Winter 2005

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Note from the Editor

Anne Nuttelman
New Hampshire Supreme Court

This issue of CQ focuses on practical problems and lessons learned. Our articles address problems that courts and judges face, as well as problems that staff attorneys, in particular, face. Marcia McCormack and her partners in crime, Cindy Lehr and Jim Branham, give us ten helpful hints for those of us whose courts are considering using or creating a case management system. They've been there. They've done that. And, now they know better. This issue contains other helpful hints about legal writing, time management, managing your boss, handling office dynamics, and problem solving.

This issue also contains an important article by Joe Merling about Executive Board Nominations. Remember: nominations are due no later than April 8, 2005.

Stay tuned for the next issue of CQ, which will focus upon the July 2005 28th Annual Seminar in lovely Dallas, Texas.

My thanks to everyone who contributed articles: Nancy Nutto Hughes, Edna Parker Mann, Marcia McCormack, Paul McGrath, Joe Merling, Sue Peppard, Annette Roach (we'll miss you!!!), and Charles Thrall. As always, a special thanks to Meredith White, Technology Coordinator for the Judicial Division, without whose help this issue would not have been possible.

If you have any comments or suggestions or want to submit ideas for articles, please contact me or any member of the Publications Committee.

Thank you,
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MESSAGE FROM THE CHAIR

Jack Fowler
Kansas Supreme Court

Please mark your calendars for the 29th Annual CASA Seminar, July 25-30, 2005, in Dallas, Texas. The seminar will take place at the Omni Mandalay at 221 East Las Colinas Blvd., in Irving, telephone: 972-556-0800. Make your reservations early for the best rate: a block of rooms is being held for CASA attendees at $95.00 per night. The Omni Mandalay is truly a first-class hotel, with overtones of Asia, hence, its name. Check it out at http://www.omnihotels.com/.

This is the first stand-alone seminar being held under the aegis of the newly formed Appellate Judges Educational Institute (AJEI). And, if CASA remains a part of the Appellate Judges Conference, it shapes up to be the final CASA summer seminar.

AJEI held its first conference, sans CASA (earlier at Part City, Utah), November 11-14, 2004, in Dallas. It was principally attended by appellate judges and members of the Council of Appellate Lawyers (CAL). AJEI has announced its plans for a fall conference in San Francisco on September 28-October 1, 2005, and, I am told, AJEI has tentatively set November 2006 in Dallas for its 2006 conference. AJEI and AJC are aware of the longstanding CASA tradition for a seminar in the summer months.

The long-range planning committee, under the leadership of the intrepid Paul McGrath (also our incoming Chair), is exploring, at this point, alternative options for CASA. If you would like to input your ideas to Paul, his email address is: pkmcg@msn.com. You may also send your ideas to Kembra Smith at: Kembra_smith@ca11.uscourts.gov.

CASA is not expected to participate, except nominally, in the AJEI 2005 Seminar because of CASA's decision for Dallas, a decision made at Park City. Judge Craig Enoch of AJEI signed the Omni Mandalay-AJEI contract for CASA in early September 2004.

But, come what may, we expect Dallas to be the usually superb CASA Seminar we have all enjoyed these many years.

Annual Request for Executive Board Nominations

Joseph C. Merling, CASA Immediate Past-Chair
U.S. Court of Appeals, 6th Circuit

It is that time again for CASA members to participate in the annual selection of members to the CASA Executive Board. This is your opportunity to be involved in the selection of the members who will be CASA's future leaders. Nominations are needed for the positions of Chair-elect, Secretary, and the five Member-at-Large positions. The Nominating Committee calls upon each CASA member to participate in this process by considering your CASA colleagues and their accomplishments and forwarding the names of those persons who you believe would contribute meaningfully to the Executive Board.

Chair-elect Paul McGrath of the New York Court of Appeals will succeed to the office of Chair at the 2005 annual business meeting at the seminar in Dallas, Texas. At that time Jack Fowler, our current chair, will become immediate past chair. Consequently, the position of chair-elect will be open. Kembra Smith of the U.S. Eleventh Circuit Court of Appeals will complete a year as Secretary, and nominations for Secretary are also requested.

The CASA by-laws require five Members-at-Large for the Executive Board. All five positions are open, but traditionally the current office-holders can be reelected for a second term. By the annual business meeting, Elizabeth Page of the U.S. Tenth Circuit Court of Appeals and John Tucker of the Virginia Court of Appeals will be concluding their second term. Gina Policano of the U.S. Fourth Circuit Court of Appeals, Bridget Gavahan of the New Mexico Court of Appeals, and Marcia McCormick of the New Hampshire Supreme Court will each be completing their first term.

