

### Trends and Developments in State Courts

#### Court Technology

This year, courts discarded their Y2K worries to again explore the rich options offered by technological innovations. The Y2K scare did prompt many courts to replace the legacy systems of the eighties and early nineties with the more advanced "Y2K compliant" systems of the late nineties.

#### The Electronic Court

As technology moves courts toward an electronic environment, the concept of Judicial Electronic Document and Data Interchange (JEDDI), conceived in the early nineties, is gaining importance. In *Electronic Court Documents*, Douglas Walker (Principal Court Management Consultant in the Technology Division of the National Center for State Courts) states:

"The adoption and implementation of the JEDDI concept has profound consequences for the way in which the courts and the entire justice community operate." Walker explains that:

[t]he holistic vision of an ideal JEDDI implementation encompasses a range of components, including:

- electronic documents
- electronic case files
- electronic signatures
- electronic filing
- electronic noticing
- electronic public access
- integration of case management, document management, electronic filing, and public access systems.

Utah and New Jersey have been instrumental in developing and implementing these concepts. Walker's book documents their efforts.

#### The Internet

Courts increasingly use the World Wide Web to enhance their abilities to adopt aspects of the JEDDI concept. Internet

access to public court records is the hottest technology issue in the courts today, followed closely by the use of the Internet to file electronic court documents. Connecticut, Oklahoma, and Wisconsin are among the growing number of states that offer free public access to their court records via the Web. Courts carefully adopt new court rules to accommodate technology innovations, and scrutinize the privacy and security implications of the electronic court environment. Electronic filing of court documents offers profound economic benefits. The time required for the nine identified steps involved in filing 100 court documents dropped from 9.75 hours to 8.8 minutes, concluded a study in Shawnee County, Kansas.

In addition to posting court calendars and appellate opinions, and allowing offenders to pay traffic fines via the Internet, courts are becoming more imaginative in their use of this electronic medium. Many courts, including Orange County, Florida, Wise County, Virginia, and Delaware County, Ohio, stream videos of courtroom activities to the Internet. Delaware County not only puts complete judgment entries of domestic violence offenders on its Web site, but also offenders' photographs.

The Internet's transformation of the way courts do business is only the beginning. Courts are taking advantage of new technologies in innovative and varied ways. Knowledge management and data warehousing are just around the corner. The electronic court is a reality, as is the concept that courts need an electronic standard (e.g., JEDDI) to communicate effectively.

#### Pro Se Litigants, Customer Service

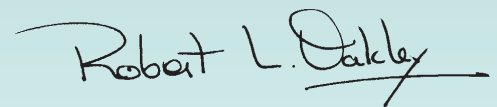
Many courts use the Internet to enhance customer service, especially for pro se litigants. New York State offers forms, instructions, and a glossary of terms in a uniform, uncontested divorce packet via the Web. California's Statewide Office of Family Court Services provides

This month's Members' Briefing may seem, at first glance, to be of interest to a fairly limited audience, relevant only to governmental law librarians—and perhaps not even all of them. But an only slightly closer examination proves the fallacy of that thinking; firm librarians serve the lawyers who argue in these courts, and university librarians educate the students who will become the next generation of those lawyers. The remove, when measured, is smaller than it first appears.

It can be very difficult, especially these days, to keep up with all the changes in our own field, and examining trends in the larger legal community of the state courts may seem like something of an indulgence. But law librarians are a vital part of that community, and I believe that it is difficult to the point of impossibility to have a true sense of the value of one's own work if one does not understand the context in which that work is done.

This report describes that context. It is a snapshot, if you will, of the current landscape of the State Courts. Some of the trends reflect short-lived concerns and will be replaced by something just as quickly passing; others forecast profound changes in the topography of our world.

This overview of State Courts is the first of a series of such overviews that will appear as Members' Briefings in the months to come. Our new Strategic Plan urges us to "track and report trends affecting courts, law firms, law schools, and other institutions in which law librarians work, and provide information to help members anticipate and respond to change in their institutions," and I trust you will find that these Briefings accurately reflect the objectives sought in that initiative.



