

# Judicial Division Record

American Bar Association Volume 13 Issue 3 Spring 2010

## CHAIR'S COLUMN



By Jack L. Brown  
Tulsa, OK

The Judicial Division has long endorsed the concept that our Judiciary needs to reflect the society for which it sits, and diversity within the judiciary, the bar and the justice system is a high priority for us.

This commitment was never more evident than at the 2010 Midyear Meeting where the annual three-day Judicial Clerkship Program celebrated its 10th anniversary under chairs Judges Ramona See of Redondo Beach, CA and Toni Clarke from Upper Marlboro, MD.<sup>1</sup> As many as 100 minority law students from around the country, interacting one-on-one with judges and former law clerks, undertook research and writing exercises, panel discussions, and personal conversations to introduce and reinforce to the students the reasons for and values of pursuing a judicial clerkship. This pro-



gram has helped many students obtain clerkships and internships as a result of their participation.

A closely related effort, the JD Judicial Mentor program, is an excellent way for attorneys interested in a judicial career to be mentored by a judge in their local community. Judges and attorneys may register online to participate at: [www.abanet.org/jd/diversity/home.html](http://www.abanet.org/jd/diversity/home.html). The program also matches judges with lawyers in their area of interest, gender, ethnicity and sexual orientation. The program is open to non-Judicial Division members and non-ABA members.

In addition, the JD's National Conference of Federal Trial Judges presented a continuing legal education program entitled "Is the Wise Latina a Myth?" The title was excerpted from Justice Sonia Sotomayor's famous comment, "I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life." The program addressed the notion that judges' decision-making might be affected by their race, gender, or ethnicity. NCFTJ Chair Judge Delissa A. Ridgeway from New York, NY, moderated the standing room only program.

Another outstanding diversity program, sponsored by the Judicial Division Lawyer's Conference, is a continuing series of Annual Meeting dialogues entitled "The Perceptions of Justice: A Dialogue on Color, Ethnicity and the Courts." It focuses on the perception and reality of bias in our courts. These programs initiate community dialogues about perceptions of the courts and seek solutions from judges, lawyers, community leaders, political leaders, and representatives of public interest groups. One program will be held on April 20 at Judiciary Square in Washington DC, starting at 2 pm; another will be at Golden Gate Law School on Thursday, August 5 at 2 pm during at the 2010

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2009-10

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#### EDITOR'S NOTE

The *Judicial Division Record* is a publication of the American Bar Association (ABA) Judicial Division. The views expressed in the *Judicial Division Record* are those of the author only and not necessarily those of the ABA, the Judicial Division, or the government agencies, courts, universities or law firms with whom the members are affiliated.

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**Article Submission Deadline:**  
Summer 2010: Wednesday, May 5



Orlando, FL – LexisNexis received a special award from ABA President Carolyn Lamm for their 10 Year commitment to the Judicial Clerkship Program. (l-r) Nigel Roberts, LexisNexis, ABA President Carolyn Lamm and JD Chair Jack Brown.

## Chair's Column

(continued from page 1)

Annual Meeting in San Francisco, CA.

The Judicial Division has also published "The Directory of Minority Judges in the United States, 4th Edition." This is the most comprehensive compendium of minority judges in the United States and contains the names, addresses, telephone, and facsimile numbers and in many cases, email addresses of colleagues of color. The newest feature of the 4th Edition is the expanded Administrative Law section.

The JD Tribal Courts Council is working with representatives of the National Native American Bar Association, the Native American Rights Fund, and the National Congress of American Indians to increase the presence of Native Americans within the federal judiciary. By bringing Tribal Court judges together, the Council works to promote Native American judges and the public's understanding of Tribal Courts. The Council is planning a joint Indian Child Welfare CLE program with the Family Law section for the 2010 Annual Meeting in San Francisco, CA. This year's Council is ably chaired by Robert Saunooke, of Cherokee, NC.

Each year, the Judicial Division Standing Committee on Minorities in the Judiciary presents outreach programs at local schools during the ABA Midyear and Annual meetings. The programs initiate interest in the legal profession among stu-

dents in grades 7 to 12 and seek to cultivate students to enter the legal profession. Judge Allen Webster, Jr. of Los Angeles, CA is the current chair of the Standing Committee.

The Judicial Division along with the Standing Committee on Judicial Independence has recently completed the first online, fully searchable Diversity Database. The Database provides the current composition of minority judges on the state bench, both nationwide, and by level of court and by method of judicial selection used by the states. The Database can be found on the Standing Committee on Judicial Independence website at: [www.abanet.org/judind/](http://www.abanet.org/judind/).

As you can see, the Judicial Division's diversity initiatives and programs are making a difference in the lives of our constituent audiences all over the country. The programs set forth above along with other programs evidence the Division's commitment to a diverse justice system. Further, the JD Council approved policy last year establishing a diversity plan of action within the Judicial Division in the leadership ranks as well as its six member conferences. It is critical for judges and lawyers to take a leading role in diversifying not only the bench, but the justice system as a whole, so that we truly can reflect the public we serve.

*Sponsored by the Judicial Division and the ABA Council on Racial and Ethnic Diversity and the Educational Pipeline with the generous support of LexisNexis®*

## Calendar Call

"Emerging Issues in Neuroscience," to be co-sponsored by the Judicial Division on June 3-4, in partnership with the American Association for the Advancement of Science (AAAS). To register for program, or to request additional information about other seminars in 2010, contact Dr. Mark Frankel of AAAS, at (202) 326-6793 or mfrankel@aaas.org Visit: <http://new.abanet.org/divisions/Judicial/Pages/events.aspx>

**JD Vice-Chair Nomination** - Pursuant to Section 5.02 of the JD bylaws, the Nominating Committee, Chaired by Judge Barbara Lynn, nominated Judge William Missouri (NCSTJ), Upper Marlborough, MD, as the Judicial Division 2010-2011 Vice-Chair. The

Committee also submitted the name of Judge Bryan McDaniel (NCALJ), Arlington, VA, for the position of the National Judicial College Board of Trustees position. The Committee met on Friday, February 15, 2010 in Orlando, FL. Pursuant to Section 5.03 of the Division bylaws, other nominations may be made by petition signed by at least fifteen (15) Division members from no less than three Conferences and filed with the Division Staff Director Peter Koelling at least 45 days prior to the Annual Meeting. Elections will occur on Saturday, August 7, 2010 at the Judicial Division Council Meeting at the Marriott Marquis Hotel in San Francisco, CA.

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# Challenges and Opportunities



By Peter Koelling  
Chicago, IL

As of this writing, I have been here four months and have been through my first Midyear Meeting. Learning about this organization and its annual lifecycle has been an eye-opening experience to say the least.

I am astounded by all the things that are happening, the projects that are being developed, and the new ideas that are being talked about. I am learning the seasons of the ABA: the winter is Midyear. Spring, the budget season, is about to begin and we will be planning in earnest for the next year. Moving forward as we begin to plan and budget, I see that there will be challenges for us as well as opportunities.

**The Challenge:** This year's budget process will likely prove as challenging as last

year's. Revenues are down from both membership dues and non-dues sources. Because we rely almost exclusively on general revenue funding, we will be impacted more than other Sections and Divisions. After making substantial cuts last year, we may be facing the same this year. Last year we cut all non-staff areas. Staff, of course, accounts for the majority of our costs, but staff is needed to support the conferences and the programs of the Judicial Division.

