ISSN 0709-5319

PRINTED IN BRANDON BY LEECH PRINTING LTD

PROVINCIAL JUDGES Journal

VOLUME 5, No. 1 MARCH, 1981

A PUBLICATION OF
THE CANADIAN ASSOCIATION OF
PROVINCIAL COURT JUDGES

The Provincial Judges Journal is a quarterly publication of the Canadian Association of Provincial Court Judges. Views and opinions contained herein are not to be taken as official expressions of the Canadian Association's policy unless so stated.

Editorial communications are to be sent to The Provincial Judges Journal, Box 531, Brandon, Manitoba R7A 5Z4.

"The Reports of My Death Are Greatly Exaggerated"

Ed. Note – Gremlins can crop up in even the most esteemed publications, as is testified to by a recent article in "Le Palatin". The unfortunate juxtaposition reproduced below occurred at a time when the President of our Association Jacques Lessard was ill – but not that ill. The following is the text of his letter enclosing the offending article:

"Dear Rod,

As editor of our Journal, let me favor you by illustrating a wrong technique that can be used in the page-setting of a publication.

"Attached to this note is a copy of a journal which is widely distributed in our Court House by our public relation service.

"I refer you to page three of this document, where the editor was anxious to announce my election as president, by also printing my picture. At the same time, he wanted to grieve over the death of an estimable colleague who had reached the age of 71 years.

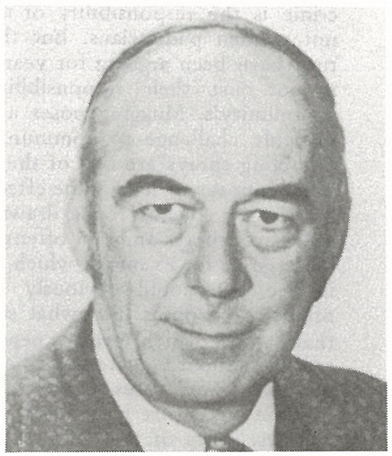
"The page-setting, in column two, places my picture – in which I have no difficulty in identifying myself, with the mention "Deceased" underneath, followed by the death announcement of my unfortunate brother, while the reference to my nomination follows in the next column.

"As the newsletter was being distributed, the rumours of my hospitalization and surgical operations were also being spread, adding therefore to the confusion, to the extent that, upon returning to my office after my hospital stay, I had the uncomfortable feeling of being regarded as a ghost.

"However, may I say that Mrs. Rumour came to my rescue, since barely one hour had passed before there was a full public rejoicing within the Court House when my prompt recovery was loudly announced.

"I am quite convinced that your experience with the Journal would shelter you from such a false step.

Yours,
Jacques"



Décès

L'ancien président de la Régie des services publics du Québec, en 1970, le juge Louis-F. Cantin, de la Cour provinciale, est décédé le 27 septembre dernier, à l'âge de 71 ans. Admis au Barreau du Québec, en 1937, il avait été élevé à la magistrature, le 1er mai 1960. Le juge Cantin était célibataire.

Un honneur pour la magistrature du Québec

Le juge Jacques Lessard, de la Cour des sessions de la paix à Montréal, a été élu, le 26 septembre dernier, président de l'Association canadienne des juges de nomination provinciale. C'est la première fois qu'un juge du Québec accède à la présidence de ce groupement. Deux autres juges agiront comme officiers de cette association. Il s'agit des juges Raymond Bernier et Denis R. Lanctôt.

L'Association canadienne des juges de nomination provinciale regroupe 800 juges de toutes les provinces du pays.

Avis

Depuis le 1er octobre dernier, les enquêtes sont entendues, en division de pratique, les mardi, mercredi et jeudi.

Le juge en chef Alan B. Gold
Le juge en chef ajoint Gaston Rondeau

In Brief

JUDICIAL COMPENSATION STUDY RELEASED

A revised report on judicial compensation in Canada for provincial court judges has been released by the C.A.P.C.J.

The study, commissioned by the association two years ago, was originally prepared by Judge Brian Stevenson of the Alberta Provincial Court. The revised version, updated to January 1, 1981, has been compiled by the Executive Director of the Association, Judge Douglas Rice from information received from the Provinces and territories.

The report covers such aspects of compensation as salaries, pension, holidays, sabbatical leave and travel allowance as they differ from province to province.

Although no recommendations are included in the report, Judge Rice concluded in his review, "We must continue to believe that 'A Judge is a Judge, is a Judge' and to attempt to achieve that which is rightfully ours – an independent, adequately compensated and equal Bench of the Judiciary of Canada.

"We must use all of the resources at our command to impress upon those responsible for judicial compensation the value of our services to the community and to the administration of justice in Canada."

This report has now been presented to the executive of the Association, and has been forwarded to all provincial representatives for their further use. Anyone interested in considering the report should contact their provincial representative.

Executive Meeting

Prospective changes to the criminal code were outlined by Chief Judge Fred Hayes at the January executive meeting of the C.A.P.C.J. in Toronto.

Chief Judge Hayes, the chairman of the Committee on the Law of the Association, indicated that some of the forthcoming changes involved policy shifts in the Criminal Code (such as those relating to sexual offences and child pornography), and for such matters it would not be appropriate to make representations to the Department of Justice.

On the other hand, he said, a number of other amendments to the Code "which may substantially affect the day-to-day work of the provincial judge" may be prepared, and on those matters Chief Judge Hayes received the authority of the executive to make submissions to the Department.

With respect to the long-awaited Sentencing Handbook, Chief Judge Hayes reported that a first draft of the Handbook had been rejected, but a second draft was "on the right track". He emphasized that the Handbook was to contain sentencing information as it exists in Canada, with an absence of editorial comment.

He indicated that this second draft of the Handbook would be used as a basis for its publication and circulation to judges. It is, he said, a first step to see if there ought to be a central judicial office in Canada to distribute information to judges.

He emphasized, however, that if such was to be the case, such a central office must be controlled by the judiciary. In the case of the Handbook, the C.A.P.C.J. has been the vehicle by which these efforts have been achieved.

At the executive meeting, reports were received from Judge Clare Lewis regarding the September annual meeting in Toronto, Judge Cy Perkins for the Court Structure Committee, Judge R.B. Wong for the Education Committee and Senior Judge Robert Hutton for the Constitution Committee.

In filing his Convention '81 report, Judge Lewis said that the program committee "has made considerable efforts in regard to the preparation of the program, including contacting Dean Watt of Nevada, the Chairman of the American Judicial College, who has indicated his willingness to attend.

"Further, Arthur Maloney, Q.C., who is the Ontario Provincial Judges' representative to the Provincial Judges' Committee, a

unique creature in the Commonwealth, has been invited to attend and discuss the experience of that Committee as an attempt at judicial independence in terms of salary, pension and other financial matters, together with the efforts which it will be making with a view to removing Judges from the Civil Service attitude normally imposed by Government on Judges.

Part of the convention will provide "a program which will involve spouses, designed to apprise Judges and their families of financial management while presiding, and preparation for retirement and the alternatives available in retirement."

A happy note was struck in the announcement, by President Jacques Lessard, of a surplus of $11,000 in the 1980 Quebec City annual meeting budget.

Some discussion ensued on future annual meetings, and it was agreed that the Saskatoon meeting be held from September 15-18, 1982. The dates of the meeting in Yellowknife, scheduled for 1983, are yet to be set, although Chief Judge James Slaven indicated that July might be preferable.

Student Jury System Resumption Planned

The student jury pilot project introduced into the juvenile court system in Brandon last year has elicited "positive response," and steps are now being taken to continue the experiment for another year, Attorney-General Gerry Mercier has announced.

Mr. Mercier said discussions have been held with the Brandon School Board and as a result the project will be resumed.

Recommendation for continuation of the project in Brandon for another school year is contained in a report on the 1979 experience by Judge Brian Giesbrecht, of the Provincial Judge Court (Family Division) of Brandon. (see elsewhere in this issue)

The student jury project was among recommendations in the September, 1979, report of the Juvenile Justice Committee, chaired by Chief Provincial Judge Harold Gyles. The project's purposes are to enable participating students to learn about and participate in the juvenile justice system and to provide an opportunity for the juvenile court to consider recommendations made by the peers of offenders.

He Meant Well

Senior Judge Ed Kimelman, of the Manitoba Provincial Court (Family Division), recently received a letter from the principal of a high school, confirming that Ed would speak to the students about juvenile court. Although Judge Kimelman claims not to know the principal, the last paragraph of the letter indicates the principal knows all about Ed:

> "Our main purpose in our school credit course is to develop a healthy life style. You will be able to show our students the results of an unhealthy life style."

The Judge is Worthy of His Hire

Americans accustomed to thinking of federal judges as financially well-heeled and "set for life" in a prestigious government post may be surprised at the findings of an American Bar Association task force study of judicial salaries. The ABA study found that federal judges, under mounting pressure from increased workloads, have fared worse than many in trying to keep up with the rising costs of living. Due to inflation the take-home pay of federal district judges, for instance, has declined to $19,000 in 1969 dollars; in other words, the purchasing power of a district judge was 60 percent higher 10 years ago than it is today. While the consumer price index rose almost 100 percent during that period, the ABA says, judges' pay went up 20 percent.

People struggling to survive with far smaller incomes that the $54,500 annual pay of a US district court judge (appeals court judges get $57,500; Supreme Court justices $72,000) might well find it difficult to sympathize. But in comparison to the fees received by many successful attorneys in private practice – big-city corporate lawyers in particular – the compensation of a federal judge is relatively low and frequently represents a financial sacrifice. In New York City, for example, it is not uncommon for a young lawyer with 10 years' experience to earn $60,000 a year. Some run-of-the-mill corporate lawyers take in $150,000. So out of proportion to judges' salaries are corporate law fees that some question whether

in the industrialized world, although sociologists caution against drawing a direct relationship between lower figures for violent crimes and laws controlling guns.

In the United States, there were 21,456 murders reported in 1979 in a population of just over 200 million, or about one murder for every 10,000 people. Half involved handguns and 13 percent rifles or shotguns. In France, there were 1,645 homicides, just over half involving firearms, in a population of 53 million, and in Britain one person in every 100,000 is a murder victim – one-tenth the ratio in the United States.

Other countries have almost negligible incidence of violent crime. In Israel, where only 42 people are licensed to sell guns, there were 145 crimes of all sorts last year involving weapons. In West Germany, with a population of 60 million, 69 crimes in 1979 involved murder or robbery with a firearm.

While far stricter in their laws, most of these countries have their share of violent crimes and illegal possession of firearms. Yet, there is a difference.

Britain offers the most interesting contrast. Serious crime and homicide have doubled in the past decade. Youth crime is on the increase, as are muggings, and criminals with guns are no longer unheard of.

For all this litany of violence, however, police in London found it necessary to fire guns only eight times in all of 1979.

– *The Washington Post*

UNFAIR TO PEPPERY LADIES

A FEW RECENT CASES have made the law look such an ass as this week's prosecution of a woman for carrying an anti-mugger spray. The spray, which had not been used, was found in the lady's handbag. It contained a mixture of pepper juice and red dye – pepper to disable an attacker and dye to help police identify the assailant. Such sprays are widely used in the United States, where they have been legally available for several years. But last week in Britain a woman was given a one month suspended prison sentence for carrying a spray. It was classified by the police as an offensive weapon.

Britain has a well-deserved reputation for its laws controlling firearms and offensive weapons. One only has to look at America to learn what happens where there are inadequate controls. In Los Angeles alone one person is murdered every 20 minutes. Four times as many people are murdered in New York every year as in the whole of the United Kingdom. But in Britain, where about one million guns are licensed, a licence does not give the owner the right to carry the gun wherever he wants. There are strict regulations covering its use. Licences for handguns are particularly restricted, which is one reason why Britain's homicide rate is so tiny compared with America'.

