

Judicial Responses to an Aging America

Max B. Rothman and Burton D. Dunlop

In 2000, the authors published a book titled *Elders, Crime, and the Criminal Justice System: Myth, Perceptions, and Reality in the 21st Century*, in which several chapters were devoted to older adults' interactions with the court system.¹ Those chapters revealed that these interactions could be highly problematic for elders. In follow-up, this article is based on a project designed to address the overarching issue of whether and how judicial systems in the United States ensure that older adults (60 and older) are provided effective access to the courts, including both civil and criminal jurisdictions.² In order to accomplish this goal, courts need to identify and remove barriers within the judicial system, and develop or enhance linkages between elders and the courts as well as with health, mental-health, and social service systems in their communities. This article examines recent developments in judicial administration to establish the context in which this can be achieved. It then analyzes ten specific questions focused on these issues, as well as other areas of importance identified during the course of project site visits. Finally, the article proposes steps or elements necessary in the development of a model plan needed to respond to issues of aging in the courts.

Two data-collection methods were employed. The first was a survey of both state trial courts and federal courts addressing the ten central questions guiding this project. The survey of state trial courts was carried out electronically in three steps. First, the survey was sent to the National Center for State Courts, which agreed to convey the survey form to all 50 state court administrators, who in turn were requested to send the form electronically to all trial-court chief judges or court administrators within their respective states. It is very likely that all 50 states received the communication, but it seems clear that a majority neglected to or decided against sending it on to the trial courts. We received responses from one or more courts in only 13 states. A total of 30 completed forms were returned electronically and three were returned by mail or fax, for a total of 33 forms. Following negotiations with the Federal Administrative Office of the Courts to follow a similar approach with federal district courts, that office declined to participate. After consulting the *Judicial Yellow Book*³ for names and addresses of federal judges, we mailed a slightly modified version of the state survey form to 93 judges. Seventeen completed forms from 13 separate courts were returned by mail or fax. However, this survey elicited a poor

response and provided virtually no useful or interesting findings.

Nearly half (15) of the state-trial-court forms were completed by court administrators and another two were filled out by deputy administrators. One circuit judge and two probate judges completed the forms, while the remaining 13 forms were answered by various court personnel, e.g., probate registers, directors or managers of human resources or intergovernmental relations, self-help centers, planning units, or special projects; one was even completed by a prosecutor. These surveys were utilized to obtain a general idea of what courts were doing vis-à-vis older adults but primarily to identify potential courts for site visits. Three jurisdictions visited, Reno, Nevada, Sarasota, Florida, and Wilmington, Delaware, were identified from the survey. Information provided was verified with follow-up telephone calls. Two sites, Ft. Lauderdale, Florida, and Tampa, Florida, did not respond but were known to the research team due to their proximity; and two jurisdictions, Minneapolis, Minnesota, and Phoenix, Arizona, were recommended by contacts at the National Institute of Justice and the National Center for State Courts as sites with promising innovations that either did or could relate to older adults.

The second data-collection mode consisted of extensive interviews of judges and other court and court-related personnel in seven different trial courts: Reno, Nevada; Maricopa County, Arizona; Tampa, Florida; Sarasota, Florida; Wilmington, Delaware; Broward County, Florida; and Hennepin County, Minnesota. Altogether, the research staff carried out face-to-face interviews with 53 individuals, each lasting an average of approximately one hour. Interviewees included 15 judges, nine court administrators or deputy administrators, seven professionals involved with guardianships, three directors of self-help centers, three persons from legal services or legal aid, three management information system specialists, and two public defenders. Others included a court public affairs director, a specialty courts coordinator, a corrections officer, an Americans with Disabilities Act coordinator, a director of psychological services, an Adult Protective Services representative, a performance measures/outcomes expert, a probate coordinator, an Aging Office representative, a private attorney, and an Elder Justice Center director. Once these interviews were completed, staff notes were reviewed carefully for common themes and especially innovative

Footnotes

1. *ELDERS, CRIME, AND THE CRIMINAL JUSTICE SYSTEM: MYTH, PERCEPTIONS, AND REALITY IN THE 21ST CENTURY* (Max B. Rothman et al., eds. 2000).
2. The project and a more detailed report on it were funded by the Borchard Foundation Center on Law and Aging and the Quantum

Foundation. The report is available at [http://www.fiu.edu/~coa/downloads/elder%20justice/Borchard_Final_Report_\(5-28-04\).pdf](http://www.fiu.edu/~coa/downloads/elder%20justice/Borchard_Final_Report_(5-28-04).pdf) (last visited Nov. 20, 2005).

3. *JUDICIAL YELLOW BOOK: WHO'S WHO IN FEDERAL AND STATE COURTS* (2003).

arrangements for dealing with older-adult issues or other court-constituent issues with adaptation potential for older adults. Lessons learned from our ongoing technical assistance work with the Elder Justice Center in the Thirteenth Judicial Circuit of Florida (Palm Beach County) also were brought to bear in the subsequent review and analysis.

I. CHALLENGES OF AMERICA'S AGING SOCIETY

The challenges of an aging society continue to dominate the attention of policymakers, academics, particularly those in the sciences and medicine, the popular media, and the public-at-large. Issues of health and long-term care, drug benefits, reduction of mortality and morbidity, social security, employment, and other economic issues are researched, legislated, and written about with increasing frequency. These matters are of great popular and political concern. As the nation's older population (65 and older) doubles over the next 25 years from 36 million to 70 million or more, these issues and many others will be addressed much more intensively because of the impact they will have not only on older people themselves and their families, but also on the core institutions of American life.

Little is known, however, about the impact older people will have on one of the three pillars of American government: the judiciary. Although considerable work has been undertaken concerning specific substantive areas of "elder law," notably tax and estate planning, other end-of-life issues, and guardianships, there has been little effort to examine the implications of aging in America on judicial administration, access to the courts, and resolution of the underlying issues that often precipitate court involvement for older adults. It is important today to understand more about the nature of situations that lead older people to the courts, how courts respond to them, and what policies and court administrative actions are needed to prepare for the future.

Health and Social Status

Although the demographics of aging in America are impelling judicial systems to accommodate larger numbers of older adults in the courthouse, it is the special situations of many elders that present the administrative challenge for court administrators and judges. Increasingly, older adults represent diversity of race, ethnicity, language, education, income, and living arrangements. The physiological, psychological, and social profiles of older people are becoming more complex. Greater incidence of disease occurs with increasing age, including dementia, cancer, bone and joint diseases, vision and hearing loss, memory loss, and loss of cognition. Alzheimer's disease alone, the most common form of dementia, afflicts 10% of the U.S. population 65 and older and perhaps close to 50% of those 85 and older.⁴ Use of prescription medication tends to increase dramatically. In a broader social context, older adults experience loss of roles through retirement, widowhood and bereavement, isolation and loneliness, depression, and substance abuse.

