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Special Report: *Trends in the State Courts*

National Center for State Courts Information Service

Each year, the National Center for State Courts' Information Service reports on the trends their researchers have observed in the state courts. The report is based on continuous monitoring of areas in which the Information Service receives requests for information. This article summarizes trends observed in 1990. For more information on any of these topics, contact the *Information Service, National Center for State Courts, 300 Newport Ave., Williamsburg, Va., 23187-8798.*

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AIDS and the courts

As the number of people infected with the human immunodeficiency virus (HIV) continues to increase, so will the number of HIV-infected individuals appearing in the nation's courts. Although HIV medical cases have been documented in every state of the U.S., in Puerto Rico, and in the District of Columbia, a 1990 National Center for State Courts' survey of state court administrative offices revealed that only 11 state judicial departments have developed guidelines or rules to assist court personnel in conducting court proceedings in which one or more participants are HIV infected and in resolving workplace issues involving HIV-infected employees. These states include Alaska, Arizona, Colorado, Connecticut, Massachusetts, Minnesota, New York, Oregon, Vermont, Virginia, and Washington. The Illinois Conference of Chief Circuit Court Judges and the U.S. Court of Appeals, Fourth Circuit, have also developed court proceedings and personnel guidelines to deal with those infected with the HIV virus.

In 1989 the American Bar Association also adopted a policy on dealing with the AIDS virus and its impact on the criminal justice system, stating that attorneys should not refuse to represent or modify representation because of a person's known or perceived HIV status. Court proceedings involving individuals known or perceived to be infected with the HIV virus should proceed as any other case unless the court participant behaves violently or attempts to escape.

Some judges in New York have been known to expedite the calendar of cases involving litigants with AIDS because they have short life expectancies. When a person's HIV status is an issue in a case, ABA policy states that the court must be provided with the most current, accurate, and objective medical information about the person's condition.

Alternative dispute resolution

Alternative dispute resolution (ADR) programs handle a wide variety of issues and casetypes, including custody, visitation, and visitation enforcement; child support; child abuse and neglect; spousal maintenance; domestic violence; property division; contract; tort; small claims; minor criminal; and landlord/tenant disputes.

All but three states have instituted or used some form of ADR; however, the level of adoption in each state varies widely. Of the more than 700 programs known to the National Center through its ADR database, approximately 60 per-

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cent are court operated. The remainder are court referred.

ADR is used the most extensively in domestic relations cases. Programs in 38 states and the District of Columbia mediate issues of child custody and visitation. Although historically there has been a reluctance to include domestic violence cases in ADR programs, at least 82 programs, 40 of which are court operated, currently address these cases.

ADR is commonly used to resolve tort actions and contract disputes. Court-annexed arbitration and community dispute resolution centers handle a substantial percentage of these cases. ADR programs for small claims and landlord/tenant disputes are more often handled outside the courts. Other types of cases not included above but heard through ADR programs include family disputes other than divorce, juvenile delinquency, neighborhood and school-related disputes, and bad checks.

Debate continues over such issues as qualifications and training for mediators and negotiators, the quality and effectiveness of ADR programs and how they are measured, the creation of a "two-tiered" system of justice, confidentiality, attorney participation in the ADR process, and decisions over which cases should be left solely to the courts.

Authorizing and withholding life-sustaining medical treatment

Since the New Jersey Supreme Court handed down the first "right-to-die" opinion in 1976 in the celebrated case of Karen Ann Quinlan, medical and technical advances capable of holding death at bay have outpaced the development of legal rules and procedures to govern their use. Ten years ago, right-to-die cases were still a rarity. By 1989, courts in at least 19 states, the District of Columbia, and three federal courts (including the U.S. Supreme Court in the case of Nancy Cruzan) had ruled on issues involving decisions to initiate, maintain, or forego life-sustaining medical treatment, and at least 39 states had passed statutes that established procedures for foregoing life-sustaining treatment.

Most jurisdictions, however, still have no published judicial opinions on the right to die, and in those that have, the development of case law has raised more questions than answers. Trial courts are left with little practical guidance in managing and deciding the increasing number of cases that present novel questions of law and procedure. Today, the full impact of an estimated 10,000 patients who are comatose or in a persistent vegetative state is starting to be felt by the nation's trial courts.