**The Opportunity:** The HOD approved an additional reduction of 25 percent on top of the 25 percent reduction all judges presently receive. For judges it means their ABA dues will only be \$225 per year. Pricing models indicate that this should help us to attract new members. This provides a great opportunity to increase our membership.

**The Challenge:** To attract new members and to keep our current ones, we have to enhance membership value. We need to offer products and programs that judges see as needed and helpful in the administration of justice. What can we provide our members that will help make them better judges and lawyers? How do we get the word out to judges who are not members about the new dues structure?

The JD held a CLE program on Friday, February 5 entitled, "Inside the Supreme Court: The Personalities and Philosophies of the recent Supreme Court Justices. Dean Ken Starr and journalist Tim O'Brien led this standing-room only program. Judges Harry Lemmon and Mary Ann Vial Lemmon put this outstanding program together.

**The Opportunity:** Budgeting pressure often allows an organization to get a sense of its priorities and can create better focus. It requires that we look for ways to become more efficient that we might not have thought about before. It pushes us to think about sources for non-dues revenue and to become more creative. How can we use our dollars more wisely? How can we use the assets that we have to provide services to other ABA members?

I look forward to working with you to face these challenges and make the most of these opportunities. If the energy and commitment that I witnessed at Midyear is any indication, I am certain that we will fare well.

## Standing Committee on Minorities in Judiciary Update

By Allen J. Webster, Jr., Compton, CA  
Chair, JD Standing Committee on Minorities in the Judiciary

The Judicial Division is committed to the principles of diversity as set forth in ABA Goal III. The JD recognizes that racial and ethnic diversity in the judiciary is the cornerstone of maintaining public trust and confidence in the legal system.

The Standing Committee on Minorities in the Judiciary wholeheartedly supports this endeavor and through its mission and purpose affirmatively supports the appointment and election of highly qualified judges in a manner that reflects a diverse, qualified judiciary. Concomitant with these goals is a commitment to engage and participate in outreach programs in local communities and diverse communities where ABA Meetings are held.

These goals were recently achieved as the Standing Committee enjoyed a very successful and dynamic program during the ABA Midyear Meeting.

The Committee's endeavors commenced

with our semi-annual outreach program at Jones High School. Committee members, Allen J. Webster, Toni Clarke, Michael Bergmann, Errol Powell, Robert Saunooke, Cynthia Loo, Sandra Thompson, Margarita Bernal and Eugene Verin experienced and enjoyed a rewarding and heartwarming visit.

The high school is an inner city, majority minority, center of learning in which 80 percent or more of their graduates attend four-year colleges and universities throughout the country. Initially, committee members discussed their backgrounds and how they decided to pursue a legal career in the auditorium with over three hundred students. Subsequently the lawyers and judges engaged in lively dialogue with the students in a more personal classroom setting. This visit, as with others in the past, was beneficial, inspirational, motivating and a true learning experience for students and visitors alike.

Later that evening the Committee hosted its signature program "Obtaining and Retaining a Diverse Judiciary." The past three programs were presented during the day and at a local law school. In an attempt to reach more attendees from our targeted audience the program was presented in the evening at the Orange County Bar Association and was co-sponsored by a number of ABA entities and the Orange County Bar. The change

resulted in a larger audience including lawyers from the targeted group who were interested in and actively pursuing judgeships.

The panel consisted of Judges Alice Blackwell, Orlando, FL; Hurbert Grimes, Deland, FL; Linh Tran Ison, Kissimmee, FL and Errol Powell, Tallahassee, FL.

The panelists provided sage advice and suggestions as to how to pursue judgeships through the election and appointment processes. After the presentations there was a lively and spirited dialogue designed to develop successful strategies for increasing judicial diversity.

Judicial diversity is a core goal and an unwavering commitment of the Standing Committee. In addition, it believes that the real purpose of diversity is to manifest a legal system of individuals with a wide range of perspectives arising from their life experiences, many of whom have historically been excluded. The effectiveness of our nation's judicial branch relies heavily upon the public's trust and confidence in the rulings and opinions of the courts. To insure that the public maintains its trust it is imperative that we have a cross section of the population participating at all levels of the judicial system as well as one that reflects and represents the life experiences and ideologies of judges from racial and ethnic communities, women, sexual minorities and the physically challenged.

# Appellate Judges News

## CHAIR'S COLUMN



By Hon. Martha Warner  
West Palm Beach, FL

What issues will concern appellate judges and lawyers over the next five years? Our recent survey showed that adequate funding of the judiciary, the election/selection/retention of a qualified judiciary, and the continuing impact of technology on judicial functions are three of the most prominent issues that the appellate courts will face in the next five years. The AJC can contribute to the national discussion on these and other issues through an engaged membership.

At the Midyear meeting of the ABA, the executive committee worked on a strategic plan for AJC to assure that we are addressing those important issues identified in the survey as well as enhancing communication with judges and lawyers across the country. CAL Chair John Bursch facilitated the Executive Committee's discussion. By late spring we expect to have a draft plan available on the website for our membership to review. With the adoption of the plan will come additional opportunities for appellate judges and lawyers to involve themselves in the important role that the AJC can play in the improvement of the administration of justice in our appellate courts.

Also at the Midyear Meeting, we celebrated the Tenth Anniversary of the Judicial Clerkship Program, designed to bring judges and minority law students together to expose the law students to judicial clerking. Former AJC Chair Justice Frank Sullivan (IN) was honored for his role in starting the program, in which many of our AJC members have participated over the years.

**Judicial Disqualification.** As a result of input from the Judicial Division, the Standing Committee on Judicial Independence elected to withdraw the proposed Judicial Disqualification resolution discussed in my last column and work with the Judicial Division Ethics Committee representatives to craft a new resolution and report in consideration of the comments it received on its first draft. Judge William Van Nortwick (FL) is our representative working with the Standing Committee on the resolution.

**Dues reduction.** The House of Delegates voted to reduce the dues for government lawyers (including judges) and solo practitioners. This will result in a substantial savings to many AJC members. Judges and staff attorneys may be able to take advantage of even greater savings through the ABA Group Program Plan by increasing ABA membership on courts. Members will be receiving information from Membership Chair Justice Robert Edmunds (NC) this spring on how to create a group and realize additional savings. The appellate courts of Missouri, South Carolina, and North Carolina have all taken advantage of this offer and cut their dues by more than half.

**AJEI Summit in Orlando.** The annual AJEI Summit in Orlando, Florida, last November brought together 325 judges and lawyers for a terrific program of appellate education chaired by Judge Elizabeth Lang-Miers (TX). Starting with a provocative session on "How Judges Think" developed by current NCFTJ chair Judge Delissa Ridgway, the Summit provided a wealth of educational offerings featuring such prominent law professors as Dean Erwin Chemerinsky (CAL-Irvine), Pam Karlan (Stanford), Dean Kenneth Starr (Pepperdine), Michale Klarman (Harvard), and George Gopen (Duke). ABA President-Elect Steve Zack inspired the participants in his keynote speech at the annual dinner.

Look for information about appellate activities at the Annual Meeting in San

Francisco. A variety of educational events are planned to involve appellate judges and practitioners. Information will be provided on the AJC website.