These factors, individually or in endless panoply of combi-

nations, result in far greater numbers of older people encountering court systems nationwide, and often presenting with much more varied and complex personal circumstances. For example, the number of petitions for guardianship are climbing as more people live longer. Likewise, numbers of arrests and jailing of older people for domestic violence, assaults, and drug-related charges are growing. Arrests for other criminal charges, including misdemeanors such as shoplifting or trespassing, also are increasing. Motor-vehicle violations of all kinds, including criminal charges and moving infractions, continue to expand. Civil matters arising from landlord-tenant and other property disputes, contracts, negligence, and a variety of other factual situations, will ensure that more older people regularly enter the courthouse. Indeed, more elders also will be selected for jury duty, called as witnesses, seek divorces, or simply look for information or assistance. Moreover, these matters may well involve persons with dementia, mental illness or substance abuse, or complex medical conditions.

Little is known . . . about the impact older people will have on one of the three pillars of American government: the judiciary.

Health and Social Services

Any one or combination of factors documented above may represent the underlying cause for an older adult to be thrust into the courts. Even if not the underlying cause, some of these conditions may well be present in a given situation and need to be taken into account by a judge to dispense justice effectively. For example, the 78-year-old man jailed for battering his spouse may be in the early stages of dementia. The 82-year-old sued for foreclosure for failure to pay her taxes may be suffering from depression and lapses in memory. Other older persons in both civil and criminal courts may have health and social-services needs that challenge the typical judge's ability to respond in a meaningful and timely manner.

The policy issue raised by these circumstances is whether the courts have the capacity for early identification of these problems as well as the practical ability to mobilize appropriate services. It is not unusual that a court may not actually see an individual until a petition for guardianship is filed, at which time any service needs simply may be delegated to the guardian. Unfortunately, many courts experience difficulty in monitoring guardians' actions on behalf of their wards. Accountability in the guardianship process is a major ongoing challenge for these courts. In fact, the myriad of cases that may reach a given judge where an assessment and/or services are needed raises an important question about how judicial districts will plan to meet this emerging need. Increasingly, courts have been experimenting with administrative methods to obtain services for other specialized populations. These experiences may offer important lessons.

4. Alzheimer's Association, *An Overview of Alzheimer's Disease and Related Dementias* (1997).

The value of TJ is that it attempts to identify underlying issues and to address them as appropriate within the court context.

II. RECENT DEVELOPMENTS IN JUDICIAL ADMINISTRATION

In recent years, a number of developments in judicial philosophy and administration have taken place that, although not specifically related to issues of older adults, have considerable relevance to issues affecting them.

It is instructive to review these developments in order to identify emerging trends and best practices in related areas that may be applicable. Although each of them has developed somewhat independently, they are all related by a common thread that seeks to improve access to the courts, build closer ties to the community, and ensure more effective use of available services to reduce recidivism. These are critically important factors in the context of older people and the courts.

Therapeutic Jurisprudence

Some courts and judges, following the lead of legal scholars, have adopted the philosophy of therapeutic jurisprudence (TJ) in their adjudicatory roles. The TJ perspective has been described by its founders as suggesting: “that the law itself can be seen to function as a kind of therapist or therapeutic agent. Legal rules, legal procedures and the role of legal actors . . . constitute social forces that like it or not, often produce therapeutic or antitherapeutic consequences. Therapeutic jurisprudence proposes that we be sensitive to those consequences, rather than ignore them, and that we ask whether the law’s antitherapeutic consequences can be reduced, and its therapeutic consequences enhanced, without subordinating due process and other justice values.”⁵ TJ has been applied primarily in criminal matters, particularly non violent drug or mental-health cases. Interested in more than criminal cases, we view TJ as a “lens” of underlying concepts that looks beyond what’s on paper for older adults engaged with the law. The value of TJ is that it attempts to identify underlying issues and to address them as appropriate within the court context.

Community problems such as substance abuse, mental illness, and familial breakdown inevitably enter the courtroom and judges search for services and treatment to respond to them.⁶ Courts sensitive to the importance of their relationships to their communities have recognized the need to be more relevant to the public and to address “the breakdown of social and

family support networks.” The authors conclude that TJ is based on the principle that judges seek “the selection of a therapeutic option—an option that promotes health and does not conflict with other normative values of the legal system.”⁷ In addition to the application in a specific case, it “may be practiced at the organizational level of the court by devising new procedures, information systems, and sentencing options and by establishing links to social services providers to promote therapeutic outcomes.”⁸

In their most recent edited book, David Wexler and Bruce Winick, the principal architects of TJ explore its evolution and the development of problem-solving courts.⁹ They cite the 2000 resolution of the Conference of Chief Justices and Conference of State Court Administrators in support of problem-solving courts, acknowledging the importance of these courts and the principles of TJ they implement. The resolution adopts a series of agreements to further analyze and promote problem-solving courts, including:

Encourage, where appropriate, the broad integration over the next decade of the principles and methods employed in the problem-solving courts into the administration of justice to improve court processes and outcomes while preserving the rule of law, enhancing judicial effectiveness, and meeting the needs and expectations of litigants, victims and the community.¹⁰

It continues by urging development of other types of courts based on similar principles. The editors then expand on how court processes affect outcomes and emphasize how specific tools and TJ principles can be used across the judiciary. Their analysis provides the essential context for consideration about how courts should address issues of an aging society.

Problem-Solving Courts

Pamela Casey and David Rottman describe four primary types of specialized or problem-solving courts: drug courts (the first was established in Miami, Florida, in 1989), mental-health courts, domestic-violence courts, and community courts.¹¹ Family courts, which may handle divorce, domestic violence, guardianship, and end-of-life matters, represent another type of problem-solving court.¹² The creation of these courts reflects the reaction of trial courts to dockets filled with too many repeat cases (the “revolving door”) in which judges had worked out solutions that addressed symptoms rather than root causes or problems underlying repeated court appearances and convictions. In effect, courts have adopted a TJ approach at an organizational level by using its principles as the underlying legal theory¹³

5. LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE (David B. Wexler & Bruce J. Winick, eds. 1996).

6. David Rottman & Pamela M Casey, *Therapeutic Jurisprudence and the Emergence of Problem-Solving Courts*, 240 NAT’L INST. OF JUST. J. 12 (July 1999).

7. *Id.* at 13.

8. *Id.* at 14.

9. JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS (Bruce J. Winick & David B. Wexler, eds. 2003).

10. *Id.* See also CCJ Resolution 22 (2000), available at http://www.communityjustice.org/ccj_cosca_resolution.html

(last visited Nov. 20, 2005).

11. PAMELA M. CASEY & DAVID B. ROTTMAN, *PROBLEM-SOLVING COURTS: MODELS AND TRENDS* (2003), available at http://www.ncsconline.org/WC/Publications/COMM_ProSolProbSolvCtsPub.pdf (last visited Nov. 20, 2005).