Corrections and alternative sentencing

Correctional pressures continue to increase at the state and federal levels. Jails and prisons are filled past the capacities for which they were designed because courts, under pressure to get tough on crime, especially drug-related crime, are handing out stiffer sentences. This problem persists despite new prison construction in 1989 and 1990 that is expected to exceed 1987-88 construction by 73 percent. New space is filled almost as soon as it is created. Several states and the District of Columbia have experienced double-digit growth in their inmate populations. Jails are filled with the overflow from prisons, forcing courts to release the least dangerous criminal suspects and defendants before trial.

Jurisdictions are trying different methods of handling the cost and space problems without surrendering their ability to punish or deter crime. Privatization of corrections is one method being used to combat high costs (current facilities cost taxpayers more than $17 million per day). Privatization—the operation or ownership of correctional facilities by for-profit corporations—is spreading. However, several constitutional aspects are still unanswered, and other issues are being raised as well: the setting and monitoring of operating standards, public access, public recourse for addressing problems, and responsibility for security and the use of force.

Most states are also testing alternatives to incarceration. Community-based options such as restitution, community service, intensive supervision, and electronically monitored house arrest are popular. While less punitive and costly than imprisonment, these sanctions are intended to be tougher than traditional probation. Some courts are also experimenting with fines as sentencing alternatives (see the section on "Use, collection, and enforcement of fines" later in this article).

Another sentencing option that has received much recent attention is prison "boot camp," technically referred to as shock incarceration. At least eight states had such programs as of fall 1989, and another eight states were studying or adopting them. Although shock incarceration received glowing praise in the years after the programs were first adopted in 1983, recent statistics on recidivism rates have not been as favorable.

Court interpreters

The increasing influx into the United States of people who do not speak or understand English has seriously aggravated the problem of the lack of competent court interpreters.

The commonly held assumption that anyone who speaks two languages can interpret in court is erroneous. Court interpretation requires not only a full command of two languages, but also a knowledge of courtroom procedure, legal vocabulary, and, more than anything else, the understanding that the job consists not of abridging, editorializing, or reassuring, but of exactly interpreting every word that is spoken without emendation or amendment.

Arizona, California, Florida, Massachusetts, New Jersey, and New Mexico

are in the forefront of developing standards and programs for training, certifying, and using court interpreters. These programs include training courses, job specifications, qualifications, examinations, certification, appointment, standards for interpreted proceedings, compensation of interpreters, and codes of responsibility and ethics. A federal program for certifying court interpretation in Spanish has been set up under the Court Interpreters Act.

Court-ordered mental health and drug treatment

State courts are feeling increased pressure in the areas of involuntary civil commitment, guardianship, and other court-ordered mental health and drug treatment inpatient care. This increasing pressure is caused by the drug abuse crisis; widespread movement of mental patients from large public institutions to community-based mental health facilities (deinstitutionalization); increased public visibility of mentally ill homeless persons; and various economic factors. For example, the role of commitment courts has expanded beyond adjudication and disposition because more people coming before the courts are being committed involuntarily to outpatient facilities instead of inpatient hospitals. Commitment courts' roles may now include monitoring and supervising patients or revoking their outpatient status—duties previously assumed by the health and social service systems. In the future, courts will need to develop closer cooperation and coordination with these systems.

Court security

Bombs killed a federal judge in Alabama, killed a civil rights lawyer in Georgia, and injured a Maryland judge. A Wayne County (Mich.) Circuit Court judge was threatened when a woman brandished a pistol during her trial. These and similar incidents have caused many state court systems to recognize the need for extensive security improvements in court facilities.

A recent 50-state survey revealed that several state court systems are actively exploring ways to address security needs. Connecticut developed a comprehensive *Judicial Department Security Manual*. The Utah Judicial Council adopted a rule on court security (Code of Judicial Administration Rule 3-414), and, in response to the mandates of this rule, the Utah Administrative Office of the Courts developed *Guidelines for Court Security in Utah Courts*. The New Jersey Judiciary/ Sheriff Liaison Committee, in response to a request from the chief justice of the New Jersey Supreme Court, wrote a *Model Plan for Court Security in New Jersey Courts*, which local court systems use as a guide to develop their security plans.

Some court systems are employing experienced security professionals to evaluate the security of court facilities, make recommendations for increased court security, train bailiffs and other security personnel, and install and supervise the use of technical security equipment. Court personnel are being taught to identify potentially dangerous situations and trained in proper response techniques.

The designs of new and remodeled court facilities continue to emphasize methods to prevent security breaches. The use of electronic detection devices in screening for weapons and other dangerous objects is increasing at all levels of the court systems.

