



Council of Chief Judges of the State Courts of Appeal

# New Chief Judges Orientation



October 2022

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1979-2015

# The History of the Council of Chief Judges of the State Courts of Appeal

# History

# The History of the Council of Chief Judges of the State Courts of Appeal

*By Art Scotland and John Irwin*

1979-2015



# A Vision Realized - The Making of the Council of Chief Judges

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“Isolated islands” is an apt description of the state intermediate appellate courts that existed when David Enoch became chief judge of the Colorado Court of Appeals in 1979. Dave discovered this isolation upon taking the administrative reins of his court after serving as an associate judge for six years. Charged with “giving direction and leadership to a new and growing court,” Dave found “many unsolved problems,” including “case management of a docket which had grown beyond the capabilities of available personnel,” a “budget that was always underfunded,” and the newfangled “introduction of computers.”

## A Vision Realized

*“Isolated islands” is an apt description of the state intermediate appellate courts that existed when David Enoch became chief judge of the Colorado Court of Appeals in 1979.*

Finding no help within his state for those and other “unanswered concerns unique to an intermediate appellate court,” Dave “turned outward for some guidance,” only to discover that none existed. His calls to the American Bar Association Appellate Judges Conference, the National Center for State Courts, the Institute for Court Management, and the Judicial College in Reno revealed that each offered some training for appellate judges generally, but “none specifically addressed the management concerns of a chief judge of a state intermediate appellate court.” Faced with this void, Dave envisioned the creation of a national organization of chief judges as a sounding board.

## Filling the Void

Dave decided to contact other chief judges to determine whether they, too, “felt the need of some forum to share problems and hopefully answers.” He was surprised to learn that no organization had a list of the names and contact information of the chief judges in the 29 states with intermediate appellate courts. Using out-of-date information obtained from West Publishing Company, Dave telephoned Chief Judges Francis Murphy (New York), Keith Callow (Washington), and John Kelly, Jr. (Missouri), who enthusiastically embraced Dave’s idea to establish a “Council of Chief Judges” and agreed to call other chief judges in their geographic areas.

“With 100 percent support from those contacted by phone and mail,” Dave turned to planning a meeting of chief judges to organize a council. He noted that, “faced with no staff, budget, or facilities, it became apparent that we had to seek help from an existing organization that would provide some assistance, at least until the council could become self-supporting.” Washington Chief Judge Callow, who lectured at the Judicial College in Reno, Nevada, suggested talking with its dean, Ernst John Watts, about holding the organizational meeting there. The dean agreed and “graciously committed meeting rooms, dormitory space, and such staff as necessary to support this first meeting.”

Thus, on October 29, 1980, 35 chief judges from 22 states (Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Missouri, North Carolina, New York, Oklahoma, Pennsylvania, Tennessee, Texas, Washington, and Wisconsin) made the trek to Reno at their own expense to make Dave Enoch’s vision a reality.

Dave had explored the possibilities for affiliation with a national organization. In his view, “it appeared to be only natural that the Council of Chief Judges of state courts should come under the umbrella of the National Center for State Courts (NCSC), which served the chief justices of the state supreme courts, state judicial administrators, and other state-court-related groups.” But the NCSC Board of Directors rejected Dave’s request to include a Council of Chief Judges as an affiliate organization. Favorable responses were received from the American Bar Association and the Judicial College in Reno.

*“Faced with no staff, budget, or facilities, it became apparent that we had to seek help from an existing organization that would provide some assistance, at least until the council could become self-supporting.”*

– DAVID ENOCH  
Chief Judge Colorado Court of Appeals



The chief judges gathered in Reno voted to accept the invitation of the American Bar Association to become a member of the Appellate Judges Conference of the ABA's Judicial Administration Division. Missouri Chief Judge Kelly presented proposed articles of incorporation that, with minor modifications, were approved unanimously, establishing "a body for consultation concerning the improvement of the administration of justice, rules and methods of procedure, and the organization and operation of the Courts of Appeal."

Hence, the Council of Chief Judges of the State Courts of Appeal was born. Elected to serve as its officers were Colorado Chief Judge David Enoch, Chairman; New York Chief Judge Francis Murphy, Vice Chairman; Washington Chief Judge Keith Callow, Secretary; and Missouri Chief Judge John Kelly, Jr., Treasurer. Chosen to serve on the Executive Committee were Georgia Chief Judge J. Kelley Quillian; Massachusetts Chief Judge Allan Hale; Illinois Chief Judge Robert Downing; and Texas Chief Judge Paul Nye.

## The First "Seminar"

The day after the business meeting at which the council was created, the chief judges held their first educational program, then called a "seminar." Dave Enoch had identified the topics and assigned presenters to talk about how their courts operate and address problems. The topics were Staffing and Personnel; Budget Preparation; Dealing with Judicial Personalities; Calendaring - Dispositions; Duties of the Clerk's Office; The Court Administrator; Settlement Conferences; Accelerated Calendars—the Colorado and South Illinois Experiences; Relationships with the Highest Court; Working with the Trial Court; Lobbying Techniques; and Public Awareness of the Courts.

Three decades later, many of those topics, and more, continue to present issues and problems that must be addressed by chief judges. Thus, as recently expressed by one of our venerable chiefs, the late Bill Cornelius of the Texas Court of Appeals, membership in the Council of Chief Judges is as necessary and valuable today as it was in 1980.

At our 2013 conference in Houston, Bill reminisced about his participation in the council's organizational meeting and first seminar in 1980, and about his attendance at 31 of the 33 annual

*"We learn much from each other  
in our conversations and social  
interactions"*

- BILL CORNELIUS  
Chief Justice  
Texas Court of Appeals

council conferences. Bill emphasized both the value of the “professional advancement courses that speak to the particular problems of chief judges” and the benefit of camaraderie, collegiality, and chats among council members. “We learn much from each other in our conversations and social interactions,” Bill astutely observed.

## Planning for the Future

The first Executive Committee meeting of the Council of Chief Judges was held in Houston, Texas, on February 5, 1981. The primary focus of the meeting was the issue of funding and financial support of the council. The committee explored incorporation as a nonprofit entity to seek tax-deductible contributions as an educational group organized under Internal Revenue Code section 501(c)(3). It was agreed that a “tuition fee” would be charged for attendance at annual Council of Chief Judges educational seminars and that Dave Enoch, in his discretion, would set the fee for members to attend the 1981 seminar to be held in Philadelphia and the 1982 seminar to be held in Chicago.

An Education Committee was created, chaired by Texas Court of Appeals Chief Justice Clarence Guittard. Discussion was had on what topics to include in the curriculum of the 1981 seminar. The meeting minutes state: “Among those items which were felt to be of greatest current interest to judges administering courts of appeal were data processing, word processing, and computers in the courts.” (Bill Cornelius recalled that technology was “just creeping into” the courts, but little was known about what was available and what could be done with emerging technology. In his words, chief judges “needed to deal with it, so they might as well learn it.”) It also was agreed that the committee would send a questionnaire to all intermediate appellate court chief judges “inquiring as to the subjects they wish to have included in the curriculum and their interest in and willingness to serve as a member of the faculty at the October 1981 seminar.”

Members of the Executive Committee then personally telephoned the chief judges of states that had not yet participated in the council and encouraged them to attend the Philadelphia seminar. A mailing list was created, and chief judges were asked “to pass on to their successors all information concerning the existence of the Council of Chief Judges” and to inform the council “of the changes of names, positions, and addresses so that the listing of those eligible for membership would be kept current.”

## The Glue

Present at this first Executive Committee meeting was Mary Ellen Donaghy, staff of the American Bar Association’s Appellate Judges Conference. A dynamo, Mary Ellen, and a number of unique personalities among the chief judges of the council’s early years, got it off to a great start.





# Council of Chief Judges of the State Courts of Appeal

## Committee Membership 2021-22

### Executive Committee

Judge Morris Silberman, FL, President  
Judge Glenn E. Acree, KY, President-Elect  
Judge Mark D. Pfeiffer, MO, Vice-President  
Judge Frankie Moore, NE, Secretary-Treasurer  
Judge Stephen W. Powell, OH, Immediate Past President  
Chief Justice Dori Contreras, TX  
Judge John Michael Guidry, LA  
Chief Judge Christopher M. Murray, MI  
Chief Justice Mark V. Green, MA  
Judge Nelly Khouzam, FL  
Judge Melanie May, FL

### Administration of Justice/ Resolutions/Historian

Everett O. Inbody II, NE, Chair  
Michael W. Pirtle, NE, Vice Chair  
Marla Graff Decker, VA  
David R. Danilson, IA  
David W. Gratton, ID  
W. Matthew Stevenson, FL  
Michael K. Talbot, MI

### Annual Conference

Nelly N. Khouzam, FL, Chair  
Cory Ciklin, FL  
Dori Contreras, TX  
Susan Peikes Gantman, PA  
John Michael Guidry, LA  
Mark V. Green, MA  
Melanie G. May, FL  
Gregory Orme, UT  
Margret G. Robb, IN  
Jack M. Sabatino, NJ,  
H. Bruce Williams, SC

### Host Committee:

Cory Ciklin, FL Chair  
Melanie G. May, FL  
Stephanie Ray, FL  
Lori Rowe, FL  
W. Matthew Stevenson, FL  
Nelly N. Khouzam, FL

### New Member Orientation:

Dori Contreras, TX  
Mary Jane Trapp, OH

### Communications Committee

Jack M. Sabatino, NJ, Chair  
Thomas Nelson Bower, IA  
Marla Graff Decker, VA  
Matthew Fader, MD  
Michele Christiansen Forster, UT  
Kem Thompson Frost, TX  
Gary W. Lynch, MO  
Christopher M. Murray, MI

### **Newsletter Subcommittee**

John Michael Guidry, LA, Chair  
Jack M. Sabatino, NJ, Vice Chair  
Karen Arnold-Burger, KS  
Sylvia R. Cooks, LA  
Frankie Moore, NE  
Christopher M. Murray, MI

### **Website Subcommittee**

Gary W. Lynch, MO, Chair  
Josh R. Morriss III, TX, Vice Chair  
Vance W. Raye, CA

\* All Committee Chairs serve as liaisons to the Newsletter and Website committees to provide content as needed.

### **Development**

Margret G. Robb, IN, Chair  
William G. Arnot, III, TX  
Cory Ciklin, FL  
James Lockemy, SC  
John C. Martin, NC  
William B. Murphy, MI,  
Mary W. Sheffield, MO  
W. Matthew Stevenson, FL  
Stephen W. Powell, OH  
Rogelio (Roy) Valdez, TX

### **Education**

Mary Jane Trapp, OH, **Chair**  
Marla Graff Decker, VA, **Vice Chair**  
Pierre H. Bergeron, OH  
Mary Jane Boyle, OH  
Darlene Byrne, TX  
Denise G. Clayton, KY  
Sylvia R. Cooks, LA  
Kem Thompson Frost, TX  
Rebecca Martinez, TX  
Vanessa G. Whipple, LA  
Gene Zmuda, OH

### **Finance**

Frankie Moore, NE, Chair  
Mark V. Green, MA, Vice Chair  
Darlene Byrne, TX  
Elizabeth Garry, NY  
John Michael Guidry, LA  
David Gratton, ID  
Nelly N. Khouzam, FL  
Everett O. Inbody II, NE  
Melanie G. May, FL  
William D. Palmer, FL  
Gregory Orme, UT,  
Michael J. Talbot, MI  
Gary Witt, MO

### **Membership**

Gregory Orme, UT, Chair  
Christopher M. Murray, MI, Vice Chair  
Cale Bradford, IN  
Dori Contreras, TX  
David R. Danilson, IA  
Michele Christiansen Forster, UT  
James Humes, CA  
James Lockemy, SC  
Alan M. Loeb, CO  
Mark D. Pfeiffer, MO  
Sherry Radack, TX  
Susan L. Segal, MN  
Mary W. Sheffield, MO  
Vanessa G. Whipple, LA  
H. Bruce Williams, SC

### **Nominating**

Stephen W. Powell, OH, Chair  
Brad R. Hill, CA,  
Margret G. Robb, IN  
Melanie G. May, FL  
William B. Murphy, MI  
William D. Palmer, FL

### **Scholarship**

Robert J. Gladwin, AR, Chair  
Manuel Ramirez, CA, Vice Chair  
Cory Ciklin, FL  
Elizabeth Garry, NY  
Terri F. Love, LA  
Alan M. Loeb, CO  
David W. Gratton, ID

### **Strategic Planning and Evaluation (SPEC)**

Mark D. Pfeiffer, MO, Chair  
Dori Contreras, TX, Vice Chair  
Judge Glenn E. Acree, KY  
Mary Jane Boyle, OH  
Alexandra D. DiPentima, CT  
Eileen T. Gallagher, OH  
Nelly N. Khouzam, FL  
Melanie G. May, FL  
Frankie Moore, NE  
Gregory Orme, UT,  
William D. Palmer, FL  
Margret G. Robb, IN  
Morris Silberman, FL

### **Task Forces**

#### **Security Task Force**

Susan Peikes Gantman, PA  
Karen Arnold-Burger, KS, Vice Chair

#### **SJI Task Force**

Karen Arnold-Burger, KS, *Chair*  
Susan Peikes Gantman, PA  
Mark V. Green, MA  
Jack M. Sabatino, NJ

\*Morris Silberman and Glenn Acree will  
serve as ex officio members of all  
committees.



## Committees Overview

### Administration of Justice/Historian/Resolutions

This committee is responsible for reviewing requests from member states to take formal positions on issues affecting the administration of justice, in general, and make recommendations to the Council's Executive Committee. This committee composes resolutions that express appreciation and recognize individuals and organizations for their worthy efforts on behalf of the Council. It also composes resolutions that formally declare the Council's views, policies, and issues affecting its work. It reviews resolutions adopted by the Conference of Chief Justices on matters relating to public service and the administration of justice, and makes recommendations to the Council's Executive Committee for their support. The Committee serves as a clearinghouse for information that may be of assistance to member courts and communicates emerging issues in state legislatures regarding the judiciary to the Council's membership.

### Annual Conference

The Annual Conference Committee is responsible for planning the annual conference.

### Communications

The Communications Committee serves as an oversight committee for all communications with the membership. Because of the integrated relationship between the newsletter and website committees, and the importance of consistency in our communications, the previously independent committees have been combined as subcommittees of the Communications Committee.

#### Newsletter Subcommittee

The Newsletter Committee is responsible for creating and disseminating the *Chief Brief* newsletter to the membership at least three times per year. The newsletter aims to inspire, educate, and encourage excellence among Chief Judges by making the membership aware of their colleague's amazing work.

#### Website Subcommittee

The Website Committee is responsible for developing quality content that meets the needs and expectations of the Council's membership. Periodic analytic surveys and questionnaires may be implemented to facilitate continuous website improvement and usability.

### Development

The Development Committee is responsible for raising awareness and works in conjunction with the Finance Committee and the Annual Conference Committee to seek funds from law-related

entities that share the Council's mission to provide equal access to the Courts to assist in the Council's education and training missions for its members and member states.

## Education

The Education Committee is responsible for surveying the educational needs and desires of members and developing an Education Plan for consideration by the Annual Conference Committee, which designs the education curriculum for the annual conference. It explores educational opportunities through collaboration with other organizations and creates year-round education programs for members to bridge the gap between annual conferences.

## Executive

The Executive Committee shall be the governing body of the Council. It shall consist of the officers of the Council, the immediate Past-President, five members of the Council, who are elected for two-year terms (staggered terms such that two are elected one year and three are elected the next year), and one member appointed by the President for a one-year term.

## Finance

The Finance Committee reviews financial reports and recommends operating and annual conference budgets to the Executive Committee. It is responsible for monitoring the Reserve Fund and investments made by CCJSCA, as well as providing a report and recommendations to the Executive Committee on the disposition of net assets at the end of each fiscal cycle. It reviews membership dues and reports financial issues to the Executive Committee.

## Membership

The Membership Committee is responsible for encouraging states to become members of the Council and for recruiting presiding judges within those states to become active participants in the Council's programs, including the annual conference. The Committee strives to maintain the interest of current and former chiefs in Council activities.

## Nominating

The Nominating Committee makes recommendations to fill offices and positions on the Council of Chief Judges' Executive Committee.

## Scholarship

The Scholarship Committee is responsible for the award of scholarships to attend the CCJSCA Annual Conference from funds allocated for that purpose by the Executive Committee. That responsibility includes the development of application procedures and establishment of criteria for the award.

## Strategic Planning and Evaluation (SPEC)

The Strategic Planning and Evaluation Committee, formerly called the Long-Range Planning Committee, is responsible for the ongoing assessment of the Council's effectiveness, identifying areas of improvement, making recommendations regarding the future direction of the Council, and monitoring progress in implementing recommendations.