12. PAMELA M. CASEY & WILLIAM E. HEWITT, *COURT RESPONSES TO INDIVIDUALS IN NEED OF SERVICES: PROMISING COMPONENTS OF SERVICE COORDINATION STRATEGY FOR COURTS* (2001), available at http://www.ncsconline.org/WC/Publications/Res_ProSol_CrtResponsesPub.pdf (last visited Nov. 20, 2005).

13. Rottman & Casey, *supra* note 6.

It is instructive to explore the unifying themes connecting these courts. According to one judge, “One of the principal themes . . . is partnership. They all rely on outside agencies—to provide social services, to monitor offenders, to supervise community service sentences. How do you make inter-agency partnership work?”¹⁴ Indeed, given considerable variation among these courts by jurisdiction and types of cases, an analysis of trends underscored the importance of community service linkages and “stress a collaborative, multidisciplinary, problem-solving approach to address the underlying issues of individuals appearing in the court.”¹⁵

More broadly, problem-solving courts share five common elements:¹⁶ (1) immediate intervention; (2) normative social adjudication; (3) hands-on judicial involvement; (4) treatment programs with clear rules and structured goals; and (5) team approach including judge, prosecutor, defense counsel, treatment provider, and correctional staff.

Although these types of courts are primarily used for non-violent criminal law violations (some community courts are multijurisdictional), it is their emphasis on early identification of underlying problems, collaboration with human-services providers, and individualized treatment approaches that warrant further investigation. As noted, the resolution passed by the Conference of Chief Justices and the Conference of State Court Administrators in 2000 called for “the careful study and evaluation of the principles and methods employed in problem-solving courts and their application to other significant issues facing state courts.”¹⁷ The challenge is to understand how these principles and experiences of problem-solving courts can be utilized to improve how all courts address issues involving older people.

Trial Court Performance Standards

Still another relevant event during this same general period has been the development of the Trial Court Performance Standards (TCPS). Initiated in 1987 by the Bureau of Justice Assistance of the U.S. Department of Justice and the National Center for State Courts, the TCPS were published in 1997. They emphasize the careful conceptualization and measurement of specific indicators of input, output, and outcomes, with the ultimate goal of improving the outcome performance of the courts. Outcomes are conceptualized as changes in the well-being of the public and the community served by a court. The five performance areas of TCPS, which encapsulate the purposes or goals of the courts, are: 1) Access to Justice; 2) Expedition and Timeliness; 3) Equality, Fairness, and Integrity; 4) Independence and Accountability; and 5) Public Trust and Confidence. As of 2000, approximately one-third of state courts had adopted the TCPS to one degree or another.¹⁸

The TCPS are more than simply an internal procedure for measuring a jurisdiction’s traditional operations. They are par-

ticularly useful in providing a basis for examining how courts address the need for responding to service issues.¹⁹ In this context, then, they “represent a shift from thinking about courts as individual judges making individual decisions (one judge, one court) to thinking about courts as organizations—as a system of structures, people, methods, and practices brought together to achieve specific ends.”²⁰

Problem-solving courts, as described above, are excellent venues for the application of TCPS because one of their primary characteristics is their relationship to community providers of treatment and services.²¹ Because identification of service needs and the ability to mobilize resources in response to those needs is particularly critical in matters involving elders, the experiences of these courts need to be analyzed carefully. Although not specifically discussed in this context, nine promising components for effective court-based service coordination have been identified:²²

- 1) Acknowledged court role in service coordination;
- 2) Judicial and court leadership;
- 3) Active policy committee of stakeholders;
- 4) Case-level service coordinators;
- 5) Centralized access to service network;
- 6) Active court monitoring of compliance with orders;
- 7) Routine collection and use of data;
- 8) Creative use of resources; and
- 9) Training and education related to service coordination.

It remains to be understood whether and how these components would work in general-jurisdiction trial courts, in both civil and criminal jurisdictions. It is particularly important to learn to what extent this experience can improve how courts respond to the emerging challenges of an aging society.

Gender, Race, and Ethnic Bias

During the 1980s and 1990s, the supreme courts of many states initiated studies of gender, race, and ethnic bias in the courts. These efforts typically engaged the judiciary, bar associations, court administrators, private attorneys, law-school faculty, researchers, and others in producing detailed analyses of existing issues and recommendations to address them. Gender and race are protected classes under the United States Constitution, and these efforts were motivated by a desire to

The challenge is to understand how these principles . . . of problem-solving courts can be utilized to improve how all courts address issues involving older people.

14. Judicial Roundtable, *Reflections of Problem-Court Justices*, JOURNAL, June 2000, at 11, available at www.courtinnovation.org/pdf/reflections_psc_justices.pdf (last visited Nov. 15, 2005).

15. CASEY & ROTTMAN, *supra* note 11.

16. Rottman & Casey, *supra* note 6.

17. CASEY & ROTTMAN, *supra* note 12.

18. Ingo Keilitz, *Standards and Measures of Court Performance*, 4 CRIM. JUST. 559 (2000).

19. Pamela M. Casey, *Court Population in Need of Services: Defining the Court’s Role*, 16 BEHAV. SCI. & L. 157 (1998).

20. Keilitz, *supra* note 18, at 583.

21. CASEY & HEWITT, *supra* note 12.

22. *Id.*

“Elder Justice Centers” represent one model for judicial response to the complex issues presented when elders interact with the courts.

ensure that the judiciary itself was administered fairly and equitably consistent with prevailing local standards and sound public policy.²³ In many states, these efforts produced exhaustive reports that examined specific areas of concern in great detail and led to ongoing efforts to educate judges, administrators, attorneys, and others about prob-

lem areas and standards of appropriate conduct.

Although age has not been determined to be a protected class, the demographics of aging ensure nonetheless that courts must address similar issues in the years ahead. For example, a Massachusetts report defined gender bias as existing “when decisions made or actions taken are based on preconceived or stereotypical notions about the nature, role, or capacity of men and women.”²⁴ A Pennsylvania report was not as specific but similarly studied whether individuals were “treated” differently as “a party, witness, litigant, lawyer, court employee, or potential juror based on racial, ethnic, or gender bias.”²⁵

It is instructive that these studies examine everything from jury selection, court-employment practices, and courthouse interactions, to domestic-violence process, criminal justice and sentencing disparities, family-law decisions, and civil damage awards. Recommendations are made to the judiciary, legislature, bar associations, law schools, and others as appropriate, together with specific avenues for further research and education. The courts have made significant progress in identifying problem areas and in producing vigorous efforts to rectify them. Age is the next frontier.

FLORIDA ELDER JUSTICE CENTERS

“Elder Justice Centers” (EJCs) represent one model for judicial response to the complex issues presented when elders interact with the courts. This problem-solving type model has been developing in two judicial districts in Florida, where the Thirteenth Judicial District (Hillsborough County) and the Fifteenth Judicial District (Palm Beach County) have both created EJCs to address issues of elders. The EJC in Palm Beach County was moved in 2005 for fiscal and administrative purposes to the Division of Justice Services in the county’s Department of Public Safety.

