

**Immigration Protections for
Immigrant Victims of Child Abuse,
Family and Sexual Violence: Role
of State Court Judges**

Chancery Judges Training
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Faculty

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Learning Objectives

By the end of this training you will be better able to:

- Apply knowledge about the dynamics of family violence in immigrant families and immigration laws that protect victims when immigration issues arise in state court cases
- Understand how immigration laws are structured and the role Congress created for state judges and state court orders in establishing eligibility for immigration relief
- Make appropriate findings and certifications in state court cases that will permit an immigrant crime victim to pursue immigration relief

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DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

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Department of Homeland Security

- DHS Dynamics Video



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Immigration Related Abuse

- Refusal to file immigration papers on a spouse/child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on a victim's behalf for family or work based visas
- Forcing victim to work with false documents
- Threats/attempts to have the victim deported
- Calls to DHS to turn the victim in or have her case denied

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Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for survivors:
 - 72.3% never file immigration papers
 - The 27.7% who did file had a mean delay of **3.97 years**.

Hass, Dutton and Orloff (2000). "Lifetime prevalence of violence against Latina immigrants: Legal and Policy Implications." *International Review of Victimology* 7 93113

- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

*Edna Erez and Nawal Ammar, *Violence Against Immigrant Women and Systemic Responses: An Exploratory Study* (2003)

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Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
 - Lifetime as high as 49.8%
 - Those married to citizens and lawful permanent residents – 50.8%
 - U.S. citizen spouse/former spouse abuse rate rises to 59.5%
- Almost three times the national average

Hass, G. A., Ammar, N., Orloff, L. (2006). *Battered Immigrants and U.S. Citizen Spouses*

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Sexual Assault Rates Among Immigrant Women

- High school aged immigrant girls
 - Twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault

– Decker, M., Raj, A. and Silverman, J., *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, 13 *Violence Against Women* 498, 503 (2007).

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Immigration Related Abuse

- 10 times higher in relationships with physical/sexual abuse as opposed to psychological abuse*
- May predict abuse escalation
- Corroborates existence of physical and sexual abuse

*Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

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When Victims are Subject to Immigration Enforcement the Cause is... (2013 and 2017)

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%; U visa 25%
- Perpetrators got the victim arrested for domestic violence
 - VAWA self-petitioners 15.4% (2013)-17% (2017); U visa 7.5%(2013)-36% (2017)
- Traffic stops
 - VAWA self-petitioners 28.6%; U visa 26.7% (2013) – 39% (2017)

Krisztina E. Szabo, David Stauffer, Benish Amver, Authorization For VAWA Self-Petitioners and U Visa Applicants: NIWAP (Feb. 12, 2014) and Rodrigues et al. Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey (May 3, 2018)

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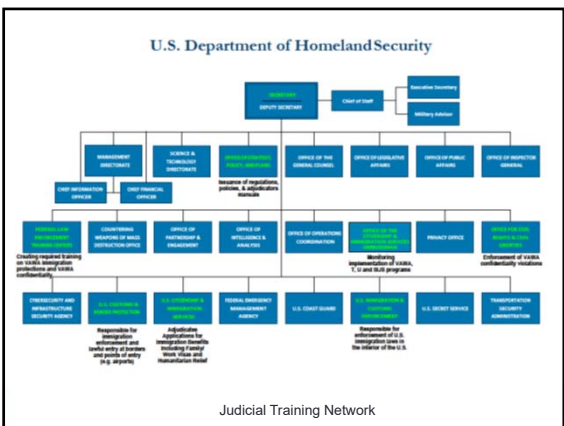
U.S. Immigration System Overview

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Department of Homeland Security

- **Citizenship and Immigration Services (USCIS)**
 - Adjudicates most petitions/applications for immigration benefits
- **Immigration and Customs Enforcement (ICE)**
 - Interior enforcement
 - Initiates & prosecutes removal (deportation) proceedings in immigration court
 - Oversees detention centers and physical removal process
- **Customs and Border Protection (CBP)**
 - Inspects ports of entry and area up to 100 miles from border
 - In some cases, can order expedited removal without a hearing

