraged to implement the *Guidelines* as part of their disciplinary practices in the 2014-2015 school year.

Immediately following the rollout meeting, electronic copies of the *Guidelines* were distributed via email to a variety of local juvenile justice stakeholders, including the majority of public districts, charter schools, and private schools across Pima County. While rollout of the *Guidelines*, both through the meeting and electronically, resulted in a great deal of initial interest and inquiry from local schools and districts, there was a minority of districts and schools that did not receive the documents.

The second recommendation, regarding training on use of the *Guidelines* in decision making, was a critical step in the pathway between creation of this standardized protocol and theorized reductions in disproportionality in referrals to juvenile court (see diagram).

School representatives who received the *Guidelines* at rollout were charged with ensuring that their school or district conducted training on using this set of resources. The amount of training conducted by districts and schools varied. Some schools and districts trained those responsible for discipline, others simply distributed the documents, and some did not disseminate the documents at all. Given the competing time and resource demands faced by schools, it was not expected that the *Guidelines* would be immediately implemented and rigorously monitored by every school countywide. However, those who did

begin to apply these resources were included as part of the evaluation of implementation in the initial school year (August 2014-May 2015) following rollout.

Measuring Outcomes and Impact

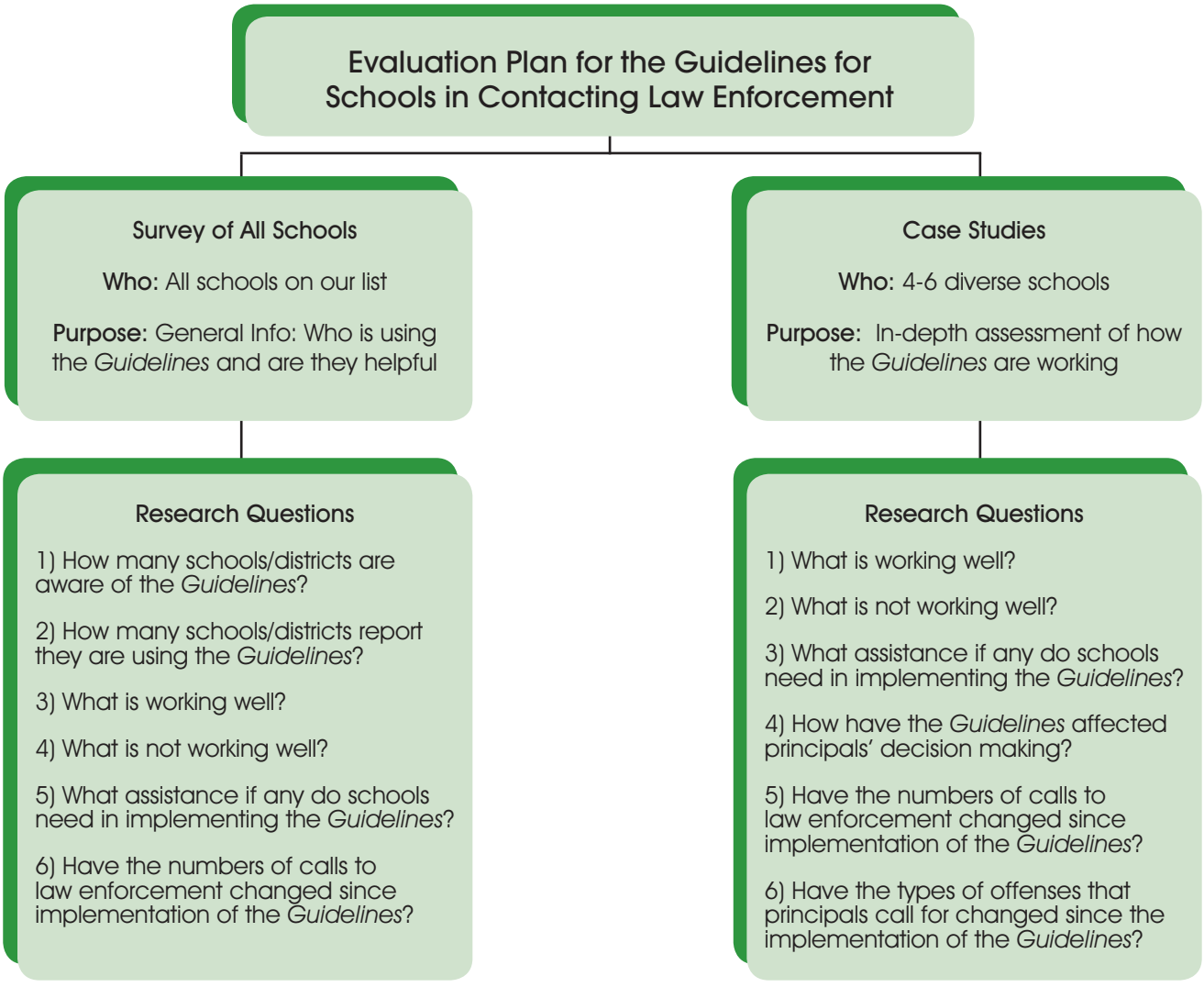
Pima County Juvenile Court's Research and Evaluation Unit planned an evaluation to capture short-term outcomes associated with implementation of the *Guidelines* for one year following rollout (see diagram). The evaluation featured a two-pronged approach:

1. a countywide survey of administrators from all schools in the county; and

2. in-depth case studies of six unique middle and high schools.

The Web-based survey, administered at the beginning and end of the 2014-2015 school year, assessed awareness and self-reported use of the *Guidelines* at the county level. The case studies, on the other hand, involved three in-depth interviews with each of the six administrators during the same period. These interviews were meant to capture detailed information from selected school administrators regarding their incorporation of the *Guidelines* into disciplinary decision making in their unique educational environments.

Survey respondents and case-study interviewees who used the *Guidelines* reported them to be helpful. Some reported that the *Guidelines* provided more detail and clarified violations better than school or district disciplinary guidelines. Many administrators reported that the documents were easy to use and provided guidance in questionable or uncommon situations. The documents also assisted administrators in remaining unbiased and consistent in generating disciplinary responses. Use



of the *Guidelines* helped them to first consider the nature of the violation independent of an individual's history or attitude and provided consistency in decision making from administrator to administrator.

Through the evaluation, it also became clear that support from leadership increased the likelihood that administrators would use the *Guidelines*. There were some clear benefits shown when districts or upper-level administrators provided training and follow-up with school-level administrators at places where school administrators reported using the *Guidelines* regularly. Further, the districts and schools that were a part of the task force that created the *Guidelines* were more likely to have school administrators who applied the documents in practice.

While there was positive feedback from many survey respondents and case-study interviewees, it was unclear how many school administrators knew about the *Guidelines* and were using them. While administrators from at least half of the middle and high schools in Pima County responded to at least one of the two surveys, about half of Pima County schools serving youth ages 8-17 either had not heard of the *Guidelines* or did not respond. Aside from collecting important data, the survey also served as an important outreach tool for administrators, some of whom requested the documents as a result. Outreach efforts to promote awareness and use of the *Guidelines* will continue through the 2015-2016 school year.

Additionally, there is a need to build data-collecting-and-sharing capacity across justice system partners, including courts, schools, and law-enforcement agencies. Many stakeholders are interested in whether the *Guidelines* have had any impact on the consistency of calls to law enforcement or the observed disparities in referrals to juvenile court. Although efforts have been made to begin to connect the short-term outcomes documented via the surveys and interviews to intermediate outcomes and impacts on disproportionality in the justice system, data-collection-and-sharing capacity needs to be further augmented within and among courts, schools, and law enforcement to link theorized outcomes to observed changes.

Despite the lack of clarity regarding the impacts of the *Guidelines* on justice system disproportionality, this iterative process has produced tangible benefits for stakeholders, notably the collaborative relationships forged between different justice system actors. Open communication and willingness to collaborate are invaluable assets to school/law-enforcement relationships. Task force members appreciated interacting with different perspectives in defining violations and walking through how each party deals with specific circumstances, and these interactions reflected lessons learned by participants in other work on justice system disparities in Pima County. These collaborative relationships are tangible resources themselves, and strengthening them through this type of work on shared areas of interest can benefit courts and other system partners by contributing to a more cohesive and functional justice system.

Implications for Courts

Recommendations for practice, intended for juvenile justice practitioners, focused on court-initiated collaborative efforts to address racial and ethnic disparities. Derived from an evaluation of the Pima County DMC Intervention Model Project efforts, these recommendations include:

- commit to maintaining clear, shared expectations;
- establish well-defined leadership/management structures and roles;
- value, respect, and support diversity;
- use data to guide and focus work;
- dedicate resources to measuring outcomes; and
- foster buy-in continuously.

These recommendations are not predicated upon a specific level of funding dedicated to work on racial/ethnic disproportionality. Consistent levels of funding support for this work may not be available to every jurisdiction. These recommendations are intended for the diversity of efforts, varying in shape and size, which exist across the country.

Each recommendation is described in greater detail here.

Commit to Maintaining Clear, Shared Expectations

Given the complexity of racial and ethnic equity issues, it is imperative those invested in this work share expectations for what the work will achieve. Clear, open communication between those involved in the work is imperative. Recognize and celebrate successes! It is important to maintain urgency and momentum, while acknowledging that reducing disparities requires long-term dedication. Well-intentioned efforts can "overpromise" to stakeholders by not offering short-term, achievable goals along with the long-term goal of disparity reduction.

The initial work of the task force that addressed recommendations for standardized school-discipline protocols underscored the importance of establishing and sharing expectations. The group of diverse juvenile-justice stakeholders discussed the broad issue of school discipline. There was a focus on the more feasible goal of developing a protocol specific to law-enforcement contact. By doing so, this group avoided taking on the broad and complex issue of school discipline in its entirety, instead setting and attaining the achievable goal of developing and disseminating the *Guidelines*.

Establish Well-Defined Leadership/Management Structures and Roles

It is important to plan efforts strategically for the long-term future. Given the likelihood of staff turnover, along with other external factors (e.g., funding), efforts to address racial and ethnic disparities require well-defined structures that are resilient or are built to withstand these influences and promote sustainability. Clearly defined decision-making processes are integral to resilient structures. While involving every stakeholder in every decision is not feasible, decision making at various levels should be transparent and comprehensible to stakeholders. Transparency can reinforce shared expectations among stakeholders, promoting trust.

While "leadership" and "management" are related concepts, they must be clearly distinguished to facilitate effective work and to avoid overburdening individuals. Those involved in leadership should work to plan, vision, and catalyze efforts. While leadership can also be exhibited informally, a formal leadership structure should be established to guide long-term work. Those involved in management, on the other hand, help to facilitate and coordinate efforts. Managers of these efforts should be somewhat detached from the visioning and directional planning done by leaders; their role is to help to formalize these plans and to ensure that they are followed. In Pima County's work in developing the *Guidelines*, school-district administrators and other stakeholders from outside the juvenile court were the true leaders, while the management role was fulfilled by juvenile court research staff. Other distinct roles needed to support efforts to address racial and ethnic disparities include meeting facilitation, research/data analysis, and evaluation.