The overarching mission of each center is to remove access barriers to the judicial system and to enhance linkages between elders and the court system, as well as the legal, health, and social service systems. They differ significantly, however, in focus. Hillsborough directs two-thirds of its resources to the Probate Court to assist with establishing accountability in guardianship cases, and the balance to serving victims of abuse and other crimes and to general assistance for elders with other matters. It is prohibited by terms of its funding from serving

offenders. Palm Beach has a strong focus on elders arrested for crimes, including elders placed in jail, as well as a broad variety of other legal matters that are referred to the EJC by the court. Recently EJC staff in Palm Beach County began assisting the Probate Court by reviewing guardianship reports, and conducting court-ordered investigations to ascertain the status and well-being of wards of the court.

Both EJCs function in support of the judicial system, not as independent advocates for particular elders. They provide information and referrals to elders as appropriate, while also serving as experts to judges on the backgrounds and needs of individual defendants or victims. Both centers try to address the inevitable fear, confusion, uncertainty, and lack of confidence experienced by many elders confronting the courts for perhaps the first time, especially those with dementia or mental-health issues. These experiences can be quite traumatic regardless of an individual’s status as victim, defendant, or witness.

III. JUDICIAL RESPONSE TO ELDER ISSUES

Given this background concerning recent trends in judicial administration, the following addresses how courts are dealing with specific issues involving older adults:

Ensure physical access to the courts, including appropriate assistance for those with vision and hearing problems.

Every jurisdiction in the United States, pursuant to the Americans with Disabilities Act (ADA), is responsible for ensuring physical access to the courthouse, courtrooms, and offices within them. All jurisdictions have a designated ADA officer responsible for compliance and for meeting special needs. In Palm Beach and Hillsborough counties in Florida, the EJCs offer one added level of assistance specifically for older persons in need, as appropriate. In general, there were no obvious ADA issues apparent during site visits.

However, the issue of hearing effectively in courtrooms was identified by a number of interviewees and was experienced firsthand by the investigators. The National Judicial College in Reno, Nevada, has a model court room designed to enhance listening by all parties and includes speakers throughout the room. A family-court judge in Reno said he had observed hearing problems even in new courthouses and recommended use of a dedicated courtroom specifically designed for persons with accessibility and hearing problems. The Delaware judiciary has state-of-the-art courtrooms in the New Castle County Courthouse, with speakers throughout and excellent acoustics. Each courtroom has headsets or “phonic ears” available for amplification. Monitors are located throughout the courtroom, including one for every two seats in the jury box, to ensure visibility of exhibits. Ramps and handrails ensure full access for jurors and witnesses.

These types of innovations will be more important as the number of older people participating in legal proceedings in already older courtrooms increase. An older person in a typical

23. Supreme Judicial Court of the Court System of Massachusetts, *Gender Bias Study* (1989).

24. *Id.*

25. Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Final Report* (2003).

courtroom with less-than-modern acoustics will have difficulty hearing not only as a member of the audience, but also as a litigant, witness, or member of the jury. This represents a threshold issue that should be addressed and regularly monitored—not only for compliance with ADA requirements, but to ensure older people can effectively participate in all proceedings.

Assess older adults who are incarcerated following arrest or booking in order to assist courts with making appropriate decisions about dementia, mental illness, or physical-health problems that could impact the next steps in legal proceedings.

This issue provided the underlying impetus for creation of the EJC in Palm Beach County, Florida. There was considerable community concern that older persons arrested and jailed should be assessed as quickly as possible, at least for the purpose of recommending a full assessment or alternative placement to the presiding judge at the first appearance. Furthermore, EJC staff are able to tap into private insurance when available to pay for assessments and services. Most jurisdictions provide some type of “pretrial services,” whether under court administration as in Washoe County, Nevada (Reno), or under county government as in Hennepin County, Minnesota (Minneapolis), for screening new arrestees. In fact, the vast majority of responding courts surveyed indicated that someone from the court carries out an initial screening to ascertain the need for a full assessment. However, only a third of these courts reported this person attends a first appearance with the arrestee. Palm Beach County is the only jurisdiction identified that has established a specific responsibility for its EJC to preliminarily screen all persons 60 and over prior to the first appearance and within 24 hours of arrest. This has resulted in court approval for hospitalization, assessment for mental illness or dementia, or alternative placement in assisted living, pending disposition. The EJC’s intervention has prevented a significant number of older people from spending unnecessary time in jail while awaiting trial.

Although addressing a later stage than booking in the judicial process, Broward County, Florida, has in operation the Broward Senior Intervention and Education program (BSIE), which is a voluntary pretrial intervention program for persons 60 and older who have been arrested for a misdemeanor for the first time. Arrestees typically are contacted, initially at arraignment or prior to arraignment, by a BSIE counselor and offered the opportunity to undergo a three-month individual counseling schedule as well as social rehabilitation, which consists of participation in a social activity at a senior center or community volunteer service. In return for completion of the program requirements, all adjudication and court costs are waived. The program is administered by a nonprofit senior-services agency, which also may refer these pretrial clients to other social services as needed. The recidivism rate for the few thousand arrestees who have completed the program since its inception in 1979 is less than 3%. The program is funded through the area agency on aging and the City of Hollywood Police Department’s Law Enforcement Trust Fund.

There is a basic question of whether law enforcement should, in appropriate situations, coordinate immediately with mental-health or dementia-specific agencies following arrest rather than booking an individual in jail in the first place. As a

nurse in the Public Defender’s Office in Sarasota, Florida, argued, the stress of incarceration for some elders could be deadly. Thus, there should be a concerted effort to “analyze risk” at the earliest possible stage. In each jurisdiction, a myriad of police departments book arrestees in facilities typically operated by a separate county corrections department. Law enforcement has to coordinate with a complex health- and social-services network, a task not easily undertaken without prior working relationships and an acceptable protocol for all parties involved. Regardless of how many older people are arrested each month in a given jurisdiction, the potential implications resulting from inappropriate or unnecessary jailing warrant specialized attention to this issue and development of a community protocol.

In an ongoing effort to address issues involving adults with special needs, the Hennepin County Police/Mental Health Roundtable has published a “Protocol to Request Assessment of Adults with Special Needs Who Are Inmates of the Hennepin County Adult Detention Center.” It is designed to inform mental-health professionals, county adult-protective-services workers, and social-services case managers about procedures for special handling or release from jail. Although it does not focus on the immediate aftermath of arrest and booking, and requires that the professional already have knowledge that a given individual is in detention, it is very useful as an example of the type of written protocol essential for addressing this issue in any jurisdiction. Increasingly, availability of services for special populations, particularly elders with dementia and/or mental-health problems who may have committed a crime, is problematic. This underscores even more dramatically the importance of close linkages among the judiciary, law enforcement, corrections, and health-care professionals.