Court technology

State and local courts have experienced rapid growth in the use of a variety of technologies. Virtually all general jurisdiction courts serving populations of more than one-half million now have some degree of automated data processing, usually from local government resources. The most commonly developed applications are criminal case management systems, followed by general civil systems. Recent surveys in the Midwest point to a growing number of automated child support systems in use by courts, probably in response to federal guidelines.

However, in smaller, less well funded localities, the technology dream remains elusive. Many general jurisdiction trial courts in the Midwest and Deep South still have either very limited or no access to automation. Even the purchase of a single microcomputer with a simple case management package is often beyond the resources of these financially strapped courts. One solution may be the use of time-sharing on a regional authority's computer, an idea that was implemented successfully in Harris County, Miss.

Courts that have case management software are emphasizing the installation of other technologies. These include wide area networks in Wyoming and Utah, state-of-the-art document scanning in Broward County, Fla., and a voice response system for public inquiry of child support in Michigan. These technologies contain a common thread—the desire to give maximum support to limited personnel resources.

As judges, clerks, and administrators become more aware of available technologies, they increasingly will use technology as a primary tool in state court management. However, funding problems will continue in many states and localities, and creative new sources of funding must be found for these courts.

Delay reduction in the courts

Efforts to reduce delay continue throughout the country and are likely to remain a high court priority. Economic constraints upon court resources increase the importance of sound, innovative court management strategies that make the most of existing resources. Courts will face increasing caseload pressures from the war on drugs and from any reduction of federal diversity jurisdiction. Such factors could add to the

problems of courts that already have backlog problems and may create new problems for courts that, until now, have been able to manage their caseloads.

Many of the programs discussed in detail throughout this article can be included as delay reduction strategies. Studies have already proven the value of early and continuous court control of the litigation process, including controlling the schedule and extent of case events and setting firm trial dates to meet statewide case-processing goals. Automating records can help in many phases of caseflow management, including monitoring compliance with time standards. Many jurisdictions are experimenting with alternative dispute resolution to lessen the burden on the courts. In some jurisdictions, specialized courts are being established to handle special elements of local caseloads, such as drug cases. Other jurisdictions are extending court hours into the evenings and weekends.

Drugs and the courts

Courts in some areas of the country, especially in certain urban areas, continue to have difficulty managing the increasing number of drug cases in their dockets. In Cook County, Ill., nearly half the 15,000 felony cases pending in criminal court involve drug offenses. The number of drug cases that have been filed in the New York courts has increased 270 percent between 1985 and 1989. It is estimated that between 50 to 85 percent of males arrested and 44 to 87 percent of females arrested in New York City test positive for drugs.

In response to the increasing number of drug cases, new court and case-processing procedures have been promulgated, and drug courts or courts with special drug sessions have been established. Pierce County (Wash.) Superior Court has used differentiated case management techniques to reduce the time it takes to resolve drug cases even though drug cases in the county increased 50 percent. In New Jersey, 20 trial court judges were reassigned to hear and dispose of an estimated 2,000 drug cases. Drug courts have been established in New York City, Jersey City, and Cook County, Ill. In Dade County (Miami), Fla., a drug diversion program has been established to coordinate efforts to deal with the Miami drug crisis. Proponents of drug courts claim that they enhance the prosecution of drug cases, use court personnel efficiently, and ensure the consistency of drug case sentencing.

Facsimile machines in courts

The transmission of documents by facsimile (fax) machine in connection with court proceedings is proliferating. Minnesota is in the forefront of fax use. After a yearlong experiment, the Minnesota Supreme Court permanently installed fax machines in all the state's courts. Attorneys may file anything with the court or with fellow lawyers by fax. The original signed document must be filed in court and fees paid within five days. Judges may use fax to issue all orders and warrants, the originals of which must be filed in court. Other states in which at least some courts have authorized fax use include California, Colorado, Idaho, Florida, Nevada, New York, Oregon, and Washington.

Courts have shown a surprising readiness to embrace the use of fax machines and to adjust rules and procedures accordingly. Rule changes or court decisions will be necessary to address some of the following problems: (1) payment of filing fees at the time of filing; (2) requirement of signatures; (3) legibility and the poor quality of thermal paper; (4) proof of receipt and adequacy of service; (5) the validity of faxed warrants and orders; and (6) clogging of fax machines with unwanted mail. Solutions include: (1) using credit cards to pay fees or striking pleadings if the fees are not paid; (2) authorizing facsimile signatures; (3) using plain-paper fax machines despite double or triple initial costs; (4) requiring acknowledgment of receipt and publication by attorneys of their fax number; (5) authorizing faxed warrants and orders by statute, rule, or court decision; (6) enacting statutes that provide penalties for clogging fax machines with unwanted mail.

