

# Judicial Division Record

American Bar Association

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## Standing Committee on Judicial Independence

by D. Dudley Oldham, Chair  
Houston, TX

The Standing Committee's Subcommittee on State Judicial Compensation is drafting recommendations for improvements to processes for determining judicial salaries. The subcommittee is surveying compensation commissions that consider judicial salaries in 21 states and has received valuable input from Judge Sophia H. Hall, Chair-Elect of the National Conference of State Trial Judges, who is serving as the Judicial Division's liaison to this project. Draft recommendations will also be circulated to Judicial Division Conference Chairs for their comment. If you would like to receive a copy of the draft recommendations, which will be available in early April, please contact Seth Andersen at 312-988-5124 or anderses@staff.abanet.org.

The Working Group on the First Amendment and Judicial Campaigns brought recommendations to the Standing

Committee at the Midyear Meeting in Seattle. The Working Group's report recommends revisions to the ABA Model Code of Judicial Conduct in light of the Supreme Court of the United States decision in *Republican Party of Minnesota v. White*. The Standing Committee has submitted the recommendations to the Standing Committee on Ethics and Professional Responsibility for its consideration.

The Standing Committee is supporting the work of the ABA Commission on the 21st Century Judiciary, which is sponsoring a National Colloquium in Raleigh, North Carolina on March 14, 2003 to solicit comment on its draft recommendations. The Standing Committee looks forward to undertaking several projects to promote and implement the Commission's recommendations in the coming years.

## Federal Judicial Compensation

On February 13, 2003, President Bush signed into law HR 16, authorizing a 3.1% cost-of-living-adjustment for federal judges. This COLA, which is retroactive to the first of the year, is a positive step towards ensuring adequate compensation for federal judges. The ABA Government Affairs Office supported a federal judicial COLA through its lobbying efforts.

In addition to lobbying for a COLA, the ABA adopted a policy resolution at the Midyear Meeting supporting the recommendations contained in the 2003 Report of the National Commission on the Public Service (the Volcker Commission) urging Congress to enact an immediate and significant increase in federal judicial salaries and break the statutory link between Congressional and judicial salaries. This policy recommendation supports the ABA's long-standing position calling for adequate federal judicial compensation. The Standing Committee on Federal Judicial Improvements will work with the ABA Government Affairs Office and the Judicial Division to promote this policy. An on-line media kit highlighting the policy and providing information about federal judicial compensation is available on the ABA's website at [www.abanet.org](http://www.abanet.org). In addition, the Volcker Commission report can be accessed through the website of the Standing Committee on Federal Judicial Improvements at [www.abanet.org/scfji](http://www.abanet.org/scfji).

## Law Day – May 1, 2003

The Constitution grants us rights, but without courts the Constitution might just be a quaint document on parchment. It is the courts that enforce the Constitution, protect our rights as Americans, and make the rule of law a reality.

Law Day can help people understand that "independent" courts are fair, impartial, and dedicated to the rule of law. Through Law Day, we can stress the importance of courts and judges free from political interference.

Every Law Day, we try to help Americans understand how our freedoms depend on our great system of law. On this Law Day, let's help our fellow citizens

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JUDICIAL  
DIVISION



by Judge James S. Sledge  
Anniston, AL

**SEATTLE WAS A WHIRLWIND**

The 2003 Midyear Meeting in Seattle was a whirlwind of activity and action. At the end of our stay, all of us bent over with hands on knees gasping for breathe, with a smile on our faces. All of you who could not attend can be proud of your leaders.

We began the meeting with the current and future leaders being trained by the Leadership Institute, conducted by the University of Memphis. We learned and practiced how to teach and present materials to adults in a manner to maximize involvement, retention and support for the lessons. The next meeting at annual will see the results of this training. The team will present the primary substantive program using the learned techniques. The team began the training at the Center for the Study of Higher Education last June. The support for this training is so strong that JD is preparing to institutionalize this training for all future leaders, in order to build a growing cadre of judicial educators.

Next, the Judicial Clerkship Program began. Fifty minority law students from ten law schools, two dozen judges and former judicial clerks met for the third annual program. Justice Frank Sullivan again organized and led the program. Last year, this program was recognized with a top ABA award. Designed to encourage minority law students to seek judicial clerkships, the program is cosponsored with the Commission on Racial and Ethnic Diversity in the Profession. LexisNexis and the ten law schools are financial sponsors. President-Elect Dennis Archer welcomed and challenged the students. For three days, the students talked with judges and former clerks and created the atmosphere of clerking. The students were enthusiastic and responsive to the benefits of a judicial clerkship. If we succeed in persuading these students to apply and

carry the messages back to their schools, perhaps the need for this program will end. That is our goal. Justice Sullivan and his dedicated committee did a grand job of teaching and inspiring the law students.

Third, we conducted a full day Summit on Judicial Outreach. The Judges Network, led by Jack Brown, organized this day. JD, joined by the ABA Division on Public Education and other groups, focused on public trust and confidence. Judges presented snippets of successful judicial outreach programs. We learned the large and growing amount of resources available to judges for these programs. The ethical considerations were reviewed. We heard encouragement from Robert Grey, former chair of the House of Delegates and the only ABA President-Elect nominee. After long debate on the role of judges in public trust and confidence in our system of government, we adopted a resolution. The summit adopted a definition of judicial duties to include participation in public education programs to further the public's trust and confidence in the justice system. A report will be prepared and the resolution will be presented to the Judicial Division Council and the House of Delegates at the annual meeting to become official ABA policy. Great job by Jack Brown, Teri Curro and all who participated. I left that meeting feeling I had seen a vision of a major role of judges, second to fair, accurate, efficient and swift administration of justice. The enthusiasm of the judges and other groups was electric.