The nominating Committee consists of Paul McGrath (as Chair-elect), myself (as immediate past chair), and three members chosen by Jack Fowler, as current chair. Those three members are: Martha Newcomb, Rhode Island Supreme Court; Dave Ewert, Iowa Supreme Court, and Anne Nuttelman, New Hampshire Supreme Court. The Nominating Committee's slate of nominees will be published in the Spring 2005 issue of CQ, and the slate will be presented for a vote of the membership at the 2005 annual business meeting. The Nominating Committee solicits your views and recommendation as to who among CASA members has shown the energy, initiative, and commitment that the Executive Board requires and whom you believe should be part of our organization's leadership during the next year and beyond. Nominations for all open positions on the Executive Board are due no later than April 8, 2005. Please contact any member of the Committee with your suggestions. We look forward to hearing from you.

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Judicial Independence: A Panel Discussion

Paul J. McGrath
New York Court of Appeals

The second day of CASA's 2004 Annual Conference kicked off with a lively panel discussion on the topic of judicial independence. The featured speakers were Judge James Wynn, an Associate Judge of the North Carolina Court of Appeals and the then-vice president of the Appellate Judges Education Institute; Christine Durham, the Chief Justice of the Utah Supreme Court; and Professor Matthew Franck, a professor of political science at Radford University. Brooklyn Law School professor Susan Herman served as the panel's moderator.

Judge Wynn began exploring the topic by restating the commonly accepted notion that a strong independent judiciary is important to our constitutional republic in particular and to democratic government in general. Yet, Judge Wynn observed, it is not always easy to arrive at a working definition of judicial independence. For Judge Wynn, judicial independence is simply the ability of judges to reach decisions only upon the law and facts, free from outside influences such as money or skewed media attention. Judge Wynn noted that his home state recently passed the North Carolina Judicial Campaign Reform Act under which judges stand for nonpartisan elections. Attempts also have been made in North Carolina to provide for the public financing of judicial campaigns. Although not opposed to judicial elections per se, Judge Wynn observed that 85% of the electorate really do not know much about the judicial candidates for whom they vote. Judge Wynn concluded with a statement of his belief that most judges really do try to do the right thing and are not abusing their independence.

Professor Franck challenged the audience by taking a far more critical view of judicial independence. According to Professor Franck, one major player in the judicial system, namely the Supreme Court of the United States, has abused its independence. Claiming that the practices of the current Supreme Court illustrate Hamilton's admonition in Federalist No. 78 that we do not want "too much of a good thing," Franck argued that the Supreme Court regularly violates the Constitution and draws distinctions between cases that have little basis in principle. Franck explored the existing checks and balances built into the United States Constitution on the power of the unelected judiciary. Impeachment, contended Franck, has not been invoked enough to be considered an effective remedy against the tyranny of the judiciary. The second major weapon he identified for controlling a wayward judiciary is to restrict its jurisdiction, including restricting a court's remedial power. Congressional power to restrict a court's jurisdiction, Franck asserts, is not well suited for use as an effective deterrent to judicial usurpation of power. Third, as strongly demonstrated by the actions of Senator Charles Schumer of New York, the Senate can consider ideology as a relevant factor in deciding whether to confirm a nominee to the federal bench. Finally, Congress possesses the power of the purse, but this power too, claims Franck, is not effective.

Professor Franck observed that in the last ten years there has been no turnover among the Justices that comprise the Supreme Court of the United States. Franck advocated a radical plan, which he conceded would have little chance of success with the Congress or the states in a constitutional ratification process. Under this plan, Congress and the President would pass

legislation increasing the size of the Court from nine members to fifteen members. In addition, the Constitution would be amended to provide that each Justice would serve only fifteen years rather than having life tenure. After a necessary phase-in period, one new Justice would be appointed annually. Franck argued that this plan would make the Court more accountable to the people and bring constitutional politics into the routine of "regular" politics, which Professor Franck insisted would be a good idea.

Chief Justice Christine Durham was the last panel member to speak, prefacing her remarks by noting that Utah uses a modified version of the Missouri Plan for the selection of its judges. Utah judges are appointed but face retention elections every eight years for the court of appeals and every ten years for the supreme court. Chief Justice Durham emphasized the differences between the State courts and the federal judiciary. She noted that Utah does not really have a statewide office of court administration and that the functions normally associated with such an office are assumed by the Supreme Court. Chief Justice Durham also noted that State judges, unlike their federal counterparts, actually shape the common law and, in this way, are more conscious of their role vis-à-vis the other branches of government. They are particularly conscious that State legislature can modify common law rules by passing statutes.