Commissions on the future of the courts

In the last few years, state judicial systems have realized the need for long-range planning looking to the year 2000 and beyond. Court officials have begun to prepare specific recommendations and strategies for improving the court system and to implement necessary changes.

In 1987 Chief Justice Harry Carrico, of Virginia, appointed the 34-member Commission on the Future of Virginia's Judicial System to "determine what justice and the justice system should be in Virginia in the next century, try to predict the court's role in the future, (and) ... seek solutions for existing issues with recognition of what the justice system is expected to be in the years ahead." Members were assigned to the following task forces: Alternative Paths to Justice; Mission, Organization, and Administration of Justice; Quality of Justice; and Technology of Justice. The commission was made up of citizens, business leaders, legislators, state and local officials, lawyers, judges, and court personnel. The commission completed its report *Courts in Transition* in May 1989. Recommendations included reorganizing the court system into a single-tiered trial court with divisions, abolishing the elected clerk position and instituting a trial court administrator track, and referring matters to quasi-judicial officers only when the court cannot provide the services in a timely manner.

In June 1988 Chief Justice Frank X. Gordon, Jr., of Arizona, appointed the 34-member Commission on the Courts. Their charge was similar to that of Virginia's: to develop a long-range plan

for the judiciary, to prepare specific recommendations and strategies, and to provide a plan for implementing changes. The commission established four task forces: Court Organization and Administration; Court Productivity; Dispute Resolution; and Children and Families in the Courts. Their report, *The Future of Arizona Courts* (1989), included 50 recommendations and several issues for further study. Recommendations included establishing a three-level state court system, creating a Commission on Judicial Performance Evaluation, conducting judicial selection through a merit selection system, appointing rather than electing clerks, carrying out the clerk's responsibilities under the direction of the court administrator or chief judge, opening courts to ADR approaches, improving the quality and quantity of judicial education and resources, and establishing state funding of the entire court system by 1995.

In March 1990 the Arizona Supreme Court created the Committee on Court Reform to advise the court on ways to achieve an integrated judicial department and to oversee efforts to implement the court improvement recommendations developed by the commission.

At least four other states have created futures commissions. In April 1990 a concurrent legislative resolution created the Michigan Commission on the Courts in the 21st Century, a 21-member commission charged with developing a "comprehensive blueprint for a more effective judiciary." They are to return with recommendations to the legislature by December 31, 1990, on structural and procedural (administrative) improvements.

Utah's 26-member Commission on Justice in the 21st Century has recently engaged in a yearlong data-gathering effort that will culminate in a report with specific recommendations as to how the judicial system should be structured and operated in the coming decades. The commission is also charged with establishing a long-term framework for securing public input and developing a strategic planning process for the justice system. A final report will be presented in December 1990 to the judicial council, the legislature, and the governor.

The 23-member Commission to Study the Future of Maine's Courts was established in July 1990 and charged with studying the future of the state's court system and making recommendations to ensure that citizens' judicial needs will be met in the 21st century. The commission is to continue its work through November 1992.

The recommendations developed by the Colorado Courts in the 21st Century Commission will allow Colorado to plan for future needs as it enters the 21st century and will create an administrative model that other states may adopt for futures research and planning. This project began October 1, 1990, and will continue for 18 months.

Gender fairness in the courts

Twenty-eight states and the District of Columbia now have established task forces on gender bias in the courts. Kansas, Kentucky, Missouri, and the District of Columbia created task forces in 1990. To date, task forces in Colorado, Florida, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, Rhode Island, Utah, and Washington have issued final reports on gender bias in the courts. The California Judicial Council Advisory Committee on Gender Bias in the Courts has submitted its report to the Judicial Council for publication later this year.

States are creating committees to implement recommendations developed by task forces while continuing to develop procedures and guidelines that address specific problems recognized by the task forces. Materials such as Massachusetts's *Court Conduct Handbook* and New Jersey's *Using Gender-neutral Language* have been published and disseminated to raise the judiciary's awareness of how to eliminate gender bias in the court system.

