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10	Electronic Trial Court Records on Appeal - What Has Worked and What Hasn't Wednesday, August 9, 2017 10:00 am - 11:15 am Pg 89-112
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-Session 1-

Leading with Laughter: How U.S. Presidents Use Humor to Relate, Motivate, and Communicate --- And How You Can Too!

- Malcolm Kushner. Sacramento Author, Speaker and Professional Consultant

Malcolm Kushner

Malcolm Kushner, "America's Favorite Humor Consultant," is an internationally acclaimed expert on humor and communication. Since 1982, he has trained thousands of managers, executives and professionals how to gain a competitive edge with humor. His clients include IBM, Bank of America, Aetna, American Bar Association, American Medical Association, Defense Research Institute and Ohio Association for Court Administration.

Kushner is the author of *The Light Touch: How to Use Humor for Business Success* (Simon & Schuster), *Public Speaking For Dummies* (Wiley Books) and *Presentations For Dummies* (Wiley Books) which has sold over 100,000 copies. He is also a co-creator of a humor exhibit that appeared at The Ronald Reagan Presidential Library. His latest book is *Comebacks for Lawyer Jokes: The Restatement of Retorts*.

Kushner holds an M.A. in Communication from the University of Southern California, and a J.D. from the University of California Hastings College of the Law. He has served as a staff attorney for the California Workers' Compensation Appeals Board, and practiced law with a major San Francisco firm.

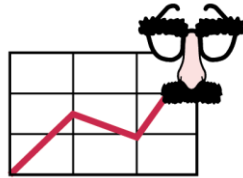
Frequently interviewed by the media, he has been profiled in *Time Magazine*, *USA Today*, *The New York Times*, *The Washington Post* and numerous other publications. His television and radio appearances include CNN, National Public Radio, CNBC, "Voice of America" and "The Larry King Show." *The Wall Street Journal* has called him "irrepressible." And his annual "Cost of Laughing Index" appears in print and electronic media around the world.

A popular speaker at corporate and association meetings, Kushner is based in Sacramento, California.

Leading With Laughter®

**How U.S. Presidents Use Humor
To Relate, Motivate And Communicate
And How YOU Can Too!**

Presented by



**Malcolm Kushner
& Associates**

www.kushnergroupp.com

**A program for
National Conference of Appellate Court Clerks
Annual Meeting
August 6, 2017**

How to Use Humor Effectively

1. **Make Humor Relevant to Your Message**

Humor that is unrelated to your message is a distraction and a waste of your audience's time. Relevant humor lowers audience resistance and increases your chance of success. It also eliminates most of the risk of "bombing." (If relevant humor isn't perceived as funny, it still moves your presentation forward.)

2. **Do Some Audience Research**

Make humor fit your audience. Include their language, interests and activities in your quips and anecdotes. The more specific, the more effective. And be appropriate: avoid offensive material such as ethnic and off-color jokes.

3. **Keep it Brief**

Brevity is the soul of wit. Audience expectations rise in direct proportion to the length of a joke. The longer the joke, the funnier it better be!

4. **Make it Conversational**

Recognize the difference between oral and written language. Humor taken from a joke-book or other written source must be adapted for the ear. Say the joke aloud and edit out the extra words and tongue-twisters.

5. **Don't Announce You're Going to Tell a Joke**

Announcing that you're going to tell a joke increases audience resistance and lowers your chance of success. Just fit the joke logically into your presentation. This will be easy to do if the joke is relevant.

6. **Use Self-Effacing Humor**

It's always safe to make yourself the target. This shows self-confidence: you're strong enough to poke fun at yourself. In addition, a moderate amount of self-effacing humor will increase your likeability and create rapport with your audience. Distinguish taking your message seriously from taking yourself seriously.

Use Simple Types of Humor

Can't tell a joke? No problem. Here are some analogies and observations that anyone can use in a conversation or presentation.

Analogies

Life is like a roll of toilet paper...the closer it gets to the end, the faster it goes!

It's like shooting an elephant with a mouse-gun.

It's like solving a Rubik's cube without the color coding.

They stand out like two sumo wrestlers at a modeling school.

Trying to analyze leadership is like studying the Abominable Snowman. You see footprints...but never the thing itself.

It's like the suicide bomber who did 35 missions. He was interested in his work but not really involved.

Incompetent colleagues are like stars. You may not always see them but you know they are always there.

Observations

People can be divided into three groups – those who make things happen, those who watch things happen and those who wonder what happened.

This is not something to be tossed aside lightly. It should be thrown, with great force.

How long a minute is depends on what side of the bathroom door you're on.

Growing old is mandatory, growing up is optional.

The first 90% of a project takes 90% of the time; the last 10% takes the other 90% of the time.

Life is not fair, but life is not fair for everyone. That makes life fair.

Eagles may soar, but weasels don't get sucked into jet engines.

Using Quotes

Can't tell a joke? No problem. Just drop a funny quote into your next conversation or presentation. It will draw attention to your point and demonstrate your sense of humor.

For example, W. Somerset Maugham once said "There are three rules for writing a novel. Unfortunately know one knows what they are." This could also apply to writing a report, memo or letter. You get the idea.

Here are some quotes to get you started. Use your imagination to adapt them to your topics of conversation.

"If you think you have someone eating out of your hand, it's a good idea to count your fingers." - Martin Buxbaum

"Few things are harder to put up with than the annoyance of a good example." – Mark Twain

"You can't have everything. Where would you put it?"
– Steven Wright

"A bad reference is as hard to find as a good employee."
– Robert Half

"If the shoe fits, you haven't left room for growth." – Robert Coons

"If all else fails, immortality can always be assured by spectacular error."
– John Kenneth Galbraith

"The big print giveth and the fine print taketh away."
– Bishop Fulton J. Sheen

"I read part of it all the way through." – Samuel Goldwyn

"The team effort is a lot of people doing what I say."
– Michael Winner

"The trouble with the rat-race is that even if you win, you're still a rat."
– Lily Tomlin

Develop Your Own Material 1

Personal Anecdotes

1. Think of a personal anecdote.
2. Think of a business point you can make with the anecdote.

Having trouble thinking of a personal anecdote? Here are some memory-joggers to get you started.

- Your most embarrassing experience
- Your first date
- Your first day on the job
- Most embarrassing thing one of your children or young relatives ever did
- The biggest mistake you ever made
- A strange dream
- Your wildest vacation story
- Hobbies
- The funniest thing you ever occurred in a meeting
- Your first job interview
- The strangest gift you've ever received
- Learning to drive
- The most bizarre thing you've ever seen or heard
- Relatives
- High school: prom, teachers, classes
- College: dorm, professors, exams
- Something that seems funny now but didn't when it happened

Personal Anecdote:

Points You Can Make With It:

Develop Your Own Material 2

Ad-libs For Goofs, Gaffes and Distractions

It's a serious mistake to ignore goofs, gaffes and distractions that occur during a presentation. If the speaker continues as if nothing happened after the lights suddenly go out or a siren blares, then the audience will become distracted. The speaker must put the audience at ease by communicating: (1) awareness of the distracting Incident; and (2) everything is OK. This can be accomplished with a humorous acknowledgment — a seemingly spontaneous quip that makes light of the situation. The trick is that this “ad-lib” has been prepared in advance. It's ready for use when needed.

Create an “ad-lib” to deal with the following situations:

The lights suddenly go out.

A siren interrupts your presentation.

Your computer malfunctions during a PowerPoint presentation.

Your notes fall off the podium

Links to Tools and Resources

Humorous Material

Quotation Search <http://www.quotationspage.com/search.php3>

Murphy's Laws <http://www.murphys-laws.com/>

New Yorker Cartoon Bank <https://www.cartoonbank.com/>

Visual Humor Generators

Einstein Dynamic Photo Generator <http://www.hetemeel.com/einsteinform.php>

Motivational Poster Maker <https://bighugelabs.com/motivator.php>

Personalized Money Generator https://www.festisite.com/money/us_dollar_1/

Topical Humor

Late Nite Jokes <http://www.newsmax.com/jokes/>

Today In History <http://www.scopesys.com/anyday/>

National Day <http://www.nationaldaycalendar.com/calendar-at-a-glance/>

How Much Humor?

Many people wonder how much humor is appropriate for a serious presentation. And how it should be distributed throughout a speech. In response, I have included the transcript of a Ronald Reagan speech given to a joint session of the Indiana State Legislature on February 9, 1982. Please do not be offended by the partisan nature of the message. Focus on how the humor is incorporated. The speech is a model of how to use humor in a presentation.

Things to observe:

- how humor is used to make points
- how humor is used specifically to build rapport with the audience
- types of humor used
- placement of humor throughout the speech

Address Before a Joint Session of the Indiana State Legislature in Indianapolis

February 9, 1982

Governor, honorable gentlemen here with me on the platform, and you ladies and gentlemen:

I can't thank you enough for that very warm Hoosier welcome.

You know, the late Herb Shriner, who was from Fort Wayne, said that he was born in Ohio, but he moved to Indiana as soon as he heard about it. [Laughter] Well, with Governors like Bob Orr and, before him, Doc Bowen and Senators like Dick Lugar and Dan Quayle, a mayor like Bill Hudnut, and a legislature like this one, I have a fondness for Indiana myself.

In 1919 William Herschell, a columnist for the Indianapolis News, came upon another admirer of this State, an old man near Knightstown who was sitting on a log in the warm sunshine, fishing in the Big Blue River. And with a sweep of his arm, the old boy encompassed the whole countryside, and he says, "Ain't God good to Indianny!" Well, God certainly has been good to Indiana, but unfortunately over the past few decades, the Federal Government hasn't been quite so kind. If the Federal Government had been around when the Creator was putting His hand to this State, Indiana wouldn't be here. It'd still be waiting for an environmental impact statement. [Laughter]

And it's not an exaggeration anymore to refer to the almighty Federal Government. In recent years, power and tax dollars flowed to Washington like water down the Wabash. And yet things didn't get better. We didn't move closer to solutions; we moved farther away. Hoosiers, like citizens all over this country, began to realize that the steady stream of money and authority to Washington had something to do with the fact that things didn't seem to work anymore. And the closer you look, the clearer it becomes. The Federal Government has taken too much tax money from the people, too much authority from the States, and too much liberty with the Constitution.

Over the last year, with the help of the American people, we started correcting these imbalances in our governmental system. We have cut the growth in Federal spending nearly in half, brought about the largest tax reduction and the most sweeping change in our tax structure since the beginning of the century. And with farmers and family businesses in mind, we raised the estate tax exemption and eliminated the estate tax for the surviving spouse so that survivors don't have to sell the family farm or the family business in order to pay the tax when death comes. We cut the increase in new Federal regulations nearly in half. And we undertook policies that strengthened State and local authority rather than erode it.

As Indiana's December unemployment rate of 11.9 percent indicates, much remains to be done. We know it. And we take our commitment to the people seriously. We have in place an economic program that is based on sound economic theory, not political expediency. We will not play hopscotch economics, jumping here and jumping there as the daily situation changes. We have faith in our program, and we're sticking with it.

To the paid political complainers, let me say as politely as I can, ``Put up or shut up." We have a solid plan already in place. What do they have? Either they give the American people a better alternative, or they join with us in our efforts to get the economy right.

The 1983 budget, which we recently released, is one of the new-wave budgets that will be rolling in for the rest of the decade. These budgets will require constant and comprehensive pressure so that we can reduce the future growth of government spending and the government's share of the gross national product. I hope the Congress will accept the future. I hope the Congress will approach the new budget proposals with the same cooperative spirit and good will as it did our proposals a year ago.

Now, the defense budgets over the next several years will be especially important. Studies indicate that our relative military imbalance with the Soviet Union will be -- believe it or not -- at its worst by the mid-eighties. As President, I can't close my eyes, cross my fingers, and simply hope that the Soviets will behave themselves. Today a major conflict involving the United States could occur without adequate time to upgrade U.S. force readiness. It's morally important that we take steps to protect America's

safety and preserve the peace.

In the months ahead as we pursue a strengthened economy and a strengthened defense, we will also be working toward a revived federalism. During the campaign, I said we would cut taxes, and we have. I said we would reduce regulation, and we have -- 23,000 fewer pages in the Federal Register than there were a year ago, and that's the thing that lists all the regulations. And I've said that we must return more power to the States, and we will.

Now, there are those who for their own narrow political purposes say our federalism plan is a mere diversion from our economic problems, or that federalism is simply a means to cut the budget further. Well, don't you believe it. Our federalism plan stands on its own merits, a key to a freer, better America. Federalism is too important an issue to be treated as a distraction, and the American people deserve a full and public debate of the proposal's merits.

In the State of the Union speech, I sketched the framework of our federalism concept. We hope to send enabling legislation to the Hill by early spring, but we're not doing that until we've had extensive consultation with the Nation's Governors, legislators, and city and county officials. We genuinely want your advice and counsel, and that's why I'm here today. We seek your help in developing a program that will bolster what Governor Orr said in his State of the State address: ``. . . Hoosiers have the ability to solve Hoosier problems . . .'' Without your participation in the plan's development, it would simply be another program imposed by Washington. We want this new partnership to work.

There's a story about the two partners who decided to take a day off and go fishing. They'd rowed out to the middle of the lake, baited their hooks, and were waiting for the first bite when all of the sudden one of them said, ``Sam, oh my gosh! We forgot to close the safe.'' ``So what?'' said Sam, ``we're both here aren't we?'' [Laughter] For too long, that's the kind of partnership the States and the Federal Government have had. Neither really trusted the other, but it's Washington that's been dipping into the cash drawer when the States weren't looking.

America's needs today are too great for one partner to solve alone. As I pointed out in the State of the Union address, in 1960 the Federal Government had 132 categorical grants costing \$7 billion. When I took office there were approximately 500 such grants, costing nearly \$100 billion -- 13 programs for energy conservation, 36 for pollution control, 66 for social services, 90 for education -- and in the Congress it takes at least 166 committees just to try and keep track of them. They try to keep track of them, but Federal grants are like rabbits -- they multiply like crazy, and when they're out you can't catch them. [Laughter]

The Congress spends most of its time on the budget these programs represent. Governor Babbitt of Arizona said that the Congress should worry about arms control, not potholes. And if Congress did that, he has said, we would have both a better chance of survival and better streets.

I've got to pause right here and interject something about that. I'm delighted in telling about the town that decided in the interest of safety, they were going to raise all their street signs and everything that were only 5 feet high to 7 feet high. And the Federal Government came along and said, ``We've got a program that'll do that for you." Well, it was quite an undertaking to change the height of all these. The Federal Government's idea was they'd lower the streets 2 feet. [Laughter]

But according to an independent governmental commission -- intergovernmental commission -- the growth of such programs has made the Federal Government ``more pervasive, more intrusive, more unmanageable, more costly, and above all, more unaccountable." Polls show that the majority of Americans feel the State government can handle local problems better than the Federal Government. Absolutely no one, except the special-interest groups and those who do their bidding, believes that we can continue as we have.