We joined a reception of the JD Standing Committee on Minorities in the Judiciary. The local minority bar and law students joined our members and the law students in the Judicial Clerkship Program. These receptions give us an opportunity to recruit new members and encourage law students. I told them that one of our goals is to support them, quoting President Elect Dennis Archer, who came to our opening reception and the opening of the clerkship program.

I trust by now you are impressed with the energy and dedication and quality activities of your leaders in Seattle. Next, State Trial Judges hosted a membership

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by Aimee Skrzekut  
Torres  
Chicago, IL

**Seattle Midyear Meeting—  
Something for  
Everyone!**

Seattle's glorious weather was especially welcoming as I departed from a frigid and snowy Chicago. Unfortunately, I doubt many

Midyear Meeting attendees were able to take in Seattle's heat wave as the Division offered more programming than ever before. A number of members participated in two brand new programs this year—the Onsite Leadership Institute and Judges Network Summit on Judicial Outreach. For those of you unable to attend, here's a quick overview of Division events:

Division Leadership learned to "Teach Around the Circle" February 5-6 during the Onsite Institute in Judicial Education. Dr. Pat Murrell, Kathy Story, the Judicial Division Leadership Institute Team and attendees explored the experiential learning model, adult development, learning styles and their application to judicial education and judging. The program concluded with a segment moderated by Judge Louraine Arkfeld aimed at identifying ways to institutionalize methodologies within the Division. Chair-Elect Rick Bien will explore ideas generated during the Institute brainstorming session during the

upcoming Joint Conference Planning Meeting in Aspen.

The Third Annual Judicial Clerkship Program (JCP) was a huge success with over 25 judges participating. Forty-two students from Cornell, Duke, Indiana-Bloomington, Michigan, New Mexico, Tennessee, Texas, Villanova and six students from CLEO participated in structured networking and research activities to encourage law students of color to consider judicial clerkships after law school. Special thanks goes to LexisNexis for generously supporting the computer training classroom for this amazing event. The JD also continued its strong support of the Spirit of Excellence Awards Luncheon (The Judicial Division, Lawyers Conference and Standing Committee on Minorities purchased tables this year.) All JCP participants attended the event and were recognized during the Luncheon.

The Summit on Judicial Outreach presented by the Judicial Division Judges Network and cosponsored by the ABA Justice Center attracted over 100 attendees. Participants heard from judges on the importance of engaging in judicial outreach and participated in the development of a resolution encouraging judges, courts and judicial organizations to consider it part of a judge's functions to develop, support and actively participate in public education programs about the law and the justice system. For complete details on the Summit, see the article written by Judges Network Chair Jack Brown on page 4 or check out the web page at <http://www.abanet.org/jd/judgesnetwork.html>

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**Division Nominating  
Committee Results**

by Judge Diarmuid F. O'Scannlain  
Portland, OR

Pursuant to Section 5.02 of the Judicial Division Bylaws, the Nominating Committee reports the following nominations:

- Judicial Member-at-Large  
Judge Norma Shapiro
- Judicial Division Vice-Chair  
Judge Jodi Levine

Pursuant to Section 5.03 of the Bylaws, nominations may be made by petition signed by at least fifteen Division members from no less than three Conferences and filed with the Division Staff Director at least 45 days prior to the Annual Meeting. Council and Executive Committee members must be notified of any nominations by petition at least fifteen days prior to the Annual Meeting.

Elections for these officers shall occur at the Annual Meeting in San Francisco in August, 2003.



Seattle, WA – Shown at the Welcome Reception sponsored by LexisNexis, (L-R) Matt Cegelis, LexisNexis, Dayton, OH; Hon. Jean Cooper, Washington, DC; Vicky Cashman, Middletown, OH.

**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.

All persons interested in submitting articles for inclusion in future issues of the *Judicial Division Record* should contact Judge Joel Medd, Editor, *Judicial Division Record*, Northeast Central Judicial District, P.O. Box 6347, Grand Forks, ND 58206-6347; Phone: 701/795-3824 x453, Fax: 701/795-3886, E-mail: [jmedd@ndcourts.com](mailto:jmedd@ndcourts.com) or contact Kris Berliant at ABA/Judicial Division, 541 N. Fairbanks Ct., Chicago, IL 60611, Phone: 800/238-2667 x 5700, Fax: 312/988-5709; E-mail: [berliank@staff.abanet.org](mailto:berliank@staff.abanet.org)

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**ARTICLE SUBMISSION DEADLINES**

Summer 2003: Wednesday, May 7

# Registration Fee Waived for Judges to Attend Litigation Section Annual Meeting in Houston

by Michael B. Hyman  
Chicago, IL

The annual meeting of the Section of Litigation has always attracted interest from the judiciary. It is about to attract a lot more.

Beginning at its annual meeting in Houston, April 9-13, the Section will waive the registration fee for judges. The Section hopes to arrange a similar waiver for its programs at the ABA Annual Meeting in San Francisco this August.

The Houston conference features six program tracks — Hot Topics, Fundamentals, Skills Enhancement, Corporate Counsel, Technology and the Law and Litigation Life Styles. Some of America's greatest trial advocates, teachers and judges will be in attendance. The program takes place at the Hyatt Regency in the heart of downtown Houston.

Judges are encouraged to take full advantage of this generous opportunity. For more information about the meeting and to register go online at [www.abanet.org/litigation/annual](http://www.abanet.org/litigation/annual).

Program materials were printed before the policy was adopted. A member of the judiciary should note that he or she is a judge on the form and then will be charged only for attendance at social events such as luncheons or dinners. The policy will also apply to the 2004 Section annual meeting in Phoenix.