In states that have no task forces studying gender bias in the courts, groups of citizens committed to eliminating such bias continue to lobby legislatures and court systems to establish and fund task forces. The importance of these task forces was underscored this year when the New Jersey Supreme Court Task Force on Women in the Courts was elevated to the status of a permanent supreme court committee.

Judicial sabbaticals

Although only Alaska, Oregon, Minnesota, and Puerto Rico currently provide for judicial sabbaticals or leave (without pay), state court systems continue to express interest in this concept. In 1988 the American Bar Association approved a resolution endorsing judicial sabbaticals. The resolution provided sabbaticals of six months at full-pay, or one year at half-pay after six continuous years of full-time service. The judge would retain insurance and pension benefits and retirement rights. In 1987 the Institute of Judicial Administration recommended the adoption of paid sabbatical leaves for judges with provisions identical to the ABA's resolution.

In 1989 Colorado established the Positive Alternative—A Unique Sabbatical Experience (PAUSE) Program, a pilot project funded by the State Justice Institute. This program allows two teams of three individuals from diverse disciplines, such as judges and court and probation employees, to take three-month sabbaticals to address issues facing the court system. Although not a traditional academic sabbatical, which judicial system employees and judges do not receive, this is an alternative sabbatical.

Canada offers study leaves for judges who have been on the bench at least 10 years. These may be taken for six-month

periods to allow a judge to teach or study at a law school in Canada. Thirty-two positions are available each year, and each law school is committed to one judge per semester.

Judicial selection

Several states continue to grapple with determining the best method of judicial selection, with recent debate focusing on elective versus merit selection systems. Many states have turned to merit selection as the best alternative. Futures commissions in both Arizona and Virginia have recommended the use of judicial nominating commissions to select judges.

Currently, 34 states and the District of Columbia use the merit system at some level of their state court systems. The remaining jurisdictions use other selection methods, including partisan and nonpartisan election, gubernatorial appointment, legislative selection, and court selection.

At the February 1990 midyear meeting of the American Bar Association, the house of delegates endorsed the draft revisions to the *ABA Standards Relating to Court Organization*. These standards include Standard 1.21, Selection of Judges, (b) Procedure for Selecting Judges, which states: "Judges should be selected through a procedure in which for each judicial vacancy as it occurs . . . a judicial nominating commission nominates at least three qualified candidates, of whom the governor appoints one to office." The revised standards deleted the additional requirement that, following appointment, judges run for retention election. Rather, Part (ii) states that "the person so selected should hold office during good behavior or until reaching the age of retirement."

The method of judicial selection has been an issue in Florida this past year. A Florida bar commission studied the issue, and in January 1990 the Florida bar board of governors endorsed merit selection and retention for trial court judges. In the state of Washington, the Young Lawyers Division of the Washington State Bar Association has called for a constitutional amendment to replace the current election process with a system of merit appointments and retention elections.

Juries

As cases continue to come to trial that are technologically complex or last longer than a couple of days, judges are experimenting with reshaping the role of the jury. Usually, jurors sit silently, ingesting the testimony and evidence. When faced with complex issues and lengthy trials, many jurors feel that they can improve their understanding of the case and, therefore, their ability to render a just and proper decision by taking notes or asking witnesses questions during the trial. Few states specifically bar jurors from taking notes or asking questions, and most leave it up to the trial judge's discretion. Judges in Wisconsin and Illinois have permitted jurors to take notes and ask questions. The Nebraska Supreme Court unanimously rejected a contention that note-taking by some jurors was improper at the trial of a man convicted of intimidation by telephone call.

Notorious cases, which attract extensive media coverage, have caused the courts to recognize the need for increased juror security and privacy both during and after the trial. In response, judges have sequestered juries in high-risk, notorious cases and have provided security personnel to assist jurors in avoiding unwanted media attention following a trial.

In *Batson v. Kentucky* (476 US 79), the state was barred by the U.S. Supreme Court from using discriminatory peremptory challenges. Rather than resolving the issue, this decision prompted additional questions such as: Does this decision apply to groups other than African-Americans? Does it bar the defense from making such challenges? Is it applicable to civil as well as criminal cases? These questions may be resolved as further decisions are rendered by trial and appellate judges.

Mandatory retirement of judges

Although the U.S. Supreme Court has yet to issue the final word on whether the federal Age Discrimination in Employment Amendments (ADEA) of 1986 are applicable to judges, other courts throughout the U.S. have been considering this question with mixed results. The amendments would bar judges from being required to retire at a particular age. The issue has seen varying interpretations from both federal and state courts and state attorneys general in many of the 35 states that have mandatory retirement provisions for judges.