In many respects, the Federal Government is still operating on the outdated and, if I may say so, arrogant assumption that the States can't manage their own affairs. At one time possibly, yes, certain States did ignore a portion of their citizenry. And when the Great Depression hit, the States weren't prepared to handle that kind of an emergency. But that was 50 years ago. There've been great changes in our land.

As Governor Thompson of Illinois, speaking for most State and local officials, has said, ``It's time to give us our money back; it's time to give us our power and authority back; and it's time to let the Governors and mayors of this Nation respond to the needs of the people in their States." And to that I say, ``Amen."

It's high time the issues were debated. And our federalism initiative is designed to focus that debate. The plan, as you know, has two major components. Starting in fiscal 1984, the Federal Government will assume full responsibility for the rapidly growing Medicaid program in exchange for the States picking up Aid to Families with Dependent Children and food stamps.

Now, by assuming the whole governmental cost of health and virtually the entire financial responsibility for the elderly population, the Federal Government will be taking on the most rapidly growing social domestic needs. The States will be picking up the areas where growth is much less rapid. Under current law, the total funding for AFDC and food stamps is projected to increase only 10 percent by 1987, compared with a projected 83-percent increase in the total cost of Medicaid for the same period.

The other aspect of the plan is a turnback of responsibilities to the States for over 40 Federal programs in education, community development, transportation, and social services -- along with the resources to pay for them. In 1984 the Federal Government will apply the full proceeds from certain excise taxes to a grassroots trust fund that will belong in fair shares to the 50 States. By 1988 the States will be in complete control of these grant programs.

Now, we have not filled in the details of the federalism program, because we want your assistance. We want the plan to be fair and equitable. And I'll give you a flat and binding pledge: There will be no net winners or losers. This will not be a roll of the dice. The State will not end up like the horseplayer who says, "I hope to break even; I need the money." [Laughter] You'll break even, and there will be no gamble.

There are other guarantees as well, like the mandatory pass-through to the local governments of some funds, such as for mass transit assistance, community development. We will ensure civil rights protections and adequate welfare, and the transition period will allow plenty of time for discussion and fine-tuning of the program.

The concept of federalism is like the green and gold quilt of Indiana crops. There is protection in variety. Well, there's protection in the quilt of the 50 States as well. What the current issue comes down to is whether or not we trust the people and those closest to them to make governmental decisions -- to make government itself work. I trust those James Whitcomb Riley, the Hoosier poet, who called them "the good, old-fashioned people -- the hale-hardworking people." And I believe that the decisions that come from this statehouse are as solid as the limestone it's built of.

Statehouses all over the country must regain the authority to make decisions about those things that affect them most closely. In 1947 the General Assembly of Indiana adopted a resolution "serving notice on the Congress of the United States that the people of Indiana are fed up with subsidies, doles, and paternalism, benevolently described as Federal grants-in-aid."

In 1951 the Congress still hadn't taken Indiana's good advice, so the Assembly again passed a resolution stating, "We Hoosiers believe that the historic constitutional rights and responsibilities of the States must be recovered; that the tax sources of which we have been deprived must be restored; and that the Federal Government must restrict its activities to matters of the broadest national interest." Well, it's taken over 30 years, but, I'm happy to report, your message has finally gotten through. To tell you the truth, I believed you the first time you said it. [Laughter]

Today in Washington there's someone -- at least in the White House and a couple of Congressmen of yours sitting right here -- who are on your side. This administration seeks nothing less than a realignment of government, a realignment that will give power back to those most responsive to the people. Of course, I'm referring to you who sit in

the State legislatures, the county boards, the city councils of this country -- you who know the needs of your neighbors and the programs that will serve them best.

I've told you I'm confident our economic recovery program will succeed. This is not wishful thinking. Our plan is based on simple logic. We have deficits because government spends more than it takes in. We've had only one balanced budget in the last 20 years. Today's interest on the trillion-dollar debt is greater than the total budget in Eisenhower's day. So, we're reducing the size and cost of government to bring the annual increase in costs to less than the increase in tax revenues. And increasing tax rates is not an answer. We doubled taxes between 1976 and 1981 and had the biggest string of deficits in our history. Besides that, taxes reduced our ability as individuals to save.

Today we're the last among the seven top industrial nations in savings and investment. Our industrial plant and machinery average 17 years in age. In Japan the average is only 10 years. So, we're reducing the tax rate.

Government regulations have cost the American economy an estimated \$100 billion a year. We're reducing, as I said, the number of regulations.

I've got to pause again and just tell you how they can -- in a nearby State, a hospital was built with some Federal funds, so therefore the Federal Government can manage everything about it. And they had the experience, and they put -- as is customary today -- and they put under the regulation of one government department those plastic bags in the wastebaskets to protect the employees from contamination in handling the waste. But in came another Federal department, took one look, and said, ``Unh-uh, someone might throw a cigarette butt in there, and the fumes of the burning plastic would be injurious to the patients. Take them out." Well, they never did get together as to which one was right, so the only thing the hospital can do now is kind of keep an eye on the front door to see whose inspector is coming. Take them out; put them in. [Laughter]

The Federal Government has at great cost been attempting to perform tasks that are not its proper function, so we're restoring the 10th amendment to the Constitution, which says the Federal Government will do only those things called for in the Constitution, and all others shall remain with the States or the people.

The great American experiment will soon enter a new phase that will last until the end of this century and prepare us for the next. And you here are the ones who will carry this experiment forward. You are the public servants who offer the most creative solutions and most promising hopes for our nation's future.

America needs your vitality and her people need your responsiveness. Let us join together to restore federalism, to restore the Nation's vigor, and to restore the faith of our people in their government at every level.

Thank you very much.

Some Thoughts on Communication

In the animal kingdom, the rule is eat or be eaten; in the human kingdom, define or be defined.

-- Thomas Szasz

Tact is the art of making guests feel at home when you wish they were.

-- Sharon Shoemaker

The functions of language: (1) the communication of ideas, (2) the concealment of ideas, (3) the concealment of the absence of ideas.

-- Otto Jespersen

Discussion - a method of confirming others in their errors.

-- Ambrose Bierce

The telephone is a good way to talk to people without having to offer them a drink.

-- Fran Lebowitz

The most important thing in communication is to hear what isn't being said.

-- Peter Drucker

History repeats itself because no one listens the first time.

-- Anonymous

A society that cannot speak or understand sense is condemned to live nonsensically.

-- Richard Gambino

Ninety percent of leadership is the ability to communicate something people want.

-- Dianne Feinstein

Think "Honk" if you're a telepath.

-- Bumpersticker

Some Articles To Check Out

Humor Techniques

Laugh Lines: Generating Fun For Power Point

<http://www.toastmasters.org/ToastmastersMagazine/ToastmasterArchive/2007/December/Departments/LaughLines.aspx>

This is an article from the December 2007 issue of *Toastmaster* (the monthly magazine of Toastmasters International.) It describes how web generators can automatically create humorous material for your next presentation even if you can't tell a joke.

How To: Want to Be Funny? You Can't Go Wrong If You Name That Song

<http://www.toastmasters.org/ToastmastersMagazine/ToastmasterArchive/2007/March/Departments/HowTo.aspx>

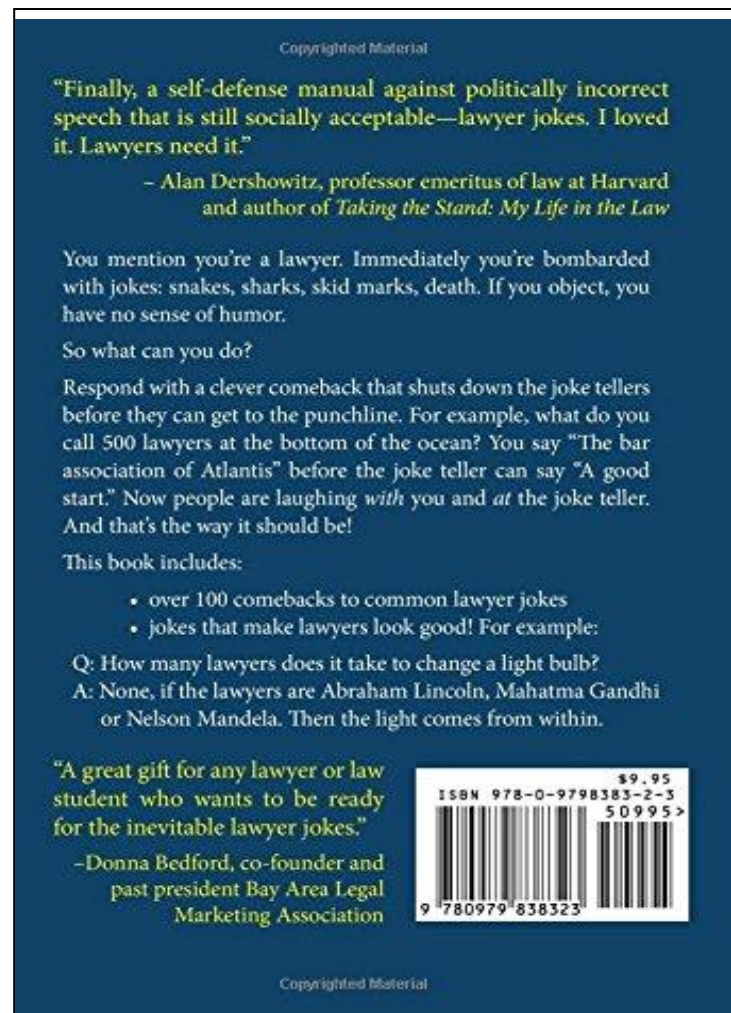
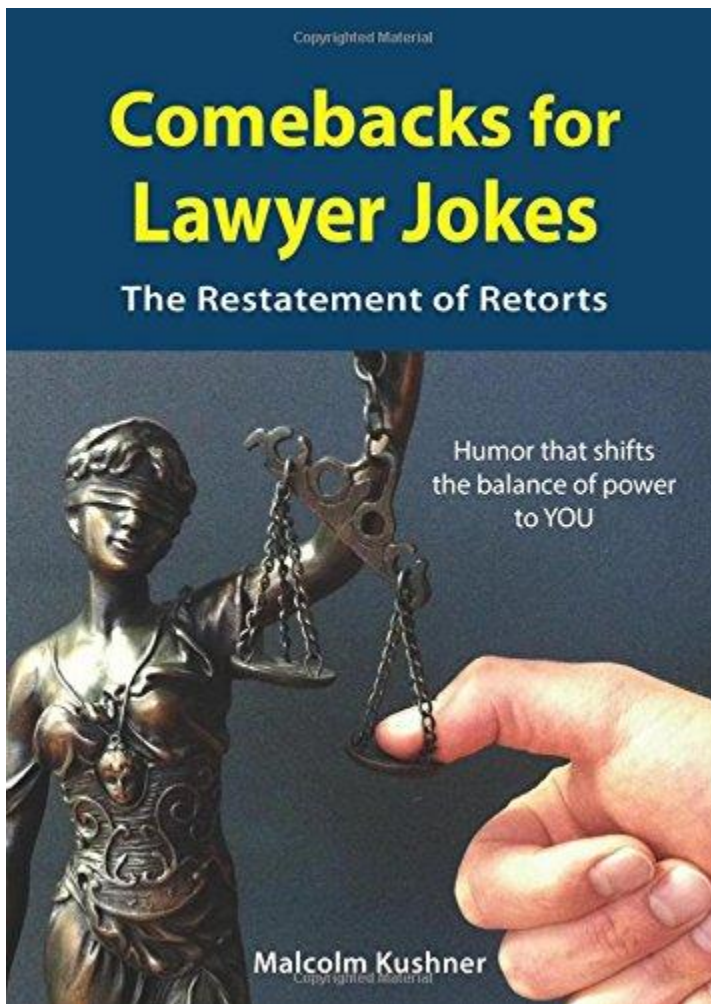
This is an article from the March 2007 issue of *Toastmaster*. It describes a simple humor technique of using song titles to make business points. No comic delivery or ability is required!

Algorithms for Humor Success

<http://sandhill.com/article/algorithms-for-humor-success/>

This is an article from the February 24, 2015 issue of the *Sand Hill* newsletter. It describes simple formulae for creating your own humorous material.

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Malcolm Kushner & Associates

mk@kushnergroup.com

www.kushnergroup.com

Questions Or Comments

My door is sometimes closed but my phone and e-mail are always open. If you have a question or comment, or need someone to bounce ideas off, give me a shout. Here's how you can reach me:

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-Session 2-

Honing Your Leadership Skills Using the MBTI–

Robert Lowney, Director of Appellate Court and Court Operations Services at the California Judicial Council.

Bob Lowney

Bob Lowney is the Director of Appellate Court Services and Court Operations Services at the California Judicial Council. Previously he had served as the interim Director of the Center for Judicial Education and Research at the Judicial Council. Bob has been employed at the Judicial Council since 1997. Prior to joining the Judicial Council, Bob taught real property and legal research at San Francisco Law School for 13 years, and taught bankruptcy law at the University of San Francisco and San Francisco State University. Bob holds a juris doctorate from Golden Gate University School of Law and a bachelor's degree (cum laude) from Boston University.

