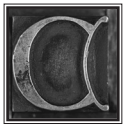
Part 3
Enhancing Justice

The search for improvement during the "golden era" was not confined to monumental milestones. Indeed, important progress was achieved across the spectrum of justice administration. Although these achievements may have spanned less than a half-century or impacted only a focused aspect of the system, they contributed significantly, especially in the areas of families and children in the courts, judicial education, alternative dispute resolution, fairness and equality, interpreter services, and technology.

Chapter 9
Families, Children, and the Courts

Overview



ases involving families and cases of juvenile delinquency are major components of the workload in California courts. Prominent are marriage dissolution, child and spousal support, and child custody and visitation, as well as actions by juveniles that would be criminal if committed by an adult.

This has been an area in which judicial branch concerns have been supplemented by an unusually high level of policy and other interventions by the California Legislature and federal government.

Termination of marriages was simplified by substituting dissolution for divorce. Major steps were taken to eliminate domestic violence. Protection of children's welfare was strengthened. Judicial control over juveniles at risk was reinforced.

The U.S. Supreme Court also intervened with decisions assuring that defendants in juvenile delinquency proceedings are entitled to various constitutional protections such as the right to counsel.

Justice was further enhanced by the identification of the battered child syndrome, introduction of mediation in family proceedings, and creation of special advocates to protect the interest of children involved in court proceedings.

Efforts of the Judicial Council and the Administrative Office of the Courts (AOC) also were notable, culminating in the creation of the AOC's Center for Families, Children & the Courts.

The phrase "litigation explosion" was spawned during the latter half of the 1900s and along with it predictions of calamity as well as a cornucopia of cures. Whether the increases in case filings were aberrational in relation to population increases and other demographic factors was a debate that also flowed from the hue and cry surrounding the alleged litigation explosion.

One fact was indisputable then and now. Civil cases involving families and noncivil cases involving juvenile delinquency compose a major part of the workloads in California courts. For example, during the decade from 1988 to 1998, family law filings in the state's superior courts consistently exceeded the number of civil filings involving personal injury, death, and property damage.[1] Indeed, family law filings in 1997–1998 were more than double the total number of filings for personal injury, death, and property damage. During that same decade, noncivil filings involving juvenile delinquency or dependency came very close each year to equaling the total number of criminal filings in California's superior courts.[2]

The national experience in state courts further confirmed that if there was a litigation explosion it was occurring in cases involving families and juveniles. Over a significant period of time in the 1980s and 1990s, civil filings in state courts increased by 34 percent, but the rate of domestic relations filings increased by 77 percent.[3] While criminal filings increased by 45 percent, quasi-criminal proceedings involving juveniles increased by 68 percent.[4]

What types of cases are involved? Traditionally, civil cases involving families include divorce or dissolution of marriages, spousal and child support, child custody and visitation, guardianship, adoption, nonfamily placement of dependent children, termination of parental rights, or establishment of paternity. In more recent periods these categories have been augmented by proceedings involving abuse directed at spouses, children, and elders. Conservatorships and trusteeships ordinarily involve adults and more specifically elderly adults. Noncivil proceedings typically involve conduct by juveniles that if committed by an adult would be regarded as criminal.

This returns us to the main point—cases involving families and juveniles are a major part of court business in California and elsewhere. In general, civil filings involving families and noncivil filings involving juveniles constitute more than a third of the total caseload of California's superior courts.[5]

The importance and extent of these cases did not pass unnoticed in California during the past quarter-century. Major steps are outlined below that establish the importance of this area as a milestone in the improved administration of justice.

Before proceeding, however, it must be noted that, more than in any of the areas considered to this point, the actions and policies of the federal government had major impact. Likewise, actions and policy initiatives by the California Legislature probably have been at least as prominent as in other areas.

Marriage

Termination of the marriage relationship has been the largest single category of court filings in the area of domestic relations. Prior to 1970 California provided the traditional remedy of divorce. However, in 1969 California joined the movement to "no-fault divorce" by permitting dissolution of the marriage relationship without establishing fault or misfeasance by either spouse. This simplified marriage termination.[6]

Domestic Violence

The need to curb domestic violence and protect spouses and former spouses from abuse always existed, but thanks to the efforts of many legal, judicial, and citizen leaders during this period the problem began to receive the attention it deserved. In 1977, the California Legislature by statute gave courts authority to grant temporary restraining orders in domestic violence cases[7] and financed shelters for battered women.[8] Shortly thereafter the legislature made it a crime to rape one's spouse.[9] A statutory presumption also was created against awarding child custody to a batterer.

The federal government contributed in 1994 by enacting the Violence Against Women Act, which, among other things, created causes of action assertable in state courts and provided significant federal funding for local domestic violence prevention efforts.[10]

The California Legislature continued by emphasizing criminal legislation that encouraged arrest in domestic violence cases,[11] eliminating the option of diversion for defendants charged with domestic violence in criminal cases,[12] and permitting law enforcement officers to arrest in domestic violence cases based on "reasonable cause" even if the officer did not witness the offense.[13]

Children

The welfare of children is a vital concern in dysfunctional families, but especially in the context of divorce or dissolution. Court proceedings devoted to protecting the welfare of children were refined during this period to encompass determining which parent receives custody when a marriage is terminated, visitation of the children by the noncustodial parent, financial and other support, protection against abuse or neglect, termination of parental rights, and placement outside the family through either temporary foster home care or permanent adoption.

Juvenile Delinquency and Dependency

California has an elaborate statutory scheme governing judicial jurisdiction over children. The court can determine that a minor is a "dependent child of the court" if the welfare of that child is in jeopardy, through no fault of the child.[14] For example, if there is a substantial risk that the child will suffer serious physical harm as a result of action or failure to act by his or her parent or guardian, the court can declare the child to be a dependent of the court. Likewise, if the conduct of a parent or guardian could result in the minor suffering serious emotional damage, the child can be declared a dependent child of the court. Other grounds for such a declaration include sexual abuse by a parent, guardian, or other member of the household; severe physical abuse by any person known to the parent if the parent knew or reasonably should have known of the abuse; leaving the child without any provision for support; acts of cruelty by a parent, guardian, or other member of the household; or abuse or neglect of a minor sibling.[15]

The court can also determine that a minor is a ward of the court as a result of the minor's own conduct. "Any person who is under the age of 18 years when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime . . . is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court."[16] Habitual disobedience or truancy can also lead to a judicial determination that a minor is a ward of the court.[17] These matters are placed within the jurisdiction of the superior court with the legislative direction that when exercising this jurisdiction actions taken shall be described as actions by the "juvenile court."[18]

Major State and Federal Initiatives[19]

1974 Federal statute enacted requiring as a condition of receiving federal funds that a guardian ad litem be appointed to represent the child in every case involving an abused or neglected child that results in a judicial proceeding.[20]

1975 Compact created by federal law to govern adoptive placement of children between member states of the compact, including independent (private) adoptions. California has been a member of the Interstate Compact on the Placement of Children (ICPC) since January 1975.[21]

1975 Federal Child Support Enforcement Program began as mandated by Title IV-D of the Social Security Act.

1980 States encouraged by federal guidelines and funds to prevent unnecessary foster care and to provide children with permanent homes as quickly as possible.[22]

1981 California Legislature mandated that all custody and visitation issues in dispute must proceed to mediation with a court-provided mediator before the matter can be set for a hearing.[23]

1982 Child welfare services restructured by statutes with four major goals: (1) prevention of unnecessary foster care placements, (2) family reunification if possible, (3) reduction in number of long-term foster care placements, and (4) stable and most familylike setting for those who must remain in foster care long term.[24]

1984 Federal law required expedited processes for establishing and enforcing child support orders. California established minimum child support amounts.[25]

1988 Legislature required Judicial Council to establish (1) guidelines encouraging the development of local Court Appointed Special Advocate (CASA) programs, which assist abused and neglected children who are the subjects of judicial proceedings, and (2) a grant program to assist in creating and expanding CASA programs.[26]

1990 Judges required to consider any history of spousal abuse by a parent before determining child custody or child visitation rights for that parent.[27]

1991 Legislature required Judicial Council to develop standards of practice for mediation.[28]

1992 California Family Code adopted effective January l, 1994.[29]

1993 Congress allocated funds to state courts for improving the handling of cases involving child abuse and neglect.[30]

1996 Multifaceted juvenile court legislation enacted in California to protect children from the effects of domestic violence. It gave courts the authority to remove a battering parent or guardian from the home, prohibit visitation by the battering parent if it would jeopardize the safety of the child, and create a "safety plan" option in cases where the child is removed from the home of the battered parent.[31]

1996 Federal grant funding provided to all states for noncustodial access and visitation programs.[32]

1996 Legislature provided for child support commissioners and family law facilitators in each county, supported with significant federal funding.[33]

1997 Judicial Council established an interagency agreement with the California Department of Social Services to award federal grant funding for noncustodial access and visitation programs.[34]

1997 Congress acted to promote the primacy of child safety and timely decisions while continuing efforts to prevent the removal of children and to reunify families when possible.[35]

1998 Legislature directed Judicial Council to create a one-year pilot project to provide that in any child custody proceeding, including mediation and other proceedings, the court would appoint an interpreter to interpret the proceedings at court expense if one or both of the parties is unable to participate fully in the proceeding due to a lack of proficiency in the English language and the court determines that the parties are financially unable to pay the cost of an interpreter.[36]

1999 Legislature established the California Department of Child Support Services as the managing agency for child support programs and required that local child support agencies take over support programs from the district attorneys by January 1, 2003.[37]

1999 Judicial Council required by statute to develop standards for full and partial court-connected evaluations, investigations, and assessments related to child custody.[38]

1999 Administrative and funding requirements for the Access to Visitation Grant Program amended to provide that the grants' main focuses are (1) supervised visitation and exchange services, (2) education about protecting children during family disruption, and (3) group counseling for parents and children.[39]

Major Judicial Decisions

Three decisions by the U.S. Supreme Court contributed to the intertwining of federal actions and the administration of juvenile justice in California. The court held in *In re Gault* [40] that minors in juvenile delinquency proceedings are protected by various provisions of the U.S. Constitution's Bill of Rights, including adequate notice of charges; representation by counsel, including the right to court-appointed counsel; the right against self-incrimination; and the right to confront and cross-examine witnesses. A short time later, the U.S. Supreme Court held that the appropriate standard of proof in juvenile delinquency proceedings is "beyond a reasonable doubt."[41] In *Breed v. Jones* the Supreme Court held in 1975 that the prohibition against double jeopardy set forth in the Fifth Amendment to the U.S. Constitution applies in juvenile court proceedings.[42]

Overarching Developments

Several events also are noteworthy because of their general effect upon the improved administration of justice in this area.

The first was completely separate from the courts or judicial process, but it had a profound influence upon subsequent statutory enactments and judicial proceedings. That event was publication of the landmark article "The Battered Child Syndrome" by Dr. C. Henry Kempe in the *Journal of the American Medical Association.*[43] Published in 1962, this article first exposed the reality that significant numbers of parents and caretakers batter their children. Within five years following publication of Dr. Kempe's report, all states had adopted child abuse reporting laws.

Another noteworthy event was the introduction of mediation in the context of various judicial proceedings involving families. In 1963, the Association of Family and Conciliation Courts was founded to promote conciliation, and subsequently mediation, as an alternative to litigation. This contributed to California legislation in 1984 directing the Judicial Council

to assist counties in implementing mediation and conciliation proceedings and to administer a grant program for research and demonstration projects that included "[t]he development of conciliation and mediation and other newer dispute resolution techniques, particularly as they relate to child custody and to avoidance of litigation."[44]

Development of special advocates to represent the interests of children in various court proceedings also was important. First established in the Superior Court for King County, Washington, in 1977, both the concept and the program, which came to be known as Court Appointed Special Advocate or CASA, grew in California and elsewhere. In 1988 several major steps were taken in California. First, the legislature directed the Judicial Council to establish guidelines encouraging the creation, development, and expansion of local CASA programs to assist abused and neglected children in judicial proceedings. Second, the Judicial Council adopted guidelines for awards to local CASA programs. Finally, in 1991, the Judicial Council awarded the first ten CASA grants to local jurisdictions.

In 1996, another important development was legislation to create in California the positions of child support commissioner and family law facilitator.[45] The Judicial Council established statewide programs to implement the legislation. These positions were intended to overcome inadequacies in the existing arrangements regarding child and spousal support orders by providing "an expedited process in the courts that is cost-effective and accessible."[46] To achieve this, each superior court was directed to have child support commissioners, and to have a sufficient number, to hear child support actions and related matters involving enforcement services of the district attorney's office (now the local child support agency).[47] In addition, the legislature created the new family law facilitator positions, to be filled by attorneys, to provide free education, information, and assistance to parents with child support issues.[48]

At several points the Judicial Council and the AOC took steps to ensure that the governance institutions of the judicial branch were effectively organized to promote improved justice in the area of families, children, and the courts. For example, in 1985 the Judicial Council established the Statewide Office of Family Court Services in the AOC. In 1988 separate Judicial Council advisory committees were created for family and juvenile law. In 1992 the Judicial Council, as part of its strategic planning process, established the Family and Juvenile Law Advisory Committee.

In 1997 a new Center for Children and the Courts was formed within the AOC. Shortly following the end of the century, this Center for Chil-

dren and the Courts was merged with the Statewide Office of Family Court Services to create within the AOC the Center for Families, Children & the Courts. In this way, both the Judicial Council and the AOC ensured that appropriate resources would be available for research, services, advice, and general support as the courts of California continued to strive to meet the challenges posed by both the substance and volume of judicial proceedings involving families and children.