## AJC EXECUTIVE COMMITTEE 2009-10

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**Judges Journal:** Hon. Patricia Timmons-Goodson, North Carolina Supreme Court

# Chair's Column— Council of Appellate Lawyers

By John Bursch  
Grand Rapids, MI

We have officially reached the halfway mark of the ABA year, and it has been a stellar six months for the Council of Appellate Lawyers. The AJEI Appellate Summit in Orlando this November produced a great turnout and a series of outstanding programs, presented by some of the most distinguished appellate judges and practitioners in the country. The subject matter ranged from diversity in the legal profession to the judicial decision-making process, and included both retrospectives and forecasts for the United States Supreme Court and its jurisprudence. Thank you to all who participated. We look forward with great anticipation to joining our appellate colleagues for the 2010 Summit in Dallas (November 18-21), the 2011 Summit in Washington D.C. (tentatively set for November 17-20), and the 2012 Summit in New Orleans (tentatively set for November 15-18).

In February, we teamed once again with the ABA's Young Lawyers Division (YLD) to present a well-attended program at the ABA Midyear Meeting on the fundamentals of appellate brief writing. Florida Court of Appeals Judge Martha Warner, Missouri Court of Appeals Judge Nannette Baker, and CAL's own Bob Biasotti of Carlton Fields were the featured panel members. Also at the Midyear Meeting, CAL's senior leadership had the opportunity to collaborate with the Appellate Judges Conference on the AJC's long-range planning, a process that will reap great dividends in the coming years for all of us who call the AJC our ABA "home."

One of CAL's long-range strategic goals is to increase the reach of our programming through podcasts and webinars. I am pleased to report that our first podcast is now available on the CAL website, <http://new.abanet.org/divisions/Judicial/ajc/cal/Pages/default.aspx>. Simply click the links under the Multimedia Resources heading. Look for more podcasts in the near future.

Another long-range goal that is reaching fruition is our book cataloguing "inside tips" of appellate practice in all state and federal courts. Approximately one-half of the chapters have now been drafted, and we look forward to publication later this year.

Looking ahead, planning is already well underway for our program at the ABA Annual Meeting in San Francisco, a panel discussion titled: "The Attorney-Client Privilege and Interlocutory Appeals after the Supreme Court Decision in *Mohawk Industries, Inc. v. Carpenter*." The program will be held on Friday, August 6, 2010, from 2:00 p.m.-3:30 p.m. I also encourage you to attend the program that will immediately follow, which also has appellate implications: "Perspectives on Review of an Administrative Case within the Executive and Judicial Branches." CAL's annual business meeting will take place at the conclusion of the administrative case program.

Mark your calendar now for the next installment of CAL's Appellate Practice Institute, which will be held at Northwestern University School of Law from May 20-22, 2011. The API is the nation's premier appellate practice and training program and will be beneficial to new and experienced practitioners alike.

I look forward to seeing you in San Francisco and Dallas later this year. If you have suggestions or comments for moving CAL forward, please email me at [jbursch@wnj.com](mailto:jbursch@wnj.com). Thank you for your participation and support!

## Save the Date for the 2010 AJEI Summit

Mark your calendars for the 2010 AJEI Summit, November 18-21 in downtown Dallas. The planning committee has lined up outstanding speakers and topics and has secured favorite speakers: Dean Erwin Chemerinsky, Professor Pam Karlan and Dean Kenneth Starr. Other notable speakers include Adam Liptak of the *New York Times* and Joan Biskupic of *USA Today*. In addition to popular recurring sessions, several new topics will be covered. In conjunction with the ABA Commission on Racial and Ethnic Diversity in the Profession, AJEI Summit attendees will be able to take part in an outreach program in Dallas inner-city schools on November 18, 2010.

The Summit will be held at the historic Adolphus Hotel, which is in the heart of the Dallas Arts District and is near many shops, including the flagship Neiman Marcus store, and restaurants featuring local specialties. Those interested in fine dining will enjoy the French Room at the Adolphus, rated among the city's top restaurants.

The AJEI lowered registration rates last year and is endeavoring to keep registration at the reduced cost. Once again there will be limited scholarships available. The 2010 AJEI Summit is sure to offer the best of programs and networking opportunities.

## Calendar Call

(continued from page 2)

**New Reduced Dues** - During the ABA Midyear Meeting, the ABA House of Delegates approved a new dues structure that will reduce membership costs for

judges by over \$170. At the same time, the association is making it easier to join by creating flexible payment options, such as installment billing and auto renewals, and developing new tools and resources to benefit lawyers in their day-to-day law practices. The new dues will take effect with a billing cycle that starts in May. The

change will be automatically reflected in your 2010-2011 invoice. For questions about your bill, please contact the Service Center at 800.285.2221. Other dues initiatives and additional tools and services will roll-out at the ABA Annual Meeting in August.

# Lawyers Letter

## CHAIR'S COLUMN

### Teaching the Constitution



By L. Neal Ellis  
Raleigh, NC

When Justice David Souter delivered the keynote address for the 2009 ABA Annual Meeting Opening Assembly, he observed that the disturbing lack of public understanding of the Constitution not

only bodes ill for our democratic processes, it also represents a serious threat to judicial independence. He cited the famous encounter between Benjamin Franklin and a woman outside the meeting hall for the Constitutional Convention when the woman asked what kind of government the convention would establish for the American people, a monarchy or a republic? Franklin answered, "A republic, if you can keep it." Justice Souter noted that we are now in danger of losing our republic through erosion in the minds of the American people. Without some sense of the concepts of separation of powers and limits on powers, the idea of judicial independence for most Americans is meaningless. Lay people and even some lawyers simply do not understand that it is frequently the judges' job to take the unpopular course when it is required by the rule

of law. At the same time those people who scream the loudest and call for the heads of judges when they make tough decisions frequently have the least understanding of basic constitutional principles and the role of judges in our constitutional scheme.

Today, our birthright documents, the Declaration of Independence and the Constitution of the United States of America, are virtually unknown to most of our citizens. In 2008, a national survey titled "Our Fading Heritage: Americans Fail a Basic Test on Their History and Institutions" was published by the Intercollegiate Studies Institute (ISI). The results were stunning. Using a 2,508 nationwide sample of adult Americans, 71 percent failed ISI's civic literacy test scoring just 49 percent. The test was hardly "rocket science." It asked questions like those that immigrants are expected to answer successfully before they are granted citizenship. For example: almost 40 percent of all respondents incorrectly believed that the president has the Constitutional authority to declare war; only 24 percent of responding college graduates knew that the First Amendment prohibits the establishment of an official religion for the United States; almost 25 percent believed that Congress shares its foreign policy powers with the United Nations; and fewer than half of all Americans could name all three branches of government. These shocking results prove beyond cavil that there is a profound need for a program that will provide familiarity with our founding documents and an appreciation for their principles.