MBTI Short Term Descriptions

How You Are Energized

<u>Extraversion – TALK IT OUT</u>	<u>Introversion – THINK IT THROUGH</u>
<ul style="list-style-type: none"> ◆ External/exterior ◆ Outside thrust ◆ Talk thoughts out ◆ Breadth ◆ Involved with people, things ◆ Interaction ◆ Action ◆ Do-think-do 	<ul style="list-style-type: none"> ◆ Internal/interior ◆ Inside pull ◆ Keep thoughts in ◆ Depth ◆ Work with ideas, thoughts ◆ Concentration ◆ Reflection ◆ Think-do-think

How You Take In Information

<u>Sensing - SPECIFICS</u>	<u>iNtuition – BIG PICTURE</u>
<ul style="list-style-type: none"> ◆ Present orientation ◆ What is real ◆ Practical ◆ Facts ◆ Perfecting established skills ◆ Utility ◆ Step-by-step ◆ The five senses 	<ul style="list-style-type: none"> ◆ Future possibilities ◆ What could be ◆ Theoretical ◆ Inspirations ◆ Learning new skills ◆ Novelty ◆ Insight-by-insight ◆ The sixth sense, a hunch

How You Make Decisions

<u>Thinking - LOGICAL</u>	<u>Feeling - PEOPLE</u>
<ul style="list-style-type: none"> ◆ Logical system ◆ Head ◆ Objective ◆ Justice ◆ Critique ◆ Principles ◆ Reason ◆ Firm but fair 	<ul style="list-style-type: none"> ◆ Values system ◆ Heart ◆ Subjective ◆ Mercy ◆ Compliment ◆ Harmony ◆ Empathy ◆ Compassionate

How You Approach Life

<u>Judging - CLOSURE</u>	<u>Perceiving - OPTIONS</u>
<ul style="list-style-type: none"> ◆ Decide about information ◆ Regulate ◆ Control ◆ Settled ◆ Run one's life ◆ Set goals ◆ Closing off ◆ Organized 	<ul style="list-style-type: none"> ◆ Attend to, gather information ◆ Flow ◆ Adapt ◆ Tentative ◆ Let life happen ◆ Seek options ◆ Opening up ◆ Flexible

Order of Mental Functions

(Dominant, Auxiliary, Tertiary, Inferior)

ISTJ <ol style="list-style-type: none"> 1. Sensing 2. Thinking 3. Feeling 4. iNtuition 	ISFJ <ol style="list-style-type: none"> 1. Sensing 2. Feeling 3. Thinking 4. iNtuition 	INFJ <ol style="list-style-type: none"> 1. iNtuition 2. Feeling 3. Thinking 4. Sensing 	INTJ <ol style="list-style-type: none"> 1. iNtuition 2. Thinking 3. Feeling 4. Sensing
ISTP <ol style="list-style-type: none"> 1. Thinking 2. Sensing 3. iNtuition 4. Feeling 	ISFP <ol style="list-style-type: none"> 1. Feeling 2. Sensing 3. iNtuition 4. Thinking 	INFP <ol style="list-style-type: none"> 1. Feeling 2. iNtuition 3. Sensing 4. Thinking 	INTP <ol style="list-style-type: none"> 1. Thinking 2. iNtuition 3. Sensing 4. Feeling
ESTP <ol style="list-style-type: none"> 1. Sensing 2. Thinking 3. Feeling 4. iNtuition 	ESFP <ol style="list-style-type: none"> 1. Sensing 2. Feeling 3. Thinking 4. iNtuition 	ENFP <ol style="list-style-type: none"> 1. iNtuition 2. Feeling 3. Thinking 4. Sensing 	ENTP <ol style="list-style-type: none"> 1. iNtuition 2. Thinking 3. Feeling 4. Sensing
ESTJ <ol style="list-style-type: none"> 1. Thinking 2. Sensing 3. iNtuition 4. Feeling 	ESFJ <ol style="list-style-type: none"> 1. Feeling 2. Sensing 3. iNtuition 4. Thinking 	ENFJ <ol style="list-style-type: none"> 1. Feeling 2. iNtuition 3. Sensing 4. Thinking 	ENTJ <ol style="list-style-type: none"> 1. Thinking 2. iNtuition 3. Sensing 4. Feeling

Mental Function Relational Structure

IMPERSONAL

REALISTIC	<p style="text-align: center;">AUTHORITARIAN</p> <ul style="list-style-type: none"> • Specifics • Systematic • Certainty/Control • Realistic • Emphasis on W • Work and Roles • Position Important • Narrow Goals • Results Focuses • Heroes = Tough Minded <p style="text-align: center;">SPECIFIC</p>	<p style="text-align: center;">ENTREPRENEURIAL</p> <ul style="list-style-type: none"> • Vision • Broad, Global Issues • Not Much Detail • Idealistic • Impersonal • Create New Things • Competence Important • Theoretical • Heroes = Problem Formulators <p style="text-align: center;">GLOBAL</p>	IDEALISTIC
	<p style="text-align: center;">FAMILIAL</p> <ul style="list-style-type: none"> • Interpersonal Aspects of Environment • Specific Human Relations • Loyalty • Cooperation • Familiarity • Workers First, Then Work, Then Roles • Heroes Create Personal & Warm Environment 	<p style="text-align: center;">HUMANITARIAN</p> <ul style="list-style-type: none"> • Focus on Broad Human Goals • Organization Exists to Serve People • Values Important • Seek Alignment of Org. Values • Decentralized • Personal • Seek Growth & Development • Heroes are Visionary and Involve People 	

PERSONAL

Pithy Description of Each Type

ISTJ <i>Analytical</i> manager of facts and details.	ISFJ <i>Sympathetic</i> manager of facts and details.	INFJ People oriented <i>innovator</i> of ideas.	INTJ Logical, critical, decisive, <i>innovator</i> of ideas.
ISTP Practical <i>analyzer</i> who values exactness.	ISFP <i>Observant</i> , loyal helper.	INFP <i>Imaginative</i> , independent, helper.	INTP <i>Inquisitive</i> analyzer.
ESTP <i>Realistic</i> adapter in the work of material things.	ESFP <i>Realistic</i> adapter in human relationships.	ENFP <i>Warmly</i> enthusiastic planner of change.	ENTP <i>Inventive</i> , analytical planner of change.
ESTJ Fact-minded, <i>practical</i> organizer.	ESFJ <i>Practical</i> harmonizer and worker-with-people.	ENFJ <i>Imaginative</i> harmonizer and worker-with-people.	ENTJ Intuitive, <i>innovative</i> organizer.

Brief Descriptions of the 16 Types - Leadership

ISTJ <ul style="list-style-type: none"> ◆ Leads by bringing order and efficiency to meetings and tasks ◆ Influences by using logical arguments backed by specifics and realism ◆ Focus is on facts, details, and results 	ISFJ <ul style="list-style-type: none"> ◆ Leads by encouraging others in tasks that suit them best ◆ Influences by ensuring that information is accurate, things are organized ◆ Focus is on setting priorities based on the needs of people 	INFJ <ul style="list-style-type: none"> ◆ Leads by encouraging others to cooperate in working towards a vision ◆ Influences by being creative and dedicated ◆ Focus is on creative insight and strong values 	INTJ <ul style="list-style-type: none"> ◆ Leads by setting the course to make an idea become reality ◆ Influences by intellectual depth and dedication ◆ Focus is on designing systems, changing the status quo
ISTP <ul style="list-style-type: none"> ◆ Leads by quietly setting an example ◆ Influences, when asked, by having all the needed information ready ◆ Focus is on finding the logical ways to get things done 	ISFP <ul style="list-style-type: none"> ◆ Leads by encouraging others to cooperate ◆ Influences by example, helping others pursue their ideals ◆ Focus is on the practical care of people 	INFP <ul style="list-style-type: none"> ◆ Leads by promoting harmonious teams where each person is valued ◆ Influences by highlighting common ideas and new possibilities ◆ Focus is on group consensus and shared values 	INTP <ul style="list-style-type: none"> ◆ Leads by convincing others of the merit and logic of his/her ideas ◆ Influences by providing in-depth knowledge and analysis ◆ Focus is on logical, intellectual insights to problems
ESTP <ul style="list-style-type: none"> ◆ Leads by finding the most efficient way to work together ◆ Influences by establishing logical processes, pursuing them with enthusiasm ◆ Focus is on action, taking care of problems as they arise 	ESFP <ul style="list-style-type: none"> ◆ Leads by encouraging the contributions of others ◆ Influences by enthusiasm and enjoyment of the tasks at hand ◆ Focus is on creating an upbeat atmosphere for people 	ENFP <ul style="list-style-type: none"> ◆ Leads by creating a vision, helping people see their potential ◆ Influences by listening to and incorporating the ideas of others ◆ Focus is on exploring all the possibilities 	ENTP <ul style="list-style-type: none"> ◆ Leads by developing novel strategies for new enterprises ◆ Influences by going the extra mile ◆ Focus is on innovative models, conquering challenges
ESTJ <ul style="list-style-type: none"> ◆ Leads by planning, providing directions, and assigning responsibilities ◆ Influences by modeling the standards and commitment he/she expects from others ◆ Focus is on structuring tasks so goals are met 	ESFJ <ul style="list-style-type: none"> ◆ Leads by paying attention to the needs of others and making sure they feel important ◆ Influences by being conscientious and hard-working ◆ Focus is on getting things organized so that people's personal needs are met 	ENFJ <ul style="list-style-type: none"> ◆ Leads by facilitating, helping others plan and cooperate to meet goals ◆ Influences by clarifying processes by which goals can be met ◆ Focus is on encouraging others in building consensus 	ENTJ <ul style="list-style-type: none"> ◆ Leads by presenting a vision, then energizing and directing others to meet it ◆ Influences by objectively analyzing ideas, setting goals ◆ Focus is on making decisions

Type Preferences and Work

<p>Extraversion</p> <p>Strengths</p> <ul style="list-style-type: none"> ◆ Large network ◆ Favorable verbal skills ◆ Confident and outgoing <p>Pitfalls</p> <ul style="list-style-type: none"> ◆ May talk too much ◆ May not listen enough ◆ May mistake activity for results 	<p>Introversion</p> <p>Strengths</p> <ul style="list-style-type: none"> ◆ Favorable resume representation ◆ Thoughtful and careful ◆ Concentrate on most important objective <p>Pitfalls</p> <ul style="list-style-type: none"> ◆ May spend too much time thinking ◆ May appear unenergetic and pensive ◆ May not develop or use networking
<p>Sensing</p> <p>Strengths</p> <ul style="list-style-type: none"> ◆ Accurate self-representation ◆ Thorough and practical ◆ Realistic about job opportunities <p>Pitfalls</p> <ul style="list-style-type: none"> ◆ May not want to try something new ◆ May have difficulty with open-ended questions ◆ May be too literal in interpreting job requirements 	<p>Intuition</p> <p>Strengths</p> <ul style="list-style-type: none"> ◆ Optimistic self-representation ◆ Open to unusual employment possibilities ◆ Adept at finding additional resources and help <p>Pitfalls</p> <ul style="list-style-type: none"> ◆ May be pulled in many directions ◆ May not respond well to specific, factual questions ◆ May overlook important job requirement details
<p>Thinking</p> <p>Strengths</p> <ul style="list-style-type: none"> ◆ Established job search strategy ◆ Objective criteria for job requirements ◆ Well-organized rationale for decisions <p>Pitfalls</p> <ul style="list-style-type: none"> ◆ May not take their own feelings into account ◆ May not weigh the impact of their decisions on others ◆ May over rationalize 	<p>Feeling</p> <p>Strengths</p> <ul style="list-style-type: none"> ◆ Values-oriented ◆ Personable and pleasant ◆ Adept at understanding organizational climates <p>Pitfalls</p> <ul style="list-style-type: none"> ◆ May be overly concerned with pleasing others ◆ May take rejection personally ◆ May relay too much personal information
<p>Judging</p> <p>Strengths</p> <ul style="list-style-type: none"> ◆ Organized and systematic ◆ Uses a step-by-step process for job search ◆ Materials and resources available at right time and place <p>Pitfalls</p> <ul style="list-style-type: none"> ◆ May define career choice too soon ◆ May become impatient with process ◆ May be rigid about career goals, plans 	<p>Perceiving</p> <p>Strengths</p> <ul style="list-style-type: none"> ◆ Ability to see options and opportunities ◆ Capacity to adjust plans and redefine goals ◆ Flexibility in terms of career outcomes <p>Pitfalls</p> <ul style="list-style-type: none"> ◆ May have difficulty making decisions ◆ May spend too much time gathering information ◆ May not set realistic time frames

Boss or Leader?

Please indicate which of the following behaviors and attitudes are more aligned with being a boss (B) or being a leader (L).

Drives employees _____

Depends upon authority _____

Says “do it” _____

Coaches employees _____

Assigns blame for errors _____

Takes credit _____

Shows how it is done _____

Asks _____

Develops people _____

Depends upon goodwill _____

Commands _____

Says “let’s do it” _____

Attempts to correct errors _____

Says “I” _____

Uses people _____

Generates enthusiasm _____

Says “we” _____

Knows how it is done _____

Inspires fear _____

Gives credit _____

-Session 3-

Emotional Intelligence: A Key Competency for Successful Leaders –

Kristine Van Dorsten, Senior Education Developer, California Judicial Council's Center for Judicial Education and Research

Kristine Van Dorsten

Kristine Van Dorsten is a Senior Education Developer with the California Judicial Council's Center for Judicial Education and Research where she works primarily on leadership education projects. Ms. Van Dorsten has been with the Judicial Council since 2007 during which time she has also provided consultation, training and technical assistance on a variety of projects involving the family, probate and dependency court systems. Ms. Van Dorsten designs and develops numerous trainings for court leadership and regularly serves as faculty. She also frequently designs and conducts training interventions for local court staff based on specific needs. Ms. Van Dorsten's background has included many years of direct service for Children Services and the courts as an investigator and mediator, as well as management positions within these systems. She is a licensed social worker in the State of Ohio, and is a certified professional development coach with specialized advanced training in organizational systems and team coaching. Ms. Van Dorsten is also an authorized facilitator of the Team Diagnostic Assessment and a certified facilitator of the EQ-i 2.0 assessment.



Emotional Intelligence

A Key Competency for Successful
Leaders

Learning Objectives

Participants will:

- Describe the components of Emotional Intelligence (EI)
- Identify specific EI competencies associated with successful leaders
- List ways the EI of leaders impact the workplace
- Become familiar with strategies for improving emotional intelligence

Kristine Van Dorsten is a Senior Education Developer with the California Judicial Council's Center for Judicial Education and Research where she works primarily on leadership education and training. Ms. Van Dorsten designs, develops and teaches numerous trainings for court leadership. She also frequently designs and conducts training interventions for local court staff based on specific needs. Ms. Van Dorsten has been with the Judicial Council since 2007 during which time she has also provided consultation, training and technical assistance on a variety of projects involving the family, probate and dependency court systems. Her background has included many years of direct service for Children Services and the courts as an investigator and mediator, as well as management positions within these systems. She is a licensed social worker in the State of Ohio, and is a certified professional development coach with specialized advanced training in organizational systems and team coaching. Ms. Van Dorsten is also an authorized facilitator of the Team Diagnostic Assessment and a certified facilitator of the EQ-i 2.0 assessment.

Read the following scenarios and choose the answer that is most similar to the way you would most likely respond right now and not how you think you should or would like to respond.