Value, Respect, and Support Diversity

Efforts to address racial and ethnic disparities should bring stakeholders together to reflect the diversity inherent in the issue and in the juvenile justice system. At its core, "collaboration" hinges upon different parties coming together to work toward a common goal. Regardless of size or structure, efforts can foster productive collaboration by valuing, respecting, and supporting diversity.

Valuing diversity means actively seeking out different types of stakeholders and inviting them to participate in the work:

- efforts should reflect the jurisdiction's racial/ethnic diversity;
- deliberate efforts should be made to engage court-involved youth and families; and
- various professional stakeholder viewpoints should be featured.

Diversity should consistently be valued throughout the process, from planning through evaluation and monitoring. A major strength of the task force that came together to develop the *Guidelines* was the diversity of stakeholder viewpoints that contributed to group discussions.

Respecting diversity means giving all stakeholders clearly defined roles and being transparent about how these roles define the collaboration. This includes identifying and agreeing upon roles that use stakeholder time intentionally and authentically engaging them in the work. School administrators, law enforcement representatives, and other juvenile justice stakeholders developed the *Guidelines*; juvenile court staff facilitated the process.

Supporting diversity means accommodating the needs of different stakeholders. Knowledge gaps exist between different types of stakeholders. This work requires ongoing orientation to a variety of terms and processes. Data-based work also requires basic data fluency. While knowledge transfer may "slow down" efforts, the reward is establishing a forum within which different perspectives can be meaningfully shared to address DMC comprehensively and appropriately. The forum established to create the *Guidelines*, and the relationships that were forged as a result, was one of the aspects of the process that was valued the most by participants.

Use Data to Guide and Focus Work

The collaborative analysis and application of local data is integral in justifying, focusing, and evaluating efforts. Basing work on local data allows stakeholders to define the issue within the local context. The effective use of data can establish and reinforce buy-

Valuing **diversity** means actively seeking out different types of stakeholders and inviting them to **participate** in the work:

in to the existence and importance of the issue, and it can focus efforts on the most critical decision points. In Pima County, observation of persistent disproportionality in referrals, both in juvenile court data and in data from school and law-enforcement partners, supported more detailed discussions of this decision point, leading to the development of the intervention discussed here. Ideas for intervention should consistently be traceable to a jurisdiction's data so that limited resources meant for this work are not consumed by other efforts.

It is important to understand the strengths and limitations of data sources. Race and ethnicity are complex characteristics that are likely collected differently by different system partners. Those working to understand and address disparities must ensure that sources of data are well defined, determining what is included and what may be missing, to properly interpret data to inform work. Through grant funding from the Arizona Governor's Office for Children, Youth, and Families, Pima County was able to fund research positions to handle the data workload underlying this important work.

Dedicate Resources to Measuring Outcomes

Resource limitations can deemphasize evaluation planning in favor of needs that are perceived as more imminent, like action. But without agreement on outcomes, along with a clear understanding of how these outcomes will be measured and who will be responsible for measurement, it is possible to devote substantial time and resources to "action" with little evidence of impact. Attempting to affect disproportionality in referrals at the county level through intervention at hundreds of referral sources (i.e., schools) is a good example of an intervention that demands dedicated time and resources for data collection. This is especially true if solid linkages between outputs, shorter-term outcomes, and long-term impacts are valued by stakeholders.

Evaluation planning should be initiated early and revisited during the process. Systems change efforts in the social sector emphasize the need to establish short- and intermediate-term indicators to measure the effects of activities on short- and long-term outcomes. Rates of referral or petition provide an overview of general trends, but reliance on these data alone provides little insight into effects of specific interventions. Agreement upon indicators of effectiveness sets benchmarks for success that can sustain efforts. Setting and achieving short-term goals can promote stakeholder motivation and commitment, while reliance on broad, long-term goals as the sole indicators of progress can result in unrealistic stakeholder expectations that are difficult to meet.

Foster Buy-In Continuously

Efforts to address disparities comprehensively must be long-term in scope, involving stakeholders with diverse needs and motivations. Continuous cultivation of buy-in sustains efforts, which are challenged by participant turnover and other competing initiatives. Staffing turnover from one school year to the next, along with changes at other partner agencies, demanded constant attention to outreach to stimulate consistent engagement in the work that led to the *Guidelines*.

Although many line staff may not attend planning or discussion meetings, they may be directly involved in implementation or evaluation of

interventions. If equity is not an issue that individuals value, or if they are unaware of efforts to address it, appeals to implement interventions with fidelity may be difficult. Without clear explanation, adding to an individual's workload can foster long-term resistance to engagement in these types of efforts.

Conclusion

While issues of equity persist in many justice systems nationwide, focused intervention, like the work done in Pima County to develop and implement the *Guidelines for Schools in Contacting Law Enforcement*, can be feasible and productive, fostering important interagency collaboration that can extend to other efforts. Further, such work can benefit system partners (courts, schools, law enforcement, etc.), as well as the communities served by each.

Complex and deep-rooted problems demand effective local responses. Jurisdictions should continue to invest in and evaluate interventions, and findings should be shared with partners in juvenile justice nationwide. The persistence of disproportionate outcomes in our systems should be exceeded by our persistence as juvenile justice practitioners in advancing coordinated efforts that foster an array of best practices to address school-to-prison issues and promote equity effectively, for the benefit of our communities.

If you would like further information, please contact Pima County Juvenile Court at (520) 724-2068.

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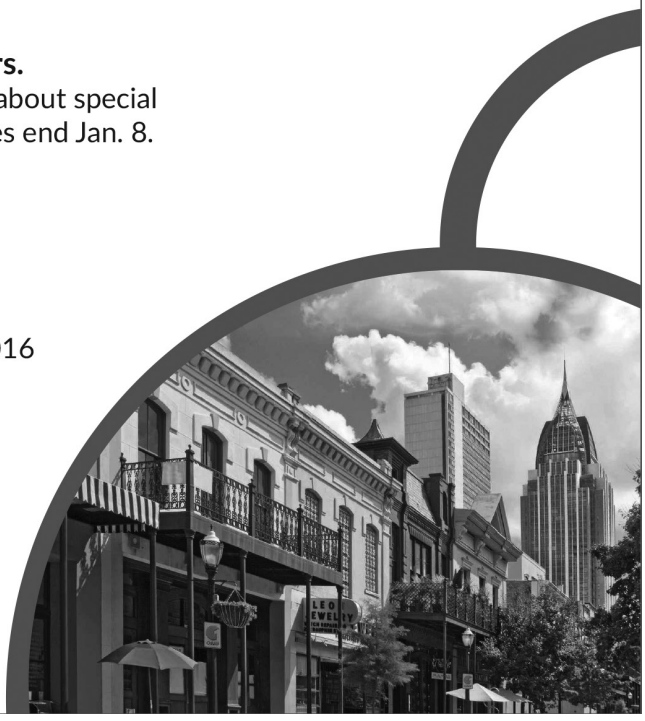

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Alaska Court System Legal Notice Website

Alyce Roberts and Stacey Marz

Imagine that you filed a lawsuit in court but do not know where the opposing party is located to serve notice. Instead of paying over $500 to publish a legal notice for several weeks in a newspaper that you doubt the opposing party has ever heard of or read, the court allows you to serve by other methods. You could post the legal notice free on the court's legal notice website, which is Google-searchable from anywhere in the world with an Internet connection. If you are in touch with the opposing party on Facebook but he or she refuses to provide a current mailing address, you could request to serve the notice via Facebook. This is now the reality in the Alaska Court System.

In October 2014 the Alaska Court System became the first court to change the default service method for absent defendants from publication in a print newspaper to an online posting to the court's legal notice website. Court rules also now permit other alternate service-delivery methods, including by social-networking accounts, email, and online newspapers, in addition to traditional newspaper publication and posting to bulletin boards. Posting to the court's legal notice website is also the service method for name changes. This article describes the history, process, and research methodology leading up to the rule changes that permit these alternate service methods. It also discusses the rules that authorize alternate service,

forms, and the legal notice website. Finally, it includes statistics about the use of the legal notice website.

History and Process

In 2003 a subcommittee of the Civil Rules Committee recommended changing the method for service of petitions for and notices of adult-name-change cases from publication in a newspaper to service by recording with the state recorder's office, which makes recorded documents available on their website. Although the Civil Rules Committee recommended adoption of the subcommittee's proposed changes to the supreme court, this approach never got off the ground.

In 2007 an Anchorage judge proposed changing the civil rule, which permits alternate service methods for absent defendants, to include posting to a court legal notice website. A subcommittee was appointed to study whether other states allow for electronic service and what their experience has been. Subcommittee members reported that they were unable to find other states that allowed electronic service on absent defendants. In 2010 the Civil Rules Committee recommended adopting a rule change that would permit service by posting on the court's website. The committee recommended that two approaches be submitted to the court: two members favored full implementation of a rule that would allow service by posting on the court's website when authorized by a judge, and six favored a pilot project that would require service by publication both in a newspaper and on the court's website. However, the court did not support changing the mechanism for service by publication at that time but indicated it would be open to reconsidering its view in the future. In the course of considering the issue of publication on the Internet, the court suggested that the committee might consider recommending a change to the diligent-inquiry section of the rule to reflect changes in technology available to find people. After consideration by the Civil Rules Committee, in September 2011 the Alaska Supreme Court changed the rule regarding diligent inquiry to require "a reasonable effort to search the internet for the whereabouts of the absent party." In addition, the affidavit of diligent inquiry "shall fully specify the inquiry made, of what persons and in what manner it was made, and a description of any efforts that were made to search the internet, so that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of effecting actual notice." Also, regular mail was added as a requirement, in addition to certified mail, to address situations where the defendant is avoiding service by certified mail.

In February 2012 the issue of alternate service arose again before the Civil Rules Committee. This time it was spurred by a request from an online newspaper that wanted to be declared a "newspaper of general circulation" for purposes of publishing legal notices. When this matter was introduced, committee members immediately raised the issue of the limited effectiveness and high cost of publishing notices in newspapers. The belief was that service by publication rarely reaches the intended parties or results in their appearance. In the intervening time since the idea was first considered in 2007, print newspaper readership and advertising revenues had substantially declined as evidenced by reports of newspapers shutting down across the country. There was interest in having the court system consider publishing notices to absent defendants and name-change notices on the court's website. A subcommittee was formed to explore changes to the publication rule and draft a rule-change proposal.