Obviously no one should lightly tamper with such controls. But last week's case suggests they have been drawn far too tightly. Not everybody will agree. Some magistrates will argue that the prevention of crime is the responsibility of the police – not women pedestrians. But the police in turn have been arguing for years that crime is not just their responsibility but the community's. Mugging poses a particularly difficult challenge to community policing. Disabling sprays are one of the few options which appear to have some effect. Of course a strict line needs to be drawn between a defensive spray and an offensive weapon. Mace guns, for example, which are available in the US, could obviously be used for offensive purposes. But what seems clear is that a spray which involves pepper juice and red dye should be categorized as a defensive weapon. Hard cases make bad laws but because of the rise in mugging – and rape – in many parts of the country, laws have to meet changing circumstances. Police, for instance, carry guns outside embassies. The fate of the lady with the pepper juice indicates that more changes are now in order.

– *The Manchester Guardian*

Other Views

Other Nations' Gun Laws

POSSESSION and use of firearms are far more limited, and regulation far more stringent, in major industrial societies other than the United States, according to an informal survey by Washington Post correspondents.

In West Germany, a person seeking to purchase a weapon not only must prove a specific need, but also must prove experience or training in the use of firearms and take a special examination in the presence of a police officer and a civilian who already is licensed.

In Japan, with a population of 115 million, there were only 171 crimes involving the use of a gun committed in 1979.

Even in Britain, whose society is fraught with much of the racial friction, economic dislocation and youth violence afflicting the United States, crimes occur with strikingly less frequency than in America. London, with a population of 7 million, had 179 homicides last year compared to 1,557 in Los Angeles and 1,733 in New York.

In contrast to the United States, where limited federal regulations governing sales of firearms are supplemented by a crazy quilt of state laws, most other major industrial societies have uniform laws. This reflects general legal traditions in much of the rest of the world, but one other significant difference is that officials are assiduous in carrying out the laws and prosecuting offenders.

For example, under the U.S. Gun Control Act of 1968, the prevailing federal legislation, a person who abuses alcohol cannot be sold a gun. Yet the law does not require a firearms dealer to check out information given by a person trying to buy a gun. The buyer's word is accepted.

In Japan, the prospective buyer would have to get permission to own the weapon, and this is granted only after a strict background check. In Spain, where controls are even more severe, the licenses must be renewed each year.

While France is much less restrictive in the categories of persons who may be given a license – almost any reason is accepted – an elaborate background check is done on every applicant.

British laws are perhaps the most draconian, with almost no licenses given for private possession of a handgun or rifle; the licenses that are given generally are limited to farmers for use on their own property or to persons using gun clubs or ranges, and they must keep their weapons on club premises.

British officials state flatly that self-protection or protection of property is not sufficient reason for a license to be granted – an attitude vastly different from that prevailing in the United States.

The Japanese go one step further: they also control possession of swords with blades longer than 15 centimeters – no small step for a country with a centuries-old martial tradition involving the sword.

In almost every country surveyed, illegal possession of a weapon is punishable by a minimum one-to-three-year sentence and in some cases up to six years. Illegal sales of guns also carry strict penalties, ranging up to five years' imprisonment.

One exception is Canada, where judges rarely send anyone to jail for unauthorized possession unless a crime was attempted with the weapon. The Canadians have been moving toward stricter controls, however, adding rifles and shotguns in 1977 to a five-decades-old tradition of licensing handguns, and removing protection of property as one of the reasons for granting a license to carry a handgun.

While hesitating to draw an immediate correlation, officials in Canada have noted a decrease in shooting homicides. In 1975, in a population of 22.7 million, there were 292 homicides involving guns. Last year, although the population had grown to 24.1 million, shooting deaths had fallen by 29 percent to 207.

The Canadian experience of vastly lower figures for violent crime, and for crimes involving guns, is reflected elsewhere

they are in accord with the ABA requirement that legal fees be "reasonable".

On the other hand, the pay scale of a federal judge does not appear to be out of line with many academic and government lawyers.

The primary concern is that it is becoming increasingly difficult to attract successful lawyers to the federal bench. Moreover, a growing number of experienced, highly qualified judges are resigning to resume private practice. A survey found that 73 percent of the judges leaving government service cited inadequate compensation as the primary factor in their decisions to do so.

More RCMP Assigned to Contract Policing

The Solicitor General of Canada, the Honourable Bob Kaplan, has announced that an additional 128 RCMP man years would be committed to provincial, territorial and municipal policing.

The addition brings the total RCMP members assigned to contract policing from 8,866 to 8,994, 6,334 providing policing services to the provinces and territories and 2,660 to municipalities.

The largest number of the new positions has been earmarked to meet the law enforcement requirements of Alberta, with its rapidly-expanding population centres and major new industrialization projects.

The RCMP provides policing services to all provinces except Ontario and Quebec, as well as providing the police forces in the Territories and 193 municipalities, where the costs are shared between the respective levels of government.

The current contract agreements come up for renewal again on March 31, 1981.

"The use of the RCMP by provincial, territorial and municipal governments provides a reduction of duplication and improved coordination between police forces, economies of scale in such areas as training and purchasing, and a ready pool of supplementary resources to meet emergency situations," Mr. Kaplan said.

"The Government of Canada is committed to renewing the services of the RCMP to those provinces, territories and municipalities which wish to have them under terms in which all parties pay for the benefits derived from the services, to ensure the continuation of these benefits by the renewal of the contracts."

As Phony as a $22 Bill

This fall, a man at the Hamilton, Montana court gave the cashier a $22 bill for payment of a $20 traffic fine. No one is sure if he received $2 in change. In addition to the unusual denomination, the bogus bill did not feature Jackson but had "a picture of a cigar-smoking man wearing a panama hat and holding a spread of bills," the *Chicago Tribune* reported. And the bill was signed: "United States Treasurer, Alaska Jack."

The Hamilton chief of police, Jon Willette, told the reporter that "a 26-year-old Hamilton man...admitted passing the $22 bill." He notified the Secret Service, which has jurisdiction over counterfeit currency cases.

The court cashier is not commenting on the matter.

MAINTENANCE PAYMENTS SHOW SUBSTANTIAL RISE

Maintenance payments received through Manitoba's family maintenance enforcement program rose by 70 per cent during the first 10 months of 1980 over the same period in the previous year, according to statistics released by Attorney General Gerry Mercier.

Attibuting the increase to the province's implementation of a new computerized monitoring and enforcement procedure, the attorney general pointed out that payments rose from $2,228,923 between January 1 to October 31, 1979 to $3,797,187 in the same period this year.

The new system has proven so effective that last month all of the 3,836 maintenance orders on the system were being enforced under the program whereas in October, 1979 only 850 of the 1,400 maintenance orders being monitored by the courts were actually being enforced.

Mr. Mercier said that as part of the maintenance enforcement program all orders payable to spouses in receipt of social allowance benefits have been put into the program for enforcement.

He said this largely accounts for the 83-per-cent increase in the amount of maintenance payments paid by individuals to dependent spouses, children or parents between the periods January 1 to October

31, 1979 and January 1 to October 31, 1980. Maintenance payments rose from $199,084 to $364,856 – representing, said Mr. Mercier, "an actual dollar saving to taxpayers."

Although the system is the most sophisticated in Canada, the attorney general said the new computerized monitoring enforcement system is relatively inexpensive, with the equipment costing only about $1,300 per month.

"The computerized system," he said, "provides early detection of default within four working days after a maintenance payment is due and provides for enforcement proceedings to begin within a month of the first default. Under the previous system, arrears accumulated over an average of six months before enforcement proceedings were initiated and, even then, orders were not always enforced."

To secure payment in cases of default, court officers now have the legislative authority to garnishee wages. If this is not sufficient to meet the default, the defaulting spouse may be brought into court, without any expenses accruing to the dependent spouse.

To maximize coverage, all maintenance orders issued by courts under provincial legislation are automatically placed within the enforcement program. Any existing order, including divorce orders, not already in the program can be included by contacting a court officer of the family court.

Stressing Manitoba's determination to secure enforcement of all maintenance orders wherever the defaulting spouse may reside, Mr. Mercier pointed out that Manitoba has reciprocal arrangements with 61 jurisdictions and is continuing to work towards an increase in the number of such agreements.

BC Crime Prevention Program Announced

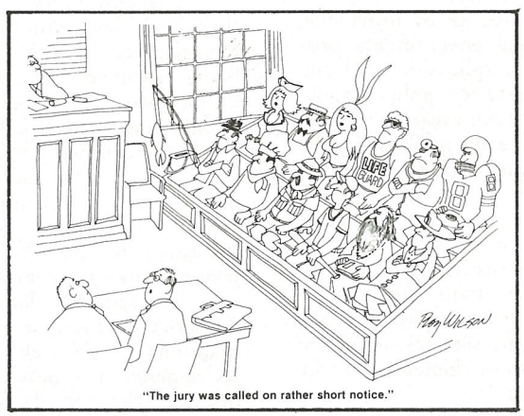
The Federal and British Columbia Governments have joined forces in a crime prevention program in British Columbia that will cost more than $700,000 over the next two years.

In a joint statement issued in Ottawa and Victoria, Federal Solicitor General Bob Kaplan and British Columbia Attorney General Allan Williams said the joint effort would assist B.C. communities in taking greater responsibility for preventing young persons from committing delinquent acts, and would serve as an experiment in community-based crime prevention programs.

The federal contribution of $133,333 will be directed toward providing technical assistance in realigning existing community resources rather than on developing new services.

The program will be managed by the Attorney General's Department of the Province of British Columbia. While the province will provide some demonstration project funding, the emphasis will be on providing expertise to communities to encourage community responsibility and action.

The program will co-ordinate the efforts of the criminal justice system and help develop specific procedures for reducing the incidence of young persons coming into conflict with the law.



"The jury was called on rather short notice."

for such action except in some small claims courts and the new provincial offences courts.

Perhaps somewhat curiously, any document in a proceeding in a small claims court in a designated county or district may be in the French language although, only in small claims courts which are designated courts under the provisions of the *Act* may the judge direct that the oral evidence or part of it be in the French language.

At the recent ceremonies attendant upon the formal opening of the courts, The Honourable The Chief Justice of Ontario said, "The 5-6% of the population of Ontario which is French-speaking should have the right to give evidence at a trial, and to have their appeals heard in their own language. The establishment of bilingual courts in Ontario at the beginning of this year is tangible evidence that we recognize this obligation." to which I add my own small Amen, or as they say in French, ainsi soit-il.

(INDEPENDENCE . . . continued from p. 6)

It is clear from the wording of the legislation that the government has endeavoured to remove any of the criticism that existed heretofore and to establish guidelines that will clearly indicate to the judiciary the limits within which they can operate.

In the opinion of the writer, the legislation is a model that could be adopted by the other jurisdictions with provision to adapt to local requirements so that there would be unanimity of approach and that the judges of all levels of the judiciary in Canada would be subject to the same constraints to provide for equality.

It is essential that judges have an equal sense of propriety regardless of the court in which they sit. They must operate under the same set of standards. They must not rationalize the acceptance of lesser standards with less pay – that only puts a price on integrity.

(PARK PROGRAM . . . continued from p. 9)

As a result of our reasonably harmonious proximity and unity of purpose, a collegial attitude has developed among the Judges. We receive on a regular basis the decisions of the Supreme Court of Canada and the Court of Appeal for Ontario as they are delivered. Judge Aaron Brown of our Court reviews these and, on a frequent basis, we meet for the purpose of his outlining recent developments in the law and providing us with copies of those decisions of importance.