Educate the judiciary and courthouse staff about issues of aging and the special concerns and problems of elders engaged in the legal system.

The president of the National Judicial College in Reno, Nevada, William Dressel, believes that it is important to create a “field of knowledge” about elders and the courts since none exists at this time. He is joined in this assessment by many of the judges, administrators, and human services professionals interviewed during site visits. In fact, many of them believe that judicial education about aging is a primary issue that needs to be addressed in order to improve access and justice for older people.

A probate judge in Maricopa County, Arizona, underscored the importance of this issue by focusing on the need to have knowledge of clinical and medical issues in order to be more effective. A drug-court judge in Hennepin County, Minnesota, emphasized the need to be knowledgeable about health- and social-services systems in order to coordinate services and estab-

Increasingly, availability of services for special populations, particularly elders with dementia and/or mental health problems who may have committed a crime, is problematic.

[J]udicial education about aging and health-care systems is a priority need in most jurisdictions.

lish accountability for outcomes. The chief judge in Hennepin County noted that the biggest problem is that the age issue is not yet on “the radar screen, but should become the focus of judicial education if the demographics justified it.” The chief judge of

the Family Court in Delaware believes that the courts “have to start looking at these issues as a jurisdiction.” Interestingly, a number of judges and professionals argued that education about the facts of aging, i.e., the physiological, psychological, and social dimensions, is a critical first step in fostering greater “judicial sensitivity” to elders and their special issues, thereby increasing its priority within the judicial system. An attorney in Reno observed that family-court judges who handle guardianship cases gain expertise over time, are more respectful, treat elders better, and humanize a process in which elders often feel intimidated. In general, a judge who has a more sophisticated understanding of aging will be more sensitive to underlying issues and can manage cases more effectively and efficiently.

Because jurisdictions differ significantly among the states, particularly in their use of problem-solving or specialty courts, education should not be limited to one type of court or judge. Judges in most sites believe that education about aging would enhance all judges’ knowledge and sensitivity about aging as well as improve their abilities to manage cases. Some particularly emphasize its importance in problem-solving courts such as a mental-health or family court in terms of increased knowledge, and ability to speak with and relate more effectively to older people on all issues affecting their lives. In this context, a mental-health court judge in Broward County, Florida, emphasized the specialty-court judge’s ability to overcome barriers to services and to ensure accountability for delivering them effectively. Despite this near consensus of sentiment, however, two-thirds of respondents to the electronic survey reported that no formal training was offered and all indicated that any training that occurred was voluntary.

Ensure that older adults who otherwise come into contact with the court system are referred, as appropriate, to publicly funded or private attorneys, and to health, mental-health, and social-services organizations to address nonlegal problems that may affect their participation in the legal system.

The issue of referral ranges from providing a referral to a private attorney or a legal-services program for someone who enters a courthouse bearing legal papers but no knowledge about what to do with them, through a court’s ability to address the mental-health needs of someone charged with criminal behavior. Thus, it includes assistance from a court’s self-help center, available in most jurisdictions visited to assist persons in obtaining and preparing legal papers necessary for pro se representation in many legal matters. It also includes potentially much more complex situations in which underlying causes, e.g., mental illness or dementia, have resulted in a criminal act. In the latter example, a court may need to harness extensive external services in order to respond effectively to an offender’s needs. All of these situations will continue to grow in number

and complexity as most communities’ experience population aging in the coming years. In this context, it is notable that more than 20% (22%) of courts responding to the survey said their court did not refer older adults to any community entity. The challenge to the judiciary lies in how each jurisdiction and individual judge responds in order both to manage cases more efficiently and to dispense justice fairly and effectively in each case to the satisfaction of the broader community.

The self-help center is a primary tool many jurisdictions utilize to address some of these issues. Although outreach to the community is typically quite limited, these centers provide extensive materials on community resources, legal forms to access probate and family courts, for example, and technical assistance on how to proceed with certain types of litigation. Phoenix, Reno, Wilmington, and Minneapolis have state-of-the-art centers that render referrals to attorneys and service agencies and deliver services intended to facilitate effective access to the courts. Palm Beach County has established through its EJC an additional office of professionals specializing in assistance to elders. The EJC in Tampa, although not connected to a self-help center, also provides the same type of “special expertise” on behalf of elders, particularly victims. These offices are people oriented and staffed by professionals trained to negotiate complex legal and health-care systems. The director of the Maricopa County Court’s Phoenix Guardian Review Project favors an “elderly advocate” who can navigate within and among courts as needed to help achieve positive outcomes through effective communication and coordination of effort. Phoenix is now studying the best way to organize current efforts in self-help, probate and mental-health, family, and perhaps, criminal court, into a “Senior Law Resource Center” to achieve this objective.

As noted above, judicial education about aging and health-care systems is a priority need in most jurisdictions. Complex criminal cases present substantial challenges to courts struggling to ensure justice, for example, in a domestic-violence case involving a frail older victim and a spouse or companion perpetrator who is in the early stages of dementia. The Palm Beach County EJC was designed “to develop and enhance linkages” for this purpose and to advise and assist judges who want to coordinate service plans as part of a sentence or case disposition. Judges need quality information on options available and the capacity to design and implement plans unique to each case. The experiences of mental-health, drug, and other problem-solving courts are analogous in many respects and, according to one judge in Minneapolis, represent precedents for enabling courts to alter the traditional paradigm, focus on people’s total needs, and bring new levels of passion, commitment, and coordination to resolution of complex human problems. In Reno, the administrator of the drug court and a new mental-health court has a dedicated budget to fund providers of services and, therefore, an enhanced capacity to hold them accountable for specified outcomes in court-ordered plans.

Educate law-enforcement, health, mental-health, and social-service organizations about issues and barriers affecting elder’s involvement with the court system.

There is near uniform agreement that law enforcement and service providers need to be educated about aging and the inter-

section between elders and the courts. This is an objective of the Palm Beach County EJC, and progress has been made concerning arrests of elders. In Tampa, the EJC works collaboratively with law enforcement to ensure services for victims are delivered promptly and responsively. As discussed previously, the Hennepin County Police/Mental Health Roundtable has developed a protocol regarding adults with special needs in jail and maintains an ongoing dialogue outside the judicial system. Although there are initiatives around the country to educate law enforcement and health-care professionals on issues of elder abuse, neglect, and exploitation, there does not appear to be any community-based, sustained effort to assemble these groups, together with court administrative staff, to address issues affecting elders and the criminal law. Most of those interviewed, with the exception of a few mental-health-court judges, did not view such an assembly as a pressing need at this time.