The subcommittee met several times and decided to collect data to determine the effectiveness of service by publication. Subcommittee members reviewed all cases statewide in which service by publication occurred in 2010 and 2011. In 2010 there were 851 total cases (522 name-change cases; 329 all other case types). In 2011 there were 843 total cases (542 name-change cases; 301 all other case types). Excluding name-change cases, in both years, family-law cases represented the majority of cases in which service by publication was used. The next largest category was debt cases. The remaining cases included personal-injury auto cases, real-estate matters, forcible-entry-and-detainer cases, and a smattering of other case types. The vast majority of notices by publication came from Anchorage cases, with almost all other notices coming from courts in larger communities and almost nothing coming out of rural Alaska.[1]

The subcommittee looked at all the cases in which service by publication was granted (excluding name-change cases). This represented 243 of the 301 cases. Of the 243 cases, 189 cases resulted in default judgments, divorce,

[1] The subcommittee found the lack of cases involving service by publication in rural Alaska surprising. There are several small regional newspapers in rural Alaska, which are widely read in the communities they cover. The subcommittee expected there to be frequent instances of service by publication and that they would result in appearances by the defendant. This was not the case, and there were very few requests to serve by publication. The committee hypothesized that most rural communities are villages off of the road system and "everyone knows everyone," so absent defendants are rare.

Newspaper	Publication of Petition	Publication of Judgment
Anchorage Daily News	$90	$30
Chugiak Eagle River Star	$75 (petition and judgment)	
Alaska Journal of Commerce	$75 (petition and judgment)	

or dissolution. Nine cases resulted in a defendant responding. *In only three of the cases could the defendant's participation be possibly attributed to effective notice by publication.* In other words, there was no other obvious way that the defendant learned of the lawsuit. Contrast this with six of the cases in which the defendant's response was clearly not related to the publication (the defendant responded after default was entered or after their Alaska Permanent Fund Dividend[2] was garnished, or the defendant was obviously dodging service).

The subcommittee also researched the costs to publish in newspapers of general circulation in all four districts. The costs varied based on the length of the notice and the individual newspaper's fees. Four different affidavits of publication that were filed in Anchorage were examined: two custody cases and two personal-injury cases. The fees in these four cases ranged from $385 to $551. The fees for publishing notices of name-change cases vary statewide. However, the table above shows the fees charged by the *Anchorage Daily News*, the *Chugiak Eagle River Star*, and the *Alaska Journal of Commerce* as of the summer of 2012.

Subcommittee Findings and Recommendations

The results of this analysis included:

- An understanding of the volume of cases in which service publication in a newspaper occurs. There are approximately 800 cases a year of which two-thirds are name-change cases.
- The vast majority of notices served by publication in a newspaper occur in larger communities and not rural communities.
- The incredibly low response rate by defendants makes a strong case that service by publication in newspapers is an ineffective method for notifying parties of lawsuits against them.
- Service by publication is costly for litigants.

The subcommittee concluded that the current default practice for attempting to serve notice on absent defendants was ineffective and expensive. The subcommittee did not research the effectiveness of notifying creditors and other interested parties of change-of-name cases via newspaper publication. However, they had no reason to question the effectiveness in this area because creditors routinely read legal notices and court dockets to review name changes.

Subcommittee members met with several staff members from the court's technology department, including case-management-system staff, to discuss the feasibility of creating a legal notice website and the efficiencies gained from eliminating the requirement for litigants to file affidavits of publication. Their initial response was positive, and they thought that creation of a legal notice webpage on the court's website could be accomplished with existing resources and software.

The subcommittee recommended to the Civil Rules Committee a rule change to Civil Rules 4(e) and 84 that would change the default method for service by publication in a newspaper to posting on the (to be created) Alaska Court System's legal notice website.

[2] Alaska residents are eligible for the annually distributed Permanent Fund Dividend. Shortly after the oil from Alaska's North Slope began flowing to market through the Trans-Alaska Pipeline System, the Alaska Constitution established the Alaska Permanent Fund, which is managed by a state-owned corporation. It was designed to be an investment where at least 25 percent of the oil money would be put into a dedicated fund for future generations, who would no longer have oil as a resource.

However, service by publication in a newspaper would still be an option that a litigant could request if the litigant has reason to believe that this would be an effective method of service. The Civil Rules Committee unanimously recommended to the Alaska Supreme Court changes to the relevant rules providing the default method for service to be posting on the court system's legal notice website. The Supreme Court adopted the recommendation, with minor stylistic edits, effective October 14, 2014.

Rule Changes

The Supreme Court amended two rules that authorize posting to the court's legal notice website. Civil Rule 4(e) replaces newspaper publication as the default method of "other" service with posting on a new, Google-searchable legal notice site accessible from the court system's home page. Civil Rule 84 replaces newspaper publication as the required method of publicizing a name change with posting on the court website. In adopting these changes, the supreme court considered the limited efficacy and high cost of newspaper publication, the evolving role of newspapers in many communities, and the development of other platforms to reach people.

Civil Rule 4(e)—Other Service. The Supreme Court changed Civil Rule 4. Subsection (e) governs service when, after diligent inquiry, a party cannot be served. Service under Rule 4(e) requires court approval. Previously, Rule 4(e) permitted service by newspaper publication or by other means reasonably calculated to provide actual service. It also required mailing to the absent party's last known address (if any) by both certified and regular mail.

Revised Civil Rule 4(e) retains the mailing requirement, requires posting on the court website, and provides for additional service by other means at the court's discretion. The additional means expressly includes service to an absent party's email, a post to the absent party's social-networking account, publication in a print or online newspaper, physical posting, or any other methods that the court determines to be reasonable and appropriate.

The amended rule requires that the party seeking to use an alternate service method discuss in the affidavit of diligent inquiry whether other methods of service listed above would be more likely to give the absent party notice. Website posting and mailing is just the minimum service effort required. If other service options exist that are better calculated to provide notice in a given case, the rule encourages the court to explore them.

This rule change does not affect those situations where newspaper publication is required by statute. For instance, newspaper publication is still required to reach absent parties in probate cases.

Civil Rule 84—Change of Name. As noted above, the supreme court amended Civil Rule 84 to require that name-change applications and judgments be posted on the court system's new legal notice website. The rule no longer requires newspaper publication in every name-change case, but the court retains discretion to order publication or posting as appropriate in particular cases. Child-name-change cases have additional service requirements for parents.

It is important to note that these rule changes did not impact case types for which there are statutory requirements for service by publication in a newspaper. For example, Alaska statutes require newspaper publication for notice to creditors when probating an estate.

Forms

To facilitate use of the alternate service process, the administrative office created new forms using plain language and amended existing forms. These forms are available on the court's website. The forms include:

- Request to Serve Defendant by Posting or Alternative Service and Affidavit of Diligent Inquiry
- Notice to Absent Defendant
- Order for Alternate Service

In relevant part, the Affidavit of Diligent Inquiry is excerpted below to show some of the required steps a user of the alternate service process must take to show the judge he or she has diligently attempted to locate and serve the defendant. Notably, diligent-inquiry efforts must include Internet searches.

In the order permitting alternate service for absent defendants, the default method is service by posting on the court's legal notice website. Judges may order additional service requirements based on the information provided in the Affidavit of Diligent Inquiry. For example, if the moving party indicates regular communication with the defendant through Facebook, the judge may also require service by posting to the defendant's Facebook account, using the Facebook "messenger" feature.

The administrative office also amended name-change forms to include information about posting name-change petitions and judgments to the court's legal notice website.

Notice of Judgment—Change of Name

A judgment has been issued by the Superior Court in Anchorage, Alaska, in Case # 3AN-15-XXXCI ordering that the petitioner's name will be changed from Alyce Simeonoff to Stacey Marz, effective on the effective date stated in the clerk's Certificate of Name Change.

Legal Notice Website

After the rules were adopted, the court's technology department began website development to ensure the site would be operational when the change went into effect three months later. The goal was to develop an automated process that would require minimal data entry by court clerks and would reduce the potential for data-entry errors. As such, the decision was made to harness the power of the case management system and pull existing case data to populate notices to the extent possible.

Notices for certain case types (such as name changes and divorces with an absent spouse when only ending the marriage is at issue) include static information as to the nature of the action and the relief sought. For these case types, the case-specific information (case number, parties' names, hearing date, etc.) is auto populated from the case management system to create the notice.

In all other cases, the moving party is required to submit a notice to the absent party that specifically describes the nature of the action and the relief sought. The clerk sends a scanned image of the notice in PDF format to an email address specifically created for posting notices to the court's legal notice website. The posting process is automated by using case-management-system docket entries and a separate database for tracking posted notices and automatically removing said notices after the posting period is complete. (See www.courtrecords.alaska.gov/webdocs/scheduled/lnwabd.pdf.)

After completion of the notice-posting period, the clerk prepares and distributes to the moving party a "Certificate of Service of Posting to the Alaska Court System's Legal Notice Website." When the court requires other methods of service in addition to posting on the legal notice website, the

Website address: http://www.courts.alaska.gov/notices/index.htm

moving party must file proof of service using the form of proof required by the rule. For example, if service is made by email or posting to a social-networking account, proof of email transmission or electronic posting shall be made by affidavit. If service is made by email, a copy of the sent email transmission must be attached to the affidavit. If service is made by posting a notice on the absent party's social-networking account, a screen print of the posting shall be attached to the affidavit.

The legal notice website was created using existing court resources with no additional expenses. A team composed of programmers, case-management-system analysts, business-process staff, and clerks designed the automated posting process and website.

In the first 11 months since the rule permitting legal notice posting has been in effect, 1,924 legal notices have been posted to the website. Other courts have recognized the utility of the legal notice website. Less than two months after the website went live, a U.S. District Court judge authorized service by posting on the Alaska Court System's legal notice website in one of its cases. Recently, the Anchorage Trial Court also received an inquiry from a Texas attorney to post a notice for a Texas case on the court's legal notice website because he believed the defendant to be in Alaska. The Alaska Court System has taken the position that it will post legal notices from other jurisdictions and provide a clerk's certificate of posting. Surveys to clerks of court revealed high customer satisfaction with the legal notice website and the elimination of publication costs in most cases. In addition, clerks appreciate the ease of the process from the clerical end. Moreover, three clerks of court reported that litigants have appeared after learning about cases from the legal notice website. Interestingly, these clerks come from diverse locations—largest urban court, a midsized court, and a remote rural court.

In 2007 the proposal to create a legal notice website to publish notice to absent defendants was deemed too radical an idea. A relatively short time later, however, the importance and viability of print newspapers in society had changed dramatically. People rely on immediate electronic information and live their lives online. Courts must stay current and provide their customers with options that make sense in today's world. The time has come to reflect the societal cultural shift where online information should be the first approach.

