

*i s s u e s o f*  
**D e m o c r a c y**



THE CHANGING  
FACE OF U.S.  
COURTS

M A Y 2 0 0 3  
VOLUME 8 NUMBER 1

# The Changing Face of U.S. Courts

From the Editors

EVEN BEFORE THE Republic was formed, America's Founding Fathers pledged that it would be based not on arbitrary power exercised by a remote and unaccountable executive, but on law and justice. For the first time, courts would be established not just to punish crime, but to affirm and protect rights.

Accordingly, the courts were assigned a central role in the American system of government when the Constitution was framed in Philadelphia in 1787.

Indeed, the courts were to be a co-equal branch of government with specific powers that could not be abrogated by the executive or by the legislature—a radical idea at the time. Equally radical was the notion that the courts' ultimate responsibility was to uphold the rights of the people enshrined in the Constitution.

Many aspects of the U.S. legal system, such as its adversarial nature and trial by jury, have been enduring features of the courts from the beginning. But the Founding Fathers knew

that the courts needed to adapt to meet the demands of the unknown future. They also knew that American democracy was a work in progress and that forming a more perfect union would require change and growth. Accordingly, flexibility was built into the system, so that new ideas, such as specialized courts that could not be envisaged in the 18th century, are a reality in the 21st.

This electronic journal focuses not so much on the structure of U.S. courts (see the electronic journal on “How U.S. Courts Work” at <http://usinfo.state.gov/journals/itdhr/0999/ijde/ijde0999.htm> [September 1999] for that), but on their changing face, especially over the last few decades as court caseloads have surged, as media have become increasingly present, and as rapid technological advances have helped streamline the management of the courts and the way trials are conducted.

In our lead article, Richard Van Duizend, a principal court management consultant with the National Center for State Courts, examines the evolution of U.S. courts, highlighting innovations ranging from plea-bargaining and various forms of alternative dispute resolution (ADR) to the increasing use of specialized courts.

A considerable number of court cases in recent decades have involved drug offenses as both the states and the federal government adopted a tougher stance toward the possession and, particularly, the distribution of illegal drugs. As Carson Fox, National Drug Court Institute fellow and former solicitor and drug court administrator for the state of North Carolina, and West Huddleston, director of the National Drug Court Institute, document in their article, specialized drug courts emerged in the 1980s as a result of a grassroots effort to cope with these offenses, and their growth has been meteoric.

The focus on drug courts in the press and professional journals might leave the impression that specialized courts are a phenomenon of the late 20th and early 21st centuries. But as Luis G. Perez, a judge in the Worcester Juvenile Court in Worcester, Massachusetts, outlines in his article, specialized courts to deal with juvenile offenses have been around for over a century. Juvenile courts are now so commonplace in every state of the union, it is hard to believe, he says, that children were once subject, without exception, to the adult court system—and to adult punishments. In his article, Judge Perez lays particular emphasis on the pendulum of public opinion which has alternately led to periods of expansion of juvenile courts and to their limitation.

In the 18th century, it is doubtful whether anyone used the term “domestic violence.” But there is no doubt that it occurred. Kristin Littel, a consultant on “violence against women” issues for the Office on Violence Against Women at the Department of Justice, says in her article that public consciousness about this crime was slow in coming, but became widespread during the 1970s. This increased awareness, and more aggressive prosecution of the crime, led to the development of domestic violence courts and treatment of domestic violence cases in family courts.

With growing caseloads, technology has become increasingly important as a tool, particularly to manage and streamline the courts. In their article, Edward C. Prado, a former U.S. District Judge for the Western District of Texas, who was recently confirmed to an appointment on the U.S. Appeals for the Fifth Circuit, and Leslie Sara Hyman, an attorney at Cox & Smith Incorporated in San Antonio, Texas, show how technology can be utilized to provide greater access to more efficient court proceedings, focusing on one model courtroom—that of Judge Prado himself.

In our concluding article, Gary Hengstler, director of the Donald W. Reynolds National Center for Courts and Media at the National Judicial College in Reno, Nevada, discusses the media’s role in modern courts. He looks at the interaction of the courts and the media, how the media’s increasing demands are accommodated, and how the integrity of the court system is maintained under ever increasing media scrutiny.

---

# C o n t e n t s

## *issues of* Democracy

May 2003

6

### THE AMERICAN COURT SYSTEM: LONG TRADITIONS, NEW DIRECTIONS

Richard Van Duizend, a principal court management consultant with the National Center for State Courts, discusses the continuing evolution of U.S. courts.

13

### DRUG COURTS IN THE U.S.

Carson Fox, a National Drug Court Institute fellow, and West Huddleston, director of the National Drug Court Institute, detail the rise in the number of specialized drug courts over the last decade and a half.

20

### JUVENILE COURTS IN THE U.S.

Judge Luis G. Perez, a judge in the Worcester Juvenile Court in Worcester, Massachusetts, presents an overview of juvenile courts, with particular focus on how trends in punishment have affected these long established institutions.

26

### SPECIALIZED COURTS AND DOMESTIC VIOLENCE

Kristin Littel, a consultant for the Office of Violence Against Women at the Department of Justice, profiles domestic violence and family courts that deal with domestic violence and other crimes affecting families.

## TECHNOLOGICAL ADVANCES IN THE COURTROOM

Edward C. Prado, a former U.S. District Judge for the Western District of Texas, who was recently confirmed to an appointment on the U.S. Court of Appeals for the Fifth Circuit, and Leslie Sara Hyman, an attorney at Cox & Smith Incorporated in San Antonio, Texas, show how technological progress has improved U.S. courts.

## THE MEDIA'S ROLE IN CHANGING THE FACE OF U.S. COURTS

Gary Hengstler, director of the Donald W. Reynolds National Center for Courts and Media at the National Judicial College in Reno, Nevada, discusses the growing interaction between media and the courts.

## BIBLIOGRAPHY

Further Information on Specialized Courts

## INTERNET SITES

Further Information on Specialized Courts

AN ELECTRONIC JOURNAL OF THE U.S. DEPARTMENT OF STATE  
ISSUES OF DEMOCRACY  
THE CHANGING FACE OF U.S. COURTS  
MAY 2003

PUBLISHER	Judith S. Siegel	CONTRIBUTING EDITORS	Estelle Baird	EDITORIAL BOARD	James Bullock
MANAGING EDITOR	Laura M. Gould		Mona Esquetini		George Clack
CONSULTING EDITOR	Christian Larson		Stuart Gorin		Judith S. Siegel
INTERNET/TEXT EDITOR	Deborah M.S. Brown		John Jasik		
			David Pitts		
		REFERENCE SPECIALISTS	Lorna Dodt		
			Anita Green		
		ART DIRECTOR	Diane Woolverton		
		GRAPHICS ASSISTANT	Sylvia Scott		

The Bureau of International Information Programs of the U.S. Department of State provides products and services that explain U.S. policies, society, and values to foreign audiences. The Office publishes five electronic journals that examine major issues facing the United States and the international community. The journals—*Economic Perspectives*, *Global Issues*, *Issues of Democracy*, *U.S. Foreign Policy Agenda* and *U.S. Society and Values*—provide statements of U.S. policy together with analysis, commentary and background information in their thematic areas. • All issues appear in English, French and Portuguese and Spanish language versions, and selected issues also appear in Arabic and Russian. • English-language issues appear at approximately a one-month interval. Translated versions normally follow the English original by two to four weeks. • The opinions expressed in the journals do not necessarily reflect the views or policies of the U.S. government. The U.S. Department of State assumes no responsibility for the content and continued accessibility of Internet sites linked to herein; such responsibility resides solely with the publishers of those sites. Articles may be reproduced and translated outside the United States unless the articles carry explicit copyright restrictions on such use. Potential users of credited photos are obliged to clear such use with said source. • Current or back issues of the journals, and the roster of upcoming journals, can be found on the Bureau of International Information Programs' International Home Page on the World Wide Web at <http://usinfo.state.gov/journals/journals.htm>. They are available in several electronic formats to facilitate viewing on-line, transferring, downloading, and printing. • Comments are welcome at your local U.S. Embassy or at the editorial offices: Editor, *Issues of Democracy*, Democracy and Human Rights—IIP/T/DHR, U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, United States of America.

email: [ejdemos@pd.state.gov](mailto:ejdemos@pd.state.gov)

# The American Court System: Long Traditions, New Directions

By Richard Van Duizend

IN RESPONSE TO growing caseloads and the changing problems affecting American society over the past two decades, the courts of the United States have experimented with new approaches and programs in order to more fully achieve the ideal of justice for all. These innovations reflect the inherent flexibility of the American governmental structure that has enabled it to adapt as the nation has evolved over the past 220 years.

In the U.S., government is divided between the federal (national), state, and local levels. Moreover, at each level, the functions of government are further divided among the legislative, executive, and judicial branches. The concept of the judiciary as a separate, co-equal branch of government was a contribution to the theory of governance introduced in the 18th century. As this concept has evolved in America over the past two centuries, the separation of governmental power among the judicial, executive, and legislative branches has, for the courts, become intertwined with the concept of judicial independence. Thus, the movement to

enable courts to manage their own affairs and the public resources allocated to them by legislatures that began in the late 1930s with the transfer of these functions from the executive branch U.S. Department of Justice to a newly established Administrative Office of U.S. Courts, is generally based on grounds of judicial independence rather than separation of powers.

This set of governmental divisions and layers is clearly and purposefully inefficient. The men who wrote the U.S. Constitution were profoundly distrustful of the power of government. By dividing the functions and areas of responsibility, they intended to create a system of “checks and balances” that would prevent government from oppressing the people. Moreover, the late 18th-century founders of the U.S. system of government also intended its decentralized federal character to stimulate innovation and foster experimentation through competition among states, between state and national government, and among the three branches of government.



*Richard Van Duizend*

This approach to governance has been so broadly and enduringly supported by Americans that the three-branch structure of government has consistently been adopted in the constitutions of each state. Thus, there are not one, but 55 court systems in the United States—the federal court system and the court system of each of the 50 states, the District of Columbia, Puerto Rico, and the territories. (In addition, there are Tribal Courts to resolve disputes on many of the reservations of Native Americans.) The federal courts have exclusive constitutional responsibility for deciding disputes involving admiralty matters, patents and copyrights, bankruptcy, international treaty and trade issues, and disputes between states. They are also authorized to decide cases involving federal statutes and violations of the U.S. Constitution. The state courts are authorized by law to decide cases involving state statutes and violations of the state constitution, violations of most federal statutes and of the U.S. Constitution, and claims under the traditional “common law” of judicial precedents that the U.S. inherited from England.

Although the U.S. federal courts may be better known, it is the state courts to which U.S. citizens and businesses most often turn for justice. More than 96 percent of the cases brought each year are filed in state courts—over 90 million cases annually.

In administering justice, all state courts in the U.S. must adhere to certain principles firmly anchored in constitutions, tradition, and law. These principles are defined and described in greater detail by the Trial Court Performance Standards (TCPS) and Appellate Court Performance (ACPS) Standards developed by national commissions of judges and lawyers and the National Center for State Courts. (The TCPS and ACPS are voluntary standards that courts may use to measure their performance. Their development was supported by grants from the Bureau of Justice Assistance and the State Justice Institute.)

- First, and foremost, they must follow the law and base decisions only on legally relevant factors;
- Second, they must be impartial and treat everyone equally;
- Third, while maintaining their decisional and administrative independence, they must be accountable for their decisions, operations, and use of public resources;
- Fourth, they must be open to all and conduct their work openly; and
- Fifth, they must be effective and expeditious.

