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Judicial Workload Estimates: Redefining the Concept of "Judicial Work"

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EMERGENCY PLANNING FOR CHILDREN DEPARTMENT



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

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PERMANENCY PLANNING FOR CHILDREN DEPARTMENT



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

Judicial Workload Estimates: Redefining the Concept of "Judicial Work"

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INTRODUCTION

Throughout the United States, child abuse and neglect proceedings in the juvenile and family court have been transformed by new demands. These demands include escalating judicial caseloads, increasingly difficult cases, and a significant new role for juvenile and family court judges. In November 1997, for example, provisions of the federal Adoption and Safe Families Act (ASFA; Public Law 105-89) increased judicial responsibilities and duties in child abuse and neglect cases and decreased the acceptable amount of time within which a case can be resolved through the placement of a child in a permanent, safe home. Moreover, state court improvement projects across the United States are asking juvenile and family court judges to become more active in developing and implementing alternative ways to address families at risk.¹ Increasingly complex issues, exacerbated by poverty, increasing drug and alcohol use, HIV, and domestic violence, are now decided in each case; more hearings are held and many more persons are involved. And national organizations, such as the National Council of Juvenile and Family Court Judges (NCJFCJ) and the American Bar Association (ABA), are calling for an expansion of judicial leadership beyond the confines of the bench.² Indeed, courts struggling to implement court reforms in child abuse and neglect case proceedings are having to partner with multiple organizations and agencies, to reach out to community resources, and to bring more system professionals into reform efforts.³

¹ Bailey, Christine, Hamilton, Francine, and White, Patricia (1998). "Summaries of Twenty-Five State Court Improvement Assessment Reports." *Technical Assistance Bulletin*, Vol. II(3), National Council of Juvenile and Family Court Judges, Reno, NV; Gray, Hon. Ernestine, Lewis, Hon. J. Dean, Mentaberry, Mary, and Bailey, Christine (1997). "Court Improvement of Foster Care and Adoption Projects: An NCJFCJ Survey Report." *Juvenile and Family Court JOURNAL*, Vol. 48(4), Reno, NV.

² American Bar Association (1992). *Judicial Implementation of Permanency Planning Reform: One Court That Works*, Washington, D.C.; American Bar Association (1995). *A Second Court That Works: Judicial Implementation of Permanency Planning Reform*, Washington, D.C.; Dobbin, Shirley A. and Gatowski, Sophia I. (1998). "Judicial Leadership and Judicial Practice in Child Abuse and Neglect Cases." *Technical Assistance Bulletin*, Vol. II(5), National Council of Juvenile and Family Court Judges, Reno, NV; Edwards, Hon. Leonard P. (1997). "Improving Juvenile Dependency Court: Twenty-Three Steps." *Juvenile and Family Court JOURNAL*, Vol. 48(4), Reno, NV.

³ For examples of how multiple organizations, including the court, have worked together to achieve significant systems reform, see Bailey, Christine L.; Dobbin, Shirley A.; Gatowski, Sophia I.; Mentaberry, Mary V. (2000). *Child Victims Act Model Courts Project Status Report 1999*. National Council of Juvenile and Family Court Judges, Reno, NV.

While the number of abused and neglected children in the child protection system continues to increase and judicial responsibilities, both by law and by necessity, continue to increase and expand, court resources are not keeping pace. Unfortunately, many jurisdictions have neither the ability nor the resources to meet these new demands. Judicial caseloads have risen at the same time that the number of issues, hearings, and parties have also increased. As a result, in some jurisdictions the quality of court process has gravely suffered. Hearings are often rushed in child abuse and neglect cases and courts may know little about relevant agency operations and available services. There are frequent delays in the timing of hearings and decisions, increasing the likelihood that children grow up without permanent homes.⁴

"Caseloads are more seriously out of balance [for judges hearing child abuse and neglect cases] than in other areas of law."

"We must have manageable caseloads if we want major improvements in how courts handle child abuse and neglect cases. Very simply, judges, attorneys, and court staff cannot do a good job if they have not enough time to do it. Of course, adequate levels of judicial staffing do not guarantee well run courts. But without adequate staffing, major court reform is not possible."

- Judges with excessive caseloads cannot carefully review their files to prepare for hearings.
- Judges with excessive caseloads have to rush their hearings, and cannot take the time to explain what is going on to the parties.
- Overburdened judges cannot take the time to monitor case progress as the law requires.
- After hearings, judges with excessive caseloads cannot prepare detailed findings when they should.
- Overburdened judges put off hearings when there is not enough time on the calendar to finish.
- When there are too many cases per judge, it can take months to get a contested hearing on the calendar.

Mark Hardin, "Determining Appropriate Caseloads for Judicial Officers and Attorneys," in Bailey and Mentaberry, *Supra* note 5, pgs. 31-32.

With the federal framework mandating shortened time frames to permanency, the increasing number of hearings, escalating caseloads, increasingly complex cases, and the need for system reform and innovation, questions are being raised about the appropriate caseloads for judges with child abuse and neglect dockets and how best to determine judicial workload estimates and conduct accurate judicial need and resource assessments. Questions need to be asked about how best to balance the values of timeliness and quality within an efficient system. Questions must also be asked about the very concept of workload itself and whether estimates of judicial work should be confined to specific

⁴ *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases* (1995). National Council of Juvenile and Family Court Judges, Reno, NV.

case-related bench tasks or expanded beyond such a limited conceptualization. And, if judicial workload is to be more broadly conceptualized, how can it be measured in a way that is useful and meaningful to the court, as well as to the child protection system more generally?

The David and Lucile Packard Foundation challenged the National Council of Juvenile and Family Court Judges (NCJFCJ), the American Bar Association Center for Children and the Law (ABA), and the National Center for State Courts (NCSC) to discuss and critically examine judicial workloads in the area of child abuse and neglect. These organizations have joined together to address this challenge in a three-tiered strategy. First, representatives of each organization met in Washington, D.C. in September 1998 as part of a "Judicial Workload Mini-Conference"⁵ to discuss the various approaches to workload studies, the benefits and limitation of each method, the various judicial roles involved in child abuse and neglect cases, and the fundamental values underlying child abuse and neglect case processing. The second step involved two pilot research projects: (1) A preliminary assessment of judicial workloads for dependency cases in Santa Clara County, California;⁶ and (2) a pilot research project aimed at expanding judicial workload theory and methods beyond traditional weighted caseload approaches. The third more long-term goal is to develop a strategy for a more sophisticated examination of judicial workload in child abuse and neglect case processing. The pilot research focusing on expanding judicial workload theory and methods is the focus of this *Technical Assistance Bulletin*.

Judicial workload studies have provided useful tools for court administrators and managers to evaluate court functioning and establish performance benchmarks in terms of time-at-task for discrete case events, and calculations of available judge time. Because of their intuitive appeal and ready application, measures of time-at-task have been the dominant means for assessing judicial workload. While time-at-task is an important component of understanding what a judge does, traditional workload assessments based upon time-at-task calculations are limited with respect to the scope of judicial work measured. Indeed,

⁵ For an overview of this mini-conference please see Bailey, Christine and Mentaberry, Mary (1999). "Mini-Conference on Judicial Workloads in Juvenile and Family Courts." *Technical Assistance Bulletin*, Vol. III(2), National Council of Juvenile and Family Court Judges, Reno, NV.

⁶ Steelman, David (2000). *Preliminary Assessment of Judicial Workloads for Juvenile Dependency Cases in Santa Clara County, California*. National Center for State Courts.

much of the past research examining judicial workload has ignored the inherent complexities of the judicial role by focusing on time-on-task issues. Moreover, judicial workload studies have rarely examined the workload of juvenile and family court judges generally and the workload associated with child abuse and neglect cases specifically.

Although judicial workload studies have provided valuable information about what judges do, well-designed practice-relevant

research on judicial workloads should recognize the complex, multi-dimensional nature of the judicial role, reflect the expansion of judicial tasks beyond discrete case-related events, and acknowledge the complexity of the judicial decision-making process. The purpose of this Pilot Judicial Workload Study was not only to provide a rich description of the multiple roles and responsibilities of the juvenile and family court judge, but also to examine their decision-making process and its inherent complexities.

Because it is believed that performance standards serve as the boundary for balancing quality and timeliness concerns, this pilot research was developed to incorporate and reflect the best practice standards of the *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* [hereafter *RESOURCE GUIDELINES*], the *ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* [hereafter *ADOPTION AND PERMANENCY GUIDELINES*]⁷, and ASFA. It is important to emphasize that judicial workload studies should measure what *is being done* in a case and how much judge time that requires, and measure against what *should be done* in the

"There are two aspects of judicial workload: one is that there are things we have to do; and the other is that we have to do them well."

Hon. Michael Anderegg
Presiding Judge, Family Division
Marquette County Probate Court
Marquette, Michigan

"I would add quality decisions within a timely period [to judicial workload studies], you need quality as the keystone. Timeliness is only a subset of quality."

Hon. Aaron Ment, Ret.
Chief Court Administrator
Connecticut

From Bailey and Mentaberry, *Supra* note 5, pg. 16.

⁷The *RESOURCE GUIDELINES* and the *ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (2000) of the National Council of Juvenile and Family Court Judges recommend the minimum requirements for conducting careful, complete, and fundamentally fair hearings at all stages of child abuse and neglect proceedings. The *RESOURCE GUIDELINES* has been endorsed by the American Bar Association and the Conference of Chief Justices. *Supra*, note 3. In its publication, *'Good Practice' Handling of Abuse and Neglect Cases by Juvenile and Family Courts* (1995), the National Center for Juvenile Justice, a research arm of the NCJFCJ, provides a description of how the time and resource allocations of the *RESOURCE GUIDELINES* were derived based upon data gathered from the Hamilton County Juvenile Court (Cincinnati, Ohio).

life of a case and how much judge time *should be expended*. Judicial workload studies should also recognize that the judge, and the court, are only one component of a large and complex child welfare system, and acknowledge that the functioning of other inter-related system components influences judicial workload. And, most importantly, the focus of judicial workload studies must not only be on the timeliness and efficiency of justice, but also on the *quality* of justice.