The Judicial Division will be distributing its membership materials in Houston to encourage Litigation Section lawyers to join the Lawyers Conference and non-member judges to join a conference.

The Litigation Section will determine the future course of the registration waiver based on its success.

# Judicial Division Summit a Success

by Jack L. Brown  
Tulsa, OK

The Judicial Division Summit on Judicial Outreach presented by the Judges Network and co-sponsored by the ABA Justice Center was a tremendous success according to attendees at the February 7, 2003 program. Held at the Seattle Sheraton during the ABA Midyear Meeting, the Summit participants crafted a consensus resolution that encourages judges, courts and judicial organizations to consider it part of a judge's functions to develop, support and actively participate in public education programs about the law and justice system. The resolution, approved by the Judicial Division Council at their meeting in Seattle, seeks to further the public's understanding of and confidence in the American system of justice in addition to maintaining an independent judiciary.

The JD will sponsor the resolution in the ABA House of Delegates at the San Francisco Annual Meeting in August, 2003. The resolution replaces and updates ABA policy developed in 1992 to encourage judicial outreach.

JD Chair Judge James S. Sledge served as moderator of the Summit. Judge Sledge summarized the recent ABA survey on "Perceptions of the U.S. Justice System" which disclosed that 90% of the respondents wanted to learn more about the justice system from judges. Judge Sledge introduced the first panel of speakers who addressed the ethical considerations involved in performing judicial outreach.

Judge Dale Ramerman, King County Superior Court Judge; John Strait, Seattle University Law School professor and Reiko Callner, an attorney for the Washington State Judicial Conduct Commission gave insightful presentations on ethical matters. "Read and know your canons of judicial conduct" was the principal message of Ms. Callner, who investigates and enforces the canons in her work for the Commission.

Robert J. Grey, Jr., ABA President-Elect Nominee, spoke to the Summit about the ABA's commitment to public trust and

confidence in the justice system. Grey was enthused about the Judicial Division's outreach initiatives and challenged Summit attendees to utilize him and the resources of the ABA in their outreach work.

The Summit Program shifted to the next panel who gave presentations on collaborative efforts by state and local bar associations along with community organizations on judicial outreach programs. Cindy Zwick, executive director of the Arizona Bar, summarized her state's strategic plan for statewide outreach with Arizona judges. Chief Justice Gerry Alexander, Washington Supreme Court emphasized the Court's agenda by inviting the public to hear oral arguments before the Court at locations throughout the state. In addition, the Court's hearings are televised statewide on public television.

The panel topics concluded with a presentation by Young Lawyers Division (YLD) representative Paul Davis on the nationwide Junior Judges Program. The Judges Network, along with the YLD and Litigation Section, are developing a collaborative plan to institutionalize the delivery of judicial outreach programs at the local level nationwide.

The day preceding the Summit was devoted to the presentation of three highly successful judicial outreach programs by Seattle area judges. All three programs are available on the Judges Network website. Presenting the "Dialogue on Freedom Program" at four Seattle high schools was Judge Dean Lum. Recognized as a prolific facilitator, Judge Lum was amazing in his efforts to stimulate the minds of high school students' on the freedoms they too often take for granted in this country.

After Judge Lum summarized the Dialogue Program, Judge Michael Hurtado presented excerpts from his spirited outreach program, "Courts in the Classroom". The panel concluded with Judge Eileen Kato's presentation on the ABA's nationally acclaimed program entitled, "National Issues Forum". Judge Kato served as coordinator of the Seattle demonstration programs. She presented the Forum at South Seattle Community College.

Focused on the issues facing judges doing outreach, the Summit moved into roundtable discussions. The topics included a judge's duty to participate in

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## Technology Column – Tech Topics



by Athir Mahmud  
Chicago, IL

make headline news. However, what do these terms really mean? When are they true viruses and when are they just hoaxes? While I will explain what these terms mean, I will use the term “virus” to refer to these in general.

A virus, worm, or Trojan, also known as a Trojan horse, is a small program put together to cause damage to a one or more computers or networks. Every one of these

**VIRUS  
WARNING!  
WORM  
ALERT! NEW  
TROJAN!** We have all seen some, all, or variations of these exclamations in the subject headers of our email boxes at one time or another. The terms cause panic, fear, and even

is a little different but the intent is almost always malevolent. Viruses and worms are very similar in that they are self-replicating programs. Essentially, these are parasitic. Viruses typically attach to files on your computer and do their damage there. They may destroy a few programs or your entire computer. Worms do the same thing but are even more destructive in that they have the ability to spread to other computers, usually via email. A Trojan is nothing more than a program that seems harmless. Trojans typically have the file extension EXE after the name of the file. Simply downloading these files or opening the emails that sent them will not infect your computer. Instead, your executing the file is what allows the damage to occur. Doing so, you may see fireworks, a silly cartoon, or pretty much anything. All the while, this small program is destroying your computer in the background. Trojans are different from viruses and worms in that they do not replicate themselves.

But what about virus hoaxes? Where is the harm in telling someone they have a virus when in reality, they do not? On first glance, there seems nothing wrong with

this, other than it being a simple prank. It seems that it only instills fear in the recipient and nothing more. Well, the average computer user will send out the warning to everyone in their address book, who will in turn, all do the same, thus creating a slowed network. Sometimes, these even force networks to shut down. In this case, the “virus hoax” has accomplished its goal. However, some virus hoaxes occur when you receive a “friendly” message that actually gives you instructions as to how to get rid of a virus that was already on your computer. In the case of the “friendly” instructions, you are often prompted to go to a specific file or files on your hard drive and delete them. The result can be fatal. These are often files that are necessary to the functioning of your computer and removing them can create chaos.