Chief Justice Durham disagreed with Professor Franck about whether courts are excessively unaccountable to the electorate. In her view, short term limits, such as eight years, as initially suggested by Professor Franck, would not be preferable in practice because: (1) judges actually improve the longer they sit on an appellate branch and interact with their colleagues; and (2) judges appointed or elected for short terms would be less likely to take a long range view of a problem and to decide cases free of prior political alliances.

Following Chief Justice Durham's comments, the panelists engaged in a lively exchange on various topics previously covered in their remarks. Professor Herman offered her own brief but insightful comments in an attempt to highlight some of the differences in the panelists' views. Returning to first principles, Professor Herman noted that one of the purposes of an unelected judiciary is to protect constitutionally enshrined individual liberties from the tyranny of the majority. Overall, CASA members were treated to a dynamic and thought-provoking presentation, enlivened most especially by Professor Franck's unconventional, yet intriguing, proposals for a more "democratic" judiciary.

And Now, Ladies And Gentlemen, Your Case Management System

Marcia McCormack
New Hampshire Supreme Court

After the unsuccessful impeachment proceedings lodged against our chief justice in 2000, the legislature responded with a flurry of "judicial reform" legislation. One such reform required the supreme court to report certain statistics on a quarterly basis to the legislature, apparently to keep a close eye on the inner workings of the "you got away with it this time, but we won't let it happen again" court. Not surprisingly, we were totally unequipped to gather most of the required data. To the rescue – or so we thought – was a case management system that would enable us to gather up and spit out the numbers as required.

We have had high highs and low lows with our system. Blame lies mainly with the six-week period that we were given to get the ball rolling. For starters, the IT department (part of the Administrative Office of the Courts, not part of our court) chose a company that had only designed case management systems for trial courts, thinking that they could just turn off parts of the trial court system and make it work in the appellate world. To make matters even worse, those of us who were on the "design committee" had no idea what a case management system could or should do, so we tried to model it as closely as possible to the then-current docketing system -- probably a really bad idea.

In an effort to provide some guidance to those of you who may be about to enter the case management system world for the first time, I solicited some helpful hints from our colleagues Cindy Lehr from the Minnesota Court of Appeals, who was active in her court's acquisition of a case management system that they love, and Jim Branham from the Hawaii Supreme Court, who is currently in the first year of a statewide implementation of a case management system. Our top ten thoughts follow.

1. Think of yourself as an English-as-a-Second-Language teacher AND student.

It is so critical to build a shared vocabulary, so that the IT folks, the court users and the vendor representatives understand one another. Even when a court has a substantial IT department "in house," it's very common for them to have only a rudimentary understanding of the court's procedures and needs. That said, don't leave planning and development to the IT people. They don't speak the same language you do. They use the same words, but they mean something different. They don't know why you want what you want. Tell them you want a robust system with good security and access by as many users as you think you need (then double that number).

2. Choose well-rounded and dedicated project teams.

Make your planning and implementation teams a mix of competent professionals within your system that includes judges, staff lawyers, administrators, administrative clerks, fiscal staff and line staff. You will be spending an incredible number of hours together, and the extent to which team members have the ability to work collaboratively, to maintain a sense of humor and to seek the synergy that comes from each unique perspective and contribution will have a huge impact. The chief judge or court administrator must be involved, because if you don't build or adapt the system correctly in the first place, there's no way you can get the statistical information and reports from it when you need to make a case for more funding in the legislature, when you need to evaluate the cause of backlogs and when you need to respond to those pesky surveys from the National Center on case clearance rates.

3. Recognize that team members will have a different "stake" in different aspects of the system.

To the extent possible, let those who will be the biggest users have the most "say" about the design of those portions of the system. (But don't abandon standardized displays and formatting entirely, so the system looks consistent to all users.)

4. Get professional assistance to help develop your "functional requirements definitions' and have the consultants work closely with your employees when doing so.

5. Map your business processes early and in detail.

That is, know how every scrap of paper or request for relief or action comes in to your court and what you do with it from the time it gets there until the case is closed and after (including how your records retention schedule is implemented). Know how your collection of fines and fees works and how or if your fiscal records are connected to your case management system.

6. During the bidding process, keep in mind that your are dealing with the sales people and you will get lots of puffing.

Be skeptical. After the bid is awarded you will be dealing with the vendor's technical and administrative staff and reality will be somewhat at odds with the sales pitch. Require the vendor to provide on-site staffing, clearly identified roles and training on a real data base with some of your actual cases input into the new case management system.

7. Have a clear decision-making path.

You need no-nonsense, practical people who can make timely decisions that stick and have the backing of your Chief Justice. Before you select a vendor, visit courts where the vendors' products are installed and talk to the people who use it.