Notes

1 Judicial Council of California, Administrative Office of the Courts, *Annual Report (1999), Court Statistics Report–Statewide Caseload Trends 1988–1989 through 1997–1998 and Caseload Data for Individual Courts 1996–1997 and 1997–1998*, p. 47.

2 Id., p. 53.

3 Brian J. Ostrom and Neal B. Kauder, eds., *Examining the Work of State Courts, 1997: A National Perspective from the Court Statistics Project* (Williamsburg, Va.: National Center for State Courts, 1998), p. 7.

4 Ibid.

5 Judicial Council, *Annual Report* (1999), *Court Statistics Report*, pp. 47, 53.

6 California Civil Code, section 4000.

7 Domestic Violence Prevention Act of 1977, California Statutes 1977, chapter 720, p. 2304.

8 Domestic Violence Center Act of 1977, California Statutes 1977, chapter 892, p. 2670.

9 California Statutes 1979, chapter 994, p. 3384.

10 Violence Against Women Act of 1994, 42 U.S.C.A., section 13931 and following.

11 California Statutes 1995, chapter 246.

12 California Statutes 1995, chapter 641.

13 California Statutes 1996, chapter 131.

14 California Welfare and Institutions Code, section 300.

15 Ibid.

16 Welfare and Institutions Code, section 602.

17 Welfare and Institutions Code, section 601.

18 Welfare and Institutions Code, section 245.

19 Substantial segments of the material in this section were prepared by staff of the AOC's Center for Families, Children & the Courts, including a timeline of major events prepared for the Family and Juvenile Law Advisory Committee.

[20] Child Abuse Prevention and Treatment Act of 1974 (CAPTA), Pub.L. No. 93-247 (1974).

[21] California Family Code, sections 7900–7910; Adoptions Interstate Compact on the Placement of Children.

[22] Federal Adoption Assistance and Child Welfare Act of 1980.

[23] Child Custody Mediation Statutes (1980), Family Code, sections 3160–62; former Civil Code, sections 4607 and 4607.1.

[24] Adoption Assistance and Child Welfare Act of 1980, Pub.L. No. 96-272 (1982); California Senate Bill 14.

[25] Agnos Child Standards Act of 1984.

[26] Welfare and Institutions Code, sections 100–109.

[27] Assembly Bill 2700 (1990) (Roybal-Allard).

[28] Family Code, section 3162.

[29] California Statutes 1992, chapter 162.

[30] Federal Omnibus Reconciliation Act of 1993, also known as the Family Preservation and Support Act.

[31] Assembly Bill 2647 (1996) (Kuehl).

[32] Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub.L. No. 104-139 (1996) 110 U.S. Statutes 2258, Title III, Subtitle I–Enhancing Responsibility and Opportunity for Nonresidential Parents.

[33] California Statutes 1996, chapter 957; PRWORA.

[34] Pub.L. No. 104-193 (1997) 110 U.S. Statutes 2258.

[35] Adoption and Safe Families Act of 1997 (ASFA).

[36] California Statutes 1998, chapter 981.

[37] California Statutes 1999, chapter 478; California Statutes 1999, chapter 480.

[38] California Statutes 1996, chapter 761; adoption of standards and guidelines by January 1, 1999, was required.

[39] California Statutes 1999, chapter 1004; California Family Code, sections 3201–4.

[40] *In re Gault* (1967), 387 U.S. 1.

[41] *In re Winship* (1970), 397 U.S. 358.

[42] *Breed v. Jones* (1975), 421 U.S. 519.

[43] C. Henry Kempe, "The Battered Child Syndrome," *Journal of the American Medical Association* 181 (1962), pp. 17–24.

[44] California Statutes 1984, chapter 893, p. 3004.

[45] California Statutes 1996, chapter 957; Family Code, sections 4250–53.

[46] Family Code, section 4250.

[47] Family Code, section 4251.

[48] See Family Code, sections 10002, 10007.

Chapter 10
Education for Members of the Judicial Branch

Overview

There were no formal programs for judicial education in California or elsewhere at midcentury. This was corrected by the California Judges Association (CJA) and the Judicial Council.

Overcoming opposition from members, the CJA launched a program of educational seminars for California judges in 1959 and established California's annual judicial college in the mid-1960s.

On roughly the same timetable, the Judicial Council through the Administrative Office of the Courts (AOC) sponsored judicial workshops—first for municipal court judges and subsequently for justice and superior court judges.

These separate efforts merged in the mid-1970s by creation of the Center for Judicial Education and Research (CJER), with collaborative oversight by the CJA and the Judicial Council. Permanent funding was achieved in the latter 1970s as part of the California Legislature's appropriation to the Judicial Council and AOC.

The curriculum, judicial student body, educational materials, and staffing expanded significantly during the first decade.

During the concluding decade of the century the organization was transformed. The Governing Committee of the Center for Judicial Education and Research was incorporated into the Judicial Council's system of auxiliary bodies as an advisory committee. The Judicial Council added education as one of its major goals. The CJER developed a long-range strategic plan. It was consolidated with the AOC's education unit, relocated to offices within the AOC, and given responsibility for nonjudicial staff training throughout California.

As the century concluded, the education program had completed new initiatives on the subject of fairness in the courts and was planning expansions in staff training, distance learning, comprehensive curricula, ethics training, and futures planning.

At midcentury the subject of judicial education was not only a clean slate; there was no slate. Indeed, the entire area of continuing education for attorneys was in its infancy. California's Continuing Education of the Bar (CEB) program was formally established in 1947 by joint agreement of the State Bar and the University of California at Berkeley for the purpose of providing refresher courses to lawyers returning from military service during World War II.

Judicial education began to emerge nationally in the early 1960s. Through the efforts of the judicial administration section of the American Bar Association (ABA), the first session of the National College of State Trial Judges was held in 1964. From that early beginning evolved the National Judicial College, which at the close of the century was offering, from its base in Reno, Nevada, residential and regional courses to judges under the auspices of a governing body appointed by the ABA.

The story of education for nonjudicial court personnel began even later. Probably the most significant early development was the establishment of the Institute of Court Management around 1970 for the purpose of training court executive officers and other managers to perform the growing number of nonjudicial, administrative functions in the courts of the country.[1]

Judicial Education in California

This is a story of two streams that eventually merged. One consisted of the efforts of the California Judges Association.[2] The other consisted of efforts by the Judicial Council and AOC.[3]

Not only was there no judicial education in California at midcentury, there was opposition to the concept. Indeed, as late as 1958, the CJA at its annual membership meeting received a recommendation from a special committee on the activities of the conference that the organization should not "conduct [nor] cause to be conducted . . . symposiums, seminars or refresher courses for judges."[4] Notwithstanding this recommendation, the CJA, in collaboration with Boalt Hall School of Law at the University of California at Berkeley, sponsored a two-day institute for California judges in June 1959. The subject was "the judge and the jury trial," and four dozen judges from superior and municipal courts in nineteen counties attended the institute. Similar institutes were held in each of the next two years. The format changed somewhat in 1962 when an all-day seminar on trial procedure was offered the day before the opening of the CJA annual meeting.

At the same time the CJA's Municipal Court Committee sponsored an all-day workshop for municipal court judges on the subject of sentencing, with sessions in both Southern and Northern California. At the northern session, Ralph N. Kleps, the relatively new Administrative Director of the Courts, offered that the Judicial Council and AOC would organize future workshops, which was favorably received by the municipal court judges. With this development we can see the headwaters of the two streams that subsequently merged in this field: the CJA on one hand and the Judicial Council and AOC on the other.

Role of the California Judges Association

By 1963 the CJA annual meeting included a two-day, in-depth educational seminar featuring a variety of subjects. The success of these seminars and other CJA-sponsored programs suggested that trial court judges were ready for judicial education by the mid-1960s.

Several California judges attended the initial session in 1964 of the ABA's National College of State Trial Judges and returned with the idea of fashioning something similar in California. This idea matured to the point that by the latter part of 1965 the CJA executive board approved a proposal, contingent on financing, to establish a California college for judges with a contemplated two-week session available to municipal and superior court judges.

After a search among private foundations for funding, the CJA, through its recently formed subsidiary foundation, received a grant of $125,000 in 1966 from the Ford Foundation for the purposes of establishing and operating for three years California's own judicial college. It has been said that this was the nation's first statewide judicial education program. The CJA made arrangements for the college to be conducted at the newly constructed Earl Warren Legal Institute, part of Boalt Hall School of Law at the University of California at Berkeley.

The fledgling California College of Trial Judges overcame the challenges of developing curriculum, selecting faculty, and gathering course materials. The first session took place between August 20 and September 1, 1967, with eighty judges in attendance. For the next year and several years thereafter, the CJA employed the services of a part-time administrator to assist with the many aspects of planning and executing the college sessions.

As the end of the Ford Foundation grant neared, the CJA turned successfully to the federal government's Law Enforcement Assistance Administration (LEAA) as a new source of funding and obtained from the

California Council on Criminal Justice (a state agency that distributed the federal funds) a three-year grant to defray substantially all of the college's expenses. (These agencies are discussed at length in Chapter Four.)

While the CJA was nurturing its new college, it also was busy sponsoring workshops both on a standalone basis and in conjunction with the annual meeting. There were four such seminars or workshops in 1969 alone.

Role of the Judicial Council and the AOC

After offering Judicial Council and AOC sponsorship of municipal court workshops in 1962, Ralph N. Kleps on behalf of the Judicial Council successfully proposed legislation in 1963 that launched a series of annual institutes for municipal and justice court judges. Soon thereafter, annual sentencing institutes for superior court judges were offered, as well as programs for juvenile court judges and the presiding judges of metropolitan superior courts.

By 1969 the Judicial Council and the AOC, similar to the CJA, also conducted four judicial education workshops or seminars around the state.

Creation of the Center for Judicial Education and Research

The CJA recognized in the early 1970s that a permanent funding source was needed for the judicial college. With the looming conclusion of the LEAA grant in 1972, the CJA's incumbent president called a meeting of representatives of the CJA, CEB, and AOC to explore options. Bernard E. Witkin, the distinguished legal scholar and early supporter of the CJA's college, also was invited to attend.[5]

The outcome of this and subsequent meetings was creation of the Center for Judicial Education and Research. This solution was modeled after a 1971 agreement between the State Bar and the University of California to perpetuate the CEB for attorney education. With respect to the CJER, the Judicial Council would serve the same role as the University of California's Board of Regents did for the CEB by becoming the official sponsor and funding entity through which state funds would flow. The CJA would serve in a capacity similar to the State Bar Board of Governors in the CEB by drawing upon its members for faculty, curriculum, and materials.

Following ratification by both the CJA and the Judicial Council, the AOC successfully obtained a first-year grant of LEAA funds in the amount of $210,000 for establishment of the CJER in 1973, with the tentative commitment of similar funding for 1974 and 1975.

The governing committee of the CJER consisted of four persons nominated by the CJA and four representatives of the Judicial Council, all appointed by Chief Justice Donald R. Wright. A full-time, professional staff was hired in the summer of 1973.[6]

The Judicial Council transferred all of its educational activities to the CJER with the exception of two annual workshops for presiding judges. The CJA relinquished to the CJER administration of the college, which was renamed the California Judicial College in 1978.

Although the CJER continued to receive federal grants for several years, the program was placed on solid financial footing in 1976 when the California Legislature, with concurrence by Governor Ronald Reagan, included the bulk of the CJER budget, including the California Judicial College, in the Judicial Council's annual appropriation.

From a staff of two professionals and an office manager in 1973, the CJER by 1987 had grown to a thirty-member staff with an annual budget approaching $3 million. The program conducted by the staff in the late 1980s included:

- The annual two-week judicial college still held in July at Boalt Hall School of Law at the University of California at Berkeley
- Eight continuing education institutes (two and one-half to three days) for new and experienced judges to discuss current legal developments, updates on substantive law, and information on standardized court practices
- Twelve orientation programs for new judges, of one week each
- Three graduate programs known as the Continuing Judicial Studies Programs, of one week each

Participation had reached a total of 2,000 enrollments each year from a total judiciary of approximately 1,500 judges and 300 judicial officers. In addition, the publications produced by the CJER included benchbooks, benchguides, and manuals on many aspects of judicial responsibilities; fifty audiotapes, many of which presented lectures delivered at the judicial college; and 100 instructional videotapes, including lectures and specially produced programs.

The CJA itself decided in the mid-1980s that there was an ongoing need for an educational program in addition to that offered by the CJER. This conclusion led to retention of the CJA's seminars held in conjunction with annual and midyear meetings, as well as occasional one-day work-

shops on problems of particular interest to groups within the judiciary. By century's end, such programs had covered a broad spectrum of topics including employment litigation, expert witnesses, justice in the public eye, jury management and relations, and coping with change.

Systemic Education in the 1990s

Maturation of the CJER accelerated during the last decade of the century. Every aspect of the organization from governance to mission was impacted.[7]

Governance

The role of the Governing Committee of the Center for Judicial Education and Research and its relationship to the Judicial Council were revised and formalized in August 1993 with the adoption of rule 1029 (now rule 6.50) of the California Rules of Court. The governing committee was added as one of the advisory committees to the Judicial Council and charged with "maintaining a high quality and independent judicial education arm of the California judicial system."[8] The committee still consisted of eight judicial officer members appointed by the Chief Justice, with bifurcation of board representation between the CJA and the Judicial Council. Bernard E. Witkin had for many years served as an advisory member and continued to do so. He was joined by the president of the CJA and the Administrative Director of the Courts, who were added as advisory members.