Above any other profession, lawyers have an obligation to ensure that generations of young Americans do not become illiterates

when it comes to our founding principles. It is hard to imagine that we could expect young voters to advocate laws, elect politicians for high office, or support our judges enforcing the rule of law if they lack even the most basic appreciation for the liberty and freedoms guaranteed by our Constitution and the principles described by the Declaration of Independence. We must take action. The Lawyers Conference of the Judicial Division will lead a program designed to help educate young Americans about our Founding Documents and the principles underlying those documents. Over the next year the Lawyers Conference will kick off a pilot program in several metropolitan areas across the country teaching the Constitution and the principles of the Declaration to high school and junior high school students. We are asking lawyers and judges to volunteer to teach five days for one hour a day. A 501(c)(3) organization with a teaching mission will provide outlines and teaching scripts for our use. At the conclusion of the course, each student will have an appreciation for America's governing principles and institutions securing our unalienable rights, as well as an understanding of how our national government is designed and works. What will you get out of it? If the beaming faces of students yearning for knowledge about how their government works is not enough, you will walk away with a finer appreciation of our Founding Documents and the knowledge that you have done something to reverse the alarming trend. We look forward to sharing with you developments about this exciting and important program over the course of the next year. If you are interested in participating in the program or volunteering to teach, please drop me an e-mail.



Members of the LC Executive Committee at the Midyear Meeting in Orlando, February 5, 2010. (l-r) Shaunda Patterson-Strachan, Phyllis Pickett, Blake Tartt, Christina Plum, Richard N. Bien (Delegate to ABA House of Delegates), William K. Olivier (Vice-Chair), Hon. David Horowitz (Ret.) (Chair-Elect), L. Neal Ellis, Jr. (Chair), Keith Roberts, Hon. Joan Davenport, Mark W. D. O'Holloran (YLD Liaison), Michael G. Bergmann.

# California's Alan Carlson Receives 2010 Robert B. Yegge Award for Outstanding Contribution in the Field of Judicial Administration

By Victoria S. Cashman, Dayton, OH  
and William K. Olivier, Golden, CO

2010 marks the 40th anniversary of the year that Robert B. Yegge, the ABA and others responded to Chief Justice Warren E. Burger's call for ". . . a corps of trained court administrators or managers to manage and direct the machinery so that judges can concentrate on their primary professional duty of judging." The late Robert B. Yegge, Dean Emeritus of the University of Denver Sturm College of Law and former Chair of the Lawyers Conference (1987-88), worked tirelessly to address this need. Among other things, he was instrumental in developing several acclaimed judicial administration programs, including the Institute for Court Management and a master's degree program at the University of Denver College of Law, which was one of the first in the United States.

It is fitting, then, that at the Midyear Meeting the Lawyers Conference Executive

Committee selected Alan Carlson, currently the Chief Executive Officer/Jury Commissioner/Clerk of the Court in the Orange County, California, Superior Court, as the 2010 recipient.

In 2009, Hon. Rebecca Love Kourlis, former justice of the Colorado Supreme Court, was selected as the first recipient of the Yegge Award. While Justice Kourlis's selection set the bar very high, there is no question that Mr. Carlson, yet another esteemed champion for court administration, is a most worthy recipient. Mr. Carlson has made significant contributions to the field of judicial administration throughout his professional life. In addition to his extensive experience as a court administrator, Mr. Carlson has been an outstanding researcher, educator, and technical assistance provider for two major nonprofit organizations focused on court and justice system improvement.

The Yegge Award will be presented to Mr. Carlson in August at the Annual Meeting in San Francisco.

## LC 2010 ABA Annual Meeting Programs Preview

By Shaunda Patterson-Strachan  
Washington, DC

The LC is pleased to announce its sponsorship of two programs to be presented at the Annual Meeting in San Francisco. First, the LC will offer the fourth installment of its acclaimed "Perceptions of Justice" program on August 5, 2010, from 2:00-5:00 p.m. at Golden Gate University School of Law, once again exploring the extent to which various ethnic groups perceive the courts as being fair - or not - in the process of dispensing justice. As with previous programs in Boston and Chicago, and the program planned for Washington, DC, in April, efforts will be made to gauge the sentiments of the local community in and around the host city. The program will be moderated

by two highly respected California jurists, Judge Ken Kawaichi and Judge Gordon Baranco. The community, town-hall format adopted for the most recent Perceptions programs will be in place for the first part of the program, while the second half will be a break-out, solutions session introduced by former California Supreme Court Justice Cruz Reynoso.

Second, on Saturday, August 7, at 9:00 a.m., the Lawyers Conference will offer 1.5 hours of CLE as part of a three-hour program, "Off the Bench: The Ethics of Extrajudicial Activity and Judges." The first part of the program will focus on how judges can advance pro bono legal services and the second part will focus on how judges can be actively engaged in their communities on issues of professional or personal interest within ethical obligations. This program is a joint effort with the SC on Pro Bono and Public Service and the JD Ethics Committee.

For more information please contact Gilda Fairley at fairleyg@staff.abanet.org or (312) 988-5689.

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Shaunda Patterson-Strachan,  
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# Administrative Judiciary

## News and Journal

### CHAIR'S COLUMN



By Hon. R. Bryan  
McDaniel  
Arlington, VA

Our efforts to obtain a further reduction of dues for NCALJ members contributed to the successful development of an initiative approved by the ABA House of Delegates at the recent Midyear Meeting for an additional 25 percent reduction in dues for judges. Judges already had a 25 percent discount from \$400 to \$300, and that is now reduced by another 25 percent to \$225. Our Membership Committee is continuing to collaborate with ABA leadership for further dues reduction under the discount dues program in order to allow an organization of judges from different courts to form a discount group. The committee is also revising the NCALJ membership flyer, looking into ways to recruit new members through the new JD Strategic Membership Marketing Plan, and considering a census of potential NCALJ members.

At the state level, the revisions proposed by our Subcommittee on the Model State APA were approved by our Executive Committee (EC) for presentation to the Commission of Uniform Laws.

At the federal level NCALJ is partnering with the ABA Administrative Law Section to send a letter to the current administration, asking that the revitalized Administrative Conference of the U.S. (ACUS) study our concerns, e.g., oversight of the ALJ program, expanding it to encompass the much larger number of non-APA adjudicators, inconsistency among agencies regarding their internal review procedures for adjudicatory decisions, enhancing the independence and stature of the agency review boards, creating uniform federal rules of administrative

procedure, better ways to handle mass adjudication programs, such as Social Security Disability and Black Lung Benefits, and reform of the Immigration Adjudication System. We also continue to pursue concerns about pay compression and benefits for administrative adjudicators and revision of the ALJ hiring process. NCALJ plans to host a one-day conference in Washington, D.C. next year to further the discussion of these and other issues. In addition, NCALJ will send a contingent to ABA Day in Washington, D.C. April 20-22 to meet with Congress and its staff regarding ABA issues.

At the international level, NCALJ has obtained ABA endorsement of the Fifth International Conference on Administrative Justice to be held May 30-June 1. Representatives from the NCALJ EC, the Canadian Council of Administrative Tribunals' Board (the Conference Host), and the NAALJ Board will meet and discuss common interests, and CCAT has agreed to NCALJ's requests to address the Conference attendees on behalf of the ABA and to hold a luncheon to promote networking among international adjudicators and tribunals. See <http://www.ccat-ctac.org/en/conferences/docs/Program2010.pdf>

At the February Midyear Meeting, our EC agreed to a proposal for a membership vote at the August Annual Meeting to amend the Conference Bylaws to incorporate a recently devised and more workable NCALJ budget system and the duties of the Conference Chair. Also, the EC endorsed the JD Diversity Plan at the recommendation of our Diversity Committee, which is now developing action steps for implementing the plan.