8. Dedicate your best legal, administrative and technical staff to the project.

If possible, someone else should take over the team members' regular jobs during key project periods. If that's not possible, you need to choose the court employees who are willing to devote themselves heart and soul to the project, no matter what it takes. Most likely, everyone knows who they are, already. Plan to be stressed and start aging in dog years.

9. Do not underestimate the importance of "change management."

Expect resistance from your own people at every level. Be thankful for gun control. The implementation of a new system presents countless opportunities to "re-think" your business processes, but court users will resist that with surprising ferocity. Because we've always done it that way is NOT a good reason to do it that way under the new system. And even those who understand the logical reasons for change probably won't be able to keep themselves from reacting emotionally. Recognize that some reports and products of the system will probably have to "look the same," even if they're produced in a new way, because you won't be able to get everyone to accept changes. Exposing people to early versions of the system whenever possible will help them become more comfortable with it before they must start using it exclusively.

10. Murphy's law will govern.

Keep a sense of humor. Drink only in medicinal amounts.

Beyond the Basics: Persuasive Legal Writing

Edna Parker Mann
Florida First District Court of Appeal

At the annual dinner at the Sai Sommet Restaurant in the Deer Valley Club, my husband Rick and I enjoyed the company of Professor Elizabeth Francis from the University of Nevada. We had a wonderful meal, lively conversation and a spectacular view as the sun set behind the Wasatch Mountains. The next morning, it was back to the business of the 2004 CASA seminar in Professor Francis's Persuasive Legal Writing breakout session.

Professor Francis quickly covered the movement into the plain language era of legal writing where the product is more polished and better honed. The current trend is for legal writing to be in a more active and powerful style. The reader expects clarity of disposition, finality and resolution. Language should be arranged rhetorically to be more persuasive, moving through stages in the writing process from openness to a point of closure.

The writing process makes the writer reason out the decision. Generally, there are four stages of writing: pre-writing, drafting, revising and editing. Pre-writing in a court setting includes reviewing the record, reading the briefs, reviewing the case law, listening to arguments and just thinking. Pre-writing activities may include outlining, listing, note-taking and contemplating. At the end of the pre-writing process, a hypothesis of the case is developed. It is healthy to experience a change of mind during the writing process, otherwise the writer may become too rigid in thinking. Drafting begins by writing in whole and complete sentences. Marshaling the facts and putting down reasons makes it more likely to test the decision-making process. Revising may include either the argument or the decision-level content. Revising allows for establishing principles of argument and style. The editing process has to do with the credibility of the writer, which may include a court if the product is an opinion. Any successful document is an interplay between the writer's aim, audience and style.

On a technical level, the subject and verb should appear as early as possible in the sentence so that the reader understands the content as soon as possible. The subject and verb ground, orient and shape what comes next. Verbs are the major persuasive devices, are tools of precision and create a more effective writing style. It is worth consciously considering who the audience is and whether the document addresses their concerns. If the aim is to persuade the reader, then the writer must demonstrate the correctness of the reasoning and the disposition and that the ultimate decision is fair. The parties must be persuaded that they have had a fair hearing and received due process. The general reader must be persuaded that the decision is intellectually honest. The document should justify the result and demonstrate that the decision is consistent with the law. The outcome should make both legal sense and common sense.

Problems of uncertainty and ambiguity can be solved by a technical analysis of the sentence. For example, if the appellant is the focus, that party is an important actor, agent or character. Whose point of view is chosen to present the argument the writer is going to make is important, as well as the verbs that will be attached. In the verb position, the writer wants important, crucial and dispositive verbs. "Who did what to whom," creates critical patterns in judicial writing. Qualifiers

have the capacity to shift the meaning of the verb. For example, in the sentence "John killed Bob," if the word "killed" is substituted with a different verb, the meaning shifts entirely. If instead of "killed," any of the following words or phrases are substituted, the meaning is changed: murdered, killed in premeditation, killed in self-defense, killed accidentally, killed mistakenly or killed inadvertently. The use of different words could either legalize or make more criminal the appearance of the statement.

Legal writing relies on notions of clarity. Once a point of view has been selected, any shift in the point of view may confuse the reader. By keeping the same subject or party as the actor throughout the narrative, consistency and familiarity are built into the writing structure. Look for places where key terms can be constructed and try to keep them at the beginning of the sentences. By creating a topic string, the reader can easily follow the lead of the writer. It is easier for the reader when the sentences move from short segments to longer sentences. Begin with the concepts that are easier to understand and move to the more complex. By using this chain pattern, the reader converts new information into old and easily builds on the old information. The chain pattern works well in the reasoning, argument and the fact sections of an opinion.