**Council of Chief Judges of the State Courts of Appeal**  
*NCSC Key Staff Listing*

NCSC KEY STAFF	RESPONSIBILITIES
<b>CORTNEY ENLOE</b> Senior Administrative Specialist Association Services National Center for State Courts 300 Newport Ave. Williamsburg, VA 23185 P: 757-259-1868 E: <a href="mailto:cenloe@ncsc.org">cenloe@ncsc.org</a>	Provides support services to Association Manager and host state: <ul style="list-style-type: none"> <li>• Assists with RFP process for hotel search and contract review process</li> <li>• Coordinates annual conference meeting logistics and reservations with hotel</li> <li>• Coordinates all annual conference social and spouse activities with host state and venues</li> <li>• Coordinates annual conference pre- and on-site registration process</li> <li>• Prepares conference badges, tote bags and appreciation gifts</li> <li>• Coordinates transportation services</li> <li>• Coordinates Newsletter articles</li> <li>• Processes all travel vouchers for members and speakers</li> </ul>
<b>TONI GRAINER</b> Conference Education Planning Manager Institute for Court Management National Center for State Courts 300 Newport Avenue Williamsburg, VA 23185 P: 757-259-1586 E: <a href="mailto:agrainer@ncsc.org">agrainer@ncsc.org</a>	Management of Education Program for Annual Meeting including: <ul style="list-style-type: none"> <li>• Staff liaison to Annual Conference Committee; start-up and ongoing planning of education programs</li> <li>• Speaker communications</li> <li>• Management of education program information, subsequent updates, and transition to official Registration Brochure</li> <li>• Compilation/development of education program materials inclusive of presentation slides, handouts, resources</li> <li>• Onsite implementation of education program</li> </ul>
<b>SIRENA KESTNER</b> Association Manager Association Services National Center for State Courts 300 Newport Ave. Williamsburg, VA 23185 P: 757-259-1827 E: <a href="mailto:skestner@ncsc.org">skestner@ncsc.org</a>	Management of Association matters including: <ul style="list-style-type: none"> <li>• Staff liaison to following committees: Executive, Administration of Justice, Development, Education, Finance, Long-Range Planning, Membership, Newsletter, Nominating, Resolutions &amp; Historian, Scholarship and Website</li> </ul>

	<ul style="list-style-type: none"> <li>• Develops and oversees annual operating and conference budgets and provides monthly financial reports</li> <li>• Collaborates with various committees to bolster awareness of and membership to CCJSCA</li> <li>• Manages RFP process for hotel search, contract negotiations, vendor contracts, and meeting implementation for annual conference and all respective committee meetings</li> <li>• Coordinates all annual conference marketing efforts including host state conference logo, Save-the-Date postcard, education and social registration brochures, schedule-at-a-glance, and website management</li> <li>• Manages all annual conference social and spouse activities with host state and venues</li> <li>• Manages audio-visual, videography, photography, and transportation service requirements for annual conference</li> <li>• Oversees annual conference registration process</li> <li>• Oversees meeting space requirements with annual conference hotel</li> <li>• Oversees reservations with annual conference hotel</li> <li>• Provides oversight for Conference Day logistics for CCJSCA President and members</li> <li>• Manages reconciliation of yearly and annual conference expenses.</li> <li>• Approves all travel vouchers for members and speakers</li> </ul>
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**OTHERS:**

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# HOT TIPS FOR NEW CHIEFS

## **Tip #1: Primary Sources Dealing with the Administration of your Court**

By Gary Lynch, Chief Judge (ret.), Missouri Court of Appeals, Southern District

Identify, read, become familiar with, and acquire a copy for ready reference in the future, all primary sources dealing with the administration of your court. Obvious sources include applicable statutes and court rules. However, you may need to dig a little deeper for applicable internal court operating rules, internal procedure manuals, employment manuals and the like. Staff will be well aware of these later sources and just assume that the Chief is also. You should not make any assumptions. Ask until you are satisfied you have a handle on them all. When an issue arises, consult these sources first. You may be pleasantly surprised to find an answer there.

## **Tip #2: Decision-making and Communicating with Stakeholders**

By Gary Lynch, Chief Judge (ret.), Missouri Court of Appeals, Southern District

Even if you have independent decision-making authority, always communicate ideas and concerns with all stakeholders before making a decision. Solicit and then listen to input from stakeholders before making a decision. Once you make a decision, notify all stakeholders before, during and after implementation. If the decision relates to any primary source for administration of your court, make sure that source is properly updated and readily available to all stakeholders.

## **Tip #3: Court Culture – New Judge Memo**

By Josh R. Morriss, III, Chief Justice, Texas Sixth Court of Appeals

Chief Justice Morriss’ “mentor” penned a “court culture” memo, setting out the collection of little things that the court had been doing or trying to do over the years, the things that a new judge would be slow to pick up otherwise or that might be learned by hard experience. It has morphed into the “new judge” memo, updated and shared with each new judge that comes on board. It contains the mindsets, conventions, and the little courtesies we try to observe. This sets the general tone for the court and gets potentially touchy issues out in the open, on paper in black and white.

Among the topics:

- a. Regular calendar features: weekly administrative and motions conferences, expectations of judges’ attendance
- b. Our customs and usual patterns for setting oral arguments.
- c. How we internally assign cases among the judges and how cases get reassigned on occasion. How we handle motions for rehearing.
- d. Our patterns and expectations on “passing” draft opinions. Courtesies such as putting other judges’ opinions ahead of your own and getting to them as soon as possible, not editing their grammar or word choices (personal preferences, etc.), but staying focused on “the law.” Recognizing that it’s his/her opinion...
- e. Our general desire for promptness to keep our cases moving whenever possible.

**Tip #4: Collegiality**

By Steve Powell, Judge, Ohio Court of Appeals, 12<sup>th</sup> District

As Chief, you must train new Judges on your court. The first lesson for collegiality should be to teach the new Judge on your Court to “review and sign off on your fellow Judges’ Opinions or Work before doing your own.”

**Tip #5: Breaking Bread with the State Legislature**

By Mark D. Pfeiffer, Judge, Missouri Court of Appeals, Western District

We all need budget dollars...and that means we are often at the mercy of our respective state legislatures. Our experience has been that there are fewer and fewer lawyers that are in our state legislature as representatives/senators (i.e. to carry the torch of the judicial branch). And, we have term limits in our state. So... our court has taken it upon ourselves to "educate" the state representatives and state senators in our court's territorial "footprint" by inviting them to an annual BBQ lunch at our courthouse (at the judges' expense) in which we provide a brief background about the work of the court. There's something about "breaking bread" with other people that "humanizes" the relationship...and when state lawmakers have a few faces with names, the "judicial branch" becomes "Mark" and "Karen" and "Tom" and "Cindy" etc... Though we do not have a perfect budget situation, our relationship has grown "warmer" with the legislative branch of government since we have been hosting luncheons for lawmakers at the courthouse each year.

**Tip #6: Inclusion**

By Melanie May, Judge, Florida Fourth District Court of Appeal

"Inclusion" is key. On becoming the Chief Judge, you must choose your leadership style. The style you choose often dictates your success, and defines the atmosphere and culture of the court. Remember, your colleagues are equally selected, appointed, or elected. Sure, you can make unilateral decisions that affect everyone. Or, you can include your colleagues in those decisions that affect them. "Buy in" avoids resentment. I found that to work for me.

**Tip #7: Doing Your Best**

By Sandee Bryan Marion, Chief Justice (ret.), Texas Fourth Court of Appeals

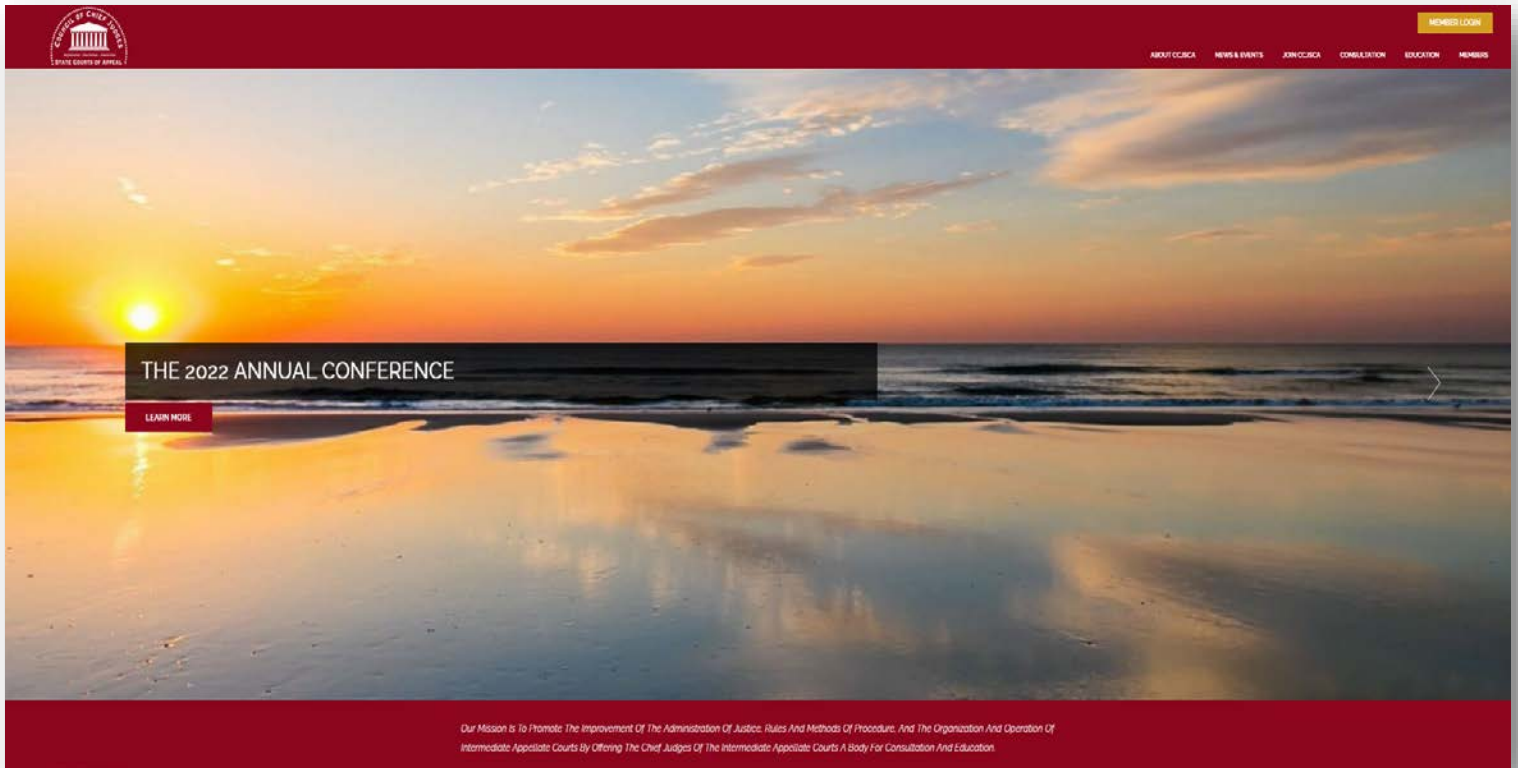
You must remember no matter how much you try, you can't fix everything. Do the best you can and move on.

**Tip #8: Clearly Communicate Your Vision. Be a Listener.**

By Susan Peikes Gantman, President Judge Emeritus, Superior Court of Pennsylvania

It is important to develop effective communication with all of the Judges on the Court. You have two ears and one mouth. Listen more; speak less. Listen to the Judges' concerns, their issues, and their complaints. You learn valuable information or critical reasons as to why things may not happen as envisioned. It is your obligation to set expectations, to ensure that communication is clear.

# CCJSCA Website



ccjsca.org



# Council of Chief Judges of the State Courts of Appeal

## President's Message



### Hon. Morris Silberman, President

Dear Colleagues,

I am honored to be serving as President of the Council of Chief Judges of the State Courts of Appeal for the 2021-22 year. It is truly a privilege to do so. The educational and social programs at our annual conference are only surpassed by the camaraderie that we share. That camaraderie is strengthened whenever we meet, whether in person or virtually. In addition to our Boston conference, we have gotten together through committee meetings and Chiefs' Chats, by telephone and via Zoom, in groups and one on one. We have developed friendships through the organization while having multiple opportunities to learn from one another, to share ideas, and to simply chat about the challenges that we face as court leaders. Thank you all for being a part of this great group and for allowing me to represent and lead the Council.

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### Members

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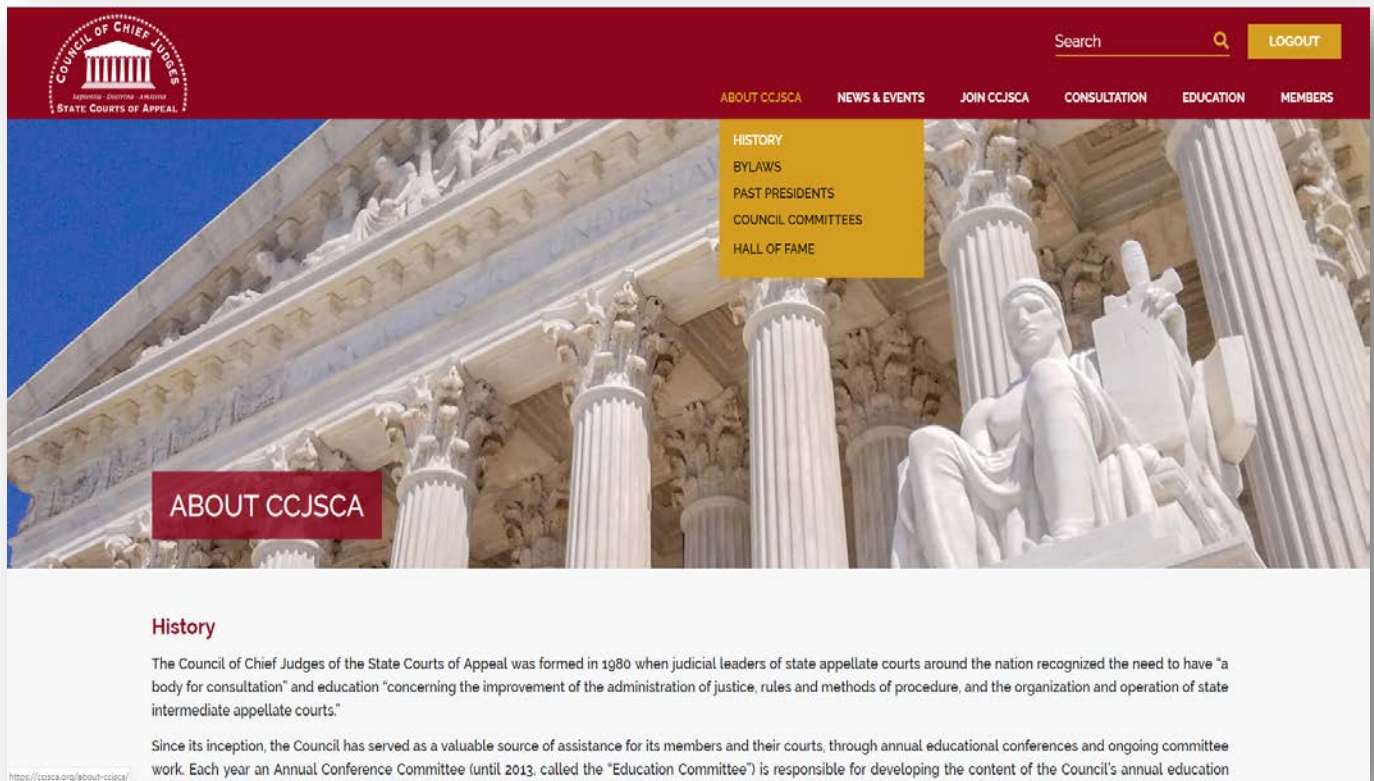
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# Council of Chief Judges of the State Courts of Appeal

## About CCJSCA



The “About CCJSCA” tab provides access to the organization’s:

- History,
- Bylaws,
- Past Presidents,
- Council Committees, and
- Hall of Fame recipients.



# Council of Chief Judges of the State Courts of Appeal

## News & Events

Catch up with the latest news about your colleagues on the “What’s New” link.

March 03, 2022

**E. Gregory Wells New Chief Judge of Maryland Court of Special Appeals**

Gregory Wells, has been designated as the new chief judge of the Court of Special Appeals, to take office in April 2022 when the current chief judge, Matthew J. Fader, becomes a member of the state court of appeals bench.