The issue of educating health-care and social-services providers is an intriguing one. For the most part, except for adult-protective-services offices and mental-health and substance-abuse providers already linked to problem-solving courts, most agencies have few relationships with law enforcement and the courts, particularly regarding elders. As a result, services in most communities are not designed for an offender population and are typically unavailable when needed. In this context, the EJC concept offers potential to serve as a catalyst for addressing issues affecting procedures and services for both victims and offenders.

Educate older adults and the general community about issues of access to the courts and typical legal issues that may affect them.

Courts can take a proactive role in educating different constituencies concerning the judicial system and typical areas of the law that may affect them. This can improve access and help prevent legal issues from ever reaching the courts. Because court systems are ultimately accountable to the public for support, elections of judges (in many jurisdictions), and funding for operations, they display an enlightened self-interest in wanting to reach out to diverse segments of the community. Four-fifths of courts responding to the survey indicated their court provided education to older adults regarding court access and common legal issues as part of a general effort to educate their communities.

The EJCs in Tampa and Palm Beach counties regularly speak to groups of older residents about legal issues, the courts, and services available. In effect, they take the self-help center concept one step further by making information available beyond the courthouse and by placing it directly into the hands of potential users of court services. This is of great value to older adults because it eliminates the need to travel to the courthouse. Older people may receive information on how to avoid consumer fraud; reporting abuse, neglect, and exploitation; family matters; understanding guardianship; and planning for long-term care and end-of-life issues. Information also may address landlord-tenant and mortgage-foreclosure situations. In general,

information can increase understanding and demystify the court system for potential older participants.

The Phoenix courts conduct outreach meetings in various communities with judges and administrators as speakers. They have learned personally of the high level of interest and concern about

probate issues of guardianship and civil commitment. A Family Court Advisory Council, including elders, has raised issues about grandparents' rights such as custody and visitation. The court is considering creation of an elder website. The chief judge in Minneapolis believes court liaisons to the elder community, particularly in minority communities with less experience in the courts and fewer resources to purchase legal assistance, are increasingly important. A probate judge in Minneapolis stressed the importance of community awareness about legal requirements concerning end-of-life decision making, i.e., available choices to avoid ending up in court. The director of the self-help center in Wilmington emphasized the importance of engendering trust by elders in the judicial process by working with them through community groups, especially in minority communities. In Reno, the director of the self-help center wants to take information and materials on the courts to senior centers and libraries using a "Self-Help Center on Wheels" model to maximize outreach. This concept is also supported by Guardian Review Project professionals in Phoenix.

Address the availability of sufficient numbers of guardians and the court's capacity to review and monitor guardianship reports.

The president of the National Judicial College characterizes the area of guardianship and conservatorships as the "ticking time bomb" of the courts because of their general lack of capacity to establish accountability for the actions of guardians. However, he perceives little interest outside of Arizona and Florida in these issues, and judges in other jurisdictions agree with that assessment. This is the single largest area of judicial activity involving elders and large sums of money, but nonetheless is referred to by many respondents as the judiciary's "stepchild." For various reasons, analysts have found that years of effort to achieve legislative reform have yielded little in positive outcomes.²⁶ Marshall Kapp urges a guardianship system that is founded on principles of therapeutic jurisprudence and argues for more research to assess outcomes based on the actual impact of the system on elders' lives. Israel Doron goes even further in recommending a change from the current concept of guardianship to a new legal model of "long-term legal care." This is a novel idea that conceptualizes guardianship law as a component of home and community-based care and utilizes shared decision making as a way to empower elders to help choose appropriate care.

The Phoenix courts conduct outreach meetings in various communities with judges and administrators as speakers.

26. MARSHALL B. KAPP, *THE LAW AND ORDER PERSONS: IS GERIATRIC JURISPRUDENCE THERAPEUTIC?* (2003); and Israel Doron, *From Elder*

Guardianship to Long-Term Legal Care, 8 *ETHICS, LAW & AGING REV.* 117 (2002).

Minneapolis and Reno both have identified the issue of grandparents seeking guardianship or custody over grandchildren. . . [and] are preparing informational and self-help materials

Although approached differently in each jurisdiction, Phoenix, Tampa, and Ft. Lauderdale have organized prototype mechanisms for addressing guardianship issues. The Guardian Review Project in Phoenix is designed to review files and annual reports, recruit and train a cadre of volunteers to visit wards and file reports, and identify service needs and financial abuse. A supervisor and two professional staff oversee 30 volunteers and collaborate with a team

of three investigators, three accountants, one probate examiner, and two paralegals. These resources are unequaled in any other jurisdiction visited and perhaps in any other jurisdiction in the United States. The priority assigned to this area, and the corresponding area of civil commitment, reflects an understanding not only of current and future demographics, but also the importance and value of these cases in both personal and financial terms. This is a model worthy of further evaluation of outcomes in order to assess potential replicability.

Absence of resources available to support this responsibility is a major barrier in most jurisdictions. Leadership of the probate judge in Tampa, who originally sought to create an “Elder Court,” led to creation of the EJC and attracted funding from private foundations to support two full-time court counselors who review case files, initial and annual reports, and guardian and attorney billings. Both the judge and a special master recognize the need for establishing financial accountability, and the clerk’s office will be hiring an auditor to help address this gap. Together, judges and EJC professionals are working to attract more guardians, improve training and licensure requirements, establish standards for selecting committee members assessing an individual’s need for a guardian, and, as in Minneapolis, are exploring implementation of the emerging concept of mediation in guardianship cases.

The probate judge in Ft. Lauderdale, a well-recognized leader in the field, receives funding from county government to support a Probate and Guardian Services Counsel. He has the capacity to audit and review files and reports similar to that conducted by the EJC in Tampa (and well underway by the EJC in Palm Beach). The judge is working with his staff on a new state-of-the-art data-management system essential for establishing oversight and accountability. He is seeking to interest local law schools in working on these issues and is participating on a state task force to help establish improved standards for guardians and the guardianship system.

These programs, as noted, are models. Most jurisdictions do not report having this level of priority or resources in the area of guardianships and conservatorships. A full 90% of survey

respondents indicated their courts reviewed guardianship reports for timeliness and reasonableness, but only one-third reported that in-depth monitoring takes place. Individual judges and administrators recognize the importance of the issues but have not yet elevated it sufficiently to attract resources. By contrast, in Reno, the court allocates space to SAFE, a private not-for-profit organization that recruits and trains volunteers to act as companions, not guardians, for wards referred from judges in family court. Similar to a guardian ad litem program for children, this state-funded program (from tobacco-settlement money) relies on court orders to gather information on the situation and on the well-being of wards, while volunteers file reports with the court. Fifty-six volunteers from ages 25 to 82 carry one to five cases, averaging 100 hours a year per case. These volunteers receive university-level training and have access to the program’s forensic psychologist for consultation. In the absence of dedicated court staff as described above, SAFE represents an imaginative alternative to responding to at least some of the issues identified in rapidly growing caseloads involving guardians.