TRADITIONAL JUDICIAL WORKLOAD METHODOLOGY

Judicial workload studies developed as a way of documenting the need for additional judges in the face of diminishing limited public resources and as a means of establishing benchmarks to monitor court performance.⁸

The dominant methods for studying judicial workload are: (1) The Weighted Caseload Method; (2) the Delphi Method; and (3) the Normative Method.

Three Traditional Methods for Studying Judicial Workload

1. Weighted Caseload Method
2. Delphi Method
3. Normative Method

1. *Weighted Caseload Method*

Weighted caseload measures have in common the overall goal of trying to determine the amount of time a "typical" case requires. The calculation of "case weight" generally involves three steps: (i) For a particular case type, identification of the different case events that need judicial attention; (ii) Documentation and recording of how much of the judge's time is spent on each event; and (iii) Documentation of the frequency with which identified events occur. The relative weight is then calculated in

Calculation of Weighted Caseload

- For a particular case type, identify the different case events that require judicial attention.
- Record how much judicial time is needed to complete each event – a determination of "case weight."
- Document the relative frequency of each identified event - a determination of the "relative incidence rate."
- Multiply case weight by relative incidence weight.

accordance with the percentages of cases in which a particular event is likely to occur (i.e., the calculation of the "relative incidence" of a specific case event). Most weighted caseload studies are concerned with how much time a judge must give a particular type of

⁸ See for example: Lawson, H.O. and Gletne, B.J. (1980). *Workload Measures in the Court*. Williamsburg, VA: Publications Department National Center for State Courts; Ostrom, B. J., Cheesman, F., Flango, V.R., Jones, A.M., Kauder, N.B., LaFountain, R.C., Way, K.G., and Fonner, M.J. (1997). *Examining the Work of State Courts, 1997: A National Perspective from the Court Statistics Project*. A joint project of the Conference of State Court Administrators, the State Justice Institute, the Bureau of Justice Statistics, and the National Center for State Courts' Court Statistics Project; Ostrom, Brian J. and Hanson, Roger, A. *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Trial Courts*. National Institute of Justice and State Justice Institute; Steelman, *Supra* note 6; Steelman, David C. and Arnold, J.M. (1993). *Circuit Court of Cook County, Illinois: Criminal Division Judge Workload and Judgeship Needs Assessment*. Prepared under the Cook County Court Improvement Project.

case; how much judge time is available for such cases; and the average judicial workload, whether measured weekly, monthly, or yearly.

Once a weighted caseload estimate has been obtained, the number of judges or other judicial officers (e.g., magistrates, referees, juvenile masters) needed to handle the caseload can be estimated by determining how many minutes or hours a day a judge in a given jurisdiction is available to hear cases,⁹ multiplying that number by the number of judge work days in a year, and dividing that number by the weighted caseload estimate to determine how many cases a judge might be expected to hear in a year. If this number is then multiplied by the number of judges or judicial officers in that jurisdiction, a determination about whether there are too few or too many judges available to handle the caseload can be made.

**Calculation of Available Judge Time
(Missouri Judicial Workload Study)**

5.5 work hours per day (reduced hours per day to allow for administrative tasks)

224 available work days per year*

[262 days per year minus 13 days for state holidays, 20 days for vacation time, and 5 days for sick time]

- 1,232 hours per year (224 days x 5.5 hours per day)
- 73,920 minutes per year (1,232 x 60 minutes per hour)
- 102.67 hours per month (1,232/12 months per year)
- 6,160.2 minutes per month (102.67 x 60 minutes per month)

Cross-state comparison of judge time needed must be done with caution as there is a great deal of variation in how cases are defined and available time is calculated.

*Note: The average judge year calculated across 25 states is 215 days.

In calculating case weights, Steelman (1993)¹⁰ notes the importance of charting "case flow patterns" and allowing for "detours" in case processing (e.g., continuances, unexpected case events), the importance of recognizing and accounting for the time necessary for "court transaction time" – that is, the time necessary to perform the routine activities of the court (e.g., paper management, the movement of people), and accounting for the time required for case management activities (e.g., review of motions, pre-trial conferences, evidentiary issues). For example, in their study of judicial workload and judicial needs

⁹ Potential differences in calculations of available judge time between judges and other judicial officers need to be recognized and accounted for as appropriate. See for example, Steelman, *Supra*, note 6.

¹⁰ *Supra*, note 8.

assessment in the Criminal Division of the Circuit Court of Cook County (Chicago), Illinois, Steelman and Arnold¹¹ allowed for an additional three minutes (five minutes for murder trials) per court event to allow for "courtroom transaction time" and an additional one-third of court event time for case management activities.

2. *The Delphi Method*

In Delphi studies, judges, court personnel, attorneys, and other experts are asked to identify the tasks they perform and to estimate the amount of time they spend completing each task. Delphi methods are often used when no valid

Delphi Method

Groups of experts (judges, attorneys, court personnel, and other system professionals) are asked to identify specific tasks they perform and to estimate the amount of time they spend completing each task.

archival data (i.e., case records or other case history information) are available to gather information about the types of tasks judges do and how frequently within a case each task is performed. The Delphi approach has been frequently used as a means of externally validating weighted caseload techniques, but is rarely used as the sole method for calculating judicial workload. Delphi techniques may be relied upon more heavily when the research is exploratory or when court records are particularly difficult to access. However, it is difficult to draw valid and reliable conclusions about judicial workload estimates derived from Delphi methods alone.

3. *Normative Method*

The normative method involves comparative analysis across analogous jurisdictions that share similar social demographics, similar jurisdictional

Normative Method

Comparative analysis among similar jurisdictions on some stable measure divided by judicial resources in each jurisdiction.

procedures, and similar statutory frameworks. Once jurisdictions are identified and parameters are established, a stable measure is identified (e.g., number of children under court jurisdiction, number of cases disposed annually) and then that number is divided by the number of judges available. The result is usually expressed in a case rate of judicial officers per thousand eligible cases. It is important to note that while the normative method may appear simple and straightforward to calculate, it is this very simplicity that

¹¹ *Ibid.*

undermines its utility and meaningfulness, as it may not allow for the influence of unique jurisdictional practices.¹²



Critique of Traditional Judicial Workload Studies

- Past judicial workload studies focus primarily on timeliness and delay and do not explicitly address the *quality* of case processing.
- Traditional judicial workload studies tend to measure the time requirements necessary for what *is* happening in the case process and do not necessarily compare this measure against what *should* be happening and the necessary time requirements inherent in best practices.
- Each of the traditional workload methods essentially assesses judicial workload with respect to calendar time, cost, and accuracy, but fails to take into account the many embedded judicial roles that emerge in the course of dependency case processing.
- Traditional workload approaches do not systematically include off-the-bench activities associated with administrative responsibilities, the necessity of ongoing and frequent judicial education, training, and legal research, and the growing need for community advocacy and leadership. These activities are not typically included in the “judge-year workload” calculation. Although some judicial workload studies attempt to acknowledge non-case based activities by shortening the judicial workday (e.g., by reducing available judge time to five or six hours per day rather than eight hours per day, with the remaining few hours per day accounted for by “other” tasks such as administrative tasks, attendance at judicial trainings, and so forth), such an approach diminishes the importance of “other activities” to the judicial role, or the importance of judicial time spent off-the-bench.
- Past studies have often been fragmented, studying only one piece of the “puzzle of resources.” Many studies of judicial workload have not taken into account other aspects of workload such as the impact of good representation for children and families, strong prosecution and agency attorneys, adequate service delivery, and community commitment to abused and neglected children. Thus, traditional workload studies fail to explicitly acknowledge that other components of the child

¹² Hurst, Hunter (1999). “Appendix A: Judicial Workload Measurement.” In Bailey and Mentaberry, *Supra* note 5.

protection system and the performance of other system professionals influences judicial workload and time estimates.

Thus, workload assessments derived strictly from time-at-task methods fail to capture the totality of the judge's activities, limit the understanding of the scope of the judge's roles and responsibilities, and may provide inaccurate estimates of the number of judges needed to effectively handle the workload in a given jurisdiction within the parameters of best practices.

At the Mini-Conference on Judicial Workloads (September 14, 1998, Washington, D.C.) representatives of the NCJFCJ, ABA, and NCSC reached consensus on the following statements:

- The study of judicial workload involves more than calculating a numerical formula.
- The examination of judicial workload must take into account the unique context and inherent complexity of child abuse and neglect cases.
- The examination of judicial workload must take place at the local level and information developed at the national and state level must be translated to the unique context of the local jurisdiction.
- The "one formula fits all" approach is neither sufficient nor appropriate for judicial workload studies in child abuse and neglect cases.

Bailey and Mentaberry, *Supra* note 5.

Although traditional judicial workload methodologies can be criticized on the grounds mentioned above, it is important to note that workload studies based upon time estimates (like traditional models) do provide useful baseline data for calculating and conceptualizing judicial workload. Indeed, any defensible research on judicial workload should include as one part of the research design a time-based workload assessment of the type typically used in weighted caseload studies. However, the danger lies in narrowly defining the scope of judicial work and relying on traditional time-based assessments as the sole basis for calculating and conceptualizing judicial workload.

UNDERSTANDING THE IMPACT OF MULTIPLE JUDICIAL ROLES ON CASE PROCESSING

"[The] numerous roles a judge fills during a day are not adequately examined in a workload study."

Bohdan Yaworsky, Ph.D.¹³

The overall role of the juvenile and family court judge is complex – a confluence of dimensions that in some cases may not even be recognized as part of the traditional or normative judicial role, much less understood in terms of the additional responsibilities or expectations that are placed upon the judge as he or she fulfills the duties of the office. Perhaps more so than any other type of judge, the juvenile and family court judge is unique with respect to the breadth and depth of the tasks and duties performed during the life of a case.