At its July 1996 strategic planning session, the governing committee invited an array of interested parties to examine the relationships among the leaders in California judicial branch education and to revisit and discuss issues surrounding governance. The participants reached consensus on the following issues: (1) a single governing board should oversee and provide policy guidance for judicial branch education, including both judicial and administrative education; (2) the membership of the governing committee of the CJER should be expanded to include three court administrators or executive officers as voting members; and (3) the Judicial Administration Institute of California, concerned with court administration training, should become one of the primary planning committees reporting to the governing committee. The governing committee recommended appropriate amendments to rule 1029 of the California Rules of Court to implement these changes. The Judicial Council concurred, adopting the amendments effective January 1, 1997.

Planning

Following the lead of the Judicial Council, which held its first strategic planning meeting in 1993, the governing committee of the CJER held its first strategic planning workshop in December of that year. Subsequent annual workshops resulted in development of a long-range strategic plan for judicial education, which was approved by the Judicial Council.

The Judicial Council in 1995 added education as one of the five strategic goals: "Achieve the goals of the Judicial Council through judicial branch education and professional development."[9]

Administration

In August 1994, the AOC undertook a major reorganization of workload and personnel, and the AOC's administrative education unit was consolidated with the CJER. Along with the unit's four staff members and budget came a new expansion of the CJER's responsibility beyond judicial education.

After having its offices in or near Berkeley for twenty-two years, the CJER moved its offices in August 1995 to the AOC in San Francisco. As part of an AOC and Judicial Council reorganization, the CJER became the Education Division of the AOC, with responsibility for staffing the governing committee of the CJER but also for a broader role as an integrated part of the AOC. The CJER director became part of the AOC management team, with shared responsibility for the whole organization. Moving the CJER's offices to San Francisco with the AOC facilitated these changing roles and increased opportunities for collaboration between the CJER and other AOC divisions.

Program for Judges

By 1990, most states had gone to some form of mandatory judicial education. California had adopted mandatory continuing legal education for attorneys, and the legislature was discussing mandating judicial education by statute. The Governing Committee of the Center for Judicial Education and Research undertook an exhaustive study of the issue and, after a lively debate on the subject over the course of eighteen months, recommended that the Judicial Council require education for new judges and justices. The council adopted rule 970 of the California Rules of Court, effective January 1, 1996, to implement that recommendation.[10]

Judicial education is also now required for judges new to a family law assignment[11] or a juvenile dependency assignment.[12]

In 1999, the governing committee recommended, and the Judicial Council adopted, sections 25–25.6 of the California Standards of Judicial Administration, which set forth more comprehensive suggested (nonmandatory) standards for participation of judges and court staff in education and training. These standards acknowledge the importance of judicial branch education in improving the fair, effective, and efficient administration of justice and state that judges should consider participation in educational activities to be part of their official duties.

Program for Court Staff

When the CJER consolidated with the AOC's education unit in 1994, its initial responsibility, beyond judicial programs, was administrative education for presiding judges, court executive officers, and some middle managers. However, by century's end, responsibility for administrative education expanded to all aspects of court management and to the more than 20,000 trial and appellate court staff.

Fairness

In 1997 Chief Justice Ronald M. George announced a fairness education initiative in which he strongly encouraged California courts to make broad-based training in racial, ethnic, gender, and disability fairness available to all judicial officers by June 30, 1998, and to all court staff by the end of 1999. The Chief Justice called on the AOC and CJER to provide the technical assistance necessary to carry out the effort. The CJER had offered programs on judicial fairness education since 1981. It had been a primary part of the one-week orientation program for new judges, which had been mandatory for new judicial officers since 1996.

In response to the Chief Justice's initiative, the CJER specifically developed a "Fairness in the California Courts" curriculum, supplemented by a videotape, for judicial officers that was provided to all trial and appellate courts, along with train-the-trainer programs and other technical assistance for local court fairness education programs. The CJER next developed "Beyond Bias: Assuring Fairness in the Workplace," a curriculum for court staff that again was provided to all courts with train-the-trainer programs and other technical assistance.

Fairness education continues to be an important focus of the CJER's work and has been integrated into substantive law programs, offered in freestanding courses specifically devoted to some aspect of fairness, and made a part of all faculty training programs.

Breadth

The statewide education program for judicial officers and court staff at both the trial and appellate court levels includes orientation programs for new judicial officers and court clerks; continuing education programs for judicial officers, court administrators, and managers; annual statewide conferences for judicial officers and court administrators; videotapes and audiotapes; and judicial benchbooks, benchguides, and practice aids, in both electronic and print form. The education services cover all areas of judicial and administrative practice, including criminal, civil, juvenile, family, domestic violence, probate, mental health, complex litigation, genetics, and environmental law. They also include skill building in areas such as decision making, trial management, juror treatment, sentencing, technology, personnel management, leadership, budgeting, and fairness on the bench and in the workplace. Special programs are provided for judges from rural counties and for retired judges who sit on court assignment.

Beyond 2000

These achievements over the past several decades certainly create a milestone in the improved administration of justice. It seems entirely likely that the pace and quality of achievement will continue when one considers the endeavors that were in progress as the new millennium began:

- The development and broadening of court staff education. Because the audience is so large (20,000), most court staff education must be delivered by distance education methods. A training coordinator network is also being developed, with the goal of each court location eventually having a training coordinator who is the point of contact for the CJER.
- Distance education projects:
  - ✓ A court staff Web site is under development, which will include an online version of the *Basic In-Service Training Manual*, a comprehensive list of staff training programs offered through the AOC, and a number of commercial online courses that have been purchased.
  - ✓ Online self-directed courses for judges and court staff.
  - ✓ Videoconferencing.
  - ✓ Satellite broadcast.
  - ✓ Electronic publication of judicial benchguides, both on CD-ROM and via the Internet.

- A comprehensive curriculum development project. Education committees in every area of subject matter expertise are developing a complete curriculum for judicial officers, from entry level to career mastery.
- The development and delivery of an ethics training program for all judicial officers. The Judicial Council has sponsored a Commission on Judicial Performance defense insurance program, and each judicial officer must participate in a qualifying training program every three years in order to be covered by the program.
- The Futures Conference in June 2000, organized by the governing committee of the CJER. The focus was on how judicial branch education can meet the changing needs of the courts in the next ten years within the Judicial Council's strategic vision.

Notes

1 "Education" and "training" in the court context often are used interchangeably for judicial and court personnel. However, "education" will be used in this discussion to encompass both.

2 The predecessor to the CJA was the Conference of California Judges, but for convenience all references are to the CJA.

3 A substantial portion of the information used in this section is derived from Cameron Estelle Andersen, *The Story of the California Judges Association: The First Sixty Years* (San Francisco: Bancroft–Whitney, 1992), but the text will not be burdened with repeated citations. Readers interested in more detail should consult the excellent discussion of judicial education, pp. 112–47.

4 Id., p. 113.

5 Bernard E. Witkin continued, until his death in 1995, to play a prominent role in both the college and judicial education. In recognition of his many contributions, financial and otherwise, the college was renamed in 1996 as the Bernard E. Witkin Judicial College of California.

6 The first director was Paul Li, an attorney in the AOC who had been assistant director in charge of legal research, who would go on to serve for twenty years as the CJER's steward.

7 The substance of this section was prepared by James Vesper of the CJER, and his research has been used extensively in crafting this text.

8 California Rules of Court [1994], rule 1029 (repealed January 1, 1999; now rule 6.50).

9 Judicial Council of California, *Annual Report to the Governor and the Legislature* (1995), part 1, p. 4.

10 This was in addition to section 25 of the California Standards of Judicial Administration, adopted in 1990, suggesting nonmandatory guidelines for judicial education.

11 California Rules of Court, rule 1200.

12 California Welfare and Institutions Code, section 304.7; California Standards of Judicial Administration, section 25.2(c).

Chapter 11
Alternative Dispute Resolution

Overview

lternative or appropriate dispute resolution (ADR) became a part of court operations between 1970 and 2000, both in California and elsewhere. Congestion and delay, the traditional demons, were driving forces.

Although many approaches are enveloped within ADR, arbitration and mediation were the two major areas of court-annexed ADR in California. In arbitration, litigants submit their respective causes to a neutral third party, who is empowered to render a decision on the merits. It is the most formalized alternative to court adjudication. Mediation and its sibling, conciliation, are informal processes in which the neutral third party assists the litigants in searching for a mutually acceptable settlement but has no power to impose a solution.

Arbitration came first. At the urging of local bar groups, both the Los Angeles and San Francisco Superior Courts established arbitration programs in 1971 for smaller personal injury cases. The Judicial Council approved.

By the mid-1970s arbitration was legislated in California for smaller personal injury cases in larger superior courts, and it became mandatory by the late 1970s.

The Judicial Council studied the arbitration system and concluded in the mid-1980s that its effects were favorable. Mandatory arbitration subsequently was perpetuated by the California Legislature, and the monetary limit on eligible cases was increased.

By the close of the century, arbitration's impact was difficult, if not impossible, to quantify, but it continued to be viewed favorably and was the most extensively used form of court-annexed ADR.

Mediation also was imposed by statute. Beginning in 1993, mediation in civil cases became mandatory in Los Angeles County for an experimental period of five years. Other courts were given the option of adopting the program. The Judicial Council was directed to report on the effects and savings, if any. Well before the end of the experiment, the Judicial Council reported that mediation had exceeded both the cost savings and time savings specified by the legislature. This led to expansion of mediation in the trial courts and the start of mediation experiments in the appellate courts.

Several years prior to mediation in civil cases, mediation was available in California family cases, and by the century's end it was in universal use.

The concept of alternative dispute resolution, or appropriate dispute resolution as it is called by some,[1] is simple: attempt to resolve disputes by means other than traditional, adversarial litigation in the courts.

The concept is simple but not new. Without delving into ancient history, one need only look to the American Arbitration Association and its extensive involvement in privately negotiated agreements for examples of arbitration rather than litigation of disputes. This model has been replicated in a number of other contemporary contexts such as health care, employment, and purchases or sales of corporate securities. Moreover, the concept is certainly not new in California. As early as 1927 California had a statute permitting the enforcement of arbitration agreements as well as awards made pursuant to them.[2] This statutory scheme not only was endorsed but strengthened by recommendations of the California Law Revision Commission in 1960.[3]

What was new nationally and in California, from 1950 to 2000, was the concept and rather extensive implementation of court-sponsored ADR programs. Both the birth and growth of court-sponsored ADR occurred in two rather different settings. The first was cases involving family matters and the formal recognition of conciliation courts. The second began in small civil cases. Pennsylvania broke new ground in 1952 when the legislature empowered courts of common pleas to establish compulsory arbitration to expedite small claims and relieve delay. The jurisdictional ceiling originally was $1,000, but in a relatively short time it was raised to $3,000 and then to $10,000. Pennsylvania's lead was followed by several other states, such as Ohio and Alaska.

These new court programs had three key characteristics that distinguished them from then-existing private ADR such as arbitration. First, court arbitration was mandatory rather than voluntary. Second, the parties did not have the right to select the third-party neutral who would serve as arbitrator. Third, the arbitration decision was not final because the universal right to a trial entitled a party who disagreed with the arbitration decision to seek judicial review or retrial.

By the end of the century, ADR, both within and outside courts, had grown extensively. Programs outside the courts, such as "private judging" or "rent-a-judge" businesses, will not be addressed here for a variety of reasons, not least of which is the dearth of readily available or reliable information.[4]

Programs in courts spanned a broad continuum by the century's end: negotiation, mediation, neutral evaluation, mini-trials, summary jury trials, settlement conferences, neutral fact finding, arbitration, referral to private judges, confidential listening, and facilitation by ombudspersons.[5]

As a practical matter, only arbitration and mediation were broadly used within the courts of California and elsewhere. As we embark upon the journey into these areas, it should be kept in mind that those who passed this way before us, both recently and decades ago, have lamented the lack of information to light the way. This is especially true regarding the impact of ADR in California.[6]

Arbitration

The first courts in California to officially venture into this field were the superior courts in Los Angeles and San Francisco Counties. In 1971, representatives of the Los Angeles Trial Lawyers Association and the Association of Southern California Defense Counsel, with the support of the presiding judge of the Los Angeles Superior Court, initiated the Attorneys' Special Arbitration Plan for smaller personal injury cases. The board of supervisors provided financial support, and staff of the superior court were designated to administer the program.