At funeral ceremonies in December, NCALJ presented to the family of Judge John Hardwicke of Maryland a spray of flowers and a letter expressing our sympathies, respect, and gratitude for his work as an officer of NCALJ, a leader of the state central panel movement, and a mentor and friend of administrative adjudicators across the country. Also, in February, NCALJ pre-

sented a plaque to Judge John Vittone at a luncheon commemorating his retirement after 40 years as an administrative adjudicator, a former Chair of NCALJ, JD, and the Justice Center, member of the ABA Board of Governors, and Chief ALJ for the U.S. Department of Labor.

You can register for the NCALJ/ABA Annual Meeting, scheduled August 5-8, 2020, at <http://new.abanet.org/annual/pages/default.aspx>. NCALJ is planning a dinner for its members and guests on Thursday the 5<sup>th</sup>, and a Napa and Sonoma valleys wine tour, followed by a group dinner on Sunday the 8<sup>th</sup>. Please consider joining our vibrant and collegial Conference. Further information is available on the NCALJ website at: <http://www.abanet.org/jd/ncalj/home.html>, and through links on that site for "membership" and "committees."

## Invitations and Announcements

You are invited to attend the Fifth International Conference on Administrative Justice, slated for Montreal on May 30 – June 1, 2010. NCALJ Chair Bryan McDaniel and Ed Felner, Chair of the NCALJ International Law and Ethics Committees have secured ABA endorsement of the Conference and a \$200 tuition discount for NCALJ members. On May 31, Judges McDaniel and Felner will be presenting an administrative law ethics workshop. Additional details at [www.ccat-ctac.org](http://www.ccat-ctac.org).

The NCALJ 2010 Nominating Committee nominated the following people to serve in the indicated positions: Vice Chair – Hon. Ira Sandron; Secretary – Hon. Bruce Cooper; Executive Committee Members – Hon. Mary Margaret Anderson, Hon. Christina Kalavritinos, Hon. Candida Steel, Hon. Richard C. Luis.

Kudos to Judges Tom Snook, Jodi Levine and Janet Mahon for serving as speakers for a very well received panel entitled "Mock Social Security Hearing." The Panel was presented at the ABA Conference on HIV Law and Practice at the ABA Midyear Meeting.

You are invited to join your judicial colleagues and lawyer friends as a member of the Senior Lawyers Division. Having chaired NCALJ, I am privileged to become Chair of the SLD in August. I invite you to accept appointment to our newly-reinstated Judiciary committee. Please contact me directly (ruthkleinfeld@hotmail.com) with any questions. Judge Ruth Kleinfeld <http://new.abanet.org/divisions/srlawyers/Pages/default.aspx>

## NCALJ Nominating Committee Results

As stated in Article VII of the NCALJ Bylaws, the Nominating Committee nominates the following people to serve in the indicated positions:

### Vice Chair

Hon. Ira Sandron

### Secretary

Hon. Bruce T. Cooper

### Executive Committee Member

Hon. Mary Margaret Anderson

Hon. Candida Steel

Hon. Christina S. Kalavritinos

Hon. Richard C. Luis

In accordance with the NCALJ Bylaws, additional nominations may be made by petition. The petition must be signed by not less than 20 Conference members and must state that the member nominated has agreed to the nomination. The petition should be sent to the Conference Chair and must be received by him/her no later than 60 days prior to the Annual Meeting.

At the conclusion of the Annual Meeting, the **Honorable Thomas Snook** will ascend to Chair, the **Honorable Ann Breen-Greco** will ascend Chair-Elect and the **Honorable R. Bryan McDaniel** to Immediate Past Chair.

## We Mourn the Loss of a "Giant in the Field of Administrative Law."

John Webster Hardwicke  
(April 10, 1927 - December 24, 2009)



John Webster Hardwicke, the State of Maryland's first Chief Administrative Law Judge of the Office of Administrative Hearings, 1990 – 2002, and former President and Councilman at Large, Harford County Council (1972- 74, 1978-90), died of pulmonary fibrosis on Christmas Eve, after a long and distinguished career as judge, legislator, attorney, and teacher.

Judge Hardwicke was appointed in 1990 by Governor William Donald Schaefer as the State's first Chief Administrative Law Judge. By the conclusion of his tenure in 2002, Judge Hardwicke was recognized as the foremost authority on state administrative law in the US. Tom Dewberry, who succeeded Judge Hardwicke called Judge Hardwicke the "founding father for administrative law" in Maryland; "a giant in the field," agreed Buddy Kittrell, former Chief Administrative Law Judge for South Carolina. "Someone who knocked down the walls that separated us," said Julian Mann, Chief Administrative Law Judge for North Carolina. Judge Hardwicke was described as a "mentor for all of us," by Larry Craddock, Chief ALJ of the Texas Finance Commission. Judge Hardwicke was a fellow of the American Bar Association.

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Hon. Christina S. Kalavritinos, Arlington, VA  
Hon. Janet J. Mahon, Washington, DC  
Hon. Judith Boggs, Washington, DC  
Hon. Bruce T. Cooper, Woodland Hills, CA  
Hon. Julian Mann III, Raleigh, NC  
Hon. Candida Steel, Washington, DC

# Federal Trial News

## CHAIR'S COLUMN



By Hon. Delissa A. Ridgway  
New York, NY

At the halfway point of the 2009-2010 bar year, the National Conference of Federal Trial Judges (NCFTJ) already has achieved much – and we have big plans for the remainder of the year as well.

The ABA Midyear Meeting in Orlando was a welcome respite from the historic blizzard that paralyzed the Mid-Atlantic. One of the meeting's highlights was the NCFTJ's blockbuster program – "Diversity on the Bench: Is the 'Wise Latina' A Myth?", which probed the implications of a new and growing body of empirical research documenting a striking correlation between case outcomes and judges' gender and/or race/ethnicity, at least in certain types of litigation. As discussed elsewhere, the provocative program attracted a record crowd and garnered unprecedented support from ABA and ABA-affiliated entities. The true measure of success? The NCFTJ was immediately asked to reprise "Wise Latina" in several other venues, and more invitations are sure to be forthcoming. As in past years, NCFTJ members also participated in the Judicial Division's Judicial Clerkship Program, which is designed to educate disadvantaged law students about the duties of a judicial law clerk and the hiring process.

The NCFTJ's business meeting in Orlando included discussion of ongoing NCFTJ initiatives, and some potential new projects. Judge Jack Tunheim is exploring the idea of presenting a Rule of Law Institute – a one-day orientation to introduce interested judges to organizations that engage in international rule of law and judicial capacity-building programs, and to prepare the judges to volunteer in such programs. And Judges Phil Martinez, Sam

Bufford, and Bob Collings are "scoping" a possible book on paths to the federal bench, with chapters written by members of the NCFTJ.

Two ABA House of Delegates resolutions adopted in Orlando warrant special mention. Long a staunch advocate of pay restoration, the ABA now is also on record urging Congress to grant federal judges an automatic annual COLA equal to the overall average percentage pay increase for most other federal employees under the General Schedule (reflecting both a base pay adjustment and the national average locality pay adjustment). In addition, in response to ABA President Carolyn Lamm's emphasis on enhancing the value and relevance of the organization, the House of Delegates voted to reduce ABA dues for certain membership categories. Judges now will be eligible for a new discount of 25%, on top of the existing discount that judges and others in government and public service receive. The ABA's group membership program for judges, unveiled earlier this year, can drop individual ABA dues even lower – to as little as \$95, on courts where enough judges participate in the program. To take advantage of the group membership discount, contact Judge Barbara Lynn – former NCFTJ and Judicial Division Chair – who is doing yeoman's work on membership development.