In June 1990 the Second U.S. Circuit Court of Appeals ruled that Vermont cannot force appointed judges to retire at age 70 (*Equal Employment Opportunity Commission v. State of Vermont*, 904 F.2d 794, 2nd Cir. 1990). The court ruled that Vermont judges are protected by the ADEA, which exempts appointed judges from mandatory retirement. In this case, the court affirmed both that federal legislation overrides state constitutional provisions and that appointed judges are not considered to be in policymaking positions.

In Missouri, however, judges lost a bid to stay on the bench past age 70. The federal appeals court ruled that the state's mandatory retirement age is not discriminatory (*Gregory v. Ashcroft*, 898 F. 2d 598, 8th Cir. 1990).

The American Bar Association, in its *Draft Revisions to the Standards Relating to Court Organization* (approved February 1990), reaffirmed the notion of compulsory retirement for judges, except if prohibited by federal law (Standard 1.24, Retirement of Judges).

Racial and ethnic bias in the courts

The treatment of minorities in the courts will continue to be a major concern of the judiciary in the coming years, especially since futurists predict that the minority population will continue to grow into the next century. Task forces on racial and ethnic bias in the courts have been established in California, the District of Columbia, Florida, Michigan, New Jersey, New York, Massachusetts, and Washington. The Iowa Supreme Court has established a Committee for Equality in the Courts to study the fair treatment of women and minorities in the state courts. The National Consortium of Commissions and Task Forces on Racial/Ethnic Bias in the Courts (consisting of task force chairs and project directors from Florida, New Jersey, New York, and Washington) held its second annual meeting in February 1990 to summarize the work of their commissions and task forces, share research goals and methods, and provide a blueprint for future efforts of other task forces.

New Jersey, New York, and Washington recently released interim reports; Michigan has issued its final report. The New York commission found that New York courts are staffed so overwhelmingly by whites that minorities do not trust the court system. The commission urged the immediate adoption of an affirmative action plan to prevent further erosion of public confidence.

The Washington task force found that minorities held a strong perception that not all citizens have attained equal treatment in the courts. The task force urged the following: passing court interpreter certification legislation, merging registered voters and licensed driver lists into the state's jury source list, and developing a curriculum to help court personnel understand hate and bias crimes.

The New Jersey task force found that racial and ethnic bias exists against minorities and developed 33 recommendations in four major areas to eliminate racial and ethnic bias in the courts: judicial and public education, judicial policy, minority personnel, and further research.

The Michigan task force's final report concluded the following:

- members of racial and ethnic minority groups and many nonminority groups perceive that the justice system is insensitive and discriminatory;
- minority lawyers, litigants, witnesses, and jurors are treated differently than nonminorities;
- minority attorneys do not receive an equitable share of available court appointments nor do they have the same access as nonminority attorneys to more-serious, higher profile, or more economically rewarding cases;
- mediation panels, arbitrators, and special masters do not include a representative number of minorities;
- minorities are underrepresented in professional and administrative positions;
- many courts lack personnel policies and procedures that promote an environment in which equal opportunity is protected and invidious discrimination prohibited;
- people who are unable to speak or understand English are deprived of equal access to the courts and translation services are inconsistent from court to court and, in some instances, unreliable and inadequate;
- the source list from which jurors are selected has improved, resulting in more representative and inclusive jury panels;
- the perception exists that prosecutors' decisions are based on the race or ethnic background of both the accused and the victim;
- minorities are inadequately represented in the legal profession, including law firms, law school faculty, corporations, and the judiciary;
- neither the Attorney Rules of Professional Conduct nor the Code for Judicial Conduct contain specific grievance provisions prohibiting gender or race discrimination by judges, quasi-judicial officers, or lawyers.

The Michigan task force called for the creation of a Standing Committee on Race/Ethnic and Gender Issues in the Courts to implement and monitor its recommendations.

Judicial membership in private clubs or organizations that invidiously discriminate against minorities and women has caused much controversy. The American Bar Association has proposed draft revisions to Canon 2(C) of the *Code of Judicial Conduct* that make judicial membership in such organizations a violation of the code. The proposed revisions do not leave to a judge's conscience the determination of whether an organization invidiously discriminates, as is now the case. Instead, they require the examination of an organization's history to determine whether it arbitrarily excludes prospective members on the basis of race, religion, sex, or national origin. The proposed code is in draft form and is scheduled to be considered and acted upon by the ABA in 1990.