So now that we know what they are and what they do, how can one avoid catching one of these potentially fatal technological bugs? Perhaps the first step is to change your email settings so that the preview pane in Microsoft Outlook, for instance, is not

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## Education/Technology Report From the Seattle Midyear Meeting 2003

by Judge Edward J. Schoenbaum  
Springfield, IL

The committee had a number of guests participate in the meeting where we discussed a number of past and future activities of the Education/Technology Committee. A subgroup has participated in two conference calls with Athir to focus on the Judicial Division’s web site and making it more beneficial to our members. If you have any suggestions for improving the JD or any of the Conference websites, please send them to me with a copy to Athir Mahmud at Mahmuda@staff.abanet.org

Athir Mahmud is preparing a series of columns for the Judicial Division Record so that judges can learn how to use the technology that is available to us. Please

read the article above. Send your suggestions on other topics you would like covered in future issues.

Judge Gary Randall organized things so that the State Trial Judges Executive Committee received the materials for their agenda books for the Midyear Meeting on their web board and he demonstrated other technology during their meeting in Seattle. We also suggested that the bylaws of the JD as well as the conferences be available on the web site.

Judge Gregory Holiday has reviewed the NCALJ web site and submitted a number of suggestions for improving its usefulness. We hope many of you will also check out the JD web site and your conference web site and send your suggestions for improving it to Athir Mahmud.

The committee reviewed the success of our third Mediation for Judges educational program in Chicago last November. The program also led to two new state trial judges joining the Judicial Division.

We are making tentative arrangements to offer the course next Fall in New Orleans and possibly next year in Phoenix. If your court, bar association, or judges

association is interested in hosting a similar program in the future, please contact me.

We were fortunate that Judge Dick Fruin, chair of the Judges Journal Editorial Board was able to join us for a portion of our meeting. We had been jointly exploring the possibility of developing a “Judges Journal Connection” patterned after the very successful ABA Journal Connection. We decided to do a pilot project this Fall around the Fall issue of *The Judges Journal* which will focus on the “Craft of Judging.” Each conference will be responsible for writing an article on the craft of judging from that conference perspective. We will also work with the authors to develop a summary article that everyone will be encouraged to read (we hope everyone will read all the articles) in preparation for a telephone conference call with a facilitator and the authors to have a 50 minute continuing judicial education program followed up by 10 minutes of questions and answers. If you have never tried the ABA Connection, you should try one before our pilot program. It is a free member benefit. We will be arranging for an 800 telephone number for our pilot

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## April ABA Connection: Meeting the Special Legal Needs of Children

**O**n April 16, 2003 at 1:00 p.m. Eastern the ABA Connection is presenting a one-hour CLE teleconference titled, "Meeting the Special Legal Needs of Children." This teleconference and accompanying ABA Journal article will focus on the difficult issues that arise when kids come into contact with the courts. Topics under consideration are: custody and visitation issues in domestic relations cases, changes in the family reunification laws, how the courts deal with children as witnesses; issues that arise when children become involved in the juvenile justice system and/or recent developments in dealing with alien minors who arrive in the United States unaccompanied by adult guardians. The program is a no-cost benefit of ABA membership, sponsored by the ABA Journal, Membership and Marketing, and the Center for CLE. Continuing Legal Education credit has been applied for in states that accept the teleconference format. To register, call the ABA at 1-800/285-2221 from 8:30 a.m. to 6:30 p.m. Eastern weekdays, beginning Monday, March 24th, or register online by Friday, April 11th at [www.abanet.org/CLE/connection.html](http://www.abanet.org/CLE/connection.html). If you are unable to participate in the live teleconference the program is available, at no cost, for one month on the ABA CLE Web Site at <http://www.abanet.org/cle/connection.html>. Tapes of the program are available to ABA members for \$50.00 two weeks after the program. To order a tape call the ABA Service Center at 1-800-285-2221.

Cosponsors: Family Law; Center on Children and the Law; Standing Committee on the Unmet Legal Needs of Children, Judicial Division, Young Lawyers Division

## On-line CLE Opportunities Available

**T**he Judicial Division and ABA Standing Committee on Judicial Independence are pleased to announce that two special CLE programs from the 2002 Annual Meeting are now online at West LegalEdcenter.

**What Role Should Ideology Play in Selecting Federal Judges?** To what extent should the United State Congress consider ideology in selecting Federal Judges at all levels? "Ideology" may be defined broadly to include conservative/liberal, Republican/Democratic, rich/poor, and limitation or restraint/activism. Who draws the line to avoid "undesirable ideologies"? This program was presented at the 2002 ABA Annual Meeting as a featured program in the ABA Presidential CLE Centre.

**The Supreme Court Speaks - Can Judicial Candidates? Life After Republican Party of Minnesota v. White** The decision of the Supreme Court of the United States in *Republican Party of Minnesota v. White* (122 S.Ct. 2528, 2002) has an impact on the canons of the ABA Model Code of Judicial Conduct and state codes of judicial conduct governing the speech of judicial candidates. The Supreme Court's decision invalidated on First Amendment grounds Minnesota's canon prohibiting judicial candidates from announcing their views on disputed legal and political issues. In this program, a panel of attorneys connected to the case, judicial ethicists, judges, First Amendment scholars and a legal journalist consider the

implications of the Supreme Court's decision on the speech of judicial candidates and on the independence of the judiciary. Hypothetical examples of judicial campaign speech are presented and discussed in the context of the Supreme Court's decision in *White*. This program was presented at the 2002 ABA Annual Meeting as a featured program in the ABA Presidential CLE Centre. ALL ABA MEMBERS ARE ELIGIBLE TO SELECT "MEMBER PRICING".