NCFTJ spring activities include participation in both ABA Day at the United Nations (involving meetings with senior officials at the U.N. and the U.S. Mission to the U.N. for briefings on promoting world peace and security, and the international rule of law), and ABA Day in Washington (involving outreach to Congress and the Executive Branch on issues of concern to the justice system).

Looking ahead to the ABA 2010 Annual Meeting in San Francisco (starting August 5), there is very exciting news to report: The NCFTJ's program – "Fair Trial, Free Press? Trying High Profile Cases in a 24/7 'New Media' World" – has been selected as an ABA Presidential Showcase Program. Only eight of the more than 1500 Annual Meeting events will be so honored.

NCFTJ Programs Chair Judge Berle Schiller promises a candid dialogue among judges, lawyers, and journalists on the challenges of high-profile trials in a world where a 24/7 news cycle is the norm, the journalists' code of ethics is out the window, and jurors are negotiating book deals during coffee breaks in trials. There will be important policy issues before the House of Delegates too. The ABA Standing Committee on Judicial Independence is putting the finishing touches on a proposed resolution on judicial disqualification – a matter that NCFTJ Chair-Elect Judge David Waxse is following closely, particularly given the House Subcommittee on the Court's December hearing on recusal, at which Ninth Circuit Judge Margaret McKeown, Chair of the Judicial Conference's Codes of Conduct Committee, was the star witness.

Please mark your calendar now for the ABA Annual Meeting in August. And, whether you join us in San Francisco or not, I hope that you will contact me, at [delissa\\_ridgway@cit.uscourts.gov](mailto:delissa_ridgway@cit.uscourts.gov), to get involved in the NCFTJ. We welcome your ideas and your support.

### Short Announcements

After consideration of an outstanding group of candidates, the NCFTJ Nominating Committee nominates the following members of the NCFTJ to serve in the indicated positions:

**10-11 Vice Chair** Honorable Dan Breen, Jackson, TN; **10-11 Secretary** Honorable Philip Martinez, El Paso, TX; **Member of the Executive Committee (Listed in alphabetical order)**

**To fill unexpired term** (one-year term expiring August 2011) Honorable Lawrence Baskir, Washington, DC ; (two-year term expiring August 2012) Honorable Darnell Jones, Philadelphia, PA

**To fill full term** (three-year term expiring August 2013) Honorable Sarah Curley, Phoenix, AZ; Honorable Stephen Limbaugh, St. Louis, MO; Honorable Gene Pratter, Philadelphia, PA

# NCFTJ Program Probes Impact of Diversity on Judicial Decisionmaking

By Hon. Berle M. Schiller  
Philadelphia, PA

Is the judge's gender or race/ethnicity a factor in judicial decisionmaking? In cases alleging racial harassment in employment, plaintiffs are *three times more likely* to survive employers' motions for summary judgment if the judge is African-American, rather than white. And, in appeals involving allegations of sex discrimination under Title VII, a male judge is *three times more likely* to rule for the plaintiff if a female judge is on the panel. These and other startling findings were the focus of "Diversity on the Bench: Is the 'Wise Latina' a Myth?", presented by the NCFTJ on February 6 at the ABA Midyear Meeting in Orlando, drawing an ABA record overflow crowd of 180.

Inspired by the now-famous words of Justice Sotomayor, "Diversity on the Bench" highlighted the new and growing body of empirical research documenting the dramatic impact of judges' gender and race/ethnicity (at least in certain types of cases), refuting the notion that "judging" is the sterile, purely objective disposition of cases without regard to judges' personal backgrounds and ideologies.

Headlining the program were University of Pittsburgh Law Professor Pat K. Chew, author of "Myth of the Color-Blind Judge: An Empirical Analysis of Racial Harassment Cases," and Jennifer Peresie, of Washington, D.C.'s Kellogg, Huber, Hansen, Todd, Evans & Figel, who authored "Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts," as well as Judges Carol E. Jackson (E.D. Mo.), Philip R. Martinez (W.D. Tx.), and Berle M. Schiller (E.D. Pa.), who chaired the event. The MidAtlantic blizzard prevented planned moderator Dahlia Lithwick of *Slate* and *Newsweek*, and renowned jury consultant Leslie Miller of TrialGraphix, from participating. NCFTJ Chair Judge Delissa A. Ridgway stepped in to emcee. Judge Karl Grube provided handheld technology for the event, courtesy of the National Conference of Specialized Court Judges.

The featured research underscores that diversity on the bench can no longer be considered simply a matter of fundamental fairness to women judges and judges of color, or of ensuring that the judiciary symbolically

reflects the community that it serves. The new studies prove that judicial diversity significantly impacts case outcomes. But the research also raises provocative questions about the rule of law, which assumes that similar cases are treated similarly (whether the judge is male or female, white or not).

Peppered with audience questions, the panel probed the significance of the research findings for litigants, and acknowledged that – although cases are decided based on legal principles – they are nevertheless interpreted through the prism of the individual judge. Thus, when it comes to judges – as illustrated by the studies of Professor Chew and Jennifer Peresie – justice in fact is neither color-blind nor gender-neutral.

The panelists explored actions that trial judges in particular can take in an effort to



"Wise Latina" panelists speak to a captive audience. (l-r): Hon. Philip Martinez, Jennifer Peresie, Hon. Carol Jackson, Hon. Berle Schiller, and Prof. Pat Chew.

minimize gender- and race-based discrepancies in decisionmaking, such as discussing cases with diverse colleagues. The panel also observed that research to date has examined areas where one would expect to see a "gender effect" or "race effect" (if they existed), and queried whether future research will identify such effects in other types of cases.

"Diversity on the Bench" was co-sponsored by more than 60 ABA and ABA-affiliated entities. Special thanks are due to The Florida Bar, the National Center for State Courts, the International Bar Association, the Union Internationale des Avocats, the ABA Center for Human Rights, the Section of Business Law, the Section of Dispute Resolution, the Section of Real Property, Trust and Estate Law, the Section of Taxation, the Tort Trial and Insurance Practice Section, the Hispanic National Bar Association, the Inter-American Bar Association, the National Asian Pacific American Bar Association, the National Legal Aid and Defender Association, and the National Association of Women Judges, for their generous financial support.

Go to [www.abanet.org/jd](http://www.abanet.org/jd) to view the program in its entirety, and to download the course materials.

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Hon. J. Daniel Breen  
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Hon. Eileen W. Hollowell  
Hon. John E. Jones III  
Hon. Mary Mona Lisi  
Hon. Philip R. Martinez  
Hon. Elizabeth Snow Stong  
ABA BOG Liaison  
G. Nicholas Casey, Jr.

# Specialized Court News

## CHAIR'S COLUMN



By Hon. J. Matthew  
Martin  
Cherokee, NC

In New York, a Constitutional crisis has erupted with the Chief Judge in a standoff against the executive and legislative branches which have not passed a pay raise for that state's judges in over a decade. In North Carolina, almost all judges followed the Chief Justice's example, taking a pay cut in solidarity with their staffs and clerks, who had a pay cut forced upon them. North Carolina emergency judges are now serving without pay so that their active brothers and sisters can take vacations. In Arizona, crews are filling back in the excavation for the foundation of a new courthouse — construction was halted because of the economic collapse. In Minnesota, officials seriously debated closing the Tax Court in the midst of its busiest docket ever. We are in the eye of the worst economic hurricane since the Great Depression. Society, passing on to the Specialized Courts many of the social issues it does not

wish to address: mental illness, substance abuse, grinding poverty, etc., will not turn off the tap. If anything, our dockets in Juvenile Court, Tax Court, Family Court, Therapeutic Courts, Traffic Courts and the like, will continue to increase without letup.