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To the Hump and Over It

Nicole Zoe Garcia

Across the United States, family courts are faced with a challenge: the number of persons accessing the courts as self-represented litigants (SRLs) has skyrocketed, as fewer and fewer litigants can afford an attorney, and an increasing number simply choose not to use one. In the Arizona Superior Court in Maricopa County, approximately 79 percent of all dissolutions (the legal term for the ending of a marriage by divorce) were filed by SRLs in fiscal year 2013 (Judicial Branch of Arizona in Maricopa County, 2013). Judicial officers in Maricopa County estimate that less than 10 percent of SRLs come to court ready to proceed with trial on the initial setting. In the remaining cases, the parties are unprepared, resulting in a dismissal of the petition (to be refiled) or causing the trial to be vacated and reset. Not only does this strain the limited resources of the court, it also places a burden on judicial officers, court staff, and the litigants themselves.

Background

Family court in Maricopa County has jurisdiction over dissolution, child custody, child support, parenting time, paternity, and other domestic relations matters. There are 27 judges and 11 commissioners assigned to the family court bench. In FY 2013 there were 33,882 case filings, and 18,162 (53.6 percent) of these filings were dissolution filings. Approximately 6.5 percent of the cases were contested and required a trial to conclude the matter; in FY 2013 the family court bench conducted more than 2,100 trials. Each judicial officer carries an average of 814 pre- and post-decree cases (Superior Court of Arizona in Maricopa County, 2013).

Extrapolating from the said data, the court can estimate that approximately 1,180 divorce trials were conducted. Using the judicial officer estimate of approximately 10 percent suggests that in only 118 divorce trials did the parties report to court ready to proceed. In the remaining 1,062 trials, the party's case was adjourned, or the petition was dismissed.

What Is the Issue?

SRLs have always been a factor in the courts, but never to the extent that the courts are now experiencing. Many commentators believe that the number of SRLs is higher than at any other time in United States history (Swank, 2005), and it appears that the situation is exacerbated as the number of Americans at or below the 125 percent federal poverty level was expected to

reach an all-time high of 66 million in 2013 (Collins, 2012). Consequently, fewer people who may require an attorney are able to afford their services.

What Has Been Done So Far?

Despite budget constraints, courts must find ways to confront this new challenge by expanding public access to court services, with many courts spearheading initiatives that are centered on these realities. For instance, some courts have begun to offer forms online and programs that will walk litigants through the steps to fill them out (Collins, 2012). Other courts have created SRL clinics and "Lawyer-of-the-Day" programs (Engler, 2012). Many courts have increased the type and amount of information available online. Several states are considering mandating attorneys to work a certain number of pro bono hours, while others are considering allowing limited-scope representation (Morganteen, 2012). Another effort in various states is family law (or family court) facilitator programs, which provide assistance to litigants who either cannot afford or forgo representation in matters dealing with certain family law and domestic relations matters. Thus far, what the courts have done to meet the demands of this unique population has enabled them to simply get to the filing stage of a case. To that end, the court has reorganized itself to get litigants "to the hump," but "not over it." The challenge now is how to get SRLs past this stage and through to the successful completion of a trial.

Superior Court in Maricopa County

At superior court in Maricopa County, several resources are available to SRLs. Regarding forms, SRLs can visit the superior court website and print out forms for most family court actions and fill them out manually. These forms are also available online as PDF fillable forms so that a person can type their information directly onto the forms and then print them out. In addition to being available online, individuals may purchase the appropriate forms from the Maricopa County Superior Court Self-Service Center.

SRLs can also take advantage of the "ezCourtForms" program. The ezCourtForms program consists of a series of interactive interviews that assists SRLs in completing the forms necessary to create court documents. The program asks a question, and when the person types in their response, the program places their answer in the appropriate place on the filing.

Arizona is also one of only two states (the other being California) that certifies and monitors individuals and companies who prepare legal documents for SRLs. These document preparers are now known as Arizona Certified Legal Document Preparers (AZCLDPs). While AZCLDPs are authorized to help SRLs complete court forms, they cannot give legal advice, recommend case strategies or legal remedies, engage in settlement negotiations, or represent people in court (Arizona Code of Judicial Administration, 2013).

These are resources available to SRLs involved in family court cases in Maricopa County. Among the most notable is the Maricopa County Self-Service Center (SSC), which opened in 1995 and was the first program of its kind in the nation (Superior Court of Arizona Maricopa County, 1997). Today, the SSC offers court forms (which have been specifically designed for SRLs), as well as instructions and information, to those who are representing themselves—the majority of whom are involved in family court proceedings.

Methodology

To develop a comprehensive understanding of a family court dissolution case with the goal of identifying factors that would increase the likelihood of trial date certainty on the first attempt, the following methodology included an examination of sample case files. It is anticipated that the careful selection of the sample would yield similar results for the population of cases. In addition, judicial officers were interviewed to uncover differences, if any, between

their perceptions of trial rates and the reality of trial rate success. Interviews were also used to identify interventions and other strategies respondents believed could affect trial rate success. The methodology also brought to bear discrepancies among the types of filing methods available to SRLs in determining whether those methods resulted in different case outcomes.

Determining the Sample Pool

To create a representative sample for the purposes of this study, all cases were required to share the following characteristics:

- dissolution case—nothing post-decree, such as child support or custody modification
- the case should involve children (a case number prefixed by FC)[1]
- a decree of dissolution needed to have been issued before June 30, 2013
- both parties shall be SRLs
- the decree shall be issued through trial

Selected Key Findings

Finding 1: The Majority of Cases Require Only One Trial Setting

Case analysis showed that in 79 cases, almost 70 percent, the parties were successful in obtaining a decree of dissolution at the first trial setting. Of the remaining 34 cases, 29 were set for trial twice, 4 were set for trial three times, and 1 was set for trial four times, resulting in a total of 40 continuances before a decree was issued. Two-thirds of all these continuances were due to the parties not being prepared to proceed with trial for a variety reasons.

Finding 2: Type of Filing Method Used by the Petitioner Drives the Case

There appears to be a correlation between the type of method used in preparing the case-filing documents and the amount of trial settings in a case. The highest average number of times a case is scheduled is when the petitioner uses the SSC forms and the respondent uses either the SSC or AZCLDP forms (1.5 times set for trial). When the petitioner uses some other type of form (AZCLDP or ezCourtForms), the average number of times set for trial drops to 1.2 or 1.3. While not statistically significant, these differences suggest that the SSC petitioner forms may not provide litigants sufficient information or are lacking in some other respect, which impacts the efficiency of the litigation process.

Finding 3: Parties Who Participate in Early Resolution Conferences (ERC) Are More Likely to Require Only One Trial Setting

There also appears to be a correlation between the number of trial settings in a case and whether the parties participated in an ERC. At the sample level, approximately 53 percent of the total sample of cases participated in an ERC. Of those cases, 77 percent successfully obtained a decree of dissolution on the first trial setting. Examination on the case-setting level reveals that of the cases set for trial one time, 58 percent participated in an ERC. Of the cases set for trial two times, only 35 percent participated in an ERC. This seems to indicate that participation in an ERC increases the likelihood that a case will only require one trial setting. This also seems to indicate that parties who participate in ERCs receive some type of benefit or guidance that allows them to resolve their cases successfully.

Finding 4: ezCourtForms Are Superior to the Current Paper Dissolution Packets

The dissolution forms available on ezCourtForms are far more streamlined, condensed, and informative than the dissolution packets available at the SSC. The petitioner packet for "Divorce—with Minor Children" comprises an overwhelming 43 pages, including 7 pages of instructions, 2 pages of filing procedures, and 27 pages of actual forms. By contrast, the "packet" for a divorce with minor children available through ezCourtForms is created using an online interview that comprises 27 screens (depending on case complexity). The packet produced from the interview is 9 pages, which includes a page of instructions.

[1] These cases were selected for this study because children were involved, therefore making it more likely there would be contested issues, such as child custody or child support, requiring intervention. Cases involving only two adults by definition do not have these issues.

Conclusions

The primary goal of this project was to identify any potential markers that would indicate the likelihood of a case successfully proceeding to trial (i.e., the parties are more likely to be prepared for trial). Based on the preliminary findings, the markers can be summarized as follows:

Marker 1: A case is more likely to successfully proceed to trial if the petitioner prepares his or her filing packet using ezCourtForms or the services of an AZCLDP.

Marker 2: A case is more likely to successfully proceed to trial if the parties have participated in an ERC, regardless of the outcome.

Marker 3: A case is more likely to successfully proceed to trial if the parties have received specific information or instructions at some point in their case.

The following conclusions together with the appropriate recommendations are noted for consideration.

Conclusion 1: A Lack of Information and Specific Instructions Is the Biggest Cause of Unpreparedness

These findings show that the litigants are failing to receive specific information that would ultimately make the trial process easier on them and the court's stakeholders. The overwhelming majority of family court litigants are SRLs. Consequently, the court must examine the value added by simply providing them with forms and sending them on their way. Is this reasonable given the realities of the court, or is it simply delaying the process and compounding the difficulty of managing the case later in the process?

Society is changing. The transition will affect the expectations, roles, and responsibilities of the court. Because the court will not be unaffected, it needs to consider the best and most practical service that can be offered to SRLs. Providing procedural information and appropriate referrals may solve some of the issues that increase the likelihood of SRLs being ill-prepared. To address this issue, the following changes are recommended.

Recommendation 1.1: Create an easy-to-read trial preparation checklist. A checklist should be created to help SRLs prepare for trial. The checklist should be concise and simple, so as not to overwhelm them with information that runs the risk of being ignored (as in the "small print" on credit card applications). This checklist should contain the most common documents that the judge will require to make a decision and issue a decree, such as tax statements, financial affidavits, etc. Hard copies of this list should be provided to SRLs, and the list should also be made available online on the family court page of the Maricopa County Superior Court website, as well as at the SSC.

Recommendation 1.2: Create a court staff position similar to the family law facilitators that exist in other state court systems. A proposal should be submitted to the funding authority for permission to create a court staff position similar to a family law facilitator. These positions were previously viewed as "ethically murky" due to strict interpretations of what constituted legal advice. However, given the overwhelming number of SRLs that require service and direction, the time may have come to create this position in a way that strikes a balance between providing good customer service without providing legal advice. A well-balanced position in this regard that is properly understood and defined can increase public trust and confidence in the courts, apart from increasing customer satisfaction among individual SRLs.

Recommendation 1.3: Renew self-service center staff training with a focus on appropriate procedural information. The court staff that work in the Maricopa County Superior Court Self-Service Center should receive training, be empowered to provide specific procedural information, and make appropriate referrals to outside resources and service providers. A decision tree should be created to help staff "distinguish between resources to help litigants find legal information

[on their own] and resources to assist them in locating legal advice or representation." This recommendation can be especially applicable to the segment of the SRL population who decide not to use an attorney for no reasons other than affordability. By providing information about resources or where to find legal information, the process is jumpstarted and eliminates some of the initial delay. To the extent that it is needed and appropriate, the training should also be extended to judicial staff, who routinely interact with SRLs.