The programs are approved in many states for online MCLE credit.

As a member of the ABA Judicial Division you can take advantage of special member pricing for the **What Role Should Ideology Play in Selecting Federal Judges?** program— savings of up to 33% off the non-member price. Additional advantages of online CLE:

- Purchase of a program gives you six months' access to it.
- Programs can be taken from office or home – anywhere you access the Internet.
- Programs can be taken on-demand, bookmarked for convenient stop and start scheduling.

**Get Answers to Your Questions from West.** The Judicial Division and ABA Standing Committee on Judicial Independence are bringing you these special CLE programs online through West LegalEdcenter. To purchase a program or to get more information please call 1-800-272-7032. For technical help or assistance with enrolling in a program, please call West's toll-free technical support line at 1-800-495-9378. Technical support is available 24 hours a day, 7 days a week, 365 days a year.

## Director's Column

(continued from page 3)

In addition to outstanding programs, the Division provided a number of opportunities to connect with colleagues and network. ABA President-Elect Dennis Archer addressed Division members and Judicial Clerkship Program participants during the Welcome Reception made possible by generous support from LexisNexis. The Standing Committee on Minorities in the Judiciary and the Preston Gates Law Firm hosted an outreach

reception at the Washington Athletic Club to honor the minority judiciary and pay special tribute to retiring Washington Supreme Court Justice Charles Z. Smith. Conference dinners and receptions provided additional opportunities to take in Seattle and mingle.

If you missed Seattle, there is always San Francisco in August. For information on the Annual Meeting or upcoming Division programming, please visit the web page at <http://www.abanet.org/jd> As always, I look forward to hearing from you. Please call on me at: [torresa@staff.abanet.org](mailto:torresa@staff.abanet.org).

## Washington Justice Charles Z. Smith Honored

Retired Washington State Supreme Court Justice Charles Z. Smith was honored, along with members of Washington State's minority judiciary, at a special reception at the ABA Midyear Meeting in Seattle. Judge Gregory Holiday, chair of the JD Standing Committee on Minorities in the Judiciary, noted several of Justice Smith's many accomplishments and presented him with a memento of Lady Justice Bookends. Justice Smith stated, "I am deeply touched by the presentation." Judge Holiday noted that Justice Smith was the first person of color appointed to the Washington State Supreme Court. In a recent news story Justice Smith stated that now at age 75 it was time to step aside and let someone else step in.



## Minority Judicial Clerkship Program Grows

by Judge Joel D. Medd  
Grand Forks, ND

The third annual Minority Judicial Clerkship Program was held in Seattle at the Midyear Meeting. The program titled "Judges & Law Students: Building Relationships that Work" was a big success with 42 law students participating. The program is sponsored by LexisNexis and won the

2002 Section Officers Conference Meritorious Service Award. Law Students cited reasons for coming to the program as to find out why is a clerkship more advantageous than becoming a first year associate and to find out how law clerks may help to shape opinions or a judge's view of the law.

Students participated in small group discussions with judges about how law clerks function and then participated in a research exercise. The law students were also recognized at the JD Standing Committee on Minorities Outreach Reception and the Commission on Racial and Ethnic Diversity in the Profession's Spirit of Excellence Awards Luncheon.

According to a veteran participant attorney Robert Wone of Washington, DC: "The JCP program is a tangible effort by the Judicial Division and the Commission to encourage minority law students to consider clerkships. Having first year and second year law students allows those students to hear the message about clerking and return to campus to position themselves to apply. For these law students, this is probably their first and most complete exposure to judges and let's them know that there are judges seriously interested in having minority applicants for judicial clerkships."



Leading one discussion group was justice Frank Sullivan of the Indiana Supreme Court. The students participating were from left to right: Patrick Ngwolo, University of Texas; Leta Hollon, Arizona State; Justice Sullivan; Kristi Guillory of Duke; Kristine M. Koren, Cornell; and Joe Richburg, Michigan.

ABA President-Elect Dennis Archer expressed his appreciation for this outstanding ABA program which is helping to change the face of the ABA and the judiciary. Appearing here on the introductory panel are Judge James Scott Sledge, Judicial Division Chair; Professor J. Cunyon Gordon, consultant; Justice Frank Sullivan, Indiana Supreme Court; Nigel Roberts, LexisNexis; and Lawrence R. Baca, Chair, Commission on Racial/Ethnic Diversity in the Profession; and President-Elect Dennis Archer.



## Time Off the Bench

by Judge Tom Warren  
Wenatchee, Washington

You would think, from reading my travel ramblings, that we only visit Europe. Actually, our family has a long travel history in Mexico and Central America. Great vacations have been enjoyed in Costa Rica, Guatemala, Belize and many adventures in Mexico.

It all started with those month long leaves in the Army. We took off for a road trip around Mexico in the year of the 1968 Olympics. Were we crazy or what? Maybe just young and fearless! We drove down the west coast of Mexico through Mazatlan, Puerto Vallarta, and Guadalajara to Mexico City and back up through the mountains to Victoria and Monterrey and back into Texas. We survived the car break-in, the torrential flood in a backwater named San Blas (allegedly soon to be an undiscovered destination resort – hah!) where you cross rickety wood bridges over roaring rain filled rivers, and lots of highways that were still awaiting pavement. This was our first out of country trip testing the foreign language skills or lack thereof and overcoming the fear of the unknown. As you can tell from “Time Off The Bench”, we really got hooked. We had actually taken a Spanish course at the University of Texas-El Paso so it didn't go too badly. I can still, decades later, clearly say “mas cerveza porfavor” – more beer please! We loved the food (yum-shrimp wrapped in bacon and cheese), the culture, the people and the excitement of a different life style.