A final note on guardianships involves self-help centers that are expanding in size and in the types of matters addressed. Minneapolis and Reno both have identified the issue of grandparents seeking guardianship or custody over grandchildren when parents are no longer able to function as parents. Both are preparing informational and self-help materials to address this relatively new and growing body of cases.

Maintain an information system capable of tracking the case status of individual older adults, documenting outcomes, and compiling summary data on the legal, health, and social-service needs of older adults entering the judicial system in order to help identify patterns or issues for legislative, programmatic, and/or budgetary improvements.

As expected, no jurisdiction routinely captures data on elders in the court system. None of the survey respondents indicated that his or her court tracked demographics, health and medical data, or financial data on older adults—even though 90% reported that their computer systems did allow tracking of older adults. The two Florida EJs are developing their own information systems to track clients and improve management of caseloads, report case trends, and identify service needs of elders in court. Because of the singular importance of this issue, it was the primary focus of technical assistance provided to the EJC in Palm Beach County.²⁷ As noted above, the Probate Court in Ft. Lauderdale is directing a circuit-court project on data management that is intended to be state-of-the-art in the belief that automation is the key element for improved oversight and accountability in guardianship cases.

The more typical response in sites visited, however, is that information systems in general are primitive and in need of modernization. Nonetheless, a system, regardless of its level of sophistication, will produce useful data and reports on elders only when it is programmed to do so. This will not occur unless a jurisdiction (i.e., chief judge, court administrator, or perhaps,

27. Max B. Rothman et al., *Consultation with the Fifteenth Judicial Circuit on the Operations of the Elder Justice Center* (2003).

an individual judge) establishes aging as a legitimate priority area of concern and requests information on elder-related indicators on a regular basis. This does not happen, however, in any of the jurisdictions visited. The directors of management information services and court statisticians interviewed were all in various stages of improving their systems to keep pace with the state of technology but had never been asked to produce data on older adults. They agree that there are no legal impediments to recording and capturing data on age and producing reports useful for judges, administrators, and professionals on a regular basis.

These data are useful for case tracking and for understanding legal areas of significant involvement by elders by type of case, length, monetary value, levels of jury participation, or any other desired measure. Data on service needs of elders can be utilized to help mobilize health-care and social-service agencies and professionals to work collaboratively to address service-delivery issues and to identify priorities for future funding. Initiatives of this nature are invaluable in raising the profile of elders in the courts and in building momentum for improved access, responsiveness of judges, and collaboration with others in the community. Finally, timely and relevant data are essential for applying Trial Court Performance Standards to issues of older adults.

Utilize technology to help improve access and effective participation by older adults in the court system.

Technology is essential to addressing issues of access and information systems, as discussed above. Interestingly, about one-half (16 of 33) of survey respondents indicated their court did not use any media or technology to help improve access and effective participation in the court system specifically for older adults. Perhaps the most important use of technology is in the courtroom itself. The “technology court” in Wilmington is state-of-the-art and responds meaningfully to the needs of older adults. Video conferencing is now a reality there and has great potential for reducing travel and expense to reach centralized courthouses. Phoenix is expanding its self-help center’s capacity to offer legal forms online. It is possible that a court’s website could have useful information about typical areas of legal or court involvement by older people and instructions and checklists on how to be prepared for participation in court proceedings. Mobile vans can transport self-help centers and even courtrooms to distant locations.

Although the state of courthouse technology will undoubtedly continue to evolve, leadership is still required to establish priorities for purposes not only of management efficiency but also of effective use by everyone in the community. The director of the Minneapolis self-help center argues that “people need to have confidence in the courts,” and be assured that they are listened to throughout the process. If people, including elders, understand what is happening to them in the courthouse, especially in the courtroom, confusion and anxiety will be reduced. There is widespread agreement that in the courts, as in health care, high tech cannot replace high touch.

Obtain resources and staff to appropriately carry out any or all of these functions.

It is the challenge of leadership to assemble resources to

meet organizational priorities. Roughly 90% of court survey respondents indicated that designated court staff carry out one or more of the functions covered in the survey. More than half reported that volunteers carry out these functions as well. These same respondents also reported that these functions are funded from multiple sources: from 42% citing court administration to one respondent identifying a national foundation as a funding source. As issues of older adults increasingly affect the courts, chief judges and court administrators will be expected to respond appropriately, even in a difficult fiscal environment. The probate judge in Tampa joined funding from private foundations with the state’s Office of the Attorney General (using funds designated to assist crime victims) to establish the state’s first EJC. In Palm Beach County, the chief judge and court administrator secured county funds to launch the EJC. The probate judge in Ft. Lauderdale leveraged a newspaper exposé about the lack of judicial oversight of guardians to generate county funding for professional staff and design of a model information system.

Other examples abound. In Phoenix, the former court administrator created a study group on probate issues to help overcome the common perception of probate as the stepchild of so many jurisdictions, resulting in the establishment of the Guardian Review Project, as discussed previously. The Reno SAFE project reflects an ongoing and unique collaboration between the family court, which handles guardianships in Nevada, and a private, not-for-profit organization (described earlier) that utilizes volunteers as “companions” for wards in cases referred by the court. In Minneapolis, the probate court processes 1,500 civil commitment cases a year and works closely with the county’s human-services department to provide case-management services under the state’s civil-commitment law and to file reports with the court at the end of the six-month commitment period. In effect, county professional staff function as a court-related resource to ensure accountability for mandated services. In Broward County, Florida, the court benefits from a pre-trial intervention program, run by a local aging services provider, that is funded by a local police department trust fund as well as the area agency on aging.

Courts are challenged to respond to increasing numbers of cases involving older people, often with complex underlying problems. Funding, trained professional staff, and motivated volunteers are all necessary resources for the courts to respond effectively. Likewise, courts will have to develop imaginative ways to attract students in law, social work, and other disciplines to assist in these efforts. As the director of the EJC in Palm Beach County states, “when you enter the courthouse, you enter a foreign country.” For elders, often without resources, the experience can be traumatic. The director of the Reno self-help center in Reno agrees that most elders “don’t know the language.” It is the responsibility of court systems to prepare themselves to meet this challenge with passion and innovation.

Courts are challenged to respond to increasing numbers of cases involving older people, often with complex underlying problems.

IV. ELDER JUSTICE CENTERS, ELDER COURTS, AND OTHER RESPONSES TO AN AGING SOCIETY

The judiciary, as this article has documented, will have to respond creatively to the demographics of aging just as other institutions in American life are adjusting. Older adults are living longer and bringing more complex underlying issues into the courthouse, challenging judges and court administrators to find ways to identify problems early, establish effective linkages with the health and social-services community, and ensure accountability for judicial orders. This article has cited experiences in Florida and elsewhere that are beginning to achieve these objectives. The emerging concept of therapeutic jurisprudence, the experience of problem-solving courts, the development of Trial Court Performance Standards, and progress made with identifying and eliminating race, ethnic, and gender bias are indicative of the judiciary's capacity to respond to changing conditions and new challenges. Given the diversity of jurisdictions and judges, there is no single approach to achieve this objective.