Professor Francis's writing session was truly "beyond the basics." She created a hands-on experience where the participants worked together to improve writing samples, which had problems of clarity, missing actors, passive voice and run-on sentences. Professor Francis also provided materials, which she developed for classes she has taught at the National Judicial College.

Appellate Decision -Making: An Individual or Collective Craft?

Charles A. Thrall
Superior Court of Pennsylvania

I had already decided to attend this breakout session when it became one of my choices for picking a session to report on for CQ. I am glad that I made the choice. Without the CQ assignment I would have still attended Professor Brett G. Scharffs' session but I would not have taken as extensive notes or spent as much time afterwards with his outline and the law review articles on which the outline and presentation were based.

Professor Scharffs' title "Appellate Decision-Making: An Individual or Collective Craft?" was a bit of a tease. I came to the session prepared to assume that appellate decision-making was a "craft," and was expecting the focus to be on the "individual or collective" question. I was wrong. Professor Scharffs spent most of his time defining "craft" with examples from other crafts as well as law and appellate decision-making. It was his definition of "craft" that answered the question in the title of his presentation. According to Professor Scharffs, all crafts have both individual and collective elements.

Professor Scharffs began by asserting that law and appellate decision-making are craft, not art or science. He acknowledged that this idea is not original but said what has been lacking is the careful comparison of law and appellate decision to other crafts. However, before taking us through his full discussion of craft he took a few minutes to discuss the relationship of craft to the other elements of Legal Reasoning. Legal Reasoning is comprised of three elements drawn from Aristotle's practical philosophy. These elements are *phronesis* (practical wisdom), *techne* (craft) and *rhetorica* (rhetoric). Each of these elements in turn has a concern, components, distinctive characteristics and a measure of success. For example, the concern of practical wisdom is acting (means and ends); the components of rhetoric are logos (reasons), pathos (emotion) and ethos (character). For craft the concern is making/production, the components are made by hand and materials and tools, the distinctive characteristics are how should it be done, relation to past, limits of rules and theory, certainty and uncertainty, and learning and transmitting. The measure of success for craft is synthesis of form and function.

Having placed the idea of craft in the larger context of legal reasoning Professor Scharffs proceeded to core of his presentation, titled on his outline as "Craft and Craftsmanship." He first talked about seven of the distinguishing characteristics of craft. To give the flavor of them I will quote three of the seven: "a craft is a socially situated practice combining practical and theoretical knowledge, and requiring skill and training;" "craft is a body of knowledge that is extensive and has come down over generations, and yet cannot be reduced to a catalogue or hierarchy of rules;" "a commitment to a craft places certain constraints upon the craftsperson, though those constraints may feel liberating rather than constraining."

With this initial definition of craft in place Professor Scharffs continued by contrasting craft to art, science and mass production. Compared with art, craft is more rooted in tradition and always concerned with the relationship between form and function. Compared with science, craft lacks precise, definable rules. At this point he asserted that in law rules cannot always be applied in exact, definable ways and that this is one reason that law is craft, not science, Harvard Dean Christopher Columbus Langdell's views to the contrary not withstanding. Although mass production like craft endeavors to produce useful objects the craft product is made with an attention to the particular use and user that is lacking in mass production. Ideally this should be true of "custom built" judicial decisions but Professor Scharffs did express concern about the mass production aspects of decisions researched and written by law clerks with judicial supervision.

Next Professor Scharffs discussed five characteristics of crafts. Explication of these characteristics helps expose the common elements of law and appellate judging and other crafts. The first characteristic is that crafts are made by hand. This has implications for the pace and output of production, the skill and experience required of the craftsperson and patience necessary to produce an item of quality, be it a pot or an appellate opinion. The next characteristic is that crafts are rooted in a particular medium, for example, pottery in clay, law in facts and precedent. Third is that crafts are defined by use and usefulness. Fourth is that crafts have a distinctive relationship with the past. Practitioners of all crafts, not just lawyers and judges, have a shared tradition within their craft. Finally, crafts require exercising judgment.

How does one become a craftsperson? One must learn the rules of a craft. This is not easy because the rules are there but not in a simple organized set and master practitioners are guided by them without being consciously aware of them. Craft knowledge must be learned by experience; it is not easily expressed in terms that meet the requirements of "theory." As an example of this point Professor Scharffs noted that artists give lectures about their work, craftspeople give demonstrations. Much of learning a craft is a matter of learning a series a techniques, learning things like how to hammer a nail without bending it or hitting your thumb. Professor Scharffs calls this "tacit knowledge." A craftsperson must learn to tolerate uncertainty. The nature of craft is such that even following the "rules," such as they are, produces only a "reasonable regularity" of outcome or, in other words, "things don't always work." According to Professor Scharffs, judges don't always recognize this but great judges like Hand and Cardozo did and consequently worried about "getting it right." Traditionally, a craft is learned through an apprenticeship. This is less true in the law than it once was but the craft ideal of apprenticeship lives on the relationship between judge and law clerk. Finally, to become a craftsperson one must not be motivated primarily by money. Craft production necessarily limits output.