The many diverse issues that arise in abuse and neglect cases make it necessary for juvenile and family court judges to interact with a wide array of individuals in a number of different situations and at a variety of levels. A judge with a dependency docket is not only a legal decision-maker, but may also be at once an administrator; a liaison between schools and social service agencies; an educator of families and communities on the importance of family, values, and discipline in the welfare of a child; a convener; an advocate for the rights of children; and a leader in drafting and commenting on legislation related to family issues.¹⁴ Many of these activities may not be case-specific, but they are important to consider when assessing judicial workload as they contribute to the complexity and demands of the judicial role. In addition to quantitative measures of workload such as case-processing time on the bench, qualitative and multi-layered descriptions of possible *judicial roles* are necessary to fully capture the multi-dimensional nature of *judicial workloads*.

¹³ See Bailey and Mentaberry, *Supra* note 5, pg. 17.

¹⁴ Edwards, Hon. Leonard P. (1992). "The Role of the Juvenile and Family Court Judge." *Juvenile and Family Court JOURNAL*, Vol. 43(2), pgs. 25-32.

Among the judicial roles that have been studied are judge as lawmaker, law applier, mediator, advocate, and peacekeeper.¹⁵ Although these studies have addressed judicial roles to an extent, they have also either imposed a degree of structure or constrained the emergence of the true scope of the judge's interactions with others, thereby defining judicial role rather narrowly.



The Role of the Juvenile and Family Court Judge

The judicial role of the juvenile and family court judge, and the level of accountability associated with that role, has been expanded in recent years. This expansion of the judicial role has been influenced by three national trends: (1) changes in federal legislation; (2) the disbursement of federal funds for court improvement; and (3) the support of collaborative initiatives by public and private funders.

1. Expansion of the Judicial Role Through Federal Legislation

During the 1970s, juvenile and family courts were expected to determine only whether a child had been abused or neglected, and, if so, whether the child needed to be removed from the home or placed under court or agency supervision. In 1980, the passage of the Adoption Assistance and Child Welfare Act (Public Law 96-272) brought about a major change in how the court handled child abuse and neglect cases. P.L. 96-272 placed the responsibility for regular reviews squarely on the shoulders of the nation's judiciary, and mandatory review of all dependent children became the focus of courts across the nation.

The most significant change in federal legislation, however, was the passage of the Adoption and Safe Families Act (ASFA) in November 1997 (Public Law 105-89). Among ASFA's most significant provisions is statutory language defining child safety and health as paramount considerations in judicial decision-making.¹⁶ The primary goals of ASFA are (1) to move children from the child welfare system into safe, permanent homes and (2) to

¹⁵ See for example, Flango, V.E., Wenner, L.M. and Wenner, M.E. (1975). "The Concept of Judicial Role: A Methodological Note." *American Journal of Political Science*, Vol. 19(2), pgs. 277-289.; Gibson, J.L. (1981). "The Role Concept in Judicial Research." *Law and Policy Quarterly*, Vol. 3, pgs. 291- 311.; Scheb, J.M., Unga, T.D., and Hayes, A.L. (1988). "Judicial Role Orientations, Attitudes, and Decision-Making: A Research Note." *The Western Political Quarterly*, Vol. 42(3), pgs. 427-435; Unga, T.D. and Baas, L.R. (1972). "Judicial Role Perceptions: A Q-Technique Study of Ohio Judges." *Law & Society Review*, Vol. 6(3), pgs. 345-366.

¹⁶ "[T]he child's health and safety shall be the paramount concern." ASFA, §101 (15A).

change the experience of children entering into the child welfare system today.¹⁷ ASFA has expedited time frames for achieving permanency, requiring that a permanency hearing be held within 12 months of removal of the child from the home and that termination of parental rights begins when a child has been placed in foster care for 15 of the last 22 months.¹⁸ Consequently, ASFA necessitates more timely, decisive, and substantive hearings, and more frequent court and administrative case reviews. It also requires a focus on outcomes and performance reports, and stresses both court and child welfare system accountability. ASFA also stresses the need for collaboration and community partnerships that are focused on child safety and timely permanency.

The implementation of ASFA presents a number of major challenges for state courts and the child welfare system. Because state compliance with the law is a condition of state eligibility for funding to public child welfare agencies, ASFA places new demands on state court resources. Moreover, the passage of ASFA also significantly increases the role of the judge throughout the processing of the case, and places responsibility for ASFA compliance and good outcomes for children and families squarely on the shoulders of the court.

2. *The Role of the Judge in Court Improvement Programs*

A second significant influence on the role of the juvenile and family court judge was the inclusion of funds by the U.S. Congress in the Omnibus Budget Reconciliation Act of 1993 for improving juvenile and family court handling of cases involving abuse, neglect, foster care, and adoption (Public Law 103-66). The Court Improvement of Foster Care and Adoption Program, part of the Family Preservation and Support Act, was a national effort begun in 1994. Funding from the U.S. Department of Health and Human Services (HHS) was awarded to state supreme courts in each of the 47 states who selected to participate in this program (49 states and the District of Columbia now participate in this program).

¹⁷ ASFA is based on a core value that foster care should only be a temporary situation. Various provisions of ASFA are aimed at shortening a child's stay in foster care, including: shortened time frames to permanency; the affirmation of family reunification as a viable option; the establishment of new requirements for reasonable efforts for permanency; the establishment of adoption incentives; the extension of health care coverage to children with medical needs who have an adoption assistance agreement; and the provision that adopted children can maintain IV-E eligibility following the death of adoptive parent(s) or a disruption in a prior adoption.

¹⁸ ASFA allows for consideration of compelling reasons why parental rights should not be terminated if the child has been in foster care for 15 of the last 22 months. ASFA also enables the court to move forward on termination prior to the 15 month timeframe if aggravating circumstances exist.

Court improvement task force members included supreme court judges, juvenile and family court judges, state legislators, child welfare personnel, attorneys, and members of various volunteer organizations. Task force members identified barriers to permanency in their states and implemented training to move court and agency systems toward meaningful change.¹⁹ Federal funding of Court Improvement Programs necessitated the

collaboration and coordination of improvement efforts between the judiciary, court personnel, and the social service agencies. Juvenile and family court judges, therefore, became active and critically important leaders and participants in court and systems reform efforts.

A history of failed or truncated improvement efforts in a variety of initiatives clearly demonstrates that without strong judicial leadership meaningful and sustainable systems change cannot occur.

Juvenile Courts: Reforms Aim to Better Serve Mal-treated Children, United States General Accounting Office, Report to the Chairman, Subcommittee on Ways and Means, House of Representatives (January 1999).

See also, *VAMC Status Report*, *Supra* note 3, and Dobbin & Gatowski, *Judicial Leadership*, *Supra* note 2.

3. *The Role of the Judge in Collaborative Initiatives*

In a time of scarce funding resources, private and public funders are stretching their funding dollar by encouraging, if not requiring, courts, agencies, and communities to collaborate in order to improve child protective systems. Funders also recognize that meaningful change can be more readily and efficiently achieved when all system professionals are brought to the table and involved in the process. These initiatives provide funding for reforms that are comprehensive, preventative, and interactive with local communities and neighborhoods – involving a radically different balance between child welfare services and the juvenile justice system.

These changes in the law and the legal landscape not only expand the role and responsibilities of the juvenile and family court judge, but also carry with them a diverse set of possible interactions between the judge and various system stakeholders. For example, a judge on the bench has the role of decision-maker, and must therefore interact with a number of individuals who provide the information and resources the judge must use to make decisions. These interactants include attorneys for opposing parties, service agency

¹⁹ See Bailey et al., *Supra* note 1.

representatives, parents, children, relatives, foster care givers, adoptive parents, and so on. In order to perform the role of decision-maker, however, the judge must also take on the role of sanctioner, advocate, mediator, convener, collaborator, and so forth. This is true for both the judge's on-the-bench and off-the-bench activities.

Additionally, the number and type of role interactants, and therefore the expectations and responsibilities placed upon the judge, change with each role the judge assumes – whether as a decision-maker, leader, or collaborator. Under these circumstances it is clearly necessary to address judicial role as a critical element in determining judicial staffing needs and related workload issues.



Role as a Research Concept

Understanding the diverse roles of the judge requires understanding the theoretical conceptualization of "role," as well as related concepts such as role set, role strain, role conflict, or role ambiguity.²⁰ When studying the judiciary from the role perspective, it is important to realize that judicial roles are not defined solely by autonomous actors. Judicial role is a composite of the judge's role identity (expectations for self), the role partners' expectations for the judge (i.e., people the judge interacts with on a daily basis), organizational expectations (organizational role identity), and the normative expectations placed on the judge by society (social role identity).

Judges' role identity is embedded in cognitive, structural, political, cultural, and legal contexts. Together these contexts comprise the identity of the organization. Understanding this nested quality of organizational identity provides insight into a judge's role-identity within this organizational structure, and in turn, into the expectations held for the judge by role partners, as well as the judge's expectations for him- or herself. Once these connections are made, judicial workload in its entirety, both on- and off-the-bench, can be better conceptualized.

²⁰ See for example, Deaux, K. "Social Identities: Thoughts on Structure and Change." In R.C. Curtis (Ed.), *The Relational Self: Theoretical Convergences in Psychoanalysis and Social Psychology*. New York: Guilford Press.; Golden-Biddle, K. and Hayagreeva, R. (1997). "Breaches in the Boardroom: Organizational Identity and Conflicts of Commitment in a Nonprofit Organization." *Organization Science*, Vol. 8(6), pgs. 593-610; Heiss, J. (1992). "Social Roles." In M. Rosenberg and R. Turner (Eds.). *Social Psychology: Sociological Perspectives*. New Brunswick, NJ: Transaction Publishers.; Petkus, E. (1996). "The Creative Identity: Creative Behavior from the Symbolic Interactionist Perspective." *Journal of Creative Behavior*, Vol. 30(3), pgs. 188-196.