Shortly thereafter, representatives of the San Francisco Trial Lawyers Association and the Association of Northern California Defense Counsel, again with the support of the superior court presiding judge, initiated a virtually identical system for San Francisco Superior Court in 1971.[7]

The impetus for arbitration in the courts came from two traditional demons, congestion and delay, which are well indicted by the following excerpt from a resolution adopted by the California Senate in 1971:

> Whereas, There is presently an excessive burden of litigation in the courts in California; and
>
> Whereas, The entire judicial process in California is overloaded causing extensive delay to citizens who are entitled to speedy justice; and
>
> Whereas, This overloading of the courts also seriously increases the costs of civil litigation; and
>
> Whereas, Court procedures must be studied and streamlined; now, therefore, be it
>
> *Resolved by the Senate of the State of California*, That the Senate Rules Committee enter into a contract with the Judicial Council

> to conduct a study of the possible role of the use of arbitration in the judicial process and that such study be concluded by November 20, 1972.[8]

Following the study requested by the Senate, the Judicial Council approved in principle the use of arbitration in small personal injury cases as a means of reducing superior court caseloads but reserved judgment on whether arbitration proceedings should be compulsory.[9]

Concerns about congestion and delay were not fanciful. Court filings, especially in civil cases, had increased dramatically during the 1960s and 1970s, as had the backlog of pending cases. Concurrently, the ratio of dispositions to filings was declining while the time to trial was significantly lengthening, whether measured from filing or from certification by counsel that a case was ready for trial.[10]

As a promising form of relief, arbitration was embraced by the California Legislature, which in 1974 adopted a plan for uniform statewide arbitration in the superior courts. The legislature acted with the support of the Judicial Council and the California Trial Lawyers Association. However, Governor Ronald Reagan vetoed the bill because it required the state to bear the cost of administration, including arbitrators' fees. These fiscal concerns also reflected fear within the executive branch of government that this would be a first step toward state funding of local trial courts, which Governor Reagan's administration opposed.[11]

The following year California had a new governor: Edmund G. "Jerry" Brown. Over the objections of his own Finance Department, he signed legislation similar to that previously vetoed by Governor Reagan. Implementing the legislation, the Judicial Council promulgated rules requiring arbitration in superior courts with ten or more judges. Optional adoption was permitted in other courts. The parties could stipulate to arbitration by mutual agreement, but plaintiffs could unilaterally elect arbitration in cases valued up to $7,500. In effect, plaintiffs could force defendants into arbitration so long as plaintiffs accepted a ceiling of $7,500 on the award. Both parties were given the right to reject the arbitrator's award and pursue the litigation in court (trial de novo) regardless of whether the arbitration was elected or stipulated.[12]

Rather than an end, the new plan was merely the beginning. In 1978 the legislature created fifty-four new, permanent judicial positions, but the legislation was vetoed by Governor Brown. Mandatory arbitration was advanced as an alternative to the expense of creating this substantial number

of new judgeships. The concept was embraced by Governor Brown and his staff, and in early 1978 legislation was introduced on his behalf to create a system of mandatory arbitration.[13] Following extensive legislative maneuvering and deliberations by a broad array of interested parties, the legislation was passed in September and signed by the governor.[14] The plan thus created had the following key characteristics:

- There were three methods for referring a case to arbitration: stipulation, plaintiff's election, or court order.
- Court-ordered arbitration was required in superior courts with ten or more judges if the amount in controversy did not exceed $15,000.
- Mandatory arbitration applied only to civil suits for monetary compensation.
- Arbitration by plaintiff's selection was limited to awards not exceeding $15,000.
- Arbitration hearing dates were set no later than sixty days after assignment to an arbitrator.
- An arbitrator had to be either a member of the State Bar or an active or retired judge.
- Arbitrators were paid $150 per day.
- Any party could request a court trial within twenty days after an arbitration award was filed.
- If the judgment following court trial was not more favorable than the arbitration award, the party requesting the trial had to pay the arbitrator's fee plus other specified costs.[15]

Hopes were high for the new program, and proponents envisioned several benefits.

- Congestion and backlog in large superior courts would be reduced by diverting smaller cases from trial.
- Judicial workloads would be reduced, requiring fewer new judgeships and thereby reducing court costs.
- Arbitration would be more expeditious, less costly, and more satisfying to litigants.
- With more expeditious handling of small civil cases, pressure to abolish the jury system would be reduced or eliminated.[16]

An evaluation of the program by the Rand Corporation after only one year of operation concluded that those who hoped for sharp reductions in court congestion "should temper these hopes somewhat."[17] Moreover, "the effect of arbitration on court costs [was] highly uncertain."[18] And the effects of arbitration on litigants in lawsuits involving small sums were unclear.[19]

The 1978 plan had two additional provisions. First, it required the Judicial Council by January 1, 1984, to report to the governor and the legislature regarding the effectiveness of mandatory arbitration. Second, the statutory scheme of mandatory arbitration was to "sunset" on January 1, 1985 (later extended to 1986), in the absence of continued statutory authorization.[20]

In response to these provisions, the Judicial Council established an advisory committee that conducted an in-depth study of the arbitration system, including its effects on the courts and users. As part of its report, this committee offered the following conclusions and recommendations, adopted by the Judicial Council on November 19, 1983:

> The committee finds that judicial arbitration is a valuable dispute resolution mechanism which has favorably affected the cost, complexity, and time associated with litigating smaller civil cases. The users of the program—litigants and their attorneys—confirm that dispositions resulting from judicial arbitration generally tend to be more prompt, inexpensive, and predictable, and are frequently more satisfactory to all parties.
>
> The program has emerged as an essential calendar management tool for the courts, permitting the disposition of civil active cases, including those not ordered to arbitration, to occur on the whole more quickly and economically, while providing litigants in smaller civil cases with a desirable alternative to conventional litigation.
>
> Based on its study of the effects of the judicial arbitration program, the committee recommends that legislation be enacted indefinitely retaining judicial arbitration beyond its current repeal date of January 1, 1986.[21]

Mandatory arbitration not only was perpetuated, it was propelled by the legislature's Trial Court Delay Reduction Act of 1986 (discussed in Chapter Eight), which required courts to identify cases suitable for ADR.[22] In 1987, the monetary limit on cases subject to mandatory arbitration was increased to $50,000.[23]

In 1989 the Rand Corporation updated its earlier assessment, which had been made after the program was in operation for only one year. With the benefit of six years of operation, Rand reached generally favorable conclusions.

> The results of our survey indicate that California's judicial arbitration program appears to be satisfying many, if not all, of its proponents' original objectives. For instance, the program is well accepted by local court officials, who consider arbitration an effective calendar management tool. It has also proved quite flexible, enabling counties to adapt the program to local needs and circumstances.
>
> Most significantly, arbitration continues to offer litigants a speedier alternative to trial. This benefit has been achieved with no observable dissatisfaction among attorneys or litigants, as reflected in the low rate of actual trials *de novo*.
>
> In spite of arbitration's success in some areas, it has not proven to be a panacea for dealing with crowded civil calendars. In contrast to significant growth in civil filings since 1979, arbitration caseloads have not grown proportionately and appear to be in a stagnant period. It may be that the recent doubling of the jurisdictional limit to $50,000 will prove an impetus to growth.
>
> In our opinion, the program's greatest need is for an ongoing means of monitoring and evaluating its performance. Although many courts maintain some program statistics, there is no general requirement that they do so, nor is there a central place for reporting and disseminating these data. In light of the recent debate in the legislature concerning arbitration and the program's substantial cost, it seems only prudent to report periodically on the arbitration program. Since arbitrated cases now represent a significant fraction of the courts' civil damage caseload, we recommend that local courts resume the reporting of data to the California Judicial Council for compilation and analysis in the council's annual report.[24]

As California entered the final decade of the last century, the need persisted to reduce delay and cost for litigants. As knowledgeable experts observed:

> Over 90 percent of all civil cases filed in California settle prior to trial. A high percentage of these settlements occur "on the courthouse steps," or shortly before trial. Dispute resolution mechanisms currently incorporated into court procedures, such as nonbinding arbitration, are helpful in settling many cases, but

> they come after cases are filed and after parties have invested considerable sums in the litigation. California's challenge is to create a system of civil justice and appropriate dispute resolution that encourages satisfactory settlements early in the process, that minimizes costs for both the parties and the state, and that results in informed decisions and perceived fairness.[25]

The same needs that had earlier motivated creation of mandatory arbitration obviously still existed. The number and variety of ADR programs in California, however, had greatly expanded, as had the amount of work performed by ADR providers.[26] By 1999 it appears there were fifty-one civil ADR programs in California courts in addition to judicial arbitration. Superior court arbitration programs existed in forty-four counties.[27] Although it was possible to identify these court-related programs, the conclusion regrettably was that "we know very little about most of them."[28]

Even with that reservation, a subcommittee of the Judicial Council was able to conclude at the close of the century that civil ADR processes positively furnished a greater choice of dispute resolution methods, accommodated a broader range of interests and concerns than possible within the confines of formal litigation, provided a broader range of available remedies, offered the possibility of earlier and faster resolution of disputes, reduced costs, and appeared to provide litigants with greater satisfaction with dispute resolution processes and outcomes.[29] These positive effects were offset to some extent by fewer procedural protections, secrecy, and the fact that ADR does not create legal precedent by which attorneys and future litigants might be guided.[30]

When the focus was confined to California's judicial arbitration program, the effects at century's close were "unclear."[31] This was true with respect to time savings, cost savings, impacts on court workload, and impacts on court costs as well as public perception of the courts."[32] Arbitration, nonetheless, had by the end of the 1900s become the most common form of court-sponsored ADR.[33]

Mediation

Mediation programs were the second most prevalent form of court-sponsored ADR in California.[34] Just as the search for a solution to court congestion and delay led the California Legislature to arbitration, these same concerns led the legislature in 1993 to mediation. At that time the legislature adopted and the governor signed the Civil Action Mediation Act.[35] Declaring that it was in the public interest for mediation to be

encouraged and used by the courts, "the Legislature found that mediation is an effective process for reducing the cost, time, and stress of dispute resolution that affords parties a greater opportunity for participating directly in resolving their disputes and may help to reduce the backlog of cases burdening the judicial system."[36]

This legislation created a five-year pilot project that was mandatory in the courts of Los Angeles County. Optional adoption of the program by other courts was authorized. At the heart of the plan was the prerogative of the presiding judge, or his or her designate, to refer to mediation any civil action that otherwise would be subject to mandatory judicial arbitration.

This act also contained a sunset provision effective January 1, 1999, with the further direction to the Judicial Council to report by January 1, 1998, regarding the effects and savings, if any, realized by the courts and parties. The legislature announced in advance that the pilot mediation programs would be regarded as a success if they resulted in savings of at least $250,000 to the courts, with corresponding savings to the parties. Within three years mediation programs were operative in the superior courts of Los Angeles, San Diego, and El Dorado Counties as well as in the municipal courts of San Diego, San Mateo, and Mono Counties. After only *two years* of operation the Judicial Council announced that "savings to the parties have been more than five times the legislative benchmark for the *five-year* pilot project" and the "estimated savings to the courts for two years . . . was more than eleven times the Legislature's $250,000 target."[37]

This permitted the Judicial Council comfortably to offer the following conclusion and recommendation: "The pilot project created by the Legislature for cases submitted under the Civil Action Mediation Act has exceeded the cost- and time-savings goals of that act and has won strong approval from reporting parties and their counsel. By removing the sunset clause and ending the pilot project early, the Legislature would recognize mediation, whether court-ordered or voluntary, as an effective process for reducing the cost, time, and stress of dispute resolution."[38]

By the end of the century the legislature expanded mediation by authorizing the creation of civil mediation pilot programs in four additional courts, with authorization in two of them to make mandatory referrals of civil cases to mediation and compensate the mediators from court funds.[39] It should also be noted that late in the 1990s experimentation had begun with mandatory mediation in appellate litigation under a program authorized by the Judicial Council in the First Appellate District of the Court of Appeal (San Francisco).[40]

Use in Cases Involving Families and Juveniles

Mediation in cases involving family relationships and juveniles requires special attention. In many ways ADR in the court context began with attempts in divorce cases to achieve conciliation between estranged spouses. Those efforts sometimes even occurred prior to commencement of formal divorce proceedings and were offered as a service by the court. Building upon a 1939 statutory enactment,[41] superior courts, by 1980, were statutorily authorized to exercise jurisdiction as a "family conciliation court"[42] and to do so for the purposes of protecting the rights of children; promoting public welfare by preserving, promoting, and protecting family life and matrimony; and providing means for the reconciliation of spouses and the amicable settlement of family controversies.[43]

It appears that conciliation and mediation have blended in terms of techniques, and in this sense mediation in family matters has been on a growth trajectory in California courts.

Among the notable developments during the latter part of the last century was the direction to the Judicial Council in 1984 to oversee mediation and conciliation court services in family matters.[44] In 1990 the Judicial Council adopted uniform standards of practice for child custody mediation as well as for disputes over visitation.[45] In 1993 the California Legislature mandated separate mediation in cases involving domestic violence, with the further provision that parties participating in these mediation sessions were entitled to be accompanied by a support person.[46]

By the end of the century, the use of mediation in family cases had become universal throughout California.

Observations

Court-related alternative dispute resolution in California didn't really start until the final quarter of the last century, and the start was slow. Moreover, the impetus was external to the courts—beginning first with local bar associations and then continuing by legislative mandates. While ADR mandates from the legislature and governor may have been cast in terms of aiding litigants and courts, the original motivation may have been driven more by the desire to avoid the expense of creating new, permanent, and costly judgeships.

Even so, the avowed purposes of saving litigants time, money, and anguish are commendable, as are the institutional goals of improving the quality of justice by furnishing alternatives to conventional litigation, reducing

congestion, expediting case processing, and better utilizing precious judicial resources. While verifying the achievement of these commendable ADR objectives may still elude the judicial system, both the purposes and the effort create a milestone in the administration of justice.

Notes

1 For instance, [Judicial Council of California], Commission on the Future of the California Courts, *Justice in the Balance, 2020: Report of the Commission on the Future of the California Courts* (1993), p. 40.

2 California Statutes 1927, chapter 225.

3 California Law Revision Commission, *Recommendation and Study Relating to Arbitration* (December 1960).

4 See, for example, Janice A. Roehl, Robert E. Huitt, and Henry Wong, *Private Judging: A Study of Its Volume, Nature, and Impact on State Courts: Final Report* (Pacific Grove, Calif.: Institute for Social Analysis, 1993).