## New Approaches

The basic American trial process has become familiar worldwide, as a staple of U.S.-produced movies and television programs. While the jury

trial remains a fundamental element of the U.S. justice system, juries decide less than five percent of the disputes brought in most U.S. jurisdictions. Some cases are heard by a judge without a jury, but the overwhelming majority of cases are resolved through negotiations between the parties. In disputes between individuals or involving businesses, this is known as settlement. In cases concerning a crime, this practice is known as plea-bargaining. Plea-bargaining has been widely criticized, especially when it is the result of inadequate resources for prosecution and defense counsel or of unlimited prosecutorial discretion. However, under appropriate policy guidance and close judicial oversight, it provides a means for expediting the disposition of cases in which the facts are not in dispute, and for concentrating criminal justice system resources on the cases where questions of guilt or innocence are greatest.

In addition, over the past 20 years, both the federal and state court systems have developed new approaches to fulfilling the purposes of courts. These include the integration of alternative dispute resolution techniques such as mediation and arbitration into the litigation process; specialized courts or dockets to address certain types of disputes or litigants (including business disputes, family disputes, and matters involving children); and specialized procedures designed to address the problems underlying traditional legal disputes such as substance abuse, domestic violence, and mental illness (frequently called “problem-solving courts”).

## Developing a Better Response

While the reasons for instituting these programs vary by court and by jurisdiction, they reflect the determination of American court leaders to fulfill the fifth principle cited above—to make the court process as effective and expeditious as possible within the bounds of the other principles. They also are a response to the demand of the public to develop better means for resolving disputes. For example, a 1999 survey of the American public conducted on behalf of the American Bar Association revealed that 78 percent of the survey respondents believed that “it takes too long for courts to do their jobs” and 77 percent believed “it costs too much to go to court.” Fifty-six percent of those surveyed favored greater use of community-based sentences instead of prison.

These results were echoed in a subsequent national survey conducted by the Hearst Corporation on behalf of the National Center for State Courts. That survey found that about half of the respondents believed the courts in their community were doing a fair or poor job of handling criminal cases; more than 50 percent felt the courts were doing a fair or poor job in family and juvenile delinquency cases, and only a bare majority stated that courts were doing a good or excellent job in disputes over contracts, services, or injuries. The concerns were the greatest among minority groups.

While courts, by nature and design, are not and cannot be a populist institution (that is, one that reflects the public’s will in its decisions), as recognized by the late U.S. Supreme Court Justice Thurgood Marshal—“We must never forget that the only real source of power that we as judges can tap is the respect of the people.”



## Court-Connected Dispute Resolution

The establishment of court-connected “alternative” or “complementary” dispute resolution procedures is the result of efforts to create a better, faster, and cheaper way of bringing a lawsuit to a conclusion. In recognition that most cases are settled, it was hoped that these programs would enable the parties to address the problems underlying their dispute, and do so at an early stage of the proceedings so as to avoid the substantial costs involved in the pre-trial preparation process and reduce the time needed to reach an agreement.

Mediation (that is, use of a professionally trained “neutral” to assist the parties to reach agreement) is now commonly used to resolve business disputes, divorce and child custody cases, litigation over personal or economic injuries, small claims cases (e.g., where less than \$5,000 is at stake), water rights disputes, and disputes between tenants and landlords. It is also sometimes used to set the amount of restitution that a criminal or juvenile offender will pay to the victim. Usually a party who is dissatisfied with the results of the mediation may take the case to trial without penalty.

Arbitration procedures (referral of the dispute for decision by one or more “neutrals” selected by the parties on the basis of their technical expertise) are frequently required by contracts for construction, medical services, brokerage services, or for employment. Arbitration decisions are usually binding on the parties and non-reviewable.

Other procedures such as early neutral evaluation (assessment of the issues and amount of damages by an expert based on a detailed statement by each party) or summary

jury trials (an abbreviated presentation of the evidence and arguments to an unofficial jury) are used less frequently, usually in complex cases or disputes in which a considerable sum is at stake.

The evaluations which have been conducted generally show that mediation is “better” than the standard litigation process in terms of the level of litigant satisfaction and compliance with agreements. However, whether it is also cheaper and faster depends largely on when in the litigation process it occurs, who pays the costs, and the quality and oversight of the program. Questions also have been raised about the fairness of arbitration panels required as part of consumer contracts.

## Genesis of Specialized Courts

Specialized courts or dockets designed to address the needs of particular types of cases or sets of litigants are not new. The Chancery Court of the State of Delaware has focused on business cases since its founding, and the first “juvenile court” was created at the turn of the 20th century. However, because of the growing recognition that the complexity of certain types of cases or the particular needs of certain types of litigants require specialized expertise, specialized services, specialized procedures, or even specialized facilities, the court systems in many states have set aside courtrooms, promulgated new rules, and assigned judges selected for their expertise to hear only business, family relations, family violence, or juvenile crime cases.

For example, in addition to the assignment of judges with a thorough understanding and experience in legal and financial matters affect-

ing commerce, business courts often have procedures and processes to enable the prompt disposition of complex matters and may have state-of-the-art courtroom information management and display capabilities including video-conferencing systems that permit witnesses to testify without leaving their offices.

Domestic violence courts often have enhanced security and counseling, and treatment services available, and provide for separate seating for witnesses and supporters of each of the parties.

Family courts are designed to facilitate the flow of information about and services provided to members of a family that may be involved in several different types of proceedings in order to assure that orders concerning the family are consistent and that necessary services are delivered both to individuals and to the family as a whole. The importance of this coordination can be illustrated by the following example:

A 13-year-old boy gets into a fight at school after witnessing his drunken father beating his mother and violently shaking his 1-year-old sister to stop her from crying. As a result of these actions, a juvenile delinquency petition is filed against the boy; a domestic violence complaint and child abuse petition is filed against the father; and the mother files for divorce and a restraining order to keep the father away from the family.

In a jurisdiction without a family court, each of these legal matters may be heard by different judges sitting in separate courts. If the family is indigent, separate lawyers may be appointed to represent them in each case, and social workers or probation officers attached to each court may collect information regarding

the family and store it in files available only to that court.

Unless the judges at least have all the relevant information regarding what is going on in the family, the judge in the delinquency matter could place the boy in his father's custody while the judge in the divorce action awards custody to his mother; the judge hearing the domestic violence complaint may sentence the father to jail at the same time the judge ruling on the child abuse petition orders family counseling; and the dispositional orders in the domestic violence and child abuse cases may require the father to participate in different types of alcohol abuse treatment for varying lengths of time.

### Problem-Solving Courts

So-called "problem-solving" courts began with the Miami Drug Court in 1989. With fervent adherents and funding from the federal government, these courts have spread across the country and expanded to include cases unrelated to substance-abuse offenses. Such courts were born out of the frustration of judges who saw the same individuals repeatedly for the same offenses or actions. However, their philosophical roots lie, at least in part, in the original concept of the juvenile court, which arose around the turn of the 20th century, in which the judge was to act as a governmental parent, more concerned about addressing the child's problems, behavior, and needs, than with the particulars of the offense at issue.

Problem-solving courts use the threat or actuality of the court's coercive power not only to induce defendants to seek and participate in treatment or other services, but also to marshal the necessary services to effectively address the

litigant's underlying substance abuse, mental health, anger management, or poverty related problems. They also feature:

- Close monitoring of the defendant's adherence to the conditions in the court's order and progress in treatment both by probation and treatment staff and by the judge;

- A direct, interventionist role for the judge with the defendant, with the consequent diminution of the advocacy role traditionally enjoyed by prosecutors and defense attorneys; and

- An agreement between the prosecution and the defendant that if the defendant fulfills the conditions and completes the programs designated in the judge's order, the charges will be dropped or the conviction will be erased.

A variation on the drug court or mental health court model is the "Midtown Community Court" established to deal with the small scale but numerous non-violent offenses plaguing a neighborhood in New York City (vandalism, shoplifting, prostitution, failure to pay transit system fares, etc.). If the defendant admits committing the offense, the judge and counsel, using sophisticated technology, are quickly able to determine the defendant's record of prior offenses, if any, and whether he or she has previously received substance abuse, mental health, or other services under court order. This information is used in combination with discussion with the defendant, to refer the individual as a condition of a probationary sentence to health, mental health, employment, education, housing, and other social services that are available in the courthouse. Normally, a community service requirement is also imposed.

The benefits of these problem-solving courts are that:

- Offenders who complete the prescribed program are far less likely to commit another offense than those convicted of similar charges and incarcerated;

- The offender is held directly accountable and faces swift and certain consequences for failing to comply with court orders;

- The cost of the treatment provided is far less than the cost of incarceration;

- They promote coordination of services; and, as a result of all these benefits,

- They strengthen public trust and confidence in the courts.

However, problem-solving courts also raise some concerns about continued adherence to the fundamental principles cited earlier. Several of these concerns apply to specialized courts and alternative dispute resolution programs as well. For example:

- When judges step out of their traditional role or when the carefully crafted rules of procedure and evidence are not applied, there is the potential of encroachments on the first and second principles named above (basing decisions only on legally relevant factors, impartiality, and treating everyone equally);

- The trend toward specialization of court processes may limit the court system's efficiency of operations and the effective administrative control and oversight of the overall court system, thus challenging adherence to the third principle (accountability in operations and use of public resources);

- The additional funds required to operate these programs, many of which are started with

time-limited grant support, may sometimes limit the ability of the court system to support basic operations affecting other litigants, threatening the fourth principle (that the courts must be open to all);

○ Finally, as the Conference of State Court Administrators noted in a position paper that generally favored use of problem-solving courts, “Obviously it takes more judge and clerk time to see a defendant 15 to 20 times over the course of a year or more than it does for a judge to...[accept a guilty] plea and sentence someone .... This additional workload affects not only the treatment court judge and the court clerk or clerks, but also other judges and clerks in the judicial district that have to make up the difference.” Thus, adherence to principle five (effectiveness and expeditiousness) can be lessened.

### Safeguards for the 21st Century

The courts adopting these new directions are well aware of both the potential benefits and possible concerns, and recognize the challenge of assuring that in striving to improve the effectiveness of, and access to, the courts, they do not compromise the other principles underlying the American justice system.

The process of innovation, testing, and dissemination that underlies the new directions discussed above and in the following articles is illustrative of one of the great strengths of the federal American governmental system—that the states can serve as “laboratories” for developing and testing innovative approaches to meeting the basic responsibilities of government within the bounds of the constitutional framework.

Indeed, the search for effective approaches now extends beyond the U.S. borders as American courts adapt programs developed in other nations, and courts elsewhere apply the lessons learned here. This inherent dynamism provides the hope and assurance that the honored traditions of American justice will remain vital safeguards as we move into the 21st century.

---

*Richard Van Duizend holds bachelor's and law degrees from Harvard University. He is currently a principal court management consultant with the National Center for State Courts, which provides consulting, training, research, technology, management, and information services to improve the administration and quality of justice in the United States and throughout the world.*

---

Issues of Democracy, IIP Electronic Journals, Vol. 8, No. 1, May 2003

## Drug Courts in the U.S.

By Carson Fox and West Huddleston

IN THE LATE 1980s, many of the courts in the United States were overwhelmed. A dramatic increase in arrests for drug and drug-involved cases, along with mandatory minimum sentences for the possession and distribution of drugs, especially crack cocaine, had led to overflowing jails and prison populations. In Miami, Florida, and other major metropolitan areas, the problem was particularly daunting. In 1989, in an effort to stem the tide of drug-involved cases, the court system in Miami began taking offenders into an intensive drug treatment program designed as an alternative to incarceration. The program was called drug court. By 1994, there were 12 drug courts in the United States. Today, there are over 1,200.