Judges, as with all organizational actors, are individual participants in a well-developed structural institution that abides by certain rules and codes. These institutional norms and rules combine to create the judicial identity into which the judge is socialized. If the justice system is viewed as an organizational identity and the position of the judge is viewed as a role-identity, the interplay between these two identities may mutually shape each other.²¹ This interplay additionally shapes the role expectations society holds for judges. These expectations, in turn, impact judges' role performance. Research based upon these theoretical assumptions will help provide a comprehensive understanding of the nature and scope of the responsibilities and the workload inherent in the role of the juvenile and family court judge.



A Brief Review of Best Practices in Child Abuse and Neglect Cases

"To develop a measure of workload for resource allocation is one thing, to develop workload standards that will improve the lives of children on measures that we value is a different thing. We need ... to see this not as a one shot process, [but] as a dynamic process that is tied to the persistent pursuit of long-range outcomes that we all agree are desirable for children. Performance standards need to be more than just efficiency standards, they also need to be human outcome standards."

Hunter Hurst, III, Director, NCJJ²²

The research described in this *Technical Assistance Bulletin* assumes the perspective that best practice performance standards serve as the boundary for balancing timeliness and quality concerns. It is important to recognize that judicial workload studies should not only measure what *is being done* in a case and how much judge time that requires, but they should also measure *what should be done* in the life of a case and how much judge time *should be expended*. The focus must not only be on the timeliness and efficiency of justice, but also on the *quality* of justice.

²¹ McCall, G. J. (1987). "The Structure, Content, and Dynamics of Self: Continuities in the Study of Role Identity." In K. Yardley and T. Honess (Eds.) *Self and Identity: Psychosocial Perspectives*. New York: John Wiley and Sons.; Petkus, *Supra* note 20; Stryker S. (1968). "Identify Saliency and Role Performance: The Relevance of Symbolic Interaction Theory for Family Research." *Journal of Marriage and Family*, Vol. 30(4), pgs. 558-564; Stryker, S. and Serpe, R.T. (1982). "Commitment, Identify Saliency, and Role Behavior: Theory and Research Example." In W. Ickes and E.S. Knowles (Eds.) *Personality, Roles, and Social Behavior*. New York: Springer-Verlag.

²² Bailey and Mentaberry, *Supra* note 5, pg. 20.

The *RESOURCE GUIDELINES* and the *ADOPTION AND PERMANENCY GUIDELINES* of the NCJFCJ outline the minimum requirements for conducting careful, complete, and fundamentally fair hearings at all stages of abuse and neglect court proceedings. It is important to note that the *RESOURCE GUIDELINES* address court process rather than substantive law. The publication does not offer criteria for court intervention, but is limited to matters of judicial procedure, organization, and staffing. Specific recommendations of the *RESOURCE GUIDELINES* include:

Key Values for Permanency Planning

- Child Health and Safety
- Permanency for Children
- Family Preservation
- Judicial Leadership
- Adequate Resources
- Judicial Oversight of Children and Families
- Availability of Alternative Dispute Resolution Mechanism
- Courtroom Civility
- Cultural Sensitivity/Competence
- Competent and Adequately Compensated Representation
- Collaboration and Community Partnership

The *Key Principles* were developed by the Permanency Planning for Children Advisory Committee and endorsed by the Board of Trustees of the NCJFCJ in July 1999.

- front-loading the court process so that parties will be prepared and cases can be resolved at the earliest court hearing possible, rather than starting down the road of delays and continuances which are often associated with subsequent court hearings;
- direct calendaring of cases;
- one judge-one family for all stages of the court proceedings, from the initial hearing through termination of parental rights and adoption; and
- the use of mediation, family group conferences, and other alternatives to traditional litigation.

The *RESOURCE GUIDELINES* and the *ADOPTION AND PERMANENCY GUIDELINES* outline what each hearing should cover, who should be present, and how much time should be allowed for each type of hearing. These guidelines also describe how court calendars can be managed to achieve efficiency and avoid delays, explain the level of court staffing and organization necessary to ensure that the judicial process runs smoothly, and clarify the costs associated with reform efforts.

At the Judicial Workload Mini-Conference, representatives of the NCJFCJ, ABA, and NCSC articulated the following overarching principles for the examination of judicial workloads in child abuse and neglect cases:

- Children should live in safe and permanent homes.
- Children and families should be treated with objectivity, dignity, and respect and they should receive individual attention by the court.
- In order to use judicial time wisely, judges must engage in best practices, including timely decision-making and collaborative efforts.
- Judges must be supported by necessary resources, including appropriate staffing and the availability of alternative dispute resolution mechanisms.

Bailey and Mentaberry, *Supra* note 5.

- Literature Review and Annotated Bibliography

A comprehensive review of existing research and literature on workload studies and role theory, as well as the body of literature that generally describes methods for conceptualizing and measuring features of professional roles was conducted. This review provided important theoretical, contextual, and methodological information that guided the subsequent development of a survey instrument designed to articulate the multi-dimensional nature of the judicial role.²³

- Pilot Survey

A pilot telephone survey of a small number of juvenile and family court judges (N=29) was undertaken. Because the purpose of this pilot survey was to explore the multi-dimensionality of the judicial role in dependency practice, judges were asked to describe in their own words the roles and responsibilities of a juvenile and family court judge, particularly as those roles and responsibilities relate to dependency practice under the ASFA guidelines and the canons of best practice. The survey was designed to allow the various dimensions of the judicial role to emerge without the imposition of structural constraints by the researchers (i.e., open-ended questions were utilized rather than close-ended or multiple choice, fixed response options). The use of open-ended questions not only allows the dimensionality of the judicial role to emerge, but it also enables the researchers to make inferences about the centrality and saliency of particular role dimensions from the responses given.

Because the purpose of this project was to pilot the survey instrument, the survey sample was not drawn in such a way that it would be nationally representative. Rather, a non-random, convenience sample of 60 juvenile and family court judges was provided by the PPCD and interview participants were drawn from that sample. All judges selected for inclusion in the survey sample presided over a child abuse and neglect docket.

²³ Dahir, Veronica., Polk, Roselyn, and Merlino, Mara L. (1999). *Juvenile and Family Court Judges: The Importance of "Role" to an Understanding of "Workload: An Annotated Bibliography*. Permanency Planning for Children Department of the National Council of Juvenile and Family Court Judges and the Grant Sawyer Center for Justice Studies, University of Nevada, Reno. If you would like a copy of the annotated bibliography, please contact the Permanency Planning for Children Department.

JUDICIAL WORKLOAD PILOT STUDY

As one component of a larger grant by the David and Lucile Packard Foundation, the Permanency Planning for Children Department (PPCD) of the National Council of Juvenile and Family Court Judges (NCJFCJ) subcontracted with the Grant Sawyer Center for Justice Studies (GSCJS) at the University of Nevada, Reno to undertake the pilot research project described herein. The goals and objectives of this pilot research project, and the research methodology, was conceived of and designed by the research and professional staff of the PPCD. The research staff of the GSCJS was responsible for the data collection and analysis stages of the project.

Research Objectives

- To provide a measure of judicial workload that acknowledges the multiple roles and responsibilities of juvenile and family court judges;
- To elicit judges' opinions and descriptions of the role of the juvenile and family court judge – both on- and off-the-bench;
- To elicit judges' views of the challenges they must overcome in the performance of their responsibilities – both on- and off-the-bench;
- To elicit judges' descriptions of the various tasks they perform and their estimates of the time they spend at each task – both on- and off-the-bench;
- To develop a survey instrument that can be used in future research examining judicial workload;
- To expand the concept of judicial "work" beyond discrete case-related events; and
- To ensure that judicial workload studies are meaningful and relevant to the court specifically, and the child protection system more generally.

This pilot research project is not intended to represent a comprehensive examination and analysis of judicial workload in child abuse and neglect case processing. Nor is it meant to infer that this methodology is the single best approach to the study of judicial workload. Rather, this pilot research project is an attempt to explore theoretical and methodological aspects of judicial workload estimates that have been ignored in traditional studies. It is hoped that the results of this research will encourage subsequent researchers and court administrators to expand their assessments and conceptualizations of judicial workload with the ultimate goal of developing a more comprehensive, realistic, and meaningful methodological approach for the study of judicial workload in child abuse and neglect case processing.

The Judicial Workload Pilot Study consisted of two primary components: (1) a literature review and the development of an annotated bibliography; and (2) a pilot survey of a small sample of judges.

Two groups of judges were selected for comparison. One group consisted of 35 judges who serve in one of 22 Child Victims Act Model Court²⁴ jurisdictions.

Approximately one-third of the judges had 1-5 years of experience on the juvenile and family court bench; 28% had 6-10 years of experience, and 21% had 11-15 years of experience on the juvenile and family court bench.

The second group consisted of 25 juvenile and family court judges who were selected from the membership list of the NCJFCJ.²⁵

Judges in the second group do not participate in the Child Victims Act Model Court project.

A final sample of 29 juvenile and family court judges were included in the pilot survey — 17 “model court” (MC) judges and 12 “other member court” (OMC) judges.²⁶

Brief Summary of Survey Content Areas:

- *Demographic Information:* number of years on the bench; number of years hearing child abuse and neglect docket.
- *Context Information:* structure of the court, size of jurisdiction, case assignment practices, number of judges hearing child abuse and neglect docket.
- *The Role of the Judge in Dependency Practice:* opinions regarding judicial role in child abuse and neglect case practice; most important functions both on- and off-the-bench; views about expectations others have for judges hearing child abuse and neglect cases.

²⁴ As part of its Child Victims Act Model Court Project, NCJFCJ has designated 22 model jurisdictions for observation of improvement efforts in handling child abuse and neglect cases. These Model Courts are actively implementing various measures aimed at improving court practice in child abuse and neglect cases and achieving safe homes for children and families. These Model Courts serve as national “laboratories” for the improvement of child abuse and neglect case processing in accordance with federally mandated timelines (ASFA) and the best practices of the *RESOURCE GUIDELINES* of the NCJFCJ. Each Model Court operates under the leadership of a designated Lead Judge. Note that Model Court judges surveyed are not necessarily Lead Judges.