We have also established quarterly dinner meetings at which our Chief Judge and Associate Chief Judge are present and to which we have, so far, invited Justices of Superior Courts. These meetings which are arranged by Judge Paul Pickett of our Court, involve the guest delivering a paper which is then subject to fuller discussion over dinner.

We have noted a growth in the number of accused electing to be tried before our Court and believe, to a large extent, that is a result of Crown counsel being known and available to a defense counsel and our being able to apportion a reasonable amount of time to the hearing of a case. Certainly, our system offers little solace to those seeking delay and inevitably they, where possible, elect to the County Court.

College Park no longer can be classified as an experiment since it now functions as a reasonably independent Court House with well established rules of which the bar is well aware. Indeed, its system, with modifications, is now being instituted at the Old City Hall by Associate Chief Judge Rice. We are of the view that the curious blend of Court House, shops, commerce and residences, sitting at a main city intersection and atop a subway station to which there is direct access makes our Court peculiarly available to the public which it serves, as it ought to be.

I am hopeful that this description of the College Park approach will be of interest to our fellow Judges across the country and assure them that expeditions case management can be consistent with the requirements of justice both being done and being seen to be done.

(EDUCATION . . . continued from p. 18)

Another joint project proposed with the Canadian Institute for the Administration of Justice is "Conduct of Bi-lingual Courts Conference" to be held also in the spring of 1982. Selection of the site has not been decided except that it will take place in the Province of Ontario. You might recall that the first of such courses, designed to assist French-speaking judges from outside the Province of Quebec to conduct bi-lingual trials was held in March, 1980 at Montreal. It is proposed that this course be a sequel to the Montreal course and will include participation by Federally appointed Judges.

The Education Committee is open to suggestions about future seminar topics, speakers, and the direction which national continuing judicial education should be headed. I encourage you to let your views be known to either myself or to the two Vice-Chairmen, Judges Coward and Bernier.

Bilingual Trials in Ontario

by Judge W.D. Lyon

The author is Associate Chief Judge of the County Court of Ontario

The Globe and Mail, January 10, 1980, headlined it as *The Quiet Victory: Bilingual Courts in Ontario".*

What has happened is that Bill C-42 was proclaimed into force in Ontario as of December 31st, 1979. The practical result is that in Ontario, in a criminal matter, an accused whose language is French is entitled to a trial before a judge or judge and jury who understands the French language.

We are fortunate to have within our ranks, at least ten judges who are completely bilingual and who are prepared to provide their services wherever required. I know there are additional judges anxious to serve in this capacity but who may have not yet reached a level of understanding and comprehension in the French language compatible with the heavy responsibility of a trial where evidence is given in the French language.

The concept of a bilingual trial is that the evidence would be given in one of the two official languages in which the witness feels most comfortable and would be heard in that language by the trier of fact – either a judge or jury. The evidence would not be translated in open court but an interpreter would be available to translate *sotto voce* to the accused or others if necessary. The evidence would be transcribed in the language in which it is orally given. The result should be that the evidence would be fully understood by the triers of fact whether it is given in French or English.

In order to assist those judges who will in the first instance be called upon to preside over such a trial, a week-long attendance in Montreal was arranged through the good offices of the Co-ordinator of French Language Services of the Ministry of the Attorney General (Provincial), a former Crown Attorney, Etienne Saint Aubin, the son of His Honour Judge A. Saint Aubin (Sudbury, retired). The judges who attended received tutorial instruction in French with emphasis on legal terminology as well as spending time in the courts observing trials, listening to jury charges and generally absorbing the atmosphere and nuances of the French trial.

I should add that Associate Chief Judge Hugessen, of the Quebec Superior Court was an enthusiastic supporter of the programme and played a very significant role in its success.

When an accused elects trial by judge alone, it is expected that a bilingual judge will be made available in the county or district where the trial would normally be held. Where the election is for a trial by judge and jury, there is a provision in the Code which enables the court, when necessary, to change the venue of the case to an area of Ontario where bilingual jurors are available.

With respect to appeals from bilingual trials in a provincial court to our court, it is expected that the transcript would simply reflect testimony which has been given in English or in French and in essence merely be a bilingual transcript reflecting the evidence given in either language. It is expected that with the number of judges available who can hear such appeals in French, it should not be necessary to translate these transcripts, particularly when the cost of such translation is "incredibly high".

In civil cases, although a certain framework has been set out in *The Judicature Act,* generally speaking there are no procedures for hearing the case in any language except English.

Section 127 of the *Act* designates certain counties and districts for the purpose of the section, and provides that additional areas may be disignated by the Lieutenant-Governor in Council. In addition, the Lieutenant-Governor may designate courts in a designated county or district whereupon, in such a designated court a bilingual judge shall preside over the hearing (with a bilingual jury in an appropriate case) if required to do so by a party who speaks the French language.

In such a case the court may direct that the evidence or part of it be given in French and it shall thereupon be transcribed in French. No such courts have been yet so designated and there are no immediate plans

The Judge — Independence and Conflict of Interest

by Senior Judge Ian Dubienski

The author is Senior Judge of the Manitoba Provincial Court (Criminal Division) in Winnipeg. This article has been, in part, based on a survey of Chief Judges in Canada. Judge Dubienski writes, "Each of the Chief Judges who responded to my questionnaire asked that they be apprised of the results. I think that publication of this article would satisfy their request."

From time to time in recent years, there have been affairs concerning the judiciary that have drawn attention to instances of judges involved in activities that might be considered to create conflict of interest and have an adverse effect upon the independence of their office. There has been discussion amongst the judiciary, in the media and not too complimentary reference by certain reporters of the so called "hotline" shows.

The main concern has been as to whether or not members of the judiciary, other than those appointed by the federal government, should be invovled in any activity of an extra judicial remunerative nature.

As is known to most judges, the Federal Judges' Act provides "no judge shall...engage in any occupation or business other than his judicial duties, but every judge shall devote himself exclusively to his judicial duties..." The legislation on this point varies somewhat in the different provincial jurisdictions as it applies to Provincial Court Judges.

As each of the various incidences concerning the judiciary became public, the question was revived, why is it that the Provincial Court Judges become involved in these problems concerning extra judicial remuneration when it rarely involves federally appointed judges? There also has been considerable discussion in the United States with regard to this matter which has resulted in the adoption by the American courts of the "Canons of Judicial Ethics", the American Bar Association Committee – "Standards of Judicial Conduct", and other studies. Some action has even caused legislation for the reporting of judges' income.

During the writer's sojourn with the Department of Justice, this problem was discussed widely with the judges of the provincial benches, and they were, in the majority, of the opinion that provincial court judges should not be involved in extra judicial remunerative work. They felt that, on the whole, the judicial remuneration was now approaching the level of adequacy and extra work was not required to augment income.

Also, there was judicial criticism of the fact that in the main this remunerative extra judicial work, namely, conciliation or arbitration work is not equally shared amongst all the judges on a certain bench. There was also the desire not to incur public criticism or suspicion of conflict of interest.

As a result the writer was asked to discuss the matter in a paper which was delivered to the Manitoba Provincial Court Judges' Association in 1979.

During the course of preparing for this presentation, it became evident to the writer that there was some difference in approach but there was a consensus that appeared throughout the legislation of the various provinces. As a result, he prepared a survey and sent out a questionnaire to the chief judges of various provincial jurisdictions concerning the matter of extra judicial employment and remuneration.

The research studies also indicated that there were various principles that would influence the establishment of judicial ethics. The main emphasis is on the necessity of maintaining judicial integrity so that it meets public expectations and avoids any suspicions. This also allows the guarantee of judicial independence which is so important and sacred to the administration of justice in Canada.

It was agreed that for acting in an extra judicial capacity, there should be no reward. The avoidance of becoming actively involved in any business, trade or occupation

was also essential to avoid public suspicion of bias of the judge.

As one United States judge said, "a judgeship is a fulltime job with fulltime responsibilities". Therefore, it is necessary to avoid any appearance of impropriety, however obscure might be, so that the public is absolutely satisfied that the integrity is maintained.

By custom and by legislation, constraints are imposed upon judges at all levels, particularly the federal court judges as above set forth, and it has been many times said, but it needs to be said again, that the same standards should apply to all judges in whatever court they may sit.

To quote Mr. Justice Gale of the Superior Court of Ontario: "Provincial court judges should devote themselves fully to the administration of justice in their courts. It is not desirable that they engage in any other employment."

At the time of the survey, legislation in the Province of Manitoba stipulated as follows:

> "On being appointed on a fulltime basis and except where he is authorized by the Minister for the purpose of winding up his practice of law, or to carry out any other activities, a judge shall not engage in the private practice of law, but shall devote his full time in the performance of duties as a judge of the provincial court."

As a result of the responses of the questionnaires, broad general provisions became evident. To avoid detail, they are as follows:

a. that a judge shall not be involved in any "business, trade or occupation" other than a judge, was the rule in all provincial jurisdictions in Canada, except the Province of Manitoba. In some provinces, this was interpreted to include arbitration and other chairmanships;

b. that the judge devote full time to being a judge and that there would be no additional pay unless authorized for extra judicial work in specific cases, was provided in many jurisdictions.

The research findings in detail were provided to the Manitoba Attorney-General on his request together with other material that had been located in certain periodicals and publications.

In due course, the Attorney-General presented proposals to the Province of Manitoba which were enacted at the last sitting of the legislature.

The legislation in detail is as follows:

Judge Should Devote Full Time to Duties:
11(1) Subject to subsection (4), every judge appointed on a full time basis shall devote his full time to the performance of his duty as a judge, and shall not:

a) carry on, engage in, practise or conduct any business, trade, profession or occupation; or

b) act as a commissioner, arbitrator, adjudicator, referee, conciliator, umpire, or mediator on any matter or proceedings; except on the direction of the Lieutenant-Governor and Council.

No Extra Remuneration:
11(2) Except as proviced in subsection (3), no judge appointed on a full time basis, hall accept any salary, fee or other remuneration for doing any of the things mentioned in 1(a) and (b).

Expenses Accepted:
11(3) A judge acting as a commissioner, arbitrator, adjudicator, referee, umpire, conciliator, or mediator in any matter or proceeding on the direction of the Lieutenant-Governor in Council, may receive reasonable travelling and other expenses incurred by him away from his ordinary place of residence while acting in that capacity or in the performance of the duties and service of the office in the same amount and in the same conditions as if he were performing a function duty as a judge if the expenses were paid by the government in respect of a matter within the legislative authority of the Legislature.

Winding Up Practice, Etc.
11(4) Judge newly appointed on a full time basis may, with the approval of the Chief Judge, wind up his practice of law or any other business, commercial or professional activities in which he was engaged within a reasonable time of his appointment.

Because of the fact that several judges in Manitoba were involved in arbitrations that have not yet been completed, the statute provides that the above Section 11 as quoted shall not come into force until March 31, 1981.

(continued on page 25 . . . .)

Like "dish droppers," people who respond to disturbing news by breaking armloads of plates and glasses, the personal opinions of these judges were always clear. As an attorney remarked, "I can tell right away how certain judges will decide."

An instance of tipping the hand early happened in a jury case with a teenage defendant charged with assault, who mentioned, without being asked, that he fired a gun at a party. The judge had been gazing at him, but after hearing the word "gun" *lifted* his eyebrows, stretched the lips in an exasperated *sneer,* and turned the face *fully away* from the defendant. The sudden, rather dramatic reaction, held for several second, made his personal distaste for the defendant's act clear. The display even may have predisposed the jury to rule against the man or, at least, to consider the offense more gravely.

How much emotion should judges show? Some judges that I interviewed stated, categorically, that feelings *never* should be seen in court. But even these judges hesitated to suggest wearing masks in court or hiding behind curtains in confession booths. All, in fact, agreed that personal contact can make stated findings, warnings, and sentencings more authoritative. Emotions do add persuasiveness, obligation, and clout to words. Thus, a moderate stand on inhibiting feelings might be proposed. Impartiality need not be mechanical or computerlike, but when emotions show they should not express uneven treatment.