Drug courts blend the oversight of the court system with the therapeutic capabilities of drug treatment. In this “marriage” of services, the defendant or participant (also referred to as the client) undergoes an intense regimen of drug treatment, case management, drug testing, and supervision, while reporting to regularly

scheduled status hearings before a judge. A team of treatment and criminal justice professionals oversees the program, and reviews each participant’s case before the regular court hearing.

### Drug Court Team

The team usually consists of a judge, prosecutor, defense attorney, treatment provider, law enforcement officer, probation officer, case manager, and program coordinator. In team meetings, often called “staffings,” the team discusses the participant’s progress since the last court appearance. Team members make recommendations for sanctions or incentives, depending on the participant’s compliance or noncompliance with program regulations.

Typically, drug courts demand abstinence from crime, alcohol, and drugs. Participants are also obligated to seek additional education or job training opportunities. Most drug court programs require the participant to remain under the court’s supervision for at least one year.

Other than intensive drug treatment and case management, the successful participant also receives a benefit from the criminal justice system. The participant may receive a lighter punishment, have his or her charges dismissed, or have his or her probation terminated early.

Drug court participation is voluntary. The participant has a choice, even if the alternative is prison. If a defendant chooses drug court, he or she must be deemed eligible before program admittance. The drug court team typically develops eligibility criteria, looking to any statutory guidelines of the state, along with the needs of the community. Some common issues considered in eligibility are: Is the defendant dependent on alcohol or drugs? Is the defendant a resident of the jurisdiction? Does the defendant have a victim; is restitution an issue; does the victim have any objections? Is the defendant a violent offender?

Eligibility is determined based on a legal and clinical screen. As the system of each state differs, and the drug court target populations differ, the method of program entry differs. Typically, the prosecutor will determine legal eligibility. If the defendant is entering drug court due to a probation violation, the probation agent may determine legal eligibility. Once the defendant is found legally eligible, treatment performs a clinical screen. In the clinical screen, a treatment professional interviews the drug court applicant and asks a series of questions. These questions are designed to determine what type of drug-use problem, if any, the participant has. (A clinical screen is not to be confused with a clinical assessment, which begins with a much longer interview process, takes place after the participant has been accepted into the program, determines the necessary level of care in treatment, and is performed on an ongoing basis

throughout the defendant's participation in drug court.)

Before entering drug court, the defendant reviews program requirements with his or her attorney, and will often also discuss these requirements with the program coordinator and the judge. Since drug courts exist for both felony and misdemeanor charges, and since some participants' status is pre-plea and some is post-plea, the legal standing of the participants varies. Some have faced formal indictment; some have not. Some may be facing prison time; some may not. If a defendant is found eligible for drug court, and that defendant agrees to participate, then he or she must agree to comply with all program rules and regulations. If the defendant enters the program pre-plea, this compliance may be made a condition of bond. (Bond is usually a monetary amount set soon after an individual is arrested, the purpose of which is to assure the defendant's appearance in court. However, bond also can be personal recognizance, where no monetary amount exists. Once a defendant posts bond, he or she is released, but remains under the jurisdiction of the court and any special conditions of the bond order.) If the defendant enters the program post-plea, the compliance may be a condition of probation.

### Traditional Methods

Drug courts began as a grass-roots effort, when local jurisdictions looking for alternatives to going through the regular court system turned to drug courts to deal with their drug-addicted offenders.

In the traditional approach to such offenders, many of the defendants received probation or prison sentences, often without the availabil-

ity of treatment. If treatment was available, and the court ordered treatment as a part of the sentence, no formal partnership existed between the court, case management, treatment, and supervision. If offenders did not comply with treatment conditions or tested positive for drugs, there was no system of sanctions and incentives designed to keep the offender engaged in treatment. Often the reaction to non-compliance was a discharge from treatment. Offenders on probation would reappear before a judge for a revocation hearing, where they would potentially face the prison time that had been suspended at their sentencing. Offenders expelled from treatment programs in the prison system would find themselves back in the prison population.

As such, the traditional system created a “revolving door” of justice. Judges, prosecutors, and defense attorneys were accustomed to seeing the same defendants month after month returning to court, many for property offenses, fueled by their drug dependency. Without treatment, the offenders continued in active addiction, and continued to victimize others to fuel their addiction.

### Framework for Drug Courts

Until the mid-1990s, although many drug court programs had similarities, no standards existed. In 1996, a group of practitioners came together with the assistance of the U.S. Department of Justice and the National Association of Drug Court Professionals. This group was organized to identify the basic standards for drug courts. They met for over a year, and in 1997, the Justice Department published *Defining Drug Courts: The Key Components*, which out-

lines 10 key components in a framework for drug courts.

The first key component of the framework explains a drug court’s integration of alcohol and drug treatment services with the justice system. As part of this integration, the program includes a cross-disciplinary team as discussed above. Program officials may also develop a steering committee, which is sometimes called a resource committee or advisory board. This committee helps the program establish broad community support. The committee may include each member of the drug court team along with representatives from mental health treatment, job training services, educational services, the local school system, local businesses, local government, the religious community, and other interested citizens. This committee may make recommendations regarding policies and procedures, raise funds for the program, and assist the program with operations and special projects, such as program graduations.

The second key component describes drug courts as non-adversarial. While under the traditional justice system, the prosecutor and defense attorney act as adversaries, with the prosecutor representing the best interests of the state, and the defense attorney representing the best interests of the client, in drug court these roles lack their traditional adversarial component. The prosecutor and defense attorney work on the drug court team—both focused on the participant’s recovery. Both make recommendations to the judge, along with the other team members, for sanctions and/or incentives, to motivate behavior change in the participant.

Under the third key component, drug courts attempt to identify participants early in the criminal justice system and place them into



treatment. Research has shown that people entering drug treatment are more successful if the treatment episode is precipitated by a moment of crisis—an arrest or violation of probation hearing, for example. Once the offender is identified as eligible, he or she is quickly placed into treatment and under the supervision of the court.

The fourth key component discusses the need for a continuum of treatment and rehabilitation services in drug court. In addition to drug treatment, drug courts offer mental health counseling, job training, continuing education, health services, and any other necessary services in the community. Naturally, some communities have more services than others, but the steering committee can identify resources and help to bridge any existing gaps in needed services.

Under the fifth key component, the participants are monitored regularly through alcohol and drug testing. Testing should be random, observed, and often. Treatment professionals or law enforcement officials typically perform the tests. In many drug court evaluations, participants cite drug testing as a critical component in their recovery.

The sixth key component stresses the coordinated strategy which governs drug court responses to participants' behavior. The regular court meetings between the judge and participants, following the staffing with the drug court team, gives the team the opportunity to respond to the participants' compliance or noncompliance with immediate sanctions and incentives. These responses are designed to motivate behavior change in the participants, and are typically not designed to be punitive. Responses may also include treatment, which does not fall into the category of sanctions or incentives,

but are the results of a participant's progress, such as increasing or decreasing the level of care.

Ongoing interaction with the judge is deemed essential in component seven. Like drug testing, this interaction is also often cited by drug court participants as important to their success. Since the judge sees the participant regularly for several months, the judge and participant often develop a "therapeutic" relationship not seen in regular court settings.

The eighth component underscores the need for monitoring and evaluation of the drug court to measure program success. No matter how successful drug court programs may be, without good data collection and a strong evaluation component, that success will only be apparent through anecdotal evidence. Programs should collect a baseline of information on participants about their drug and alcohol treatment, health care, demographics, criminal history, and current charges. Team members should set clear goals and objectives for the drug court, and then structure an evaluation to measure the achievement of those goals. Both the drug court team and those who provide funds and services to the drug court will want to see proof of the program's efficacy.

The ninth component stresses the need for continuing interdisciplinary education. Since drug courts represent a fundamental change in the criminal justice and treatment systems, all team members need to understand the basics of each team member's role. Each team member must continue receiving education in the most current science-based practices. Drug courts should foster such educational opportunities, encourage team members to attend continuing education training, and provide training, when



possible, for new and experienced team members.

Under the tenth key component, the drug court builds partnerships in the community, which enhance program effectiveness and generate local support. Many of these partnerships are demonstrated in the creation of the drug court steering committee. The organizations on the steering committee become partners in the drug court's success. Drug courts can also partner with the community by having participants perform community service, which can be a general program requirement, or reserved as a sanction. The committee also assists the program staff to better organize existing community resources. The members of the steering committee typically represent the agencies or entities that provide the "wrap around" services needed by drug court participants.

## Funding

Compliance with the 10 key components is necessary to receive federal funding. Many state and local funding sources also rely heavily on these components, and will require that applicants outline how their program complies.

Although drug courts have never been a federally mandated program, due to their large growth in the 1990s, the Drug Courts Program Office was created in the Office of Justice Programs (OJP) at the U.S. Department of Justice (DOJ). (The Drug Courts Program Office has since been absorbed into the OJP.) Drug courts at the local level are now assisted through the Bureau of Justice Assistance (BJA), also located in the Justice Department.

Through BJA, the DOJ provides seed money for drug court planning, along with limited funding for implementation and enhance-

ment. Federal funding for drug courts is available from several sources, including drug court discretionary grants available through the cooperation of BJA and the Office of National Drug Control Policy, under the auspices of the Executive Office of the President; the Local Law Enforcement Block Grant program; the Edward Byrne Memorial grants; the Center for Substance Abuse Treatment; and the Center for Substance Abuse Prevention, but most drug courts operate on a combination of federal, state, and local funds. Some drug courts charge participants a fee and some receive financial assistance from tax-exempt organizations founded to support the programs (many of these are started by steering committees). To be successful, however, drug courts must also look to existing local resources, and organize those resources to avoid duplication of services.

## Tremendous Success

Drug courts have shown such tremendous success that they now exist in almost every metropolitan area of the United States. Indeed, every U.S. state and territory has a drug court. While this article discusses drug courts in the context of the adult criminal justice system, the drug court model also has been applied to juveniles, to parents at risk for losing custody of their children due to drug abuse, to offenders charged with driving while under the influence of alcohol or other drugs, to offenders with mental health issues (regulating medications and case management), and to parolees in re-entry courts (monitoring parolees with drug addictions upon release into the community). In some cities, such as San Diego, California, and Minneapolis, Minnesota, drug court systems exist where the underlying cause of the offend-

er's charge can result in that offender being placed in one of a variety of court-supervised programs—all following a drug court-type model.

Most drug court programs target non-violent offenders. These offenders are placed in programs, which may take a variety of forms:

- Diversion (charges are held until program completion, and upon successful completion, they are dismissed);

- Probation (a participant pleads guilty and is placed on probation with the successful completion of drug court being a special condition); and

- Probation revocation (a participant already on probation and in violation for reasons caused by drug addiction continues on probation and is placed in drug court).

Drug courts deal with charges ranging from drug possession to property crimes. Since many drug addicts steal to finance their drug habit, drug courts also target these drug-driven property crimes. If a drug court participant has committed a crime that involves a victim, such as in a theft case, the program typically requires restitution.

### Coerced Treatment

Drug courts use coercion to keep participants engaged in treatment. The most recent science-based literature on drug and alcohol treatment shows that coerced treatment clients actually perform better than those entering voluntarily. Drug court, through its system of sanctions and incentives and its regular court hearings, provides a constant level of coercion to help the participant remain engaged in treatment. Drug court increases retention rates in

treatment, and therefore, increases success rates of those needing treatment over standard voluntary treatment methods.