²⁵ Sampling from the membership list of the NCJFCJ may produce a biased sample. However, given that this is a pilot research study on a small number of judges, it was decided that the drawbacks to this convenience sample were acceptable. Future research should sample juvenile and family court judges from some independent source (e.g., *The American Bench*).

²⁶ Of the 60 judges in the sample, two OMC judges were no longer hearing juvenile and family court cases. Four MC judges and 1 OMC judge agreed to be interviewed, but due to court business were unavailable to be interviewed at their scheduled times. These judges were re-contacted and asked to reschedule their interviews. Those judges who were unable to reschedule their interviews before the end of the data collection period were treated as withdrawals from the study. Two MC judges declined to participate due to time constraints. The remaining judges were contacted, but could not be scheduled during the data collection time period.

Brief Summary of Survey Content Areas (Continued ...)

- *On-the-Bench Activities:* description of typical workday activities and estimation of amount of time associated with those activities; discussion of challenges associated with completing on-the-bench tasks.
- *Off-the-Bench Activities:* description of typical activities related to dependency caseload but performed off-the-bench; estimation of the amount of time associated with those activities; discussion of challenges associated with completing off-the-bench tasks.

RESULTS AND IMPLICATIONS FOR JUDICIAL WORKLOAD STUDIES

This *Technical Assistance Bulletin* presents only a portion of the overall results of this pilot study. For a more complete discussion of the results, please contact the Permanency Planning for Children Department for a copy of the research report, *"The Results of Pilot Research Aimed at Expanding the Scope and Utility of Judicial Workload Studies in Child Abuse and Neglect Cases,"* a joint product of the Permanency Planning for Children Department of the National Council of Juvenile and Family Court Judges and the Grant Sawyer Center for Justice Studies, University of Nevada, Reno (1999).

➡ Judges' Opinions About the Role of the Juvenile and Family Court Judge in Dependency Practice

To determine judges' perceptions of their role, respondents were asked to describe the role of a juvenile and family court judge in dependency practice. Recall that judges were responding to an open-ended question and were not asked to endorse any particular pre-determined or fixed response category (e.g., judges were not asked to choose among multiple response options). Therefore, responses provided by judges elicited information about how judges "talk" about their role. For the purpose of analysis, responses were themat-

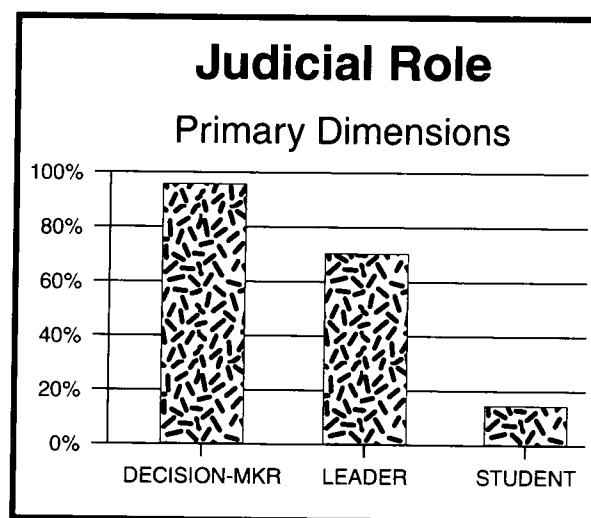


Figure 1

ically coded and then grouped into role dimensions informed by the literature review. From the responses provided, three distinct and primary dimensions of the judicial role in dependency practice emerge – that of legal decision-maker (DECISION-MKR; 97%, n=26), leader (LEADER; 72%, n=21), and student (STUDENT; 14%, n=4). (See Figure 1).²⁷ These three role dimensions represent those roles that are most central to the respondents' concept of "juvenile and family court judge in dependency practice."

²⁷ These responses were provided in response to an open-ended question: "In your opinion, what is the role of a juvenile and family court judge in dependency practice?" Percentages do not sum to 100% as judges could provide multiple responses.

Because the question was open-ended and judges were able to provide any answer they wished, the responses reflect those role characteristics that are most cognitively available to the judges. If the question had been structured as a close-ended question using fixed response categories, and if other potential role descriptors were provided (e.g., administrative role), then it is likely that at least some of the respondents would have "checked" other options. However, a close-ended question would not have provided information about the relative cognitive primacy, immediacy, and centrality of the various role dimensions to the role of the juvenile and family court judge in dependency practice. While there might be other roles (e.g., judge as administrator), these other roles are not as salient to the respondent nor as central to the role of the judge in dependency practice. Moreover, the findings should not be interpreted to mean that only 14% of the judges view the "judge as student" role as important, but rather that the student role was spontaneously offered as a dimension of the judicial role by 14% of the judges.

In discussing the role of the juvenile and family court judge, many of the comments reflected multiple role dimensions within a single response. That is, "judicial role" was not discussed as a single, unitary concept. Moreover, the multiple dimensions were discussed in terms of *both* on-the-bench and off-the-bench activities, suggesting that juvenile and family court judges see their judicial role as expanding beyond the bench.

The quotes opposite serve as illustrations of this point. In the first quote, the traditional "judge as decision-maker" role is evident in phrases such as "[t]he judge's role is to comply with state and federal statute, to make findings, and to make orders." However, the quote also reflects a recognition of a leadership dimension: "[t]o oversee dependency cases ...to ensure that child protective services is providing appropriate services ..." By including an oversight function in the role description

**Perception of Judicial Role
in Dependency Practice**

"The judge's role is to comply with state and federal statute, to conduct hearings, to make findings, and to make orders ... to oversee dependency cases to be sure ... to ensure that child protective services is providing appropriate services to children and families to achieve early, safe permanency for children."

"To make sure I have a system that is protecting children, that's the main thing. Second, is to litigate contested issues."

"The role [of the judge] is to serve the institution that holds accountable those who are responsible for serving families and children. To make things happen, to find safe, permanent homes for children."

(i.e., oversight over dependency cases, oversight over the child protection agency, oversight over the provision of appropriate services), the judge's discourse suggests more than

solely a decision-maker function. The second and third quote reflect a similar multi-dimensionality. Statements such as “[t]o make sure I have a system that is protecting children,” “[t]o make things happen,” reflect more than a traditional judge as legal decision-maker role. It is also important to note that these sample responses reflect the values underlying the multiple roles of the dependency court judge – leadership, accountability, permanency for children, and so forth.

**Perception of Judicial Role
in Dependency Practice (Cont’d ...)**

“Our primary role is to ensure children have a safe, permanent home and are not staying in foster care longer than necessary.”

“To set and enforce best practice standards so that decisions involving best interests are based on the best information and result in the best, timely outcomes for each child.”

“To look out for the best interests of the child and to do so as expeditiously as possible.”

Implications for Redefining “Judicial Work” in Workload Studies

Recognizing the complex multi-dimensional role of juvenile and family court judges in dependency practice is critical to an understanding of judicial workload. As these preliminary results suggest, the “judge as leader” and “judge as student” are important dimensions of the judicial role that should not be overlooked when calculating the amount of time spent in performance of the judicial role. While “judge as legal decision-maker” may be captured by traditional workload methodologies, most studies to date have either ignored or significantly marginalized the “judge as leader” and “judge as student” roles.

Judicial workload assessments must expand the concept of “judicial work” beyond a traditional “judge as legal decision-maker” focus, and recognize the importance of the leadership and student dimensions.

◆ **“Judge as Legal Decision-Maker”**

When the judges talked about their role as a juvenile and family court judge, their responses, not surprisingly, tended to focus on tasks associated with judicial decision-making generally (e.g., ensuring fairness and impartiality), and tasks associated with judicial decision-making in dependency practice specifically (e.g., ensuring the best placement for the child, focusing on the best interests of the child). It is worth noting that although “making informed, thoughtful decisions” and “ensuring fairness and impartiality” were the most frequent first responses, when all responses are examined the most common expectation for the judge as legal decision-maker in child abuse and neglect cases is to focus on the best interests of the child and ensure timely decision-making.

Figure 2 illustrates the relative importance of the various role expectations (across all mentions) associated with the judge as legal decision-maker:

- to focus on best interests of the child (FOCUS BEST INTERESTS; 68%, n=19 of 28);
- to make timely decisions (TIMELINESS; 46%, n=13 of 28);
- to hear testimony from all parties and make a decision (HEAR TESTIMONY, 32%; n=9 of 28);
- to manage the case (MANAGE CASE; 32%, n=10 of 28); and
- to apply/follow the law appropriately (APPLY LAW; 29%, n=8 of 28).

Taken as a whole, the comments reflect a recognition of the normative judicial role as a neutral arbiter (i.e., reference to fairness, impartiality, and listening to information presented by all parties), but they also reflect the importance of recognizing and incorporating child safety and timeliness into judicial decision-making in dependency practice. Thus, taking responsibility for child safety and timeliness not only reflect underlying key values of permanency, but are also perceived as judicial bench *functions*.

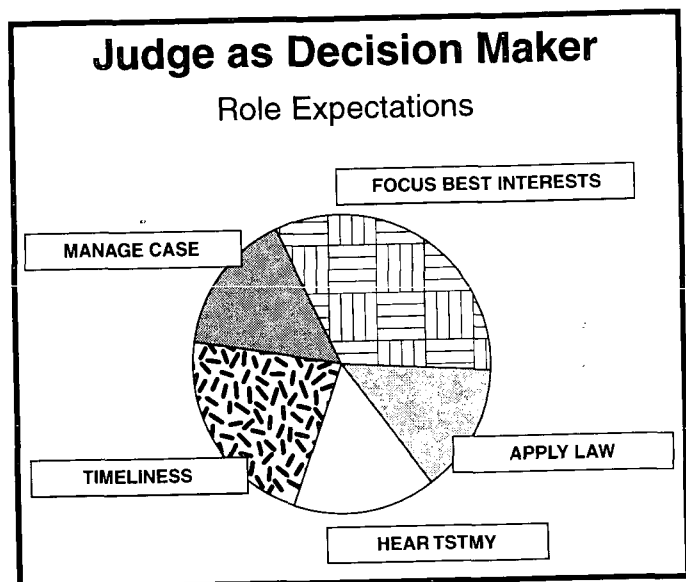


Figure 2

The concern for child safety and timeliness as a function of the "judge as legal decision-maker" role, reflects the unique legal framework (i.e., ASFA) within which juvenile and family court judges in dependency practice operate and the expansion of their role beyond that of traditional, neutral decision-maker. It also serves to highlight the complexity of the judicial decision-making task.

