

## REVIEW SECTION

### Of Note

Mary J. Deits and Lora E. Keenan, "Getting to Know Us: Judicial Outreach in Oregon," *Journal of Appellate Practice and Process* 6 (2004): 237-47.

The authors, the retired former chief judge of the Oregon Courts of Appeals\* and a staff attorney, address the disconnect between the state appellate courts, trial courts, and the public. In their account, Deits and Keenan acknowledge the widely held perception that state appellate court judges "live in ivory towers" and indicate how this perception has contributed to the increasingly negative view of courts in general (p. 237). Because of such views, the Oregon appellate bench implemented an experiment to educate trial court judges and others about the operations of the Oregon appellate courts. The experiment included "trading benches," which involved bringing trial court judges into the appellate courts as participants; conversely, appellate judges served in the trial courts.

The Oregon appellate court's novel approach is a means to bridge the gap between court levels by better informing judges at each level about the other. The appellate court also created "A Court of Appeals on Wheels," a community outreach program that involved educating the public about the appellate process by holding oral argument in high schools, junior high schools, and colleges in different parts of the state. The court has appeared at several schools by invitation, and the program has been well received. The authors note, however, that the schools extending invitations already have strong government programs in place. Nevertheless, through this program, the Oregon appellate court has been able to inform a larger audience about courts and the appellate process. These experiments illustrate that appellate court judges are aware of how they are perceived despite residing in "ivory towers" and, more important, wish to do something about it. **JAE**

Conference of State Court Administrators (COSCA) Position Papers.

Position Paper on Self-Represented Litigation (August 2000): 7 pp.

Position Paper on Safety and Accountability: State Courts and Domestic Violence (November 2004): 31 pp.

White Paper on Effective Management of Family Law Cases (August 2002): 9 pp.

The Conference of State Court Administrators (COSCA) has prepared a number of position papers. To be noted here are three, each of which addresses different chal-

\* **Editor's Note:** This is the court described by one of its judges in our previous issue. See Rick Haselton, "A Look at a State Appellate Court," *Justice System Journal* 26 (2005): 98-100.

lenges and trends confronting state courts today: self-representing litigants, domestic-violence cases, and family-law litigation.

The first of these position papers cites the national growth in self-represented litigation. It addresses the impact of recent increases and the demands that expansion of pro se litigants place on the court system and on court personnel. The position paper calls for additional investigation to identify those litigants most likely to self-represent, the types of cases/legal issues most often affected, and how these vary across states.

The most recent paper of the three examines the response of state courts to the "massive influx of domestic violence cases" (p. 4). A number of issues specific to domestic-violence cases are identified that currently confront state courts, including the high rate of recurrence. The paper also notes that domestic violence cases often require additional remedial action by courts not required by other criminal or civil cases. As the recurrence rate is so high, it is likely that monitoring during the pending case, any intervening or remedial action, and post-trial is needed. That a number of domestic-violence cases are going through the criminal and civil courts at the same time is noted. This adds to the complexity of domestic-violence litigation and creates more challenges for court administrators and state court judges.

Several programs currently operating in different states to address some of these problems are described. For example, Vermont courts offer a 24-hour hotline to victims of domestic violence, and courts are open after hours to handle these claims. New York State and Miami/Dade County in Florida have established specialized courts for domestic violence cases. San Diego has established "The Family Justice Center," which provides a variety of support services for victims and the families of victims of domestic violence. The Hennepin County Domestic Abuse Service Center in Minneapolis provides legal assistance as well as support services for victims of domestic violence.

This position paper concludes with recommendations that data be collected on domestic-violence cases, that the legal process and support services be made more effective and efficient in domestic-violence cases, that training be provided for court administrators and judges who handle domestic-violence cases, and that efforts with other relevant agencies be coordinated.

The position paper on management of family-law cases discusses the poor fit between traditional adversarial dispute resolution and family law. According to the paper, family-law cases are often emotionally charged in a way that other legal cases are not. Moreover, the outcomes of the trial or hearing will likely have greater impact and repercussions for family members beyond the litigants, often for many years after the court case has been settled. The paper cites studies that find a high rate of recurrence in many family-law cases, as well as a strong likelihood that parties in family-law cases may have parallel criminal cases or have been involved in criminal courts in the past. Specifically, the paper notes the need for more integrated information services to provide courts and court personnel with information about the litigants

and any additional pending actions in civil or criminal courts. The paper calls for a more holistic or restorative justice approach to family-law cases because of their unique complexity and social importance. Among the recommendations presented are staffing courts appropriately and adequately, collecting data on cases and litigants, training court personnel, and creating a more positive court atmosphere for the resolution of these disputes. **JAE**

Special Issue on "The Vanishing Trial." *Journal of Empirical Legal Studies* 1, no. 3 (November 2004): 459-984.