In evaluation after evaluation, drug courts show high levels of retention in treatment. Whereas many alcohol and drug treatment programs see 80-90 percent attrition rates, many drug courts boast a 30 percent attrition rate. Furthermore, participants who graduate from drug courts see large reductions in their recidivism rates, sometimes by 90 percent. Drug court evaluations also show these programs to be much more cost-effective than the traditional criminal justice system. Two cost-benefit studies—one in Oregon and one in Texas—showed that the drug court saved taxpayers between \$9 and \$10 for each dollar spent.

### International Efforts

Drug courts began as a grass-roots effort, and they remain so today. From Miami to San Francisco to Rio de Janeiro, communities implement drug courts to deal with their local issues. Different jurisdictions must confront different drugs of choice, different criminal justice systems, and different available resources.

For years, drug court professionals have provided assistance and training to each other and those interested in the drug court concept. This assistance and training occurs through the efforts and support of several organizations. For instance, drug court professionals from the United States have traveled to Brazil, Great Britain, Australia, Bermuda, and Barbados to share the experiences of U.S. drug courts.

The National Association of Drug Court Professionals (NADCP), representing thousands of drug court practitioners in the United States, was founded in 1994, and is located in

Alexandria, Virginia. The research, scholarship, and training arm of NADCP, the National Drug Court Institute (NDCI), was founded in 1997. NDCI is supported by the Office of National Drug Control Policy, which falls under the auspices of the Executive Office of the President, and the Bureau of Justice Assistance at the U.S. Department of Justice. NDCI provides over 70 drug court training events each year, throughout the United States and around the world.

NDCI worked closely with the U.S. Department of State in 2002, facilitating a tour of the Brooklyn and Manhattan Treatment Courts for government representatives from England, Finland, Greece, Austria, Spain, and Italy, and participating in a video conference with several government representatives from Thailand. NADCP and NDCI are also associated with the International Association of Drug Court Professionals (IADCP).

---

*Carson Fox is a National Drug Court Institute fellow, and former solicitor and drug court administrator for the state of South Carolina.*

*West Huddleston is the director of the National Drug Court Institute.*

---

Issues of Democracy, IIP Electronic Journals, Vol. 8, No. 1, May 2003

## Juvenile Courts in the U.S.

By The Honorable Luis G. Perez

THROUGHOUT HISTORY, societies have struggled to find the proper way to deal with juvenile criminality and with problems of child abandonment, abuse, and neglect at the hands of adults.

In the 19th century, the United States began to move toward important social reforms which ultimately brought many changes in the ways these problems were addressed. Various states enacted child labor laws protecting children from harsh working conditions, child welfare laws protecting children from physical abuse and abandonment by parents, and education laws that guaranteed the right of all children to a public education.

However, there was no separate and unique juvenile court system for children anywhere in the United States. Children accused of criminal behavior were charged and judged as adults, and they were sentenced to adult punishments. In that

era there were no juvenile proceedings and children were tried in conventional criminal trials. So it was that in 1828, a 12-year-old boy named James Guild was tried in New Jersey for killing Catharine Beakes. A jury found him guilty of murder, and he was sentenced to death by hanging. (See *In Re Gault* 387 U.S. 81 *State vs. Guild* 5 Halst. 163)

### Early Juvenile Justice

Early American reformers were appalled by the application of adult procedures and penalties given to children, and by the fact that many children received long prison sentences and were incarcerated alongside hardened adult criminals. They were profoundly convinced that society's duty to the child should not be defined by preexisting concepts of justice that had developed in relation to adult criminality.

They believed that society's role was not simply to ascertain whether the child was "guilty" or "innocent" but rather "what is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career." (*In Re Gault* 387 U.S. 16, *Julian Mack, The Juvenile Court*, 23 *Hars. L. Rev.* 104, 119-120 (1909))

It was not until April 1899 that the state of Illinois established the first juvenile court in the United States. This innovative juvenile court system served as a nationwide model that ultimately came to be adopted, in varying degrees, by every state in the United States, as well as the District of Columbia and Puerto Rico.

In the beginning, a more humane, flexible civil system was adopted by many states, in place of a harsh, punishment-driven criminal justice system as applied to children. The idea of crime and punishment as the guiding principle of the juvenile justice system was to be rejected. Instead, the child was to be "trusted" and "rehabilitated," and the legal procedures from apprehension through institutionalization were to be informed by clinical rather than punitive concerns. Insofar as possible, these results were to be achieved by non-adversarial proceedings where the state was to proceed as in *loco parentis* (*In Re Gault* 387 U.S. at 16 *Paulson, Fairness to the Juvenile Offender*, 41 *Minn. L. Rev.* 547 (1957)), that is, the state was considered to act in place of the parent, with the welfare and care of the child as its paramount concerns.

## Who Is a Child?

Today, the United States does not have a unique and comprehensive juvenile justice system. On the contrary, there are at least 52 separate and distinct systems in this country. Although states look at and are influenced by what other states are doing, each state has the prerogative to develop and implement a juvenile justice system reflecting its own traditions, needs, and customs. Many states recognized that there was a fundamental distinction to be drawn within the system between the laws aimed at protecting children from abuse, neglect, and abandonment, and the laws designed to treat delinquent behavior.

A great deal of debate has transpired in each state in defining who is a child. For example, at one time, a child under the age of seven was broadly considered to be incapable of possessing criminal intent. Today, the line that separates children from adults may differ from state to state, and indeed may differ from context to context within the same jurisdiction. An obvious example of this would be a state in which a young person is competent to enter into a contract at age 18, but not able to purchase alcohol until age 21. Every state has enacted its own laws defining who is a juvenile and who is an adult for the purpose of applying the criminal laws.

In Massachusetts, for example, a juvenile delinquent is defined as "a child between seven and 17 who violates any city ordinance or town by-law or who commits any offense against a law of the commonwealth"—unless the defendant is charged with first or second-degree murder, in which case a 14-year old must be treated as an adult. This sort of anomaly illustrates how some states have lowered the age at which

a defendant will be considered an adult as a response to a perceived rise in the rate or severity of violent juvenile crime. This is a political response. There is no logical or clinical reason to explain in the above example why the same defendant should be treated as a child when accused of robbery and an adult when accused of murder.

### Dramatic Changes

The U.S. juvenile court system has changed dramatically since its inception in 1899. In the 1950s and 1960s, experts observed a tendency toward more violent criminality among juvenile offenders. The juvenile system was challenged as to its effectiveness. States responded by instituting prevention and rehabilitation programs as well as by imposing stricter punitive measures in order to curb the rise in juvenile violence. Some states changed their procedures to permit a juvenile to be transferred to an adult penal institution after an adjudication of delinquency in the juvenile court. In some other states, the juvenile could be transferred to the adult court at an earlier stage in the proceedings for trial as an adult.

In the landmark case of *Kent vs. United States*, 383 U.S. 541 1966, the Supreme Court wrote “there is much evidence that some juvenile courts lack the personnel, facilities, and techniques to perform adequately as representatives of the state in *parens patriae* capacity, at least with respect to children charged with law violations.” Two years later in the 1968 decision *In Re Gault*, the Supreme Court dramatically changed the rules governing juvenile procedures throughout the United States. The Court ruled that certain minimum standards of due process applied to juvenile delinquency proceedings. Such proceedings, which had sometimes been highly

informal and flexible, were transformed into more formal, adversarial proceedings designed to protect the basic constitutional rights of defendants. Gone were the days of unsworn testimony and the absence of transcripts or recordings of the proceedings.

Now, the right to notice of charges, the right to counsel, the right to confront and cross-examine witnesses, the privilege against self-incrimination, the right to a transcript, and the right to appellate review were extended to juveniles as they had already been guaranteed to adults. As Paul S. Lehman observed in “A Juvenile’s Right to Counsel In a Delinquency Hearing,” in *Juvenile Court Judges Journal*, “Unfortunately, loose procedures, high-handed methods and crowded court calendars either singly or in combination, all too often, have resulted in depriving some juveniles of fundamental rights.”

### Reforms and New Ideas

In the 1970s and 1980s, attention was increasingly focused on the effectiveness of state juvenile justice systems in the treatment and rehabilitation of juveniles. At the same time, there was growing awareness of the dangers associated with treating violent juvenile offenders in the same programs and facilities as victims of neglect or abuse, or so-called “status offenders,” i.e., truants, runaways or wayward children.

Much debate took place around the country and some new ideas gained momentum. Reforms included the segregation of defendants in delinquency proceedings from children involved in other sorts of court proceedings at all phases of their involvement with the juvenile justice system, including post-adjudicative rehabilitation. A range of smaller, specialized programs were developed and implemented in order to give

judges a menu of options from which to choose in ordering placements of children. The goal was generally to meet children's individual rehabilitative needs in the least restrictive appropriate setting in the community. Children were no longer to be warehoused in large, dilapidated, overcrowded, ill-equipped treatment facilities.

### Public Outcry

But eventually a backlash developed to this new approach, prompted by a few notorious cases that turned the media spotlight onto the juvenile justice system. Every component of the system—treatment and program facilities, juvenile courts, police, politicians, and parents—all were subject to scrutiny and criticism. The impression was often created among the public that juvenile murderers, rapists, sex offenders, and other violent youths were being released to the community without having suffered any concrete consequences for their actions.

For example, in 1989, a 15-year-old Massachusetts boy convicted as a juvenile for the murder of his parents and grandparents was released to the community only three years after the crime. He had been detained in a treatment facility until the maximum age allowed by law—19. The local community became outraged.

In response to public outcry against perceived leniency and ineffectiveness in the juvenile justice system, state legislatures throughout the United States changed their laws to make them tougher on juvenile crime. Many states shifted power and authority from juvenile courts toward the adult criminal justice system by reverting to the ancient expedient of treating broader categories of juvenile offenders as adults.

### Full Circle

If we look at the history of the American juvenile justice system from its inception in the late 19th century until the present, we can discern a pattern of transformation which in certain respects appears to have come full circle. In the beginning, many states instituted juvenile courts as a means of eliminating the participation of children in an adult legal system, which was viewed as harsh and inappropriate to the special needs of young people, and replacing it with a more humane, flexible, and informal system based on civil law, rather than criminal law.

This noble idea met with varying degrees of success as it was put into practice over the ensuing decades. Many of the reform movement's goals were achieved, and the American public will probably never have a full appreciation of the hundreds of thousands of troubled young people who were quietly and successfully reintegrated as productive members of society over the years. On the other hand, the system also produced some notorious failures in grappling with an increase in the most extreme instances of juvenile violence during the second half of the last century, leading to heightened scrutiny of the system by the media, the public, and politicians.

This public scrutiny has led many states to cut back on the promise that the juvenile court had originally represented, either by limiting access to juvenile court through adjustments to eligibility requirements, or by fundamentally altering the philosophy that had underlain the system. It is certainly fair to say that the typical state juvenile court system today is more sanction-driven (primarily interested in punishment as opposed to rehabilitation) than it was a generation ago. This is particularly unfortunate insofar as far-reaching changes to the law have some-



times been made in response to particular cases that received massive, frenzied, media attention, precisely because of their atypicality.

### Complex and Challenging World

It is a truism that our world is becoming more complex and challenging. Illegal drugs, guns, gang activity, and violence are only some of the problems that have become commonplace threats to the quality of life in many communities in the United States—not only the inner cities. Every state has had to reconsider and adjust its approach to the problem of juvenile delinquency and related issues.