It's easy to feel isolated. Maybe your funding source will no longer allow you to travel to receive continuing judicial education. Perhaps you are hearing more cases because vacancies have not been filled. You might be like me, unable to order additional paper clips. Chillingly, you may even feel this economic disaster at home, feelings that often migrate from home to work.

We all understand the bleakness of the current economic environment. After all, we are the ones who review the requests for court-appointed counsel.

However, if you think about it, this can be an extraordinary opportunity for specialized court judges. Increasingly, the judiciary is becoming specialized. In fact, we are already there. For example, we understand the value of DWI Courts. We know how to operate them. These pressures are nothing new to us; actually, we are long used to doing more with less. It is one of the things that make us special.

Three recent events have convinced me that now is the time for Specialized Courts to seize the moment. First, there has been

an explosion of Veteran's Courts in the last six months. Col. Linda Strite Murnane and Judge Steve Philo have ensured that our Conference is at the forefront of this exciting development, which brings as many services to our veterans as possible. Second, I have been privileged to observe Zero to Three Courts like the one Judge Ernestine Gray operates in New Orleans. There are 13 of these pilot project Courts in the country. These Therapeutic Courts provide intensive services for maltreated infants and toddlers ages zero to three. Finally, after our Midyear advance faculty training, I agree with Judge Bob Pirraglia who is convinced our Conference has reached a turning point in its judicial outreach programming which will leave us extremely well positioned to be in the vanguard of judicial education.

While these difficult times put more pressure on specialized courts, they also present us with moments for innovation. Veteran's Courts are a perfect example of that. We are seizing the day. We are experimenting, innovating and educating. There is no better time to be a member of the National Conference of Specialized Court Judges. I am pleased you are with us as we expand the frontiers of Specialized Courts. Tell your colleagues: it's starting to feel like a movement.

## Faculty Judicial Education Training

By Hon. Karen Arnold-Burger  
Overland Park, KS

The NCSCJ arrived at the Walt Disney World Dolphin Resort in Orlando two days before the beginning of the ABA Midyear Meeting to participate in strategic planning and faculty development for its judicial faculty outreach program. Eighteen judges participated. All eighteen have had extensive experience presenting programs in their own jurisdictions as well as around the country and even internationally. So, these

were definitely seasoned educators with a desire to improve their skills even more.

The program began with Dr. Pat Murrell from the University of Memphis, Institute for Excellence in Faculty Judicial Education, providing instruction regarding adult learning styles. Participants completed assessments to determine their own learning style and then discussed how this might impact their teaching. The judges practiced developing programs that could reach all learning styles. This is often referred to by Dr. Murrell as "teaching around the circle."

The second day was again spent with Dr. Murrell examining generational differences in learning and the generativity posi-

tion of our learners. Rhode Island Judge (Ret.) Robert Pirraglia followed with a discussion of how to market our outreach program to the various states, including an examination of what we do well and what barriers there may be to expanding the program. Judge Mike Kwan, Taylorsville, Utah, trained judges on use of the responder system that the NCSCJ purchased several years ago and uses frequently in its various programs. The participants shared practical tips and best practices in judicial education. The Hon. William Kelly, Kentwood, Michigan, gave an overview to the group on distance learning.

# NCSCJ Community Effort Reaches Iraq

By Hon. J. Matt Martin  
Cherokee, NC

When Judge Mike Pietruszka is not on the bench in Erie County, NY, he may be found working as the NCSCJ representative in the House of Delegates. Or, he can be found serving his community as an Assistant Scoutmaster with Boy Scout Troop 325, which is chartered by the Annunciation of the Blessed Virgin Mary R.C. Church in Elma, NY.

Most recently, his work with the Boy Scouts led to outreach to Iraq. The leaders of Troop 325 were contacted by Tom Gleed, a friend of the troop. He asked the Scouts to package craft kits donated by The Home Depot and Lowe's, and ship the kits to their fellow Scouts at Victory Base Council (VBC) in Iraq. The Scouts also included letters to the Iraqi Scouts detailing their scouting experiences in Western New York. The NY Scouts also included some local scouting memorabilia.

Scouting has been in Iraq for almost a century. Iraqi Boy Scouts and Girl Guides are the two programs run through the schools, via the Ministry of Education, as a nationwide youth program. There are over 100,000 Scouts in Iraq, but the programs vary greatly in their organization and scope.

Scouting in Iraq has been "de-certified" by the World Organization of the Scout Movement (WOSM) in Geneva, Switzerland twice, due to wars or politicization of the program. Iraqi Scouting is currently not re-certified by WOSM, but leaders of the scouting movement in Iraq are working on a return to certified status.

In early 2008, U.S. Navy Chaplain Andrew Wade planted the seeds of scouting at Victory Base, which surrounds the Baghdad Airport. Those seeds sprouted into a group of volunteers stationed on the Victory Base Complex, "doing their best" to start and support scouting in the areas

around Camp Victory – hence the name Victory Base Council (VBC). In May of 2008, the VBC received official acknowledgement by Scouting Council of Iraq.

The VBC is not a "council" in the U.S. sense; they do not govern or control any aspect of Iraqi Scouting. Instead, VBC serves as a conduit for funneling volunteer time, talent, and energy into the local Iraqi communities to help scouting start and flourish in areas that are under-served. Victory Base Complex has over half a dozen camps, and over 30,000 people.

The VBC volunteers sent the photos you see here, showing the members of the VBC opening the kits. They also sent their thanks, saying:

"Yesterday the younger boys used the drum kit craft your troop sent. The boys really enjoyed making and decorating them. In their schools and daily lives, they experience very little hands-on activities, with resources so limited here. So for them to make something with their own hands and proudly take it home, made for a really awesome day. It worked out perfectly, as a Sergeant from the Army band here, who is in the Army Reserves and has a regular job as a school music teacher, came out to provide a small group with some recorder lessons. But she really liked the drum kit project, so after the boys completed the drums, she gave them a percussion lesson."

The NCSCJ has a logical connection to this community effort since, in addition to Judge Pietruszka's involvement in the Conference, and in the Boy Scouting program, the Conference is also home to the Military Courts Committee. That committee includes military judges, including judges presiding at criminal proceedings involving U.S. service members around the world.

The VBC is currently under the direction of Co-Chairs Lt. Col. Robert McWilliams and Maj. Gary Farley. More information on the VBC can be found at <http://www.victorybasecouncil.org>



Orlando, FL - (l-r) Judge Ernestine Gray, Judge Elizabeth Finn, Judge J. Matt Martin, Judge George Perez and Judge Margarita Bernal.

## NATIONAL CONFERENCE OF SPECIALIZED COURT JUDGES 2009-10

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# Trial Judges News

## CHAIR'S COLUMN

### Procedural Fairness: It's Our Job



By Hon. Gary B.  
Randall  
Omaha, NE

Since becoming a member of the NCSTJ and participating in the work of the Judicial Division, I have had opportunities to be exposed to the inner workings of other jurisdictions, seeing differences in courts

management and operation. I have enjoyed the opportunity to develop a broader perspective on being a general jurisdiction trial judge than I may have had from my own work in the District Court of Douglas County, Nebraska.