The Court of Special Appeals is Maryland's intermediate appellate court. The Court considers appeals from almost any case that originates in a circuit court or an orphan's court in Maryland. Parties who are unsuccessful in the Court of Special Appeals may be able to seek further review in the Court of Appeals, Maryland's highest court.

"Wells will be the first African American to serve as chief judge of the court of special appeals and the first openly LGBTQ person to serve as chief judge of either of Maryland's appellate courts," a press release from the governor's office stated.

The University of Virginia law school graduate has served on the court of special appeals since 2019.

Prior to that Wells served as a circuit court judge for Calvert County and a district court judge in the three Southern Maryland counties.

In late 2005, Wells was appointed by two circuit court judges to fill the unexpired term of Calvert State's Attorney Robert Riddle, who was appointed to the district court bench. At the time of that appointment, Wells was serving as the Calvert Circuit Court's master for domestic relations and juvenile causes.

The Chief Brief Newsletter provides a brief snapshot of the latest issues and undertakings of the Council.

Click on the “Upcoming Conferences” and “Past Conferences” links to access valuable information about education programs, resolutions, committee reports, and other important conference materials.

### CHIEF BRIEF NEWSLETTER

CCJSCA's newsletter, The Chief Brief, is distributed to members of the Council.

- Chief Brief Volume 15, Issue 2 – April, 2022
- Chief Brief Volume 15, Issue 1 – January, 2022
- Chief Brief Volume 14, Issue 3 – August, 2021
- Chief Brief, Volume 14 Issue 2 – April 2021
- Chief Brief Volume 14 Issue 1 – January 2021



# Council of Chief Judges of the State Courts of Appeal

## Join CCJSCA

Not a member of the Council of Chief Judges of the State Courts of Appeal? Learn why you should join and reap the benefits of membership.



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CCJSCA 2016 Annual Conference  
Cary, North Carolina

### Council of Chief Judges of the State Courts of Appeal Membership

New Chief Judge Orientation

### Eligibility

The Council is comprised of the chief judges of intermediate courts of appeal in the 39 states with such courts. Individual states are invited to join. Current Chief Judges from member states and judges who are slated to become chief judges within the next year also can participate, as can former chief judges.

### Why Join — The Value of CCJSCA Membership and Participation

The Council's Mission: The Council of Chief Judges of the State Courts of Appeal (CCJSCA), was formed in 1980 as "a body for consultation" and education "concerning the improvement of the administration of justice, rules and methods of procedure, and the organization and operation of state intermediate appellate courts."

### Educational Opportunities

The Council provides access to many educational resources including educational modules, videos and information on web based educational programs. View them in the [Learning Center](#)

READ MORE

### Collaboration & Networking

The Council's mission is accomplished through the work of its committees. For a description of the work assigned to each committee, see the [Committee Overview](#).

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#### News & Events

Announcements  
What's New  
Chief Brief Newsletter  
Upcoming Conference

#### Consultation

Upcoming Conference  
Chiefs Forum

#### Education

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Interactive Modules  
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# Council of Chief Judges of the State Courts of Appeal

## Chief's Forum

The Chief's Forum is a venue for discussions, polls, questions, and answers on the operations of courts, as well as conversations about the business of the CCJSCA.

### Chiefs Forum

A community of Chief Judges

This forum has **39 Discussions**

[Notification Settings](#)  
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 [Q](#)

#### Forums

- Professional
  - Council Business
  - Off the Bench
- Administration of Justice
- Annual Conference
- Communications
- Development
- Education
- Executive
- Finance
- Membership
- Newsletter
- Nominating
- Past Presidents
- Resolutions
- Scholarship
- Strategic Planning and Evaluation (SPEC)

**Professional**

May 12, 2022 @ 05:39pm | 0 11 0

### The Chief and Cybersecurity – Chief Chat on May 12, 2022

By Gary Lynch

During our Chief Chat today on cybersecurity, the participating chiefs referenced and discussed a Joint Technology Committee Resource Bulletin entitled "Cybersecurity Basics for Courts." Click on the hyperlinked title to download. We also discussed a webinar hosted by the Joint Technology Committee on April 25.

[READ MORE](#)

**Professional**

Mar 03, 2022 @ 01:13pm | 0 65 0

### Sentencing by Ambush-An Insider's Perspective on Plea Bargaining Reform

By Everett Inbody

I am pleased to announce that we have posted a new Great Educational Moments (GEMS) on the Home page of the website. Justice Michael P. Donnelly, a member of the Supreme Court of Ohio presents his new video on "Sentencing by Ambush-An Insider's Perspective on

[READ MORE](#)





# Council of Chief Judges of the State Courts of Appeal

## Learning Center

The learning center provides links to helpful resources, including the interactive learning modules, conference videos, white papers, speech bank, and archived discussions and summaries.



## Learning Center

INTERACTIVE  
MODULES

WHITE PAPERS

RESOURCE BANK

JUDICIAL  
SCHOLARSHIP

ARCHIVED DISCUSSIONS  
& SUMMARIES

CONFERENCE  
VIDEOS



# Council of Chief Judges of the State Courts of Appeal

## Interactive Learning Modules

CCJSCA.org's Interactive Learning Modules help a new chief judge learn to address the challenges of being a chief judge in a new and interactive way.

### INTERACTIVE LEADERSHIP MODULES

The screenshot shows a course interface. On the left is a thumbnail for the course titled "Governance & Leadership for Chief Judges of the State Courts of Appeal". The thumbnail features a blue sky, a white classical building with columns labeled "COURTHOUSE", and a green lawn. Below the thumbnail are two small icons: a crosshair for "MAIN MENU" and a book for "RESOURCES". To the right of the thumbnail is a "BEGIN COURSE >>" button. To the right of the thumbnail, there is a paragraph of text describing the course, followed by a numbered list of five topics.

This interactive online education program was developed by the Council of Chief Judges of the State Courts of Appeal and the National Center for State Courts under a grant from the State Justice Institute. This course was created because your colleagues in the Council of Chief Judges of the State Courts of Appeal learn from each other about how to deal with the challenges of being a chief judge and they wanted to give you the benefit of their experience. A list has been created of topics chief judges talk about when they get together and it has been organized under headings taken from organizational leadership literature.

1. The Challenge of Leadership in Appellate Courts
2. Leadership: The Importance of Legitimacy
3. Process: Protecting and Guiding
4. Fairness: Collaborative Decision Making
5. Communication: Tools for the Chief Judge





## Great Educational Moments (GEMS)

Great Educational Moments (GEMS) is a growing library of short videos (8 to 20 minutes each) on multiple topics of interest to appellate judges. Take a “moment” to view the brief clips and learn from esteemed legal experts and judges. The administration of the appellate court, constitutional law, leadership, and judicial decision-making are just a few of the categories offering guidance.

### GREAT EDUCATIONAL MOMENTS (GEMS)



#### Lessons of Leadership and Team Building

By Chuck Rosenberg

[View Video](#)

#### Law and Literature as Pertains to Judges Over Time

By Charles Geyh

[View Video](#)

#### The Justice Who Changed His Mind

By Thomas Healy

[View Video](#)

#### What Trial Judges Would Like To See from Appellate Decisions, a/k/a Remember We Lost Sleep Over The Decision You Are About To Reverse

By Paul A. Felix

[View Video](#)

- Administration of an Appellate Court (1)
- Constitutional Law (1)
- Criminal Appeals (1)
- Criminal Procedure (2)
- Judicial Decision-Making (3)
- Leadership (2)
- Oral Argument (1)



# Council of Chief Judges of the State Courts of Appeal

## New Chief's Toolbox

A Collection of Specially Chosen Resources For New Chief Judges



### Conference Videos & Knowledge Base

It's Good to be the Chief – Tips on Effective Leadership

Headlines or Lifelines? Best Practices in Court Administration: Judges in Distress



### Interactive Modules

Governance & Leadership for Chief Judges of the State Courts of Appeal



### Chiefs Forum

Ask a Question!

Make a Comment!



### Public Speaking

Video: The Chief's Speech: The Art of Public Speaking

Text: CCJSCA Speech Bank

The New Chiefs Toolbox is a collection of resources for new chief judges, including conference videos from years past, a connection to the Chiefs' Forum, CCJSCA's Interactive Learning Modules, and a collection of tips on the art of public speaking.



# Council of Chief Judges of the State Courts of Appeal

## Speech Bank

The screenshot displays the website's navigation bar with the Council of Chief Judges logo, a search bar, and a 'LOGOUT' button. The main menu includes links for 'ABOUT CCJSCA', 'NEWS & EVENTS', 'JOIN CCJSCA', 'CONSULTATION', 'EDUCATION', and 'MEMBERS'. A large banner image of a scale of justice is featured, with a 'SPEECH BANK' button on the left and a 'LEARNING CENTER' sidebar on the right. The sidebar lists resources such as 'INTERACTIVE MODULES', 'CONFERENCE VIDEOS', 'SELECTED WORKS OF TENIELLE FORDYCE-RUFF', 'JOURNAL OF APPELLATE PRACTICE AND PROCESS', 'NEW CHIEFS TOOLBOX', 'EMERGING ISSUES', 'SPEECH BANK', 'WHITE PAPERS', and 'ARCHIVED DISCUSSIONS'. Below the banner, five white boxes categorize the speech bank: 'Ceremonies of the Oath', 'Eulogies', 'General Speeches', 'Memorials', and 'Occasions of Tribute'. A red arrow points from the 'Ceremonies of the Oath' box to a detailed view of that section. This detailed view shows a header 'CEREMONIES OF THE OATH' and four document icons representing speech templates: 'President Judge – moderate in length', 'Appellate Judge – moderate in length', 'Appellate Judge – moderate in length', and 'Appellate Judge – brief'.

**COUNCIL OF CHIEF JUDGES**  
*Sapientia • Doctrina • Amicitia*  
**STATE COURTS OF APPEAL**

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TENIELLE FORDYCE-RUFF  
JOURNAL OF APPELLATE  
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**SPEECH BANK**  
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ARCHIVED DISCUSSIONS

Ceremonies of the Oath Eulogies General Speeches

Memorials Occasions of Tribute

**CEREMONIES OF THE OATH**

President Judge – moderate in length Appellate Judge – moderate in length Appellate Judge – moderate in length

Appellate Judge – brief



# Council of Chief Judges of the State Courts of Appeal

## White Papers

### WHITE PAPERS



Enhancing Communications Collaboration and Collegiality



Comparative Attributes of Legal Staff in Intermediate Appellate Courts



The Role of State Intermediate Appellate Courts

### Enhancing Communications, Collaboration and Collegiality in State Intermediate Appellate Courts

*An examination of the widespread use of  
communications technology and its impact on the  
appellate court environment*



December 2019

A White Paper produced by the Council of Chief Judges of the State Courts of Appeal







# Council of Chief Judges of the State Courts of Appeal

## Conference Videos

### CONFERENCE VIDEOS

2020 Conference Videos

2019 Conference Videos

2018 Conference Videos

2017 Conference Videos

2016 Conference Videos

2015 Conference Videos

2014 Conference Videos

2013 Conference Videos

2012 Conference Videos

### 2018 CONFERENCE VIDEOS



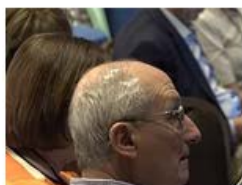
Two Views on the Latest Constitutional Law Decisions



Sex-Based Harassment in the Workplace



Pay Attention Mindfulness and Meditation



Mendez v. Westminster



Communication on the Court and Beyond



Wow Your Audience Art of Verbal Communication



Immigration Law for State Courts of Appeal



Immigration Law for State Courts of Appeal




Clear Concise and Understandable Opinions




# Council of Chief Judges of the State Courts of Appeal

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Hon. Carl W. Anderson		CA	94611-3736
Hon. Marlin J. Appelwick		WA	98101-1176
Hon. James A. Ardaiz		CA	93721
Hon. Christopher J. Armstrong		MA	02110-2321
Hon. Gerald Arnold		NC	27607

Behind a secure firewall, easily peruse the “Member List” to find your colleague.





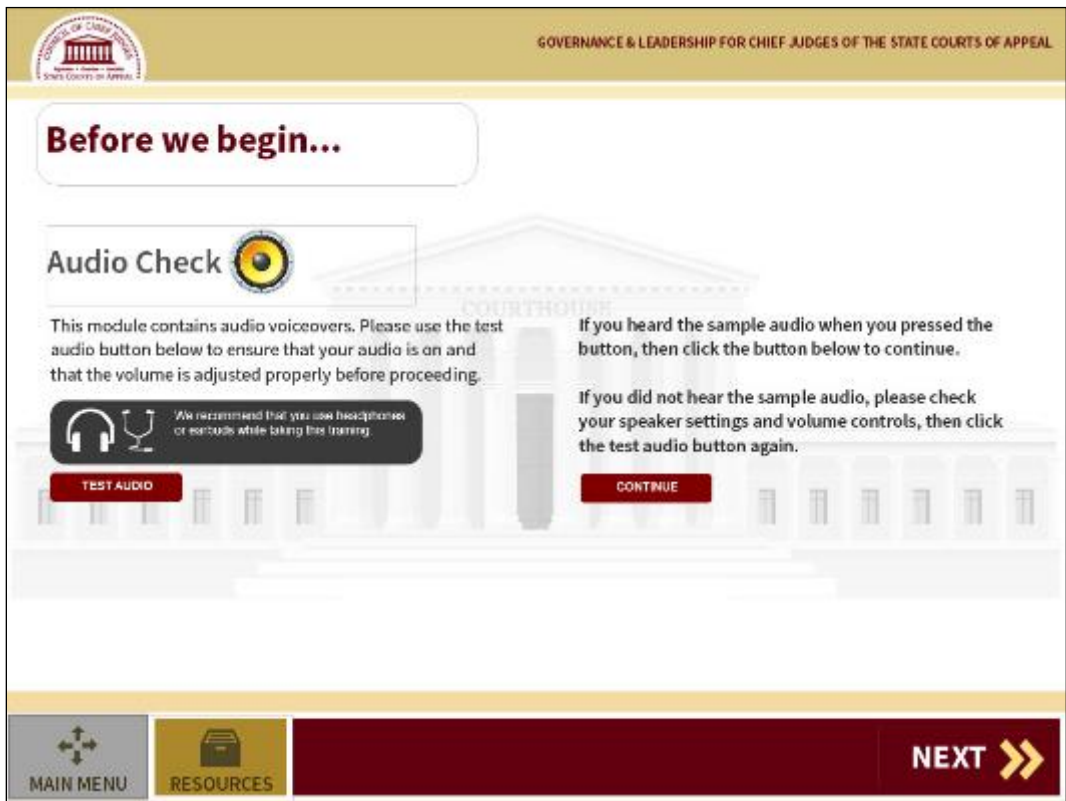
# Valuable Resources

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL



Voiceover in progress.  
Adjust your speaker  
volume accordingly.

### Course Outline

- The Challenge of Leadership in Appellate Courts
- Leadership: The Importance of Legitimacy
- Process: Protecting and Guiding
- Fairness: Collaborative Decision Making
- Communication: The Importance of the Inner Branch



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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### LEARNING OBJECTIVES

Click on each of the cards below to reveal more about each objective for this module.

You will be able to identify common responsibilities for a chief appellate court judge

You will be able to describe the leadership challenges of a chief judge

You will be able to identify the characteristics of a loosely coupled organization

You will be able to list the governance mechanisms that should be used by leaders in the appellate courts



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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### How Does A Chief Appellate Judge Learn the Job?

**RATE THE FOLLOWING STATEMENTS:**

	Strongly Disagree 1	Disagree 2	Neutral 3	Agree 4	Strongly Agree 5
1. By watching the previous chief judge	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2. From education or a manual or other guidance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3. From court rules or statutes describing the duties	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4. From chief judges from other appellate courts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Submit



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Adjust your speaker  
volume accordingly.

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### How Does A Chief Appellate Judge Learn the Job?

**You said:**

\$ScpQuizAssessEthics1\$\$

By watching the previous chief judge

\$ScpQuizAssessEthics2\$\$

From education or a manual or other guidance

\$ScpQuizAssessEthics3\$\$

From court rules or statutes describing the duties

\$ScpQuizAssessEthics4\$\$

From chief judges from other appellate courts

**Our Response**

A new chief judge's answer to these questions will depend on that chief's circumstances. Many chief judges are limited as a practical matter by their court's "culture," the practices of previous chief judges, and assumptions about the role of the chief vis a vis the court clerk, the court administrator, and other staff.