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Immigrants may be

- Lawfully present on visas
- Lawful permanent residents in the U.S. for many years
- Persons in the process of applying for immigration relief
 - (can take many years)
- Unauthorized

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Unauthorized Immigrants

- Approximately –
 - 50% entered without inspection
 - 50% overstayed some form of visa
- 66% -10+ years in the U.S.
- 4% under 5 years in the U.S.
- No **current** lawful immigration status
 - Might have applied or be eligible to apply
 - May or may not know that they are eligible
 - e.g. crime victims

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Children of Immigrants

- “In 2016, approximately 18 million children under age 18 lived with at least one immigrant parent. They accounted for 26 percent of the 70 million children under age 18 in the United States.”
- Migration Policy Institute, Frequently Requested Statistics
- <https://www.migrationpolicy.org>

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Lawful Permanent Residents

- This is a gateway status
- No route to become a naturalized U.S. citizen
 - without first becoming a lawful permanent resident
- Never automatic – always requires an application process

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Obtaining Lawful Permanent Resident Status

- Three major avenues
 - Employment-based – 38.3%
 - Family sponsored – 47.7%
 - Diversity Lottery – 2.7%
- Other important paths, smaller numbers
 - Humanitarian immigrants
 - Refugees, asylees, Cubans - 9.9%
 - Crime victims – VAWA self-petitions, U visas, T visas – 1.3%
 - Abused, abandoned, neglected children – SIJS – 0.1%

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Forms of Immigration Protection for Victims

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PROTECTIONS FOR IMMIGRANT VICTIMS

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Immigration Options for Non-citizen Crime Victims & Children

- **Battered spouse waiver**
Abused spouses of US citizens with two-year conditional permanent residency
- **VAWA self-petition**
Abused spouses/children of US citizens and lawful permanent residents
Abused parents of U.S. citizens over 21 years of age
- **VAWA cancellation of removal**
Abused spouses/children of US citizen and lawful permanent residents
protection from deportation
- **Work Authorization for Abused Spouses of Work Visa Holders**
A (Diplomats); G (Foreign government, international organization employees), H & E3 (Specialty occupation workers)
- **U visa**
– Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
– Substantial harm from criminal activity
- **T visa and Continued Presence**
– Victims of severe forms of human trafficking
- **Special Immigrant Juvenile (SIJS)**
– Children abused, battered, abandoned or neglected by one or both parents

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Historical Development of Battered Immigrant and Immigrant Crime Victim Protections

- Spousal sponsorship rooted in the legal concept of marriage
- 1907-1922 US citizen woman lost citizenship if married foreign born husband
- In 1952, the INA became gender neutral, but kept sponsorship scheme
- Control of immigration process could be in hands of a batterer; abusive employer; trafficker
- VAWA, T and U-visa immigration provisions were enacted to address the problem

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VAWA and U/T Visas Designed to –

- Provide a battered spouses and children access to immigration relief they are already entitled to
- Stop abuser/perpetrator use of immigration law as a weapon
- Sever abuser/perpetrator’s control over
 - Criminal justice system intervention
 - Victim and children
 - Locking victims in abusive family relationships
 - Keeping victims from leaving abusive employers
 - Stopping victims from seeking help
- Provide victims access to justice, services, help, healing, safety, and economic security

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Slide 23

LO1 Bill and Aparna should I use or delete this
Leslye Orloff, 1/8/2015

VAWA Works for Immigrant Victims

- Stops perpetrator retaliation in form of deportation of victims
- Severs economic dependence on perpetrator through employment authorization for victims
- More crime victims are willing and able to
 - Leave perpetrators
 - Cooperate with law enforcement in crime detection, investigation and prosecution
- Victims more successful in accessing
 - The criminal and civil justice systems
 - Obtain custody of and protection for children
 - Victim services and support