1. You just received an email from your boss that you need to submit a budget estimate to her by noon tomorrow. You also have a project meeting tomorrow at 9:00am with the presiding judge and stakeholders that you already rescheduled once and cannot reschedule. It is 3pm and your employee Jason just knocked on your door and said he needs to leave due to an emergency at home- something that happens frequently. You will have to help cover the desk for the next two hours. You also have a family birthday celebration planned for tonight. ***You are most likely to...***
 - a. Feel anxious and call your boss immediately, complain about Jason, and ask what to prioritize- you can't do it all.
 - b. Feel irritated, interrupt Jason who is giving you lots of details you don't need, and curtly advise him you don't have time to listen and excuse him. After he leaves, you proceed to the front desk with your work and tell others you'll be sitting in for Jason "*again*" but trying to get your own work done too.
 - c. Feel some pressure, calmly wish Jason well and take your work out to the front desk to work on while covering the desk. Proceed how to plan and prioritize for the next 24 hours.
 - d. Feel overwhelmed and have trouble concentrating on your work and managing the desk for the next 2 hours.
2. You are leading a meeting to get input on a crucial implementation stage for a new process where a problem with the design was discovered. You and several colleagues feel strongly about a certain course of action and you don't all agree. A decision on how to move forward needs to be made immediately. ***You would most likely...***
 - a. Thank them for their feedback, tell them you have considered their positions and give the reasons you will move forward with your course of action.
 - b. Talk to your boss after the meeting and ask how to proceed. You are unsure about the best course of action and worried about making the wrong decision.
 - c. After the meeting, go do more research and postpone the decision so you can be sure you are making the right decision.
3. You are responsible for leading the implementation of a new procedure that you do not agree with. ***You are most likely to...***
 - a. Be honest with your team and share with them your concerns, but tell them that it is coming from the executives so we need to support it and move forward.
 - b. Meet with your boss and gain clarity on business needs and brainstorm options for communicating the roll out.
 - c. Respectfully tell your boss your team won't like this and in order to "avoid being the bad guy", suggest she be the one to inform your team about this new procedure.

Emotional Intelligence

Emotional Intelligence is a set of emotional and social skills that collectively establish how well we:

- Perceive and express ourselves
- Develop and maintain social relationships
- Cope with challenges
- Use emotional information in an effective and meaningful way

Emotional Intelligence is the ability to be aware of our own emotions and those of others, in the moment, and to use that info to manage ourselves and manage our relationships.

EQ-i 2.0

Emotional Intelligence is divided into 5 general categories. Within each category there are additional emotional intelligence subscales.

Self-Perception

Self-Expression

Interpersonal

Decision Making

Stress Management

Group Discussion: Examples of Emotional Competencies at Work

Think of the skills that are required of you in your leadership role and on which you are evaluated. Make a list of 3-5. Then, using the emotional intelligence categories above, discuss which ones you believe might be related to the leadership skill you listed.

Emotional Intelligence Competencies/Skills Associated with Leadership

Strengths and Blind Spots of Leaders

Read the brief descriptions below and answer the questions.

Justice manages 5 legal research assistants. She is skilled and extremely confident in expressing herself and being assertive. She is less skilled in recognizing and understanding how others feel. What behaviors might we see and/or how might she be perceived?

Franco supervises a team of 8 court clerks. He is very good at picking up on social cues, is highly sensitive to how others feel and respects others' opinions. His team members are close, feel appreciated and there is a sense of camaraderie among them. Franco's manager, on the other hand, has some concerns about Franco's performance. What might you suspect they are?

Micki is the head of a division and has 3 managers reporting to her. She is known for getting things done, has an optimistic outlook and remains confident and positive despite setbacks. At the same time, she has trouble remaining objective and seeing things as they really are. What behaviors and impact might we see?

Internal Dialogue

It is important to be aware of internal voices and beliefs that are consciously or subconsciously impacting our feelings and behaviors. Below is a list of common voices/beliefs that may be repetitive and impact our behavior without our awareness. Choose one or two from the list that you know is common for you or come up with your own and answer the following questions.

How has this had an impact on your behavior?

Think of a specific situation. How has this had an impact on others?

Everyone I work with must approve of me.
They are going to find out I'm incompetent if I make a mistake.
There are never enough resources so I must act quickly.
Conflict is to be avoided.
I need to be right and have the answers.
If (I'm) it's not perfect, it's proof that I'm not good enough.
I compare myself to others so I know how I rank.
I must solve problems or fix things for people.
Speaking up will label me as difficult.
I must be in control at all times.
I can change them.
Pressure makes me focus and work harder.
Change is hard.
When I get frustrated or treated unfairly, I view things as awful or terrible.
I'm afraid they're going to find out I don't belong here.

Intention Exercise

Think of the result rather than the intention of your behavior. By focusing on the result, you will be better able to see the other person's perspective. This helps to improve our empathy and ability to resolve conflict.

Example:

I said/did: I sent an email cancelling the meeting without any details.

I meant: I wanted more time to prepare because it was important.

The result: You thought I didn't think it was important.

I could have said/done: Sent an email explaining I want to cancel the meeting so I can gather more information. This is important and I think having all the facts will help us in our discussions.

Suggestions for Practice:

1. Increase awareness of emotions throughout the day, the thinking associated with emotions, and the types of triggers.
2. Conduct an emotional impact audit.
For next 2 weeks, notice how your emotions impact your decisions, behavior and others. Keep a journal and make a daily list.
3. Practice identifying the emotions of others and the “emotional field” during team meetings. Be transparent and check in with others to gauge accuracy.
4. Notice what is motivating you to take a certain action- your underlying beliefs, your own interests, interests of others, your values.

Self-Reflection Activity

1. What are my strengths?
2. Where can I improve?
3. What 2 areas will I focus on for the next 30 days?
4. Who can I share this with to hold me accountable and to give me feedback?
5. What is the next step?

Resources:

Emotional Intelligence 2.0, Bradberry and Greaves

Working with Emotional Intelligence, Daniel Goleman

The EQ Edge: Emotional Intelligence and Your Success, Stein and Book

-Session 4-

Opperman Speaker

The Forgotten Presidents: Their Untold Constitutional Legacy -

Professor Michael Gerhardt, Samuel Ashe
Distinguished Professor of Constitutional
Law at the University of North Carolina.

Michael Gerhardt

Michael Gerhardt is Samuel Ashe Distinguished Professor of Constitutional Law at UNC Law School, Scholar in Residence at the National Constitution Center, and Visiting Professor at the University of Pennsylvania Law School. He is a nationally recognized expert on constitutional conflicts and the author of dozens of law review articles and five books. The New York Times praised his book, “The Federal Appointments Process,” as the principal guide used by the Bush administration for the confirmation hearings for both Chief Justice John Roberts and Samuel Alito, Jr., and his books on the federal impeachment process and on precedent have been widely cited as classics in their fields. The Financial Times selected his book, “The Forgotten Presidents: Their Untold Constitutional Legacy” (Oxford University Press, 2013), as one of the best non-fiction books of 2013.

Professor Gerhardt has testified more than a dozen times before major congressional committees as a constitutional expert. In 1998, he was the only joint witness to testify before the House of Representatives during President Clinton’s impeachment; and he was the only legal scholar invited to meet (behind closed doors) with the entire House of Representatives to discuss the federal impeachment process. He has participated in the confirmation proceedings for six of the nine justices currently on the Supreme Court, including as Special Counsel to the Senate Judiciary Committee on the nominations of Sonia Sotomayor (2009), Elena Kagan (2010), and Neil Gorsuch (2017) to the Supreme Court. In 2015, the Library of Congress selected him as the first independent scholar ever to help to oversee and coordinate the updating of the official United States Constitution Annotated. Professor Gerhardt received his B.A with honors from Yale University, an M.Sc. from the London School of Economics, and a JD with honors from the University of Chicago. He has given distinguished constitutional law lectures at universities around the world, including three at Princeton University, and been interviewed regularly by every major national media organization, including CNN where he was resident expert on the impeachment process throughout President Clinton’s impeachment proceedings. After law school and before entering academia, Professor Gerhardt clerked for two federal judges, served as the Deputy Media Director for Al Gore, Jr.’s first Senate campaign, and practiced law in the D.C. law firm, Miller, Cassidy, Larroca & Lewin, which specialized in complex civil and criminal litigation.

- Sessions 5, 8, & 12 -

Applying Education: What We've Learned –

-Polly Brock, Chief Deputy Clerk- Colorado Court of Appeals

-Jenny Kitchens – Clerk of Court, South Carolina Court of Appeals

Pauline Brock

Pauline Brock has been with the Colorado Court's since 1996 and is currently the Deputy District Administrator for the Colorado Supreme Court and Court of Appeals. Polly graduated from the University of Colorado School of Law in 1992. Before her current position, Polly was a staff attorney for the Colorado Court of Appeals specializing in motions and jurisdiction for over 10 years. She is a graduate of the Colorado Judicial Executive Leadership Development Program (2015) and the Colorado Institute for Faculty Excellence in Judicial Education (2017).

Jenny Abbott Kitchings

Jenny Abbott Kitchings received a Bachelor of Arts from Converse College with a major in Modern Languages, including Spanish, Italian, and French. She graduated from the University of South Carolina School of Law with a Juris Doctor and from the top-ranked Moore School of Business with an International Masters of Business Administration.

Upon graduation, Jenny came to work in the judicial system as a trial court law clerk. When her judge was elected to the Court of Appeals, she veered into private practice before returning to the court as an appellate law clerk. She was appointed as Clerk of Court of the South Carolina Court of Appeals on January 25, 2012.

Jenny's an INFJ, a proponent of technology, a Star Wars nerd, a Clemson fan, a lucky wife, and a competent, if harried, momma of two little girls.

- Session 6 –

The Multi-generational Workplace –

Pam Harvit, Speaker, Professional
Consultant and Columnist

Pamela M. Harvit MS CEA

After receiving both a Bachelor of Science and a Master of Science from West Virginia University, **Pamela Harvit** began working for Fortune 500 Companies where she has held several positions which include specialty and training responsibilities. As an Executive Specialist with Merck and Company, she was the recipient of the prestigious “Hall Fame Award” from that Company. In that capacity, she attended the Protocol School of Washington and became certified in Corporate Etiquette and International Protocol by that institution. She also studied under the direction of Dorothea Johnson, Protocol Adviser and Liaison to the Washington Diplomatic Community for the Joint Military Attaché.

Ms. Harvit is a popular national speaker having presented to executives and employees of national banking and insurance associations, medical societies, the West Virginia Supreme Court, the Chamber of Commerce, national law and accounting firms, hospitals, medical schools, universities and many other organizations. She is quoted in the *Washington Post*, has written for *West Virginia Executive Magazine*. For over a decade, she has been a featured columnist for the largest statewide newspaper in West Virginia, *The Gazette Mail*. Her column, “Mind Your Manners,” is a favorite among readers.

For the first time in American History, there are four (and soon to be five) generations in the workforce at the same time. Each of these generations has distinct and diverse characteristics that were shaped and defined by events that occurred in their youth. But what does this mean in the workplace? In some cases, it has created generational tension. However, understanding and successfully leveraging the diverse sets of skills and differences each generation brings to the “table” can also make a stronger, more enjoyable workplace. In this fun presentation, Pam Harvit will discuss what makes each generation unique as well as ways to understand, communicate and appreciate the diversity.

Also, speaking of “table,” everyone understands the importance of proper dining skills regardless of your generation. However, do you know how to dine like a diplomat? In this hands-on and informative presentation, Pam will unlock some of the lesser-known secrets which will set you apart in any social or business setting. [This presentation is sure to “generate” a buzz!](#)

- Session 7 –

Recent Developments in Employment Law / How to Avoid Traps for the Unwary

Patti Williams, Supervising Attorney of the
Legal Services Office's Labor and
Employment Unit

Patti Williams

Patti Williams is the Supervising Attorney of the Legal Services office's Labor and Employment Unit. She joined the Judicial Council staff in 2006 after spending 14 years in private practice, where she specialized in employment litigation and advising. In 1992, Ms. Williams graduated from the University of California, Davis, King Hall School of Law. In 1988, Ms. Williams received a Bachelor of Sciences degree in Art – Studio from the University of California at Davis. Ms. Williams spends her free time swimming, cycling and running.

Employment Law Update and Best Practices

- Presented by:
- Judicial Council of California
 - Patti Williams, Supervising Attorney



Case Law Update

What's new?

No, no...
This isn't gossip.
It's the truth.



Case Law Update

Equal Pay Act

Rizo v. Yovino (E.D.Cal. 2017)



Case Law Update (cont'd)

Is sexual orientation protected under Title VII?

Hively v. Ivy Tech Community College (7th Cir. 2017)

Christiansen v. Omnicom (2nd Cir. 2017)



Case Law Update (cont'd)

Title VII: Hostile Work Environment

Reynaga v. Roseburg Forest Products (9th Cir. 2017)

Zetwick v. County of Yolo (9th Cir. 2016)



EEOC Activity

Updated Enforcement Guidance on Retaliation
(August 2016)



Traps for the Unwary Employer



How to Handle Difficult Situations
That Can Lead to Liability

Requests for Reasonable Accommodation



“We don’t have to accommodate that... do we?”

Steps to Creating Good Habits for Handling Leaves and Accommodations

- Demystifying the interactive process and understanding what is and isn't a reasonable accommodation
- Responding to requests for leaves, including indefinite leaves



Demystifying the Interactive Process



- The Request
 - No special words are required by the employee
 - Accommodation request may come from your own observations
- Gathering Information
 - Meet face-to-face if possible
 - Request medical information if needed
 - Focus on work-restrictions, not diagnosis

Understanding the Interactive Process

- Explore Ideas
 - Ask employee or doctor for suggestions
 - Be creative and document your efforts
- Determine the accommodation
 - Accommodation requested by employee is not required
 - Should allow for performance of essential duties
- Follow-up
 - Never assume once is enough
 - Start over if necessary



The Interactive Process is Complete When...

- The reasonable accommodation works
 - Warning: Accommodation is an ongoing process; past success does not negate the need for future efforts
- The employee does not cooperate
 - Test: Who is responsible for the break down of the interactive process
- The Employee is not “qualified” under the ADA
- The request creates an undue hardship for the Court
 - Extremely high standard



Questions to Ask Yourself Before Terminating the Interactive Process

- Have we done enough?
 - What efforts have we made to return the employee to work, or otherwise accommodate the employee, in this instance?
 - How will you be able to answer the questions “What did you do to help this employee?” and “Why did you not do x?”
- How will a neutral person view your efforts?
 - Will a jury believe that you did everything to help the employee in the most recent instance or that you looked for the first opportunity to cut ties with the employee?

Accommodations 101

Reasonable Accommodation	NOT a Reasonable Accommodation
Job and duty restructuring	Eliminate essential functions
Make existing facilities accessible; Acquire new workplace equipment	Purchase personal use items (i.e., prosthetic limb, eyeglasses, hearing aids)
Modify work schedule	Reduce workload standards
Defined period of unpaid leave	Provide indefinite leave
Consider Policy Modifications	Excuse past policy violations
Reassignment to vacant position that employee is qualified to fill	Create a new job; Bump an employee from job; Promote an unqualified employee to vacant job
Reassign tasks on a temporary basis	Hire other employees to pick up the slack caused by reassigned duties

Conduct Issues

- Attributed to a mental disability?
- Assess threats
- Actual misconduct required
- Possible reasonable accommodations?