Chief judges should consider attending the annual meetings of the Council of Chief Judges of the State Courts of Appeal, where they can learn how appellate courts operate in very different ways around the United States, despite having the same goal of rendering decisions in a fair and efficient manner.

Modules 2 through 5 of this course include summaries of advice from experienced chief judges and offer a variety of perspectives on the role a chief judge can play in maintaining and improving judicial administration.

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### What Does a Chief Appellate Court Judge Do?

- Most appellate judges have little familiarity with the administrative responsibilities of a chief judge until one becomes a chief judge
- Judges assume a chief judge only presides over judges' meetings and makes decisions about law-related matters
- In reality many chief judges are also responsible for policies, procedures, and decisions about human resources, facilities, security, budgets, and more



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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Statutes and Court Rules

*Click each rule below to learn more.*




COURTHOUSE


Kansas General and Administrative Rules  
(Adopted by the Supreme Court)

Michigan Court Rules


*You MUST click on and read each set of rules before you can move to the rest of the module.*




Voiceover in progress. Adjust your speaker volume accordingly.



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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Statutes and Court Rules


*Click each rule below to learn more.*



*You MUST click on and read each set of rules before you can move to the rest of the module.*

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL



### Kansas General and Administrative Rules (Adopted by the Supreme Court)



Rule 1.02  
CHIEF JUDGE OF THE COURT OF APPEALS

(a) Designation. The Supreme Court will designate a chief judge of the Court of Appeals.


(b) Chief Judge's Administrative Powers. The chief judge of the Court of Appeals has the following administrative powers:

- (1) to designate and number hearing panels, assign judges to the panels, and designate the presiding judge of each panel of which the chief judge is not a member;
- (2) to assign cases for hearing and determination to panels designated under paragraph (1);
- (3) to designate the time and place for the hearing of each case — at any place within the state as provided in K.S.A. 20-3013 — taking into consideration where the case arose and the relative convenience and expense of the parties, court, and counsel;

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Kansas General and Administrative Rules, cont.



(3) to designate the time and place for the hearing of each case — at any place within the state as provided in K.S.A. 20-3013 — taking into consideration where the case arose and the relative convenience and expense of the parties, court, and counsel;



(4) to designate a judge to conduct a prehearing conference when the court has ordered one to be held before a single judge under Rule 1.04;

(5) **to establish — after consultation with the other members of the court — internal operating procedures for the orderly handling of the court's business and the fair distribution of work among its members\***; and


(6) **to perform any other necessary administrative duty\*** not otherwise provided for by statute or supreme court rule.

\* Emphasis added

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL


### Kansas Rule


The Kansas rule includes the following language-



(5) **to establish — after consultation with the other members of the court — internal operating procedures for the orderly handling of the court's business and the fair distribution of work among its members\***; and

(6) **to perform any other necessary administrative duty\*** not otherwise provided for by statute or supreme court rule.

*The requirement of consultation with other members of the court and the "other duties as necessary" language are common causes of challenges and opportunities for chief appellate court judges and they will be examined later in the course.*








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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Michigan Court Rules

Rule 7.201 Organization and Operation of Court of Appeals

(A) Chief Judge and Chief Judge Pro Tempore.

(1) The Supreme Court shall select a judge of the Court of Appeals to serve as chief judge. No later than October 1 of each odd numbered year, the Court of Appeals may submit the names of no fewer than two judges whom the judges of that court recommend for selection as chief judge.

(2) The chief judge shall select a chief judge pro tempore, who shall fulfill such functions as the chief judge assigns.

(3) The chief judge and chief judge pro tempore shall serve a two-year term beginning on January 1 of each even numbered year, provided that the chief judge serves at the pleasure of the Supreme Court and the chief pro tempore serves at the pleasure of the chief judge.

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Michigan Court Rules, cont.

Rule 8.110 Chief Judge Rule

(C) Duties and Powers of Chief Judge.

(1) A chief judge shall act in conformity with the Michigan Court Rules, administrative orders of the Supreme Court, and local court rules, and should freely solicit the advice and suggestions of the other judges of his or her bench and geographic jurisdiction. If a local court management council has adopted the by-laws described in AO 1998-5 the chief judge shall exercise the authority and responsibilities under this rule in conformity with the provisions of AO 1998-5.


(2) As the presiding officer of the court, a chief judge shall:

- (a) call and preside over meetings of the court;
- (b) appoint committees of the court;
- (c) initiate policies concerning the court's internal operations and its position on external

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL


### Michigan Court Rules, cont.

- (d) meet regularly with all chief judges whose courts are wholly or partially within the same county;
- (e) represent the court in its relations with the Supreme Court, other courts, other agencies of government, the bar, the general public, and the news media, and in ceremonial functions;
- (f) counsel and assist other judges in the performance of their responsibilities; and
- (g) cooperate with all investigations conducted by the Judicial Tenure Commission.

(3) As director of the administration of the court, a chief judge shall have administrative superintending power and control over the judges of the court and all court personnel with authority and responsibility to:

- (a) supervise caseload management and monitor disposition of the judicial work of the court;
- (b) direct the apportionment and assignment of the business of the court, subject to the provisions of MCR 8.111;


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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL


### Michigan Court Rules, cont.


provisions of MCR 8.111;

- (c) determine the hours of the court and the judges; coordinate and determine the number of judges and court personnel required to be present at any one time to perform necessary judicial administrative work of the court, and require their presence to perform that work;
- (d) supervise the performance of all court personnel, with authority to hire, discipline, or discharge such personnel, with the exception of a judge's secretary and law clerk, if any;
- (e) coordinate judicial and personnel vacations and absences, subject to the provisions of subrule (D);
- (f) supervise court finances, including financial planning, the preparation and presentation of budgets, and financial reporting;
- (g) request assignments of visiting judges and direct the assignment of matters to the visiting judges;
- (h) effect compliance by the court with all applicable court rules and provisions of the law;


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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURT'S OF APPEAL

### Michigan Court Rules, cont.


CLOSE X

- (i) perform any act or duty or enter any order necessarily incidental to carrying out the purposes of this rule.
- (4) If a judge does not timely dispose of his or her assigned judicial work or fails or refuses to comply with an order or directive from the chief judge made under this rule, the chief judge shall report the facts to the state court administrator who will, under the Supreme Court's direction, initiate whatever corrective action is necessary.
- (6) A chief judge may delegate administrative duties to a trial court administrator or others.
- (7) Where a court rule or statute does not already require it, the chief judge may, by administrative order, direct the clerk of the court to provide litigants and attorneys with copies of forms approved by the state court administrator. In addition, except when a court rule or statute specifies that the court or clerk of the court must provide certain forms without charge, the administrative order may allow the clerk to provide the forms at the cost of reproduction to the clerk.

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURT'S OF APPEAL

### Chief Judge Responsibilities


- Most chief judges continue to have some of their own cases in addition to their responsibilities as chief judge
- Chief judges typically have administrative responsibility for managing the court's legal work.
- Chief judges usually are also responsible for administrative matters not directly related to administering cases

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL


### Chief Judge Responsibilities


- Some administrative responsibilities seem mundane and do not require creative leadership skills, such as handling complaints from associate judges about heating or air conditioning, reviewing contracts for lawn service, or considering new court supply purchases.
- Even the most mundane administrative decisions can have an impact on the morale of staff or the collegiality of the court, and consequently on the ability of the court to operate effectively and to be a place where people want to come to work every day.

Voiceover in progress.  
Adjust your speaker  
volume accordingly.


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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Personnel Scenario

A law clerk complains to you, the Chief Judge, about another judge's assistant consistently arriving at work at 10 am and leaving by 3 pm.

*What do you do?*


Nothing  
Click Box


Tell the clerk not to be concerned about it  
Click Box


Write or talk to the other judge  
Click Box

Talk directly to the judge's assistant  
Click Box


SUBMIT  
Click Box

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Personnel Scenario

Nothing	It is possible that the absence of the judge's assistant is creating work flow problems for the court. The situation may also negatively affect staff morale. Doing nothing may perpetuate a real problem.
Tell the clerk not to be concerned about it	This alternative may be appropriate if you believe the clerk would like to report on staff "misbehavior" to you at every opportunity. By itself this response does nothing to identify or address potential problems.
Write or talk to the other judge	The chief judge should address the situation with the assistant's judge if: 1. The assistant's conduct violates an HR policy or rule; 2. The assistant's conduct does not violate a policy or rule, but is adversely affecting the work of the court.
Talk directly to the judge's assistant	This should only be done if the assistant is part of a pool and is not considered to be the judge's staff or if doing so would be seen as a commonly accepted practice.





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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Personnel Scenario

**General Guidance:** If you decide that addressing this kind of issue is within your responsibility as chief judge, the first step is to consult with your court's HR director or to look at the court HR manual to determine if there is a rule that applies to judges' staff. For example, is there a statute or rule that prescribes the legal status of the judge's staff members, such as serving as an at will employee of the judge? If there is a written, applicable rule it should be followed. If there is not a written rule, most chiefs would recommend communicating directly with the other judge regarding conduct of a judge's personal staff.

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL




### Personnel Scenario: Follow up

Does your court have a telework policy?


If so, do you know to whom it applies?

Does your court have separate policies for staff who report directly to a judge and for those who do not?

**SUBMIT**

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Personnel Scenario: Follow up

**Guidance:** The chief judge should know if there are HR policies about typical HR issues. If there is no applicable policy the chief should decide if the employee's behavior is a) affecting the efficient work of the court or b) having a negative impact on staff morale. If either of these situations are present the chief should consider speaking with the employee's judge. The chief may also ask his or her colleagues to adopt a policy that will apply to all judges' staff.

This scenario relates specifically to another judge's personal staff. If a general member of the court's staff was the focus of the scenario a different approach would be appropriate. In that case, the matter could be delegated to the human resources office or to the employee's supervisor.

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Personnel Scenario: Conclusion



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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Facilities Scenario

The air conditioning stops working in your court building in the summer. The head of maintenance tells you expensive parts need to be replaced and it will take two work days to restore air conditioning.


Will you review or approve the contractor selected to do the work and approve the cost of the repair?


Do you know who on your court staff has the expertise to be sure the AC is repaired in a professional and cost-effective manner?


If your court shares building space, do you know the protocol for resolving maintenance problems and paying for them?

Do you know the procedures to be followed if the court building is to be closed for any period of time.

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Facilities Scenario



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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Facilities Scenario

How will you decide if staff should be required to come to work the next two days?


The court clerk/administrator will use a Continuity of Operations Policy (COOP) to determine the appropriate action.

You will convene a meeting of the other judges and the court administrator or clerk of court to make a decision.


You will individually make a decision based on the information you have.

If the building needs to be closed how will staff be informed and what will the communication tell them as far as whether they should work from home, take personal leave, etc? You may type a response below.


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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Facilities Scenario


**Guidance:** The practices of each appellate court will vary, but the chief judge should know how similar problems have been resolved in the past and if there are any written court procedures that apply.

Remember that when there are facilities issues, such as repairs, construction, or anything that could affect employees, every member of the staff will want to receive information about what decisions are being made. If the court has a public information officer that person can be recruited to inform any lawyers, litigants, or others who may be affected.

Should anything occur that could impact the continuity of court operations, the chief judge must address these matters as a priority and have a plan and process for communicating with the other judges, staff, and external stakeholders.

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Chief Judge Responsibilities

*As we wrap up this section on chief judge responsibilities, ask yourself:*

- What are your responsibilities as chief judge?
- Are they clearly defined?
- Is there a clear allocation of responsibility between you and the clerk or the administrative director of the court?
- Would the associate judges and key court staff be able to describe your responsibilities as chief?

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL



### Why are Courts Hard to Manage?

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Why are Courts Hard to Manage?

The introduction to the monograph, “Governance: The Final Frontier,” frames the issue this way: Harvard Law School Dean Roscoe Pound’s famous 1906 speech, “The Causes of Popular Dissatisfaction with the Administration of Justice,” launched an era in which court leaders and academic supporters sought to find a form of court organization that would produce public satisfaction as a matter of routine. Now, more than a century later, after countless examinations, re-examinations, development of various standards for court organization, and application of innovative private sector business practices, no agreed-upon model for effectively leading state courts has emerged even as judges and court administrators continue to explore the frontier of court governance.

“Governance: The Final Frontier,” Pg. 1, Mary Campbell McQueen, June 2013  
(The “Governance” monograph is available for reading at the resources link below.)



## Slide 37

GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Why are Courts Hard to Manage?

Courts have often tried to run themselves like a business, but courts are different from private businesses; the organizational models for the two are incompatible. Instead, court leaders should “consider a ‘loosely coupled organization’ model and look to the processes and mechanisms that the leaders of those organizations use to achieve effective governance.”

“Governance: The Final Frontier,” Pg. 1


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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Analogous Leadership Positions?


Which of the following positions do you believe is most analogous to the job of state appellate court chief judge?


Military General


Chief Executive Officer


College Dean

SUBMIT

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Analogous Leadership Positions?

**Military General:**  
Most chief judges do not have the authority or the degree of control over subordinates that a general has.

**Chief Executive Officer:**  
While it is true that courts are generally required to be more accountable for their budgets and business practices than they used to be, a chief judge does not have the authority to re-allocate resources and set strategic direction in the way a CEO does.

**College Dean:**  
Chief judges and college deans are both “superiors among equals” with responsibilities for administrative matters, including rules and procedures that promote consistency and standards.

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Characteristics of Loosely Coupled Organizations


Loosely coupled organizations have traits that are often associated with public universities and medical institutions. Those traits include the following...



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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Characteristics of Loosely Coupled Organizations

- Complex and specialized decision-making
- Highly trained professionals with individual autonomy
- Tension between institutional commitment and personal autonomy

Consider how professors in universities, doctors in hospitals, and judges in courts all retain a high level of autonomy within their organization. That autonomy results in diminished formal authority for the organization's leadership. "Legitimate authority in a loosely coupled organization is derived as much from colleagues as from a formal source, such as a statute, bylaw, or constitution." "Governance: The Final Frontier," Pg. 2

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Characteristics of Loosely Coupled Organizations

- External funding
- Changing public expectations

-- These two characteristics apply to universities, hospitals, and courts. While each of them generates some revenue, the bulk of their revenue comes from sources they do not control. Likewise, public expectations are important, they change rapidly and often, and public expectations are not controlled by the institution.

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Characteristics of Loosely Coupled Organizations

Now we will look more closely at some of the features of loosely coupled organizations that make them a challenge to manage.

- Federated structure
- Accountability v. autonomy
- Unpredictable connections
- Complex and knowledge intensive

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Characteristics of Loosely Coupled Organizations

#### Federated Structure

- Consistent with their high level of autonomy, “trained professionals in public service, [such as appellate judges,] may create their own governance norms and feel unreasonably constrained by a central authority’s demand for administrative accountability.”
- Individually based legitimacy contributes to the federated nature of the organization and perpetuates an “us versus them” perception of governing.

“Governance: The Final Frontier,” Pg. 2

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Characteristics of Loosely Coupled Organizations

#### Accountability v. Autonomy

- “Accountability and autonomy are competing values in loosely coupled organizations and, as such, potential sources of tension.”
- “Increasing competition for public funds, coupled with increasing demands for court efficiency and productivity, have elevated the tensions between judicial accountability and individual autonomy.”

“Governance: The Final Frontier,” Pg. 3-4

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Characteristics of Loosely Coupled Organizations

#### Unpredictable Connections

- “The connections and alliances that exist between the individual... [e.g. associate judges] and the centralized executive... [e.g. the chief judge and administrator] are unpredictable in loosely held organizations, especially compared with a tightly coupled hierarchical agency....Lines of authority may be unclear, misunderstood, or unrecognized, and the distribution of power may appear uneven.”

“Governance: The Final Frontier,” Pg. 4-5

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Characteristics of Loosely Coupled Organizations

#### Complex and Knowledge Intensive

- Professionals in loosely coupled systems arrive in their positions having personally attained a high level of academic achievement applying complex concepts. Whether in medicine, academia, or the law, continued personal achievement is valued and rewarded. This individually based system of recognition and reward perpetuates the loosely coupled nature of the organization.
- The pressure to make the right decision in the first instance contributes to a sense of individual rather than institutional responsibility, a consequence distinctive to the courts as a loosely coupled system.

“Governance: The Final Frontier,” Pg. 5

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

### Guidance for Leaders in Loosely Coupled Organizations

#### The Mechanisms

- Leadership: The Importance of Legitimacy
- Process: Protecting and Guiding
- Fairness: Collaborative Decision Making
- Communication: The Importance of the Inner Branch
  - Each of these four “mechanisms” contain recommended strategies for leaders in loosely coupled organizations. They are fully addressed in the other modules.