Implications for Redefining "Judicial Work" in Workload Studies

When examining specific tasks and calculating associated time estimates, it is important to recognize that the rote execution of a task does not necessarily reflect the underlying meaning or purpose behind the task.

"Time on task" approaches must be reconceptualized and expanded to examine whether the "tasks" reflect the underlying key values of permanency planning, and whether appropriate time is taken to allow for a full, substantive examination of issues surrounding the health, safety, and welfare of the child, and the achievement of permanency.

◆ “Judge as Leader”

How judges talked about judicial leadership, and the expectations and responsibilities of leadership, differed somewhat depending on whether the judge was referring to judicial leadership generally or leadership activities off-the-bench specifically. Again, almost every judge discussed a constellation of leadership expectations and responsibilities. With respect to judicial leadership generally, the following role tasks were identified by the judges, in order of frequency (See Figure 3):

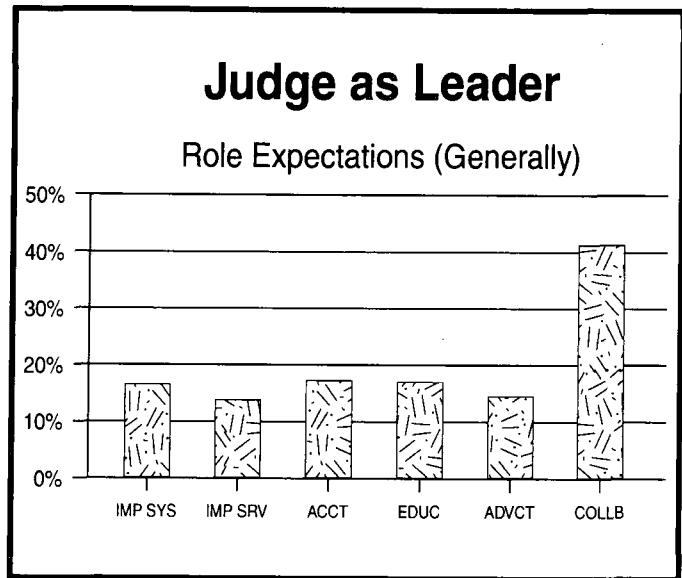


Figure 3

- collaborating with and convening the stakeholders (COLLB; 41%, n=12);
- improvement of the justice system (IMP SYS; 17%, n=5);
- enforcing accountability among the parties (ACCT; 17%, n=5);
- training and educating other system professionals (EDUC; 17%, n=5);
- improving service provisions for children and families (IMP SRV; 14%, n=4); and
- advocating for children and families (ADVCT; 14%, n=4).

The task of “collaborator” is obviously an important aspect of the “judge as leader” role. Comments reflected the necessity of collaborating with all the stakeholders in the process, including other judicial officers, legal representatives, social service agencies, families, the community, and the media.

Although “judge as legal decision-maker” is central to the dependency judges’ role on-the-bench, the leadership dimension became more salient when the judges discussed their off-the-bench activities. Judges were asked, “What do you think is your *most important function off-the-bench*?” The majority of judge-respondents (79%, n=24) gave responses reflective of a leadership dimension of the judicial role. And, as previously mentioned, many of the responses reflected both decision-maker and leadership dimensions. Recall that all of these responses reflected judges’ answers to the general open-ended question, “In your

opinion what is the role of a juvenile and family court judge in dependency or child abuse and neglect practice?" The judges are *not* responding to a question specifically designed to gather information about judicial leadership.

Figure 4 illustrates the relative importance of each off-the-bench role expectation in relation to the others. Note that the specific reporting of "being a catalyst for change" may be arbitrary and misleading as tasks associated with being an advocate for change probably incorporate all aspects of the "judge as leader" role. For example, of the 11 judges who believed their most important off-the-bench activity was to be a catalyst for change, nine of them also mentioned the importance of speaking engagements and convening community stakeholders, again reflecting the constellation of role expectations and role tasks

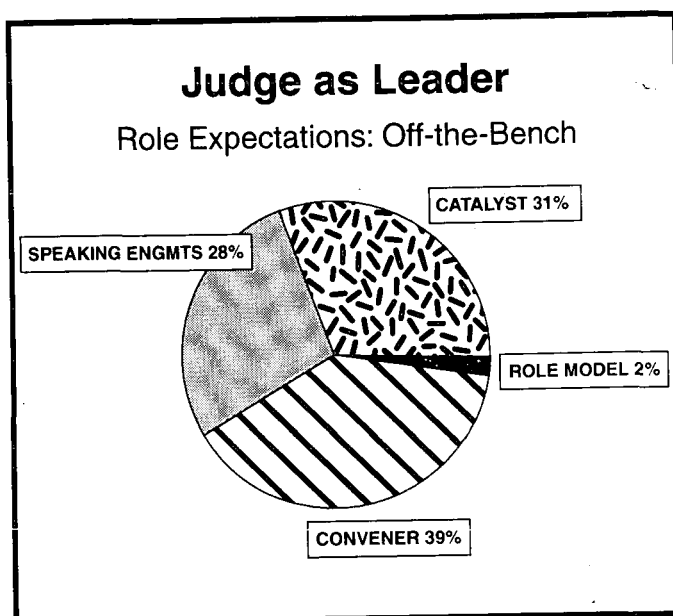


Figure 4

associated with the "judge as leader" role.²⁸ These role expectations reflect a more non-normative role for a judge, especially with respect to tasks associated with being a catalyst for change, a convener, and a community leader. This constellation of role expectations and responsibilities reflect an active, involved, community-aware dependency judge.²⁹

²⁸ The concept of "community" may have different meanings for different judges. Some judges define community as pertaining to the legal community or the child protection system community, while other judges define community more broadly to include the local social community – the faith community, the educational community, the business community, and so forth. What is common across all definitions is the belief that judges must actively bring the relevant community members together to focus on child protection issues and system reform. For some examples of how judges have actively worked to engage the relevant community, see Bailey et al., *Supra* note 3, and Bailey, Christine (1999). *Diversion Project Matrix: A Report from Four Sites Examining the Court's Role in Diverting Families from Traditional Child Welfare Services into Community-Based Programs*, National Council of Juvenile and Family Court Judges, Reno, NV.

²⁹ Again, it is important to remember that judge-respondents were not asked to endorse a particular role or roles, but rather they were asked through a structured open-ended series of survey questions to "talk about" their judicial role.

Implications for Redefining "Judicial Work" in Workload Studies

Clearly leadership is an important and central part of the juvenile and family court judicial role. Indeed, the history of court improvement and systems reform illustrates how critical judicial leadership is to best practices and ultimately to achieving better outcomes for children and families. Yet, traditional judicial workload estimates have traditionally ignored, or, at best, marginalized, the time and resource commitment necessary for the exercise of effective judicial leadership.

Judicial workload estimates must start to recognize and account for the leadership dimension of the judicial role – leadership that is exercised both on- and off-the-bench. To do otherwise undermines the efficiency of the court process and the quality of justice it delivers.

◆ "Judge as Student"

The third role dimension that appears to be salient to the judicial role is that of "student." Over one-third of the judges expect themselves to be well informed on all the relevant law and legal procedures of child abuse and neglect case practice *and* to be knowledgeable about the research and theory pertaining to child development (including physical, neurological, psychological, mental, and social development), family dynamics, the process of drug and alcohol use, abuse, and recovery, as well as to be knowledgeable about services available in their community.

While some of this education might occur by attending a conference or through interdisciplinary trainings and meetings, much of the student function occurs through self-study. Moreover, judges mentioned having to be knowledgeable about the organizational structure and resources of the agency with whom they have to work. The judges indicated that being a "student" of child abuse and neglect issues also means becoming knowledgeable about the extent and availability of services offered to children and families in their communities. In addition, the judges reported that other system professionals also expected them to be well-versed in issues relevant to children and families (e.g., beyond professional knowledge of relevant law, legal rules, and procedures) and to apply this knowledge in their decision-making. In fact, judges explicitly identified the performance of the "judge as student" role as a fundamental aspect of best practice in child abuse and neglect cases.

Implications for Redefining "Judicial Work" in Workload Studies

The time required to engage in education and training on an ongoing basis should be accounted for more explicitly in judicial work studies.

Other off-the-bench role functions included: case preparation ("judge as legal decision-maker" dimension); administrative duties ("judge as administrator" role dimension); and review tasks such as keeping up-to-date on research and theory in child development, family development, relevant laws and statutes, etc. ("judge as student" dimension).

Judge-respondents were asked to estimate the proportion of off-the-bench time spent on a variety of activities: administrative duties; reviewing case materials; attending meetings with other judicial officers; attending meetings with other court personnel; attending meetings with community groups; and attending judicial trainings. Generally speaking, judges provided the following estimates:³⁰

- | | |
|--|-----------------------------------|
| • administrative duties | 20% or less of off-the-bench time |
| • reviewing relevant case materials | 20% or less of off-the-bench time |
| • meeting with other court personnel | 20% or less of off-the-bench time |
| • meeting with community | 15% or less of off-the-bench time |
| • meeting with other judicial officers | 10% or less of off-the-bench time |
| • attending judicial conferences/trainings | 10% or less of off-the-bench time |
| • other | 5% or less of off-the-bench time |

Implications for Redefining "Judicial Work" in Workload Studies

Off-the-bench judicial leadership activities – such as convening, facilitating and participating in collaborative meetings and community outreach – and the time taken to ensure the appropriate knowledge base should no longer be included simply under "other" activities in judicial time calculations. Rather, such leadership and "student" activities should be recognized as central role expectations for the dependency court judge. As such, judicial time estimates should account for, or at least allow for, a relatively significant proportion of judicial time to be devoted to leadership and "student" activities.