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Protections Help

- Protection from deportation for
 - Domestic, elder and child abuse
- Access to legal immigration status
- Financial independence from perpetrator
 - Legal work authorization (3-48 months from filing)
 - Issuance of federally recognized ID
- VAWA confidentiality
- Greater access to public benefits

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Immigrant Children in Family Court

- May have options for legal immigration status
 - Child's own application
 - Child included in parent's application
- Immigrant children's best interests are promoted when state courts:
 - Issue detailed findings required for children to apply for Special Immigrant Juvenile Status
 - Sign U visa certifications
 - Award custody to non-abusive parents, family members, guardians
 - Without regard to the custodian's immigration status
- Distribute U.S. DHS legal rights for victims/children brochures

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Court's Role:

- Can be first responder
 - Interpreters, CPO
- Distribute information
- Provide language access
- Recognized potentially eligible immigrants
 - Requests of counsel
 - Referrals to services
- Know how to access accurate information about immigration laws

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**State Court Orders and Findings
Provide Useful Evidence**

- Facts of the abuse or victimization suffered
- Who was the victim and who was the perpetrator
- Findings regarding physical/emotional injuries suffered
- Facts regarding family relationships
 - Parent/child
 - Marriage/step-parent relationships
 - Divorce

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**Congress Created Roles for State
Court Judges in Federal Statutes**

- U visa certification
- SIJS findings
- Enforcement of Affidavits of Support

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U Visa Status for Victims of Crime

- A victim of qualifying criminal activity is eligible for a lawful immigration status under INA § 101(a)(15)(U) when:
 - The victim has suffered substantial physical or mental abuse as a result of qualifying criminal activity crime
 - The criminal activity occurred in the United States or violated U.S. law;
 - The victim possesses information concerning the criminal activity; and
 - The victim has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the offense

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U Visa Qualifying Criminal Activity

• Domestic violence	• Female genital mutilation	• Peonage
• Sexual assault	• Kidnapping	• False Imprisonment
• Rape	• Abduction	• Blackmail
• Incest	• Trafficking	• Extortion
• Prostitution	• Involuntary servitude	• Witness tampering
• Torture	• Slave trade	• Obstruction of justice
• Felonious assault	• Being held hostage	• Perjury
• Manslaughter	• Fraud Foreign Labor Contracting	• Stalking
• Murder		

Attempt, conspiracy or solicitation to commit any of these crimes any similar activity

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U Visa Regulations Definitions

Although terms are used interchangeably

- As a matter of law (U visa regulations)
 - Helpfulness in the “investigation or prosecution” always means
 - “Detection, investigation, prosecution, conviction, or sentencing”
 - “Crime” always means
 - “criminal activity”
- “Criminal activity” chosen to offer early access to justice system protection
 - Improving stability for crime victims

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In what types of court cases might a judge detect helpfulness?

- What are some examples of helpfulness a judge detect?

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Criminal Activities: Types of Proceedings

- Family
 - ✓ Civil Protection Order
 - ✓ Custody Case
 - ✓ Child Abuse, Neglect, or Termination of Parental Rights
 - ✓ Divorce Case
 - ✓ Paternity Case
- Juvenile
- Criminal
- Probate
 - ✓ Elder / Dependent Adult Abuse
 - ✓ Guardianship
 - ✓ Conservatorship
- Civil
 - ✓ Employment
 - ✓ Tort damages against a perpetrator

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Why might a victim come to a judge for certification?