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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL

# Summary



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GOVERNANCE & LEADERSHIP FOR CHIEF JUDGES OF THE STATE COURTS OF APPEAL



# Resources

## I. Governance: The Final Frontier




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# Selected Works of Tienielle Fordyce-Ruff



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Selected Works of Tienielle Fordyce-Ruff

Director of the Legal Research & Writing Program, Associate Professor

Tienielle Fordyce-Ruff joined Concordia University, School of Law as the Director the Legal Research and Writing Program in April of 2012. Professor Fordyce-Ruff created and directs the program, in addition to teaching. Prof. Fordyce-Ruff also authored Idaho Legal Research, a textbook designed to help legal professionals and students in the state and now in its second edition. In addition, Prof. Fordyce-Ruff serves as the series editor for Carolina Academic Press' state specific legal research series and authors a monthly column on legal writing for The Advocate, the Idaho State Bar's monthly publication. [read more](#)

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Search works of Tienielle Fordyce-Ruff

Featured Works (1)

PDF

**Index to Tienielle Fordyce-Ruff's Advocate Articles** (Tienielle Fordyce-Ruff) *Faculty Scholarship* (2018)  
This document functions as an index to help readers to navigate Professor Fordyce-Ruff's Advocate column articles better.

Research Works (59)

PDF

**Legal Citation Part III: Using Citation to Convey Textual Meaning** (Tienielle Fordyce-Ruff and Jason G Dykstra) *Faculty Scholarship* (2018)  
Remember, at our core, attorneys are advocates, and one of the purposes of citation is to prove to the reader that she can trust one's research-to prove that the law is what one states it ...

PDF

**Legal Citation Part II: Tips & Tricks to Avoid Common Errors** (Tienielle Fordyce-Ruff and Jason G Dykstra) *Faculty Scholarship* (2018)  
This article goes over quick and easy tips to help one avoid the most common citation typeface and abbreviation errors often seen in practitioner filings.

PDF

**Legal Citation Part I: The Basics of Legal Citation** (Tienielle Fordyce-Ruff) *Faculty Scholarship* (2018)  
Legal citation conveys information succinctly and efficiently by adhering to four principles. Thus, legal citation follows the 1) core identification principles, 2) minimum content principles, 3) compacting principles, and 4) formatting principles. This article looks ...

PDF

**Beyond the Basics: Lesser-Used Punctuation Marks** (Tienielle Fordyce-Ruff and Jason G Dykstra) *Faculty Scholarship* (2018)  
Occasionally legal writing can benefit from a few lesser-used punctuation marks. This article focuses on the proper use of the question mark, slash, and parentheses in legal writing. Used sparingly and correctly, these marks can ...

PDF

**To That or Not to That: When to Use and When to Omit "That"** (Tienielle Fordyce-Ruff) *Faculty Scholarship* (2018)  
Using or omitting that can be confusing. Sometimes a sentence needs a that, sometimes a sentence doesn't need a that, and sometimes using that is optional. This article addresses some tips to help one understand ...

PDF

**Taking the 30,000-Foot View: Seeing What You've Written** (Tienielle Fordyce-Ruff) *Faculty Scholarship* (2018)  
In thinking about a topic for this column, I took a moment to look back over what I've covered since I started writing for The Advocate. I saw a huge range of topics-- word choice ...

PDF

**Three Tips for Concise Writing** (Tienielle Fordyce-Ruff) *Faculty Scholarship* (2017)  
I'm just wrapping up the first unit of my legal writing class. During this time every year, I introduce my students to the 4 C's-four characteristics that should be present in every legal document.' Yes, ...



















PDF

**Connections Count Part II: Orienting and Substantive Transitions** (Tienielle Fordyce-Ruff) *Faculty Scholarship* (2017)  
Last month we began exploring transitions and their usage. We covered generic transitions, their placement, and the importance of using the transition with the exact right meaning. This month, we are turning our attention to ...

**Bridging the Gap from Law School to Practice; Connecting LRW to the Practice of Law with a Capstone Litigation Planning and Drafting Course** (Tienielle Fordyce-Ruff and Jason Dykstra) *Western Regional Legal Writing Conference* (2017)  
This presentation will discuss connecting law school to the practice of law with a course focused on civil litigation from the beginning of a dispute through dispositive motion practice. Students improve their persuasive legal writing ...

PDF

**Connections Count Part I: Generic Transitions** (Tienielle Fordyce-Ruff) *Faculty Scholarship* (2017)  
Transitions serve an important function in any piece of writing: they connect the ideas in sentences and paragraphs and show the reader how lines of reasoning are advancing. These simple words let the reader know ...

-  **Writing for E-Readers: Tips and Tricks to Craft Effective Briefs** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2017)  
With the second wave of counties in Idaho ready for e-filing, it seemed like a good time to talk about the difference in document design for e-readers versus paper- readers. Put simply, people have different ...
-  **Help the Reader Swim Downstream: Create Flow in Your Writing** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2016)  
Idahoans know flow. We have the most amazing rivers just out of our backdoors. But as legal writers, Idaho attorneys need to do more than look outside to create effective writing. This month's column will ...
-  **Alphabet Soup: More Confusing Word Pairs** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2016)  
I'm writing this over my Spring Break. By the time you read this, the weather will be lovely, but today it's classically blustery. I decided to make soup before sitting down at my computer. Filled ...
-  **Beyond the Basics: Typographic Symbols in Writing** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2016)  
Last week my students finished their major assignment for the spring semester. As we were working on proofing and editing, one student asked me when to use § and when to use "section." I quickly ...
-  **A Quick Reference: Tricky Prepositions and Confusing Adjectives** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2016)  
I'll admit it: This month's column is a little bit for my students (and newer law grads). It seems that about this time each year my students start to notice that they struggle with certain ...
-  **Odds and Ends: My Inbox Part II** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2015)  
One of the joys of writing this column is hearing from my readers. Every month a loyal Advocate reader contacts me. Some just let me know about a topic they particularly enjoyed. Others, though, ask ...
-  **Know Your Audience: Writing to Non-Lawyers** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2015)  
I spend a lot of time in my classroom teaching my students about audience traits and expectations. We learn about how legal readers read and use documents and how we can better prepare our writing ...
-  **Back to Basics, Part V: Adjectives** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2015)  
In grammar terms, an adjective is a word that modifies a noun or pronoun. You might have learned that it's a 'describing word' back in elementary school. Adjectives tell the reader what sort, how many, ...
-  **Fairness, Clarity, Precision, and Reaction: Gender-free and Bias-free Word Choice** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2015)  
Every legal problem involves people. You cannot practice law without writing about people. But writing about people in a way that is clear and won't cause a negative reaction by the reader takes some effort. ...
-  **Spring Cleaning Part II** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2015)  
... [I]n the spirit of spring-cleaning, let's look at some writing "rules" you can jettison to the trash heap.
-  **Robust Writing: Crafting Better Sentences** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2015)  
My students have ... learned that legal writing can be difficult to read. Sometimes the difficulty comes from hard concepts or ideas. Sometimes, however, the difficulty comes from difficult sentence structure. The writer has tried ...
-  **Feeling Possessed: The Use of the Genitive Case** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2015)  
"Maybe it's just the end of the winter, but I always go a little stir crazy this time of year. Not like Jack Nicholson in *The Shining*, of course. But I do long for a ...
-  **Beyond the Basics: Transitive, Intransitive, Ditransitive and Ambitransitive Verbs** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2015)  
Here's a good laugh: Lori walks into the kitchen and says to Greg, "Make me a sandwich." Greg waves his hands wildly and replies, "Poof! You're a sandwich." I know you all love a good ...
-  **Confusing Word Pairs III: D Words** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2015)  
... [T]his month we are going to delve into D words. So sit back (maybe by a nice fire with a cozy beverage) and prepare to be dazzled as we dig into an array of ...
-  **Typography Matters: Document Design** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2014)  
This month, I am turning to what I hope is [a] ... helpful topic: document design. Sit back and enjoy learning more about spaces after periods, cueing devices, point size, justification, and paragraph breaks. [excerpt]
-  **A Pro's Woe: Overcoming Writer's Block in a Hurry** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2014)  
Even though attorneys spend much of their lives writing, we are not immune to writer's block. Some of us have triedand- true methods for overcoming these slumps, but even then there might be times when ...
-  **Back to Basics [IV]: Subordinate Word Groups** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2014)  
I've spent a lot of time writing about how to create better sentences. I've covered everything from parts of a sentence, to cutting clutter from sentences, to adding eloquence to sentences. But I've never covered ...
-  **Confusing Word Pairs: Part II** (Tenielle Fordyce-Ruff) *Faculty Scholarship* (2014)  
Way back in the January 2012 edition of *The Advocate* I introduced you to my inner grammar noodle by discussing confusing word pairs. Several readers gave me suggestions for pairs that had confused them, and ...

# Minding the Court: Enhancing the Decision-Making Process

By Pamela Casey, Kevin Burke and Steve Leben<sup>1</sup>

## 1. Introduction

A compelling and growing body of research from the fields of cognitive psychology and neuroscience provides important insights about how we process information and make decisions. This research has great potential significance for judges, who spend much of their time making decisions of great importance to others. For most judges, this research literature is not part of their judicial education.

This article reviews cutting edge research about decision making and discusses its implications for helping judges and those who work with them produce fair processes and just outcomes. It builds on a 2007 American Judges Association paper that encouraged judges to incorporate the principles of procedural justice (see side bar) to help ensure a decision-

making process deemed fair by litigants.<sup>2</sup> Procedural fairness increases compliance with court orders and is critical to positive public perceptions of the court system.<sup>3</sup>

Implementing procedural-justice principles in the courtroom demands the judge's "mindful" or conscious focus and attention. Understanding how the brain processes information and the various factors that can influence decisions and courtroom behaviors is a first step to practicing more mindful decision making that is consistent with the principles of procedural justice.

### Key Procedural-Justice Principles

Voice—Litigants have the opportunity to participate in the process and offer their perspective.

Neutrality—Litigants believe the judge is neutral, makes decisions based on rules rather than opinions, and applies rules consistently.

Respectful treatment—Litigants are treated with dignity and feel their problems are taken seriously.

Trust—Litigants perceive the judge is sincere and caring.

## 2. The Science of Decision Making

At any point in time, an individual is bombarded with a host of sensory information. Most of it is processed "behind the scenes" with little or no knowledge on the part of the individual. Much like a computer continues to work in the background while a word-processing program is on the screen, individuals constantly process a barrage of sights (e.g., the glare on the computer screen), sounds (e.g., the click of the keys), smells (e.g., the coffee on the desk), and other information—sorting, categorizing, and storing it—even as they intently focus on a specific task (e.g., reading a case file or writing an opinion).

Reflexive processes—Like blinking in bright sunlight, these reflexive processes are automatic, rapid, and unconscious.

Reflective processes—Like solving a math problem, reflective processes are deliberative, slow, and conscious.

This dual system of information processing is the mechanism by which judgments and decisions are made. Neuroscientist Matthew Lieberman has identified different areas of the brain associated with each system by neuroimaging.<sup>4</sup> The

<sup>1</sup> Pamela Casey is Principal Court Research Consultant of the United States' [National Center for State Courts](#). Kevin Burke is a judge of the Hennepin County District Court in the State of Minnesota, and Steve Leben is a judge of the State of Kansas Court of Appeals in the United States. Both Judge Burke and Judge Leben are past presidents of the [American Judges Association](#). This article is based on a white paper adopted by the AJA in 2012. The authors thank Dr. Ingo Keilitz for his editing of the original paper for publication here. They also thank Dr. Jenny Elek, Dr. Keilitz, and Dr. Robert Rust for their substantive contributions to the development of the original paper.

<sup>2</sup> Kevin Burke and Steve Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction*, 44 CT. REV. 4 (2007); see Tom R. Tyler, *Procedural Justice and the Court*, 44 CT. REV. 26, 30-31 (2007) (describing the key procedural-justice principles contained in the sidebar).

<sup>3</sup> See Steve Leben, *Considering Procedural-Fairness Concepts in the Courts of Utah*, at 4-6, paper presented at the Utah State judicial conference, Sept. 14, 2011, available at <http://www.proceduralfairness.org/Resources/~media/Microsites/Files/procedural-fairness/Utah%20Courts%20and%20Procedural%20Fairness%2009-2011.ashx>.

<sup>4</sup> Matthew D. Lieberman, *Reflective and Reflexive Judgment Processes: A Social Cognitive Neuroscience Approach*, in SOCIAL JUDGMENTS: IMPLICIT AND EXPLICIT PROCESSES 44 (Joseph P. Forgas, Kipling D. Williams, and William Von Hippel eds., 2003). Scientists are still exploring whether there are two different systems, multiple systems, or multiple processes that make up one system, but most agree on "processes that are unconscious, rapid, automatic, and high capacity, and those that are conscious, slow, and deliberative." Jonathan St. B. T. Evans, *Dual-Processing Accounts of Reasoning, Judgment, and Social Cognition*, 255 ANN. REV. PSYCHOL. 255, 256 (2008). This article relies on Lieberman's model because of his extensive work mapping areas of the brain and because the labels he uses are more descriptive of decision-making processes than, for example, Daniel Kahneman's system 1 and system 2 labels. Compare Burke and Leben, *supra* note 2, and Lieberman, with DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011).



reflexive, automatic system relies on patterns that develop based on the individual's experiences with the world. The individual learns over time how to distinguish different objects, people, actions, and situations based on features that coalesce into patterns. These patterns, referred to as schemas, help the brain process information quickly and efficiently. Based on prior experiences, for example, individuals know that a red octagon in the distance means "stop."

The reflective, controlled system relies on deliberative intention and effort to perform a task. Memorizing a new phone number or computer password requires concentration. Once the phone number or password is repeatedly practiced, however, it becomes a readily accessible schema that comes to mind with little effort. For a judge with a domestic-violence docket, for example, a bit of study up-front would teach the judge the elements of domestic battery—with no need to look it up again as each case is called.

While the reflexive system can process information on an ongoing basis, the reflective system has a limited capacity. It works for a while but eventually runs out of gas. Thus the brain is somewhat miserly about its use of the reflective system. This "principle of least effort" means that decision makers initially tend to rely on the automatic retrieval of schemas to process incoming information and engage the reflective system only when motivated to do otherwise by, for example, learning a new skill or solving a complex problem.<sup>5</sup>

Gary Klein refers to this reliance on schemas as recognition-primed decision making.<sup>6</sup> His premise is that we develop schemas that we subsequently use to size up a situation and decide how to move forward. For example, a firefighter does not enter a burning building and proceed to analyze all the potential options for action. Rather, the firefighter instantaneously takes in a variety of information about the current situation and matches it to a response option that has worked in similar situations in the firefighter's past. The initial option may not have been the best option if there had been enough time to generate and analyze all possible options, but it usually works. Judges, particularly when confronted with large dockets, heavy calendars, or pressing "emergency" motions, can tend to use the same process as firefighters. Sometimes using the first option that works rather than the optimal option will be satisfactory — but not always.

Reflexive decision making works for countless choices an individual makes throughout the day.<sup>7</sup> And in some instances, such as those requiring a quick decision in an emergency situation, as in the firefighter example, the reflexive approach might be better than a more deliberative, reflective approach.<sup>8</sup> The problem with reflexive decision making, however, is that sometimes the underlying schemas are based on inaccurate information (e.g., assuming two events that occur together are related, as in superstitions), are only partially correct (e.g., stereotypes), or are applied incorrectly (e.g., using a gesture that is misinterpreted in another country).<sup>9</sup> Two prominent examples of schemas that can lead to inaccurate decisions are cognitive heuristics and implicit biases.

## 2.1 Cognitive Heuristics

Heuristics are schemas based on only part of the information available—letting us make decisions more quickly. Research shows that reliance on heuristics in some circumstances can lead to more accurate decisions and judgments than reliance on more rational models.<sup>10</sup> But heuristics also can be faulty in a variety of ways, leading decision makers to jump to conclusions and make errors in solving problems.<sup>11</sup> And since heuristics operate in the world of unconscious, reflexive processing, we can easily make errors without recognizing the source of a faulty decision.

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**Heuristics**—schemas that rely on only some of the information available so an individual can make a decision quickly and with little effort.

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<sup>5</sup> Serena Chen and Shelly Chaiken, *The Heuristic-Systematic Model in Its Broader Context*, in DUAL-PROCESS THEORIES IN SOCIAL PSYCHOLOGY 73 (Shelley Chaiken and Yaacov Trope eds., 1999).