Mexico for many Americans is all about beaches and sun. Mary Ann and I are not really beach people, but we do seem to end up at beach resorts frequently. Thus while we do visit the beaches, we have learned to love a couple of interior Mexican destinations. We would recommend to you the two towns of Guanajuato and San Miguel de Allende, both located near each other in the colonial district of central Mexico. They can be reached by flying to Guadalajara, San Luis Potosi, or Leon, and then driving to these towns. Guanajuato is built in a canyon and is located in a historic mining district. It has a university popular

with Americans. San Miguel de Allende is an art colony with a lot of U.S. ex patriates. Both are exciting and great fun. They are the kinds of places that you think about retiring to or at least to rent a villa for a few months in the winter. Check out these websites: [www.mexconnect.com/MEX/mxc/tour.index.html](http://www.mexconnect.com/MEX/mxc/tour.index.html) and [www.internetsanmiguel.com](http://www.internetsanmiguel.com). Our favorite large city in Mexico is Guadalajara. Guadalajara, and the state of Jalisco, both have interesting shopping neighborhoods, crafts, year round good weather, and lots of big city cultural events. It does not have the crime, smog, nor overwhelming size (it is Mexico's second largest) that you experience in Mexico City. While there be sure and visit the suburb of Tlaquepaque. The whole city gives you the experience of the Mexican culture and vibrancy, which you do not get when you spend time in the beach cities where there are so many foreign tourists. To look at the opportunities in any of the Mexican cities or resorts, the Mexican government has an excellent website at [www.visitmexico.com](http://www.visitmexico.com).

To get out of the rain and snow of the Pacific Northwest we have spent a number of weeks in the winter at the Mexican west coast resorts. For us these have included Mazatlan, Puerto Vallarta, and Los Cabos. Some of our most memorable family experiences have come from those vacations. There is nothing like being in the airport in Mazatlan when your oldest daughter dislocates her shoulder. Having seen the hospital, her mother then grabs the shoulder, pushes it back in the socket and commands Katy to get on the plane. Maybe this is how Mary Ann obtained the reputation of being a tender and caring mother, and her children now follow her theory of “buck up and quit whining!” How about flying back from Puerto Vallarta when our youngest daughter Amanda who is sitting next to me (Mary Ann must have had a premonition), leans over in my lap, as we were landing in Seattle, and vomits all over me. You have never seen flight attendants exit a plane so fast while completely ignoring two passengers. Or how about

the time when having an excursion out of Cabo San Lucas to the “Hotel California” village of Todos Santos, when the “Gringo Judge” gets busted by the policia for running the hidden red light (the only red light). Go figure! It was close to lunch time and I think the police needed lunch money. I was hauled up to the police station by five policemen, and three police cars. Fortunately, our good traveling friends were carrying enough pesos, as no visa cards were accepted. Afterwards I asked if Mary Ann saw the court while she was killing time waiting for us. She said, “No, but I did find several really awful jail cells.” I left my business card to be given to the judge advising him I would have to forfeit my bail!

We have some good friends who have a time share at the Westin Club Regina ([www.loscabosguide.com/clubregina/](http://www.loscabosguide.com/clubregina/)) in the corridor between Cabo San Lucas and San Jose del Cabo. We have enjoyed the ambiance, weather, whales of this resort and the two cities at the foot of Baja California Sur. Los Cabos is growing like crazy and you should plan to visit there before it gets completely out of control. If you are a golfer it is a must. With all of the gringos being catered to, it is also becoming very expensive. Last year we also spent a week in Mazatlan. We were not really looking forward to it, as the last time (about 20 years ago) it was really going to seed. To our delight it is now a very exciting resort, very busy, cleaned up, lots of fun and easy to get around with the open air pulmonia taxis. We had a great time and can heartily recommend the experience. For a lot of information look at [www.mazatlan.com.mx](http://www.mazatlan.com.mx).

Wherever you go in Mexico, if you enjoy other cultures, you will have a good time. We heartily encourage some time off the bench in Mexico.



## Technology

(continued from page 5)

open. Since many of these begin their damage once the message is opened, keeping your emails from opening before you decide whether or not you want to do so can be a method of prevention. Another good idea is to never, ever delete anything from the hard drive of your computer. There are numerous files, programs, and applications that are vital to the functioning of your machine. If you are ever in doubt,

contact a trained professional about deleting files before doing anything. You can also err on the safe side by never opening an email from someone you do not recognize, especially if the subject line reads that you have won something, can achieve ultimate happiness, so on and so forth. That is not to say that your closest friends will not send you infected attachments. When I was in graduate school, a fellow classmate sent me a word processing document that was infected. Fortunately, I owned what I am about to

stress next. Finally, but perhaps most importantly, purchase and install anti-virus software for all of your computers. Make sure that the anti-virus software runs constantly and allows you to update periodically in order to keep up with newer viruses. The small amount of money you invest in anti-virus software can save you thousands of dollars in virus damages.

If you have further questions or concerns with respect to viruses or any other topic, please feel free to email me at [mahmuda@staff.abanet.org](mailto:mahmuda@staff.abanet.org).

## Education/Technology

(continued from page 5)

program. We also hope to publicize it so that non-members can call in and pay a reasonable charge for their participation.

Members may also want to invite other judges in their courthouse to join them in their chambers to see how the judicial division can help meet their needs to become more effective judges. We would also like to hear from our members about other topics that may be developed into future Judges Journal articles and Judges Journal Connection educational programs.

We would like to work with the Judges Journal on other uses of technology and distance-learning. Please send Judge Fruin or myself your suggestions. [EdSchoen@abanet.org](mailto:EdSchoen@abanet.org).