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Why victims seek certification from courts

- Only justice system contact = victim sought
 - Protection order
 - Custody
 - Divorce
 - Filed a civil case (e.g. tort,
- No language access when victim called police for help
- Police did not investigate and case never sent to the prosecutor

According to DHS, a U/T Visa Certification Tells USCIS Only 3 Things:

- Certifier believes the applicant is a victim of a qualifying criminal activity
- Victim had knowledge of the criminal activity
- Victim was, is, **or** is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing

Tips for Judges Completing Certification Forms

Part 4. Certification

I am the head of the agency listed in Part 2, or I am the person in the agency who was specifically designated by the agency to issue a U/T Visa Certification on behalf of the agency. **My responsibilities** of the Part 2 court, under specific authority, that the court shall identify in Part 2, is to use a review of law to determine if the crime listed in Part 2, is a crime that the court, under authority to certify, can and will make the provisions regarding the alien or victim's ability to assist in law enforcement. **My responsibilities** of the court shall be to certify the alien or victim's ability to assist in law enforcement. **My responsibilities** of the court shall be to certify the alien or victim's ability to assist in law enforcement.

1. Signature of Certifying Official (sign in ink)

2. Date of Signature (mm-dd-yyyy)

A. District Employee Number

B. Case Number

- Judges can amend the form
Examples: Based upon ...
- My findings of fact or ruling in [name type of proceeding]
 - Probable cause
 - My issuance of a protection order
 - My sentencing of the defendant
 - My having presided over a criminal case

REMEMBER: This is a certification that you believe the applicant was a victim of a crime.

Certification provides evidence to DHS.
DHS adjudicates and decides whether to grant the victim immigration relief.

Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children who cannot be reunified with one or both parents
- State court findings are required as evidence
 - The state court order does **not** provide immigration status
 - The order is one required piece of evidence in a federal adjudication process

Immigration and Nationality Act § 101(A)(27)(J)

Why Congress Wanted Input From State Court Judges

- Included a role for state court judges as experts in child best interests, custody, and child welfare matters.
- State court expertise that are an inherent part of court's decision-making when courts:
 - Adjudicate facts of child abuse, neglect and abandonment
 - Issue orders regarding child care, custody, and placement that further the best interests of children

State Court Findings Needed for SIJS

State Law Applies To Each

- The court has jurisdiction to issue orders regarding the care, custody, or placement of an immigrant child (under age of majority and unmarried) with
 - An individual (e.g. non-abusive parent, grandparent, kinship care, guardian, next friend, adopting parent) OR
 - State agency, private agency, including foster care system
- It is not in the child's best interest to return to their home country
 - Best caregiver identification/often not necessary to compare countries
- Reunification of the child is not viable with a parent due to at least ONE PARENT'S abuse, abandonment, or neglect

**State Courts Regularly Make
Custody & Placement Determinations**

- Who will be the custodian/guardian of the minor
- With whom will the child live
- Whether the minor will be committed to the custody of the state or private agency for care, treatment, or rehabilitation

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**Decisions about care and custody of
children arise in...**

- Civil protection order cases
- Custody cases
- Child welfare cases
- Divorce cases
- Delinquency cases
- Guardianship cases

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Home country not in child's best interests

- Identify each potential custodian in U.S. and home country
- Apply state best interests factors to each placement
- States in court order the factual findings that support chosen placement
- Make findings that illustrate why under state best interest factors court is not choosing placements in child's home country
- Compare the supports, help, services child needs U.S vs. home country
 - Example of factors VAWA Extreme hardship

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Reunification Not Viable and Best Interests

- Order must include the finding that reunification with the parent is not viable
- Using state best interests law
 - Identify factual reasons why reunification is not viable
 - Will include explaining why the abusive parent is not being granted physical custody of the child

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Apply Same Jurisdiction and Procedural Rules as All Other Cases

- Include a statement of the court’s jurisdiction citing the state statute, court rule, or other authority under which the court is exercising jurisdiction.
- Follow your state court procedures and note that you do so to demonstrate that the court made an informed decision.

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Immigration status not relevant to establishing jurisdiction in family court cases

- Protection order case
 - domestic violence crime committed in state or
 - victim needs protection in state
- Divorce case
 - residency of party in state
 - Legal immigration status not required to establish residency under state family laws
- Custody case
 - (UCCJEA, Federal PKPA, Hague Convention) often the home state of children
- Child support case
 - where child or non-custodial parent lives

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Importance of Court Findings on Bests Interests and Custody Orders for Immigrant Children


- Trauma and child development
- Needs of teens who have been victims
- Provides findings about the history of abuse the child suffered
- Discuss case example



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Is Immigration Status Relevant to Custody?