Judicial workload assessments, and time and resource calculations, must start to explicitly recognize and account for off-the-bench judicial leadership activities as legitimate "judicial work."

³⁰ Only gross approximations are presented. The task of calculating proportion of time or number of hours spent on any given task is a cognitively difficult one. The purpose of presenting rough approximations is to provide some insight into the various off-the-bench activities.

 ***Judicial Descriptions of Expectations Others Have for Dependency Judges***

In any individual's performance of a specific role, he or she recognizes that others hold certain expectations for how he or she should perform that role. Indeed, the perceived expectations of others often shapes the behavioral and attitudinal enactment of a role, and conflicting or differing expectations may lead to role strain. Judges interact with a wide range of individuals as they perform their judicial role, and these various individuals may hold different expectations of how the judicial role should be performed. Balancing the expectations held by different stakeholders, not to mention organizational and administrative expectations, is a complex and challenging process.

In order to elicit *judges'* descriptions of the perceived expectations held for them by their role partners (those with whom they interact on a regular basis), respondents were asked what expectations they thought various parties held for them as the judge (e.g., what expectations they felt were held by the attorney for the social service agency, the attorney for the parent(s), the representative for the child, the agency caseworker, the parent, and the child). The responses reflect a dynamic and complex interplay between perceived expectations about legal procedures (e.g., to be fair and impartial, to make well informed decisions) and expectations about procedural justice concerns (e.g., to treat individuals with respect, to be compassionate, to hold parties accountable, to ensure that everyone understands what is happening, and to provide the litigants with the appropriate opportunity for "voice").

Not surprisingly, when talking about the expectations they perceive legal representatives to hold for them, whether representatives for the social service agency, the parent, or the child, a greater proportion of responses reflected expectations related to the judge's legal decision-maker role – the expectation that the judge will be fair, impartial and reasonable, and take into account all relevant information presented.

For example, when talking about the expectations held by the legal representative for the social service agency, 68% of responses reflected components of the legal decision-maker role. Expectations about the quality of the decision itself are reflected in such comments as, *"Ensure good quality outcomes for the child and family,"* and *"Make timely decisions."* Note that over half of the judge-respondents overall (and 70% of MC judges) also believe that agency representatives expect judges to be well informed on relevant

topics pertaining to child development, family dynamics, and so forth. This expectation reflects the importance of the “judge as student” dimension – judges perceive that other system professionals expect them to have knowledge of issues relevant to children and families that goes beyond professional knowledge of relevant law, legal rules, and procedure, and to use this knowledge in their decision-making.

Almost one-third of the responses (32% overall) reflected procedural justice issues. For example, the expectation that the party will be given the opportunity to provide information that will be listened to and considered in the final decision, and that the attorney will be expected to be treated with professional respect. The results are relatively similar when discussing the perceived expectations of other legal representatives and system professionals.

However, when judge-respondents talked about what behavioral and attitudinal expectations parents might hold for him or her as a judge, the balance between legal procedures and procedural justice shifted somewhat. The majority of responses (70%) reflected procedural justice concerns related to the opportunity to be heard (“voice effect”) and respectful treatment of the parent(s). Thirty percent of responses reflected expectations with respect to legal procedures. It appears, at least preliminarily, that judges are more aware of procedural justice concerns with respect to the parent than with respect to system professionals. This no doubt reflects a recognition of the status difference between parent(s) and system professionals, the importance of the event to the parent and his or her subsequent relationship with the child, and the need to be cognizant and respectful of the parents’ role in the litigation.

Figure 5 compares the proportion of responses addressing issues related to legal procedures and the general hearing process and issues related to procedural justice concerns. Depending upon which role interactant is being discussed in a given question (representative for social service agency, RSA; representative for parent, RP; representative for the child, RC; the caseworker, CW; parent, PRT; or the child, CHD), the balance between hearing issues and procedural justice

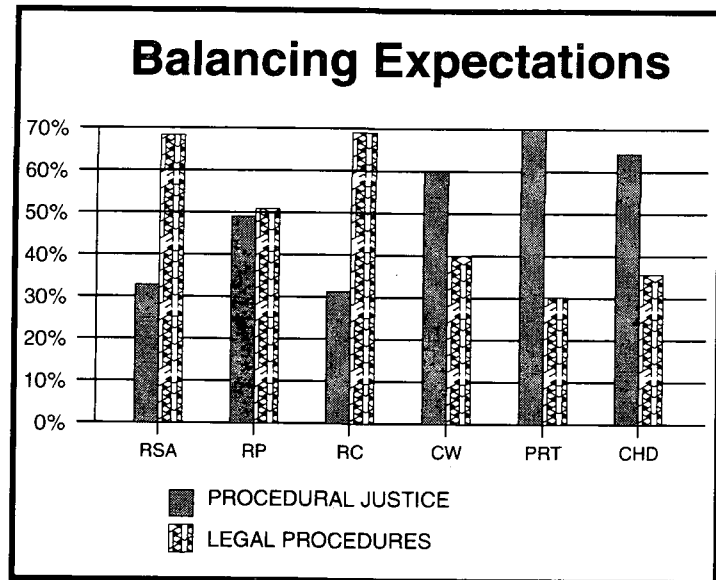


Figure 5

concerns shifts somewhat. That is, judges seem to perceive more concern about procedural justice issues on the part of caseworkers and parents than with other system participants. Note, however, that the balance between concerns with general hearing procedures and procedural justice issues is almost equal for representatives for parents.

Implications for Redefining "Judicial Work" in Workload Studies

It is important to acknowledge that a judge's role is not defined solely by the judge, him or herself. An individual's *role identity* is typically defined by a set of behavioral expectations – expectations held by society, certain others, and the individual him or herself. With respect to the judiciary, there is the judge's role identity (expectations for self), the role partners' (people the judge interacts with on a daily basis) expectations for the judge, and the normative expectations placed on the judge by society (social role identity).

In order to fully articulate nature and scope of workload it is important to capture the extent to which the expectations of others impact an individual's performance of their role. Such an approach provides a rich description of the judicial role and a more comprehensive understanding of judicial workload, both on and off the bench.



Organizational Constraints and Role Strain

Organizational constraints, as well as differing expectations of what constitutes appropriate "judicial work," often create challenges that make the full performance of a role and the completion of role related tasks difficult. Moreover, the inability to complete the tasks seen as important or central to the successful performance of the judicial role often leads to role strain and frustration and undermines the efficiency of the court and the quality of justice.

Judges were asked to talk about the biggest challenges they face in completing their tasks successfully and performing the full scope of their judicial activities. Responses generated can be classified into four major categories, in order of frequency of mention (See Figure 6):

- Time Constraints (TIME; 79%, n=23);
- Training Issues (TRNG; 31%, n=9);
- Case Type (CASE TYPE; 24%, n=7); and
- Resource Issues (RESOURCE: 17%, n=5).

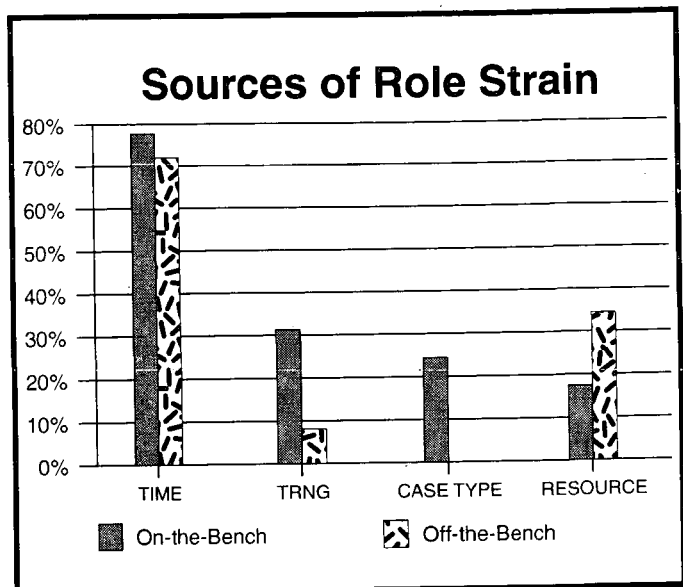


Figure 6

◆ Time Constraints

Perhaps not surprisingly, lack of time was the most frequently mentioned constraint that presents a considerable challenge to successful completion of both on-the-bench and off-the-bench activities. With respect to on-the-bench tasks, the most common time issue noted by the respondents was an insufficient amount of time to properly conduct the full scope of the hearings. For example, some indicated that they did not have enough time to hear testimony from all parties or to cover all necessary issues in a case, nor to ensure that the parties actually understood what was happening and the court's expectations for them (again reflecting the need to balance legal procedures and procedural justice concerns).

Time as a Source of Role Strain On-the-Bench

"Having sufficient time to adequately review all the case issues is a major problem."

"It's difficult to have enough time to hear from all of the parties in the way that I would like."

"The sheer volume of cases makes it difficult to have enough time to conduct hearings with sufficient time to cover everything."

Time as a Source of Role Strain Off-the-Bench

"Allotting enough time to review previous orders and reports so I have good familiarity with the case and ensuring everyone involved is heard is very difficult."

"Judges lack sufficient time to work in a collaborative framework."

"With everything else that I must do, it's difficult to find the time to meet with everyone as often as I should... other judges and court staff as well as community groups ... there's just not enough time in a day."

"Can't do all the follow-up needed — you speak to community groups and then what?"