Handling Indefinite Leaves- “I’ll be back two weeks from never...”

- Employee may request unpaid leave as accommodation
 - No maximum duration
- If you receive a leave request with no anticipated return to work date
 - Require the doctor/employee to provide an actual return to work date
 - Don’t accept “next examination” response
- If the doctor/employee requests multiple extensions
 - Consider asking why doctor’s earlier predictions were wrong
 - Ask what the basis is for the most recent Return to Work date

When Can I Terminate the Leave?



- Use extreme caution and conduct an individualized inquiry with input from HR
 - How long has the leave been?
 - How many times has the leave been extended?
 - How long is the most recent request?
 - What have we told the employee in past extensions?
- Is continued absence an undue hardship?
- Is providing more leave futile?

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When is Leave an Undue Hardship?

- Accommodations create an undue hardship only if they:
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 - Are unduly disruptive
 - Fundamentally alter the nature of the Court's operations
- Factors include:
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FMLA Leaves—Abuse by Employees?

- Proceed with caution!
- Consider who the witnesses will be
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Discrimination and Retaliation Claims

- Both Discrimination and Retaliation Claims require the employee to prove only:
 - He/she belongs to a protected class (discrimination) or engaged in a protected activity (retaliation)
 - He/she suffered an adverse employment action
 - Causal connection tying the protected characteristic to the adverse action- i.e. the adverse action was “because of” my protected status
- While employers have certain defenses, the bar for bringing a lawsuit and avoiding early dismissal are low

Protected Characteristic or Action

- Protected **Characteristic** for Discrimination Claims
 - The same characteristics that are protected for harassment (sex, race, religion, disability, age, etc...) are also protected for discrimination
- Protected **Action** for Retaliation Claim
 - Filing or assisting another in filing a good faith complaint of harassment, discrimination, policy violation, violation of law, or other issue of public or Court-wide importance
 - Participating in an investigation into such complaint (either as a witness or complainant)
 - Refusing a direction the employee believes, in good faith, is unlawful

Defining a “Good Faith” Complaint

- Complaints are protected if made in **good faith**
- What about a good faith, but mistaken, belief?
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Identifying Adverse Employment Actions

- Any action that is materially adverse to a reasonable employee or job applicant
- **Test:** Would it dissuade a reasonable worker from coming forward
- Examples include:
 - Termination, suspension, demotion, or reduction in terms and conditions of employment
 - Lateral job transfer that disrupts employee's life
 - Poor performance evaluations
 - Freezing the employee out of normal activities or not providing support

Proving Causation

- Is the adverse action **because of** the protected activity?
- Timing, knowledge and motivation matter
 - The closer in time, the more likely retaliation can be proven
 - Does the decision-maker know about the protected activity?
 - Is the Court able to point to a legitimate reason for the adverse action?
- Ask yourself: Would a neutral person who does not know me (and might think the worst of me) believe I acted against the employee because of a protected action?
- Remember: Juries love retaliation claims- it is easy to believe someone is motivated by revenge or animosity!

Dealing with Complaints of Discrimination or Retaliation

- Handle the same as harassment complaints:
 - If you are aware of, witness, or have an employee make a complaint of retaliation or discrimination, act immediately
 - Remind the employee that the Court does not tolerate retaliation for making the complaint
 - Stay vigilant to prevent any reprisals against the complaining employee
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So How Do I Discipline a Protected Employee?

- Don't wait until the employee becomes protected to address performance issues
 - Address issues at the time they occur
- Always document serious issues
 - Timely and objectively document the issues; do not rely on or trust your memory- the jury will not!



Discipline (cont'd)

- Be consistent in:
 - Enforcing policies
 - Treat your best performer like your worst performer (no special treatment)
 - You can be tough or lenient, just be consistent!!!



Questions?



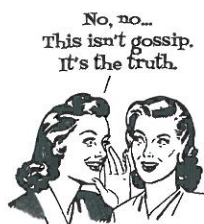
Employment Law Update and Best Practices

- Presented by:
- Judicial Council of California
 - Patti Williams, Supervising Attorney



Case Law Update

What's new?



Case Law Update

Equal Pay Act

Rizo v. Yovino (E.D.Cal. 2017)



Case Law Update (cont'd)

Is sexual orientation protected under Title VII?

Hively v. Ivy Tech Community College (7th Cir. 2017)

Christiansen v. Omnicom (2nd Cir. 2017)



Case Law Update (cont'd)

Title VII: Hostile Work Environment

Reynaga v. Roseburg Forest Products (9th Cir. 2017)

Zetwick v. County of Yolo (9th Cir. 2016)



EEOC Activity

Updated Enforcement Guidance on Retaliation
(August 2016)



Traps for the Unwary Employer



How to Handle Difficult Situations
That Can Lead to Liability

Requests for Reasonable Accommodation



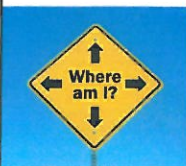
"We don't have to accommodate that... do we?"

Steps to Creating Good Habits for Handling Leaves and Accommodations

- Demystifying the interactive process and understanding what is and isn't a reasonable accommodation
- Responding to requests for leaves, including indefinite leaves



Demystifying the Interactive Process



- The Request
 - No special words are required by the employee
 - Accommodation request may come from your own observations
- Gathering Information
 - Meet face-to-face if possible
 - Request medical information if needed
 - Focus on work-restrictions, not diagnosis

Understanding the Interactive Process

- Explore Ideas
 - Ask employee or doctor for suggestions
 - Be creative and document your efforts
- Determine the accommodation
 - Accommodation requested by employee is not required
 - Should allow for performance of essential duties
- Follow-up
 - Never assume once is enough
 - Start over if necessary



The Interactive Process is Complete When...

- The reasonable accommodation works
 - Warning: Accommodation is an ongoing process; past success does not negate the need for future efforts
- The employee does not cooperate
 - Test: Who is responsible for the break down of the interactive process
- The Employee is not "qualified" under the ADA
- The request creates an undue hardship for the Court
 - Extremely high standard



Questions to Ask Yourself Before Terminating the Interactive Process

- Have we done enough?
 - What efforts have we made to return the employee to work, or otherwise accommodate the employee, in this instance?
 - How will you be able to answer the questions "What did you do to help this employee?" and "Why did you not do x?"
- How will a neutral person view your efforts?
 - Will a jury believe that you did everything to help the employee in the most recent instance or that you looked for the first opportunity to cut ties with the employee?

Accommodations 101

Reasonable Accommodation	NOT a Reasonable Accommodation
Job and duty restructuring	Eliminate essential functions
Make existing facilities accessible. Acquire new workplace equipment	Purchase personal use items (i.e., prosthetic limb, eyeglasses, hearing aids)
Modify work schedule	Reduce workload standards
Defined period of unpaid leave	Provide indefinite leave
Consider Policy Modifications	Excuse past policy violations
Reassignment to vacant position that employee is qualified to fill	Create a new job. Bump an employee from job. Promote an unqualified employee to vacant job
Reassign tasks on a temporary basis	Hire other employees to pick up the slack caused by reassigned duties

Conduct Issues

- Attributed to a mental disability?
- Assess threats
- Actual misconduct required
- Possible reasonable accommodations?



Handling Indefinite Leaves- "I'll be back two weeks from never..."

- Employee may request unpaid leave as accommodation
 - No maximum duration
- If you receive a leave request with no anticipated return to work date
 - Require the doctor/employee to provide an actual return to work date
 - Don't accept "next examination" response
- If the doctor/employee requests multiple extensions
 - Consider asking why doctor's earlier predictions were wrong
 - Ask what the basis is for the most recent Return to Work date

When Can I Terminate the Leave?



- Use extreme caution and conduct an individualized inquiry with input from HR
 - How long has the leave been?
 - How many times has the leave been extended?
 - How long is the most recent request?
 - What have we told the employee in past extensions?
- Is continued absence an undue hardship?
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 - Enforcing policies
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Questions?



- Session 9 –

E-Filing at the U.S. Supreme Court

Scott Harris, Clerk of the United States
Supreme Court

SCOTT S. HARRIS

Scott S. Harris became the 20th Clerk of the U.S. Supreme Court in September 2013. He is responsible for management of the Clerk's Office, which maintains Court records, processes case-related filings and orders, prepares and administers the Court's calendar, and drafts and administers the Court's Rules. The Clerk's Office also serves as a liaison between the Court, the bar and the general public regarding the Court and its administrative functions.

Before assuming his duties as Clerk, Mr. Harris served for 11 years as the Court's Legal Counsel. In that position, he oversaw the Court's Legal Office, which provides advice to the Justices on a variety of case-related petitions and motions, and also serves as "General Counsel" for the Court as an institution. Between 1997 and 2002, Mr. Harris served as an Assistant United States Attorney in Washington, D.C., defending federal agencies and officials in civil litigation in the federal courts. He also spent three years as an associate at the law firm now known as Wiley Rein, and he clerked for the Honorable Paul V. Niemeyer of the United States Court of Appeals for the Fourth Circuit.

Mr. Harris earned a B.S. from Yale University in 1988, with a double-major in Mechanical Engineering and History. In 1993, he received his J.D. from the University of Virginia School of Law, where he was a member of the Virginia Law Review. He lives in Maryland with his wife, Lisa Klem, and their three children.

- Session 10 –

Electronic Trial Court Records on Appeal – What Has Worked and What Hasn't

*Panel Moderator – John Moyer, Deputy Prothonotary (Retired), Commonwealth Court of Pennsylvania

*Panelist - Doug Shima, Clerk of the Kansas Appellate Courts

*Panelist – Matt Ruth, Senior Project Director, Administrative Office of Pennsylvania Courts

John R. Moyer

John R. Moyer was appointed as the Deputy Prothonotary of the Commonwealth Court in December, 2007, and was a Staff Attorney with the Court from 1995 to 2007. Prior to that time, Mr. Moyer worked as a law clerk to the Honorable James R. Kelley, Commonwealth Court, as counsel to the Honorable H. Craig Lewis, Pennsylvania Senate Judiciary Committee, and as counsel to the Pennsylvania Court of Judicial Discipline. Mr. Moyer received his J.D. from the University of North Carolina and his B.S. from Bloomsburg University. He also earned a Master of Education degree from the Pennsylvania State University and taught at various levels. He was instrumental in rescuing a large wooden roller coaster which is now operating at Knoebel's Grove, Elysburg, Pa., assisted in the construction of a second wooden roller coaster at Knoebel's and is most recently assisted in the recreation of a classic 1930's "Flying Turns" coaster, also at Knoebels, which opened in October, 2013.

On August 4, 2017, Mr. Moyer retired after 27 years with the Pennsylvania Courts.

Doug Shima

Doug Shima grew up in Rocky Ford, Colorado. A small farming community in southeastern Colorado along the Arkansas river. He is a self-proclaimed small-town-city-boy and the son of one of only two doctors in Rocky Ford at the time. Doug attended Bethel College in North Newton, Kansas, and then Washburn Law School graduating in 1994. He started his law career in the Kansas Court of Appeals central research staff and then hired on as chambers counsel with the Hon. G. Joseph Pierron, Jr., in 1995. Doug was with Judge Joe from 1995 until 2016 when he was appointed Clerk of the Kansas Appellate Courts overseeing the Kansas Supreme Court and Kansas Court of Appeals. Doug is married to Michelle and they have three kids – Tyler, Zach, and Kaitlyn. Doug never gave up on having a daughter so he would have someone to look after him when he got old.

Doug takes great pride in being very active in his kids' schools. He has served in virtually every executive position in the parent groups at Shaner Elementary School, Jardine Middle School, and Topeka West High School. He is founder of the WATCH D.O.G.S. programs at Shaner and Jardine. Doug is also known by school officials as the crazy guy that puts in all the flowers around the schools and is always at the school in the evenings watering and tending the gardens. Doug takes great pride in the flower gardens he and the students have established at Shaner, Jardine, and Topeka West. In September 2014, Doug organized the Sharefest activities at Topeka West and supervised over 250 volunteers cleaning up the campus, establishing new gardens, and planting over 250 new bushes and plants. In October 2014, the Topeka Public Schools recognized Doug with its "Above and Beyond Award."

Doug is a past chairman of the board of directors of the Topeka Bar Association. He has served in many capacities on the TBA board and its committees, including serving as board chair and board secretary. Doug currently co-chairs the TBA membership committee and is a regular contributor to the TBA Briefings newsletter. Doug received the TBA's Outstanding Young Lawyer Award in 1997. In April 2014, Doug received the TBA's prestigious award, the "Hon. E. Newton Vickers Professionalism Award," as a member who by his or her conduct, honesty, integrity, and courtesy, best exemplifies, represents or encourages other lawyers to follow the highest standards of the legal profession. Doug has also been active in the Sam A. Crow American Inn of Court ever since graduating from Law School and currently serves as the Inns' secretary/treasurer.

Doug is active in many organizations in addition to the Topeka Bar Association. He is a long-time supporter of meals on wheels, having served meals on wheels for over 25 years, and for the last 15 years has organized two corporate routes -- one for the Kansas Judicial Center and the other for his church, Southern Hills Mennonite Church. He served in many capacities with the board of directors of meals on wheels and ended his tenure after serving as board chairman for two years. In 2013, Doug was awarded the Rueter Award (pronounced "Roiter") for distinguished service to meals on wheels.

In his spare time, Doug enjoys coaching and/or watching his kids in their many activities. He also enjoys playing many sports including basketball, softball, and golf. Any time left after that, he is usually gardening at one of his kids' schools.

Matthew Ruth

Matthew Ruth is the Senior Project Manager, for the Administrative Office of Pennsylvania Courts (AOPC), overseeing the Pennsylvania Appellate Case Management System (PACMS) and Pennsylvania's Unified Judicial System's Web Portal (UJSPortal - <https://ujportal.pacourts.us>). In his position, he works directly with appellate court personnel to provide for electronic processing of all possible aspects of their case management practices. His position also involves oversight of the many applications provided by the UJSPortal including PACFile (electronic filing), PAePay (Online payment of bail, fines, costs, and restitution), Annual Attorney Registration, and PAeDocket (IOS and Android mobile case docket apps), among others.

Matt has overseen development of the Court's electronic original record pilot and rollout that began in early 2016. In addition he is also overseeing the AOPC IT department's development and implementation of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that was adopted by the Supreme Court of Pennsylvania and will become effective in January of 2018. Matt received his Bachelors of Science degree in Software Engineering and Systems Programming from Shippensburg University.