During the 1990s, the political pendulum swung a couple more times: in the early part of the decade some states developed crime prevention strategies based on collaborative efforts within communities; these embodied what we might call the “It Takes a Village” philosophy, to borrow a phrase from former First Lady Hillary Clinton. Proponents of this model sought to enlist the cooperation of leaders throughout a given community—city and town officials; police officers; court officials; as well as prominent religious, charitable, and educational figures—in a holistic effort to develop and implement programs designed to identify youth who were at risk of getting caught up in the toils of the juvenile justice system. The idea was to intervene early enough to prevent this from happening. Such collaborative efforts were often quite successful. Yet toward the end of the decade, several highly sensational cases of violent crimes committed by juveniles were given wide play in the media, and the resulting public outcry pushed many state legislatures into a reaction against perceived laxity in the juvenile justice system once again. On balance,

by the end of the decade the “eye for an eye” philosophy had had a greater impact than “It Takes a Village” ideals on the state of juvenile justice around the nation. (*Robert W. Drown and Karen M. Hess. Juvenile Justice, 3rd ed. Belmont, CA : Wadsworth, c2000*)

### Juvenile Justice at a Crossroads

The juvenile justice system is at a crossroads as we progress into the 21st century. The social and political consensus that sustained the system as we know it for a century appears to be unraveling. We will witness continued modifications to the juvenile justice system in the years to come. Recent trends raise the question of whether the reformers will retain some of the compassion for young people that was such an impetus to the creation of a separate juvenile justice system in the first place.

To be effective, the system will require that sufficient resources be devoted to fulfill the mission assigned to it. Juvenile courts must have appropriate power and authority, sufficient trained personnel, and adequate facilities to meet their obligations and responsibilities.

Since 1984, there has been a 68 percent increase in juvenile court filings nationwide. Since 1987, juveniles detained and committed to state institutions have risen from approximately 90,000 to 400,000 in 2002. The system is plagued by overcrowding and understaffing in courtrooms, treatment programs and detention facilities. Failure to invest in children now—and at the earliest point of intervention possible—may entail high costs later in increased crime and social decay. It costs each state approximately \$6,000 per year to educate a child. Yet it costs a state over \$30,000 per year to detain a child in a



residential facility (including prison). It appears cost-effective to invest in early intervention to prevent children from reaching the point where the state must detain them away from their families.

Pressing social problems like juvenile crime cannot be solved by the courts alone, acting, as it were, in a vacuum. There must be an active collaboration among multiple elements in communities and governments: political, educational, and religious leaders; civic organizations; law enforcement agencies; and others. This requires that leaders stop blaming one another, stop acting chiefly in response to sensationalist crime reporting in the mass media, and start working together more purposefully to solve a critical complex of issues affecting young people and society at large.

---

*Judge Luis G. Perez is a judge in the Worcester Juvenile Court in Worcester, Massachusetts. He has been recognized for his innovative techniques in working with juvenile offenders, specifically gang members. Judge Perez is also a former professor of juvenile law, and has traveled through Latin America, lecturing on that topic.*

---

Issues of Democracy, IIP Electronic Journals, Vol. 8, No. 1, May 2003

## Specialized Courts and Domestic Violence

By Kristin Littel

IN THE 1970S, a movement began in the United States to raise public consciousness about domestic violence and its damaging impact, not only on victims, but also on families, and society at large. A concerted effort was made to encourage broad-based reform to alter the way communities and institutions thought about and responded to this crime.

Considerable attention was given to improving criminal justice system response to domestic violence. Activists in the movement labored to dispel the perception that domestic violence was a private family matter. They demanded the creation of laws that acknowledged the seriousness of this crime, and practices to protect victims and to hold the abusers accountable. As Susan Keilitz noted in *Specialization of Domestic Violence Case Management in the Courts: A National Survey*, law enforcement was the first part of the justice system to change its approach to domestic violence cases, followed by prosecution, probation, and finally, the courts. A few localities—Philadelphia,

Pennsylvania; Cook County, Illinois; and Quincy, Massachusetts—pioneered domestic violence court reform in the 1980s. States and other localities continued these reforms in earnest throughout the 1990s. Keilitz estimated that by 2000, over 300 judicial systems nationwide had specialized structures, processes, and practices to handle domestic violence cases. These structures, processes, and practices are commonly referred to as “domestic violence courts.”

Around the time reforms were occurring in criminal justice response to domestic violence, a parallel initiative to improve court response to families and children was taking place. One concern was that it was not uncommon for a single family to be involved in several cases in multiple courts in one judicial system at the same time. Courts began to recognize that it was inefficient to handle each case separately. And, as Carol Flango, Victor Flango, and H. Ted Rubin indicated in *How are Courts Coordinating Family Cases?*, such a disjointed response



Kristin Littel

could result in conflicting court orders. Courts also noticed juvenile and family law caseloads were increasing and becoming more complicated, with an underlying host of other difficulties. Yet, many judicial systems offered little in the way of services for families, and they were generally not coordinated across courts. The family court—one court or division, typically created as a result of consolidating juvenile and family law caseloads, that has jurisdiction over a wide range of family related matters—emerged as one remedy for these problems. In many states and localities, these courts helped to address family legal issues in a more coordinated, holistic, and efficient way.

In conjunction with domestic violence courts, family courts provide the judiciary with tools to improve response to domestic violence. This article explores the need for specialized court response to this crime, models of domestic violence courts, emergence and structure of family courts and the extent to which they address domestic violence, and the importance of coordinated judicial response to domestic

violence that promotes victim safety and offender accountability.

### Improved Judicial Response

Domestic violence courts and many family courts are positioned to improve judicial response to domestic violence. To be effective, however, these courts must be built on an understanding of the nature of this crime and the special concerns of its victims. For example, they should recognize the following:

- Domestic violence is unlike other crimes in many ways. The violence is between intimates rather than strangers and typically progressive. Victims often fear, with justification, that justice system involvement will provoke increased threats and abuse by the batterer. This may make victims reluctant to seek court assistance. Victims may forgo court involvement in fear of being charged with failure to protect their children from abuse and the possibility of losing custody. To counter these roadblocks to safety and justice, victims and children may need enhanced protection during and after court involvement, including the close monitoring of their abusers. Mechanisms must be put in place to keep nonabusive parents and children together.

- Domestic violence is also different from many problems facing families, as Billie Lee Dunford-Jackson, Loretta Frederick, Barbara Hart and Meredith Hofford noted in *Unified Family Courts: How Will They Service Victims of Domestic Violence?* For example, whereas courts typically seek to resolve family disputes in a manner agreeable to all parties, there can be no “win/win” outcomes in domestic violence cases. Although alternate dispute resolution methods such as mediation may be a useful tool

to help families work out some of their problems, if domestic violence is involved, these methods may allow batterers to further manipulate victims and use children as pawns. And while preserving the family unit may be encouraged when dealing with many family disputes, if domestic violence is a factor, victims and their children often need to be shielded from abusers and assisted in gaining independence.

○ Treatment for perpetrators of domestic violence (often called a batterers' intervention program) is not, in and of itself, an appropriate intervention. Such a program may help abusers learn how to modify their behavior, but it does not guarantee that they will not reoffend. To intervene effectively in domestic violence, treatment coupled with sanctions, constraints, and conditions matching the seriousness of the crime are needed to deter further violence and restore victim independence.

### Specialized Domestic Violence Courts

There are many forms of domestic violence courts, some of which were created under the rubric of, or operate in concert with, family courts. Yet, despite this diversity, a number of distinct models of domestic violence court specialization have emerged. In *Creating a Domestic Violence Court: Guidelines and Best Practices*, Emily Sack described the following models:

**Civil Protection Order Docket.** Many victims of domestic violence seek civil orders of protection from the courts. Such an order directs the abuser to refrain from assaulting or even contacting the victim or engaging in specific acts (for example, going to victims' place of work or their children's school). Protection

order petitions and violation hearings usually represent the bulk of domestic violence caseloads, which make civil protection order dockets (a docket is a calendar of cases pending before a specific judge or court) a logical choice for specialization in many localities. Protection order dockets vary in the amount of time they devote to hearing cases, the number of judges that serve the docket, and whether enforcement of protection orders and violations is addressed. While this model is limited in that a court handling only civil protection orders cannot address all the related legal needs of the involved parties, dockets can facilitate a more accessible and streamlined protection order process. Civil protection order dockets promote victim safety, encourage full use of justice system remedies, and link litigants to community services.

**Criminal Model.** Criminal domestic violence courts deal with criminal cases. One or more judges may handle these cases. The majority of these courts have jurisdiction over only misdemeanors. A few localities have created courts that handle only felony domestic violence cases. In other localities, a specialized court handles both misdemeanor and felony domestic violence. A criminal model emphasizes the importance of appropriate sanctions and monitoring of batterers. One limitation of this model is that it does not address related civil matters; therefore, coordination across courts is vital to ensure consistent orders and proper provision of services.

**Domestic Violence Courts with Related Caseloads.** In comparison to protection order dockets or criminal courts, this court model is designed to address problems of families involved in domestic violence cases more

comprehensively. Sack identified three variations of this model:

*Integrated domestic violence court.* Handles criminal domestic violence and related family matters, such as protection orders, child custody, support or divorce. It often provides an array of services to family members.

*Unified family court.* Typically allows one judge to handle all legal issues related to one family. This court can deal with civil and/or criminal domestic violence, although it more frequently focuses solely on civil matters.

*Coordinated court.* Criminal domestic violence and related civil issues are heard in the same court division, but on separate dockets.

## Family Courts and Domestic Violence

**Evolution.** New Jersey enacted legislation in 1912 giving county juvenile courts jurisdiction over family legal disputes, according to Hunter Hurst, in *Family Court in the United States*. Hurst noted that this legislation was the first documented evidence of a family court. But it was not until the 1960s that family courts began to take hold and Hawaii, New York, and Rhode Island established the first state systems of family courts. Numerous other states have since followed their example. Beyond the creation of formal statewide family courts, many states are encouraging their local justice systems to implement family courts. Hurst indicated that both the American Bar Association and National Council of Juvenile and Family Court Judges, among other national organizations, support efforts to establish these courts.

**Structure.** States and localities tailor family courts to fit their needs, the desired level of reform, and available resources. As was previously discussed, unified family courts dedicate one judge to handle all or most cases involving the same family. In other family courts, while information sharing, court orders, and services are coordinated, the one judge per family approach may not be observed. Some judges have long-term appointments to family courts as well as extensive experience and training in family case law, while others rotate more frequently into other courts and are less well versed on these issues.

Family courts differ in types of cases they handle. The American Bar Association recommended in *Unified Family Courts: A Progress Report* that family court jurisdiction include cases of juvenile delinquency; child abuse and neglect; termination of parental rights; guardianships for juveniles; intra-family criminal offenses, including all forms of domestic violence; divorce, separation, annulment, alimony, custody, and support of juveniles; paternity and child support enforcement; and those involving the need for emergency medical treatment. Despite this recommendation, many family courts are restricted to civil matters.

These courts also vary both in the extent that they partner with government and community-based service providers and offer direct services to families, and in how they use technology and personnel to facilitate information sharing and informed decision-making.

**Domestic Violence as a Family Court Matter.** At minimum, most family courts address divorce, custody and child support, and other civil issues that face families dealing with abuse. They may handle civil protection order petitions and related enforcement and violation

hearings. Some family courts may hear intra-family criminal cases—most that do have jurisdiction only over misdemeanors. Family courts that process a large number of domestic violence cases or handle both civil and criminal aspects of these cases may choose to create a specialized division within their courts to address these issues.