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information for handling divorce or separation, and for applying for or responding to domestic violence restraining orders. In **Arizona**, the Tucson City Court supplies a complete explanation of an order of protection and an injunction against harassment, while the self-service center in Maricopa County offers tips on self-representation. The Clerk of Courts in Hamilton County, **Ohio**, provides an excellent small claims guide. Many states have initiatives to provide public Internet access terminals in convenient locations, such as libraries, for customers who do not have access to personal computers elsewhere.

### Court Reporting

For several years, new court-reporting technologies, including digital audio, real-time transcription, and voice-recognition technologies have been enhancing the making of the court record. More strides have been made, and this continues to be an area of significant change. In December 1999, the first person in the U.S. to be certified as a Realtime Verbatim Reporter by the National Verbatim Reporters Association reported his first case in Jackson County, **Missouri**. In voice-recognition realtime court reporting, a court reporter repeats every word spoken in the courtroom into a

voice-silencing transmission device. The dictation is electronically transcribed into realtime and can be simultaneously viewed on a monitor or projected onto a viewing screen in the courtroom.

### Specialization and Consolidation

A quick glance at developments in the state courts leaves the impression that two contradictory trends are occurring simultaneously. New states continue to join those that have consolidated their trial courts to increase administrative efficiency, reduce the public confusion associated with courts' overlapping subject matter jurisdiction, and discourage forum shopping. At the same time, there are more specialized courts that deal with particular case types or legal issues, even while consolidation is underway.

The most recent developments in state court consolidation include:

**Arkansas**—In 1998, a joint task force of the Arkansas Bar Association and the Arkansas Judicial Council drafted a new article, set forth in a proposed amendment to the state constitution. This proposed amendment was presented to the legislature in 1999 and will be placed before the electorate in

the general election in November 2000. The new article provides for the consolidation of the Circuit Court and the Chancery Court, currently separate courts of law and equity, into one general-jurisdiction court. In addition, the article provides for a District Court of limited jurisdiction to absorb the current Justice of the Peace Courts, Courts of Common Pleas, Police Courts, and Municipal Courts.

**California**—On June 27, 2000, the Judicial Council certified the final eligible county to create one countywide superior court, consolidating the superior and municipal courts of Kern County. Two remaining counties, Kings and Monterey, must receive pre-clearance authorization from the Department of Justice under the federal Voting Rights Act of 1965 before they may vote for consolidation. The Administrative Office of the California Courts is studying the impact of consolidation, hoping to identify initial changes, successes, and remaining challenges.

**Georgia**—In late spring of 2000, the Administrative Office of the Georgia Courts proposed several different models of consolidation.

## Therapeutic Jurisprudence

One recent trend that spans many aspects of court management is therapeutic jurisprudence, also called *therapeutic justice* or TJ. Judge William Schma has described TJ as "the study of the role of law as a healing agent [that] offers fresh insights into the role of law in society and those who practice it." The role of judges, proliferation of specialty courts, expansion of court services, increasing use of alternative dispute resolution (ADR), and other developments all appear to have been influenced by or intertwined with TJ.

What does TJ look like in practice? Its applications vary and encompass such corresponding trends as specialized courts and "involved judging" in a number of contexts. Therapeutic drug courts (as opposed to specialized drug dockets) typically apply TJ to cases of nonviolent, low-level drug offenders. Judges are involved with defendants, rewarding success and penalizing failure. Permutations of the drug court include family drug court and juvenile drug court. Some courts also apply the philosophy and practices of drug courts to DUI cases.

Domestic violence is another specialized court type that has applied TJ. One such court in Vancouver, **Washington**, is the child of court/community collaboration that is "premised on principles of therapeutic jurisprudence, preventative law, and restorative justice with the aim of holding the offender accountable, ensuring the safety of victims and their children, and improving victim satisfaction with the justice process." (Fritzler and Simon, "Creating a Domestic Violence Court: Combat in the Trenches," *Court Review*, Spring 2000)

TJ has also been applied in mental health law. Broward County, **Florida**, has been a pioneer in this area. Courts in other states, including **Alaska**, **California**, and **Washington**, have instituted similar programs.

**Michigan**—In 1996, the Michigan Supreme Court initiated a project to test the consolidation of local trial courts. The goal was to improve the efficiency and responsiveness of local court systems. The Supreme Court selected six jurisdictions with differing populations and court configurations for the program. Consolidation in the six original project sites has been continued indefinitely, and a seventh has been added. Michigan courts have received an appropriation to initiate new consolidation projects.