Professor Scharffs had begun his presentation by asserting that law is a craft. After having given us a detailed description of craft and craftspersonship he turned his assertion into a question and asked the question "Is law a craft?" His answer was twofold. First, looking at law as craft is not the only way to look at it but it is a helpful

way. Second, there are many unhappy lawyers and the happiest lawyers are those who treat law as craft, serving a counselors as well as advocates and developing long-term relationships with their clients.

The final section of Professor Scharffs presentation focused on the collective dimensions of craft, a theme he had touched at various points previously. He based this discussion on three extended quotations that were printed in his outline. The first was from a potter named Carla Needleman writing about her experience of working on her own projects but in a small studio with other potters. Even though she is not actually working with the other potters and indeed disagrees with them on many matter of technique she finds their presence and the interactions they do have to critical her practice of her craft. Professor Scharffs compared Ms. Needleman's observations to the experience of lawyers and judges working on their own cases but in the company of other lawyers and judges in the same firm or courthouse.

The next quotation was a short passage from Aristotle's Nicomachean Ethics in which Aristotle says that we must not only be conscious of our own existence but of the existence of our friend as well and that although a wise man can contemplate truth, he can perhaps do so better with fellow workers.

The final quotation was several passages from James Surowiecki's new book *The Wisdom of Crowds: Why the Many are Smarter than the Few and How Collective Wisdom Shapes Business, Economies, Societies and Nations.* Neither these passages nor Professor Scharffs' discussion of them made specific reference to craft but the implicit theme continued: the collective aspect of craft is one of its strengths. Professor Scharffs did suggest that the wisdom of crowds model might have some utility for criminal sentencing and the appellate courts (where cases are traditionally decided by more than one judge).

Professor Scharffs closed by saying that he believes that lawyers and judges should not dismiss craft traditions as being out of touch with modern reality but rather will find their professional lives more meaningful if they try to approach them from the perspective of the craft traditions he has described. He ended his outline by writing, "When discussing and reflecting upon what it means to be a craftsperson, part of me wants to loosen my tie, work with my lands, and build something real and solid. But I remind myself that I don't have to head to the carpenter's workbench to develop craft skills if I choose to treat my vocation as a craft."

I don't know that I agree with everything that Professor Scharffs had to say but I found his talk thought-provoking as I listened to it in Park City and I have enjoyed working through it again from his outline and my notes as I prepared this report. The law review articles on which much of the Park City presentation was based are Brett G. Scharffs, Law as Craft, 54 Vanderbilt Law Review 2245-2347 (2002) and Brett G. Scharffs, The Character of Legal Reasoning, 61 Washington and Lee Law Review, 733-786 (2004).

Time Management after Downsizing

Nancy Nutto Hughes
Texas Eleventh Court of Appeals

Professor Sandi Parkes of the University of Utah Center for Public Policy challenged her audience at the July 2004 CASA seminar in Park City to view time management not as task scheduling but as prioritizing, as developing relationships to meet a joint goal, and as respect for other skills and personal styles. Professor Parkes put a "whole brain" spin on time management, stating that it takes both the reason and the logic of the left side and the vision and creativity of the right side to accomplish demands in today's world.

Professor Parkes focused on the four styles identified in the 1999 Organizational Design Development model: direct, spirited, systematic, and considerate. Each style has its strengths and its challenges. A person with a direct style is a quick decision maker, stays on task until completion, and usually has immediate access to resources. However, a person with a direct style tends to become inpatient and frustrated with others, does not always slow down enough to think a head, and often has to go back and fix things. The spirited person is innovative, inspires and motivates others, and is a natural catalyst for change. This person also frustrates others by not completing or by not following through on projects. The systematic person sets time aside to complete projects according to procedures and meets deadlines but has trouble with the unexpected and with staying focused on the big picture. The considerate person devotes time to helping co-workers, adapts easily to new tasks or situations, and is an active listener. However, in the workplace, this person may ended up doing everyone else's projects and fall behind on their own.

Professor Parkes stressed that seldom is anyone just one style or type. Usually, we are a mixture of two or three styles. Professor Parkes stated that all four approaches are important and that, by identifying your own styles as well as the styles of your co-workers, it is possible to achieve goals more efficiently and more pleasantly.