**MATERIALS OFFERED BY
ADMINISTRATIVE OFFICE OF
PENNSYLVANIA COURTS**

AOPC

Original Record Process

Proposed Functionality



August 2015

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Construction and Assembly of the Original Record--Phase 1

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Original Record Proposed Functionality

Introduction

3 The AOPC is in the process of developing electronic systems for compiling, indexing, assembling and conveying the Original Record by the lower tribunal / trial court for submission to the Appellate Court. 1 2

The stakeholders in the proposed process involve not only the Pennsylvania appellate courts, but trial courts, lower tribunals and agencies that prepare Original Record documents for the courts. This collaboration needs to be implemented so that no extra burden is placed upon any of the stakeholders to be able to meet the needs of the new process.

Any proposed method needs to implement electronic means to collaborate on the required documentation in such a manner that the integrity and security of the court records is maintained.

AOPC has devised an implementation plan to meet the needs of the stakeholders, that includes three (3) phases of development and implementation.

- Phase 1—Technically Capable Tribunals
- Phase 2—PACFile Approach
- Phase 3—Pending Original Records from the Case Management System(s)

By implementing the automated process over 3 phases of development, the Original Records Process can be brought into production more quickly. Those counties that have more robust automation and support will be able to build upon their existing systems. Other counties with fewer staff and small or no IT departments can be brought on board in a way that causes less of a time strain than their current manual processes.

In Phase 3 of the project, it is envisioned that the Original Record process will reside within the case management systems of the Orphans' Court / Common Pleas case management systems, and that future enhancements and updates to trial court case management systems by AOPC will incorporate this process.

Phase 1—Technically Capable Tribunals

The trial court or agency filing office user will be made a registered PACFile user associated to the specific county and the division they represent, or with a specific agency. They will receive a notification that directs them to upload documents. The documents to be uploaded include:

1. An index. The index should be detailed enough to adequately identify specific documents. A lengthy textual description of each document is not necessary.
 - The index/record will be certified through a stamping process in PACMS/CPCMS to provide for uniformity across tribunals.
 - A separate transmittal form indicating the contents will not be required.
2. A separately uploaded set of transcripts, identified as such. This will provide for future security for such documents.
 - Certification by the Court Reporter will be done by affixing a certification page at the end of each transcript.
3. For submitted transcripts, the Court Reporter could be provided with a security role to upload the documents.
 - A workflow would generate a notification to to produce the transcript.
 - PACFile would provide the notification to the Court Reporter that transcripts need to be uploaded.
 - Court Reporter would complete and upload the transcript.
 - After upload of transcripts by Court Reporter, Trial Court will complete the submission to Superior Court.
 - A workflow will run to notify the Trial Court that the transcript has been uploaded by the Court Reporter.
4. A separate set of "Secure Case File Documents."
 - The trial court or agency will not be required to return a copy of an Appellate Court notice of docketing since they must select the specific appellate court docket number for which the record should be filed.
5. The submitting user will verify the documents and complete the PACFiling process.
6. The submitting user would upload any additional documents to complete the Original Record filing prior to submitting the Original Record to the appellate court.
7. The submitting user will receive notification of submission through PACfile.

Appellate Court Acceptance of the Original Record in PACMS

An appellate court staff person will be able to see an icon, indicating that there are pending PACFile items to be accepted. They can click on this icon to navigate to the pending queue or use other navigation to open this screen. They will view a single package in the acceptance queue for the Original Record Submission.

1. An OnBase (electronic document management application) process will create the keywords necessary to connect the document(s) to the pending docket entry in PACMS. When the process is complete, the PACMS docket entry will be updated to a status of "Submitted" and the docket entries will be available for users in the PACFile acceptance queue.
2. Separate docket entries will be created for the Exhibits, Transcripts and Secure Case File documents so that these can be secured by the court if necessary.
3. Document uploads will be performed separately to accommodate any that may need to be filed as sealed documents.
4. A PACMS user will be able to review the document(s) in the PACFile acceptance queue and accept the docket entries.
5. The lower tribunal user will receive Notice of Acceptance and will be able to log into PACFile to review the documents. The active attorneys and any pro se litigants that are registered PACFile users will also receive notification and will be able to log in to review both the index and documents associated with the Original Record.

Additional Processes

1. Supplemental Items

Trial Court users will need to be able to submit supplementary items and to review any requests from Appellate Courts to supplement the record. These may include:

- Supplemental Record
- Additional Transcript of Testimony
- Trial Court Opinion

2. Additional Lower Tribunal Filings

AOPC will compile a list of appellate court docket entries that are filed by Lower Tribunals to make these available through PACFile.

3. Notice of Disposition

Lower Tribunal users and Judges will need the ability to receive notice of appellate court dispositions. From an original record perspective, this will prevent staff members that are compiling the record from having to proceed if a case is withdrawn or settled, for example.

Phase 2—PACFile Approach

1. PACFile would provide a solution to allow the Original Record to be uploaded as one filing for those counties/divisions that are capable of assembling it themselves.
2. PACFile could provide an alternative upload method, external to the case management functionality that may exist in the future, that would (see Figure on page 6):
 - a. Create and/or import an index (using a csv file format, for example). For CPCMS cases, this should be the docket sheet with the document sequence number highlighted.
 - b. Provide for numbering the documents and applying a number stamp automatically.
 - c. Facilitate uploading multiple documents at the same time as well as allow documents to be attached one at a time.
 - d. Provide for assembling uploaded documents into a single pdf or multiple pdfs when and if the size warrants.
2. PACFile would provide an interface for lower tribunal staff to track original record due dates and the internal status, as well as the PACMS status of the original record. The interface should reflect the docket number, short caption, original record due date, internal status (i.e. awaiting trial court opinion) within the lower tribunal. It should also allow staff to view an uploaded original record once it has been processed.
3. PACFile should automatically notify lower tribunal staff of any docket entries with a next event of Original Record Due.
4. PACFile should automatically provide notice to lower tribunal staff of any disposition on the case at the PACMS level.
5. The rules committee and/or the courts might consider standardizing the documents that need to be submitted and assist AOPC in determining the order in which they are to be combined so that the PACFile interface can be built correctly. It is clear that different divisions within the same county are doing this differently.
6. Pilot upload of the entire original record with Philadelphia Civil, allowing direction of data integration for CPCMS and capitalizing on their technical capability to compile the record. Work on integration for CPCMS next and then pilot with Philadelphia Criminal, as they are also able to compile the documents using their eFiling system. Work on alternative index and upload implementation and pilot with Allegheny Criminal, Civil and then Orphans Court.

Select Method

☐ a. Upload Already Assembled Documents

☐ b. Create Index and Upload Documents

Original Record Index/Document Upload

Number	Description	Text	Document
1	Original Papers		<input type="checkbox"/>
2	Bill of Information		

Upload CSV file

Match Documents to Index

Document Upload

Number	Name	Document
1	Complaint.pdf	<input type="checkbox"/>
	Bill.pdf	

Upload Documents

Save and Verify

Phase 3—Pending Original Records from the Case Management System

The Common Pleas/Orphans' Court Case Management System, as well as future updates to current and newly developed AOPC trial court case management systems, could provide court users with the ability to electronically organize case documents and other files to create an Original Record upon request of the appellate court.

When an appellate court requests an Original Record, the trial court could receive an electronic notification in the case management system.

Using the Pending Original Records process the submitting court would be able to:

1. Search for and view all docket entries and documents for the case(s), potentially including consolidated cases in a single user interface.
2. Select docket entries for inclusion in the original record, along with any electronic documents associated to the docket entries.
3. Upload any additional documents, that may not be part of the official docket but may need to be included in the Original Record.
4. Reorder and renumber documents and docket entries to be included.
5. Create an electronic index and certification document.
6. Transmit the Original Record to the appellate court in a transfer-like process.
7. Receive notifications from within the case management system of:
 - a. Verification of receipt of the Original Record from PACMS.
 - b. Future disposition(s) on the submitted cases for their tracking purposes through the case management system.

Pending Original Records Process

The screenshot shows the OCCMS software interface. The main window is titled 'OCCMS - [CAORSU01] Pending Original Records'. It displays a list of records with columns: Docket Number, Filed Date, Include, OrderNo, Entry, and Move Up. Below this, there are two sections for document details, each with a 'Documents' button and 'Edit/View' and 'Remove' options.

Docket Number	Filed Date	Include	OrderNo	Entry	Move Up
OC-46-WE-0000597	7/3/2013	<input checked="" type="checkbox"/>	1	Petition for Grant of Letters	Move Up
OC-46-WE-0000597	7/3/2013	<input type="checkbox"/>		Request for Short Certificate	Move Down
OC-46-WE-0000597	7/30/2013	<input checked="" type="checkbox"/>	2	Certification of Notice	Create
OC-46-WE-0000597	9/18/2015	<input checked="" type="checkbox"/>	3	Inventory Filed	
OC-46-WE-0000597	9/18/2015	<input checked="" type="checkbox"/>	4	Inheritance Tax Form 1500	
OC-46-WE-0000597	1/15/2014	<input checked="" type="checkbox"/>	5	Notice of Appraisalment Form 1547	

Attached Date	Include	Document Name	Attached By
02/01/2014	<input checked="" type="checkbox"/>	Correspondence	aopc_admin28

Created On	Document Name	Attached By	Submitted On
02/01/2014	Original Record	aopc_admin2	2/01/2014

Functions

The following functions could be included in Pending Original Records in the case management systems.

- Search for Case(s) and Consolidated Cases
- View Docket Entries for Target Case(s)
- Select and Order records for inclusion in the Original Record
- Upload additional documents for inclusion in the Original Record
- Create an Indexed Original Record
- View Original Records

Future Steps

1. Modify Rule 1931 to provide for methods of transmission of the inventory to attorneys and pro se litigants other than through mail.
2. Committee review of other rules/administrative documents to be modified.
3. Review and revise proposal with:
 - a. Follow-up meeting with Trial Court and Superior Court representatives with PACFile demonstration
 - b. Appellate Court Rules and Divisional Rules Authorities
4. Establish a pilot project plan and schedule based upon the Trial Court division that the county feels is most technically capable and upon Superior Court's upcoming schedule. The pilot will be between Superior Court and Trial Court, but once capability is established, the other appellate courts will be considered. The plan will include:
 - a. Delivery of a simulated document from Trial Court that AOPC staff can test through the PACFile process.
 - b. Future meeting dates
 - c. Date the county believes they can have internal process developed and ready to be system tested
 - d. Internal Testing Submission Through PACFile
 - e. PACMS Acceptance Testing
 - f. Proposed go-live date for Pilot

Long Term Goals

- Incorporate the Pending Original Record process into Orphans' Court implementation.
- Incorporate the Pending Original Record process into existing and future AOPC-developed case management systems.

APPENDIX

Construction and Assembly of the Original Record—Phase 1

Introduction

This document is intended to provide guidance and to act as a process guide to Lower Tribunals regarding the creation and submission of an electronic version of the Original Record. At the time a case is created in the Appellate Courts Case Management System, PACMS, a request for filing will be sent to the Lower Tribunal, asking for the submission of the Original Record. In accordance with the proposed Original Record document, the Lower Tribunal will be able to submit the requested Original Record electronically to the Appellate Court using PACFile.

Request for Filing

Lower Tribunals that are PACFile registered users will receive an electronic request for filing from PACFile. The request will provide pertinent case information to the Lower Tribunal and allow for a simple upload of the Original Record and any accompanying documents to the Appellate Courts.

Message	Notification Type	Lead Case Caption	Filing Name	Received Date	Filed Date	Filing Type	Tracking Number	Docket Number	Submitter	Filers	Status	Comments	Send To
<input type="checkbox"/> View Filing Requested for case 1458 WDA 2014	Case Filing Requested	Comm. v. Dohn, David J. Jr.		12/18/2014	12/19/2014	Trial Court Record		1458 WDA 2014					<input type="checkbox"/> Criminal Division - Allegheny

Gathering Documents

Gathering the electronic copies of the documents to a single file location will greatly simplify the document assembly process. The naming of documents is an important part of this step. If you are going to create an Index or use the form/report 1275 provided from CPCMS, the document name should reflect the docket entry as much as possible.

Creation of Index

The Lower Tribunal currently has two options available to them for the creation of the Index. If the case is in CPCMS, the form/report 1275 can be used to generate the Index. Alternatively, the Lower Tribunal can create its own Index outside of CPCMS.



Allegheny County Court of Common Pleas Filings Information

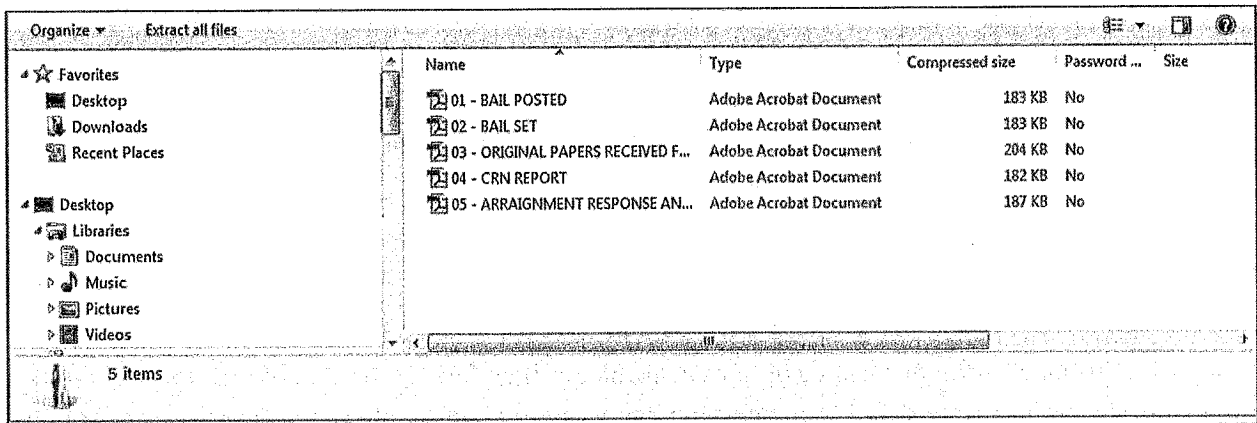
Selection Criteria: Entry Classification: All			Sort By: Document Number Ascending	
Document Number	Filed Date	Title/Entry	Entry Classification	Filed By
CP-02-CR-0000520-2015		Comm. v. Dohn, David M.	Dohn, David M.	
①	01/08/2014	Bail Posted - Dohn, David M.	Official Docket Entry	Dohn, David M.
②	01/08/2014	Bail Set - Dohn, David M.	Official Docket Entry	Dohn, David M.
③	02/05/2015	Original Papers Received from Lower Court	Official Docket Entry	Allegheny County District Attorney's Office
④	01/09/2014	Arraignment Scheduled 02/13/2014 8:30AM	Official Docket Entry	Allegheny County District Attorney's Office
⑤	01/29/2014	CRN Report	Official Docket Entry	Allegheny County District Attorney's Office
6	02/06/2014	Pre-Trial Conference Scheduled 03/04/2014 8:30AM	Registry Entry	Allegheny County District Attorney's Office