- **Relevant to:** Immigrant crime victim presents evidence of immigration related abuse, power and control suffered
 - Either not filing or withdrawing immigration papers
 - Threats to turn victim in for deportation
 - Part of history of violence
- **Not relevant to:**
 - Core primary caretaker determination
 - Evaluation of parenting skills
 - Best interests of the child determination
 - Requirements regarding custody awards to non-abusive parent

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Myth vs. Fact: Parents without Legal Immigration Status

Myth	Fact
1. Deportation is imminent	1. DHS policies prevent detention/removal of crime victims
2. Parent is likely to flee U.S. with child	2. US citizens and lawful permanent residents are more likely to flee with children, especially when <ul style="list-style-type: none"> – There have been threats of kidnapping children – They are dual nationals – They travel freely to and from U.S.
3. The parent has no livelihood	3. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
4. Legally present parent must have custody in order to file for benefits for child	4. Custody does not affect parent's ability to file for or gain immigration benefits for his children.



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ICE Removal Data

2013	2017
• Convicted criminals 82%	• Criminal convictions 73.7%
• Repeat immigration violators 7.8%	• Pending criminal charges 15.5%
• Ordered removed and failed to depart 1.6%	• Outstanding notices to appear in immigration court 5.3%
• Other immigrants 7.7%	• Ordered removed and failed to depart + reinstatement 2.8%

<https://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf>

<https://www.ice.gov/removal-statistics/2017>

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Immigrant Parents and Child Custody

In re Interest of Angelica L., 277 Neb. 984 (2009)

- Parents have a Constitutional right to custody (absent unfitness)
- Applies to all families without regard to:
 - Undocumented immigration status
 - Immigration detention
 - Deportation
- Overriding presumption that:
 - Parent-child relationship is constitutionally protected
 - In children's best interest to stay with/be reunited with their parent(s)
- Child's best interests is most important
 - A comparison of natural vs. adoptive parent's cultures, countries or financial means is not to be made

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Judges Role in Enforcement of Affidavits of Support

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Affidavits of Support

- To prove that an immigrant will not become a public charge
- Since 1996, each person who petitions for family members to immigrate to the United States must execute a legally enforceable affidavit of support for each family member sponsored

8 U.S.C. § 1182(a)(4)(C)(ii)

Sponsor's commitment

The sponsor demonstrates that he has "enough income and/or assets to maintain the intending immigrant(s) and the rest of [the] household at 125 percent of the Federal Poverty Guidelines."

8 U.S.C. §1183a(a)(1)(A).

- Can be enforced by both federal or state courts

Evidence Supporting the Affidavit

- Documentation past 6 months income
- Letter from current employer with salary, date of employment, # hours worked, future employment/advancement possibilities
- Tax returns, tax exempt interest, IRAs, pension annuities, SSI-1099s
- 12 months of bank statements
- Evidence of ownership of stocks, bonds, real property, and valuable personal property

End of Obligation to Support

- The obligation to support continues until the sponsored immigrant
 - becomes a U.S. citizen;
 - can be credited with 40 qualifying quarters of work in the United States;
 - Lost lawful permanent resident status by leaving the U.S.
- Divorce does not end the obligation
- Could last forever

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Divorce does not end the obligation


- It is possible that none of these happen until the death of the parties involved.
- The Affidavit of Support itself specifically warns “that divorce **does not** terminate your obligations under this Form I-864.”

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Questions?

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Evaluation



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Technical Assistance and Materials

- Power Point presentations and materials for this conference at <http://niwaplibrary.wcl.american.edu/msjudcol-4-19/>
- Judicial Training Manual at <http://niwaplibrary.wcl.american.edu/training-manual-for-courts-table-of-contents/>
 - NIWAP Technical Assistance
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: <http://niwaplibrary.wcl.american.edu>



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