5 California Judicial Council, Center for Judicial Education and Research, *Judges Guide to ADR* (1996), pp. 14–17.

6 Deborah R. Hensler, Albert J. Lipson, and Elizabeth S. Rolph, *Judicial Arbitration in California: The First Year*, Rand Publication Series R-2733-ICJ ([Santa Monica, Calif.]: Institute for Civil Justice, Rand Corporation, 1981), pp. xvi–xvii; Judicial Council of California, Task Force on the Quality of Justice, Subcommittee on Alternative Dispute Resolution and the Judicial System, *Alternative Dispute Resolution in Civil Cases: Report* (August 1999), pp. v–vii.

7 John G. Fall, project director, *A Study of the Role of Arbitration in the Judicial Process* (Judicial Council of California, 1972), pp. 18–26.

8 California Senate Resolution 139 (Moscone), 2 *California Senate Journal* (1971 regular session), pp. 2766–67, 2933.

9 Fall, *Role of Arbitration*, [preface].

10 Id., pp. 9–15; Hensler, Lipson, and Rolph, *Judicial Arbitration in California*, pp. 4–8.

11 Hensler, Lipson, and Rolph, *Judicial Arbitration in California*, p. 10.

12 Id., pp. 10–11.

13 California Senate Bill 1362 (Smith); California Statutes 1978, chapter 743, p. 2303.

14 Hensler, Lipson, and Rolph, *Judicial Arbitration in California*, pp. 13–23, 105–7.

15 Id., pp. 22–23.

16 Id., pp. 12–13.

17 Id., p. 93.

18 Id., p. 94.

19 Id., p. 96.

20 California Statutes 1978, chapter 743, sections 1141.29 and 1141.32, p. 2307; Hensler, Lipson, and Rolph, *Judicial Arbitration in California*, p. 2.

21 Judicial Council of California, *Annual Report to the Governor and the Legislature* (1984), pp. 5–6; California Statutes 1983, chapter 1253, section 1141.32, p. 4944. By the time of the Judicial Council's report, the repeal date had been extended by legislative amendment to January 21, 1986.

22 California Government Code, section 68607(d); Trial Court Delay Reduction Act of 1986, California Statutes 1986, chapter 1335.

23 California Code of Civil Procedure, section 1141.11; California Statutes 1987, chapter 1204, section 1, p. 4298.

24 David L. Bryant, *Judicial Arbitration in California: An Update*, Rand Publication Series N-2909-ICJ ([Santa Monica, Calif.]: Institute for Civil Justice, Rand Corporation, 1989), pp. x–xi.

25 Robert Barrett, Jay Folberg, and Joshua Rosenberg, *Use of ADR in California Courts: Report to the Judicial Council of California Advisory Committee on Dispute Resolution* (University of San Francisco School of Law, December 1991), p. 5.

26 Id., p. 35.

27 Judicial Council of California, Task Force on the Quality of Justice, Subcommittee on Alternative Dispute Resolution and the Judicial System, *Alternative Dispute Resolution in Civil Cases*, p. 50.

28 Ibid.

29 Id., pp. 7–15.

30 Id., pp. 15–16.

31 Id., pp. 62–64.

32 Id., pp. 62–65.

33 Judicial Council of California, *Civil Action Mediation Act: Results of the Pilot Project, Legislative Report* (November 1996), p. 7. Attributable to the statutory

mandate compelling arbitration in civil cases involving less than $50,000 in larger courts and the supplemental discretionary authority in smaller courts to also compel arbitration. Code of Civil Procedure, section 1141.11(a)–(b).

34 Judicial Council, *Civil Action Mediation Act*, p. 7.

35 California Statutes 1993, chapter 1261, p. 7323.

36 Judicial Council, *Civil Action Mediation Act*, p. 1.

37 Id., pp. 2–3.

38 Id., p. 9.

39 California Statutes 1999, chapter 67.

40 Judicial Council of California, Task Force on Appellate Mediation, *Mandatory Mediation in the First Appellate District of the Court of Appeal: Report and Recommendations* (September 2001).

41 California Statutes 1939, chapter 737, p. 2261.

42 California Statutes 1980, chapter 48, section 1740, p. 126.

43 California Family Code, section 1801; see also California Statutes 1980, chapter 48, section 1768, p. 131.

44 California Family Code, sections 1850–1852; see also California Statutes 1984, chapter 893, section 5180, p. 3004.

45 Judicial Council of California, *Annual Report to the Governor and the Legislature* (1991), volume 1, pp. 90–91.

46 California Family Code, sections 3170 and 6303; see also California Statutes 1993, chapter 219, section 116.8, pp. 1628–29, and section 154, pp. 1659–60.

Chapter 12
Fairness and Access to Justice for All

Overview

Public attitudes toward courts were measured nationally and in California during the closing quarter of the last century. The results were discouraging. Americans were dissatisfied with court performance and had unfulfilled expectations about courts providing equality and fairness. Most Californians viewed courts as "poor" or "only fair" and felt that both access and treatment were unequal.

Nationally, a consortium was formed of state court entities devoted to combating the several forms of bias in courts.

California began with an attack on gender bias that led to the Judicial Council's establishment of the Advisory Committee on Gender Bias in the Courts in 1987. This committee reported in 1990 that gender bias in the courts was a significant problem and submitted sixty-eight recommendations to insure fairness.

A special committee, charged with acting on these recommendations, reported in 1996 that one-third had been substantially implemented.

Following the initial report of the gender bias committee, a companion committee was established by the Judicial Council to address racial and ethnic bias. By 1994 it was apparent that a comprehensive effort was required, and the Access and Fairness Advisory Committee was created by the Judicial Council.

This umbrella committee divided into six subcommittees: access for persons with disabilities, gender fairness, racial and ethnic fairness, women of color, sexual orientation, and education and implementation.

These various subcommittees utilized a similar array of research techniques including opinion polls, surveys, public hearings, and interviews. By the end of the century, all but the sexual orientation subcommittee had completed sufficient research to advise the Judicial Council that there were opportunities in each area to improve fairness.

Public attitudes regarding courts were surveyed at several points in the last quarter-century. Results were discouraging both nationally and in California. Public confidence was not high. At the national level, a survey commissioned by the National Center for State Courts produced these insights, among others, in 1978:

- The general public and community leaders were dissatisfied with the performance of courts and ranked courts lower than many other major American institutions.
- The public's concern about courts stemmed from the feeling that basic expectations, including equality and fairness, had not been met.[1]

Toward the end of the century, a survey of public attitudes in California provided similar and equally alarming results.[2] A majority of Californians had an "only fair" or "poor" opinion of the state's courts.[3] Californians believed, in general, that "some people get treated better than others" and, specifically, that "[p]oor people do not have equal access[,] . . . minorities are not treated as well as whites, and white males receive the best treatment."[4]

There were both national and California responses to this new knowledge.

National Response

The most significant development nationally was state-by-state establishment of commissions or similar bodies dedicated to combating various forms of bias. The objectives were bias eradication and demonstrable equality for all persons involved in court processes.

Gender bias may have been the first target, thanks to the efforts of the National Association of Women Judges and other groups. A national conference sponsored by the National Center for State Courts in 1981 apparently inspired the creation of the first gender bias task force, also in 1981, within the New Jersey court system.

Ultimately these antibias entities joined forces as a national consortium that enabled them to share information, techniques, and inspiration. California played a prominent role in this consortium, with notable contributions by individual judges.

California's Response

Within California, the efforts of many dedicated persons ensured that the pursuit of fairness would be a milestone in the improved administration of justice.

Following the national conference on gender bias, a steering committee was formed composed entirely of women lawyers, law professors, and judges. This group urged Chief Justice Rose Elizabeth Bird to establish a gender bias task force in California, as had been done in New Jersey and elsewhere. The Chief Justice responded by appointing, in 1986, a special committee to review issues of gender bias in the courts. This appeared to be the first formal response to bias in California's courts. Based upon the work of that committee, the Judicial Council in 1987 created the Advisory Committee on Gender Bias in the Courts. This was supplemented in 1991 when the Judicial Council created the Advisory Committee on Racial and Ethnic Bias in the Courts.

It became apparent in a relatively short time that an all-encompassing effort was both needed and appropriate. The Judicial Council therefore created in 1994 the Access and Fairness Advisory Committee "to review and make recommendations about fairness issues in the courts related to race, ethnicity, gender, persons with disabilities, and sexual orientation."[5]

At the close of the century this umbrella committee had organized itself into six subcommittees respectively concerned with access for persons with disabilities, gender fairness, racial and ethnic fairness, women of color, sexual orientation, and education and implementation.

Both the creation of the Access and Fairness Advisory Committee and its activities are embraced by the Judicial Council's mission for the judiciary, which emphasizes fairness and accessibility in the resolution of disputes arising under the law. More specifically, the first goal of the Judicial Council, incorporated into its strategic plan, stresses "equal access to the courts" as well as "fair and just" treatment in the courts.[6]

Gender

The original Advisory Committee on Gender Bias in the Courts submitted in 1990 a draft report advising that "gender bias was a significant problem in the courts as it was throughout society." The committee also submitted for consideration sixty-eight recommendations "designed to insure fairness for all participants in the court system."[7]

Utilizing an array of research techniques, as well as public hearings, the committee examined the potential for gender bias in five substantive areas: family law, domestic violence, juvenile and criminal law, court administration, and civil litigation and courtroom demeanor. In each area the committee concluded that gender bias existed or had the potential to exist. For example, in the family law area the extent and level of gender bias led

the committee to recommend, among other things, changes in child and spousal support, custody, division of assets, assignment of judges, training of family lawyers, and mediation.[8] With respect to domestic violence, the committee noted: "because 95 percent of the victims of domestic violence are women, the judicial system's unequal and inadequate treatment of such victims and of the crime of domestic violence raised serious issues of gender bias."[9]

The committee found in the area of juvenile and criminal law three major areas of concern: appointment of attorneys to represent defendants, treatment of female offenders, and operation of juvenile courts. The committee concluded that "gender bias affects the ways in which the criminal and juvenile courts operate, both directly and indirectly."[10] Within the courts themselves, the committee found potential for gender bias in administration in view of the fact that California courts employ women predominantly in lower-paid classifications.[11] The committee rather forcefully concluded that gender bias was unacceptably high in the courtroom environment—flowing from judicial conduct in the form of either actions by judges or the failure of judges to control courtroom interactions in which other participants, such as attorneys or court employees, exhibited gender-biased behavior.[12]

After review and consideration by a special subcommittee, the Judicial Council unanimously adopted the recommendations of the committee and formally issued the report in 1996.

The landmark work of the advisory committee in the area of gender bias was accompanied by the work of another Judicial Council group, the Gender Fairness Subcommittee of the Access and Fairness Advisory Committee, charged with implementing the gender fairness proposals. Thanks to the work of this group, it was reported that by 1996 approximately one-third of the sixty-eight original proposals submitted to the Judicial Council in 1990 had been substantially implemented.[13]

Minorities

The Judicial Council's Advisory Committee on Racial and Ethnic Bias in the Courts approached its task directly by conducting public hearings. Between November 1991 and June 1992, thirteen days of public hearings were conducted in twelve cities throughout California. In addition to open invitations to individuals and groups to testify, on a public or confidential basis, people were invited to submit written testimony or observations. By the conclusion of this process, 249 people testified, resulting in 2,600 pages of testimony, and 94 people made written submissions totaling 1,000 pages.[14]

From this mass of information the advisory committee concluded that issues of fairness existed in a broad array of areas ranging from access to justice to minority employment within courts.

Recognizing that the testimony and statements elicited during the course of public hearings did not necessarily reflect a representative sampling of the California population, the advisory committee subsequently conducted an opinion survey for the purpose of determining whether the opinions of those who testified could be objectively verified as views held by the general public. The results of that survey were submitted to the Judicial Council in 1994. The clearest conclusion was that there are two distinct perceptions of the judicial system in California. "One system is experienced primarily by judicial officers, and to some extent nonjudicial court personnel, while the 'other' system is the domain of racial and ethnic minorities."[15] The second distinct conclusion from the survey was that "racial and ethnic minorities do not share a monolithic view of the courts."[16]

Persons with Disabilities

The Access and Fairness Advisory Committee elected to provide special focus on persons with disabilities and did so by creating a subcommittee responsible for "studying and addressing issues related to the availability of all aspects of the judicial system to persons with disabilities and chronic medical conditions."[17] To discharge this responsibility, the subcommittee undertook a multistage research program composed of public hearings, telephone and mail surveys, and in-person interviews.

The primary areas of inquiry concerned attitudes, architecture, communications, environment, transportation, and employment. Admitting that the objective was to ascertain perceptions and experiences, the subcommittee during the course of its work apparently did not attempt to document barriers to access for disabled persons.

The committee in 1997 submitted for the Judicial Council's consideration an array of recommendations—all in support of the objective of increasing access to the judicial process for persons with disabilities.[18]

At the heart of the recommendations were proposals for extensive education both within and beyond the courts to familiarize court officials with the Americans with Disabilities Act (ADA) and to heighten awareness of access problems for persons with disabilities. The subcommittee also urged that the Judicial Council help courts assess court capacity to assist persons with disabilities; require an ADA coordinator in all courts; adopt a standard of judicial administration to provide flexible scheduling

to accommodate disability-related problems of stamina or time limitations; and undertake a compliance review to quantify the extent to which persons with disabilities face physical barriers to participation in the legal system.