Remote computer access to automated court records and to other public records

Montgomery County (Norristown), Pa., was a pioneer in establishing a comprehensive program in which automated court records and other public records could be accessed by remote computers in attorneys' offices. The program saves attorneys a substantial amount of time—without having to go to the courthouse, they can check the status of cases, schedule hearings, avoid conflicting court dates, and examine real estate and other public records. The remote access pro-

gram has notably improved the quality of service to the public and the efficiency of court administration and has resulted in savings in the number and cost of court personnel. An increasing number of jurisdictions are establishing or considering similar programs. While access in Montgomery County is free to the public, other jurisdictions are prescribing user fees. In these programs, records may be accessed for information only, and the software protects confidential information.

Tort reform

Tort reform and litigation continue to be a major concern to the state courts, particularly in the area of product liability. Two new studies indicate that the current system of handling tort cases is not as negative as businesses and industries contend. The U.S. General Accounting Office concluded in its study *Product Liability: Verdicts and Case Resolution in Five States* that damage awards were not "erratic or excessive" but fell in line with plaintiff's injuries. Two-thirds of the verdicts rendered in favor of plaintiffs were based, in part, on defendant's negligence. Two Cornell law professors concluded in their report *The Quiet Revolution on Products Liability: An Empirical Study of Legal Change* that since the mid-1980s appellate courts have increasingly ruled in favor of defendants in product liability cases and have reviewed punitive damage awards with scrutiny.

Tort reform bills continue to be brought before state legislatures. However, tort reform opponents are challenging the constitutionality of various tort reform legislation. Several courts have struck down legislation that imposes damage caps. In *Sophie v. Fibreboard Corporation*, No. 54610-0 (Wash. S. Ct. 1989), the Supreme Court of Washington struck down a state statute that restricted awards of noneconomic damages to an age-based formula. The court stated that the legislature cannot intrude into the jury's fact-finding function in civil actions, including the determination of the amount of damages. The U.S. Supreme Court also ruled in 1989 that skyrocketing punitive damage awards in personal injury lawsuits do not violate the U.S. Constitution's ban on excessive fines.

Use, collection, and enforcement of fines

Interest continues in using fines as an alternative to incarceration and probation. Although success in collecting and enforcing fines has been nominal at best in this country, day-fine systems have been imposed and fines collected effectively in Scandinavia and West Germany. States in this country are beginning to realize that fines, if effectively administered, may be one answer to crowded correctional facilities and the problems of probation supervision.

In the day-fine system, fines are tailored to fit each offender's financial means and the severity of the crime. Judges collect information about the offender's financial resources at the time of sentencing. Fines offer the possibility of preserving the economic and social ties of the offender and may, therefore, be less stressful to the community. Fines can also provide much-needed revenue while being inexpensive to administer compared to incarceration. Richmond County (Staten Island), N.Y., and Maricopa County (Phoenix), Ariz., are currently testing day-fine systems.

Improvement in collection is necessary if fines are to be used effectively. Computerized recordkeeping systems can maintain payment records and automatically disseminate notices to offenders. Most states allow installment payments, which can improve collection rates when spread over a short period and combined with an initial partial payment. Courts have found that telephone reminders given by court staff or by outside telemarketing firms, as is done in Tacoma, Wash., enhance collection. In Snohomish County, Wash., and elsewhere, collection agencies have helped to collect delinquent fines because many agencies can pursue offenders across state lines and have access to credit bureaus.

Payment by credit card has been permitted in some courts, but with less success—poor offenders are less likely to have cards, and those with cards prefer to avoid the high interest charges. To make payment easier and increase awareness of the necessity of paying fines, the Tulsa, Okla., Municipal Court has extended its office hours, installed lock boxes as additional payment sites, notified employers, and used posters to educate the public.

Many enforcement options are available to state courts. Incarceration, labor as a substitute for payment, and seizure of property, bank accounts, or wages are all enforcement options for those who do not pay their fines. Scott County, Iowa, dramatically increased its collection rate by setting a second court date at the time an offender is fined. If offenders have no legitimate excuse for failing to pay by the second date, they may be jailed. Community service and other forms of labor are already being used as a sentencing option in most states. Seizure is rarely used for fine enforcement in the United States, although it has been used effectively for that purpose by English magistrate courts and is proving useful for collecting support payments in this country.