JUDICIAL DEFENSIVENESS

Stage metaphors and analogies drawn between judges and actors break down in areas. Consider audience reaction, for example. The judicial audience is often less than inspiring, because courtgoers display so many negative emotions and attitudes like anger, fear, disagreement, challenge, annoyance, and dislike. Actors may be celebrated with applause, hero worship, and good reactions; judges may find mainly sorrow, antagonism, and ill-feeling as daily rewards in court.

A long-term psychological effect of receiving aversive messages, of getting the worst from people, is to become defensive. Judges adapt to negative emotional overload by withdrawing and turning inward to block others out. The withdrawal process is gradual. A judge may find, after five years on the bench, that he or she has become "gun shy" of people in court. Over the years a set of nonverbal mannerisms which discourages interaction may infiltrate the expressive repertoire.

Social distance in court can be promoted by using signs that show aversiveness or excessive formality. Both imply an unwillingness to get involved. Although formal stances often are effective and needed, many of the unfriendly signs seem geared to head off defendants' anticipated bad reactions. Such aversive cues, or *aversions,* convey at the outset that interaction is not welcomed. The gut message can be glossed, "I'm out," or "Go away." Signs like *lip compression,* excessive *paperwork, sarcastic* para-language, and *fast tempo* in behavior function as coping devices, to insulate judges from, or seal out, potentially antagonistic defendants.

One judge established a barrier with all defendants in arraignment sessions – at the very outset – by reading his instructions in a loud, annoyed, sarcastic voice. Another showed defensiveness and anxiety at sentencing by fixing his gaze on the desk, continually *clearing his throat, biting his lip,* and waiting to look up until the defendant left court. In one mode of withdrawal the judge spoke while doing paperwork at a fast pace until the guilty person walked out, then seemed relieved.

Signs of aversion and withdrawal may help a judge cope with stress and anger in court, but do little for people's conceptions of justice received. These nonverbal signs may provoke negative poses in defendants who might otherwise be good-natured. Furthermore, judges, presumably skilled at interpersonal relations, can rise above the human insecurities and contrary emotions generated in the courtroom.

Judges who become familiar with their own nonverbal presentations will realize two things. First, in some respects the self-presentation is just an *act,* and need not remain inflexible. The repertoire can be changed. Specific units can be added or dropped depending on audience need. The point is not to counterfeit feelings or become fraudulent, but to be more expressive on the bench – to show empathy, lessen intimidation, convey firmness, facilitate understanding, discourage strong emotions, and so on. Second, a judge must bring to court a high degree of expressive competence. This requires a self-conscious inspection of communication style, and an expansion of the nonverbal repertoire.

impersonal mood permeated the court. Further, defendants either were stared at or ignored, and the judge's unwavering eye contact was intimidating. Attitudes of impatience or disagreement were conveyed by the judge through strategic *throat clearing, tongue-showing* (slight protrusions of the tongue), *facing away,* and *sideward head shaking.* Finally, his tone of voice resembled that of a parent scolding a misbehaving child. The effect of the scolding language put defendants in a defensive posture at the outset of a case.

The two opposed styles elicited very different reactions. Defendants in court A were more relaxed, spoke with fewer *hesitations, false starts,* or *throat clearings,* and were more *articulate* when presenting their cases. In court B, defendants appeared more nervous and upset, could not state their cases well, and seemed above all to have poorer attitudes. While judge A, by using a relaxed, personal style, conveyed expectations for cooperation, judge B's impersonal, disregarding pose elicited defensiveness, dislike, and frustration.

Thus, a judge's demeanor is reflected in returned behaviors. The image a judge creates is mirrored in the expectations that are created, which largely determine the emotional climate in the court.

ACHIEVING IMPARTIALITY

Impartiality is perhaps the single most important judicial trait. Dispassionate judges are more desirable than courteous, open, friendly ones. A judge might even be unkind in court so long as the unkindness applies across the board to all.

Favoritism is hard to mask. Bias leaks easily in nonverbal behavior because evolution has programmed our feelings to show. Sociability requires true information about members' relationships to one another – liking, disliking, dominance, submission – and unlike reptiles or fish, we are endowed with extra-ordinary expressive features, mobile faces, freed arms and hands, movable heads, and kinetic eyes. To look impartial, therefore, requires training and a working of the will.

What does impartiality look like in the courtroom? It cannot be conveyed in a single facial expression or in particular gestures. The relaxed, *blank face* might come close, but even this potentially neutral countenance can betray favoritism when used with defense but not prosecution.

Bias shows nonverbally as a difference in regard. It arises when a set of behaviors is used with one person while an alternative set is used with someone else. Degree of impartiality varied from high to low in courtrooms I visited.

A few highly neutral judges exhibited only minor nonverbal differences in psychosocial orientations to addressees. On the bench they were quiet and low keyed, used a fixed, neutral face, and habitually *covered the mouth* with a hand, thus hiding reactions, while listening. They spoke using soft, monotone voices, giving moderate to little eye contact. Everyone in court was treated somewhat unemotionally – neither warmly nor cooly – and I could point to no visible inequalities in regard.

Most judges, unintentionally I am sure, emitted readable signs of favoritism. Most common were disparities in gaze: giving eye contact to the favored, withholding it from those not-so-favored, the uncooperative, the disliked, or the disbelieved.

Gaze averting is a predictable reaction to even mild stress. It has been documented as a fully functional response in the first months of infancy. Even congenitally blind people will avert the face when annoyed or angered. Because *gaze cutoff* is automatic it may be difficult to control.

Related to gaze, body orientation also can telegraph a predisposed feeling. For example, partnership with the prosecution shows when a judge consistently *orients the upper body* toward the prosecutor, but *angles away* from defense. The act is subconscious, but can be subliminally revealing to spectators.

Another behavior often used selectively is *covering the mouth* with a hand. In everyday interaction people will conceal the mouth when arguing, mentally disagreeing, or carefully weighing an idea. In court, I have recorded instances where judges systematically used hand-covers-mouth with defendants subsequently found guilty, but withheld it from those later acquitted. I recall an episode in appellate court where three judges covered their mouths, leaned backward, and averted gaze while listening to the plaintiff's summation, then uncovered mouths, leaned forward, and gazed at the defendant's attorney as he summed. The point is not whether a gesture positively correlates with judicial leanings in a case, although many appear to do so (in the example above, the defendant lost), but that systematic *differences* in orientation, even apparently trifling ones, can disclose bias. Performed unwittingly, they nevertheless can stand out to perceptive witnesses and jurors – and must be the delight of courtwise attorneys as clues of judicial sway.

Finally, a very small number of judges reacted visibly to everything said in court.

A Program in "The Park"

by Judge Clare E. Lewis

The author is a judge of the Provincial Court of Ontario (Criminal Division) in Toronto. He is, also, the chairman of the Convention '81 committee for the C.A.P.C.J.

The College Park Area Court has now been in operation for sixteen months and perhaps now some assessment can be made of its rather unique approach to the disposition of criminal matters.

Traditionally, Criminal Court Services have been provided to the citizens of Metropolitan Toronto through the Old City Hall which served the City of Toronto, and Area Courts situate in the Boroughs of Scarborough and Etobicoke, and the City of North York. Administratively, the Old City Hall is overseen by Chief Judge Hayes and Associate Chief Judge Rice, while, in recent years, each of the three Area Courts is staffed by four or five Judges, one of whom is a Senior Judge responsible for procedures in that area.

While the Old City Hall contains a large number of Court rooms and houses many Judges, it had become apparent that the inner-city Criminal Court needs of Toronto were not being met by the Old City Hall, primarily because of space limitations. As a result, after much planning and consideration as to location, it was determined that a new area Court House would be provided and the old Timothy Eaton Company, College Street Complex, was chosen as the site.

That building had been sold and renovated by its new owners as a rather prestige commercial, office and residential mix and is situated at the corner of Yonge and College Streets in upper downtown Toronto. On a lease basis, the very large second floor was renovated to allow for ten Court rooms, eight criminal and two small claims, Judges Chambers and officers for Police, Crown Attorneys and support staff.

A portion of the sub-basement of the building and the mezzanine level above the Court rooms have been converted to holding cells and they are joined by security elevator for prisoner transport. Those prisoners are brought to each Court room from the mezzanine level by way of secure hallways and individual staircases leading into each Court room.

NINETY-DAY COURTS

The actual operation of College Park was designed by Associate Chief Judge Harold Rice to accommodate the case load of three large and busy inner-city police divisions, and by reason of the excellent and separate cell facilities, to deal with every woman in custody throughout the whole of Metropolitan Toronto. Judge Rice decided that, since College Park would open in September of 1979, without any backlog of cases, it afforded an excellent opportunity to put into practice a theory which had long interested him.

It was his view, that given the right circumstances, criminal matters could proceed to disposition within ninety days of first appearance before the Court. Such a view, while perhaps not heretical, was, nonetheless, given the enormous case loads of the City of Toronto proper, at least unusual.

Each of the other area Courts of Scarborough, North York and Etobicoke have, under the guidance of thier Senior Judges, developed independently their own methods of dealing with their case loads. Since the Attorney General had assigned two of the Court rooms and Judges Chambers at College Park to the needs of the small claims work of the experimental Provincial Court (Civil Division), Judge Rice had available eight courtrooms.

As you will see, basic to the ninety day to disposition theory, is a large degree of judicial co-operation and accountability. Accordingly, Judge Rice assigned eight Judges to College Park on a permanent basis. Those Judges work in a rotational manner.

At any given time, one Judge presides in Bail and First Appearance Court, five preside in Trial Courts and two in Specials Courts. Those Specials Courts really have nothing to do with the main College Park format. They deal with cases from anywhere in Metropolitan Toronto, assumed to last four days or more, which are sent from a weekly Assignment Court, over which Judge

Rice presides at Old City Hall. They do provide the College Park Judges with a break from the normal case load responsibility every few months. There are similar Specials Courts operating elsewhere in Metropolitan Toronto.

STRUCTURE

The basic structure of the College Park system is as follows. All cases arising in 53, 54 and 55 police divisions involving accused either in or out of custody, and all cases involving women in custody throughout Metropolitan Toronto make their first appearance in 501 Court, which is assigned bail and first appearance duties. The Judge there presiding conducts the show-cause hearings for all persons in custody, and in the case of women accused, if their case arises in a police division other than those three assigned to College Park, and if they admitted to and released on bail, remands them either to the Old City Hall or to the Area Court which would normally handle their police division for the purpose of setting a date for trial. All other accused, including women who remain in custody, either by reason of detention or by being unable to meet the bail terms set, are remanded to what is known as the "Pick-up" Court at College Park.

As mentioned, there are five such Courts in operation and each picks up its own case load on a rotational basis. 502 Court is the first of the five of such Courts in the sequence, and for a three-week period, the Judge assigned to that Court receives the total case load from the Sending Court 501, excluding those accused who have entered a plea of guilty in 501 Court on first appearance. It is the responsibility of that Judge to dispose of the whole of the case load picked up by him in that three-week period within ninety days. Each Judge sitting in such a Trial Court maintains his own Court schedule and plays a leading role in the setting of dates of trial.

Needless to say, given the predominance of legally-aided accused, all trial dates are by no means set within the first three-week period, and given appeals against refusals of Legal Aid, Judges find themselves still setting dates for trial well within their allotted time frame. However, having received his total case load within the first three-week portion of the period, that Judge knows precisely what his responsibilities will be for the next ninety days and can assign Court time appropriately. Cases arising subsequent to the three-week receiving period need not concern the Judge in 502 Court since they become the responsibility for a three-week period of the Judge assigned to the next Court in sequence.

