

# Marriage Policy and Trial Judges

## Some Thoughts for Presentations

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### Know Your Audience

I. Knowing your audience is a key to an effective presentation, especially if you are trying to “sell” something, including an idea.

II. An “audience” of Judges

A. Background

1. Most are highly educated: Generally they have 2 college degrees. (Note: Some states have magistrates and judges who are not lawyers. These individuals are still typically very intelligent, highly respected members of the community.)
2. Most are lawyers and have spent at least 10 years in private practice.
3. They won a competitive process to become a judge (election or appointment).
4. They tend to be very self-confident, self-assured, and self-reliant. (Don’t confuse this with arrogance. Some are arrogant, some are very humble.) The job requires these traits to have any level of success.

B. The primary problems in their professional lives: **The Three Realities**

1. **Docket.** Most judges are driven by their docket (their case load). Many states are establishing “Time Guidelines” that put more pressure on the judge. The last thing they want to talk about is something that will give them more to do. But, give them a tool to lighten the case load, *now* there’s something to talk about.
2. **Budget.** Judges are in a constant budget struggle with their funding unit. This has been true for at least 30 years. If you can do anything, however small, that will lighten the budget demands, you will be heard.
3. **Reelect-ability.** Most judges have to stand for reelection. They want to keep their jobs. They don’t want to take on a “hot potato” that will put them on the defensive or encourage others to run against them.

This is not totally “self-serving” or “crass.” Judges do not “represent” any constituency, as does a member of a legislature or the executive branch of government. Judgments should reflect justice, not a desire for political advantage.

However, judges do reflect the values of the communities they come from. This includes reflecting the local cultural concepts of what is right and fair. When concerns about reelection is an unspoken thought in the back of a judge's mind, it is typically a sensitivity to that local cultural view of justice.

### C. The philosophical context of their world

1. Most judges came from backgrounds in trial law . They are used to an adversarial system. Many cringe at the idea of doing any “marriage counseling.” Most do not want to be “social workers.”
2. Most judges do not enjoy making the God-like decisions involved in either criminal sentencing and child custody disputes. (Cf: The turnover rate of judges in many full-time Family Courts.)
3. The judiciary is generally passive, unlike the legislature and the executive branches of government. The judiciary does not initiate, it responds. Most judges are only “proactive” in the administration of their courts. Most do not want to be involved in “dictating” other people’s lives, unless they’re required to by law.
4. Judges tend to be strongly “fact driven.” Even expert opinions must be fact-based under The Rules of Evidence.
5. The concept of “stare decisis” (*star-ie de-cis-is*) and “legislative intent.”
  - a. Stare decisis refers to the need to follow precedent. Trial judges always look for a basis of their decision in what higher courts have decided in other cases. Many do not like “cases of first impression.”
  - b. With legislation, judges look at the intent of the legislature. Most trial judges want to apply the law, not make it.
6. The vast majority of judges passionately want to do the right thing, to be fair and just; they want to be good judges.

### C. “Types of Judges” in the context of marriage skills education.

1. Umpires. They call the balls and strikes, then go home. They typically do a very good job and try hard to be fair.
2. Commissioners of Baseball. They are also umpires, but see larger social issues, which affect the game. They want to have an effect on the issues that have an effect on the game.

## **Making An Effective Presentation**

### III. The strategy

A. Determine whether there is a respected “Commissioner of Baseball” on the local bench, or a respected trial lawyer who can act as your advocate to find one. (If you use a trial lawyer, find one who is well respected and does a great deal of family law. Make sure the lawyer is well versed in the statistics you want presented and is very familiar with the programs you have available.)

B. Have a specific goal. What exactly do you want from the judge? How would you define “success”? What would the judge or the court be doing differently than it is doing now? How are these goals supported by the data you have available?

C. Prepare a fact-based presentation, which addresses the issues of docket control, budget and reelect ability. NOTE: These should NOT be the primary points of the presentation. Instead, they should be a background message making it clear that your proposal will have a positive influence on each of these three concerns.

D. Emphasize the value of skills education and making information available to couples. The idea is to empower people to make wise decisions, which in the end, will bring them into court less often, so the judge has to make fewer decisions. Again, what data do you have to support this conclusion? Make it clear and concise.

E. Understand the legal limits (case law, statutory, court rules, and judicial canons of ethics), which control the judge’s actions. Do NOT try to get the judge to change state or federal law. It won’t happen! You want to explain how your proposal fits within existing legal concepts and procedural law.

F. Plan on it taking at least a year to make any real change. This is a process, not an event. Don’t expect a total agreement on the first visit. You may get lucky, but don’t count on it. Instead, plan what your strategy will be when the judge says, “Let me think about it.” Here you need to know the judge’s individual personality to determine your response. Have a response planned, however, before you meet.

G. Accept small victories. Then look for other areas where small victories are possible.

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