Sexual Orientation

The subcommittee responsible for issues related to sexual orientation was in the midst of its initial research as the century ended. Surveys were being used extensively, as they had been used by the other subcommittees. The threshold objective was to examine the experiences of court users with the goal of identifying procedures that have been especially successful in promoting access and fairness for lesbians and gay men. The second objective was to examine the experiences of court employees in order to assess the courts as a workplace for gay men and lesbians as well as to determine ways in which the work environment can be improved.

Notes

1 Yankelovich, Skelly and White, Inc., "Highlights of a National Survey of the General Public, Judges, Lawyers, and Community Leaders," in *State Courts: A Blueprint for the Future: Proceedings of the Second Annual Conference on the Judiciary*, National Conference on the Judiciary ([Denver]: National Center for State Courts, 1978), p. 5.

2 Yankelovich, Skelly and White/Clancy Shulman, Inc., "Surveying the Future: Californians' Attitudes on the Court System," in *2020 Vision: Symposium on the Future of California's Courts: Research Papers* (December 10–11, 1992).

3 Id., p. [1] 5.

4 Id., p. [2] 10.

5 Judicial Council of California, California Courts Web site: [Programs: Access and Fairness: Background Information], *www.courts.ca.gov/12519.htm*.

6 Judicial Council of California, *Leading Justice Into the Future: Strategic Plan* (March 2000), p. 9.

7 Judicial Council of California, Advisory Committee on Gender Bias in the Courts, *Achieving Equal Justice for Women and Men in the California Courts* (1996), p. xiii.

8 Id., p. 7.

9 Id., p. 11.

10 Id., p. 13.

11 Id., p. 15.

12 Id., p. 17.

13 Judicial Council of California, Access and Fairness Advisory Committee, Gender Fairness Subcommittee, *Gender and Justice: Implementing Gender Fairness in the Courts: Implementation Report* (1996), p. 1.

14 Judicial Council of California, Advisory Committee on Racial and Ethnic Bias in the Courts, *1991–92 Public Hearings on Racial and Ethnic Bias in the California State Court System* (1993), p. 2.

15 Judicial Council of California, Advisory Committee on Racial and Ethnic Bias in the State Courts, "Report on Fairness in the California Courts: A Survey of the Public, Attorneys, and Court Personnel," Administrative Office of the Courts Report Summary (June 28, 1994), in *Reports and Recommendations* (July 7, 1994), tab 2, p. 6.

16 Ibid.

17 Judicial Council of California, Advisory Committee on Access and Fairness in the Courts, Access for Persons with Disabilities Subcommittee, *Public Hearings Report: Access for Persons with Disabilities* (1997), p. 1-1.

18 Judicial Council of California, Advisory Committee on Access and Fairness in the Courts, Access for Persons with Disabilities Subcommittee, *Summary of Survey and Public Hearing Reports* (1997), pp. 16–24.

Chapter 13

A Response to Diversity—Interpreter Services

Overview

f a person's knowledge of the English language is inadequate for understanding court proceedings, he or she is vulnerable, particularly as a defendant in a criminal case. The plight of these persons received substantial attention and assistance in the last quarter-century.

Two important events occurred in the 1970s. The California Constitution was amended in 1974 to provide that "[a] person unable to understand English who is charged with a crime has the right to an interpreter," which clarified a murky area of law. Several years later, in response to a request from the California Legislature, the Judicial Council reported major findings regarding needs and recommendations to improve interpreter services.

The legislature replied in 1978 by directing the State Personnel Board to certify qualified interpreters to the superior courts, and the Judicial Council to report statistics on interpreter utilization and adopt standards governing the need for interpreters in individual cases, interpreter competence, and interpreter conduct.

This sufficed through the 1980s, but more was needed. On recommendation of the Judicial Council, the legislature in 1993 directed the council to implement a comprehensive court interpreter program. The council complied by addressing training, testing, certification, performance evaluation, recruitment, management, and other aspects of interpreter services. In the 1990s the Judicial Council promulgated professional ethics for interpreters and campaigned for a legislative increase in interpreter compensation.

Achievements in this area appropriately are measured against conditions in California. As reported by the Judicial Council in 1995, 224 languages were in use in California. The top 10 foreign languages used in criminal proceedings were Spanish, Vietnamese, Korean, Armenian, Cantonese, Farsi/Persian, Tagalog, Cambodian, Laotian, and Russian. Of the 1,675 certified court interpreters, 1,536 were certified in Spanish—by far the most frequently used foreign language in the courts. Annual expenditures for interpreter services exceeded $58 million per year by the year 2000.

This milestone in the administration of justice warrants several introductory observations. First, the focus is on assistance for persons involved in court proceedings whose knowledge of the English language is nonexistent or so limited that they are unable to comprehend the proceedings without the assistance of an interpreter who can translate into a language known to the person. Individuals with impaired hearing, vision, or speech have significant problems that are receiving attention, but the number of persons with language problems is far greater.

Second, the focus is on criminal defendants because life, liberty, or property, in the form of bail or fines, is at stake in the legal proceedings confronting them. This does not minimize serious needs, as well as progress, in civil and juvenile proceedings, but they are not at the heart of this milestone.

Third, this is an area in which there has been extensive, interactive direction from the California Legislature to the judicial branch. This characteristic is shared with other milestones such as families and juveniles in the courts, delay reduction, and alternative dispute resolution.

Finally, there is a deceptive simplicity when considering interpreter services. If a defendant does not speak English, the obvious response would seem to be to provide a person to interpret who speaks the defendant's language. But lurking beneath the surface are devilish issues.

- Who determines the extent of a defendant's proficiency or lack of proficiency in English: the defendant, the defendant's counsel, a third party, or the judge?
- Is a defendant entitled to an interpreter at all phases of criminal proceedings, such as the preliminary hearing, or only at trial?
- At trial, is the defendant entitled to translation of only the testimony of the witnesses or of all proceedings that transpire?
- Must the translation furnished to the defendant be verbatim, or may it be a summary?
- Should the translation be simultaneous with a witness's testimony or consecutive, following the witness's testimony?
- Is a defendant entitled to have documents translated?
- Is a defendant entitled to an interpreter to facilitate communications with counsel?

- When interpreter services are provided, is the defendant entitled to exclusive use of an interpreter, or may that interpreter be shared with other defendants or even the prosecution?
- Outside the courtroom, is the defendant entitled to interpreter services for consultations with counsel or other matters related to the criminal proceedings?
- Are interpreter services to be provided only for indigent defendants?

With respect to the interpreters themselves, there are significant issues regarding qualifications, testing, certification, recruitment, availability, compensation, and status (independent contractor versus employee), to name a few.

Not all of these issues were resolved by century's end, but the courts of California under Judicial Council and Administrative Office of the Courts (AOC) leadership made sufficient progress during the last quarter-century to make assistance to non-English-speaking persons a milestone in the improved administration of justice.

Where to Begin?

Obviously interpreters were used in court proceedings prior to the 1970s, but an appropriate point to begin this story is 1973, when the California Legislature adopted Assembly Concurrent Resolution 74, which, among other things, stated that communication difficulties of non-English-speaking citizens and residents "frequently jeopardize access to equal justice under the law and threaten the liberty and property rights"[1] of these persons. Based on these and other propositions, the legislature directed that the "Judicial Council shall immediately undertake a comprehensive research study to identify and evaluate, at every stage of the judicial process, both criminal and civil, the language needs of non-English-speaking citizens and residents."[2] To ensure that the Judicial Council understood the meaning of "comprehensive," the legislature also directed that the study include:

> (a) Identification of tasks and responsibilities of interpreters at various stages of the judicial process;
> (b) Identification of documents and forms that need to be provided in languages other than English;
> (c) Standards of qualifications and competency for interpreters at various stages of the judicial process;
> (d) The needs faced by non-English-speaking citizens and residents in contact with all justice-related units of government, including, but not limited to, police and sheriffs' offices, district attorneys'

offices, public defenders' offices, all courts and the offices of county clerks;
(e) The development, design, and conduct of training programs for interpreters;
(f) Development of an interpreter utilization model suitable for use in both urban and rural settings;
(g) Identification of both urban and rural justice systems receptive to testing a developed interpreter utilization model for a one-year period;
(h) Development of a suitable system to fully evaluate the effectiveness of any developed model.[3]

Close on the heels of the legislature's request for the Judicial Council's study, the voters of California in 1974 adopted a proposal of the Constitution Revision Commission that amended the California Constitution to provide: "A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings."[4]

This was a fundamental change in the explicit law of California and was offered for these reasons: "The Commission also recommends adoption of a provision for an English interpreter at State expense to persons accused of a crime who cannot understand English. Although furnishing interpreters is customary, the Commission does not believe that the law adequately provides for them. Given the large numbers of persons living in California who do not speak English, the Commission feels that the opportunity for equal treatment under the law is enhanced by a constitutional right to an interpreter."[5]

While the appropriateness of this addition to the constitution seems apparent in today's world, prior to 1974 the state of the law regarding access to interpreter services was chaotic at best. In fact, one analyst concluded that prior to 1974 "the rights of the non-English speaking criminal defendant, as such, were largely ignored and the only recognition given to the problems raised by the non-English speaking defendant were subsumed under the California Evidence Code section 752, which reads[:] 'When a witness is incapable of hearing or understanding the English language or is incapable of expressing himself in the English language so as to be understood directly by counsel, court, and jury, an interpreter whom he can understand and who can understand him shall be sworn to interpret for him.'"[6] Even this statutory provision suggests rather clearly that the purpose is to provide interpreter services for the judge, attorneys, and jury who may not be able to understand a witness. It also suggests that

a non-English-speaking defendant would have received interpreter assistance only when the defendant was a witness and not otherwise during the course of a trial.

A Study of the Language Needs of Non-English-Speaking Persons

A three-part, two-year study, titled *A Report to the Judicial Council on the Language Needs of Non-English Speaking Persons in Relation to the State's Justice System*, was prepared at the request of the Judicial Council by the consulting firm of Arthur Young & Company in 1976–1977. It was the direct response to the legislature's request and was both the first examination of this area and an appropriately detailed examination.[7]

What were the results? At the threshold were the facts that, as of the mid-1970s, there were more than one million non-English-speaking persons in California. The majority of this group spoke Spanish (83 percent), but there were at least seventy other languages spoken in the state.[8] Corollaries to these findings in the court context were that the utilization of Spanish interpreters was five times greater than the utilization of interpreters for all other languages combined, and the greatest utilization of courtroom interpreters was in Southern California.[9]

As part of the methodology for the study, public hearings were held, and numerous persons within and beyond the court system were surveyed for their experiences and perceptions. The broad opinion expressed was that "the present types and levels of courtroom interpreting services provided in criminal matters do not always result in an understanding between non-English-speaking and English-speaking persons."[10] The reasons for this rather alarming conclusion were that procedures at the time did not ensure that those needing interpreting services would receive them, the ability of persons selected to perform courtroom interpreting varied, multiple defendants were seldom furnished with separate interpreters, procedures such as verbatim translation had the potential to impede understanding, and procedures did not exist to ensure accuracy of interpretation.[11]

The researchers concluded there were multiple needs regarding courts and criminal proceedings: improvement in the method of determining when a courtroom interpreter was required; provision of qualified interpreters in all languages; ensured availability; testing, certification, and evaluation of court interpreters; provision of courtroom interpreters to defendants in criminal proceedings at no expense to the defendant; and improvement in the procedures for accepting a defendant's waiver of an interpreter.[12]

These were the conclusions submitted to the Judicial Council, and subsequently the legislature, as of January 1976 (Phase I). The second report was submitted in May 1976 (Phase II) and addressed the tasks and responsibilities of court interpreters, certification and testing models for delivering interpreting services, court interpreter training, and the use of bilingual forms.

The final segment of the study was submitted to the Judicial Council in January 1977 (Phase III). The consultants first offered the following supplemental findings:

- The roles, relationships, and responsibilities of court reporters are largely undefined.
- Establishment of a central licensing authority and statewide certification process for court interpreters would be costly and inflexible.
- Interpreter training classes are an effective method of increasing the proficiency of interpreters.
- Written and oral interpreter training programs are feasible and can screen qualified from unqualified interpreters.
- Existing compensation practices for interpreters are at times inconsistent with commonly accepted wage and salary principles.
- Court interpreter assignment procedures vary significantly and do not always meet the courts' needs.[13]

Although the resulting recommendations extended well beyond criminal proceedings, the recommendations all clearly applied to criminal cases.

- The Judicial Council should adopt the proposed court interpreters' standards of conduct and professional responsibilities.
- Legislation should be enacted for the training and testing of court interpreters in California.
- Judicial Council rules should be adopted for establishment of a list of recommended interpreters in designated counties.
- The Judicial Council should adopt guidelines for the qualification of court interpreters.
- Courts should continue to determine whether an interpreter is needed, but such determinations should be subject to application of Judicial Council guidelines.

- Existing laws should be clarified regarding public payment of court interpreters.
- Legislation should be enacted requiring periodic review of court interpreters.
- Legislation should be enacted to require the Judicial Council to collect and publish pertinent interpreter utilization statistics.
- A countywide interpreter fee schedule should be established by local court rule in each county.
- County employees assigned additional duties as courtroom interpreters should be reclassified with commensurate paid adjustment.
- Courts experiencing difficulty in locating or assigning court interpreters should consider use of a coordinator at the county level who is responsible for obtaining interpreter services when needed.
- The Judicial Council should distribute a handbook on court interpreter utilization to judges, attorneys, and interpreters.[14]

Interpreters in the 1970s

This report arrived against a backdrop of rather sparse interpreter services. The State Personnel Board was legislatively mandated to test and certify proficiency in foreign languages. This did not mean certification or qualification as a court interpreter but only testing and certification in knowledge of a language.