ASSESSING LENGTH OF TIME

Accordingly, a Judge in a Trial Court knows the nature of the cases with which he must deal, and through enquiry of Counsel, can, to some degree, assess the length of time required for a proper hearing of any case. Much pressure is placed upon Counsel to afford themselves of full disclosure by the Crown and to narrow the issues to those clearly required to be litigated.

Surprisingly, realistic assessments of Court time needed are usually achieved. A Judge assigned to a regular Trial Court is expected to hear and dispose of any case, either by way of preliminary enquiry, or trial, which have been assessed to require, up to and including, three days of Court time. Any case realistically assessed as needing more than three days for hearing, and there are few of these, is sent to Judge Rice's Assignment Court for scheduling in one of the Specials Courts, either at College Park or elsewhere in Metropolitan Toronto.

Accountability of the Judge arises in that, if he has not finished all of his cases at the conclusion of his assigned period, then any such unfinished cases will, to the knowledge of all other Judges at College Park, be added to the load of another Judge who is engaged in picking up his own case responsibilities. Since that is the manner in which backlogs grow, each Judge is anxious to dispose of his case load himself. We have found that some cases which are commenced within the assigned period, are unable to be finished within that period by reason of unexpected unavailability of Counsel or unrealistic assessment of time needed for the case, but we have found that each Judge has been able to complete those cases once started during his assignment, to either the Specials Court or to the Bail Court. Again, such cases are also blessedly few.

Co-operation among Judges has arisen in that we are each aware of the need to avoid backlog and, when we become available on any given day through unexpected guilty pleas, or otherwise, we offer assistance to Courts which find themselves overburdened. Our Bail Court, which is usually very busy, often receives assistance in this manner. Brief holidays, attendance at conferences, or other short absences, are either provided for by the Judge setting up his trial list, or covered internally by the other Judges at College Park. Normal holidays, or other longer absences, are either covered by the closing of the two Specials Courts in the summer months, or by assignment of a Judge outside College Park to sit there during that period.

does paper work while listening to a defendant might be viewed as inattentive or bored. How courtroom participants feel toward the judge may be based on covert interpretations derived from nonlinguistic signs.

Witnesses, attorneys, and the accused may be hypersensitive to nonverbal cues from the judge. Attempts to read between the lines, to find emotional attitudes underpinning words, should be expected from the highly involved participant. Visual details of demeanor may be overinterpreted. Above all, they will be taken personally. Defendants want to know the answer to questions like, "Does the judge *like* me?" and "How does the judge *feel* about what I have done?" As many judges know, a defendant's concern to receive personal forgiveness, understanding, and guidance from the judge follows a parent-child model.

Compression or *tightness of the lips* may connote impatience or anger, as they do in ordinary interaction around the world. Combined with the facing gaze, a *sustained eyebrow raise* can telegraph intensity; fixed elevation of brows can accent attentiveness to speakers, increase the seriousness of a verbal warning, or exaggerate a show of disbelief. It thus combines with and magnifies other facial expressions.

Smiling often can be positive, but like the *laugh* may come across, ironically, as a sign of hostility. Outside of pure humor, laughing (especially laughing at) may function to unite a group by scapegoating an outsider. Because smiles and laughter can express alliances – usually "we" against "them" – which may seem intimidating and prejudicial to the accused, judges should use them only in contexts which are clearly nonsarcastic and unthreatening. The "knowing" smile privately exchanged between a judge and prosecutor can be devastating to a defendant's morale. Even the "social" smile used as a friendly greeting can backfire in court. "Fake smile," "looked like a salesman," "he treated me like a baby," and "snake-oil man" are comments of some defendants greeted by judges' social smiles.

THE "CLEVER HANS" PHENOMENA

Body movement signs express emotions, moods, and psychosocial orientations to others. But some do more.Many nonverbal signals act as implicit *expectations* of how partners should respond. That is, they tell receivers how to manage their half of the face-to-face encounter. Depending on emitted cue, one's manner may tend to flippancy or respect, intimacy or aloofness, to being guarded or open.

These covert scripting signs operate in accordance with a "Clever Hans" principle. They set up cycles of *self-fulfilling prophecy* in relationships. Hans, a nineteenth century carnival horse, could add and subtract. Or so it seemed. A spectator would ask Hans how much is, say, three plus four, and the horse would stomp his hoof seven times in reply, Hans's frequent correct answers astounded onlookers, causing intense speculation about the animal's supposed high intelligence. Ultimately, the mystery was solved when an unobvious relationship linking horse and questioner became apparent. The interrogator, it was determined, would subliminally cue Hans when to stop tapping. A spectator's head would nod more emphatically with the last stomp, the eyes would widen, brows would raise, or the mouth might drop open at the next to last hoof tap. Apparently, human body signs – not the animal's talent for math – told Hans the right answers.

The Clever Hans phenomena may be seen in court. For example, juries seeing a judge who consistently *leans backward* while a public defender speaks, but *leans forward* while hearing the district attorney, may sense a preference for the prosecution. And like Hans, they may *act in line* with their observations. Consider the following effects of telegraphed judicial expectations seen in courtrooms A and B:

Court A judge wore a *neutral face* (relaxed, "expressionless") throughout the day. He *oriented* his face and upper body to defendants. Using an informal eye-contact pattern, like that in standard American conversation where neither staring nor evasion predominates, he alternated *looking -at* with *looking-away*. Conversational gestures – opened *palm-upward* movements used when explaining, emphatic *palm-downward* motions when accenting, and *pointing* to show dominance were used. The voice itself sounded personal rather than coldly authoritative. There was normal intonation and loudness, and a measured speaking tempo. Overall, judge A presented a neutral, concerned, low-keyed image, and seemed willing to interact on an individual basis with defendants.

Conditions were less positive in court B. The judge's lips were tightly *compressed,* and rolled in, making his face seem angry. He spent much time leaning so far backward in his chair that just his face showed above the bench. Gestures while speaking were not used, nor did the judge appear to pay attention to testimony and questioning. An

across as impatient, unfeeling, and somewhat dictatorial. However, the same words said less stridently, with less haste, and with eye contact would convey a totally different message. Although neither rendition would make the sentence itself easier, the better-humored reading might reduce impressions that ill-feeling swayed the judge's decision.

Second, nonverbal signs of personality tend to be presented automatically, without a sender's full awareness. While judges might consciously choose just the right wording for a suspended sentence, they might not consider how to enact the lines in bearing. To illustrate, imagine a judge gazing at a defendant, saying in a featureless *monotone,* "I am going to sentence you to five days in jail suspended on condition you arrange to pay for damages to the car you hit." Notice that there is no comma before the word "suspended," which seems just routinely appended to the preceding phrase so that "five days in jail" appears to be nullified procedurally, as a matter of course.

Such run-together phrasing gives the defendant no time to ponder jail as a possibility of sentence. Also, because confinement was suggested and cancelled in the same breath, the offense itself seemed less serious than the judge may have wished. His remarks could have been more significant if presented less automatically by using the stylistic range available in his "tone of voice," including cadence, loudness, pitch, pausing, and vocal register.

Third, without self-willed effort, one's repertoire of nonverbal signs stabilizes and becomes fixed with age. Reactions to a projected image also become predictable and, finally, are taken for granted. A performer may even become habituated to signals triggering negative reactions of irritation or resentment, and may not understand what produced the reaction.

I recall videotaping a judge whose on-the-bench style appeared forbidding and formal. He used an evangelistic, sermonizing voice to reinforce dominance over those in court. Conversational *speaking gestures* were absent. Instead of gesticulating to address or aim his comments to recipients, he kept his *hands folded tightly* on the bench top in a pose conveying low personal involvement. His upper arms were *held snugly* against the sides of his body, his upright torso was *rigidly positioned,* which connoted anxiety, and his tone of voice accented a holier-than-thou orientation. He also would "look down his nose" – a posture suggested by tilting the *head backward* slightly– while listening. The disdainful, formally formally aloof posture was further emphasized by his failure to acknowledge, with *head nods* or facial cues *showing comprehension,* the speaking points made by others.

This same judge commented that "People just don't like judges." He also said that he enjoyed his work in court less now than when he started out. Before the videotaping, he failed to sense that his own intimidating style helped cue the misunderstanding and visible hostility which threatened him. After reviewing the tape, we disassembled the performance into specific units of behavior, such as *frown, shrug, stretch, point,* and so on, then studied their interpersonal context and inferred significance.

I suggested that he experiment by adding selected positive nonverbal signs to the customary display. Natural speaking gestures, like those used out of the courtroom, replaced folded hands; the churchlike para-language was replaced with conversational speech patterns. He began nodding the head while listening, *orienting* his upper body toward speakers, and *leaning forward* to draw in reserved participants. Results were immediate: defendants were more cooperative, showed better attitudes, and, on balance, were easier to handle. Equally important, court work once again became pleasant. Fearful at first of losing control with the new pose, the judge remarked that he had no difficulty turning on the dominant, formal style with people who took advantage of him, and, at the first sign of cooperation, he would assume the more positive guise again.

THE COURTROOM AUDIENCE

Judges are watched closely, sometimes more closely than actors on stage. This is due in part to the court's physical layout. Judges stand out because they sit costumed, above viewers, center stage, in eye-catching benches, framed by flags, official seals, wood paneling, and engraved legal truths. Architecture reinforces the higher status of judges. Audiences are positioned lower. Individuals grouped anonymously with strangers must face forward and are permitted to speak at proper times only.

Every judicial mannerism, therefore, or its absence, is available to interpretation. A sudden *lowering of eyebrows* might be received as evidence of unvoiced disagreement with a witness, especially if a pattern combining brow lowering with spoken argument has materialized. A judge who

It is not suggested that such a system has been imposed without difficulty, variation or re-assessment. The first requirement as the recognition of the Judges assigned to College Park that a relatively large number of Judges must work in close harmony and must be prepared to be answerable for the proper management of their Court lists. That goal has been achieved.

The most serious difficulties encountered have been those of the hostility of the defence bar to proceeding to trial within ninety days, speedy processing of legal aid applications and determination of whether or not a person will be legally aided. Defence Counsel, being lawyers, suffer from the inertia and conservatism endemic to our profession. There was, initially, much resistance to the ninety day rule and their response to our setting trial dates of which they did not approve was to bring motions for prohibition combined with motion to quash.

There were, early in the College Park experience, several such applications to the Supreme Court, all of which were unsuccessful. Indeed, while the defence argument has been, that by reason of the unavailability of Counsel and, in their view, the arbitrary setting of a trial date by our Court, the accused was being denied his or her choice of Counsel. Our Supreme Court has consistently held that an accused is entitled to Counsel of his or her choice available on the date set by the Court for trial.

These rulings, together with the fairly recent guidelines as established by the Chief Justice of Ontario, the Honourable Mr. Justice Howland, have operated to afford the Judges of our Court much control in the management of case loads and this control has been particularly important in the context of the College Park approach. The Chief Justice's guidelines, which are rapidly assuming the status of law, set out a thorough code of procedure for the seeking and obtaining of trial adjournments by Counsel for the Crown and the defence. Again, much discretion and control is given to the trial Judge. *Ed. Note – see Provincial Judges' Journal, September, 1980.*

To a large extent, the misgivings and initially very real angers of defence counsel have abated, by reason of their having come to realize that speedy disposition of their cases results in speedy payments of their fees. There is no doubt that considerable pressure has been placed upon defence counsel by our ninety day rule, in that, to some extent, their ability to accept retainers in ever increasing numbers of cases is some what limited, and they must take much greater care in their scheduling of Court appearances. Our Superior Courts have been generally most helpful, in many cases deferring to dates set in the Provincial Court, in accordance with the Chief Justice's guidelines.