### Pros and Cons of Handling Domestic Violence in Family Court

Dealing with domestic violence and family matters simultaneously has its benefits. There is the opportunity for a coordinated and comprehensive response. If domestic violence is adjudicated in family court, court personnel often have expertise in addressing family matters associated with this crime. Family members are typically offered an array of related services to resolve problems. All legal issues facing a family may be adjudicated in one courtroom. Court-ordered conditions tend to be compatible rather than conflicting, particularly in courts that handle both civil and criminal cases, because judicial decisions are informed by more complete family court histories.

However, there are potential disadvantages. Family court personnel, attorneys, and service providers may lack understanding of the distinct nature of domestic violence and inadvertently make decisions that put victims and their children at risk for further harm. Domestic violence may not receive adequate attention because it is one of many issues. And despite the focus of family courts on more holistic interventions, many do not handle all aspects of domestic violence. However, as pointed out in *Creating a Domestic Violence Court: Guidelines*

and *Best Practices*, courts that do encompass both civil and criminal domestic violence matters may face their own set of challenges. For instance, they may have a tendency to focus on civil issues to the detriment of criminal issues or vice versa, may have difficulties in keeping case information separate, and/or may blur evidentiary standards applied to a case. A related problem is that courts may lack resources to foster appropriate information sharing, taking into account safety and confidentiality issues.

### Coordinated Judicial Response

There is some obvious overlap in the way that family courts and domestic violence courts structure their response to domestic violence, as well as opportunity for the two types of courts to address collaboratively the myriad problems related to this crime. Clearly, how courts are structured to deal with domestic violence is an important factor in promoting a coordinated judicial response and service delivery. Regardless of the court approach used, however, it is most critical that judicial systems facilitate safety for domestic violence victims and their children and accountability for batterers. Achieving these two overarching goals is a complicated but absolutely essential task. Among the challenges at hand, as noted in *Creating a Domestic Violence Court: Guidelines and Best Practices*:

- Properly educating all professionals involved in domestic violence cases;
- Informing victims about their cases and options so they can make well-informed decisions;
- Designing court mechanisms that reduce safety risks facing victims and their children;

- Providing access to services that may help free victims and their children from abuse;
- Promoting appropriate sharing of information among justice system offices and service providers as needed for each case;
- Monitoring batterers and responding to noncompliance in a timely and consistent way;
- Explaining to judges that they can be involved in community domestic violence prevention efforts without negating their ability to be impartial in court; and
- Facilitating ongoing data collection and evaluation to improve court response to domestic violence.

Commitment to victim safety and batterer accountability can go a long way towards overcoming potential problems associated with any specialized court handling domestic violence. This commitment increases court capacity to truly help families experiencing abuse.

---

*Kristin Littel is a consultant on “violence against women” issues for the Office on Violence Against Women at the U.S. Department of Justice.*

---

Issues of Democracy, IIP Electronic Journals, Vol. 8, No. 1, May 2003

# Technological Advances in the Courtroom

By The Honorable Edward C. Prado and Leslie Sara Hyman, Esq.

THROUGH THE USE of technology, Americans have a better understanding of their court system and how decisions are made. By making what is going on in the courts more accessible to the public, technological advances help to build trust in the U.S. judicial system.

U.S. federal courts have long used technology internally to manage their caseloads. In recent years, technological advances have been implemented to provide the litigants and the general public with greater access to more efficient court proceedings. For example, courts may post their most important decisions on the Internet and some courts offer access to all opinions and filed papers. Several courts are testing electronic filing, which saves both time and paper. The public can pay a nominal fee to access case and docket information from appellate, district, and bankruptcy courts over the Internet. Many courts notify litigants of new orders and opinions by e-mail or facsimile.

In technologically advanced courtrooms, audio-visual display and presentation systems, video conferencing of remote witnesses, and real-time transcription of the record all reduce trial time and associated costs, and improve fact-finding by both judges and juries.

This article examines the use of sophisticated technology in the U.S. federal courtroom of Judge Edward C. Prado in San Antonio, Texas. His courtroom was remodeled specifically to expand the available technology and is considered a model courtroom in this regard.

## “Real-Time” Transcription

The expanded use of technology in Judge Prado’s courtroom began in 1996, when he hired a court reporter who used “real-time” equipment. With “real time,” the court reporter takes down the proceedings using a traditional stenography machine, and a computer immediately creates a rough transcript that can be viewed on a computer monitor. In order to per-





*Judge Edward C. Prado*

mit the court and the attorneys to make use of the real-time transcript, computers are placed at the judge's bench, in the judge's chambers, at the court staff's desks, and at the counsel tables.

Real-time transcription allows the litigants to search the transcript, review transcripts from prior days' testimony, quickly read back questions or testimony to witnesses, annotate their personal copies of the transcript with notes or highlighting, and purchase each day's rough transcript to assist in preparation for the following day's testimony. Real-time transcription also simplifies complying with a deliberating jury's request to review particular testimony, and can permit persons with hearing impairments to participate in courtroom proceedings.

### Presenting Evidence Technologically

More recently, using funding from the Administrative Office of the United States Courts, and with Judge Prado's input, his courtroom was remodeled and wired with current

audio-visual technology. This technology, while advanced, is quite easy to use. Much of the equipment is designed to facilitate the presentation of evidence.

The courtroom is equipped with numerous video monitors: The jurors share eight flat-screen LCD monitors located in the jury box. The custom-built podium, judge's bench, courtroom deputy's and law clerk's desks, witness stand and counsel tables are also equipped with flat-screen monitors. Large television-type monitors hang from the ceiling to allow any members of the public and observers outside the bar also to view the evidence. Evidence can also be presented using a high-resolution projector and large motorized screen that is lowered from the ceiling.

The courtroom has a high-resolution camera/presenter. Participants can place any document or object on the presenter and transmit the image to the monitors. The camera has a zoom feature, which can be used to focus in on a particular part of a document or simply to limit the amount of the document or item shown. This ensures that jurors are actually able to read the documents they see. In addition to traditional business documents, in the past, attorneys have used this camera to present fingerprints, x-rays, maps, and even bullets. The presenter is also located near enough to the podium microphone to be used by the questioning attorney, but there is enough room for another attorney or paralegal to operate the presenter.

### Video and Audio Conferencing

The monitors are also connected to a VCR, which counsel can use to play portions of videos or even to show a clear single frame, and to the



*Leslie Sara Hyman*

courtroom's video conferencing equipment, which can be used to take testimony from out-of-town witnesses. For example, a doctor who had been on duty all night in an out-of-town emergency room was able to testify via video conferencing. On another occasion, a reporter from Tampa, Florida, was saved the trouble of traveling the 1,613 kilometers to San Antonio. Video conferencing saves both money and time as it permits greater flexibility in scheduling.

There is also an audio conferencing system, which is connected to the courtroom sound system and is capable of adding telephone conferences to the proceedings. Counsel who wish to present audio evidence can do so using a cassette player at the podium that is wired to the courtroom's high-quality sound system, which includes 29 ceiling speakers and surround sound.

In addition to facilitating the presentation of evidence, the courtroom's audio and video conferencing equipment is available for use by out-of-town counsel to participate in hearings without having to travel to San Antonio. The equipment is set up for use both in the court-

room and in the judge's chambers. As with using video conferencing for taking testimony from witnesses, using the equipment for hearings can result in significant cost savings and can facilitate scheduling.

### Presenting Evidence Quickly

The courtroom is equipped with several computer inputs connected to the monitors. Counsel can use the input at the podium or counsel table and their own laptops to present scanned documents, Power Point presentations or other visual presentations. Since the litigants can have every piece of documentary evidence imaged, there is no longer any need to carry dozens of boxes of documents to court. Instead, a CD-ROM can accomplish the same result. CD-ROM and bar coding allow lawyers to quickly locate exhibits and present them to the judge or jury.

A lawyer who expects that a live witness will contradict his deposition testimony can come prepared with several video deposition clips loaded on his computer. If the witness does contradict his earlier testimony, the lawyer can play the video clip and permit the jury to immediately see the inconsistent testimony.

The podium and witness monitors are equipped with annotator pens. Counsel and the witness can use the pens to annotate any still image on the monitors—such as a document or still-video frame—by circling, drawing arrows, and underlining in several colors. Litigants can use this feature to have a witness mark locations of key events on aerial photos or maps, for example. Once an annotation is complete, counsel can request that the item as annotated be printed on the courtroom's high-resolution

color printer and then mark the annotated item as evidence.

The parties can use the equipment in various combinations. For example, the jurors could be shown a videotaped deposition on the large screen while viewing the documents the witness is discussing on the small monitors.

### Controlling Presentation of Evidence

The questioning attorney can control the various presenting devices using a touchpad at the podium or a wireless touchpad that can be used while elsewhere in the courtroom. As with the presenter and the computer input, the wireless touchpad can also be used by someone other than the questioning attorney (such as another attorney or a paralegal) sitting at the counsel table. The touchpads can direct the video feed only to certain monitors.

For example, counsel can use the monitor at the podium to preview evidence with the judge and opposing counsel before presenting it to the witness or jurors. Documents or other items can be shown to only the witness to refresh the witness's recollection or to establish the foundation for the admission of the evidence before showing it to the jury.

The judge and his courtroom deputy also have touchpads and can override the podium touchpad. And they have controls for the sound system volume and controls for the lighting in the courtroom, which can be dimmed to optimize images on the projection screen.

### Other Technology

Judge Prado's courtroom has several additional modern features that can be used during

a hearing or trial. For example, the courtroom is equipped with voice-activated video cameras and counsel can request that all or part of the proceedings be videotaped. The wiring for the technology is located primarily under the courtroom floor and is easily accessible should different arrangements be necessary.

In addition to the real-time transcript, the computers at the counsel tables have been equipped with the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, the Federal Sentencing Guidelines, the Fifth Circuit Pattern Jury Instructions and the Local Court Rules. Although for security reasons those computers do not have Internet access, the counsel tables do have access to dial-out telephone lines. Counsel who choose to bring a laptop computer loaded with the proper software can use the telephone lines to access the Internet, their law firms, and e-mail.

The courtroom is equipped with wireless microphones to permit counsel to be heard while moving around the courtroom. Translators may also use these microphones. In addition to providing a witness or party with a two-channel wireless headset for translation, the judge may allow observers, such as a defendant's family members, to listen to the translated testimony. The wireless headsets are also useful for those with hearing impairments.

A white-noise generator is installed over the jury box for use when opposing counsel are speaking with the judge at his bench. This prevents the jury from hearing what is said without requiring anyone to whisper. The jurors can notify the judge of the need for a break by pushing buttons located in the jury box, which send a message to the judge's computer. And the judge and the court reporter can send a "slow down" message to the monitors at the podium

and the witness box without disrupting the proceedings.

### Making the Courtroom Staff's Job Easier

While most of the equipment added to the courtroom is used by the litigants, the judge and his staff also have the ability to use the technology to make their jobs easier. For example, audio and visual signals of all events in the courtroom and all evidence presented using the system are fed to monitors in chambers. Judge Prado also has the option of sending the signals to other locations. In one high-profile murder-for-hire case, for example, the signal was sent to another courtroom in the courthouse so that an overflow audience could view the proceedings.

The courthouse computer system, which is available to Judge Prado and his courtroom deputy and law clerk on their courtroom computers, contains a calendar of all of the local judges' dockets for the following two months. This feature makes scheduling much easier for the judges.