Conclusion 2: Parties Who Participate in ERCs Are More Informed and Better Prepared Than Those Who Do Not

With the anecdotal evidence from the judges, along with the statistical data from the case analysis, ERC outcomes show that participation is beneficial to both the parties and the court. Notwithstanding the clear advantages that the ERC offers, almost a third of the cases did not participate. To that end, the following recommendations focus on increasing the rate of participation in ERCs.

Recommendation 2.1: Close the ERC loophole. At the superior court in Maricopa County, all contested family court dissolution cases are automatically scheduled for an ERC when a response is filed in the case. However, in some instances, a judge must take early action in the case. For example, when temporary orders are requested (which is quite common), the case is taken out of the ERC "pipeline," and the parties do not participate in conference unless specifically ordered. The court should eliminate this aspect of the track and continue to schedule an ERC for all contested cases as a matter of course. This should be especially the case for those matters that involve two SRL parties, regardless if there is early judicial action, unless otherwise ordered.

Recommendation 2.2: Create a YouTube video about ERCs. The Maricopa County Superior Court's media department has created a number of educational videos for the public about various resources the court offers and how-to videos about such things as obtaining a protective order. A similar video should be created for ERCs. The video would educate the public about the purpose and benefits of ERCs, what to expect during an ERC, and possible outcomes. The video could be hosted on the family court page of the superior court website, and it would also be beneficial to play the video in areas where there are large numbers of SRLs, such as the SSC, family court waiting rooms, and lobbies located at the various superior court facilities.

Conclusion 3: The Self-Service Center Packet for Dissolution Is No Longer Effective for SRLs

The analysis of the SSC and ezCourtForms versions of the dissolution filing, coupled with the data outcomes of trial rate success and anecdotal evidence from the judges, suggests that the SSC packet is outmoded. In the sample of cases examined for this project, only 25 percent used ezCourtForms to prepare their dissolution packet. The results demonstrated that it is important for the court to significantly increase the use of the ezCourtForms program.

Recommendation 3.1: Begin phasing out the use of SSC forms and move exclusively to ezCourtForms. As the burgeoning of e-filing and a paperless society continues, the courts should continue to reengineer themselves to keep pace with the latest innovations. This seems especially relevant in areas where electronic versions of forms are superior to paper versions for accessibility, among other reasons. Having said that, the superior court should begin to phase out the use of the SSC forms for dissolution, both the hard-copy packets and the downloadable packets, and substitute the exclusive use of ezCourtForms for those documents. This change may prompt the elimination of other paper packets, with a more efficient practice being implemented for other filings.

Summary

As the number of SRLs increases significantly, courts continue to struggle to keep pace with the needs and demands of this population. There are other issues that the court must consider, such as access to justice and what that means in a society where more people are accessing the courts without legal representation. The Maricopa County Superior Court was an early pioneer in addressing SRL concerns with the development of the SSC, which assisted litigants at the outset of their case filing. The challenge now is guiding SRLs through the entire caseflow process to the point of successful trial resolution.

This study examined a sample of cases to develop "markers of success" for those matters involving SRLs. The objective was to provide recommendations on the basis of these markers to increase the likelihood of trial date certainty on the initial date of scheduling. The preliminary results, albeit only drawn from a small sample of cases, showed promise in their applicability to all family court cases involving SRLs. The recommendations offer an opportunity to better inform SRLs and ease some of the burden on court resources. At the same time, the suggested changes in practice will enhance the public's access, trust, and overall satisfaction in the courts.

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ABOUT THE AUTHOR

Nicole Zoe Garcia is the jury manager with the Maricopa County Superior Court. This article is a modified version of her paper submitted for the Court Executive Development Program of the Institute for Court Management.

The Impact of Digital Evidence on Court Infrastructure

Tracy J. BeMent

When court managers talk about the increasing amount of video materials submitted for evidence, the conversation is not limited to just body-worn cameras (BWC) that police officers may be wearing. Rather, court managers view this as just one of many technologies that ultimately become part of the digital evidence submitted in a court proceeding. Digital evidence also includes footage from police car dashboard cameras, surveillance cameras (ATMs, convenience stores, businesses, and homes), audio recordings (surveillance, phone calls, etc.), computer files, email, and numerous other electronic media and files. To be sure, the proliferation of BWCs is poised to exponentially increase the amount of digital evidence submitted to the courts.

Support and pressure for implementing these BWC technologies is growing. Several states are considering legislation supporting or even mandating use of such technology. North Carolina, for example, has pending legislation that would mandate the use of BWCs for up to 60 percent of the state's law enforcement within about a year. The Department of Justice is also encouraging the use of BWCs. As of September 2015, the DOJ awarded $19.3 million in grants to 73 law-enforcement agencies for implementation of BWCs. That number likely pales in comparison to the other state and local funds that many jurisdictions are also using for BWCs and similar technologies.

The courts must be prepared to address the influx of digital evidence no matter its source and all of the logistics that such evidence imposes on our court infrastructures. And, further, court managers must be prepared to do this in an appropriate, cost-effective manner. The level of preparedness of court infrastructures throughout our state with regard to digital evidence is profound. While there are numerous counties with well-equipped courtrooms, many of our courts have little to no technology in their courtrooms. This places the burden on the courts, parties, or both to bring in laptops, projectors, monitors, and speakers to set up and then take down for each court proceeding as needed. While such efforts are manageable for a few cases here and there, this scenario is not feasible if mountains of digital evidence become more commonplace.

The DOJ recently contacted the National Center for State Courts (NCSC), a clearinghouse of information for courts, and inquired as to what the courts are doing about BWCs. A focus group was convened with court administrators and court technologists to discuss the impacts of BWCs and other digital evidence. Their findings are still being developed but, as this author was part of the focus group, we can share some of the general observations.

The logistical concerns for court management are some of the same as those faced by the implementing law-enforcement agencies, but the courts do have some unique challenges. At this time, the court managers have more questions than answers, but solutions can be found through open discussions and coordination. Below are several of the concerns raised at the national focus-group meeting.

Storage—How much digital evidence will be submitted to the courts? How will that digital evidence be stored (such as on servers or in a cloud or must all digital evidence be placed on CDs or DVDs), and are the courts' infrastructures ready for massive amounts of electronic data in terms of server space, cloud storage, or physical space? If courts are also recording court proceedings in a digital format, either audio or video, do they have the long-term storage capabilities for those recordings?

Technical—What are the playback capabilities in terms of computers, evidence presentation systems, and the like? Do the courts have appropriate evidence presentation systems that support the technology present in the digital evidence?

Records Management—Are the courts' current records retention rules adequate for maintaining digital evidence? When should such material be destroyed and by what means? Do the appellate courts have any requirements for when cases are appealed and for when an electronic copy of the record must for forwarded for review?

Public Access—Are there any issues or concerns when the public or media seek access to digital evidence? Are the clerk's offices capable of making copies of digital evidence, and what should they charge for such copies? Do the clerk's offices have the computers and hardware necessary for viewing digital evidence, such as monitors and speakers or headphones?

Privacy—Are there concerns when the public or media request access to digital evidence that may be considered sensitive?

Security—Are the digital files secure? Are adequate access and audit mechanisms in place to ensure that digital evidence has not been altered or tampered with once in the court's possession?

These are just a handful of questions that a proliferation of digital evidence raises. Some can be quite challenging. Take, for example, an average size county with, say, five cities. Each city police department and the county sheriff's department may each choose a different body-camera manufacturer, each with its own proprietary recording software. The court and the prosecutor may be faced with playback of body camera or other footage from the systems of six different manufacturers, and each may require its own unique player software. Then take into consideration what might happen when these manufacturers update their software and require upgrades in player software every quarter or even annually. The courts must keep multiple versions of the player software as cases may take several months or a year to go to trial. Some states have tried to work around this by requiring that such footage be converted into a standard playback format. While that sounds great, some industry experts will tell you that this is a concern. By converting from the original recording format to a standardized format, or codex, sometimes the audio or video may get out of sync or not play back at the same rate of speed, or critical meta data, like time stamps and links to transcribed audio, could be lost.

So, how should the issues of digital evidence be addressed? First and foremost, the courts and the law-enforcement agencies and prosecutors that bring cases before them should communicate. A best practice is to have local criminal-justice-coordinating bodies meet regularly to discuss sharing information and data. Such forums offer a great opportunity for everyone to share information about what technologies they are using and how those technologies and the digital evidence they generate will affect the greater criminal justice community. Some of those conversations may be tough, especially for law enforcement when determining their policies for use of such systems. Also tough may be determining the cost and technical burdens. Likewise, court managers should be ready to be active participants in the conversation about how to be prepared for the influx of digital evidence.

ABOUT THE AUTHOR

Tracy J. BeMent is a court administrator in Georgia and serves as the current president of the Georgia Council of Court Administrators (GCCA) and on the Board of Directors of the National Association for Court Management (NACM). He recently contributed as an author and editor to NACM's *Guide to Technology Planning for Court Managers* and is NACM's liaison to the Integrated Justice Information Sharing (IJIS) Institute.

Jury News

PAULA HANNAFORD-AGOR

New Educational Resources on Jurors and New Media

Hardly a week goes by that I don't hear about a trial that was disrupted or a jury verdict overturned because one or more jurors conducted independent research on the case or communicated with friends or family using social media. Hundreds of written court opinions have been filed in response to allegations of Internet-related juror misconduct. Although courts have developed some tools in recent years to discourage inappropriate juror use of Internet technologies, not all judges are aware of these tools or use them consistently. And none of the current approaches can guarantee 100 percent effectiveness 100 percent of the time. Trial judges can now anticipate spending more courtroom time deciding motions for mistrials and new trials.

In fact, an informal survey of judges suggests that this is already happening. More than half (58 percent) of trial judges who participated in an online survey during an educational program on this topic said that they had *personally* encountered juror misconduct during trial. About three-quarters of them discovered the incident at some point during trial. In about one-quarter of the trials, the judge was forced to declare a mistrial or order a new trial.

To help judges and court staff meet these new challenges, the National Center for State Courts (NCSC) developed curriculum materials for a judicial education program on *Preventing and Addressing Internet-Related Juror Misconduct*. The curriculum consists of three distinct modules, each of which is designed as a 30-minute educational program. Module 1 familiarizes judges and court staff with both the ubiquity of Internet technologies in contemporary society and jurors' expectations about their access to and use of these technologies during jury service. Module 2 describes techniques that judges and court staff can employ to discourage inappropriate use of these technologies during trial. This module includes a discussion about the importance of formal court policies concerning the types of electronic devices that are permitted within the courthouse and the accessibility of those devices for jurors in the jury assembly room, during voir dire, during trial, and during deliberations.