The new information developed in the three-stage study subsequently was supplemented, establishing, by the end of the 1970s, that Spanish was used forty times more frequently than all other languages combined in connection with court interpreter services. Those services were utilized 94 percent of the time in criminal cases. More than half of all court interpreter services were used in the three Southern California counties of Los Angeles, Orange, and San Diego.[15]

Initial Standards

Following the Judicial Council's submission to the California Legislature of the final report on language needs, the legislature in 1978 enacted legislation addressing court interpreter services.[16] The legislature recognized "the need to provide equal justice under the law to all California citizens and residents and the special needs of non-English-speaking persons in their relations with the judicial system."[17] The legislature further

found that "[p]rovision of competent interpreter services in courts and judicial agencies would be facilitated by a coordinated effort to provide testing programs and to assure adequate interpreter services to all California citizens and residents."[18]

The operational portions of the legislation imposed new duties on the State Personnel Board and the Judicial Council. The personnel board was directed to establish minimum standards of language proficiency, both written and oral, in English and the language to be interpreted. In addition, the personnel board was directed to administer appropriate examinations and annually certify to the superior courts a list of qualified interpreters. The superior courts in the thirty-three larger counties were directed to compile from the list published by the State Personnel Board a list of recommended interpreters for use by all trial courts throughout these counties.[19]

The Judicial Council was directed to report pertinent interpreter utilization statistics to the governor and legislature by December 31, 1980. In addition, the Judicial Council was to implement the legislation by establishing standards for determining the need for a court interpreter in particular cases, for ensuring an interpreter's understanding of court terminology and procedure, and for the professional conduct of court interpreters. Periodic review of each court interpreter's skills and removal of those who failed to maintain skills also were required.

The Judicial Council responded by directing each superior court to establish procedures for review of the performance and skills of court interpreters.[20] The Judicial Council further adopted Standards of Judicial Administration that, among other things, provided guidance in determining the need for a court interpreter, the procedures to be followed during interpreted proceedings, techniques for ensuring interpreter understanding of court terminology, and professional standards of conduct for interpreters.[21]

These standards, combined with the legislature's directives, apparently sufficed through the 1980s.

Interpreters in the 1990s

In the 1990s, court interpreter services received renewed attention. Chief Justice Malcolm M. Lucas advised the State Bar in his 1990 State of the Judiciary Address that he had appointed an Advisory Committee on Court Interpreters because "[w]e must provide qualified interpreters to all who need them to assure every Californian access to justice."[22] This committee was directed to "work toward ensuring early identification of the need for an interpreter, improving the quality of interpreting, and increasing

the number of available qualified interpreters."[23] More specifically, the committee was directed to delve into a broad array of topics: developing interpreter training and certification programs; administering interpreter resources; conducting statistical studies; recording interpreted proceedings; evaluating interpreter performance; using technology to provide interpreter services; certifying interpreters for the hearing impaired; training judges, attorneys, and court personnel regarding interpreter services; and proposing comprehensive revisions in the statutes governing interpreters.[24]

The balance of the 1990s produced a steady flow of responsive measures. The Judicial Council in 1991 sponsored legislation, for example, to provide comprehensive interpreter services to the courts and to non-English-speaking persons in the courts. This proposal included creation of a Certified Interpreters Board to take responsibility for testing, certification, and regulation in this area. The proposed legislation also permitted California courts to use federally certified interpreters without regard to state examinations.[25]

By 1993 the legislature had directed the Judicial Council to implement a comprehensive court interpreter program with an extensive set of components ranging from recruitment to continuing education.[26] In June 1993 Chief Justice Lucas appointed the Court Interpreters Advisory Panel,[27] which was a natural extension of his 1990 Advisory Committee on Court Interpreters.

The major thrust of activities to this point was to provide interpreter services for Spanish-speaking persons. This is understandable in view of the overwhelming number of cases in which Spanish interpreters were required. However, beginning in 1993, the Judicial Council through its advisory committee began exploring the development of new proficiency testing for Arabic, Cantonese, Japanese, Korean, Portuguese, Tagalog, and Vietnamese.[28]

In response to the earlier legislative directive, the Judicial Council in 1995 submitted to the governor and legislature a substantial report entitled *Court Interpreter Services in the California Trial Courts.* At this point, 224 different languages were spoken in California. Embedded in this number were fascinating facts revealing the language diversity in the state.

- The top languages (in order of usage in the courts) were (1) Spanish, (2) Vietnamese, (3) Korean, (4) Armenian, (5) Cantonese, (6) Farsi/Persian, (7) Tagalog, (8) Cambodian, (9) Laotian, (10) Russian, (11) Mandarin, (12) Arabic, (13) Hmong, and (14) Japanese.

- Los Angeles County was the major provider of interpreter services in every major language except Laotian and Hmong.
- Spanish remained the most widely used language.
- Vietnamese replaced Korean as the second most widely used language.
- Armenian was reported as a language with "some usage" in 1992. However, by 1995 it had jumped into fourth place—ahead of Cantonese, Tagalog, and Japanese.
- Farsi/Persian, another newcomer, was ranked sixth on the list of the most widely used languages, ahead of Tagalog, Arabic, and Japanese.
- Cambodian, Laotian, Russian, and Mandarin each accounted for around $250,000 worth of interpreter services statewide, yet none of these languages was among the group of languages designated for certification testing.
- Portuguese, with expenditures of $51,514, did not demonstrate wide usage, although it was a language requiring certification.[29]

In addition to these intriguing data, the Judicial Council reported that the trial courts were spending approximately $32 million per year on interpreter services; there were 1,675 certified court interpreters in 1995, of which 1,536 were certified in Spanish; and, in order to retain certification, court interpreters were required to register with the Judicial Council, annually complete thirty hours of continuing education, and be able to prove forty professional assignments every two years.[30]

The Judicial Council explicitly noted that the information furnished was confined to criminal proceedings. This comment was accompanied by a recommendation for "further investigation into the use of interpreters in the civil sector."[31]

The next major step was promulgation, in 1997, by the Judicial Council and AOC of a comprehensive statement titled *Professional Ethics and the Role of the Court Interpreter.*[32] By the end of the century, Judicial Council concerns and actions extended to campaigning successfully for legislative increases in the rate of compensation for interpreters. This was precipitated by important facts. First, the number of continued or delayed proceedings due to the unavailability of interpreter services doubled from 1997 to 1998. In addition, 224 languages were spoken in California, and yet certification for court interpreters was available in only eight languages—Arabic, Can-

tonese, Japanese, Korean, Portuguese, Spanish, Tagalog, and Vietnamese. Finally, the Judicial Council reported that "[t]rial courts often must turn to uncertified interpreters, cope with a growing number of continued or delayed interpreted proceedings, and pay more than established pay rates for interpreters."[33]

In 2000, the council designated an additional five languages for certification—Armenian, Khmer, Mandarin, Punjabi, and Russian—and began developing certification examinations for those languages. By that year, annual expenditures for the interpreter program had risen to more than $58 million, with 1,116 certified interpreters in designated languages and 245 additional interpreters registered in nondesignated languages, for a total of 1,361 interpreters.[34]

Reflections

In many ways the story of court interpreter services in California revolves around Los Angeles County. Not only is it the most populous county in the state, it also has a significant number of residents who are Spanish-speaking. More specifically, the courts in Los Angeles County, led by the superior court, were the first to confront needs in this area by creation of a centralized list of interpreters for use by courts throughout the county.[35] Certification was based on extensive written and oral testing programs that included mock trials.[36] Toward the close of the century, the cost of interpreter services in Los Angeles County accounted for approximately 50 percent of statewide expenditures for interpreter services.

While sheer size and demographics will continue to ensure that Los Angeles County has a prominent place in this story, considerable statewide effort and concern in providing appropriate interpreter services warrant designation of this achievement as a milestone in the improved administration of justice.

Notes

1 Assembly Concurrent Resolution 74; California Statutes 1973, Resolution Chapter 179, p. 3301.

2 Id., p. 3302.

3 Ibid.

4 California Constitution, article I, section 14 (added November 5, 1974).

5 California Constitution Revision Commission, *Proposed Revision of the California Constitution*, part 5 (1971), p. 22.

6 Arthur Young & Company, *A Report to the Judicial Council on the Language Needs of Non-English Speaking Persons in Relation to the State's Justice System* (January 1976), Phase I, pp. III-1–III-2.

7 The scope of this study extended to agencies beyond the courts, such as law enforcement agencies and probation departments, which was in the spirit of the California Legislature's request. It also extended to civil litigation and administrative proceedings.

8 Arthur Young, *Report*, Phase I, p. II-3.

9 Id., p. IV-3.

10 Id., p. V-4.

11 Id., pp. V-4–V-16.

12 Id., pp. II-5–II-12.

13 Arthur Young & Company, *A Report to the Judicial Council on the Language Needs of Non-English Speaking Persons in Relation to the State's Justice System* (January 1977), Phase III, pp. 10–14.

14 Id., pp. 16–32.

15 Judicial Council of California, *Annual Report to the Governor and the Legislature* (1981), pp. 15–34.

16 California Government Code sections 68560–68563 (since superseded); California Statutes 1978, chapter 158, pp. 388–90.

17 Government Code, section 68560(d) (since superseded); California Statutes 1978, chapter 158, pp. 388–90.

[18] Government Code, section 68560(e) (since superseded); California Statutes 1978, chapter 158, pp. 388–90.

[19] Government Code, section 68562 (as of 1978); Judicial Council, *Annual Report* (1981), p. 15.

[20] California Rules of Court, rule 984 (as of July 1, 1979); Judicial Council, *Annual Report* (1981), p. 31.

[21] California Standards of Judicial Administration, sections 18–18.3 (as of 1979); Judicial Council, *Annual Report* (1981), pp. 31–34.

[22] Judicial Council of California, *Annual Report to the Governor and the Legislature* (1991), p. 3.

[23] Id., p. 83.

[24] Id., pp. 83–84.

[25] Judicial Council of California, *Annual Report to the Governor and the Legislature* (1992), p. 24.

[26] Senate Bill 1304; California Statutes 1992, chapter 770.

[27] California Courts Web site, *www.courts.ca.gov/2685.htm*.

[28] Judicial Council of California, *Annual Report to the Governor and the Legislature* (1994), p. 7.

[29] Judicial Council of California, *Court Interpreter Services in the California Trial Courts* (1995), pp. i–ii, 1.

[30] Id., p. ii.

[31] Id., p. iii; see also Judicial Council of California, *Annual Report to the Governor and the Legislature* (1996), pp. 29–34.

[32] Judicial Council of California, Administrative Office of the Courts, *Professional Ethics and the Role of the Court Interpreter* (1997).

[33] Judicial Council of California, Administrative Office of the Courts, *Foundations for a New Century: Annual Report* (2000), p. 7.

[34] Judicial Council of California, Administrative Office of the Courts, *Report to the Legislature on the Use of Interpreters in the California Courts* (2001), pp. 5–7.

35 Even in the 1970s the Los Angeles Superior Court supplied certified Spanish interpreters to all trial courts in the county. See Arthur Young, *Report*, Phase I, p. V-8.

36 Ibid.

Chapter 14
The Power of Technology

Overview

echnology came in use in a variety of court contexts during the past quarter-century, but in the 1990s the Commission on the Future of the California Courts lamented that developments had "left the judiciary behind" and that "the courts are lagging."

Technology in California's courts, nonetheless, is commendable even though the record is fragmented, progress is slow, and the promise still lies substantially in the future.

Certainly by century's end one or more courts were applying technology to perform a wide array of functions including case management, calendars, juries, records, exhibits, and statistics. Accounting and legal research were additional areas of notable technology utilization. Implementation efforts were under way in an even broader array of applications, ranging from interactive video to electronic data interchange.

The first statewide application began in the mid-1980s with automation, in stages, of the appellate courts. This was followed by a Judicial Council

and Administrative Office of the Courts (AOC) effort to develop statewide court automation standards. The futures commission offered extensive recommendations to create a "preferred future" for the judicial branch in which use of technology would, among other things, greatly increase Californians' access to and information about justice.

In partial response, the Judicial Council in 1995 created the Court Technology Advisory Committee. By century's end this committee submitted and the council adopted both a *Strategic Plan for Court Technology* and a *Tactical Plan for Court Technology*. The combined thrust of these plans was to shift from local to state perspectives on court technology and, with the advent of full state funding of trial courts, to achieve a systemic technology plan for the entire judicial branch.

In 1950 a court or an attorney desiring to prepare multiple copies of a document, such as a judicial opinion or written interrogatories, had two choices: employing a printer to set type and print copies or "cutting stencils" by manual typewriter in preparation for mimeographing the copies. Neither word processors nor photocopying machines were commercially available.

The next breakthroughs were IBM Selectric self-correcting typewriters and photocopying machines, which became available in the late 1950s and led to creation of the verb "xerox." While these events in speeding production of paper documents were unfolding, the potential of electronics was emerging. Following creation of the first mainframe computer by Univac in 1952, IBM introduced the "360" computer in 1963, followed by the minicomputer in 1964. The first pocket calculator became available in 1971 and the first personal computer in 1975. The Apple II computer was introduced in 1977 and, after a lag of four years, the IBM personal computer was offered. Shortly thereafter inexpensive laser printers also reached the market.[1]

The result was that by century's end the electronic creation, reproduction, storage, and transmission of documents were widespread within the legal community and to a fair extent within the courts. Technology, of course, is much broader than documents.