Videotaped trial records

During the past year, the use of videotape in lieu of court reporters to preserve trial records has continued to grow. Today more than 60 courtrooms in 11 states use the taping system devised by Jefferson Audio Video Systems, Inc., of

Louisville, Ky. Two to four videotape-recording machines record the proceedings using voice-activated microphones and cameras. The cameras focus on the bench, witness box, and counsel tables, but specifically exclude the jury box. A patented audio mixer continually monitors the sound level in the courtroom and adjusts the microphones to pick up the dominant voice. The judge can use a mute switch to ensure the privacy of side-bar conferences. The videotape recorders generate date and time notations onto the videotape, providing reference points for review.

Trial judges have more consistently favored using videotape because the technology offers greater flexibility than using court reporters. Appellate judges, however, initially found that they spent too much time reviewing nonessential footage while locating passages on long tapes and that some testimony was garbled or inaudible. Today the quality of videotaped recordings, apparently, has improved, and most technical problems have been eradicated. Videotapes can also be transcribed if requested. Appellate attorneys have commented that a videotaped record is advantageous because it puts the reviewing courts in the same position as the trial judge, allowing the appellate judges to observe the speaker's demeanor and voice inflections. Overall, the quality of videotaped records, like those of traditionally transcribed records, requires that court administrators provide care and proper management of the recording system.

Video teleconferencing

Many new courthouses and confinement facilities are being equipped with two-way audiovisual microwave links, which allow judges and defendants to carry out court business without the defendants being transported to the courthouse. The systems minimize the amount of time the inmates are on the road and allow judges and other court personnel to remain in the courthouse and conduct arraignments, bond and enforcement hearings, motions, pleas, and sentencing with the prisoner under the watchful eye of the sheriff's deputy at the jail. These systems are especially cost-effective in large counties in which the jails and courthouses are far apart. An estimated 95 percent of county court business (excluding jury trials) can be handled by microwave networks. These networks can also include facsimile transmission, electronic mail, and other data communications methods.

Another teleconferencing technique being used more often is satellite deposition. In its simplest form, it consists of a one-way video and a two-way audio link between examiner and witness. An audio/video transmitter (uplink) is used at the witness's location, and an audio/video receiver (downlink) is in place at the attorney's and court reporter's location. The bridge between the two locations is a $40 million communications satellite hovering over the equator. Return audio to the witness from the attorney is carried by regular telephone lines.

Although two-way video is still a luxury (it doubles the cost of a teleconference), a videocamera can be used at the attorney's location to tape those asking questions. Individuals can be deposed and taped at an office, home, or hospital. The various electronic sources are then mixed and recorded on videotape. Because costs of satellite depositions begin at $700 per hour, the greatest savings are realized if the distance between the attorneys and the person being deposed is great and the deposition is short. Often it is the an attorney's time, not money, that is saved.

Voting rights act and judicial selection

Lawsuits challenging the way judges are selected continue to be brought in several states. These suits rely on the Voting Rights Act of 1965, as amended, which protects the rights of minority citizens with regard to the election of public officials. Plaintiffs contend that their voting strength is diluted because the method and geographical basis for selecting judges deprives them of their right to representatives of their choice. While activity continues at the federal district and circuit court level, the U.S. Supreme Court has twice declined the opportunity to decide otherwise. In practice, federal courts have been reluctant to impose solutions, preferring to allow states to come up with a remedy that is acceptable to plaintiffs, such as those currently being fashioned in Louisiana, Illinois, and Ohio. In North Carolina this past year, the state supreme court upheld a judicial redistricting plan, saying that the General Assembly was within its authority to develop the plan to increase the number of black judges.

In *LULAC v. Mattox et al.*, the West District Court of Texas ordered the state to change to single-member districts; this order was stayed by the Fifth Circuit Court. A panel of the Fifth Circuit Court then heard the case and put a stay on the existing scheme. That decision was appealed to the full circuit court en banc, which heard oral arguments in June. An opinion is pending, and the state is operating under the existing system of judicial selection and district lines.

In Florida, a pro se plaintiff has attacked at-large judicial elections in Hillsborough County (*Marzuq Al-Hakim et. al. v. State of Florida*, filed in the Middle District of Florida). The judge directed the parties to submit written memorandums of law in support of their positions. The parties are now waiting for the judge's decision. scj