### Benefits of Technology

Use of technology in the courtroom has resulted in numerous benefits to the litigants and to the public. The most important benefit may be to the court system itself as it is widely believed that judges and jurors retain far more information when it is presented visually as well as orally. Use of technology permits greater access to proceedings by any observers since they are able to use the courtroom's monitors to see anything that the jury is seeing. And presenting information in multiple formats simultaneously saves time over presenting the infor-

mation over and over again. The ease of switching between various types of input means that trials are not delayed while the litigants rearrange easels and monitors or set up VCRs. Similarly, rather than having to look through boxes of evidence to find a hard copy of a document, then show the document to opposing counsel, the witness, the judge, and each individual juror, a lawyer can use an imaged copy of the document and display the document to the relevant persons in a matter of seconds.

By allowing proceedings to move quickly, the new technology permits courts to try more cases and reduces the delay between the filing of a case and its resolution. These benefits should only improve as U.S. courts continue to add technology, and as judges and litigants become more familiar with the features of the existing technology.

---

*Judge Edward C. Prado has been a U.S. District Judge for the Western District of Texas for 19 years and was recently confirmed to an appointment on the U.S. Court of Appeals for the Fifth Circuit. Judge Prado is a former U.S. attorney, assistant federal public defender, state district judge, and state assistant district attorney.*

*Leslie Sara Hyman is an attorney at Cox & Smith Incorporated in San Antonio, Texas. Her practice includes anti-trust, securities, and general commercial litigation.*

---

Issues of Democracy, IIP Electronic Journals, Vol. 8, No. 1, May 2003

# The Media's Role in Changing the Face of U.S. Courts

By Gary A. Hengstler

AS THE DISTINGUISHED U.S. appellate court judge Learned Hand observed, "The hand that rules the press, the radio, the screen, and the far-spread magazine, rules the country." Moreover, Judge Hand also concluded that media's power was an unchangeable fact of life: "Whether we like it or not, we must learn to accept it."

What is remarkable is that Justice Hand reached this conclusion in 1942, before the advent of television. Today the world is a changed place, due in part to advances in mass communications. We see humanitarian crises as they unfold. We get to judge for ourselves the truthfulness of leaders questioned by journalists before the cameras.

The net result is that governments have been forced to be more open and accountable. Governments now must take into account public opinion in ways they never had to before. Gone are the days when powerful rulers could operate largely in secrecy, indifferent to their citizens' views.

As people everywhere have grown accustomed to being better informed about developments in their nation and around the world, a byproduct has been to endow the messengers with recognition and consequently great influence. For better or for worse, the media have considerable power to influence people favorably or unfavorably toward those in government.

It comes as no surprise that the courts, the judiciary, and the legal profession have not escaped heightened media scrutiny. Today, the media capitalize on an enduring American appetite for the law and regularly turn to it both to provide information and to captivate. More and more time in nightly newscasts and space in daily newspapers are devoted to judicial proceedings, especially criminal cases. Stories with legal themes are also a staple of book publishers, moviemakers, and television drama producers in the U.S. Indeed, much fictionalized material is simply repackaged news stories.



Gary A. Hengstler

American interest in the application of law to life in the United States is rooted in the nation's origins. The Founding Fathers had one thing in common—a deep distrust of the potential for the abuse of power by rulers. Therefore, the Constitution was written to ensure the United States would be governed by the rule of law and not by a system based on anyone's societal status.

These concepts of equal application of the law, fundamental fairness, and due process were embedded in the American consciousness from the beginning of the Republic, which is why the themes of right and wrong and fair play appear regularly in U.S. media entertainment and news coverage. These are values that Americans have come to care about passionately—ones that are regularly monitored as they observe their courts in action.

At the same time, another critical factor in the increasing and intense public focus on U.S. courts and the cases filed in them is simply human nature. People are interested in people—the hardships they face, the way they

wrestle with challenges, and their exultations in triumph over adversity.

Nowhere is there a greater source for compelling stories than in those cases filed every day in U.S. courts. Now that the courts have come under the media's microscope, they likely will remain there. The heightened demand for information from the courts has required significant changes in the way the courts have traditionally operated. As with most changes, there have been both positive and negative consequences.

A positive byproduct of the changes spurred by the media and addressed by the courts is that more Americans are aware of their constitutional rights than ever before. They are more familiar with how police investigate crime and how the courts try the case to determine guilt or innocence. In short, citizens are more aware of the law and its impact on them than their forefathers were.

### Preserving the Courts' Integrity

On the other hand, the new demands of the media can create internal conflict for judges as they attempt to reconcile two obligations seemingly at odds with each other. For example, ethical rules governing U.S. judges require them to refrain from public comment about a case before the court. The prohibition against such commentary is designed to make sure the judge does not say anything that might cause the public to question his or her impartiality. Most media questions a judge will face, however, will deal with a specific pending case because it is newsworthy at the moment. Consequently, judges have to become more media savvy. They have to find ways to assist reporters in getting



the story while at the same time staying within the boundaries of ethical rules about public comment.

Since the courts have no enforcement powers in and of themselves, U.S. judges know that their authority exists only to the degree that the people have confidence in the courts' integrity and fairness in administering justice. Because most people do not attend court regularly, perceptions of the quality of justice come largely from media accounts of the courts' work. That means more courts now try to cooperate more fully with the media to help educate the public about the judicial system.

The media share the courts' recognition that improved cooperation is necessary to strengthen the public's confidence in both institutions. A 2002 survey commissioned by the American Bar Association found that lawyers, judges, and the media need to do a better job in earning the public's trust. According to the survey, only 19 percent of U.S. citizens say they are "extremely or very confident in" lawyers and the legal profession. The judiciary rated higher at 33 percent, and the media came in lower at 16 percent. By comparison, the medical profession led the list of possibilities at 50 percent.

### Media's Increased Focus

One of the positive ways the media have affected the judicial system is to help spur a greater sense of openness by the courts so the public can see for itself how the court serves the people. At the same time, the media have begun to focus on the activities of individual judges as well, sometimes to the judge's detriment.

For example, a Denver, Colorado, television station followed the state's judges to their annual three-day judicial education workshop. The required workshop was designed to keep judges current with changes in the law and was funded with money from the state. The TV station used hidden cameras to show that nine out of the 300 judges enrolled in the workshop engaged in recreational activities instead of attending some of the classes. The judges caught on camera were certainly embarrassed when it looked like they were vacationing at taxpayers' expense, exemplifying how expanded media coverage can have a negative effect on the image of the courts.

However, the media would argue that exposing public officials who are not performing their required duties is a positive public service. Whatever one's point of view, the fact remains that the media's increased focus on the courts also includes focusing more intensely on the individual judges themselves.

The area where increased media coverage has caused U.S. courts the greatest concern is the pretrial news coverage in a criminal case. The difficulty is that the U.S. Constitution sometimes pits the courts and media against each other in a clash of amendments. The First Amendment guarantees the media freedom to report just about anything it wants to, including as many details as the media can learn about the arrest of a criminal suspect. The Sixth Amendment guarantees a defendant a fair and public trial, with the burden of ensuring fairness implicitly placed on the trial judge.

Because the U.S. uses a jury system, ordinary citizens of the community determine the guilt or innocence of a defendant. The problem arises when potential jurors learn from the media facts or purported facts about the case



that are not permitted to be introduced at trial. An example might be when the police announce to the media that the defendant has confessed to the crime. However, at a later hearing the judge might rule that the confession was unlawfully obtained by police and will not permit the prosecutor to introduce the confession as evidence. In effect, the judge has to hope that the jurors selected to hear the case will have the ability to disregard knowledge of the confession they read about in the newspaper or heard on television. If the jury cannot disregard that evidence, the trial no longer is considered fair.

### Guaranteeing a Fair Trial

The result is that when media coverage of a trial is especially heavy, the courts often have to consider alternative and more expensive means of guaranteeing a fair trial. These alternatives include:

- Transferring the entire trial to another city where the news coverage has not been as strong;
- Directing the jury not to read newspapers or watch TV newscasts;
- Issuing “gag orders” that direct the prosecutor, defense attorney, and other court personnel not to talk to the media about the case; or,
- In rare cases, keeping the jury sequestered in a hotel where they are monitored and prevented from accessing the media.

“High profile” cases, such as the O.J. Simpson murder trial in 1995, draw extreme media coverage and have caused significant problems for the courts. In addition to the routine coverage of the trial, the courts now have to contend with evening television talk shows where attorneys talk about what happened in

the trial that day and speculate on what will transpire in future days. The result is that the serious trial can begin to seem like a spectacle, much as sports contests fuel talk shows that second-guess and analyze the game. Judges now have reason to worry about the public perception of the courts when individual cases are treated similarly to sporting events.

Judges are also concerned about the potential for erosion in the public’s confidence, because there have been a few cases in U.S. history where media coverage appears to have affected the fundamental fairness of the trial. For instance, the 1935 trial of Richard Bruno Hauptmann, accused of kidnapping and murdering the son of aviator Charles Lindbergh, drew unprecedented media coverage. Hauptmann was convicted, but subsequent research has raised questions as to whether the media frenzy created a rush to judgment that caused an innocent man to be convicted.

The media coverage in the 1954 case of Dr. Sam Sheppard was so pervasive that the U.S. Supreme Court used that case to place the responsibility on the trial court judge to prevent prejudicial publicity. Dr. Sheppard was charged with the murder of his wife and his story was the basis for the American television series (and later film) “The Fugitive.”

It is fear of the possibility of media coverage adversely affecting the quality of justice that leads the U.S. Supreme Court to prohibit television coverage of its arguments. The Court has permitted audio taping, but, until recently, has only released the tapes for historical or archival purposes long after the cases were decided.

The recent case involving the 2000 presidential election between then-Governor George

W. Bush and former Vice President Al Gore was the first instance of the Court releasing the audio tape in a timely fashion for the news media to cover the event. Whether that will lead to further relaxation of electronic media coverage of the Court remains to be seen.

### Public Access and “Live” Coverage

A related problem is the question of public access to the trial itself. Increasingly, television stations are asking courts to permit “live” coverage of trials. They argue that the public has a right to see the trial and that limited seating in the actual courtroom should not be a bar to the public because TV cameras can bring the trial to the public in their homes. Opponents, however, argue that the presence of television cameras will change the behavior of the witnesses and court personnel in ways that will affect the fairness of the trial. At present, no TV cameras are permitted in U.S. federal courts. Each state is permitted to decide for itself whether to accept televised trial coverage, and the issue of televised proceedings is one on which the courts have not yet reached consensus.

The first television coverage of a court case is believed to have taken place in Oklahoma City, Oklahoma, in 1953 in the criminal trial of Billy Eugene Manley. The first “live” broadcast of a trial occurred in 1955 when Harry L. Washburn was tried for murder in Waco, Texas.

In 1984, CNN broadcast the first nationally televised “live” coverage of a trial in New Bedford, Massachusetts, where multiple defendants were accused of raping a woman on a bar-room pool table at a local bar. The strong interest in that case led to the creation of Court TV, which offers daily coverage of court activities,

focusing on America's most newsworthy and controversial legal proceedings in courtrooms where live coverage is permitted.

Currently, 25 states permit televised coverage when the presiding judge agrees to let the cameras into the courtrooms. Eight states restrict televised coverage when witnesses object to having television cameras in the courtroom. And 17 states essentially prohibit TV coverage at the trial level through a variety of court rules. There are, however, indications that more courts are opening their doors to the media.