<sup>6</sup> Gary A. Klein, *A Recognition-Primed Decision (RPD) Model of Rapid Decision Making*, in DECISION MAKING IN ACTION: MODELS AND METHODS 138 (Gary A. Klein, Judith Orasanu, Roberta Calderwood, and Caroline E. Zsombok eds., 1993).

<sup>7</sup> "Most of the time we solve problems without coming close to the conscious, step-by-step analysis of the deliberative approach. In fact, attempting to approach even a small fraction of the problems we encounter in a full, deliberative manner would bring our activities to a screeching halt. Out of necessity, most of problem-solving is intuitive." PAUL BREST AND LINDA HAMILTON KRIEGER, PROBLEM SOLVING, DECISION MAKING, AND PROFESSIONAL JUDGMENT: A GUIDE FOR LAWYERS AND POLICYMAKERS 14 (2010).

<sup>8</sup> See, e.g., Timothy D. Wilson et al., *Introspecting About Reasons Can Reduce Post-Choice Satisfaction*, 19 PERSONALITY AND SOC. PSYCHOL. BULL. 331 (1993); Timothy D. Wilson and Jonathan W. Schooler, *Thinking Too Much: Introspection Can Reduce the Quality of Preferences and Decisions*, 60 J. PERSONALITY AND SOC. PSYCHOL. 181 (1991).

<sup>9</sup> See Desmond Morris, *Gestures, Meanings, and Cultures*, YOUTUBE (Jan. 29, 2011), <http://www.youtube.com/watch?v=fRQSRRed58XM>, for some common examples of cultural differences in interpreting gestures in a video by Desmond Morris.

<sup>10</sup> Gerd Gigerenzer and Wolfgang Gaissmaier, *Heuristic Decision Making*, 62 ANN. REV. PSYCHOL. 451 (2011).

<sup>11</sup> KAHNEMAN, *supra* note 4.

Anchoring is one of these heuristics. For example, a person is likely to give a higher or lower estimate of damages if a particularly high (or low) figure is introduced. That number—even if far off the mark—tends to act as an anchor around which later estimates are formed.

In a classic study, participants were asked to estimate the number of African countries in the United Nations after witnessing a researcher spin a wheel of fortune that landed on one of two numbers.<sup>12</sup> The wheel of fortune was rigged to stop only on the numbers “10” and “65.” The median response of participants who saw and wrote down the number “10” was 25 countries; and the median response for participants who witnessed the number “65” was 45 countries.

Do judges who are trained to follow procedural rules designed to minimize the influence of irrelevant information succumb to anchoring? In a series of studies with German judges, Birte English and her colleagues examined whether criminal sentencing decisions could be influenced by anchors that judges knew to be irrelevant.<sup>13</sup> The anchor was presented in several ways: (a) by a journalist’s question about the sentence, (b) by a prosecutor’s acknowledged, randomly determined sentencing demand, and (c) by a prosecutor’s sentencing demand obtained by the judge throwing a pair of loaded dice. In all cases the judges’ decisions were influenced by the anchors. The judges sentenced more harshly when exposed to the higher rather than lower randomly determined anchor.

Another heuristic is the reliance on small and unrepresentative samples of the population to make decisions. Individuals frequently view small samples incorrectly as representative and adjust their expectations accordingly.

Uri Simonsohn and Francesca Gino, who studied the influence of this heuristic,<sup>14</sup> postulated that individuals who make a set of decisions every day would try to align each daily set of decisions to reflect their overall distribution of decisions. To test this hypothesis, the researchers reviewed data from over 9,000 interviews in which interviewers scored the qualifications of the interviewees. They found that interviewers’ daily subsets (small samples) of scores tended to reflect their overall distribution of scores (population). Even though on a given day four interviewees, for example, may all have been deserving of a high score, the interviewers will be reluctant to score all four highly, and the interviewees will be more likely to be ranked lower to conform to the interviewer’s overall population scores.

Simonsohn and Gino ask us to imagine, for example, a judge who must make dozens of judgments a day. Given that people underestimate the presence of streaks in random sequences, the judge may be disproportionately reluctant to evaluate four, five or six people in a row in too similar a fashion, even though that “subset” was formed post-hoc.<sup>15</sup>

More evidence that judges are susceptible to heuristics comes from a series of studies by law professors Chris Guthrie and Jeffrey Rachlinski and Judge Andrew Wistrich.<sup>16</sup> They explored judges’ use of five heuristics: (a) anchoring, (b) framing—the same information presented differently (e.g., the glass is half full versus half empty), (c) hindsight—the sense that specific outcomes were more predictable once the outcomes are known, (d) representativeness—ignoring statistical base-rate information, and (e) egocentricity—overconfidence in one’s abilities. They found that judges’ decisions were influenced by each of these heuristics.

For example, when some judges were told about a clearly meritless motion to dismiss for lack of jurisdiction in a diversity case (based on the idea that damages were less than \$75,000), judges who were aware that such a motion had been filed awarded a lesser damage amount (30% less overall) than judges who did not know about the motion to dismiss.<sup>17</sup> But they also found that judges showed less susceptibility to the framing and representativeness heuristics than other experts and laypersons, and, in a subsequent study, that hindsight did not affect judges’ decisions in a specific scenario involving a probable-cause determination.<sup>18</sup>

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<sup>12</sup> Amos Tversky and Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 SCI. 1124 (1974).

<sup>13</sup> Birte English, Thomas Mussweiler, and Fritz Strack, *Playing Dice with Criminal Sentences: The Influence of Irrelevant Anchors on Experts’ Judicial Decision Making*, 32 PERSONALITY AND SOC. PSYCHOL. BULL. 188 (2006).

<sup>14</sup> Uri Simonsohn and Francesca Gino, *Daily Horizons: Evidence of Narrow Bracketing in Judgment from 10 Years of MBA-Admission Interviews*, PSYCHOLOGICAL SCIENCE (forthcoming).

<sup>15</sup> *Id.* at 10-11 (citing Thomas Gilovich, Robert Vallone, and Amos Tversky, *The Hot Hand in Basketball: On the Misperception of Random Sequences*, 17 COGNITIVE PSYCHOL. 295 (1985)).

<sup>16</sup> Chris Guthrie, Jeffrey J. Rachlinski, and Andrew J. Wistrich, *Inside the Judicial Mind*, 86 CORNELL L. REV. 777 (2001).

<sup>17</sup> Chris Guthrie, Jeffrey J. Rachlinski and Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93 CORNELL L. REV. 1, 21 (2007).

<sup>18</sup> Andrew J. Wistrich, Chris Guthrie and Jeffrey J. Rachlinski, *Can Judges Ignore Inadmissible Information?: The Difficulty of Deliberately Disregarding*, 153 U. PA. L. REV. 1251 (2005).

## 2.2 Implicit Biases

Implicit biases, another type of schema, also threaten fair processes and just outcomes. They are based on implicit attitudes or stereotypes that operate below the radar. Research shows that even individuals who consciously strive to be fair and objective can nonetheless be influenced by implicit biases.<sup>19</sup>

Scientists use a variety of methods to measure implicit bias, but the most common is comparing individuals' reaction times in response to pairings of two stimuli that are strongly associated (e.g., elderly and frail) with two stimuli that are less strongly associated (e.g., elderly and robust). *Project Implicit*, begun in 1998 by researchers from several U.S. universities, offers web-based reaction-time tests, referred to as Implicit Association Tests, in over fifteen areas such as weight, age, race, and religion that anyone can take.<sup>20</sup> A review of the results of over 2.5 million tests taken between 2000 and 2006 revealed the pervasiveness of implicit preferences for socially privileged groups such as white over black and straight over gay.<sup>21</sup> Research also shows that implicit biases can influence decisions in a variety of real-life settings such as employers hiring job applicants, police officers deciding to shoot, healthcare workers providing medical treatment, and voters making voting choices.<sup>22</sup>

Research by Rachlinski and his colleagues suggests that judges may be influenced by implicit bias.<sup>23</sup> They found, for example, a strong white preference on the Implicit Association Test among white judges. In keeping with the general population findings of the Implicit Association Test, the black judges showed no clear preference overall (44% showed a white preference but the preference was weaker overall). The researchers also reported some evidence that implicit bias affected judges' sentencing decisions, though this finding was less clear. Importantly for judicial decision making, the researchers found that "when judges are aware of a need to monitor their own responses for the influence of implicit racial biases, and are motivated to suppress that bias, they appear able to do so."<sup>24</sup>

## 3. Mindful Judicial Decisions

Scientists agree that most behaviors and decisions result from a combination of both reflexive and reflective processes. The question is the extent to and ways in which the two processes work together for any particular decision.<sup>25</sup> Several researchers postulate what psychologist Jonathan Evans refers to as "default-interventionist" models of judgment and decision making.<sup>26</sup> These models propose that initial intuitive or reflexive responses are generated, which are then modified or endorsed by the reflective system. The reflective system routinely endorses the initial responses, reserving more deliberative, effortful processing to when the individual is motivated to do so and working memory and time are sufficient.<sup>27</sup>

In most situations, default processing is good enough. But in the courtroom, where individuals face possible restrictions of liberty and judges consider other life-altering issues—such as family preservation, personal safety, economic security, and adequate housing—fair processes and just outcomes demand a more deliberate approach. Given that most behaviors and decisions result from a combination of both reflexive and reflective processes, are there ways to lessen the effects of faulty heuristics and implicit biases? One step is to understand some of the causes of diminished decision-making abilities, which include fatigue (like sleep deprivation), other depleted resources (like glucose levels), multitasking, mood, and fluency (i.e., ease of processing information).

<sup>19</sup> Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 J. PERSONALITY AND SOC. PSYCHOL. 5 (1989).

<sup>20</sup> PROJECT IMPLICIT, <http://www.projectimplicit.net/about.html> (retrieved September 28, 2012).

<sup>21</sup> Kristin A. Lane, Jerry Kang, and Mahzarin R. Banaji, *Implicit Social Cognition and Law*, 3 ANN. REV. L. AND SOC. SCI. 427 (2007); Brian A. Nosek et al., *Pervasiveness and Correlates of Implicit Attitudes and Stereotypes*, 18 EUR. REV. SOC. PSYCHOL. 36 (2007).

<sup>22</sup> John T. Jost et al., *The Existence of Implicit Bias Is Beyond Reasonable Doubt: A Refutation of Ideological and Methodological Objections and Executive Summary of Ten Studies That No Manager Should Ignore*, 29 RES. ORGANIZATIONAL BEHAV. 39 (2009).

<sup>23</sup> Jeffrey J. Rachlinski, Sheri Lynn Johnson, Andrew J. Wistrich, and Chris Guthrie, *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1225-26 (2009).

<sup>24</sup> *Id.* at 1221. For judicial-education resources on implicit bias, see PAMELA M. CASEY, ROGER K. WARREN, FRED L. CHEESMAN II. & JENNIFER K. ELEK, *HELPING COURTS ADDRESS IMPLICIT BIAS* (2012), available at [www.ncsc.org/ibreport](http://www.ncsc.org/ibreport).

<sup>25</sup> Robert Boyd et al., *Explicit and Implicit Strategies in Decision Making*, in BETTER THAN CONSCIOUS? DECISION MAKING, THE HUMAN MIND, AND IMPLICATIONS FOR INSTITUTIONS 225 (Christoph Engel and Wolf Singer eds., 2008); Roy F. Baumeister, E. J. Masicampo, and Kathleen D. Vohs, *Do Conscious Thoughts Cause Behavior?* 62 ANN. REV. PSYCHOL. 331 (2011); Evans, *supra* note 4.

<sup>26</sup> Evans, *supra* note 4, at 266.

<sup>27</sup> Jonathan St. B. T. Evans, *The Heuristic-Analytic Theory of Reasoning: Extension and Evaluation*, 13 PSYCHONOMIC BULL. AND REV. 378, 382 (2006).

### 3.1 Effects of Fatigue, Diminished Resources, and Multitasking

We all know that fatigue, depleted resources, and multitasking lower performance. Researchers Yvonne Harrison and James Horne reviewed studies on the effects of sleep deprivation and identified several effects including poor “communication, lack of innovation, inflexibility of thought processes, inappropriate attention to peripheral concerns or distraction, over-reliance on previous strategies, unwillingness to try out novel strategies, unreliable memory for when events occurred, changes in mood including loss of empathy with colleagues, and inability to deal with surprise and the unexpected.”<sup>28</sup>

Blood sugar (glucose) fuels the brain, and research shows that reflective processes demand more fuel than reflexive processes. When glucose levels are low, individuals have a tendency to rely more on reflexive decision-making strategies and have more difficulty summoning their reflective system to check their decisions.<sup>29</sup>

This research may explain the findings of a recent study that examined decision fatigue among Israeli parole-board judges.<sup>30</sup> The study found that the experienced judges’ decisions fluctuated based on when cases were heard during the day. Cases heard early in the morning and just after breaks (with meals) were more likely to end with a parole grant than cases heard shortly before breaks and at the end of the day. That is, decisions tended to default to the *status quo* of denying parole as the number of cases increased until judges took a break. Because each break included a meal, it is not possible to say with certainty that it was the meal and not the “timeout” that affected subsequent decisions. But research in this area suggests that the meal replenished glucose stores and thus contributed to the change in “default” processing in cases following a break. In either case, the study suggests that “judicial decisions can be influenced by whether the judge took a break to eat.”<sup>31</sup>

Finally, multitasking involves the rapid switching from one task to another. Done in milliseconds, the brain postpones one task and sets up for the next.<sup>32</sup> For more than 97% of the population, this task switching has a cost in performance.<sup>33</sup> Despite numerous studies to the contrary, however, most individuals think that they are good at multitasking and more efficient as a result. Many judges are the same; even if they concede that multitasking has a cost, many judges are quite good at articulating that—for them—the cost is negligible and worth it.

As noted, researchers consistently find diminished performance by those who multitask. For example, psychologists Jason Watson and David Strayer tested the performance of 200 individuals on a driving simulation task, a cognitive task involving memorization and basic math problems, and a dual-task condition involving both the driving simulation and the cognitive tasks.<sup>34</sup> Performance measures on the individual tasks were significantly better than those in the dual-task condition.

Task switching in the courtroom has the potential of distracting the judge and reducing performance, but it also carries with it the sense that a judge is not fully engaged with the matter at hand. A central tenet of procedural fairness is that the judge is an active listener. If the judge seems distracted with other matters, litigants will not feel that their voice has been fully heard. A recent study by Harvard psychologists demonstrated the importance of giving people voice.<sup>35</sup> The researchers found that regions of the brain associated with reward are activated when individuals are allowed to talk about themselves.

### 3.2 Effects of Mood

Mood affects the way we process information, with those in a positive mood generally more likely to engage in reflexive, automatic processing and those in a negative mood more likely to engage in more reflective, deliberative processing.<sup>36</sup>

<sup>28</sup> Yvonne Harrison, and James A. Horne, *The Impact of Sleep Deprivation on Decision Making: A Review*, 6 J. EXPERIMENTAL PSYCHOL.: APPLIED 236, 246 (2000).

<sup>29</sup> E.J. Masicampo and Roy F. Baumeister, *Toward a Physiology of Dual-Process Reasoning and Judgment: Lemonade, Willpower, and Expensive Rule-Based Analysis*, 19 Psychological Science 255 (2008).

<sup>30</sup> Shai Danziger, Jonathan Levav, and Liora Avnaim-Pesso, *Extraneous Factors in Judicial Decisions*, 108 PROC. NAT’L ACAD. SCI. 6889 (2011).

<sup>31</sup> *Id.* at 6890.

<sup>32</sup> Stephen Monsell, *Task Switching*, 7 TRENDS COGNITIVE SCI. 134 (2003).

<sup>33</sup> Jason M. Watson and David L. Strayer, *Supertaskers: Profiles in Extraordinary Multitasking Ability*, 17 PSYCHONOMIC BULL. AND R. 479 (2010).

<sup>34</sup> *Id.*

<sup>35</sup> Diana I. Tamir and Jason P. Mitchell, *Disclosing Information About the Self Is Intrinsically Rewarding*, 109 PROC. NAT’L ACAD. SCI. 8038 (2012).

<sup>36</sup> Gerald L. Clore and Jeffrey R. Huntsinger, *How Emotions Inform Judgment and Regulate Thought*, 11 TRENDS COGNITIVE SCI. 393 (2007).



One explanation is that positive moods enhance the default processing approach—the status quo—and negative moods inhibit it.<sup>37</sup> In many instances, individuals “default” to reflexive processing; thus positive moods often are associated with reflexive processing. If things are good, there is little motivation to engage in more effortful processing. Reliance on stereotypes comes easily.<sup>38</sup> A negative mood, on the other hand, signals a problem that requires more focus and attention.