The Ethics and Judicial Outreach programs from the 2001 Annual Meeting in Chicago now have links and time lines so that anyone can listen to the whole program or focus on an individual speaker.

In addition, the NCALJ Ethics roundtable discussion on ethics from the Philadelphia Midyear Meeting also has one link but no specifics on who is speaking. The quality of the beginning of that program is not as good as the rest of the program.

The 2002 Annual Meeting educational program on "New Technologies and Best Practices for Courts" is available from the JD home page. Speakers include: Vicky Cashman, Chief Judge Robert Bell, Judge Gladys Kessler, and Alan Carlson, president of Justice Management Institute. <http://www.abanet.org/jd/judicial.ram>. There are additional speakers on this program.

We have had two technology tele-conference meetings with Athir Mahmud, our newest staff person who is responsible for technology. We are making progress and want your input.

## Summit

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judicial outreach, obstacles to performing judicial outreach and strategies for overcoming the obstacles. The roundtable discussions were led by the Honorable Sophia Hall, Honorable Andre Davis, Honorable Michael Pietruska, Honorable Ruth Kleinfeld, Honorable Louraine Arkfeld and Honorable James Wynn, Jr.

Table moderators, Joan Irion and Dan Gourash, followed a "speaking points" document prepared by Dan Gourash, Vice-Chair of the Judges Network. Conclusions from the roundtable discussions were presented by the table moderators to Summit attendees. Among the many excellent conclusions, participants determined that outreach should not be mandatory among judges, but should be strongly encouraged among a judge's many judicial functions. Another key conclusion was to focus efforts on presiding judges and state supreme courts on the vital need for judges to undertake

outreach programs and to urge judges to participate.

From the conclusions, the Summit then word-smithed a draft resolution:

RESOLVED, that the American Bar Association encourages judges, courts and judicial organizations to consider it part of a judge's functions to further the public's understanding of and confidence in the American system of justice, and to develop, support, and actively participate in public education programs about the law and justice system to promote the trust and confidence of the public that is crucial to maintain an independent judiciary.

A summary of the Summit roundtable conclusions is available on the Judges Network website at [www.abanet.org/jd/judgesnetwork.html](http://www.abanet.org/jd/judgesnetwork.html). In closing the Summit, Judges Network Co-Chair, Jack L. Brown, expressed thanks to the Lawyers Conference, the National Conference of Federal Trial Judges, the National Conference of Administrative Law Judges

and the National Conference of State Trial Judges for their financial support of the Summit and the work of the Judges Network. The Network is working with JD Chair-Elect, Rick Bien to stage its first stand-alone national conference on judicial outreach next year.



Seattle, Wa – Judges Network Co-Chair Jack Brown makes remarks at the Judicial Division Summit held February 7, 2003 at the Sheraton Seattle Hotel.

## Chair's Column

(continued from page 2)

drive in the space needle and the rest of us relaxed in conference dinners. Early Saturday morning, we began the business sessions in each conference. The chair of Judicial Branch of the Judicial Conference of the United States and former chair of Judicial Division, Deanell Tacha, met with Federal Trial Judges, Lawyers Conference, Standing Committee on Federal Judicial Improvements and the ABA lobbyists to discuss strategy for implementation of the Volker Commission Report. A lively discussion led to cooperation and a common strategy. When the timing is right, the ABA will launch a national, grass-roots campaign to build public support. When the House of Delegates began on Monday, Chief Judge Tacha was granted special privileges to address the House, immediately after the welcome of President Carlton. Following her comments, the House of Delegates unanimously adopted the resolution supporting implementation of the 2003 Report of the National Commission on Public Service especially an immediate and significant increase in compensation to federal judges. This may be the first time the ABA has worked so closely with the Judicial Conference of the United States on a matter of mutual interest. The leadership of the Judiciary and ABA now communicate regularly. Great thanks to Chief Judge Tacha for her leadership. The ABA again demonstrated its commitment to support of the judiciary.

During the conference business meetings, I discussed the report of the Millennium Task Force. The task force includes the vice chair of each conference and is chaired by Judge Leslie Miller and Justice Harry Lemmon. In the fall, the Task Force drafted long-range goals and a mission statement. The three focus areas are as follows: to be a national voice for the judiciary; to work to improve the administration of justice and professionalism; and to serve our members. In order to develop the required resources for the goals, the division will have to establish collaborations with other organizations. After discussion in each conference, the JD Council approved the statement, as follows: "The mission of the Judicial Division is to be the national voice of the judicial profession, serving the public and the profession by advancing justice, judicial independence, professional excellence, and public trust and confidence in the justice system." The Millennium Task Force will add the suggestions from the Council to the long range plan and mission statement and present the final form to the division. The Division Spring Planning Meeting in Aspen, CA, May 1 - 4 will develop precise steps and time lines for implementation of our goals. We want to intentionally move to accomplish our goals and be able to measure our success. The task force has given us clear direction and inspiration. We began with our last planning meeting, which was titled, "Sailing into Uncharted Waters." We now have charts and a course for our journey.

Another substantive issue presented to the Council was the report of the Ethics and Professionalism Committee. Judge Margaret McKeown chaired this committee. She reported that the ABA Ethics Committee has decided not to issue an opinion on Judicial Seminars. Judge McKeown has provided great leadership to the division and the Judicial Advisory Committee. This topic was a major discussion in the last annual meeting of the Council when Ethics Committee Chair Marvin Karp met with us and in the fall meeting of top ABA leadership, including me as your chair, and the executive committee of the Judicial Conference of the United States. A point of friction has been removed.

All of the many issues presented to the House of Delegates were discussed, as well as the financial problems caused by the large cost overrun in the ABA automation improvements. Judge John Vittone kept us informed of the Board of Governors.