Module 3 summarizes applicable law concerning juror misconduct and provides a checklist of factual issues that trial judges should use to assess the risk of prejudice resulting from juror misconduct. Module 3 also includes a series of hypothetical cases involving juror misconduct for judges to consider how they might respond to allegations of juror misconduct.

The curriculum materials include the following:

- a detailed "Faculty Guide" with suggestions for faculty selection, learning objectives, learning-activity guidelines, and comprehensive background substantive information;
- PowerPoint slides with detailed faculty notes;
- a state-by-state "Reference Guide for Case Law on Juror Misconduct" with case citations and brief descriptions of relevant statutes and cases;
- additional background reference materials for faculty;
- written materials for program attendees; and
- program activities, including small-group exercises, participant action plans, and a program evaluation.

All of the curriculum materials are free of charge and can be downloaded from the NCSC Center for Jury Studies website at www.ncsc-jurystudies.org. (Click on the "What We Do" tab, then scroll down to the "Jurors & New Media Curriculum.") We intend to update the curriculum materials periodically as information about new technologies and strategies for preventing and addressing juror misconduct become available. In addition, we developed an online version of the curriculum as an individual judicial education program, also free, and available either through the hyperlink on the curriculum

webpage or directly at https://www.icmcourtacademy.org/course/jurors-new-media-a-guide-for-judges/.

The challenges associated with juror use of new media will not go away in the foreseeable future. In fact, they are likely to become more frequent as younger, more Internet-savvy jurors comprise an increasing proportion of the jury pool. I encourage "Jury News" readers to use these materials for your own education and to recommend these materials to the trial judges for their ongoing judicial education programs.

2015 G. Thomas Munsterman Award for Jury Innovation

Earlier this fall, Judge Frances C. Gull, administrative judge of the Criminal Division, Allen Superior Court in Indiana, received the National Center for State Courts' (NCSC) 2015 G. Thomas Munsterman Award for Jury Innovation, which recognizes organizations or individuals that have made significant improvements or innovations in jury procedures, operations, and practices.

Judge Gull has dedicated the past ten years to electronically upgrading Allen County's Superior Court jury management system. She helped to establish mJuror, a texting application that allows people to perform a number of juror-related tasks electronically. Once potential jurors log onto the application, they can register an unlimited number of accounts via their smart phone or email and complete a qualification questionnaire. Summoned jurors may use the app to request an excuse or deferral or set reminders before their appearances by text or email. In addition, jurors can view a map of the courthouse location or request a link to Google Maps, which would allow GPS navigation from their current location to their reporting location. In 2014 the court enhanced the application, enabling the jury system server to receive questions in the form of text or email messages from a potential juror in "everyday language," evaluate the meaning, and provide an accurate response as a two-way conversation. mJuror also hosts a variety of benefits for court staff. It gives administrators the ability to 1) adjust reporting instructions for jurors; 2) send texts, emails, or both to staff in the case of court cancellations; 3) electronically receive daily statistics as to the number of jurors reporting; and 4) collect satisfaction surveys via texting/email. While many states and jury automation vendors have developed online interfaces, mJuror is the first to our knowledge that was specifically designed for mobile communication devices, which are now the dominant technology platform for citizens to communicate with courts.

In addition to improving jury service for Allen County jurors, Judge Gull has also served on the Jury Management Committee of the Indiana Judicial Council, in which she advised on the development of the statewide jury automation system, helped to implement the ABA *Principles for Juries and Jury Trials*, participated in judicial education programs on managing high-profile and capital trials, and worked with state legislators to promote the fullest degree of public participation in jury service. Indiana Chief Justice Loretta H. Rush nominated Judge Gull for her innovative thinking: "Judge Gull's modern approach to jury administration allows Indiana to meet its fundamental charge of fair and open courts."

Judge Gull received the Munsterman Award during a ceremony at the Allen County Court on November 10, 2015.

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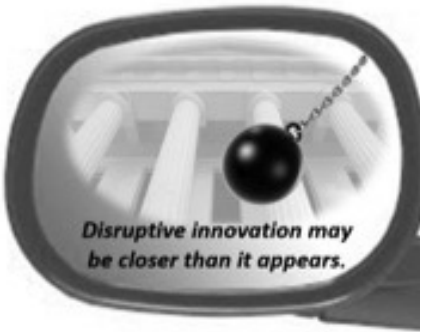

If you are not familiar with the term *disruptive innovation* you may want to brush up—because folks, it's on its way to your court and it promises to revolutionize the way we think about facilitating court business. Despite what the word "disruptive" may conjure, this is not a cause for panic!

Unlike a disruptive person in your courtroom or the disruption of unanticipated events to your caseload, this type of disruption aims to help—and it is being purposefully planned between courts, national organizations like the NCSC and IJIS Institute, industry consultants, and the private companies who supply our technology solutions. For an example of disruptive innovation, think about the switch from handwritten docket books and calendars to electronic court databases, or the leap from giant mainframes with clunky workstations to lightweight PCs and slim laptops using the (very disruptive) Internet to access your software and case information. At one point these now-common technologies were considered pretty fantastic, but today it is hard to imagine getting much done without them. You may even chuckle at those examples because your court has already embraced newer (and yes, disruptive) capabilities that use devices like tablets, smartphones, cameras, and near-field readers for at least some aspects of your business. If so, then you are familiar with the kind of stuff we are talking about here—but, if not, you can count yourself among the masses in our industry who are still relatively new to this latest round of disruptive opportunity in the courts. No matter which side you are on, you might have felt a slight jolt late last year as your technological future suddenly shifted into a higher gear. We repeat—do not be alarmed! It has been said that taking bold action can create explosive results. Read on and see if you agree.

11.11.2015: A Groundbreaking Event Unfolds

It all started on a crisp, cloudless day this past November. The NCSC and IJIS Institute, along with a group of representative court practitioners who serve within NACM, COSCA, and CITOC, invited industry consultants and technology leaders to join them in Salt Lake City, Utah. The event was billed as the inaugural **Court Industry Summit** and promised two days of intense conversation about the major challenges facing our courts. From the very beginning it was apparent that this was no typical industry conference, as leaders from the private and public sectors greeted one another and settled in shoulder-to-shoulder. Joe Wheeler, chair of the IJIS Court's Advisory Committee, drove straight to the point during his kickoff stating *"This is our time to take down barriers and have open, productive conversations about something we all have in common—and that's our commitment to the health, welfare, and future of our courts."* Yes indeed, this summit was clearly headed in the right direction.

After brief introductions by the 21 companies and 10 courts and associations, focus quickly turned to the agenda, which guaranteed to inspire conversation and insight about:

- Big ideas from the Civil Justice Initiative
- What's 'hot' in large trial courts?
- Issues facing decentralized states
- What opportunities exist in unified states?
- Perspectives from a state court administrator
- Trends and needs of the specialty courts
- Standards—do we really need them, where are they headed, and can they be leveraged to a competitive advantage?
- What are the issues being observed by our vendors?

To the credit of everyone present, formalities and competitive posturing were set aside in favor of straightforward talk about the trends and challenges facing the courts and how the private sector can help. As the first day unfolded, ideas were shared openly between vendors and practitioners about ways that other industries are using technology and the potential for

new advancements that are still on the horizon. The room was revved up and engaged in some serious brainstorming.

We Are Not Paving Cow Paths

It was clear from the start that courts are not looking for the small incremental improvements of yesteryear. We were not talking about gussied-up screens or new spins on old reports. Instead, each of the practitioners described their vision for transformation in the courts. With an emphasis on serving citizens and justice partners, court leaders urged their industry counterparts to imagine new ways of solving court challenges—those existing today and the ones lurking just over the next hill. Every topic presented multiple angles on what's been holding us back, collectively, from really resolving technology gaps. We then talked about opportunities on both the public and private sides to fill in those cracks.

Views from the Trenches

"We must not use technology just to paper over outdated systems or just to pave the cow paths. We need to think about how the [justice] system can be better and then utilize technology to get there."

- The Rule One Initiative

Likewise, Snorri Ogata, CIO at the Los Angeles Superior Court, did not mince words when he spoke about the top problems facing large trial courts today. *"Our foremost goal as court CIOs is to have happy customers,"* Snorri told the group. *"Basically, everything we do centers around achieving this objective."* Snorri spoke about CIO challenges with budget pressures, keeping legacy systems running, and effectively communicating with the many customer types they serve. The sheer transactional volume of these bustling courts makes automation an absolute necessity rather than a luxury. His "wish list" to the vendor community included support for federated identity management, adherence to standards and web services so systems can be more easily integrated, and help with training court IT personnel.

Through conversations like these, the group tackled each topic, sharing knowledge, experiences, and potential solutions where possible. By the end of day 1 and with a full day to go, the verdict was already in: the Court Industry Summit was a hands-down winner.

Disruptive Collaboration (times ten!)

By the second day, ten primary court business areas that are ripe for technological breakthrough had emerged, and participants selected four of them for more intense problem solving:

- Better automation of case management **✓selected for breakout**
- Online dispute resolution **✓selected for breakout**
- Triage assessment of cases throughout their lifecycle **✓selected for breakout**
- Online "self-help" systems
- Management of court consumers (person-centric customer-relations perspective)
- Management of court financial transactions
- Language access
- Integration and data sharing with justice partners **✓selected for breakout**
- Management of electronic evidence and court records
- Data analytics and risk assessments

Breakout teams were formed and charged with identifying the business problems, objectives, and action items to help advance solutions for case management, online dispute resolution, case triage/assessment, and integration/data-sharing. Court and industry experts were interspersed across teams, creating an ideal environment for energetic collaboration. While a lot of hard work, the teams had a great time bouncing ideas and preparing their summaries to share with the overall group. And while there's still much work to do, this cooperative spirit has remained intact even as the summit contributors left Salt Lake City behind and returned to their respective locales. Their efforts and the results of the summit will manifest in the direction the courts take in technology and the products and related services offered by industry over the next three to five years.

In future IJIS Exchange articles, we'll fill you in on the details about each area the teams tackled. In the meantime, here's wishing you a most disruptive day!

"This is our time to take down barriers and have open, productive conversations."