Researchers Kimberly Elsbach and Pamela Barr suggest that different moods are more suited for some purposes than others: “[P]ositive moods are best suited for decision-making tasks that are interesting or require creativity or efficiency, while negative moods are best suited for decision tasks that are effortful and/or require careful consideration and analysis of a number of different issues and potential outcomes.”<sup>39</sup>

It is possible for individuals to override their spontaneous reliance on reflexive processing when in a positive mood by being more vigilant. Research shows, for example, that specifically instructing individuals to pay attention and holding individuals accountable for their decisions can induce more effortful processing.<sup>40</sup>

### 3.3 Fluency

Fluency refers to the ease with which we process information. People generally consider information that is processed more fluently (i.e., is more easily understood) as more accurate and true than less fluent information.<sup>41</sup> This holds true for a range of sensory and cognitive information. For example, information written in an easy-to-read font is considered more accurate than the same information written in a more difficult-to-process font. Likewise, information that is familiar, easier to pronounce, and easier to retrieve from memory is judged more true and likeable and individuals express more confidence in it, whatever its actual content (and accuracy) may be. Much of advertising is based on the idea of fluency.

Psychologist Adam Alter and his colleagues demonstrated that fluency is associated with reflexive information processing and disfluency is associated with more reflective processing.<sup>42</sup> In one of their studies, they asked participants to complete the Cognitive Reflection Test, a series of three questions that seem to have initially easy answers but, upon further reflection, require more systematic processing to obtain the correct responses. The researchers gave some of the participants in the study the questions in an easy-to-read font and other participants received the questions in a difficult-to-read font. Those in the latter disfluency group answered more items correctly. The researchers suggest that the difficult font served as a cue to the reflective system that the task would require more effort to process. Those in the easy-font group had no clue that more effortful processing was required.

Nancy Pennington and Reid Hastie demonstrated the potential effects of fluency in a courtroom setting. They found that when individuals read case materials and were asked to come to a decision at the end (similar to the typical juror’s task), the individuals develop narrative stories to understand the evidence. The researchers manipulated the order of the evidence provided, making it easier or harder to develop a coherent narrative. Consistent with the research on fluency, they found that the ease in creating a narrative story affected “perceptions of evidence strength, judgments about confidence, and the impact of information about witness credibility.”<sup>43</sup> Decisions shifted in the direction of the narratives that were easier to construct.

## 4. Becoming More Mindful

Almost everything a judge does involves processing information and making decisions. So if they are to improve their performance as judges, they must focus on improving the performance of those tasks. Doing so can offer additional benefits as well. One aspect of being more mindful is finding ways to relieve stress, which can interfere with information processing and decision making. Some judges may regard job stress as part of the job, but job stress can lead to

<sup>37</sup> Jeffrey R. Huntsinger, Gerald L. Clore, and Yoav Bar-Anan, *Mood and Global-Local Focus: Priming a Local Focus Reverses the Link Between Mood and Global-Local Processing*, 10 *EMOTION* 722 (2010).

<sup>38</sup> Galen V. Bodenhausen, Geoffrey P. Kramer, and Karin Süsser, *Happiness and Stereotypic Thinking in Social Judgment*, 66 *J. PERSONALITY AND SOC. PSYCHOL.* 621 (1994).

<sup>39</sup> Kimberly D. Elsbach and Pamela S. Barr, *The Effects of Mood on Individuals’ Use of Structured Decision Protocols*, 10 *ORGANIZATION SCI.* 181, 193 (1999).

<sup>40</sup> Norbert Schwarz and Gerald L. Clore, *Feelings and Phenomenal Experiences*, in *SOCIAL PSYCHOLOGY: HANDBOOK OF BASIC PRINCIPLES* 385 (Arie W. Kruglanski and E. Tory Higgins eds., 2<sup>nd</sup> ed. 2007); Bodenhausen, Kramer, and Süsser, *supra* note 38.

<sup>41</sup> Adam L. Alter and Daniel M. Oppenheimer, *Uniting the Tribes of Fluency to Form a Metacognitive Nation*, 13 *PERSONALITY AND SOC. PSYCHOL. R.* 219 (2009).

<sup>42</sup> Adam L. Alter, Daniel M. Oppenheimer, Nicholas Epley, and Rebecca N. Eyre, *Overcoming Intuition: Metacognitive Difficulty Activates Analytic Reasoning*, 136 *J. EXPERIMENTAL PSYCHOL.: GEN.* 569 (2007).

<sup>43</sup> Pennington and Hastie, *Explaining the Evidence: Tests of the Story Model for Juror Decision Making*, 62 *J. PERSONALITY AND SOC. PSYCHOL.* 189, 202 (1992).



diminished physical health.<sup>44</sup> Of course, consistent with the theme of this paper, stress also can lead to a diminished capacity for good decision making.<sup>45</sup>

The remainder of this paper suggests some strategies that may help judges be more mindful and make better decisions. First, they might do well to should focus on the higher purpose of the proceeding and properly deciding a case with a real impact on someone, not just processing a court docket. Second, they could formalize and critique heuristics used to make repetitive but important decisions. For example, a judge might consider what specific factors are leading to bail decisions or probation conditions: Are they based on accurate information? Third, they could become more mindful and periodically “read the dials.” Am I tired? Is noise from outside the courtroom a distraction? Is a break in order? Fourth, decision aids, like checklists, may help. Finally, they might benefit from feedback and fostering accountability.

#### 4.1 Focusing on Purpose

Sometimes the sheer press of business makes it difficult for a judge to focus on the individual case. The primary purpose of court work becomes *moving* cases as opposed to *hearing* them. It is hard to be mindful when the focus is on getting through a docket, signing orders, writing opinions, preparing a speech for a local community group, and any number of other responsibilities that fall on a judge’s shoulder.

Taking time—even just a few minutes—to bring full attention to the matter at hand offers a check on reflexive, automatic decision making and a step toward ensuring a fair process and a just outcome. Administrative Judge Judy Harris Kluger makes this point in her reflections about working in the busy New York City Criminal Court:

For a long time my claim to fame was that I arraigned 200 cases in one session. That’s ridiculous. When I was arraigning cases, I’d be handed the papers, say the sentence is going to be five days, ten days, whatever, never even looking at the defendant. At a community court, I’m able to look up from the papers and see the person standing in front of me. It takes two or three more minutes, but I think a judge is much more effective that way.<sup>46</sup>

Judges who see their work not as the volume of the cases they move in a particular day, but rather as their contribution to a fair and just court system are likely to find more satisfaction and meaning in their work.<sup>47</sup> Judges who see themselves as cogs in the machinery of the system may benefit from remembering their contributions to the larger system goals.

#### 4.2 Formalizing Decision Heuristics

Although the law may assume that decision makers review and weigh all relevant information in a systematic manner to reach an optimal judgment, research demonstrates that this is not the case in practice. In a study of bail decisions in England and Wales, researchers found that a simple “matching heuristic” explained decisions better than a more complex, integrated model of decision making. The matching heuristic relied primarily on three factors: bail decisions could be predicted 92% of the time in one court, for example, by relying on (1) whether the prosecutor opposed bail, (2) whether a previous court imposed conditions or remanded in custody, and (3) whether police imposed conditions or remanded in custody. If the answer was yes to any of these, the magistrate’s decision was to deny bail.<sup>48</sup> In another study, the findings showed that magistrates’ beliefs about their decision-making process differed from their practice (*i.e.*, relying on a simple heuristic).<sup>49</sup>

Clement McDonald observed that physicians often rely on a subset of information and extrapolate based on experience to make diagnoses and treatment decisions. He notes that the lack of scientific information available on some drugs and diseases, for example, requires doctors to develop heuristics. Rather than ignoring the use of heuristics, he calls for the medical community to formalize them. “Exposing these heuristics to critical review so that they can be clarified, improved, and standardized may reduce practice variation, thereby making it easier to optimize the care process,” he writes.<sup>50</sup>

In the same way, judges can consider the “rules of thumb” they may be using to process their cases, whether traffic, small claims, family, civil, or criminal. Are there specific factors that cause one judge to put the defendant in custody at sentencing while another does not? Does a defendant’s marital status have any bearing on a bail decision? Taking time to

<sup>44</sup> *E.g.*, Jo Ann Heydenfeldt, Linda Herkenhoff and Mary Coe, *Mind Fitness Training: Emerging Practices & Business Applications: Applied Neuroscience*, 1 Int’l J. Humanities & Soc. Sci. 150, 150 (2011).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 81.

<sup>47</sup> Brent D. Rosso, Kathryn H. Dekas, and Amy Wrzesniewski, *On the Meaning of Work: A Theoretical Integration and Review*, 30 RESEARCH IN ORGANIZATIONAL BEHAVIOR 91 (2010).

<sup>48</sup> Mandeep K. Dhami, *Psychological Models of Professional Decision Making*, 14 PSYCHOL SCI. 175 (2003).

<sup>49</sup> Mandeep K. Dhami and Peter Ayton, *Bailing and Jailing the Fast and Frugal Way*, 14 J. BEHAV. DECISION MAKING 141, 163 (2001).

<sup>50</sup> Clement J. McDonald, *Medical Heuristics: The Silent Adjudicators of Clinical Practice*, 124 ANNALS INTERNAL MED. 56, 57 (1996).

reflectively identify and rely on decision heuristics that are transparent and predictable across cases and judges, could go a long way to enhancing litigant perceptions of fairness.<sup>51</sup>

#### 4.3 “Reading the Dials”

The principles of procedural justice require focus and attention, which may be hard to come by if a judge is tired or hungry, is multitasking, or is not in a mood to engage in effortful processing. Taking stock of such distracting factors serves as a reminder that more concentration may be necessary. Sometimes little annoyances may become irritating distractions and unwittingly raise the level of tension in the courtroom. Sometimes the judge just wants to “push through” the remaining cases when a break would be best for all.

Periodically “reading the dials” helps identify distractions and potential ways to lessen their effects. For example, does the temperature in the courtroom need to be adjusted or noise in the hallways reduced? Is it time for a break? Some judges and lawyers have adopted a practice of “mindfulness” to strengthen their ability to read the dials.<sup>52</sup>

Harvard researchers describe the practice of mindfulness as meditation that “encompasses focusing attention on the experience of thoughts, emotions, and body sensations, simply observing them as they arise and pass way.”<sup>53</sup> Other researchers note that “mindfulness is thought to enable one to respond to situations more reflectively (as opposed to reflexively).”<sup>54</sup>

A common meditation practice involves sitting quietly and concentrating on the breath. Individuals try to identify when their mind wanders from focusing on the experience of breathing; and, once they do, they return the mind’s focus to the breath. As they practice this sequence over and over, they gradually learn to recognize the thoughts and emotions that pull their attention away and are able to regain focus more easily. Research by psychologist Amishi Jha and her colleagues shows that the ability to focus attention is evident after just thirty minutes of practice a day for eight weeks.<sup>55</sup> As with physical exercise, the longer individuals practice mindfulness meditation, the more skilled they become.<sup>56</sup>

Bob Stahl and Elisha Goldstein offer another mindfulness practice to help individuals take a quick look at the dials. They refer to it as the STOP meditation.<sup>57</sup> The STOP acronym reminds individuals to:

- Stop what they are currently doing,
- Take a deep breath and focus on the sensation of breathing,
- Observe what they are thinking, feeling, and doing, and
- Proceed with new awareness.

Judges can use this quick pause throughout the day, especially when they find themselves getting distracted, bored, or overwhelmed. The pause helps to refocus attention and reaffirm the priority to ensure each case is given a fair process.

Attorney Douglas Codiga expressed concern that judges and attorneys’ misconceptions about mindfulness being mystical or otherworldly, requiring a commitment to Buddhism, or amounting to just another stress-reduction technique would lessen its potential to impact the field.<sup>58</sup> Contrary to these misconceptions, he argued that mindfulness is compatible with legal principles of reason, analysis, and skepticism; does not conflict with preexisting religious beliefs and requires no

<sup>51</sup> Gerd Gigerenzer, *Heuristics*, in *HEURISTICS AND THE LAW* 17 (Gerd Gigerenzer and Christoph Engel eds., 2006).

<sup>52</sup> See, e.g., Mindfulness in Law Web site at <http://mindfulnessinlaw.com/Home.html>; The Institute for Mindfulness Studies, The Mindful Judge website at <http://themindfuljudge.com/Home.html>; Amanda Enayati, *Seeking Serenity: When Lawyers Go*, CNN HEALTH, (May 11, 2011), <http://thechart.blogs.cnn.com/2011/05/11/seeking-serenity-when-lawyers-go-zen/>; and Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 *Negotiation L. Rev.* 1 (2002).

<sup>53</sup> Britta K. Hölzel et al., *How Does Mindfulness Meditation Work? Proposing Mechanisms of Action from a Conceptual and Neural Perspective*, 6 *PERSP. PSYCHOL. SCI.* 537, 538 (2011).

<sup>54</sup> Scott R. Bishop et al., *Mindfulness: A Proposed Operational Definition*, 11 *CLINICAL PSYCHOL.: SCI. AND PRAC.* 230, 232 (2004).

<sup>55</sup> Amishi P. Jha, Jason Krompinger, and Michael J. Baime, *Mindfulness Training Modifies Subsystems of Attention*, 7 *COGNITIVE, AFFECTIVE, AND BEHAV. NEUROSCIENCE* 109 (2007).

<sup>56</sup> Alberto Chiesa, Raffaella Calati, and Alessandro Serreti, *Does Mindfulness Training Improve Cognitive Abilities? A Systematic Review of Neuropsychological Findings*, 31 *CLINICAL PSYCHOL. R.* 449 (2011).

<sup>57</sup> See STOP meditation demonstrated at <http://www.youtube.com/watch?v=EiuTpeu5xQc>. See generally ELISHA GOLDSTEIN, *THE NOW EFFECT: HOW THIS MOMENT CAN CHANGE THE REST OF YOUR LIFE* (2012); BOB STAHL AND ELISHA GOLDSTEIN, *A MINDFULNESS-BASED STRESS REDUCTION WORKBOOK* (2010).

<sup>58</sup> Douglas A. Codiga, *Reflections on the Potential Growth of Mindfulness Meditation in the Law*, 7 *HARV. NEGOT. L. REV.* 109 (2002).

commitment to Buddhism; and, in addition to reducing stress and improving lawyering skills, mindfulness would help legal professionals develop insights regarding their entire lives.

#### 4.4 Using Decision Aids

At first blush the idea of using a decision aid, like a checklist or a benchcard, may seem mundane. But compelling lessons from other professions such as health care and aviation demonstrate their incredible potential for improving performance. Physician Atul Gawande, for example, tells the story of how simple checklists (requiring such simple steps as washing hands with soap and fully covering the patient with sterile drapes) implemented in a Michigan hospital intensive care units saved over 1,500 lives and an estimated \$175 million dollars in costs.<sup>59</sup>

Judges sometimes use checklists to decide substantive issues, but judges might also benefit from having procedural checklists.<sup>60</sup> In busy courtrooms with crowded dockets, a judge can easily fail to cover an essential piece of information that a defendant must be told before a plea may be voluntarily entered. When using checklists, however, judges should be careful also to follow the principles of procedural fairness and not simply cross off items on a checklist. For example, it is important that the defendant actually understand the rights he or she is giving up, not just answering “yes” to a series of questions obviously intended to get an affirmative response (“Do you understand?”).

Other tools based on evidence-based practices, such as risk and needs assessments, can be helpful to judges in making sentencing and probation-revocation decisions.<sup>61</sup> Research demonstrates that standardized, objective assessment instruments enhance decision making across a wide variety of professional decisions.<sup>62</sup> Researchers Stephen Gottfredson and Laura Moriarty suggest the following reasons, in part based on reflexive processing, for the superiority of statistical methods of prediction compared to intuitive methods: decision makers may not use information reliably, may not attend to base rates, may inappropriately weight predictive items, may weight items that are not predictive, and may be influenced by causal attributions or spurious correlations.<sup>63</sup>

#### 4.5 Seeking Feedback and Fostering Accountability

Because feedback is essential to learning and developing expertise, judges might seek and courts could benefit from providing opportunities to obtain feedback. Judges seldom know the results of their decisions. Even when a judge’s decision is reviewed by an appellate court, the lag time between making the decision and getting appellate feedback diminishes the value of the information. Individuals benefit the most when feedback is immediate.

Judges also cannot improve their decisions when they do not know what is and is not working at a systemic level. Does the court have access to outcome data on, for example, pretrial release, sentencing, and probation revocation decisions? What are the trends in the data? What cases most often result in failure to appeal or rearrest, and what decision heuristics might be guiding the cases? The court could also collect information on litigant satisfaction using a survey such as the National Center for State Courts’ *CourTools Access and Fairness Measure*.<sup>64</sup> The results of the survey would indicate whether judges’ assessments of their practice of procedural fairness principles are consistent with litigants’ experiences.