Professor Parkes suggested the following tips:

- Think like the styles that you aren't
- Think outside of your comfort zone
- Don't be afraid of or avoid tasks out of your comfort zone
- Find persons whose strengthens complement your weaknesses
- Look towards the goal
- Don't get delayed by looking at individual tasks
- Complete one important thing a day

- Don’t do the easy tasks first
- Strategically skim when possible
- Keep things where they belong

Professor Parks concluded by challenging the CASA audience to identify the way they spent their time, to recognize their preferences, to respect the methods of others, and to create new ways to accomplish tasks.

Managing Your Boss

Anne Z. Nuttelman
New Hampshire Supreme Court

Little did I know when I walked in to the breakout session on "Managing Your Boss" given by David Patton, Director of the University of Utah Center for Public Policy, how useful the session would prove to be. Like many CASA members, I am a line employee. I supervise no one and have a number of "bosses." There is my immediate supervisor, the Senior Staff Attorney; the Deputy Clerk, fellow CASA member Marcia McCormack; the Clerk of Court; the Reporter of Decisions; and, the individuals with whom I interact most frequently – the justices. Sometimes it feels as if everyone in the building, except for the janitorial staff, clerical staff, and the law clerks, are my "bosses."

According to Patton, the line employee, like me, needs to focus on "managing up," helping our various bosses to accomplish their goals and to look good doing it.

How do we do this? By taking these three key steps:

1. **Understand who our bosses are and what they want**

2. **Understand ourselves and how we affect the relationships with our bosses**

3. **Take Action to Manage Our Boss by**

    - Developing a compatible work relationship with him/her
    - Developing a set of mutual expectations
    - Managing the Flow of Information
    - Being Dependable and Straight-Forward
    - Using Our Boss' Time and Resources Wisely

Step 1: Understanding Our Bosses

There are myriad different kinds of bosses. There's the Scarecrow boss who has no brain. The Cowardly Lion boss who has no courage. And, you guessed it, the Tin Man boss who has no heart. There's also:

- NBFH or Nightmare Boss From Hell
- AVG-KHAW or The Average, Okay, struggling-to-Keep-their-Head-Above-Water boss

- ❖ WOW or the Walk on Water Boss who is dynamic, wise, fair, well-adjusted, and even reasonably good-looking

- ❖ The Pal who makes everyone happy, but doesn't give feedback

- ❖ The Self-Promoter who has no time for staff, thinks he or she is perfect, is quick to take credit and to assign blame

- ❖ The High Achiever who is open to ideas

- ❖ The Roadblock who hasn't met an idea that he or she can't squash

- ❖ The B+ Manager who is pretty good at managing

- ❖ And, the poor Boss who is completely in Over their Head

Patton asked us to list the characteristics of a "good boss." Our list included characteristics such as: fair, flexible, calm, approachable, respectful, supportive, responsive, decisive, reasonable, considerate, and trustworthy. He then asked us to list the characteristics of a "bad boss." These included: impatient, backstabbing, narcissistic, unpredictable, indecisive, quick to tempter, needy, negative and disrespectful.

Patton asked us why a good boss might be so good. We thought the best bosses were comfortable with themselves. They were secure both personally and professionally. And, importantly, they had the support of their bosses. The worst bosses were insecure, threatened by the competence of others, and not supported by their higher-ups.

Step 2: Understanding Ourselves

Patton observed that management is a relationship and both parties to the relationship are responsible for it. We, as line employees, can affect how our managers behave and feel. For instance, if we circumvent our boss by going to his or her supervisor, our boss can become defensive. If we do not do our jobs well, our boss can become grumpy and impatient with us.

Step 3: Taking Action

So, what can we as line employees do to create a constructive, productive working relationship with our boss or bosses?

Patton suggested these do's and don'ts:

DO	DON'T
Communicate with your boss. Keep him or her informed. Find out his or her expectations. Listen.	Bad mouth your boss to others. It always gets back to them.
Try to be aware of your boss' goals, problems,	Be less than honest with your boss

DO	DON'T
pressures. Try to think from his or her perspective	
Be a good follower	Be confrontational.
Look at your own work with a critical eye	Try to change your boss' style.
Work well with others.	Be high maintenance.
Ask if you're not sure	Be undependable.
Be positive and helpful. Ask if you can help.	Assume that your boss' actions are the result of bad intentions.
Disagree agreeably.	Under- or overestimate what your boss needs to know.

Building a good managerial relationship, like any other kind of relationship, takes work. Patton's seminar gave us some of the tools to do that work.

Office Dynamics Revisited

Annette Roach
Louisiana Third Circuit Court of Appeal

Supervisors within the court system must seek to mesh the various personalities of their staffs to accomplish the work of the courts in as smooth a manner as possible in a work environment complicated by constant changes. In a nutshell, they must be aware of the office dynamics.