During site visits, Elder Justice Centers in Florida and the concept of an Elder Court generated extensive discussion. Some judges and administrators argued that no special efforts by the courts were justified on the basis of age and that all persons in the court system should be treated the same, consistent with ADA requirements. However, most liked the EJC concept, and many favored creation of a problem-solving elder court.

In general, those who supported the EJC concept endorsed it as an entry point for elders who would have an advocate assisting with negotiation of a very complex judicial system. Elders would receive relevant information concerning legal matters, obtain referrals to legal and social services as appropriate, and be assigned, if needed, a case manager whether in probate, mental-health, family, or criminal court. Social-services professionals would recruit, train, and supervise volunteers and students to expand coverage and provide additional support. They would be a source of technical support to judges in various divisions, particularly with respect to health, mental-health, and social-services systems. They would be "boundary spanners" who establish linkages with service providers and assist judges with development of treatment plans. They can tap into elder's insurance coverage and seek out other sources of support for services. As the Tampa probate judge noted, dedicated staff are "invaluable" in guardianship matters because their efforts allow the court to establish accountability for activities of guardians and their attorneys. Finally, as noted by a court administrator in Phoenix who is working to shape a senior law resource center, this concept can be designed to build on a jurisdiction's unique organization and strengths and respond to identified community needs.

For similar reasons, many of those interviewed favored creation of an elder court. Specialty-court judges and professionals, particularly in mental-health and drug courts, underscored the importance of being able to harness the composite of services needed to help affect human behavior and generate positive outcomes. Judges with specialized training and experience may recognize the absence of family and social support and can mobilize services in support of treatment decisions. The key is the court's connection to services and its ability to

mobilize agencies and to hold the system accountable. Jurisdictions with an integrated family court, perhaps including responsibility for probate and mental-health matters involving guardianships and civil commitments, family matters, and domestic-violence cases, could shape dockets and designate one judge to preside in an "Elder Court." As one judge in Minneapolis concluded, under a "one person, one judge" concept, an Elder Court could punish, commit, order services, or designate a guardian. The key is a "judge with passion, not just a case processor, but a judge who wants to deal with people, not just lawyers!" The paradigm needs to shift to manifest a willingness to integrate and address all relevant issues affecting an individual through caring, good judgment, and persistence.

In the future, it is possible to imagine jurisdictions with large older constituencies making strategic decisions to implement either or both of these concepts. Jurisdictions will differ based on state constitutions and laws, local history and organization, and judicial leadership. The availability of resources undoubtedly will be an important factor, but allocation of resources may be equally as important. Although courts are always subject to community pressure to respond to issues of crime and safety, individual judges with passion and commitment can shape the judicial landscape. As courts have responded creatively to issues of race and gender, in the early years of the 21st century they will be equally challenged to respond to the issues of an aging America.

V. A MODEL APPROACH

As the analysis of experiences described above demonstrates, there is no single approach to how an individual jurisdiction should address issues of older adults. In fact, although most courts consider the age of 60 as a threshold for consideration of age, the experiences of Florida's EJCs suggest most of their work focuses on people 70 and over. Inevitably, there will be wide variability in how jurisdictions approach these issues in the coming years. Nonetheless, a model approach should include the following elements:

1. An analysis of the jurisdiction's demographics, including numbers and percentages of older adults 60 and over, by 10-year cohorts.
2. An analysis of state constitutional and legal requirements concerning the organization and administration of local court systems.
3. An internal review of how the jurisdiction's judges and professional staff perceive issues affecting older people and their recommendations to address these issues.
4. An external review by a community task force or advisory group consisting of representatives from: the bar, including prosecutor, public defender, and private bar; health-and-human-services organizations, including adult-protective services and mental-health and dementia-specific agencies; older advocates; and law enforcement.
5. A review of the experiences of other jurisdictions, especially focusing on EJCs and problem-solving courts.
6. Analysis of existing or potential resources to support any new initiative.
7. Decision on a course of action tied to the availability of resources.

8. Establishment of goals, objectives, and strategies to implement decisions over a 3-year period.
9. A strategic plan to address each of the 10 specific issues described above in order to implement desired programs and activities.
10. Inclusion of an evaluation component from the beginning in order to track progress and measure outcomes.

The evaluation component is critical to courts' capacity to make policy decisions surrounding issues raised in this report.²⁸ Kapp emphasizes the importance of research that applies the TJ approach described above, "which is concerned with measuring outcomes or results on the intended beneficiaries."²⁹ He is concerned about evaluating the effects of laws, programs, or judicial action on those intended to benefit from them.

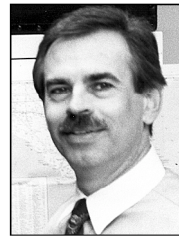
Each community, of course, is unique and by engaging in "community mapping," each jurisdiction can assemble data and mobilize resources to respond most effectively to its own special circumstances. Courts in this country, although subject to the ebb and flow of broader political and fiscal currents, have the ability to set agendas, attract resources, and exercise moral authority to meet new challenges. The next frontier for most institutions in American life, including the judicial system, is older age!



Max B. Rothman is the executive director of The Center on Aging at the Robert Stempel School of Public Health, College of Health and Urban Affairs, of Florida International University. He holds a B.A. from Lafayette College, a J.D. from the University of Michigan, and an LL.M. from the George Washington University Graduate

School of Public Law. The Center on Aging engages in research, education, and training, with a focus on long-term care, healthy aging and health promotion, and issues of elder justice.

In 2000, Rothman coedited a book, *Elders, Crime, and the Criminal Justice System: Myth, Perceptions, and Reality in the 21st Century*, addressing the increasingly complex issues of elders, crime and criminal justice, published by Springer Publishing Co. He is currently coauthoring a report for a project funded by the State Justice Institute on "Adapting Trial Court Performance Standards to an Aging Society."



Burton Dunlop is director of research at the Center on Aging at The Robert Stempel School of Public Health, College of Health and Urban Affairs, Florida International University. He earned his Ph.D. in sociology from the University of Illinois at Urbana-Champaign. Dr. Dunlop has more than 25 years of experience in directing research and evaluation on issues and programs in aging, health, disability, social services, long-term care, and elder justice. His most recent publications include an entry on "Elder Abuse and Neglect" in the Corsini Concise Encyclopedia of Psychology and Behavioral Sciences (in press); and the 2000 book, *Elders, Crime, and the Criminal Justice System: Myth, Perceptions, and Reality in the 21st Century*, which he coedited with Max Rothman and Pamela Entzel. He is currently coauthoring a report for a project funded by the State Justice Institute on "Adapting Trial Court Performance Standards to an Aging Society."

28. KAPP, *supra* note 26.

29. *Id.*