Crown Counsel have met the demands of College Park by assigning to it a Bureau Chief who, in turn, directs a staff of Assistant Crown Attornies and these Counsel are assigned to stay with a trial Judge throughout his ninety-day period. Such assignment procedures allow a Crown Counsel equally to become familiar with his or her case load, to plan in advance for the presentation of cases and to meet with defence counsel with a view to providing discovery and narrowing the issues.

Crown Counsel have informed us that the police are very pleased with the ninety-day system in that it allows them to bring their matters before the Court while memories are fresh and the underlying events still have significance in the minds of the accused and those allegedly aggrieved.

A major difficulty in the operation of our Court has been the delays experienced in the processing of Legal Aid. We have met this problem directly by meeting with Senior Officials of the Legal Aid Plan who have made considerable internal efforts to streamline their processees and bring their appeal procedures into a reasonable time frame.

We have selected from among us Judge Charles Scullion as our co-ordinator who has assumed the responsibility of day-to-day direction of the Court. He, or in his absence, another of us, meets daily with the Chief Clerk and the Chief Reporter and occasionally with the Bureau Chief Crown counsel for the purpose of dealing with any immediate or foreseen scheduling problems. Since our Court requires much co-operation in order to function properly, the Judges meet frequently on an informal basis and regularly at formal Judges' meetings under the chairmanship of our co-ordinator. Minutes are kept of those meetings and administrative or other duties are from time to time assigned to individual Judges.

For example, I function as secretary of those meetings, am liaison with Legal Aid, and until my recent resignation from that post, was in charge of the Judges' coffee fund, a thankless task if there ever was one. Through those meetings, we have been able to establish some consistency in our practices and have been able to modify them as the need arose.

(continued on p. 25 . . .)

"A Jury of His Peers"

by Judge Brian Giesbrecht

The author is a judge of the Manitoba Provincial Court (Family Division) in Brandon.

Section 27(1) of the Juvenile Delinquents Act allows for the establishment of a committee of citizens to be known as the "juvenile court committee" to work with the juvenile court. Section 28(1) authorizes such a committee to consult with probation officers and offer advice to the court concerning delinquents, and Section 28(2) specifically allows members of the committee to be present at any session of the juvenile court.

Although juvenile court committees have been established in different areas of Canada, to my knowledge they have been mainly composed of adults, and these committees generally do not take part in the actual court process. The concept of involving a juvenile offender's peers in the juvenile justice system was discussed in Manitoba as long ago as 1974, but it was not until 1979 that a project based on this concept was initiated.

Chief Judge Harold Gyles selected Brandon as the location for the experiment mainly because Brandon's relatively small population, and the correspondingly small number of people involved with the Brandon juvenile justice system, would lend itself more easily to the management of the experiment and the monitoring of the results. Preliminary meetings were held between people from the Brandon school system and juvenile justice system, and the purposes of the proposed project were identified as follows:

1. To provide an opportunity for the participating students to learn and take part in the juvenile justice system.
2. To provide an opportunity for the juvenile court to consider recommendations made by the peers of offenders.

I met with the room representatives of the three high schools in Brandon and outlined the proposed project. It appeared from this meeting that a significant number of students were interested in participating.

The School Board agreed to the project proceeding on a limited and experimental basis for one school year. Ten students would be required for one afternoon each month, and involvement by the students would be on a voluntary basis. It was further agreed that an evaluation of the project would be presented to the School Board following the end of the school year, and that termination, continuation, or expansion of the project would then be considered.

MECHANICS OF OPERATION

The mechanics of operaton were completed by the supervising probation officer, the crown attorney and myself, with the help of the superintendent of the school division and the principals of the high schools involved. They were as follows:

1. The students would be selected in the following manner:
   a) Notices would be posted in the high schools.
   b) Students responding to the notices would be given a one page information sheet which would outline the project and require a parent's written consent to their child's involvement.
   c) The lists of volunteers would be sent by the high schools to Probation Services.
   d) Probation Services would randomly select names but attempt to achieve an equal representation of high schools
2. The students selected would be oriented in the following manner:
   a) Each student would be telephoned by Probation Services and would be asked to attend an evening meeting.
   b) At the meeting the probation officer, crown attorney and I would outline our respective functions in the system, and the project would be outlined. Discussion would then ensue.
   c) The students would be asked to decide upon six students who would hear the first case. These six would have to appoint a foreman.

The Way Others See Us

by Dr. David B. Givens

The author is a researcher and communications consultant at the Department of Anthropology, University of Washington. This article was originally published in a recent issue of The Judges' Journal.

Without a mirror on the bench, it may be difficult for municipal and district court judges to realize how conspicuous their own personal feelings can be to defendants, witnesses, and attorneys. Because judicial education emphasizes communication by word – reading, writing, and speaking – nonverbal expressions are covered only lightly, if at all. Nevertheless, a judge's concern, attentiveness, liking and disliking, fairness, annoyance, superiority, patience, timidity, boredom, attraction, impartiality, and other emotional orientations to those in court often are communicated without words.

Thus, a judge's personal manner of relating legal facts and opinions through his or her extralinguistic, nonvocal style can be as important as words for conveying a positive on-the-bench image. For example, body signs such as *raised eyebrows, compressed lips,* and *sideward gaze-aversion* often can be read by attentive judge watchers – or perceived subliminally by the less watchful – as revealing indicators of judicial predilection and mood. Even a "stone-faced" judge can telegraph favor for, say, the prosecution merely by gazing at the latter's witnesses but withholding eye contact from those for the defense. Many of these nonverbal signs are received subconsciously. For example, onlookers might detect favoritism for the prosecutor's case without being able to identify a specific cue of bias, such as gaze avoidance, in the judge's bearing.

This paper proposes to heighten sensitivity to implicit, covert aspects of judicial communication evident in body motion, gesture, facial expression, tone of voice, personal distance, and gaze. For the past year, I have worked as a communications consultant for the Washington State Administrator for the Courts studying the impact of judicial mannerisms on courtroom observers. At first I supposed that personality-concealing features– the judicial robe, the bench with its shielding effect, the impersonal and remote seating distance, and the structured legal format– would mask individuality and lead to an emotionally muted performance on the bench. The supposition, however, was untrue. Each of the judges I observed showed a distinct expressive style, a kind of private nonverbal "signature," which stimulated different attitudes on the part of others in the courtroom.

"PRESENTING THE SELF" AS A JUDGE

In the eyes of sociologist Erving Goffman, author of *The Presentation of Self in Everyday Life,* human beings frequently are "imposters." Like actors, men self-consciously *stage* social performances for effect. In order to manage impressions and manipulate their own impact on others, men resort to costumes, dramaturgy, and stagecraft. Clothing may be contrived, and offices, like movie sets, may be filled with noticeable props enabling real-life performers to present images of intelligence, worth, and high status.

Goffman's theater simile is most compelling in nonverbal communication. People convey feelings about status and personal regard not so much in spoken words as in dress, bearing, movement, gaze, vocal pitch and loudness, bodily distance, and so on. Speech, in fact, can be secondary to the visual display of deference and demeanor.

For instance, a judge may *sit judiciously,* put on an imperial facial expression, *interrupt* authoritatively, *wear* a conservative hair style, *move* calmly, and *gesture* deliberately. These juristic virtues are unstated. Because they are perceived subconsciously by those in court, a judge need not openly announce them. Indeed, to make explicit references to one's own qualities of impartiality, patience, authority, etc., not only would be demeaning, but redundant– and perhaps untrustworthy–in light of the visible evidence.

Three features of the nonverbally presented self affect on-the-bench style:

First, the unspoken message has as much, or more, of an emotional impact on receivers as words. For instance, a judge who *withholds his gaze* and *speaks hurriedly* using a loud voice while sentencing a defendant to time in jail is likely to come

Proposed changes to the Criminal Code pertaining to sexual offences and sentencing procedures will be discussed. Also for discussion will be the proposed Young Offenders Act. Estimated number of judges attending from the four Western Provinces and the two Territories will be 65, with the majority from the Province of Manitoba.

The Atlantic Regional Seminar for the four Atlantic Provinces will be held May 31st to June 4th at the Wandlyn Inn, Bridgewater, Nova Scotia. The program will include discussion of recent cases pertaining to evidence and problems in procedures. Like the Western Regional Seminar there will be both Criminal and Juvenile and Family Court sections. The Criminal Court program will be chaired by Judge Hiram Carver of New Germany, and the Juvenile and Family Court section by Judge Bob Ferguson of Sydney. Venue Chairman will be Judge Joseph Kennedy of Bridgewater.

Francince Altman of our Education Secretariat in Ottawa reports that our catalogue of seminar papers has been recently updated and sent to all Provincial Chief Judges across Canada. The catalogue now includes papers presented at various Provincial Education Conferences and also a number of papers in the French language. A copy of any seminar paper on file may be obtained by writing to Mrs. Altman at the Education Secretariat, c/o The Canadian Judicial Council, Suite 717-130 Albert Street, Ottawa, Ontario, K1P 5G4.

The creation of a Canadian National Judicial College for the Canadian judiciary is under consideration by the Government of Canada. No organizational meetings to discuss the setting up of such a college with either Federally or Provincially appointed judges have yet been held.

Last year, the Education Committee conducted a survey as to the extent of continuing judicial education provided to Provincial Court Judges by each Province. As you might expect, what is provided varies from Province to Province.

After the Annual General Meeting at Quebec City last fall, Judge Albert Gobeil of the Quebec Youth Court was requested to give our Committee the benefit of his views about the feasibility of a National Judicial College.

Judge Gobeil's report and our survey of last year was recently sent to all Chief Judges and Provincial Association Presidents with a request that they discuss with you whether you are receptive to the creation of a National Judicial College and what expectations you have concerning the function of such a college relative to your own educational programs.

A seminar entitled "Sexual Agression and the Law" sponsored by the Department of Criminology, Simon Fraser University, in co-operation with the Canadian Institute for the Administration of Justice and the Canadian Association of Provincial Court Judges, will be held October 16th and 17th at the Four Seasons Hotel, Vancouver, British Columbia. This seminar, designed to bring together Judges, Forensic Psychiatrists, lawyers and Corrections officials, proposes as its objectives the following:

- to provide courtroom decision makers with an overview of the most recent research in the area of sexual aggression;
- to explore the interrelationships of the various assessment and treatment models presented by "expert witnesses", called to testify in sexual offender cases;
- to focus on the clinical model as one in which significant research advances have been made recently, advancements that could have potential implications for sentencing;
- to make researchers and potential expert witnesses more familiar with the legal context to which they might be asked to contribute information on assessment and treatment of sexual offenders;
- to promote a greater degree of accuracy in the assessment of and prognosis for the dangerous sexual offender.

The seminar will bring together groups of professionals who almost never meet outside the formal setting of the court. Thus, the aim of the seminar ultimately would be one of making evidence, particularly clinical evidence, a tool more readily accessible for, and utilized by, legal professionals charged with sentencing and other forms of disposition of the sexual offender.

Discussions have recently been held with the Canadian Institute for the Administration of Justice to hold joint conferences in the spring of 1982. A 2½ days Small Claims Seminar is proposed for February or March of 1982 in Vancouver, British Columbia. The theme will be "Courts and Dispute Resolution" under the Chairmanship of Judge Edward O'Donnell of Surrey. This conference will be a sequel to the successful "Conference on Small Claims Courts" sponsored by the Canadian Institute for the Administration of Justice at Toronto in September, 1980.

(continued on p. 25 . . .)

d) Another meeting would be held with me immediately prior to the sitting of the student jury and the confidentiality aspect would be emphasized.