Stamping and Preparing Documents

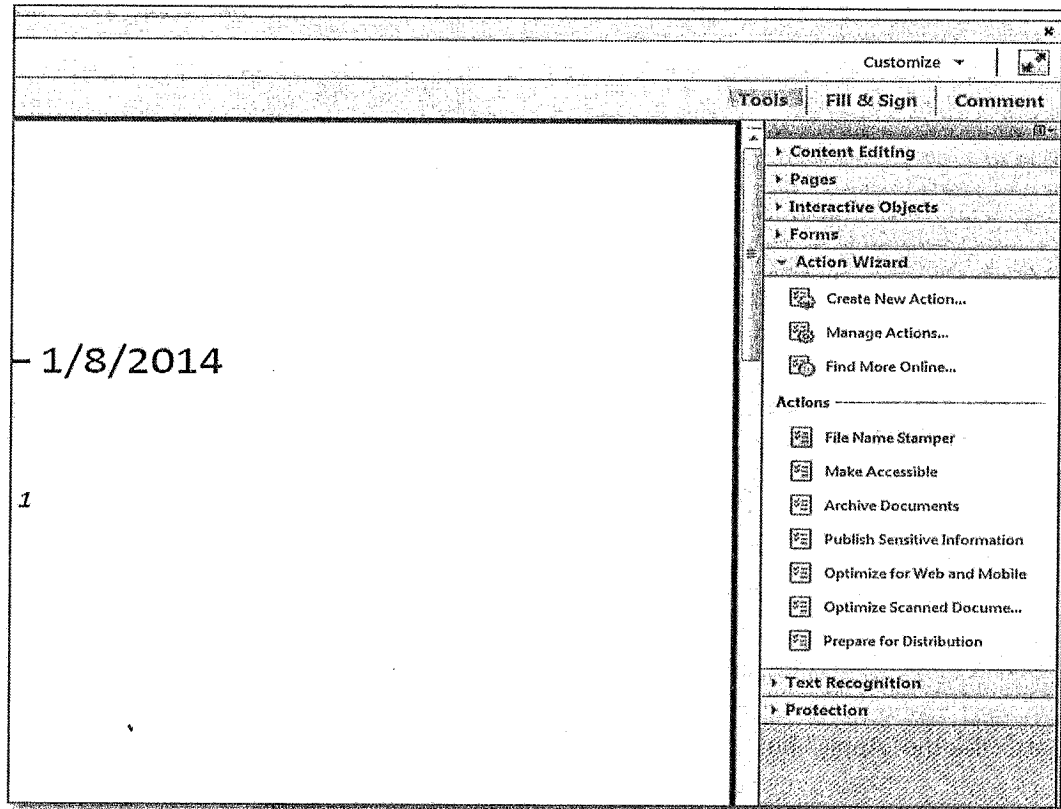
The AOPC ERMS team discovered an add-on for Adobe Pro that applies the name of the document to the pages of the document based upon the document's name. It is important to run this process prior to assembling the Original Record, so that each section of the Original Record maintains its own unique name.

Adding stamps using Adobe:

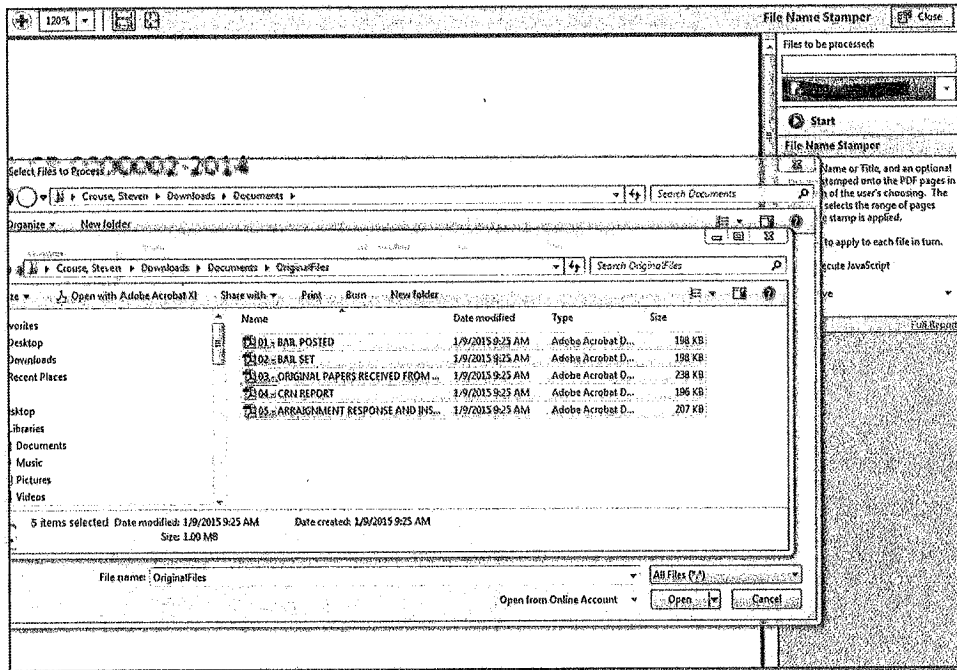
- 1) Open the first document



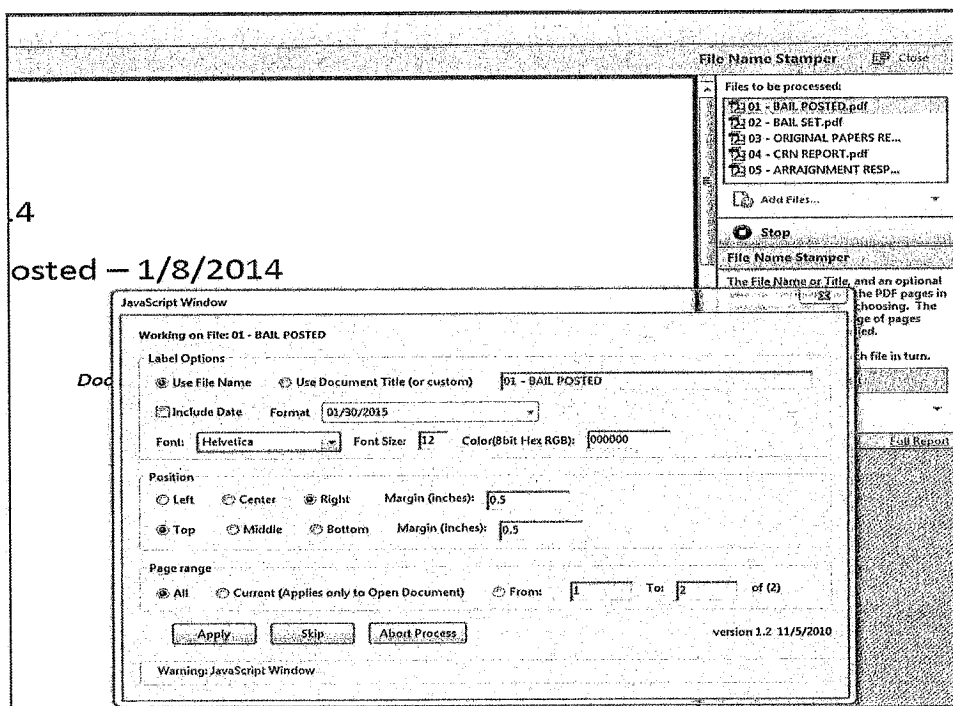
2) Navigate to Tools → Actions → File Name Stamper



3) Add Files → Select all files that should receive a stamp



4) Open → Start, click the "Apply" button through the process to stamp each document accordingly.

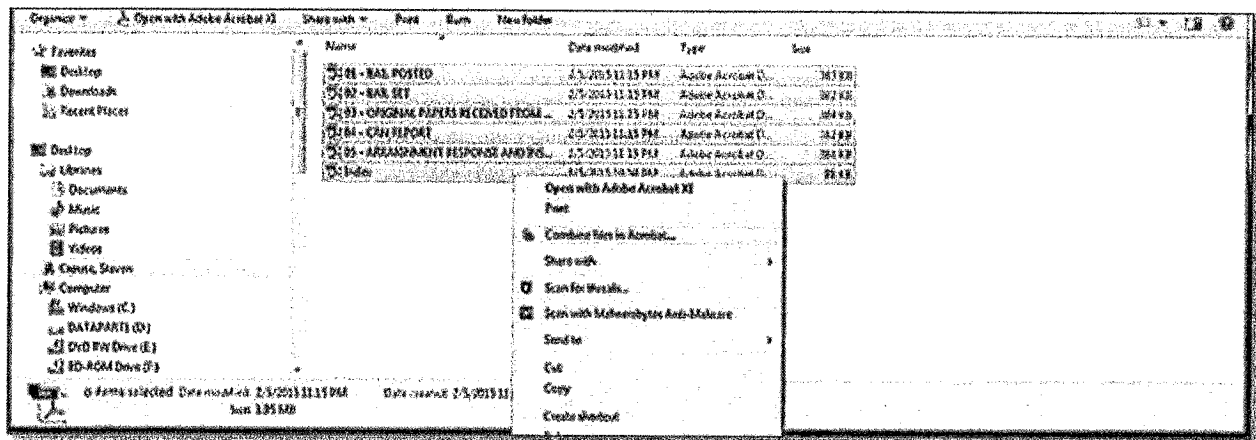


Assembling Original Record

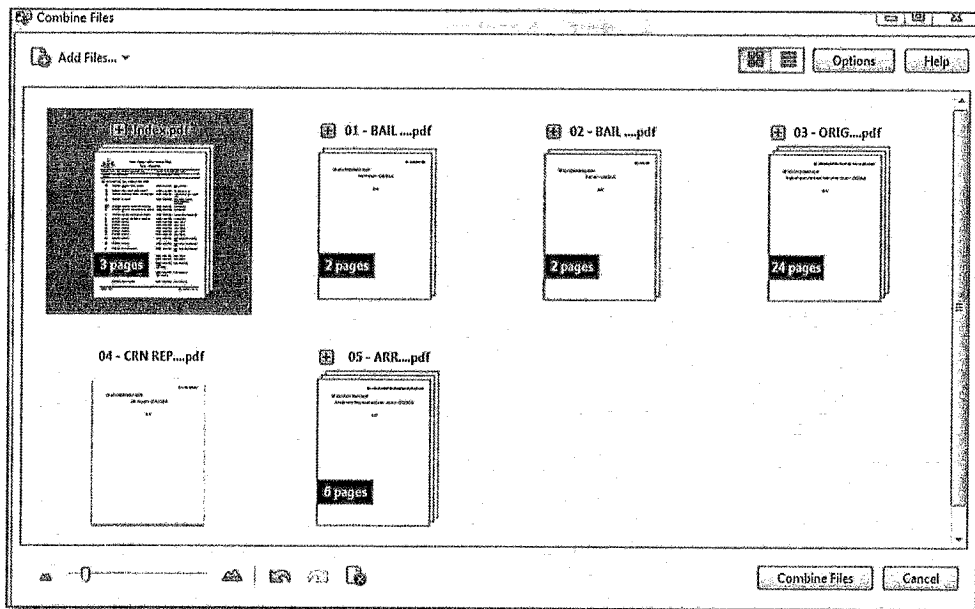
Return to the location of the original files that now contain the file name stamps. Add the Adobe pdf index to this location.

Using Adobe's inherent combine files process:

- 1) Select all of the documents → Right click and select "Combine files in Acrobat"

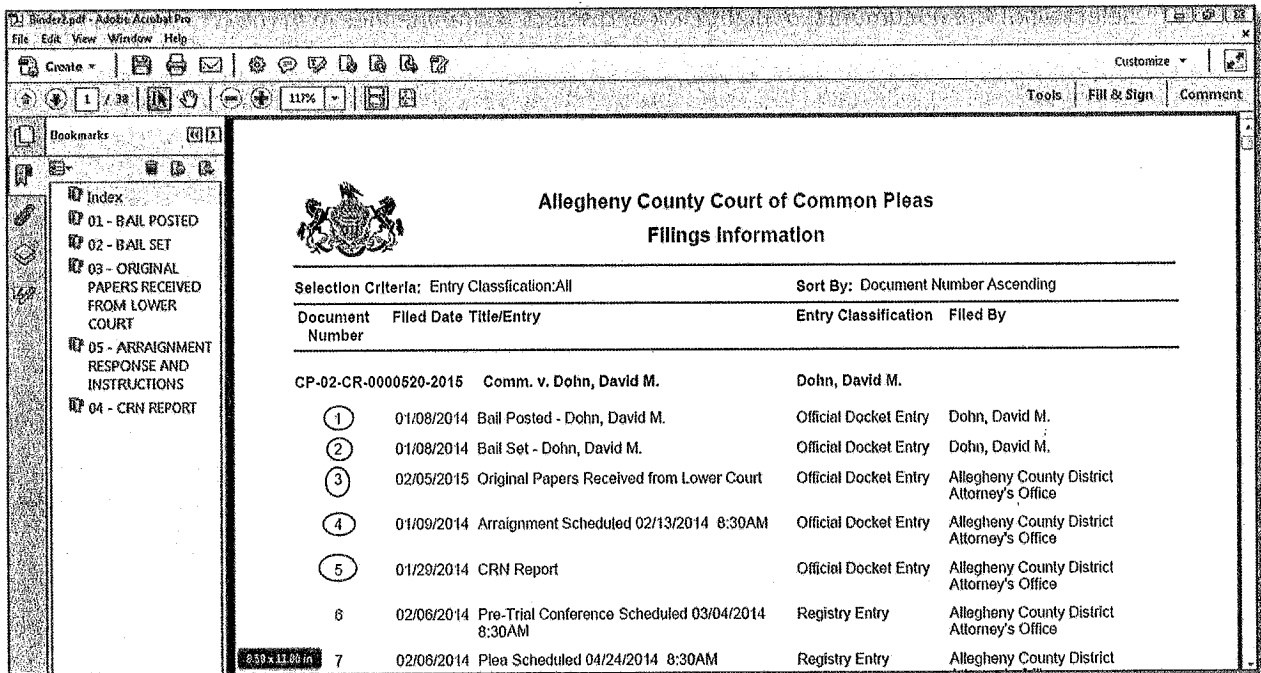


- 2) Reorder the documents, if necessary and click on Combine Files



- Click on the Bookmark to review the final Original Record prior to submitting the document(s) to the Appellate Court. Image A below is an example of an Index generated from CPCMS being viewed using a bookmark. Image B below is an example the contents of the record, including the file name stamp being viewed by the bookmark.