My court, like all of yours, is busy and many of us may view our primary tasks on a daily basis to be case disposition or case management and making legally correct decisions. We all realize judging requires more than that. With increased case filings, busier dockets, fewer resources and the increase in our responsibilities in appropriately handling the growing number of pro se litigants, I suggest it is time to

reflect on not only how do we efficiently do our daily job, but what simple changes can we make to help to ensure that the litigants who appear before us perceive that their case was handled fairly.

I wish I could take credit for the development of the steps I am suggesting you consider, but in fact the work on this topic has been done by two well known judicial educators: Judge Kevin Burke, Hennipen County, Minnesota and Judge Steve Leben from the Kansas Court of Appeals. Burke and Leben recently presented their program *Procedural Fairness: A Key Ingredient in Public Satisfaction* at the Conference of Chief Justices Midyear Meeting. They were able to capture the audience's attention by showing compelling examples of how judges can alleviate public dissatisfaction with the judicial system by paying attention to certain key elements of procedural fairness.

I ask you to consider Burke and Leben's recommendations:

1. As a matter of practice, explain in understandable language what is about to go on to litigants, witnesses and jurors. The more they know what to expect, the more likely they will be able to comprehend.
2. Learn how to listen better. Listening is not the absence of talking.
3. While it is understandable to believe that a lawyer will explain judicial orders, not every litigant has a lawyer

who will ensure an order is understood. It is your order. You have a responsibility to explain it in understandable terms.

4. Put something on the bench as a mental reminder that patience is a virtue, not always easily practiced.
5. At the start of a docket, explain the ground rules for what will happen. For example, explain why certain cases will be heard first or why what litigants or defendants can say is limited in time or scope.
6. Share and discuss these concepts with the courtroom staff. They can play a critical role in giving a judge feedback, reminders, and support.
7. Arrange to have yourself videotaped, particularly when you preside in heavy calendars. Ideally, review the tape with someone who will aid your analysis. You can learn a lot about how you are perceived by the people before you.
8. Enlist the local academic community. Professors who specialize in communication and nonverbal behavior can offer great insight.
9. Thank people for their patience.

We have all learned through our experience that perception is often thought to be reality. You can help change the public's perception of the court system. Try taking these simple steps in your courtroom, it will make a difference.



Leaders of the NCSTJ after the Executive Meeting at the Midyear Meeting in Orlando (from left to right) (standing) Christopher T. Whitten, William D. Missouri, Toni E. Clarke, Alan Moats, Calvin L. Scott, Marguerite D. Downing, Guy Reece, Leslie Miller, James T. Gleason, Julia B. Weatherly, Joel Medd, Jeanette Clark, W. Terry Ruckriegle, William J. Capratbe (sitting) William C. Carpenter, Stephanie Domitrovich, Gary B. Randall, Ramona G. See, Annette J. Scieszinski.

# 2010 Judicial Clerkship Program a Huge Success

By Hon. Christopher Whitten  
Phoenix, AZ

Thanks go out to all of those who worked so hard to make the 10th Annual Judicial Clerkship Program a huge success, including the NCSTJ's own Judge Ramona G. See and Judge Toni E. Clarke. Almost one hundred top minority law students from across the country gathered in Orlando during the 2010 ABA Mid-Year Meeting to participate in the program. Over the course of the week, they heard from speakers about the importance of increasing the numbers of minority judges in all of our courts. ABA President Carolyn Lamm pointed out that, in order to maintain the confidence of the communities we serve, all of our courts "must reflect communities."

The program seeks to create a pipeline, hoping that the students who participated in

the program will go on to serve as clerks, and eventually as judges. Even failing this ultimate goal, the program presents an opportunity for minority law students to sharpen their research and writing skills, meet a judge who is willing to serve as a mentor, and make friendships that will last a lifetime.

Judges are needed from many jurisdictions to staff this program. To find out more, or to become involved next year, please contact Gilda Fairley at 312.988.5689 or [fairleyg@staff.abanet.org](mailto:fairleyg@staff.abanet.org).



Six of the ninety-seven law students participating in the 2010 Judicial Clerkship Program pictured with three of the participating judges: Herbert B. Dixon Jr., Janet Mahon, Candida Steel, and Barbara Lynn.

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## Announcements and Reminders

### Do You Have a Case Involving Scientific Concepts that Were not Covered in Law School?

The NCSTJ recently published a booklet that might be of interest: "Best Practices Handbook on the Use of Independent Experts." The resource is available free of charge through the ABA Publications or on the conference's website under the "resources" link.

The handbook covers such topics as identifying areas where an independent, court-appointed expert might be helpful to the court, discussion of the laws

and practical considerations to take into account in deciding whether, or how, to use such an expert, tips on how to choose and communicate with an a court appointed expert, and suggestions on how their opinions should be used and how they can be paid.

Special thanks for the project to Judge W. Neil Thomas, III of Tennessee for organizing funding for the publication and distribution costs for the project.

### Complimentary Section Memberships

Remember: all NCSTJ members are offered a complimentary membership in both the Litigation section and the Tort Trial and Insurance Practice (TIPS) section. To learn more visit the website at <http://new.abanet.org/divisions/judicial>.



Dinner together after a weekend of work (l-r): Judges Annette J. Scieszinski, George Perez, Gary B. Randal, Stephanie Domitrovich, Mr. William Miller, Mrs. Phoebe Dixon, Judges Jon Stafsholt, Ramona G. See, Christopher T. Whitten, Mrs. Marilyn Carpenter, Judges William C. Carpenter, Toni E. Clarke, and Herbert B. Dixon Jr.



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## 2009-2010 Justice Center Calendar

### **ABA Day in Washington, DC**

April 20-22, 2010  
Washington, DC  
More information:  
<http://www.abanet.org/poladv/abaday10/home.shtml>

### **Spring Planning Meeting**

May 6-8, 2010  
Lexington, KY  
More information: 800.238.2667 (x5700)

### **SC on Federal Judicial Improvements Spring Meeting**

May 8-9, 2010  
Washington, DC  
More information: 800.238.2667 (x 5723)

### **SC on Judicial Independence Spring Meeting**

May 20-23, 2010  
Ft. Lauderdale, FL  
More information: 800.238.2667 (x 5723)

### **Emerging Issues in Neuroscience**

June 3-4, 2010  
St. Louis, MO  
Co-sponsored by the Judicial Division  
Registration: contact Dr. Mark Frankel of AAAS, at (202) 326-6793  
or [mfrankel@aaas.org](mailto:mfrankel@aaas.org)

### **Annual Meeting**

August 5-10, 2010  
San Francisco, CA  
More information: 800.238.2667 (x5700)

### **Section Officers Conference**

September 23-24, 2010  
Chicago, IL  
More information:  
<http://www.abanet.org/dch/committee.cfm?com=YY000000>

### **Traffic Court Program**

October 13-15, 2010  
Little Rock AR  
More information: 800.238.2667 (x6716)

### **Jury Symposium**

October 21-22, 2010  
Washington, DC  
George Washington University School of Law

\* For more meeting information, please visit: <http://www.abanet.org/jd/events.html>