This worthwhile, lengthy special issue presents a study of the significant decrease in the number of trials; the study was undertaken as part of a project under the auspices of the ABA Section of Litigation Civil Justice Initiative. The study and other papers presented by academics to a December 2003 conference of state and federal judges and practitioners are the basis for this volume. In addition to the core document, Marc Galanter's "The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts" (pp. 459-570), presented here are responses to that study and observations on various aspects of the subject. Primary attention is given to civil trials, although criminal trials are also mentioned, largely as a factor affecting civil-trial rates.

Studies supplementing Galanter's include Herbert Kritzer's comparative study of Ontario, England, and Wales (pp. 735-54); Elizabeth Warren's examination of bankruptcy cases (pp. 913-42); Stephen Burbank's exploration of the use of summary judgment, subtitled "Drifting Toward Bethlehem or Gomorrah?" (pp. 591-626); and Ted Eisenberg's analysis of appeals from tried and untried cases, a "Further Exploration of Anti-Plaintiff Appellate Outcomes" (pp. 659-89). Brian Ostrom and his National Center for State Courts colleagues look at state court trials from 1976 through 2002 (pp. 755-82), and Thomas Stipanowitch reports on effects of court-related ADR programs in federal and state courts (pp. 843-912).

Such empirical examination is far from all this symposium contains. Methodological problems involved in trying to determine trial rates over time are examined. Gillian K. Hadfield gives serious attention to the availability of and quality of appropriate data ("Where Have All the Trials Gone? Settlements, Nontrial Adjudications, and Statistical Artifacts in the Changing Disposition of Federal Civil Cases," pp. 705-34). Galanter's study is analyzed and criticized, for example, by Stephen Burbank ("Keeping Our Ambition Under Control: The Limits of Data and Inference in Searching for the Causes and Consequences of Vanishing Trials in Federal Courts," pp. 571-90) and Lawrence Friedman ("The Day Before Trials Vanished," pp. 689-704, which brings a valuable historical perspective). There are reflections, and normative questions are raised; they are present in a number of the articles but are central to Paul Butler's "The Case for Trials: Considering the

Intangibles” (pp. 627-36) and the essay by Stephen Landesman, “So What? Possible Implications of the Vanishing Trial Phenomenon” (pp. 973-84).

The types of explanations offered for the decrease in trials are resources (availability of judges and magistrate judges); “supply-side” factors (cases filed), to which Shari Seidman Diamond and Jessica Bina’s especially fine analysis, “Puzzles about Supply-Side Explanations for Vanishing Trials: A New Look at Fundamentals” (pp. 637-58) gives particular attention; costs of litigation; and the shift to ADR and privatization of the legal process, considered by Judith Resnik (“Migrating, Morphing, and Vanishing: The Empirical and Normative Puzzles of Declining Trial Rates in Courts,” pp. 783-842) and others. Stephen Yeazell adds rule changes to the mix in “Getting What We Asked for, Getting What We Paid for, and Not Liking What We Got: The Vanishing Civil Trial” (pp. 943-72). **SLW**

Teresa W. Carns, Michael G. Hotchkin, and Elaine M. Andrews, “Therapeutic Justice in Alaska’s Courts,” *Alaska Law Review* 19 (1999): 101-52.

The authors discuss the recent development and use of therapeutic justice in Alaskan courts. Therapeutic justice differs from the more common retributive and restitution approaches because it “emphasizes the root causes of a specific offender’s criminality,” seeks to ameliorate those root causes, and, in turn, rehabilitates the offender so she may be successfully integrated back into her community (p. 105). Therapeutic justice has been applied in special courts in Alaska, such as drug courts, family courts (which deal with domestic violence), and courts for the mentally ill. The authors note that there is growing support for the therapeutic justice approach from legislators, judges, the Conference of Chief Justices (CCJ), and the Conference of State Court Administrators (COSCA). However, the efficacy of this approach is not yet known because it is still novel and not widely used. Therapeutic justice is also an approach that is very expensive to implement. The authors assert that, over time, treatment through therapeutic justice is less costly than incarceration. Additionally, they speculate that focusing on treating or eliminating factors that produce criminal behavior will be more effective than retribution or restitution at reducing recidivism. **JAE**