### Modern Demands and Solutions

What judges have discovered in the wake of expanded news media coverage is that the old ways and traditional personnel will not be sufficient to cope with modern demands. That is why more courts are hiring specialists, called court public information officers, to work with the media. These media liaisons serve three purposes:

- They are a resource for reporters to check their facts and help ensure accurate reporting of the court's work;
- They provide a court spokesperson who can answer media questions, thus protecting the judge from inadvertently making a comment to the press that violates ethical rules; and
- They provide the court with a specialist who knows how to promote the good news of the courts' work to the media in a newsworthy manner.

Additionally, more U.S. courts are providing information directly to the public through their own web sites on the Internet. The advan-

---

tage the courts see in this change is that it allows greater control over what information is provided to the public. It also provides the public—including the media—with electronic access, which reduces the amount of time court personnel spend searching paper files for reporters. Finally, it provides the court with an alternative means of correcting the record when the court feels the media have inaccurately reported on a case.

Just as other segments of society today have had to adjust to advancing technology and expanded communications, so too have U.S. courts. But one thing remains certain. While the courts and media have made adjustments in how they operate in this changing environment, both have remained true to their vital roles in the American democratic system. The late, great CBS newsman Edward R. Murrow captured the importance of courts and media to the United States when he said, “What truly distinguishes a free society from all others is an independent judiciary and a free press.”

However the day-to-day interaction between the courts and media may be altered in the future, both will make the changes with an eye always on their mission of safeguarding the freedoms of the citizens they serve.

---

*Gary A. Hengstler is the director of the Donald W. Reynolds National Center for Courts and Media at the National Judicial College in Reno, Nevada.*

---

# B i b l i o g r a p h y

---

## Further Information on Specialized Courts

### **American Bar Association**

*Unified Family Courts: A Progress Report.* Chicago: American Bar Association, 1998.

### **Davis, Wendy N.**

"Special Problems for Specialty Courts," *ABA Journal*, vol. 89, February 2003, pp. 32-37.

### **Drowns, Robert W. and Karen M. Hess**

*Juvenile Justice.* 3rd ed., Belmont, CA: Wadsworth, 2000.

### **Dunford-Jackson, Billie Lee, Loretta Frederick, Barbara Hart and Meredith Hofford.**

"Unified Family Courts: How Will They Service Victims of Domestic Violence," *Family Law Quarterly*, vol. 32, no. 1, Spring 1998, pp. 131-146.

### **Feigenson, Neil and Meghan A. Dunn**

"New Visual Technologies in Court: Directions for Research," *Law and Human Behavior*, vol 27, issue 1, February 2003, pp. 109-126.

### **Fielding, Ellen W., ed.**

"Technology Forecast for the Federal Judiciary," *Federal Probation*, vol. 65, issue 2, September 2001, pp. 3-7.

### **Flango, Carol, Victor Flango and H. Ted Rubin**

*How are Courts Coordinating Family Cases?* Williamsburg, VA: National Center for State Courts, 1999. <http://www.ncsconline.org/courtinfoportal/search/search1.html>

### **Hanson, Roger**

*Appellate Court Performance Standards,* Williamsburg, VA: National Center for State Courts, 1998. <http://www.factory7.com/~rah/acps.pdf>  
<http://www.factory7.com/~rah/acps.doc> (Word 2K)

### **Harrison, Paige, James R. Maupin, and G. Larry Mays**

"Teen Court: An Examination of Processes and Outcomes," *Crime & Delinquency*, vol. 47, no. 2, April 2001, pp. 243-264.

### **Hennessey, James J.**

"Introduction: Drug Courts in Operation," *Journal of Offender Rehabilitation*, vol. 33, no. 4, 2001, pp. 1-10.

### **Herrera, Frank Jr., and Sonia M Rodriguez**

"Courtroom Technology: Tools for Persuasion," *Trial*, vol 35, issue 5, May 1999, pp. 66-70.

**Horrigan, David**

"The Trials of Trial Technology," *National Law Journal*, vol. 25, issue 4, September 16, 2002, p. C3.

**Hurst, Hunter**

"Family Court in the United States," *Family Court Bulletin*, vol. 1, issue 1, 1999, pp. 1-4.  
[http://www.sconet.state.oh.us/judicial\\_and\\_court\\_services/family\\_court/vol1num1.pdf](http://www.sconet.state.oh.us/judicial_and_court_services/family_court/vol1num1.pdf)

**Hurst, Hunter, Jr. and Linda Szymanski.**

*Family Courts in the United States 1996: Statute, Court Rule, and Practice Analysis*. Pittsburgh, PA: National Center for Juvenile Justice, 1996.

**Keilitz, Susan**

*Specialization of Domestic Violence Case Management in the Courts: A National Survey*. Williamsburg, VA: National Center for State Courts, 2000.

**Lederer, Fredric I.**

"Courtroom Practice in the 21st Century," *Trial*, vol. 35, issue 7, July 1999, pp. 38-41.

**Lehman, Paul S.**

"A Juvenile's Right to Counsel In a Delinquency Hearing," *Juvenile Court Judges Journal*, vol. 17, Summer 1966, pp. 53-54.

**Logan, T. K., Carl Leukefeld, and Lisa Minton**

"The 'Drug Court Strengthening Families' Program," *Journal of Offender Rehabilitation*, vol. 33, no. 4, 2001, pp. 11-43.

**Logan, T. K. and Carl Leukefeld, and Katie Williams**

"A Drug Court Process Evaluation: Methodology and Findings," *International Journal of Offender Therapy and Comparative Criminology*, vol. 44, no. 3, June 2000, pp. 369-94.

**Meserve, Jason**

"Order in the Court," *Network World*, vol. 18, issue 7, February 12, 2001, pp. 49-50.

**Miethe, Terance D, Hong Lu, and Erin Reese**

"Reintegrative Shaming and Recidivism Risks in Drug Court: Explanations for Some Unexpected Findings," *Crime & Delinquency*, vol. 46, no. 4, Oct. 2000, pp. 522-41.

**National Center for State Courts**

*Trial Court Performance Standards*, developed by the Research division of the National Center for State Courts. Williamsburg, VA: The Center.  
<http://www.ncjrs.org/pdffiles1/161570.pdf>

**National Task Force on Court Automation and Integration**

*Justice and Technology in the 21st Century: Findings and Recommended Strategies From the Report of the National Task Force on Court Automation and Integration*. Rockville, MD: National Institute of Justice, 1998.

**Nolan, James L., ed.**

*Drug Courts in Theory and in Practice*. New York: Aldine de Gruyter, c2002.

**Peters, Roger H. and Mary R. Murrin**

"Effectiveness of Treatment-Based Drug Courts in Reducing Criminal Recidivism," *Criminal Justice and Behavior*, vol. 27, no. 1, Feb. 2000, pp. 72-96.

**Robbenolt, Jennifer K. and Christina A. Studebaker**

"News Media Reporting on Civil Litigation and Its Influence on Civil Justice Decisionmaking," *Law and Human Behavior*, vol. 27, issue 1, February 2003, pp. 5-27

**Ruiz, Jim and D.F.Treadwell**

"Perp Walk: Due Process v. Freedom of the Press," *Criminal Justice Ethics*, vol. 21, issue 2, Summer/Fall 2002, pp. 44-56

**Sack, Emily**

*Creating a Domestic Violence Court: Guidelines and Best Practices*. San Francisco: Family Violence Prevention Fund, 2002.

**Staton, Michele, Allison Mateyoke and  
Carl Leukefeld**

"Employment issues among drug court participants," *Journal of Offender Rehabilitation*, vol. 33, no. 4, 2001, pp. 73-85.

**Stienstra, Donna, Patricia Lombard, David Rauma,  
and George Cort**

*Digital Audio Recording Technology: A Report on a Pilot Project in Twelve Federal Courts*. Washington, DC: Washington Federal Judicial Center, 1999.

**U.S. Department of Justice**

*Defining Drug Courts: The Key Components*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Drug Court Program Office, January 1997.

**U.S. General Accounting Office**

*Drug Courts: Overview of Growth, Characteristics and Results*. Report to the Committee on the Judiciary, U.S. Senate, and the Committee on the Judiciary, House of Representatives. Washington, DC: U.S. General Accounting Office, July 1997. (GGD-97-106)

---

# I n t e r n e t   S i t e s

---

## Internet Sites on Specialized Courts

### **Problem-Solving Courts**

[http://www.courtinnovation.org/pdf/prob\\_solv\\_courts.pdf](http://www.courtinnovation.org/pdf/prob_solv_courts.pdf)

### **Reflections of Problem-Solving Court Justices**

[http://www.courtinnovation.org/pdf/reflections\\_psc\\_justices.pdf](http://www.courtinnovation.org/pdf/reflections_psc_justices.pdf)

### **An Honest Chance: Perspectives on Drug Courts**

<http://www.ncjrs.org/html/bja/honestchance/execsum.html>

### **2000 Adult Drug Court Survey Report: Program Operations, Services and Participant Perspectives**

<http://www.american.edu/justice/publications/execsum.pdf>

### **Development and Implementation of Drug Court Systems**

<http://www.ndci.org/develop.pdf>

### **OJP Drug Court Clearinghouse & Technical Assistance Project**

<http://www.american.edu/justice/drugcourts.html>

### **National Association of Drug Court Professionals (NADCP)**

<http://www.nadcp.org/>

### **Specialization of Domestic Violence Case Management in the Courts: A National Survey: 1/2001**

<http://www.ncjrs.org/pdffiles1/nij/grants/186192.pdf>

### **A Leadership Guide to Statewide Court and Community Collaboration**

[http://www.ncsconline.org/WC/Publications/Res\\_CtComm\\_CFCLeadershipGuidePub.pdf](http://www.ncsconline.org/WC/Publications/Res_CtComm_CFCLeadershipGuidePub.pdf)

### **Community Courts: An Evolving Model**

<http://www.ncjrs.org/pdffiles1/bja/183452.pdf>



**In New York City, A Community Court and a New Legal Culture**

<http://www.ncjrs.org/pdffiles/commcrt.pdf>

**Community Court Initiatives**

[www.communitycourts.org](http://www.communitycourts.org)

**American Bar Association: Juvenile Justice Center**

<http://www.abanet.org/crimjust/juvjus/>

**The Center on Juvenile and Criminal Justice**

<http://www.cjcj.org/>

**Citizens for Juvenile Justice**

<http://www.cfjj.org/index.html>

**Juvenile Justice: A Century of Change**

<http://ojjdp.ncjrs.org/pubs/general.html#178995>

**Juvenile Justice Law Materials**

<http://wwwsecure.law.cornell.edu/topics/junvenile.html>

**Juvenile Justice Links**

<http://www.criminology.fsu.edu/jjclearinghouse/jjlinks.html>

**National Council of Juvenile and Family Court Judges**

<http://www.ndjfcj.org>

**The National Center for Courts and Media**

<http://www.judges.org/nccm/>

**Courtroom Technology Manual**

<http://www.uscourts.gov/misc/courtman.pdf>

**Center for Court Innovation. (Publications)**

[http://www.courtinnovation.org/center\\_publications.html](http://www.courtinnovation.org/center_publications.html)

**Courtroom of the Future**

<http://www.txwd.uscourts.gov/cotf/cotf-c.html>

**Emerging Judicial Strategies for the Mentally Ill in the Criminal Caseload**

<http://www.ncjrs.org/html/bja/mentalhealth/contents.html>

Issues of Democracy, IIP Electronic Journals, Vol. 8, No. 1, May 2003

*i s s u e s o f*  
Democracy



THE CHANGING  
FACE OF U.S.  
COURTS

M A Y 2 0 0 3

VOLUME 8 NUMBER 1