**New York**—Following a study of the benefits of consolidating some or all of the state's trial courts, the New York State Unified Court System delivered a proposed constitutional amendment to the state legislature. Thus far there has been no action on this proposal.

As the number of state courts undertaking consolidation has slowly but steadily increased, specialized courts have quickly proliferated across the nation. Some specialized courts, such as juvenile courts, have existed for a century, while new subjects seem to emerge every year.

Some new courts, such as family drug courts or juvenile domestic violence courts, appear to be hybrids that combine several specialties. While the long-established juvenile courts arose gradually from a firm theoretical base, endured countless evaluations, and have spirited defenders and detractors, newer court types have developed rapidly through trial and error. Only after the fact was therapeutic jurisprudence (see sidebar on pg. 18) advanced as the legal theory for drug treatment and similar courts and as the rationale for the creation of unified family courts.

Development in the absence of a supporting theoretical construct distinguishes the new specialty courts from those that have been consolidated. Consolidation and simplification of a court system might be considered the heart of court unification "reform" since the beginning of the 20th century. Elimination of overlapping and conflicting jurisdictional boundaries (of subject matter and geography) is a recognized goal. The extent to which trial courts should be consolidated and the immediacy of the link between consolidation and improvements in

performance have been subject to debate. Most structural reformers agree that a consolidated system should have no more than one intermediate appellate court, court of general jurisdiction, and court of limited jurisdiction, and *no specialized courts*. However, increasing courts' flexibility to use resources effectively is a goal of consolidation, and the creation of specialized courts might be a manifestation of such flexibility.

Most specialty courts are not independent, but sub-units of larger courts. Consolidation that brings several distinct courts under one figurative administrative roof does not require that the combined jurisdiction be handled in one procedural room. Administrative unity and accountability need not proscribe procedural flexibility. The degree to which the consolidation and specialization trends are at odds may depend upon how specialty courts evolve and how permanent they become. Although many specialty courts have come into being quickly, they may dissolve just as quickly if the need for them wanes. Given time for study, the relationship between specialization and consolidation will become clearer.

### Enforcing Protection Orders Across State Lines

One of the most significant contributions to the safety of domestic violence victims arising from the 1994 *Violence Against Women Act* (VAWA) is its provision requiring every jurisdiction in the U.S. to recognize and enforce valid protection orders (full faith and credit) across state and tribal lines. The intent of the law is to afford cross-jurisdictional protection orders for victims, cross-jurisdictional accountability for violation of valid protection orders by abusers, and interstate recognition and enforcement of the valid protection orders entered by judges.

Courts, law enforcement, and other practitioners face numerous obstacles to achieving full faith and credit, including:

- differences in state and tribal laws governing protection orders,
- variation in the format and content of the orders, and
- inadequate data systems for verifying orders from another jurisdiction.

Achieving full faith and credit across state lines is challenging because protection orders are not necessarily standardized even on an intrastate basis. One state that has achieved standard and uniform orders of protection throughout the state is **Iowa**. Iowa not only standardized orders of protection throughout the state, but electronically linked courts with the Department of Public Safety.

A key theme emerging from the 1997 national conference, "Full Faith and Credit: A Passport to Safety," was the need for coordination and cooperation among states and tribes to overcome these obstacles. The positive response to the meetings indicates continuing development of state court leadership and involvement in this issue.

The National Conference of Commissioners on Uniform State Laws is developing a uniform law on Interstate Recognition and Enforcement of Domestic Violence orders to implement VAWA's full faith and credit provisions. It is being developed under a State Justice Institute grant and is expected to be completed by the end of 2000.

### Multi-Lingual Juries

Do jurors have the right to an interpreter? The right of deaf jurors to sign language interpreters is well-established. In 1987, the 10th Circuit in *U.S. v Dempsey*, 830 F.2d 1084, upheld the presence of the thirteenth person in the deliberation room. A sign language interpreter was permitted to sit in the jury box with the juror and in the deliberation room to assist a hearing-impaired juror. Recently, the **New Mexico** State Supreme Court required the court to provide English language interpreters for non-English speakers who are otherwise qualified to serve on a jury. Nancy Festinger (former president of the National Association for Judiciary Interpreters and Translators in New York) said she knows of no state besides New Mexico where non-English-speakers are serving on juries.