- Joe Wheeler
IJIS Court's Advisory Committee Chair

A Question of Ethics

FRANK MAIOCCO

Into the Market Place

While perusing greeting cards at a local store recently, I was surprised when another customer abruptly approached and, with a sense of urgency, asked if I could help him. Without hesitation, I agreed to assist if I could and asked him what he needed. The man introduced himself, indicated that he had relocated to Kitsap County in just the last five weeks, and wanted to know who the three-to-five largest employers in the area were. I responded by providing, to the best of my knowledge, the information that he had requested and expected him to walk away satisfied with my answer. He very quickly followed up by asking me how long I had lived in the area and where I worked. To my amazement, within five minutes, "Ben" had managed to transition his urgent plea for help into a three-minute sales pitch on the financial-planning services that he was all-too-excited to offer me. When I declined his offer to further discuss the details of his services over coffee, I watched in fascination from afar as "Ben" identified another would-be customer in glassware and began his pitch again.

On reflection, I was initially awestruck at how seamlessly I had been marked by a vendor seeking to sell me something that I really did not need. His sales technique was creative, imaginative, and, candidly, undeterred. And he kept me interested long enough to briefly listen to the range of services that he was offering. In fact, in an odd way over those few minutes, we transitioned from strangers almost to friends, until his real intent took over. On the way home, it occurred to me that had he been selling something I thought I needed, I might have actually accepted that cup of coffee.

The incident reminded me of a similar incident several years ago, when one of my judges returned from a conference with materials from a technology vendor that she had met at a vendor fair. She was utterly sold on the application that had been presented to her, was convinced it was something we needed to deploy in the several courts in our jurisdiction, and was eager to explore where to obtain the funding to procure it. For a variety of reasons, I was not as sold on it and, ultimately, endured several months of sales calls from the person with whom the judge had initially met and left my business card. At the end of the day, I was fortunate that my judge and I were able to discuss our technological needs in the context of our overall IT portfolio and to agree that this particular vendor's wares were incompatible with where we were intending to go. However, some of our colleagues have not been so fortunate.

The Respondents

I am extremely fortunate to have two new panelists accept my invitation to review and provide their independent perspectives on this month's scenario. Leesa A. McNeil is the district court administrator for the Third Judicial District located in Sioux City, Iowa, and Lynne Campeau is the court administrator for the Issaquah Municipal Court in Issaquah, Washington.

The Scenario

Mitch Hansen has served as the clerk and court administrator for the Sampson Municipal Court for 17 years. He is highly regarded among his peers and represents municipal court leaders on a variety of state committees and task forces related to limited-jurisdiction matters. He is viewed as a "go-to" guy for questions on procedures and resources, and many other limited-jurisdiction clerks/administrators strive to follow his example.

Mitch's newly appointed judge, the Honorable Tracy Billington, has only been with the Sampson Municipal Court for seven months. She is equally regarded among her peers, and many in the Sampson community and the local bar association are happy that she has finally been appointed judge. There is a general expectation that she will not only do well in her new appointment, but she will also have a significant positive impact on policies regarding the state judicial branch.

Glenn Adams is the primary provider for defensive-driving school (DDS) in the Sampson Municipal Court. Glenn is a former Sampson city police officer who developed a start-up DDS program after retiring from an exemplary law-enforcement career with the city of Sampson. Mitch contracted with Glenn in his initial year, in large part because of Glenn's remarkable reputation in the community. Many clerks/administrators have been surprised that Mitch has continued this contractual relationship with a local firm given the presence of another provider, Xtreme Defensive Driving (XDDS), which consumes over two-thirds of the state's DDS market. While Mitch has, generally, been evenly impressed with the overall quality of the education and administration provided by XDDS, he has found Curt Endover, XDDS's marketing director, to be a bit aggressive.

In her first several months with the court, Judge Billington has had very little experience working with defensive-driving programs. She has regularly deferred to Mitch's good judgment and stellar reputation, and she appreciates that he will only involve her if he perceives a public-relations problem. Further, because state statutes outline when defensive-driving school is an appropriate remedy, most cases entering defensive driving are handled by Mitch's staff, so Judge Billington rarely sees these cases.

In keeping with state policy, Judge Billington is required to attend a weeklong New Judge College within 12 months of her appointment. New Judge College is held in the state's capital approximately 178 miles away. Judge Billington travels to the capital and checks in at the local hotel where the college is scheduled to occur. Unbeknownst to the judge, Curt Endover of XDDS also checks in to the same hotel for the duration of the college, even though he is not a part of the formal program.

At the conclusion of Tuesday's comprehensive educational session regarding defensive-driving programs, legislation, rules, and state policy, Judge Billington and other attendees are approached by Curt Endover in the foyer of the hotel. Curt very quickly introduces himself, acknowledges that he is not a formal part of the college program, and distributes personalized invitations to each of the limited-jurisdiction attendees to join him in at an "invitation-only" hospitality suite that evening. Intrigued by Curt's assertion that over two-thirds of the limited-jurisdiction courts contract with XDDS for defensive-driving education, Judge Billington and other newly appointed and elected judges decide to stop by the suite to learn more.

Upon her return from New Judge College, Judge Billington summons Mitch Hansen to inform him that she would like to take the court's DDS function "in a new direction." She informs Mitch that she is convinced XDDS is much more up-to-date with regard to changing legislation, that its curricula is far more comprehensive and consistent with state DDS requirements, and that it will be much more affordable to citizens then the currently contracted alternative.

Mitch has heard this sales pitch over the phone several times over the last four years. However, over Mitch's expressed concerns, Judge Billington directs him to review the current contract and to determine how expeditiously he can legally terminate it. She also writes Curt Endover's name and contact number on her newly acquired XDDS scratch pad and tells Mitch to call him and estimate how many bail/bond cards that local law-enforcement officers will need to distribute to drivers over the next three years.

The Questions

While Judge Billington's directive may simply reflect new information that she has acquired at New Judge College, should Mitch be concerned about any inherent ethical implications? What considerations? And ethical considerations affecting whom?

Leesa and Lynne agreed that Mitch should be concerned with the underlying reasons for Judge Billington's directive. Lynne responded that even if there is no ill intent on the part of the judge, there is an appearance of impropriety, after attending a private event, and then immediately terminating an existing contract, that could potentially create other legal issues for the court and municipality itself.

Leesa indicated that Mitch should be concerned about any preferential treatment to any provider that does not have an agreement to provide specified services for a geographic area. "As a government entity—especially with the court—fair and equal treatment of all, including vendors, should be a concern." Further, Leesa suggested that Mitch has an ethical responsibility to ensure his contractual relationships are formed within an open competitive process to preserve the court's fundamental responsibility to both be and appear fair. Leesa believed Judge Billington shared this same obligation—to ensure all vendors are treated fairly.

Moreover, Leesa concluded that it is important that the judges be involved in matters that impact judicial process. While they should be part of a collaborative effort so their input is integrated in the proper administration of the court, it is essential that administrative staff can carry out the policy to insulate the judge from any appearance of impropriety when it comes to vendor interactions.

One might argue that Judge Billington's directive is solely based on economics, and on her strong appreciation for how the free market works. Following this logic, Mitch's reaction would seem like an interference—a potential ethical breach—in Curt Endover's legal ability to conduct and market his business. Do you think Mitch is overreacting? Why or why not?

Leesa thought Mitch was overreacting—but not in the way that some might initially think. He should have concerns about any vendor being given preferential treatment if there is not an agreement in place to be the sole provider of defensive-driving school. It is apparent there is not a sole provider in this scenario so no one vendor should be given preferential treatment. Leesa insisted, "If the court (or law enforcement) provides the public information about vendors they may contact for defensive-driving school, the public should be given information about all known vendors that provide that service and informed it is up to each party to discern which provider best meets their needs in terms of cost and schedule of classes."

Lynne offered a slightly different perspective on this issue. "If Judge Billington believes this is an economic issue and wants to promote the free-market system, there are other ways to accomplish this goal." In this regard, Lynne inherently suggests that Mitch and Judge Billington explore other methods for procuring defensive-driving-school services.

Lynne also suggested that Mitch, too, may be acting unethically—or appearing to act unethically—by continuing to promote a contract that is based on a long-time relationship with an "old friend of the municipality," a former local police officer. Lynne concluded that a Request for Proposals (RFP) should be issued to resolve the potential conflict. "Allowing all vendors to equally and fairly participate in an RFP will negate any ethical issues by both Judge Billington and Mitch."

Lynne also thought Mitch and the judge could certify a "best-of-breed" list of providers, wherein the judge could review and approve acceptable DDS vendors, and simply let the defendants decide which company to use.

The scenario suggests that there is limited, if any, opportunity for Mitch to defend or justify with Judge Billington his existing contract with Glenn's local program. Would you encourage Mitch to initiate a further dialogue with Judge Billington on this subject? Are there any ethical implications that you would encourage him to raise?

Both Lynne and Leesa would encourage Mitch to have a further conversation with Judge Billington before taking further action. Lynne reminded that Judge Billington is a relatively new judge and may not be fully aware, yet, of the ethical implications surrounding vendor relationships with the court and the municipality. "Mitch may want to gently raise the issue, and suggest that while he's sure that the judge means no harm, there may be an appearance of impropriety given the recent hospitality suite at the conference." Likewise, Lynne would strongly encourage Mitch to reexamine his own ethical responsibilities and suggest that an RFP to seek out the best defensive-driving school for their municipality.

Leesa concurred and encouraged Mitch to advise Judge Billington of his concern with any judge or court employee giving preferential treatment to vendors that have not engaged in a competitive bidding/award process to provide specified services. "I would also like to see Mitch have a recommendation for a method for all known vendors to be identified for the public that needs that information."

By appearance, it looks like Curt Endover has identified and taken advantage of a new marketing path for his program. It is unknown whether this technique is one of the "aggressive marketing" ploys that have historically raised Mitch's concerns. Is there anything Mitch could have or should have done before New Judge College to mitigate this situation?

Lynne responded that if Mitch knew in advance that vendors typically appear at the judicial college to market themselves, he should have forewarned Judge Billington and shared some of his more uncomfortable vendor-marketing experiences with her so she was aware of the practices that some vendors engage in. Lynne noted, however, that there was little else Mitch could do to prevent private vendors from appearing at the same conference location.

Leesa agreed and thought Mitch could have approached the issue more fundamentally. "Ideally, all new judges would be advised of how policies/practices have evolved that they are going to encounter in their work as a judges." Additionally, Leesa emphasized the importance for all new judges to understand the distinct role and function of administrative staff and be advised of the ethical issues judges will encounter in their work as a judge.

Mitch contacts the AOC Education Division to lodge a grievance regarding the New Judge College as an environment in which vendors are allowed to "prey" on new judges/customers. The AOC is very quick to point out that XDDS was never a formal part of the college program, and there is nothing that it can do to forbid any vendor from checking into the same hotel or contacting college attendees. Is there anything that college planners and facilitators could have done to address this situation? What?

Leesa and Lynne agreed that the planners of the New Judge College should incorporate a session regarding the ethics of vendor relationships if one is not already part of the curriculum. Leesa concluded that "vendors will be everywhere and judges should be advised to be on guard to avoid even the

appearance of impropriety. Attending a reception hosted by a vendor that is for judges only is inappropriate for a judge, and Judge Billington should be coached by the college staff to avoid such."