Eighteen years ago I accepted my first supervisory position overseeing five attorneys and nine secretaries. I was given no advice on how to do it nor was I sent to any course to "teach" me supervisory skills. Like most attorneys who are promoted into supervisory roles, I had no background in supervising others and so, I learned by doing, making many mistakes along the way. During the eighteen years that have passed, the size of the staff and the scope of the administrative responsibilities have more than doubled. Similar stories can be shared by others throughout the court system. To meet the specific needs of these supervisors, each year at its annual meeting, CASA offers several sessions addressing issues for supervisors and managers. Although the sessions at the CASA seminars are among the best I have ever attended, the greater benefits I derived from attending the annual seminars came from the opportunity to interact with others in similar leading positions. To enhance these benefits, CASA has created a very workable way to open up discussions on difficult issues.

At the 2004 CASA Seminar in Park City, Utah, a series of roundtable luncheons were added to the spectrum of regular sessions. The purpose of the roundtable discussions was to give some structure to the informal luncheons that have taken place for years at CASA seminars, and at which members discussed issues they were facing in their courts while seeking advice and input from others in similar positions.

One such roundtable discussion was entitled "Office Dynamics." During this roundtable discussion, several attendees took advantage of the opportunity to ask questions of each other concerning topics of mutual interest, such as how to handle a difficult employee or how to deal with judges. The attendees not only asked questions, they offered advice to others - explaining what had or had not worked for them. Most of the issues faced by supervisors within the judicial system are not unique and the opportunity to receive input from others who have faced the same or similar issues is invaluable. I believe those who attended the roundtable sessions last year would agree that the discussions provided valuable information that could be used when they left behind the laid back days in Park City and returned to their courts.

As Abraham Lincoln said "Whatever you are, be a good one." With this admonition in mind, most of us who have chosen to serve in supervisory positions within our courts are excited to avail ourselves of opportunities to learn how to do our job the best we can. Thanks to CASA and its members who are so willing to share their experiences - both good and bad - there is a seminar available to help us learn how to be good at what we do.

I would be remiss to end this article without expressing my THANKS to each of you who have helped me along the way. As I write this article, my last day with the Louisiana Third Circuit

Court of Appeal is less than a week away. I am retiring after more than twenty-two years in state service to join my husband in private practice. I will miss the friends I have in CASA.

Problem Solving with Mark And Muffy

Sue Peppard
Louisiana Fourth Circuit Court of Appeal

Lunchtime in the mountains was the setting for a roundtable discussion on problem solving chaired by Martha Newcomb of the Rhode Island Supreme Court and Mark Zanchelli of the U.S. Fourth Circuit Court of Appeals. The idea for this session grew out of discussions overheard at CASA social events over the years concerning problems common to central staffs and their relationships with other departments of their respective courts. After quickly solving the initial problem of the late arrival of lunch, Mark and Martha opened up the session to a discussion of ideas mostly contributed by the attendees.

The participants discussed the difficulties encountered by courts in general and by staff personnel in particular due to the turnover of personnel in judge's chambers. Because attorneys on central staffs generally remain at courts longer than do those who serve as law clerks, some participants saw one of staff's roles as helping the court maintain consistency in its operations. Some participants noted that their staffs prepared manuals of internal operating procedures, while others spoke of orientation meetings and even video presentations designed to help both new staff attorneys and new law clerks. In some courts, judges participate in the orientation process. A few participants spoke of court-sponsored social gatherings as a means to introduce new employees and place them in contact with those who can help orient them to their new work environment.

The participants then discussed the use of evaluations in staffs. In some courts evaluations are completed by judges, while at other courts they are completed by supervisory personnel in staff. The participants discussed the use of evaluations, and some questioned the value of an evaluation completed by a judge who may not have a good appreciation of the workings of staff. In a somewhat related matter, another participant spoke of her court's use of exit interviews when an employee leaves, and she said she uses these interviews to plan changes to procedures to help staff attorneys do their jobs more efficiently.

The final problem discussed was attempted persuasion of staff attorneys by judges with views that do not reflect those of the majority of the court. Because judges rely heavily upon staff recommendations, some staff attorneys have had problems with judges trying to influence them to prepare their memos to reflect that judge's interpretation of the issues in a case, rather than the attorneys' interpretation. Some participants indicated that they informally warn new staff attorneys about this problem.

The hour allotted to this session passed quickly, due in large part to the great participation by the attendees as well as the guiding hands of the moderators. As always with such discussions, it was encouraging to hear of common problems and enlightening to learn of new ways to deal with them.