A

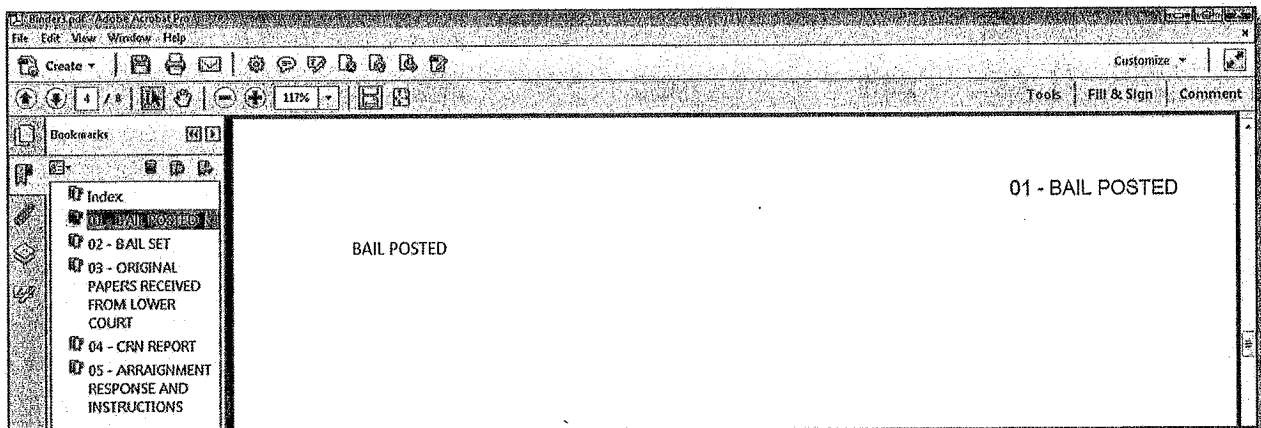


Allegheeny County Court of Common Pleas
Filings Information

Selection Criteria: Entry Classification: All Sort By: Document Number Ascending

Document Number	Filed Date	Title/Entry	Entry Classification	Filed By
CP-02-CR-0000520-2015		Comm. v. Dohn, David M.		Dohn, David M.
①	01/08/2014	Bail Posted - Dohn, David M.	Official Docket Entry	Dohn, David M.
②	01/08/2014	Bail Set - Dohn, David M.	Official Docket Entry	Dohn, David M.
③	02/05/2015	Original Papers Received from Lower Court	Official Docket Entry	Allegheeny County District Attorney's Office
④	01/09/2014	Arraignment Scheduled 02/13/2014 8:30AM	Official Docket Entry	Allegheeny County District Attorney's Office
⑤	01/29/2014	CRN Report	Official Docket Entry	Allegheeny County District Attorney's Office
6	02/06/2014	Pre-Trial Conference Scheduled 03/04/2014 8:30AM	Registry Entry	Allegheeny County District Attorney's Office
7	02/06/2014	Plea Scheduled 04/24/2014 8:30AM	Registry Entry	Allegheeny County District

B



01 - BAIL POSTED

BAIL POSTED

Uploading Original Record to Appellate Court – PACFile

The request for filing that was received earlier contains an option to “Create Filing.” Here we can upload the newly assembled Original Record.

Filing Requested for case 10 WDA 2015

Due Date: 4/6/2015
Sent Date: 2/5/2015
Sent By: Office of the Prothonotary
Docket Number: 10 WDA 2015
Lead Case Caption: Comm. v. Dohn, David M.
Reference Docket Number: CP-02-CR-0000520-2015
Requested Filing Type: Trial Court Record

Create Filing
Cancel

When the file has uploaded successfully, the document icon displays next to the document name.

Filing Package

Tracking No:	Unassigned	Filing Type:	Trial Court Record	Description:	None entered	Total Fees Due:	\$0.00
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Referenced Case Information

Docket Numbers: 10 WDA 2015
Case Status: Active


Short Caption: Comm. v. Dohn, David M.
Event Track: Appeal

Court: Superior
Program Status: Not Available

Filing Documents
Verification

Based on the filing type selected in the Filing Type tab, the corresponding document(s) that must be filed are listed below. You must upload at least one electronic file to each filing type. Before uploading any documents, click here to view the electronic filing requirements.

To upload an electronic document, click the (Upload Document) link that appears to the right of the corresponding filing type.

Filing Type	Fee	Uploaded Documents
Trial Court Record	\$0.00	<div>  Trial Court Record.pdf (Binder3.pdf) </div> <div> (Upload Document) </div> <div> (Attach Document) </div>

Next
Cancel

To Do List

- ☐ Upload Filing Documents
 - At least one document must be uploaded or attached to each required filing type.
- ☐ Final Verification



The user receives notification of submission through PACFile, in the Submitted Filings link from the dashboard.

PACFile - Pennsylvania's Unified Judicial System

Submitted Filings

The filing(s) listed below has been submitted to the court. If this submission included a payment, a confirmation number is provided for your records.

After closing this screen, the details of this filing(s) are accessible through the Recently Submitted Filings link on your dashboard.

Invoice	Description	Filing Type	Filing Name(s)	Docket Number(s)	Document(s)	Filer(s)	Created By	Submit Date	Tracking Number	Status	Fee
 View	None entered	Filing Requested	* Trial Court Record	10 WDA 2015	 Trial Court Record	Allegheny County Criminal Division	County, Allegheny	2/5/2015	WSPRWD00000100	Submitted	\$0.00
* Indicates primary filing											Subtotal: \$0.00
											Total Due Today: \$0.00

Close

- Session 11 –

Public Access vs. Party Privacy: Managing Court Records in the Electronic Age

*Panel Moderator – Larry Royster, Clerk of
the Michigan Supreme Court

*Panelist – Judge Renee Jubelirer,
Commonwealth Court of Pennsylvania

*Panelist - John Tomasino, Clerk of the
Florida Supreme Court

*Panelist – Greg Pachmayer, Clerk of
Indiana Supreme Court & Court of
Appeals

Larry Royster

Larry Royster, Bachelor of Landscape Architecture, Michigan State University, 1982; J.D., Thomas M. Cooley Law School, 1985. After graduating from law school, Larry worked as a staff attorney with the Michigan Court of Appeals for eighteen months and then as a judicial law clerk for two years. From 1989 to 1998, Larry supervised a group of senior staff attorneys at the Court. He became the Court's deputy research director in 1998 and the research director in 2001. In 2011, Larry assumed the dual role of both research director and clerk of the Court of Appeals. In 2013, Larry became the chief of staff and clerk of the Michigan Supreme Court. Larry is married and has two daughters.

Judge Renée Cohn Jubelirer

Judge Cohn Jubelirer was first elected to the Commonwealth Court in November 2001 and was retained for another ten-year term in November 2011. After graduating from the Pennsylvania State University, she attended Northwestern University School of Law, where she served as Executive Editor of the Law Review. She received her LL.M. in Judicial Studies from Duke University School of Law in 2014. She served as a teaching fellow in legal research and writing at Stanford Law School, as an Assistant Professor at De Paul University College of Law, where she taught Torts and Remedies, and as an Adjunct Professor at the Penn State Dickinson School of Law, teaching Professional Responsibility. She was an associate at Sidley & Austin in Chicago, Illinois, later served as vice president and shareholder in Frank, Frank, Penn & Bergstein in Allentown, Pennsylvania, and also served as a deputy and assistant solicitor for Lehigh County, Pennsylvania. Her last position, before joining the court, was in-house counsel for a telecommunications company.

She is a member of the American, Pennsylvania, and Centre County Bar Associations, and an emeritus member of the James S. Bowman American Inn of Court. In 2016, she completed her term on the Pennsylvania Supreme Court's Appellate Court Procedural Rules Committee, which she chaired for five years. Judge Cohn Jubelirer served as Co-Chair of the Pennsylvania Supreme Court's Public Access Working Group – Trial and Appellate Court Records, which recommended a new public access policy. After the Supreme Court adopted the policy in January 2017, she has assisted with its implementation, serving as co-chair of the Implementation Committee.

She was recently appointed to the newly formed Continuing Judicial Education Board of Judges, which will be responsible for guiding development and delivery of continuing judicial education to all commissioned judges in the Commonwealth. Judge Cohn Jubelirer also serves on the Workers' Compensation Liaison, Appellate Advocacy, Judicial Administration and Women in the Profession Committees of the Pennsylvania Bar Association.

John Tomasino

John Tomasino is the Clerk of the Florida Supreme Court and has served in that role for almost 4 years. Prior to joining the Florida Supreme Court, John served as the Administrative Director of a public defender's office, while also handling their technology needs and doing some criminal defense work. Additionally, John worked for 3 years as a capital collateral assistant counsel, representing Florida death row inmates in their postconviction cases. John is a board member of the Florida E-filing Authority, which oversees Florida's electronic portal for electronic case filings and electronic service.

Greg Pachmayr

Greg Pachmayr was appointed Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court in June 2016 after serving as Deputy Clerk for two years. Before joining the Appellate Clerk's Office, he was Director of the Indiana Board of Pharmacy. Greg is a Returned Peace Corps Volunteer, having served in the Kingdom of Lesotho from 2004 to 2006.

Greg is a graduate of the Indiana University Maurer School of Law – Bloomington (J.D.), the Indiana University School of Public and Environment Affairs – Bloomington (M.P.A.), and the University at Buffalo (B.A.).

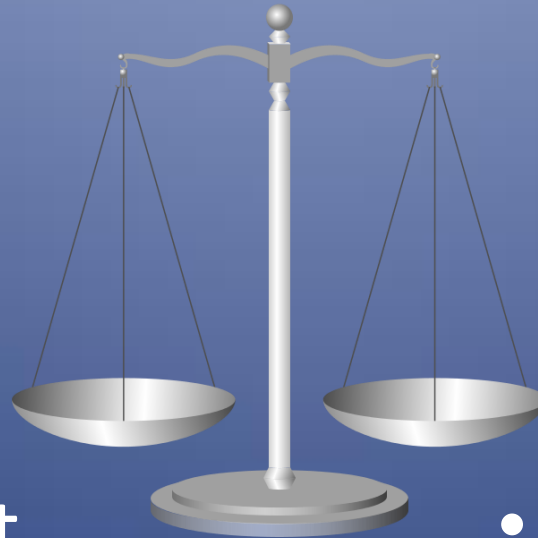


Public Access vs Party Privacy:

Managing Court Records in the Electronic Age

Balancing the Competing Interests

There is a fundamental difference between viewing paper records at the courthouse and accessing electronic records remotely.



- Public's right to know

- Individual's right of privacy

Stakeholders

- Litigants and attorneys of record
- Judges and court staff
- The bar, generally
- Witnesses/third parties
- General public
- Media



What is a court record?

- Court opinions, orders, and correspondence
- Documents filed by the litigants, e.g., initiating action, pleadings, motions, correspondence
- Transcripts and/or audio and video recordings of court proceedings
- Exhibits
- Docket information



Public Access

- Established by constitution, statute, or common law
- Government transparency
- Integrity of the judicial process
 - Ensure the fairness and honesty of judicial proceedings.
 - Protect public health and welfare
 - Allow media to report on matters of public interest and concern

Public Access

- Withholding court records from public access (sealing or suppressing):
 - Only for compelling reasons;
 - Determined on a case-by-case basis
- Practical obscurity –electronic access via kiosk or terminal at courthouse.

Privacy Interests

- Individuals have the right to control how their personal information is disseminated and used, especially witnesses and innocent third parties
- Risk of identity theft



Privacy Interests (cont.)

- Risk of targeting by investment scams, unscrupulous debt collectors, or fraudulent credit repair services
- Data mining and sale of personal information



Redaction

- Types of information - SSN, driver's license, bank account, credit/debit card, names & of minors, non-parties and confidential informants, birthdates, addresses, phone numbers
- Who is responsible?
 - Filer
 - Court staff
 - E-filing vendor
- Redaction software
- Preservation of the original document
- Difficulty of enforcement

Scope of access

- Case types – termination of parental rights/adoption, mental health, guardianship/conservatorship, grand jury proceedings, PPO, abuse and neglect, juvenile criminal
- Document types – medical records, mental health reports, trade secrets, educational records, tax and income statements

Scope of access (cont.)

- Viewer types
 - Full access to everyone or limited to litigants and attorneys of record in the case
 - Restricted access – controlled through registration requirement or fee-based access



Governance Structure

- Standing committees to address ongoing questions of access, exclusion, system design, implementation, removal/suppression of info
- Membership = limited or full representation of all stakeholders?



Questions?



- **Hon. Renée Cohn Jubelirer**
 - Email: Judge.CohnJubelirer@pacourts.us
 - Judge, Commonwealth Court of Pennsylvania
 - Co-Chair, Public Access Working Group – Trial and Appellate Court Records

- Session 13 -

Ethics for Clerks – What You Really Don't Want to Know

Tom Hall, Consultant and Retired Clerk of Florida Supreme Court.

Thomas D. Hall

Thomas D. Hall is Of Counsel with The Mills Firm in Tallahassee, Florida. Mr. Hall's practice is limited to appellate matters, primarily in the Florida Supreme Court. Mr. Hall retired as Clerk of the Court at the Florida Supreme Court in 2013 after 13 years as Clerk. While at the Court Mr. Hall also served a six-month term as the Acting Marshal. Prior to appointment as Clerk, Mr. Hall was the Chief Staff Attorney at the Florida First District Court of Appeal for approximately 10 years. Before that he was in private practice in Miami, Florida, for approximately eight years doing complex commercial litigation at the trial and appellate level. Immediately after graduation from the University of Miami School of Law, he was a law clerk to the Honorable Daniel S. Pearson at Florida's Third District Court of Appeal. Mr. Hall is also the President of TLH Consulting Group LLC, providing non-legal advice to those doing business or wishing to do business with court systems.

Mr. Hall has taught at the University of Miami School of Law, St. Thomas University Law School, the Florida College for Advanced Judicial Studies, the Florida Appellate Judges' Conference, the Florida Conference of Circuit Judges, the Justice Teaching Institute, the Florida Workers' Compensation Institute, the E-Court Conference, various Florida Court Clerks and Comptrollers education conferences, numerous Florida Bar Continuing Legal Education programs and in the Barry University Legal Assistant's Program.

He formerly served as editor of the Reporter's Handbook published by The Florida Bar. He is also active in the Appellate Practice and Government Lawyer sections of the Bar, having chaired both. He is also a former chair of the Continuing Legal Education Committee of The Florida Bar. He currently serves on the Florida Appellate Court Rules and the Rules of Judicial Administration Committees of The Florida Bar.

Mr. Hall has been a member of NCACC since 2000. He is a recipient of the J.O. Sentell Award.