Technology, particularly in the quarter-century from 1975 to 2000, came into use in a variety of court contexts, with a profound impact on the administration of justice. Most of that evolution in court technology applications was scattered among California's several hundred courts with little or no statewide direction until the end of the century. There was scant coordination or cooperation among courts and no systematic documentation. These realities severely frustrate any conscientious effort to document the growth of technology in courts.

Even granting full credit to the pioneering innovations in dozens of trial courts around the state, courts both in California and nationwide generally have been slow to join the technology parade and certainly have not caught up. In 1993 the Commission on the Future of the California Courts observed: "Despite some degree of automation in most California courts today, in the adoption of new information technologies the private sector and other branches of government have left the judiciary behind. While manual clerical work is rapidly disappearing from the workplace, the courts are lagging the field."[2]

Even though the history is fragmented, progress has been slow, and significant fulfillment of technology's promise still is in the future for courts, the efforts made nonetheless justify recognition of technology applications as a milestone in the improved administration of justice.

Technology Applications

Although there is no compiled history of technology applications in California courts, we do know that in one or more courts automation was utilized for the following functions by the year 2000:

- *Case management:* online indexes; register of action/docket; case status; related parties, attorneys, etc.; correspondence/notice generation
- *Calendaring:* scheduling of hearings and events; production of calendars; automated differentiated case management
- *Accounting:* collection of fees and fines; production of receipts; automatic allocation among accounts; audit trail
- *Arbitration:* selection of arbitrators; automated conflict recognition; automated notification and notice generation
- *Jury management:* source list processing; cumulative history of service; panel selection; juror notification and response; automated payment calculation
- *Case filing:* case intake; front-counter operations; automatic case assignment; workload balancing
- *File tracking:* tracking of current locations of case files
- *Records management:* preparation and updating of case files; storage and retrieval; archiving; records destruction
- *Exhibits management:* tracking of current locations of exhibits
- *Statistics and reports:* production of required reports for the Judicial Council and other agencies; case status reports; monitoring of judicial performance; generation of caseload reports; generation of ad hoc queries and reports
- *Legal research:* provision of online indexes[3]

It also appears that in 2000 an appreciable number of trial courts had implemented or were working on implementing the following applied technologies:

- Interactive video (for example, video arraignments)
- Telephone retrieval of database information
- Innovative data capture (such as bar coding, optical character recognition [OCR] scanning)
- Remote filing (such as fax filing)
- Image-based records management
- Remote access to court records
- Innovative user interfaces (such as kiosks)
- Video recording of trial proceedings
- Electronic mail, bulletin boards, or groupware
- Electronic data interchange with other agencies and departments
- Judicial decision support software
- Other expert systems
- Electronic legal research[4]

Appellate Court Automation

The first systemwide automation began in 1984 with a pilot project in four divisions of the courts of appeal. This was part of a comprehensive automation program to modernize administration of California's appellate courts. This inaugural effort consisted of first providing automated assistance to the clerks' offices followed by developing automated systems for the justices and their staffs.[5] This was preceded somewhat by shifting secretarial services from Selectric typewriters to word processors. By 1986 document preparation had been further transformed by use of personal computers tied to a network available to justices, research attorneys on the court staff, and support staff.[6]

This proved to be a prolonged effort. In the early 1990s the AOC was still grappling to define "the information needs of the appellate courts and their support agencies—clerks' offices, chambers, appointed counsel, libraries, administrative systems, and public information systems—and to find a way to integrate judicial information between the groups."[7]

Systemwide Technology

The first truly statewide venture into technology applications in California's courts apparently occurred in 1991 when Chief Justice Malcolm

M. Lucas appointed the Advisory Committee on Financial Reporting and Automation Performance Standards.[8] This development was driven in large measure by the legislature's Trial Court Realignment and Efficiency Act of 1991 (discussed in Chapters Five and Six). Among the many other provisions in this legislation was the requirement that 2 percent of all fines, penalties, and forfeitures collected in criminal cases be set aside for an automation fund to be used exclusively to pay the costs of automating court record keeping and case management systems for criminal cases, with the further provision that these systems must comply with Judicial Council performance standards.[9] To implement this portion of the legislation, the Judicial Council approved a rule of court, effective March 1, 1992, requiring compliance with the approved Trial Court Automation Standards developed by the AOC.[10]

Several additional events of statewide significance were unfolding. Fourteen municipal courts were engaged in a pilot project experimenting with interactive video for arraignments in criminal cases. The AOC was conducting a pilot project to test electronic and video recording as an alternative in creating the verbatim record of court proceedings. The Judicial Council adopted interim rules governing the filing of court documents by facsimile transmission (fax).[11]

The next major contribution of systemwide significance was made by the Commission on the Future of the California Courts. At the conclusion of its work the commission offered a "preferred future" for the judicial branch of government. The commission proposed that by the year 2020 all Californians be able to access justice information and law in a language of their choosing from public information kiosks, online, or by interactive television in their homes. Physical presence would no longer be required in most justice proceedings. Paper would have nearly vanished from the courts, and technology would have made justice more efficient, more accessible, more understandable, and higher in quality. Rather than dehumanizing justice, technology would "rehumanize" dispute resolution. At the same time, it would unburden judicial branch personnel of most routine, mechanical tasks, freeing them to focus on the needs of court users.[12]

To achieve this vision of the future, the commission offered for consideration by the Judicial Council and others ten specific recommendations.

> Justice information should be easily accessible through common, well-understood technologies. . . .
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> To promote efficiency, access, convenience, and cost reduction, interactive video technology should be incorporated into all justice proceedings. . . .

> Courts must become paperless. . . .
>
> A comprehensive and integrated data distribution network should be created to connect and serve the entire judicial branch, other agencies, and the public. . . .
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> Standards to ensure the integrity of justice data must be developed and carefully implemented. . . .
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> The judicial branch should install case management systems as soon as feasible. . . .
>
> As the technology evolves, proves itself, and demonstrates its utility for judicial decision makers, the courts should be prepared to integrate expert systems into their work. . . .
>
> In the justice system of the future, local innovation should be encouraged, supported, acknowledged, and rewarded. . . .
>
> The judicial branch should create a standing advisory committee on technology. In its oversight role, such a body should develop branch-wide policies and procedures for the use of technology in judicial administration and decision making. . . .
>
> Judicial officers should receive ongoing education on the use of justice system technology and play leadership roles in the modernization of court information systems. As necessary, staff should be retrained for nonmechanical functions.[13]

In response to these recommendations, a Court Technology Task Force was created to advise the Judicial Council and the AOC on the "design, charge, and procedural structure for a permanent governing body to oversee the planning for and implementation of technology in the California trial and appellate courts."[14] Following rather extensive investigation and deliberations, this transitional group presented extensive information regarding the technologies then in use in California's courts, as well as user reactions to those technologies. But its major contribution was recommending establishment of a standing court technology committee charged to "promote, coordinate, and facilitate the application of technology to the work of the California courts."[15] On the assumption that the recommended committee would indeed be established, the task force offered extensive guiding principles and goals for the new committee.

The Judicial Council adopted the recommendations of the task force in 1995 and created the Court Technology Advisory Committee with the mandate to improve justice administration through the use of technology and to foster cooperative endeavors to resolve common technology issues with stakeholders in the justice system.[16]

This technology committee also was given more specific duties:

> (1) Recommend standards to ensure compatibility in information and communication technologies in the judicial branch;
> (2) Review and comment on requests for the funding of judicial branch technology projects to ensure compatibility with goals established by the council and standards promulgated by the committee;
> (3) Review and recommend legislation, rules, or policies to balance the interests of privacy, access, and security in relation to court technology;
> (4) Make proposals for technology education and training in the judicial branch;
> (5) Assist courts in acquiring and developing useful technologies;
> (6) Maintain a long-range plan.[17]

In response to these mandates, the Court Technology Advisory Committee produced two important reports, both of which were adopted by the Judicial Council: the *Strategic Plan for Court Technology*[18] in 1998 and the *Tactical Plan for Court Technology*[19] in 2000.

The strategic plan addressed the "logically discrete but complementary" subjects of planning, infrastructure, court management systems, information, and communications.[20] More specifically, the technology advisory committee included among its extensive objectives and recommendations the following broad goals:

- Development and maintenance of a strategic plan for the effective application of technology to the needs of the judicial branch and justice system
- Establishment of an infrastructure to meet the information technology needs of the judicial branch
- Technical assistance to courts to improve management of operations and resources
- Technology applications enabling courts to acquire and utilize information needed to process cases, manage resources, and meet public needs
- Implementation of technology programs to meet the information needs of the judicial branch, its partners in the justice system, the public, and others with legitimate needs[21]

This strategic plan approximately coincided with establishment of full state funding of the trial courts (see Chapter Six). For technology in the

courts, state funding meant the proverbial rubber had hit the road. This new reality drove the subsequent *Tactical Plan for Court Technology* that was unveiled two years later with a much sharper focus than the earlier strategic plan.

The Court Technology Advisory Committee was frank from the outset, noting that there had been "historic underfunding of technology in the judicial branch" and that "the judicial branch has been unable to articulate a comprehensive plan for technology that includes clear objectives and measurable outcomes."[22] The tactical plan was designed "not only to obtain funding for statewide technology initiatives but also to move trial courts forward toward more coordinated and integrated technology solutions."[23]

Translated, this meant that the days when each trial court followed its own technology path were drawing to a close, as was the existing patchwork of individual court technology applications spawned in all fifty-eight counties by local funding. At the heart of the tactical plan were managing funding related to court technology at the state level, limiting the number of available solutions for common court technology problems, and grouping trial courts according to characteristics and technology problems shared in common.[24] The courts within each of the groups would be "expected to choose from established menus when their existing technology has reached the end of its useful life," with the clear implication that state funds would be provided only for items on the menu for the group in which a court had been placed.[25]

The technology committee advised that this new approach was built upon certain guiding principles:

- **Functionality:** Judicial Council-approved technological solutions must allow courts to meet state requirements . . . ; must provide for public access to court data; and must ensure effective communications with partners in the justice community.
- **Economy:** To contain information technology expenditures, court groups must identify the minimum number of alternative technological solutions that meet group or regional needs and achieve state objectives.
- **Consistency:** Technology should foster a common experience of the court system, irrespective of court size or location.
- **Innovation:** Individual courts should be encouraged to develop innovative technological solutions that can be replicated cost-effectively within their region or throughout the state.

- **Proven Solutions:** Proven technologies should be favored when they minimize risk of failure and reduce costs. Custom-built solutions should be funded when there is no proven alternative, risk is reasonable, and the likelihood of attaining objectives can be demonstrated through a project plan.
- **Existing Investment:** Technology should be used as long as it functions effectively.[26]

The Judicial Council was further advised by the Court Technology Advisory Committee that the tactical plan, with its overarching components and proposed implementation steps:

- Integrates the technology strategic planning process with the branchwide strategic planning and funding initiatives;
- Funds technology from the statewide, rather than the local, perspective;
- Coordinates funding for technology;
- Achieves economies by encouraging collaborative approaches and common solutions to technology issues;
- Provides the foundation for a multiyear implementation plan; and
- Maintains flexibility to encourage innovation among trial courts.[27]

As the new millennium opened, extensive efforts were in progress by the AOC and others to make the tactical plan a reality. Regional groups were formed. Local and group technology plans were in development. A branchwide plan was in sight, accompanied by budget implications if enacted.

Viewed collectively, the steps taken by the judicial branch in the 1990s offer an encouraging commitment to more vigorous and systemic exploitation of technology. That commitment, the creation of the advisory committee, the strategic and tactical plans, and serious efforts toward implementation all suggest a milestone in justice administration.

Notes

1 Institute for the Future, "The California Future Databook" in *2020 Vision: Symposium on the Future of California's Courts: Research Papers* (December 10–11, 1992), p. 42.

2 [Judicial Council of California], Commission on the Future of the California Courts, *Justice in the Balance, 2020: Report of the Commission on the Future of the California Courts* (1993), p. 103.

3 Judicial Council of California, *Report of the Court Technology Task Force* (January 25, 1995), appendix B, p. B-8.

4 Ibid.

5 Judicial Council of California, Administrative Office of the Courts, *A.O.C. Newsletter* (August–September 1984), pp. 1–2.

6 Dee Ziegler, "Rose Bird Automates the Supreme Court," *The Recorder* (December 1, 1986), pp. 1, 15.

7 Judicial Council of California, *Annual Report to the Governor and the Legislature* (1992), volume 1, p. 21.

8 Id., pp. 10–11.

9 Id., p. 11.

10 California Rules of Court, rule 1011 (as of 1992).

11 Judicial Council, *Annual Report* (1992), pp. 19–20.

12 Commission on the Future of the California Courts, *Justice in the Balance, 2020*, p. 101.

13 Id., pp. 105–15.

14 Judicial Council, *Report of the Court Technology Task Force*, p. 7.

15 Id., p. 11.

16 California Rules of Court, rule 6.53.

17 Ibid.; Judicial Council of California, *Annual Report to the Governor and the Legislature* (1995), p. 8.

18 Judicial Council of California, Court Technology Advisory Committee, *Strategic Plan for Court Technology* (August 14, 1998).

[19] Judicial Council of California, *Tactical Plan for Court Technology* (January 26, 2000).

[20] Judicial Council, *Strategic Plan*, p. i.

[21] Id., pp. 1, 2, 4, 6, and 7.

[22] Judicial Council, *Tactical Plan*, p. 1.

[23] Ibid.

[24] Id., p. 3.

[25] Ibid.

[26] Id., pp. 9–10.

[27] Id., p. 4.