3. The procedure in court would be as follows:
   a) Court would be opened in the usual way.
   b) I would ask the six students sitting as the jury (the remaining four would sit in as observers) whether any of them could not sit on the jury due to a conflict of interest.
   c) Defence and Crown would have the opportunity to challenge any proposed juror for cause.
   d) The student jury would be sworn in.
   e) The case would proceed in the usual manner with the lawyers and I attempting to explain matters fully as the case proceeded.
   f) If the case was a trial the students would observe only until the adjudication stage had been completed. If the case was for disposition only, or if the case was a trial that had resulted in a conviction and an adjudication of delinquency, the student jury would receive copies of any reports or documents filed as exhibits, and take notes as counsel made submissions.
   g) Following submissions I would give a brief charge to the student jury and ask them to retire to a room that had been made available and attempt to formulate a recommendation as to disposition. Court would then recess.
   h) The probation officer would remain available to the student jury when they were deliberating. If a legal point arose in their discussions the probation officer would bring the student jury into my office for clarification.
   i) After the student jury had arrived at a consensus concerning a recommendation they would return to my office, and without trying to influence them in any way, I would listen to their recommendation and answer any further questions about its legality, etc.
   j) Court would reconvene. The foreman would be asked for the recommendation. I would then complete disposition.

OPERATION DURING THE 1979-80 SCHOOL YEAR

One hundred and eight school students volunteered for jury participation from the three high schools in Brandon. Some 30 students were randomly selected to be participants. The juvenile juries were in operation during the afternoons of December 4, 1979; February 19, 1980; and May 13, 1980. We had also scheduled and had students available on January 22, 1980. However, due to some last minute problems, the case had to be cancelled.

The students submitted recommendations on a total of seven juvenile cases. The cases heard by the juvenile jury consisted of property and driving offences. The total number of charges involved in these seven cases was 20. I was able to follow the recommendations given by the students in all cases. The range of recommendations for the seven cases included:

- personal apologies to victims
- fines
- suspension of driver's license
- restitution totalling $2,349.50
- community service work totalling 85 hours
- recommendation for attending hunter safety program

EVALUATION

Following their participation the students were asked to fill out a questionnaire relative to their feeling about their participation as well as answering questions relative to changes they felt needed in the program. Twenty-three evaluations were filled out by the 30 students. Of the seven not completed one student was sick and could not attend and the six others were to make recommendations but didn't see the case through because of complications in the case which did not give them the opportunity to actually participate.

Not only did most students feel they had a better understanding of the operation of a juvenile court after their participation on a jury, but the students also indicated overwhelmingly that they thought they had an important role to play in deciding what happened to the cases they heard. They were virtually unanimous in encouraging further participation by other high school students in the project.

1. What I enjoyed most about being involved in a Juvenile Jury was:
   - Learning about the system itself

- my interest in law has been active for many years and this was a way for me to see and experience an "in Court session"
- learning about the responsibility of the jury
- I felt it was a very educational experience
- the fact that it was my first experience in a Court room made the whole experience very new and exciting
- the chance to see how juveniles try and figure out ways of defending themselves
- opened my eyes to facts which had not entered my mind before
- seeing to it that some smart ass doesn't get off
- I learned about the punishments a juvenile could receive
- meeting juveniles from other schools and participating
- discussing what should happen with a case
- the feeling that you have played a part in guiding the course of the decisions of the jury and maybe helped to adjust the offenders' lives and practices.
- being able to have some input into the accused sentences and that our recommendations were respected and used
- being able to speak freely on my own opinion of what should be done
- realizing the consequences and seriousness of what may seem to be a small offence.

2. What I enjoyed least about being involved in the Juvenile Jury was:
   - the fact that I knew one of the accused, it was somewhat uncomfortable – but bearable
   - making a decision on a person's life
   - that some of the cases were too long
   - the room was too small and hot
   - afraid of knowing the accused
   - the fact that maybe the accused felt uncomfortable in my presence which would make me feel uncomfortable
   - I felt I was rushed into making a decision and also I felt that not enough had been given about the case
   - it took too long
3. Having now had the experience of being on a Juvenile Jury, for the next Jury I would recommend that:
   - be fair and realistic in your recommendations
   - more information be available for jurors
   - it ran so smoothly – more than I expected that I can't really suggest anything to improve it right now
   - I feel it went really well
   - other students be encouraged to get involved as it creates a new awareness of the system
   - the Probation Officer be asked questions before going to see the Judge
   - we be allowed to speak with the persons being tried
   - we be allowed to speak out and ask questions during the trial
   - that the jurors have more input into the proceedings
   - it's good the way it is
4. Additional Comments:
   - it was a good experience
   - thanks for the opportunity
   - I really enjoyed being a member of the jury
   - I wish I could do this more than just the one time
   - a very good idea. I liked it
   - I kind of knew what happened in a Juvenile Court because I had to attend once for a speeding ticket.
   - very good idea! Should have been introduced long ago.

A subjective observation of the students, by the Supervising Probation Officers, Crown Attorney and myself was that the participating students took the whole matter very seriously. They appeared interested, concerned and their actions and behaviour reflected a high level of maturity.

PROBLEMS ENCOUNTERED

It became evident during the year that there were a number of problems with the student jury concept. Some of these problems had been anticipated. Others had not been anticipated. The major problems were as follows:

1. Early in the year it was recognized that the use of the term "jury" was causing difficulty. The students in our project did not decide on the issue of guilt or innocence; they made recommendations only. However the term "jury" has a fixed meaning to most people. It was felt that the use of a different term such as "student court committee" or "student advisory panel" would have been a better choice.

What's Happening in Education

by Judge R.B. Wong

The author, a judge of the Provincial Court of British Columbia, is chairman of the C.A.P.C.J. Education committee.

I am pleased to outline what the Education Committee has done in the last few months and what the Committee proposes to do in 1981.

Other Education Committee members consist of: Judge Fred Coward, Lethbridge – Western Vice-Chairman; Judge Raymond Bernier, Montreal – Eastern Vice-Chairman; Judge Cy Perkins, Chatham; Judge Peter Nasmith, Toronto; Judge Jean-Marie Bordeleau, Ottawa; Judge Rodney Mykle, Brandon: Judge Hiram Carver, New Germany and Judge Robert Halifax, Hay River.

Last November the 5th Annual New Judges Orientation Course was held for the second year at the Park Lane Hotel in Ottawa.

54 newly appointed judges were in attendance: British Columbia – 10; Alberta – 2; Saskatchewan – 2; Manitoba – 5; Ontario – 7; Quebec – 21; New Brunswick – 1; Nova Scotia – 3; Prince Edward Island – 1; and Newfoundland – 2. This was the largest group in attendance since the inception of the program and both Criminal and Family Court sessions were held. 35 new judges were involved in the Criminal Court program and 19 in the Family Court section.

Extensive pre-reading material was sent out to the new judges prior to their arrival at Ottawa and I am pleased to say that this innovation promoted the format for discussion rather than lectures. The seven day course was designed to acquaint and to review with newly appointed judges problems in evidence, procedure, sentencing, and transition of adjustment from Bar to Bench.

The opening day keynote address was delivered by Chief Justice Bora Laskin on the topic of "Judicial Independence". The text of Chief Justice Laskin's address was printed in last December's issue of the Journal. Professor Ron Delisle, of Queen's University Law School, reviewed the principles of evidence by the technique of video-taped problems in conjunction with group discussion. Practical application in the art of judging was the theme of the program with Mr. Justice John Arnup of the Ontario Court of Appeal discussing techniques of judgment delivery and writing, and Mr. Justice Orville Frenette of the Quebec Superior Court discussing proper and improper judicial roles during the course of a trial. Faculty for the balance of the course consisted of Chief Judges and other experienced Provincial Court Judges across Canada.

The new judges were also given some free time to visit Ottawa. For example, tours of both the Supreme Court and the House of Commons while in session were arranged and the judges enjoyed particularly, a private chatting session with Mr. Justice William McIntyre. At the end of the course, general response of the new judges was that the academic content and delivery of the course were of high calibre and the opportunity to meet and to discuss with colleagues across the country problems of common concern was especially welcome. It is gratifying to know this and is attributed to the fine work by the planners of the course: Judges Peter Nasmith of Toronto, Jean-Marie Bordeleau of Ottawa, Fred Coward of Lethbridge, Raymond Bernier of Montreal and Stephen Cuddihy of St. Jerome.

The Western Regional Seminar will be held this year from March 22nd to April 2nd at the Gull Harbour Resort, Hecla Island, Manitoba, which is approximately 100 miles north of Winnipeg on Lake Winnipeg. Under the Chairmanship of Judge Rodney Mykle of Brandon, the program will have both Criminal and Juvenile and Family Court sessions. The Juvenile and Family Court section will be chaired by Judge Edward Kimelman and Venue Chairman will be Judge Arnold Conner, both of Winnipeg.

The theme of the Western Regional Conference will be to discuss changes in the criminal and young offenders process. Keynote speaker will be Mr. Justice Fred Kaufman of the Quebec Court of Appeal.

hotel, "The Holiday Inn Downtown", in Winnipeg, prior to official mailing of the brochure, should write to Senior Judge Ian V. Dubienski, P.O. Box 397, Winnipeg, Manitoba, Conference Planning Chairman.

See you in Winnipeg in 1981!

La Société Canadienne pour la prévention du crime et la Société de criminologie du Manitoba sont les responsables du prochain congrès Canadien sur la Prevention du crime, qui aura lieu à Winnipeg du 12 au 16 juillet 1981.

La conférence portera sur plusieurs sujets des plus intéressants:

— l'école et la prévention du crime
— les agencies communautaires et gouvernementales et la prévention du crime.
— l'église et la prévention du crime
— l'industrie et le commerce et le prévention du crime
— le systeme de justice et la prévention du crime, etc.

Des conférences, ateliers, tables-rondes, présentations audio-visuelles, etc., favoriseront la participation de tous.

Le congrès se diversa en trois grandes parties:

a) un congrès pour les personnes intérresées au systeme de justice criminelle;
b) un mini congrès ou d'excellents travaux recherches seront présentés;
c) une exposition dont le but est de l'information, les publications, l'équipment et le matériel utiles à la prévention du crime.

La cour, surtout la cour provinciale, ainsi que le tribunal de la famille sont des composantes importantes du systeme de justice criminelle. Plusiers conférences, ateliers et autres présentations traite ront des sujets comme réconciliation/punition; vandalisme; réhabilitation efficace; crime organisé; programmes communautaires; role de la cour et des services legaux, etc.

Le très honorable Edward Schreyer, gouverneur-général du Canada; l'honorable Robert Kaplan, solliciteur-général du Canada; le très révérend Edward F. Scott, primat de l'Eglise anglicane au Canada aussi que le docteur E. Ted Bensel seront parmi les grands conférenciers invités.

Si vous désirez prendre part au congrès ou vous loger au "Holiday Inn Downtown" vevillez vous inscrire au plus tôt en écrivant à M. le juge Ian V. Dubienski, casier postale 397, Winnipeg, Manitoba.

Au plasir de vous accueillir à Winnipeg en juillet prochain.

(QUEBEC MINISTER . . . continued from p. 14)

sur tout acte qui influence sa vie est devenu plus scrutateur et les tribunaux, dont les décision marquent son destin, n'ont pas échappé à cette forme de vigilance. Bref, il est devenu de plus en plus difficile de démarquer clairement les frontières entre les pouvoirs traditionneles mêmes, et celui suprême, commun aux trois ordres reconnus, celui des citoyens. L'indépendance, par exemple du pouvoir judiciaire, ne peut plus s'exprimer par un isolement de ceux qui doivent 'exercer, par rapport aux autres constituantes de la société. Ce n'est pas tant le rôle de chacun qui est remis en question, mais plutôt la façon de l'assumer. Le juge conserve dans la communauté une place bien particulière, celle de l'arbitre: en arbitre qui doit demeurer au-dessus de la mêlée, un arbitre que les parties doivent respecter. C'est un rôle délicat, tous le conçoivent. Et il m'apparaît important que la magistrature contribue à definir son profil dans cet ensemble. C'est l'un des défis que vous vous apprêtez à relever à l'occasion d'un congrès comme celui que vous tenez. Vous êtes conscients des dimensions du problème, et vous pouvez compter sur la collaboration des autres intervenants de la société pour concrétiser, par les mesures requises, la situation qui doit être la vôtre.