The majority of judge-respondents (72%) also remarked that time constraints presented a challenge for completing tasks off-the-bench as well. Finding the time to prepare for hearings appropriately (e.g., reviewing case files, motions) and to do any necessary follow-up after a hearing was identified as problematic. The judges also indicated that finding the time to attend meetings and engage in community outreach was extremely difficult.

Implications for Redefining "Judicial Work" in Workload Studies

Judicial workload estimates cannot and should not be measured solely on the basis of discrete on-the-bench tasks. For example, the *meaningfulness* of the time spent on-the-bench needs to be assessed. Workload assessments should not only measure what is happening and how long a particular event or hearing is taking to complete, but also measure against what *should be happening* (e.g., with respect to best practice).

Judicial workload estimates also need to more explicitly account for the time involved in *off-the-bench activities*, especially with respect to judicial leadership activities. The history of court improvement and systems change efforts clearly illustrate that judicial leadership and community outreach is an essential component of successful reform, yet the time intensive nature of such leadership efforts is not valued in "judge time" calculations.

Judicial workload assessments need to value time differently.

◆ **Training Issues**

Almost one-third of the judges mentioned a lack of training on the part of system stakeholders as a major challenge (31%; n=9).

Forty-one percent of MC judges (7 of 17) identified training as a major challenge, while 17% of OMC judges (2 of 12) identified training as a challenge.

Some judges expressed concern that the lack of training of some attorneys specifically (17%; n=5) or lack of professionalism generally (14%; n=4) made it difficult for the judge to perform his or her job on-the-bench as well as he or she would like. Lack of training was

also discussed within the context of judicial leadership and the need to educate the system and the local community about child abuse and neglect. The recognition that the lack of training of other system professionals is a source of role strain for judges is an explicit recognition that the judiciary, and the court, are only one component of a large and complex system.

Training as a Source of Role Strain On-the-Bench

"Attorneys who are not well-versed in the rules of juvenile court are a real problem."

"Training of all parties and understanding of service and limitations would help me considerably."

"Agency professionals are often not well-trained for presentation of the case in the court."

"Parties need training on giving testimony this would help accomplish the tasks of the hearing in the allotted time."

Implications for Redefining "Judicial Work" in Workload Studies

In order to adequately address judicial performance and judicial workload estimates, much more attention needs to be paid to how other system professionals – in their level of preparedness, in the quality of representation, in their level of professionalism, their collaborative efforts, and so forth – influence how successfully and how timely judicial tasks can be completed. To ignore the influence of other system professionals is to isolate judicial officers from the larger context within which they function.

Judicial workload assessments need to take a more "systemic" approach to determining appropriate time estimates and practice standards.

◆ Case Complexity

Approximately one-quarter of the respondents (24%; n=7) mentioned the complexity of dependency cases and the need for continued education as a particular challenge. For example, the difficulty finding time to stay on top of the research and literature on child abuse, child development, and best practice was mentioned as a particular constraint to the performance of the judicial role.

Case Type as a Source of Role Strain

"The issues are difficult in these cases and can require special knowledge on the part of the judge."

"Often parents are not high-functioning, so special care must be taken to ensure that they understand what is happening to them."

"Multiple parties, alcohol and drug problems, domestic violence ... make these cases very complex."

Implications for Redefining "Judicial Work" in Workload Studies

The complexity of dependency cases and the need for continual judicial training and education needs to more explicitly recognized in judicial workload studies as a component of best practice.

◆ **Resource Issues**

Seventeen of the respondents identified a lack of resources as a challenge to successful role completion, with respondents indicating a need for additional judicial resources and agency services to support court improvement program development and ensure program sustainability. As with the responses to the on-the-bench challenges, some judges voiced a need for program funding, judicial resources, or agency services in order to complete their off-the-bench activities in an acceptable manner.

Resource Issues as a Source of Role Strain

"Every time I spend time off-the-bench working in a collaborative effort or conducting a community training, someone must cover my docket ... we just don't have enough judicial resources to support the kind of off-the-bench work required."

"Proper support of our programs and collaborative initiatives is needed."

Implications for Redefining "Judicial Work" in Workload Studies

In calculation of judicial time and resource needs – especially the need for additional judicial officers – workload studies need to more realistically assess judicial workload issues, recognizing the multi-dimensional nature of the judicial role and the importance of off-the-bench leadership activities, against a standard of best practice.



On a Methodological Note

As part of this pilot research project, judges were asked to estimate the time required for each hearing in the dependency process, as well as the amount of time required for preparation and follow-up tasks.³¹ Providing such estimates proved to be a difficult task. Not only did judges indicate that they were unable to provide accurate assessments of time, but they also expressed frustration at having to make such estimations. Judge-respondents were also asked to describe the specific judicial tasks they performed at specific hearings. While all the judges could talk about the tasks they performed during hearings, they did so in very global terms.

Thoughts Regarding Estimation of Time at Task

"Trying to figure out how much time you spend on tasks is difficult ... I'm not sure how accurate I can be ... sometimes when I collect such data the data is different than my subjective feelings ... problems tend to stick out more often and may affect my perception of time, which could then be overstated or understated."

"It was difficult to quantify many of my answers ... I don't know if it gives an accurate overview, especially of my off-the-bench activities."

³¹ The results of this component of the pilot research project are not presented herein as they are beyond the scope of this publication.

Indeed, it was difficult for the judge-respondents to provide specific details. This difficulty may be an artifact of the research itself (e.g., length of the survey, wording of the question). This result could have been avoided if a list of tasks was provided to the judges, asking them to endorse the ones that they performed at each hearing. However, this might have primed the judges to respond in certain ways (e.g., providing socially desirable responses), especially if they understood the list of tasks as indicating what they *should* be doing at each hearing.

Results derived by asking such questions in a Delphi group would have been similarly confounded. Hearing other group participants mention that they perform certain tasks during hearings can influence individual responses. Conducting case file reviews in order to obtain information about specific task performance might also fail to reveal the necessary detail regarding what actually occurs at each hearing (e.g., case files might not contain sufficient detail about judicial tasks). This suggests that a multi-method approach to determine specific task completion should be utilized – one that couples rigorous court observation using empirically-derived, standardized, and field-tested data collection forms used by trained observers, with detailed case file review.

Implications for Redefining “Judicial Work” in Workload Studies

Every effort should be made to ensure that all instruments are empirically-derived, standardized, and field-tested.

Judicial workload studies should use a multi-method approach, one that includes court observation, file reviews, and judicial and system professional interviews or surveys.

CONCLUSION

Judges with a dependency or child abuse and neglect case docket face many challenges. Not only do they preside over complex, often emotionally-wrenching cases involving multiple parties and issues, but they do so in an environment with limited court resources and burgeoning caseloads. The contemporary legal framework is one in which time frames to permanency have also been shortened, and the number of hearings required per case have been increased. Add to this challenging environment the knowledge that court and system reform and innovation are best achieved with the involvement of judicial leadership, and one can understand the growing concern that judges who hear child abuse and neglect cases are becoming under-resourced and overburdened.

Given this context, and “best practice” canons that call for judges to be both on-the-bench and off-the-bench professionals,³² how can workload studies, aimed at providing accurate judicial needs and court resource assessments, truly capture the myriad duties and responsibilities of the dependency court judge? How can they measure not only what is happening in the case process, but also what *should* be happening and the necessary time and resource constraints on best practice? And, how can this measurement be done in a scientifically defensible, empirical way that is both useful and meaningful to the court and the child protection system generally?

The answer, perhaps, lies in changing implicit values and expectations that underscore the assessment of judicial time and work in traditional workload studies, and changing the methods used to make such assessments.

Changes in the Underlying Philosophy, Values, and Normative Expectations for Judicial Time

- ◆ Recognizing the complex multi-dimensional role of juvenile and family court judges in dependency practice is critical to an understanding of judicial workload. Judicial workload assessments must expand the concept of “judicial work” beyond a traditional “judge as legal decision-maker” focus, and recognize the importance of the leadership and student dimensions.

³² RESOURCE GUIDELINES, *Supra* Note 7.

- ◆ “Time on task” approaches must be reconceptualized and expanded to examine whether the “tasks” reflect the underlying key values of permanency planning, and whether appropriate time is taken to allow for a full, substantive examination of issues surrounding the health, safety, and welfare of the child, and the achievement of permanency.
- ◆ Judicial workload assessments need to take a more “systemic” approach to determining appropriate time estimates and practice standards.
- ◆ The complexity of dependency cases and the need for continual judicial training and education needs to more explicitly recognized in judicial workload studies as a component of best practice.
- ◆ Judicial workload estimates must start to recognize and account for the leadership dimension of the judicial role – leadership that is exercised both on- and off-the-bench.
- ◆ Judicial workload assessments, and time and resource calculations, must start to explicitly recognize and account for off-the-bench judicial leadership activities as legitimate “judicial work.”



Changes in the Methodological Approach to Calculating Judicial Time and Judicial Workload

- ◆ Off-the-bench judicial leadership activities – such as convening, facilitating and participating in collaborative meetings and community outreach – should no longer be included simply under “other” activities in judicial time calculations. Rather, such leadership activities should be recognized as central role expectations for the dependency court judge. As such, judicial time estimates should account for, or at least allow for, a proportion of judicial time to be devoted to leadership activities.
- ◆ Although reflecting agreed upon best practice standards, judicial workload studies should be designed to capture the local jurisdictional context and to address local needs and practice standards.

- ◆ Judicial workload studies should use a multi-method approach, including
 - court observation,
 - file reviews, and
 - surveys/interviews with judges and other relevant system professionals.
- ◆ Multiple data sources should be used and every effort should be made to ensure that all instruments are empirically-derived, standardized, and field-tested.
- ◆ Care should be taken to ensure that data collection procedures and instrumentation allow for the multi-dimensionality of the judicial role to be adequately and appropriately assessed.

Judicial workload studies need to value time differently.

Judicial workload studies need to redefine and expand what constitutes legitimate "judicial work."

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NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

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