According to the *Constitution of New Mexico*:

The right of any citizen of the state to vote, hold office, or sit on juries, shall never be restricted, abridged, or impaired on account of religion, race, language, or color, or inability to speak, read, or write the English or Spanish languages.

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This provision has been in the state's constitution since New Mexico's admission into the United States in 1912, yet the usual procedure was to require all prospective jurors to be able to understand English.

Wording indicating whether a person must "converse," "read," "write," "speak," or otherwise communicate in English varies across the states. Standard Four of the *ABA Standards Relating to Juror Use and Management* states that a person should be able to "communicate in the English language." The test ranges from the ability to complete the questionnaire to being able to converse with court officials during selection. Courts usually rely on a person's own judgment. Some ask jurors to indicate if they have a problem understanding

testimony. In West Palm Beach, **Florida**, a sworn juror in mid-trial did just that. An interpreter was provided for the remainder of the trial.

The New Mexico situation has received much interest. According to Frank Newton (Dean of the Texas Tech School of Law in Lubbock, Texas) the ruling could "heighten discussion about accommodating jurors and providing interpreters." While the New Mexico rule is connected to that state's constitution, other states experiencing changing demographics might soon face the issue of juror interpreters with respect to their own constitutions, legislators, or case law.

This Members' Briefing is a revised and edited version of the 1999–2000 edition of *Report on Trends in the State Courts*, produced by the Knowledge Management Office of the National Center for State Courts. For more information on the National Center for State Courts, visit its Web site at <http://www.ncsc.dni.us/>. For the complete *Report on Trends* document, go to <http://www.ncsc.dni.us/KMO/Trends/99-00/Index.htm>.

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## Lawyers and Multidisciplinary Practice: A Coming Revolution?

Developments that might revolutionize legal practice have appeared on the horizon, but for now, they will not be allowed into port. If these potential developments become reality, they will affect the courts indirectly—by modifying of legal culture—or directly—through regulating the legal profession and resolution of disputes stemming from the new practices. Historically, attorneys in the U.S. have not been allowed to join with non-attorneys to provide services that include the practice of law and involve sharing legal fees. Non-lawyers must avoid the unauthorized practice of law. Prohibiting multidisciplinary practice (MDP) has been considered necessary to maintain attorneys' professional independence, support their duty of confidentiality, and avoid conflicts of interest. Recently, however, business developments have raised questions about whether MDP rules are necessary or harmfully anachronistic.

In response, the American Bar Association (ABA) formed a Commission on MDP. Arguments in favor of loosening restrictions include the following:

- MDP offers the ability to provide efficient, "one-stop shopping" for clients—better service at lower prices.
- MDP is common in Europe, where international accounting firms provide legal services. In a global market, U.S. attorneys would have a competitive edge if MDP restrictions were reduced.
- The **District of Columbia** already allows non-lawyer partners in law firms devoted solely to practicing law.
- MDP could be financially rewarding to lawyers because it would allow them to sell or share in the fees from the sale of non-legal products, such as insurance policies or real estate.

Despite a favorable recommendation from the Commission, the ABA declined to change the rules until further study had demonstrated that MDP would advance public interest without sacrificing attorneys' independence. The Commission continued to hear testimony while other legal professional

organizations undertook their own analyses. The Commission presented a new report, recommending changes that would allow MDP, but addressing concerns. On July 11, 2000, the ABA voted to maintain its position that lawyers not be permitted to share fees with non-lawyers, and that non-lawyers not be permitted to own or control entities that practice law, effectively rejecting MDP.

Whether the ABA's position will stand against a variety of pressures remains to be seen. The realities of global corporate mergers, MDP practices overseas, expanding international trade, and customer preferences for shopping convenience may eventually isolate the U.S. legal community. States are not bound by the ABA's vote, and bar associations in some states, influenced by business interests, may eventually urge change. If the ABA's position begins to erode in the states, it may perceive MDPs to be inevitable and vote to adopt changes such as those recommended by the Commission.