Like Leesa, Lynne believed an ethics program focused on real-world ethical issues, like vendor relationships and procurement rules, might be one good way of mitigating this situation in the future. "New judges need to be made aware of their ethical obligations in general. An education session like this could include different scenarios with best practices for how to handle ethical situations and dilemmas."

> **Mitch's final concern with this situation is that XDDS will provide bail/bond cards—much as they do in two-thirds of the state—with both its name and contact information, and the court's name and contact information prominently displayed on the bond card. Since a "primary provider" contract will eventually be executed between the court and this vendor, are you concerned about any ethical considerations inherent in this practice? Why or why not?**

Leesa raised grave concerns with a practice of identifying the court with a specific vendor where a sole contract for specific services is not in place. "That should never happen! . . . If there is not an agreement or contract to be the "sole" provider, the court should not be showing any preferential treatment." Again, Leesa encouraged the court to establish a publicly accessible "best-of-breed" list from which the citizens could select a court-approved DDS provider. "The court could direct the public to a website where all known providers may be listed. If there is a need for the court to provide the public information, a court card that directs the public to a place to obtain information about available defensive-driving schools could be utilized."

As always, I welcome your thoughts regarding this scenario, including any interesting, creative, or challenging experiences you may have had working between vendors in the marketplace and the judges in your courts. Nonjudicial court leaders are sometimes the last audience brought into the conversation, and I anticipate there may be a variety of scenarios and perspectives for addressing such scenarios through our court communities. Please share your experiences!

Also, if you have an idea for a future ethics article or would like to be contacted to respond to a future scenario, please send a message to me about your interest at fmaiocco@co.kitsap.wa.us. I also invite you to visit the National Association for Court Management's ethics webpage at www.ncsconline.org/Nacmethics.

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Management Musings

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Run Your Race

The International Olympic Creed states: "The most important thing in the Olympic Games is not to win but to take part, just as the most important thing in life is not the triumph but the struggle. The essential thing is not to have conquered but to have fought well." The motto, *Citius–Altius–Fortius*, meaning "Faster–Higher–Stronger," encourages athletes to give their best during competition and to strive for personal excellence. The creed and motto are meant to inspire the athletes to embrace the Olympic spirit and perform to the best of their abilities. Most of us will never become Olympic athletes or compete at such levels, but the philosophy of the Olympic Games can be applied to our everyday professional and personal lives.

In ***Everyday Greatness***, Stephen Covey discusses greatness in terms of not only famous people doing notable things, but also ordinary people living exemplary lives. Covey stated that great people know how to negotiate three kinds of choices that everyone confronts:

1. The Choice to Act—Although life is filled with random events that are out of our control, we have power over our response to these events. Rather than abandoning one's goals because of the work that is involved, Covey proposes finding direction from your inner compass to pursue and ultimately achieve them.
2. The Choice of Purpose—Deciding to act is not sufficient. Decisions to act must be aligned with one's values and long-term goals.
3. The Choice for Principles—Great people act in accordance with universal principles, including vision, innovation, humility, quality, empathy, magnanimity, perseverance, and balance.

A day is valuable because it comprises a fraction of our life. Because we only have a finite number of days in which to live it, every day has extraordinary value. Each day comes with an important decision—what will we do with it? Regardless if we do it consciously, we trade what we accomplish that day with the fixed time we have in this life. What should we seek to do with this time? George Bernard Shaw perhaps summed it up best: "I want to be thoroughly used up when I die, for the harder I work, the more I live. Life is a sort of splendid torch, which I hold for a moment. And I want to make it burn brightly, before I hand it off to future generations."

***

"I see that you've come prepared with some new sneakers for this year's race," I mentioned to Toni as she lifted one of her legs off the park bench to stretch it and then decided to tighten the laces of her sneaker.

"Yes. Because of the miles put on them, I replace them once a year, and I do it right before this charity event so it's easy to remember," she replied.

"I do the same thing with my carbon monoxide detectors."

"How's that?"

"I change the batteries when daylight savings time ends—once a year—so it's easy to remember."

"Hmm. That's a good idea—I may borrow that."

We were preparing to run as a part of an annual fundraiser. Every year a local 10K event is held to raise college-tuition money for the children of those members of the community killed on September 11th. Having lost friends in the

World Trade Center, we felt that one of the best ways to commemorate their lives was to take part in the event. It was incredible to see how quickly the children of those victims were growing and maturing with each passing year. We'd often see some of the same faces so Toni had come to know many of them. Some of them began to confide in her—and she always had a sage piece of advice.

"What time did you get here?" I asked.

"Six. Why?"

"It's kind of chilly and it's almost eight. Why do you come so early?"

"It's all part of my process."

"I didn't know there was a process to today."

"You should have a process for each day that you get out of bed. What is it that you are seeking to accomplish today?" A rhetorical question and having known her long enough, I knew a thought-out response would follow immediately. "I can survey the terrain and landscape of the course—I can take deep breaths of the great, morning air before it becomes too congested with runners. Most important though, is that getting here at that hour allows me to watch the sun just as it breaks the horizon. It makes me feel good knowing that I am as prepared as I am ever going to be to run this race."

The crowd was getting larger as the sun got warmer. As in past years, participants were varied and included everyone from high-school students to active retirees. It was not exclusive to the most athletic in the community, although there were plenty who appeared fit and were regular runners in these kinds of events.

"What corral did they assign us?" I asked Toni.

"Looks like we're in corral B with a start time of 9:20," she responded.

"We had a better start time last year."

"I don't know if it was better—it was earlier. But it doesn't matter—I'll take whatever placement is assigned so long as we can run."

Toni and I started at an even pace when she looked over at me and said, "You can go ahead. I'll see you at the finish line."

I nodded and started to pick up my pace to my normal speed. Along the course I passed the town's clock tower, a ten-story building, which was the tallest structure in an otherwise very understated community. Runners turned right onto Chestnut Street and proceeded through the downtown district. As the race forked right onto Monroe Boulevard, I began passing the middle of the pack and started to make my way toward the two dozen or so runners who were leading the corral. As we made our way through downtown and began passing the recently developed open-air mall with about 15 stores, I knew that there were about two miles left. Some of the runners began to pick up the pace, attempting to separate themselves from the pack. In response, I started increasing my pace, too, thinking that I could easily get into the top five finishers. With about a mile left, several of the runners broke off from the pack entirely, and it seemed as though they were in a full-fledged sprint to the finish line. The sprinters got further away from me as I began to tail off from the exhaustion of trying to keep up. Quite winded by the time I stretched my torso across the finish line, I was back in the middle of the pack with a time of 1:24:10—ten minutes worse than my time the year before. With my head bent downward, I walked over to the tent to get some water. Still breathing heavily, I forced the

water down to dampen my windpipe that had been hardened by my deep gasps for air. It wasn't too long before Toni made her way across and, after confirming her official time, came over to the curb where I was recuperating.

"How'd you do?" she asked.

"Not so good. My time was ten minutes better last year. How about you?"

"A personal best and incidentally about three minutes off my time last year," she said with her trademark wink.

"I would have been faster, but I lost it in the last two miles when I tried to keep pace with the lead group," I lamented.

Toni offered to buy lunch (I imagined as a conciliatory prize for trying too hard and failing). We headed to one of our favorite downtown eateries. We decided to order some comfort food—*ropa vieja* (Spanish for "old rags")—a dish we've had before that never disappoints. Flank steak is shredded, layered with spicy, but flavorful tomato sauce, thin shavings of onions, and stuffed into a flour tortilla. The side of rice, black beans, and fried sweet plantains always plays nicely as you make your way through the tortilla. We wash it down with *agua de Jamaica*—an iced, herbal tea made from the flowers and leaves of the Jamaican hibiscus plant.

As we sat finishing our tea, the question Toni had been waiting to ask since the race ended was put to me: "So what did you learn?"

"About what?" I asked to ensure she was talking about the race.

"It's all for charity, so there's no real harm with your miscalculation, but tell me about your lesson from today's race," she clarified.

"I allowed the performance of others to distract me from my purpose and vision."

"Well done—all is not lost. Had you remained focused and maintained your stride you would have built upon your personal best from last year."

"You're probably right," I conceded.

"There's no probably; two plus two will always equal four. I want you to understand how to apply today's outcome to your personal and professional plan."

"I think I know where you are going, but I want to hear you explain it."

"Okay. The plan you develop must be tailored to you. You must craft it based on your understanding of yourself. Once that's in place, you can then seek to make improvements, recalibrating as you travel your journey. It's a very personal process."

"I see."

"There will always be someone stronger, faster, smarter. You should not use them as your yardstick for two critical reasons."

"What's that?"

"First, everyone lives under their own set of circumstances—some good, some bad. It is unfair to compare yourself to them because inevitably you will either sell yourself short or give yourself too much credit. In either scenario you've lost. Second, and more importantly, when the race is over for those who spent their whole journey chasing other people, they won't be happy because they will have spent so much of their valuable time comparing themselves to others. You truly get

ahead in life when your greatest competitor is you. You set your own standard and then work to live up to it."

"All true. How'd you get to be so wise, Toni?"

"I'm not wise, I've just lived a little longer and because of that, I've had lots of practice at making mistakes."

"I don't know about that. Maybe for most other folks they fall in line with what Ernest Hemingway said: that they don't grow wiser, just more careful."

"Ha! That's true. When you get up tomorrow to continue your race, remember that you can't control where you came from, but you can certainly control where you're going. In your journey, there should be no idols—no matter how fast their pace. Idolize no one—including me."

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In *Living the 80/20 Way*, Richard Koch presents some fundamental questions to help bring focus to one's life:

1. What do you care most about?
2. Who do you care most about?
3. Who do you want to be in the future?
4. What qualities do you most want to possess?
5. What qualities do you currently possess?

The key is to answer these questions with complete honesty. According to Koch, high achievers share six qualities: 1) they are ambitious; 2) they love what they do; 3) they achieve despite their shortcomings by focusing and developing their strengths; 4) they study their topics and become experts on it; 5) they speak and think clearly; and 6) they have enthusiasm doing things their own way.

As managers, we seek to make a contribution—to bring the court to a higher plane and leave it a better place than when we began. We do this by principally having a clear, working knowledge and understanding of ourselves. Toni's advice shows that these efforts must be commensurate with our individual talents and abilities and to continually seek to improve without losing focus. As Yogi Berra would say: "I tell the kids, somebody's gotta win, somebody's gotta lose. Just don't fight about it. Just try to get better." Ultimately, if we simply strive to work and live to be the best version of ourselves, we'll always finish the race with a good time.

And those are just some of my musings on management.

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National Association for Court Management

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