Au Québec, le législateur a voulu, par des amendements récents à la Loi des tribunaux judiciaires, contribuer à renforcer d'une façon concrète l'indépendance des juges. Par exemple, la procédure de nomination des juges par voie de concours supprime l'arbitraire de 'exécutif; déjà à ce stade, l'indépendance du juge est perceptible pour le justiciable et sa confiance en l'autonomie du magistrat ne peut être ébranlée par quelqu'obscure considération qui pourrait tenir du systère qui entourerait sa nomination. Par ailleurs, la création d'un conseil de la magistrature et l'élaboration par les juges eux-mêmes d'un code de déontologie sont de nature à améliorer les rapports entre le pouvoir judiciare et la société.

Je ne voudrais pas prolonger davantage mon intervention, d'autant que j'aurai à nouveau le plaisir de vous revoir à l'issue de vos assises, vendredi. J'ai cependant voulu soumettre à votre réflexion certaines considérations qui, je crois, s'inscrivent dans le thème de votre congrès; je souhaite ardemment que vos échanges soient fructueux, et je vous réitère notre volonté bien arrêtée de favoriser l'indispensable dialogue qui existe entre nous, et je veux vous assurer de notre collaboration en vue d'assurer la concrétisation de toute démarche susceptible d'améliorer l'administration de la Justice au profit de nos concitoyens.

2. It had been anticipated that the use of the student jury would result in more court time being taken per case. This prediction proved to be true and it appeared that roughly three times as much time was taken per case when the student jury was involved.

3. It had also been anticipated that the scheduling of cases would be more difficult when the student jury was involved, but it had not been anticipated that the problem would be a major one. It turned out to be the single biggest obstacle to the use of the jury. On one occasion two trials and two dispositions were scheduled and everything proceeded. Court was closed at 8:30 p.m. On the next occasion only two trials were scheduled. Neither trial went ahead, for the usual reasons, and the jury was left with nothing to do. It was finally decided to take great pains in scheduling two dispositions and one trial which were almost certain to go ahead. Still, last minute adjournments due to unanticipated absences of witnesses, stays of proceedings, denials changed to admissions, and reports not sent on time, continue to make scheduling problematical. The fact that I am entitled to know only the name and charge in a matter set for trial means that I am of very limited use in deciding which trials are appropriate for the student jury, and is a further complicating factor in the scheduling of cases.

4. The ten students selected for each sitting had only brief exposure to the juvenile justice system. They met with us for one meeting and sat in court for one afternoon only. It was recognized that their experience with the system was a very limited one.

5. The participating students, through their evaluations, expressed some dissatisfaction with the method by which their consensus was arrived at. Rather than simply being able to question me about the legality or feasibility of a certain method of dealing with an offender, they wanted an opportunity to actually discuss a proposed recommendation with me.

CONCLUSION

The smallness of the student jury experiment, and the short time it has been in operation make impossible a firm conclusion about its value, or lack of value, to the juvenile justice system. It was never intended that the student jury be involved in any more than a limited number of cases, and in anything but a certain type of case. However, the positive response to date has prompted us to plan for the continuation of the experiment in a modified form.

PROPOSED STUDENT JURY PROJECT FOR THE 1980-81 SCHOOL YEAR

With a view to solving some of the problems we encountered in our first year of operation we would modify the project in the following manner:

1. Ten students would be selected from the lists of volunteers as before, but their commitment would be for at least three half days and one evening over a span of three months.

2. In the first month the supervising probation officer would have the students participate as a panel in cases that are "non-judicialled" (diverted). Screening of the cases would be undertaken by Probation Services and the cases would include the concepts of victim-offender reconciliation, and community service work. It is anticipated that the scheduling of cases would be less of a problem in the non-judicial process than it had proven to be in the court process. In this way, the students would be introduced to the juvenile justice system, and would initially play a role similar to the function of the existing American student juries, most notably the student jury project in Denver, Colorado which claims positive results.

3. In the second month the students would observe at least one regular docket day in juvenile court. Some time after their day of observation the students would meet with the crown attorney, supervising probation officer and myself for discussion and further orientation.

4. In the third month the students would participate as before in the court process. However, I would be involved in their discussions to a greater extent than before. The students would still be required to deliberate as a group and tentatively arrive at a consensus on a recommendation, but they would then be at liberty to meet with me for discussion of the proposed recommendation before it was enunciated by their foreman in court.

This modified project would again be conducted on a very limited scale, and again it would be carried on for one school year. At the end of the year a report would be prepared and ongoing evaluation would be required from all participants for that purpose.

The Quebec Minister of Justice Speaks

By The Hon. Marc-Andre Bedard

(The author is the Minister of Justice for the Province of Quebec. These remarks were made at the annual meeting of the C.A.P.C.J. in Quebec City.)

Je suis trés hereux de l'occasion qui m'a été offerte par votré association de venir vous rencontrer dans le cadre de votre congrès annuel. Dans nos fonctions respectives, nous avons à assumer une responsabilité commune, celle de l'amélioration constante de la qualité de la justice ainsi que de son administration; cette préoccupation commande une concertation; cette préoccupation commande une concertation entre l'exécutif et le judiciaire, qui se construit à mon sens, sur un dialogue positif entre les deux ordres.

Le respect des juridictions respectives de chacun ne doit pas s'exprimer par un cloisonnement stérile, mais plutôt, je crois, par le maintien et même le renforcement des liens d'échange entre deux intervenants et de dialogue qui est de nature à favoriser l'atteinte de ces deux objectives que je viens d'évoquer. C'est dans cette perspective que je veux situer ma présence ici aujourd'hui. Vous venez de toutes les provinces canadiennes, reflétant ainsi à la fois les préoccupations qui sont, les unes communes à l'ensemble de la magistrature, les autres, plus spécifiques à chacune de vos provinces, l'organisation judiciaire différant parfois un peu d'un endroit à l'autre. Je ne peux, pour ma part, m'adresser à vous au nom de mes collègues des autres provinces; mais je suis particulièrement honoré d'être le premier à pouvoir bénéficier du fruit de la réflexion que vous allez mener ici au cours des prochains jours.

A la veille d'une prochaine conférence inter-provinciale des ministres de la Justice, il m'apparaît important de pouvoir recueillir de votre part l'éventail des suggestions qui pourront venir de votre congrès afin d'être en mesure d'en discuter avec mes collègues.

Je vous sais préoccupés, entre autres, au moment où l'on parle également d'une révision de la constitution, de voir inscrit dans un nouveau pacte constitutionnel le principe même de l'indépendance du pouvoir judiciaire. Il va de soi que le gouvernement du Québec est entièrement d'accord avec le principe qui implique que le juge est libre de toute contrainte, de toute attache lorsqu'il rend jugement et que le gouvernement n'a pas d'objection à ce que cet énoncé soit consacré d'une manière plus formelle puisqu'il existe déjà dans les faits.

Il m'apparaît normal en ma qualité de ministre de la Justice que les lois et les décisions de l'administration soient débattues devant les tribunaux; c'est, je crois, le fondement même de notre système qui justement permet ce type d'examen par le pouvoir judiciare, et sonsacre ainsi le droit des citoyens d'être entendu en justice en toute matière. Notre système judiciaire prévoit par ailleurs que l'initiative des politiques appartient à l'écutitif et que cest son devoir d'assumer cette responsabilité, dans l'intérêt public. Il m'apparaît qu'un sain équilibre doit exister entre ces trois ordres de pouvoir, et que la vigueur de ces ordres est de nature à garantir la qualité de l'encadrement juridique de la société.

L'évolution accélérée de cette société a commandé de la part du législateur et de l'exécutif une multiplication des gestes en vue de répondre adéquatement aux attentes et aux besoins de la population. L'éventail des actes de l'Assemblée nationale et de l'administration s'est considérablement élargi, et la nature des recours a suivi cette même courbe. Il ne faut donc pas se surprendre que ce droit nouveau comporte également un acroissement des interventions devant les tribunaux; nous n'en sommes plus à l'époque où seulement le Code civil, le Code criminel et quelques lois statutaires devaient être interprétés par les tribunaux.

Le rôle même du juge a donc dû se transformer non pas dans sa substance, mais en tout cas à l'égard du champ qui est soumis à son appréciation. La nature et la finalité du droit qu'il a à examiner a également évolué. La population, aussi mieux informée, plus exigeante a développé un sens critique plus aigu qui tient de son implication plus large à l'évolution de sa propre destinée. Le regard qu'elle pose

(continued on page 16 . . . .)

COMMUNITY RESPONSIBILITY

Crime Prevention Congress in July

by Senior Judge Ian Dubienski

The author is Senior Judge of the Manitoba Provincial Court (Criminal Division) in Winnipeg.

The Canadian Association for the Prevention of Crime is sponsoring, and the Manitoba Society of Criminology is hosting, the 1981 Canadian Congress on the Prevention of Crime in the City of Winnipeg, July 12th - 16th, 1981.

This Congress is coming at a time when many people on the North American continent are most concerned with the threat of crime and its growth. All facets of society are standing, pointing at the other, alleging that each has failed to meet their responsibility with regard to the problem.

It is the objective of this Congress to emphasize the fact that the prevention of crime is everybody's responsibility – the responsibility of the whole community, and not only of the police and law enforcement bodies, who in reality are instruments of detection and apprehension.

The Conference will develop various themes of responsibility, such as the school, the family, the community agencies, the mental health system, the Church, the economy and commerce, and the criminal justice system itself. These themes will be developed in plenary sessions and workshops throughout the course of the Congress. It is the hope of the Planning Committee that this program design will enable a constant interchange of ideas, extensive citizen and professional participation, with submissions, presentations and discussions based on academic research papers.

As a result, the Congress will have a format involving three main parts:

1. a Congress, involving those interested in and involved in the criminal justice system, with encouragement of citizen participation;
2. an academic mini-congress, that will allow for the presentation of academic papers on the problem of the prevention of crime; and
3. provision of a display area, for the purposes of disseminating information, publications, equipment and the material, of interest and having to do with the prevention of crime.

Of course, forming a large part of that segment of society known as the criminal justice system is that of the courts, and particularly the Provincial Judges Criminal Court and Family Courts.

As a result of interest to this particular criminal justice level, the Program Planning Committee has developed workshops, presentations, panel discussions to deal with topics on prevention related to: vandalism, reconciliation vs. punishment, rehabilitation that works, victim perspectives, organized crime, community programs and community service orders, other alternatives to prison, place of courts and legal services in the prevention of crime, juvenile crime sentencing, and the judicial function in prevention of crime.

The main theme and plenary sessions will be addressed by such people as the Congress patron, The Right Honourable Edward Schreyer, the Governor-General of Canada; the Honourable Robert Kaplan, Solicitor-General of Canada; Most Reverend Edward E. Scott, Primate of the Anglican Church of Canada; Dr. E. Ted Bensel, Director of Children's Centre, Minneapolis, Minnesota; and others.

An appropriate social program will be announced and there will be provision and arrangements made for a large selection of "self-arranged" entertainment for spouses and children, and a special note – the Congress will be immediately followed by the opening of the Morris Manitoba Stampede, which is now the largest stampede in western Canada.

Anyone wishing to indicate registration either at the Congress or the Congress