Judges also could be videotaped periodically or observed by a mentor or colleague. A neutral observer more likely will be able to identify mistakes in reasoning or instances where procedural fairness practices could be strengthened.<sup>65</sup> Finally, accountability can lead to more effortful, reflective processing of information. Researcher Eileen Braman explains:

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<sup>59</sup> Atul Gawande, *The Checklist*, THE NEW YORKER (Dec. 10, 2007), available at [http://www.newyorker.com/reporting/2007/12/10/071210fa\\_fact\\_gawande](http://www.newyorker.com/reporting/2007/12/10/071210fa_fact_gawande); see also ATUL GAWANDE, *THE CHECKLIST MANIFESTO: HOW TO GET THINGS RIGHT* (2011); Ingo Keilitz, “Never Events” in *Court Administration: Lessons from Health Care Reform*, 21(1) THE COURT MANAGER 6-15 (2009).

<sup>60</sup> For examples of substantive-law checklists, see Guthrie, Rachlinski and Wistrich, *supra* note 17, at 40.

<sup>61</sup> Pamela M. Casey, Roger K. Warren, and Jennifer K. Elek, *Using Offender Risk and Needs Assessment Information at Sentencing: Guidance for Courts from a National Working Group*, NATIONAL CENTER FOR STATE COURTS (2011), available at <http://www.ncsc.org/Services-and-Experts/-/media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Sentencing%20Probation/RNA%20Guide%20Final.ashx>.

<sup>62</sup> Stephen D. Gottfredson and Laura J. Moriarty, *Clinical Versus Actuarial Judgments in Criminal Justice Decisions: Should One Replace the Other?*, 70 FED. PROBATION 15 (2006), available at <http://heinonline.org/HOL/LandingPage?collection=journalsandhandle=hein.journals/fedpro70anddiv=23andid=andpage>.

<sup>63</sup> *Id.*

<sup>64</sup> National Center for State Courts, *CourTools: Measure 1, Access and Fairness* (2005), available at [http://www.courttools.org/-/media/Microsites/Files/CourTools/courttools\\_Trial\\_measure1\\_access\\_and\\_fairness.ashx](http://www.courttools.org/-/media/Microsites/Files/CourTools/courttools_Trial_measure1_access_and_fairness.ashx).

<sup>65</sup> Brest and Krieger, *supra* note 7, at 635.

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Put another way, accountability tends to heighten accuracy motivations. When we know others are watching, we want to “get things right” and we also strive to use appropriate decision criteria to avoid criticisms that may be raised down the line.<sup>66</sup>

One suggestion for holding judges accountable is to require that they provide an explanation for their decision, preferably in writing. Guthrie and his colleagues argue that “the discipline of opinion writing might enable well-meaning judges to overcome their intuitive, impressionistic reactions.”<sup>67</sup> Research also shows that individuals who were required to justify each step in a decision process performed better.<sup>68</sup>

To the extent that judges ask themselves “why” at each point in their decision process and consider alternatives, their decisions will be the result of more effortful and deliberate processing. And to the extent that they are willing to engage in obtaining and using feedback from others, as discussed above, they will enhance a culture of accountability.

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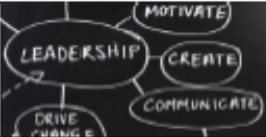






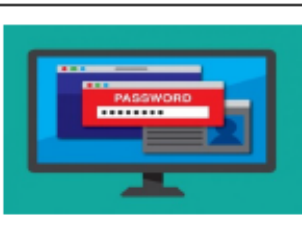
<sup>66</sup> Eileen Braman, *Searching for Constraint in Legal Decision Making*, in *THE PSYCHOLOGY OF JUDICIAL DECISION MAKING* 215 (David E. Klein and Gregory Mitchell eds., 2010).

<sup>67</sup> Guthrie, Rachlinski and Wistrich, *supra* note 17, at 37.

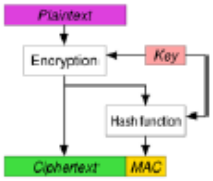





<sup>68</sup> Baumeister, Masicampo, and Vohs, *supra* note 26.



## Quick Start Guide to CyberSecurity Recommendations and Tips

	<p>Be the leader when it comes to CyberSecurity. Make it a priority and hold everyone accountable.</p>
	<p>Identify those responsible and determine capabilities, timelines, job descriptions, and funding. Look to other government agencies/private contractors to augment existing resources.</p>
	<p>Communicate often regarding the need to remain vigilant in an ever changing CyberSecurity landscape. Establish and/or annually review data security policies and procedures.</p>
	<p>Establish a yearly judge/employee training program regarding CyberSecurity.</p>
	<p>Prepare a CyberSecurity action plan. Test at least yearly. The plan at a minimum should have a chain of command, recommended action steps, a communication component, and other government (vendors) identified with contact information.</p>
	<p>Ensure that system firewall settings are configured and adapted to keep your systems secure. Review email security settings filtering malicious emails/attachments.</p>
	<p>Have a software patch schedule for servers, storage, software, desktops, and hardware. Backup systems on a very frequent basis and have an off-site storage process.</p>
	<p>Enhance password complexity and length (recommendation is 15 characters with complexity), recommend changing every six (6) months. Recommend screen lockouts at 15-30 minutes.</p>



	<p>Encrypt mobile devices. Encryption is the only way to ensure (as best as possible) that a stolen mobile device is not a risk to the court.</p>
	<p>Run anti-virus scans on all desktop, laptops, and servers. Ensure that anti-virus software is updated on a regular basis.</p>
	<p>Plan an external system penetration test. Yearly is recommended. Prepare an action plan once the results of the penetration test are known.</p>
	<p>Secure your wireless network. Do you offer “free or guest” Wi-Fi? If so, ensure that the “free or guest” Wi-Fi is segregated from your production systems and/or at a minimum capped at a certain speed to prevent production disruptions.</p>
	<p>Be prepared to invest time and resources in technology staff training (on-site, video, and off-site) to keep up with CyberSecurity trends and preventative actions that can be taken.</p>
	<p>CyberSecurity will slow you down a bit – plan on it. Ransomware, successful malicious email attacks, and systems that are compromised are generally preventable.</p>

## Taking Precautions

### **101 PERSONAL SAFETY TIPS for JUDGES and COURT STAFF**

*Since the tragic murders of a judge, court reporter, and court service officer at the Fulton County Superior Courthouse in Atlanta, Georgia, on March 11, 2005, deadly shootings and serious security incidents continue to plague our nation's courts. Each one serves as a painful reminder that judges and court staff are at risk and at all times should be aware of their environment, take safety precautions, and use security procedures. The safety tips below are useful reminders for personal safety.*

#### **Home and Personal Life**

1. Do not let your guard down at home. Practice good safety techniques.
2. Do not keep or carry a weapon unless it is in proper working condition and you have been trained in the correct use of it.
3. Do not answer your door (or any door) without looking through a peephole or knowing who is on the other side.
4. Do not use the title "Judge" on personal checks, credit cards, airline tickets, etc.
5. Do not use your judiciary authority or title to perform peacekeeping functions when you are away from your court. Leave that to the police. Be a good witness.
6. Do not volunteer personal information to strangers or identify yourself as a judge. If asked, identify yourself as an attorney, government employee, etc.
7. Do not unreasonably expose yourself to persons with communicable diseases (e.g. HIV virus, hepatitis, tuberculosis, etc.).

8. Do not forget to have a Personal and Family Information Sheet secured with the local law enforcement agency in your jurisdiction so that it can be used in an emergency situation.

#### **Home Telephone**

9. Do not have a listed or published telephone number or address.
10. Do not announce your name and phone number on the outgoing message on your home answering machine.
11. Do not tell anonymous callers on your home telephone your name or the phone number they have reached.
12. Do not allow strangers to overhear your personal telephone calls.
13. Do not expect privacy when talking on a cellular or cordless telephone.
14. Do not return office telephone calls from your residence phone if "Caller I.D." is not in operation in your area and if you do not have "Caller I.D. Blocking." Otherwise, the

person you call will obtain a digital readout of your home telephone number.

15. Do not call "800" numbers or make collect calls unless you want your phone number to appear on the call recipient's phone bill.

#### **Home Mailing Address**

16. Do not use your street address on your personal mail's return address if you can use a post office box.
17. Do not put your name on your return address if you use a residence street address or deposit your mail in outgoing office mail.
18. Do not take magazines to the courthouse until you remove mailing labels containing your name and address.

#### **Commuting**

19. Do not always drive the same route to and from your home and office.
20. Do not arrive at or leave the courthouse at the same time every day.
21. Do not leave the courthouse during the day without confidentially letting someone know where you are going, what you will be doing, and

when you should be expected to return to the building.

22. Do not be paranoid, but be aware if someone is staring at you or following you.
23. Do not drive to your street of residence if you even *think* someone might be following you. Gas is cheaper than your life, so drive another block or two before deciding whether or not to go home.
24. Do not enter or leave the courthouse in darkness if you can avoid it.
25. Do not transport your judicial robe in your vehicle by hanging it up unless it is covered up. If not concealed, lay it on the seat or in the trunk to hide it.

### **Courthouse Parking Lot**

26. Do not reserve your parking space with a sign that says "Judge" or your name.
27. Do not have a personalized license plate that says "JUDGE" on it.
28. Do not go to your vehicle if someone is watching you that had business within your court. Either wait, or walk to a vehicle first that is not yours, and then act like you forgot something and return to the building.
29. Do not leave your car unlocked or the windows down.
30. Do not enter your vehicle without first looking under

the car and inside for any signs of hidden persons or tampering.

### **At the Courthouse**

31. Do not conduct court sessions or hearings in the absence of a court security officer.
32. Do not sit on or behind a bench that is not elevated.
33. Do not sit on a bench that does not have protective material behind it to stop bullets.
34. Do not run from the bench if shooting begins in your courtroom. Drop behind it and lie flat.
35. Do not allow law enforcement officers to enter your courtroom with a weapon if the officer is a party to a case pending in your court. This is especially important in domestic relations cases.
36. Do not allow anyone to approach the bench without first asking for and receiving your permission.
37. Do not ever let a party or criminal defendant think your decision was "personal" or that you have some personal dislike or animosity toward them.
38. Do not allow disruptive persons to remain in your courtroom if you can have them legally removed.

39. Do not hesitate to request additional security for a high-risk trial or a high-risk person.
40. Do not be reluctant to ask for ask for more money for court security at budget hearings.
41. Do not forget to wear your judicial robe in the courtroom. It will normally command respect, and like a police uniform, it will make you more difficult to recognize off of the bench when you have removed your robe (your 'uniform').
42. Do not operate your court without "Rules of Courtroom Decorum" that are prominently posted and vigorously enforced.
43. Do not allow the number of persons in your courtroom to exceed fire code. In addition to fire safety, this can be used to exclude any unruly or intimidating spectators.
44. Do not drink from glasses or water pitchers that have been left unattended in the courtroom on the bench.
45. Do not think that just because you have never had court violence that it will never happen in your courtroom.

### **In Your Chamber**

46. Do not display family photographs in your chambers where visitors can see them. Turn them toward you.
47. Do not allow persons in the custody of law enforcement to be brought to your residence or chambers. Meet them in the courtroom or police station.



48. Do not hesitate to call a court security officer to your chambers at the first hint of a security problem.
  49. Do not allow anyone to be seated in your office or chambers in your absence without your prior consent.
  50. Do not leave valuables or sensitive papers in sight and unlocked when you leave your office. This is especially important if maintenance or cleaning persons will be entering during your absence.
  51. Do not allow anyone to close the door to your chambers other than you, your court security officer or someone you have instructed to do so.
  52. Do not use hollow core doors on your chambers.
  53. Do not discard sensitive materials or information in your home or office trash can in a legible form that could be read by scavengers.
  54. Do not leave file cabinets, desk drawers, briefcases, etc. unlocked when you leave your office.
  55. Do not photocopy sensitive data without accounting for each original and copy.
- Throughout the Facility**
56. Do not have heavy or sharp items on the bench or your desk where others can grab them. Leave them in drawers.
  57. Do not leave your lunch in a common area accessible to the public. If you do, label it with another name or a symbol.
  58. Do not walk past windows or sit in a courtroom that has windows without blinds.
  59. Do not run into the hallway if you hear gunfire in the courthouse. Seek immediate cover and have your chambers and courtroom secured.
  60. Do not allow the public access to your mail room.
  61. Do not issue combination lock codes or building keys without keeping records and periodically changing codes and locks.
  62. Do not be afraid to visualize court security problems and think about what you can do to reduce risks and what options are available to you if an incident occurs.
  63. Do not assume that duress alarms are in working condition. Test them regularly.
  64. Do not use an audible duress alarm that will force a person to quickly flee or fight. They might fight! Use a silent alarm.
  65. Do not allow intoxicated persons to enter or remain in the courthouse.
  66. Do not leave your court security manual or security materials where others can access them.
  67. Do not allow architects to design your courtroom, chambers, or courthouse without receiving your input.
  68. Do not allow budgets to be prepared without providing for court security.
  69. Do not use the main, public courthouse doors if you can avoid doing so.
  70. Do not be reluctant to have your staff make a "coded" mark on any case file folder that can indicate a potentially violent or unstable person.
  71. Do not hire, appoint, or accept a court security officer until you have reviewed their résumé, personnel file and background check.
  72. Do not allow your staff to tell strangers where you are or give out your schedule.
  73. Do not get onto an elevator with persons you do not know or are not comfortable with.
  74. Do not try to get up if you have been shot. Play dead and do not move. Wait for help. Do not invite another shot.
  75. Do not become physically involved in subduing, chasing, or apprehending disorderly persons or escapees.
  76. Do not forget to teach your staff and your family what you have learned about judicial safety and security.
  77. Do not forget that none of the other judges killed or wounded went to work or home thinking they would be attacked. Be alert and aware!

## Telephone and Mail

- 78. Have a tape recorder and telephone microphone to tape record any office or telephone conversations in both your office and home.
- 79. Do not continue to talk on the telephone with a person who is hostile or threatening unless the person identifies himself or herself to you.
- 80. Do not open any envelopes or parcels that look suspicious or have no return address, especially if you were not expecting such.
- 81. Do not throw away "hate mail." Keep a file containing them (or notes of conversations) that may be helpful to you and detectives down the road.
- 82. Do not open unlabelled packages or gifts delivered to your home or office.

## Public and the Media

- 83. Make restaurant reservations and give fast food orders using a nickname or a name you will remember and recognize when called but is not so unusual as to attract attention.
- 84. Do not use public restrooms unless unavoidable.
- 85. Do not sit near front windows in restaurants.
- 86. Do not eat food prepared or served by persons you have had in your court as criminal defendants or losing parties.
- 87. Do not publicly announce

that you are going out of town for work or vacation.

- 88. Do not wear shirts or caps in public that identify you as a judge.
- 89. Do not become intoxicated in public, thereby becoming vulnerable.
- 90. Do not ride in parades unless there are provisions made for security and crowd control.
- 91. Keep a press-clipping file so you will know what information the public has received about you.
- 92. Do not be quoted in the news in such a manner as to make the public think that you fear violence or that you think you are not at risk. Such comments can be taken as an invitation or a challenge.
- 93. Do not tell the media (or publish reports) about the kind of security you have in place or what weaknesses your court has that need to be improved.
- 94. Do not update photographs on file with the news media or the government if you can avoid it. An exception is the photograph that should accompany the Personal and Family Information Sheet, which is confidentially maintained
- 95. Do not allow the media to show photographs of

your family or your residence after there has been an incident of court-related violence.

- 96. Do not allow the media to learn the names, ages, or schools of your children.

## Campaign

- 97. Do not place your residence address on campaign materials.
- 98. Do not appear at campaign fund raising events unless you have arranged for security. Consider control of admission by invitations or limit ticket sales or distribution.
- 99. Do not personally post or remove your campaign signs.
- 100. Do not campaign door-to-door alone.
- 101. Do not overdo it with your campaign signs at your residence or bumper stickers on your personal vehicles.

*NOTE: Review this list periodically to refresh your memory. Awareness of these tips for your personal safety and security will improve your chances for survival in an incident. Tips are used with the permission of the Johnson County, Kansas Sheriff's Department.*

**Further information contact:**  
National Center for State Courts  
Court Consulting Services  
707 17<sup>th</sup> Street – Suite 2900  
Denver, CO 80202  
(303) 305-4315