Whew. As your chair, I must constantly run or I will be trampled by the energy and action of the division members. In the past two columns, I addressed large issues and philosophy. In this column, I attempted to demonstrate that Judicial Division is working to create and alter reality to change the big picture. The challenges are great, and the efforts of the division to meet those challenges are also great. Thank you for the privilege to work with you and to serve you.

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## Law Day

(continued from page 1)

appreciate that judicial independence is "the most essential characteristic of a free society." In a democracy, no one—no matter how powerful—is above the law, as long as judges have the authority to apply the law impartially and fairly.

Plan on joining your leaders in DC this May! For more information, log onto: <http://www.abanet.org/publiced/lawday/home.html> or call the Public Education Division at 312/988-5735.

Seattle, WA – Matt Cegelis, LexisNexis, Dayton, OH; Hon. Greg Holiday, Detroit, MI; Vicky Cashman, Middletown, OH enjoy the welcome reception sponsored by LexisNexis during the Midyear Meeting in Seattle, WA.



# Appellate Judges News

American Bar Association

## CHAIR'S COLUMN



by Justice Craig  
Enoch  
Austin, Texas

### A "Positive Move"

**P**ositive move" is how a number of people described the ABA Board of Governors Executive Committee's action authorizing the "Go Forward" committee. The "Go Forward" committee is the committee

charged with working out the details for a close and cooperative relationship between the ABA Appellate Judges Conference and the Appellate Judges Education Institute.

In my message in the Winter 2003 edition of the *Judicial Division Record*, I detailed the Appellate Judges Education Institute. It's a 501(c)(3) charitable educational organization, uniquely focused on the educational needs of the appellate judiciary, staff, courts, and practitioners, that is to be affiliated with Dedman School of Law at Southern Methodist University in Dallas. At that time, I expressed optimism about the ABA Board of Governors permitting the Appellate Judges Conference to go forward with its plan to provide quality appellate judge education in cooperation with the Appellate Judges Education Institute.

During the ABA Midyear Meeting, your AJC leadership had the opportunity to make presentations about the Institute to the various committees of the Board of Governors. We not only addressed individual governor's questions, but we also displayed the AJC leadership's commitment to a strong working relationship with the ABA's Judicial Division and the larger Bar. We were pleased with the exchange and impressed with the professional response. While

more is yet to be done, we are excited about the decision to "go forward."

The decision to go forward was the result of hard work by a lot of people. I want to thank the members of your AJC leadership team. My thanks goes to Judge Danny Boggs of the United States Sixth Circuit Court, our Immediate Past Chair, who superbly elaborated on the continued participation of the AJC in the life of the ABA; to Judge James Wynn, Jr. of the North Carolina Court of Appeals, our Chair-Elect, who brought life and passion to our point about the need for quality appellate judges education; and to John Attanasio, dean of the Dedman School of Law (and Chair of the ABA "Out-of-the-box" Committee on the Future of Legal Education), who made it clear that SMU Dedman Law School is committed to the success of the appellate judges education programs. As well, I want to thank Judge Diarmuid O'Scannlain of the United States Ninth Circuit Court, a former member of our Executive Committee and Immediate Past Chair of the ABA Judicial Division, for his continued behind-the-scenes work in support of the Institute. Also I would like to thank ABA President A.P. Carlton, ABA Executive Director Bob Stein, the members of the ABA Board of Governors Executive Committee, and ABA Governor Bill Robinson, our Executive Committee Liaison from the Board of Governors, for their efforts on behalf of quality appellate judge education. Finally, thanks should be given to all the members of your AJC Executive Committee, who have spent long hours going over the details of the Education Institute, participating in conference calls, attending meetings, and doing those things necessary for successful appellate judges education programs.

Regarding other activities at the ABA Midyear Meeting, I must certainly thank Justice Frank Sullivan, Jr. of the Indiana Supreme Court, for his successful effort as Chair of the Judicial Division's Minority Clerkship Program. Over 40 students and a number of judges from around the

country participated in the program, which was designed to inform the students about clerkships and to introduce them to the clerkship experience. The students were bright and motivated and they were given a number of opportunities to meet judges both in a classroom setting and informally. To say that their comments at the end of the program were glowing would be an understatement.

A number of you have received the LL.M. in Judicial Process degree from the University of Virginia Law School Graduate Program for Judges. Recently you should have received a letter from Professor Earl Dudley, Director of the program, asking that we contact our respective congressional office-holders about federal funding for the State Justice Institute. For those of you who don't know, the State Justice Institute has been the primary scholarship provider for judges attending the Masters program. I've contacted my representatives and senators, and I hope you will contact yours. Judicial continuing education is a necessary component of good government. And while I certainly wouldn't want our educational programs totally dependent on government funding, the State Justice Institute helped us strike the right balance in funding our programs between private, government, and tuition dollars.

Finally, I want to remind you to watch the mail for announcements of our upcoming educational programs. Our Spencer-Grimes Appellate Judges Seminar Series has two outstanding programs planned. One is in conjunction with our Council of Appellate Lawyers, July 24 - 27, 2003, in Providence, Rhode Island. The other is in conjunction with the Canadian National Judicial Institute, October 26 - 29, 2003, in Victoria, British Columbia. If you have any questions, please call our dedicated staff at the ABA Judicial Division offices.

**JUDICIAL**  
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## Good Things Happen With Three

by Judge Rosemary S. Sackett  
Chief Judge, Iowa Court of Appeals  
Okoboji, IA

A Tri-State Appellate Court Conference held in Iowa brought together the Court of Appeals judges from Iowa, Minnesota, and Wisconsin. The concept of the conference was initially conceived by Chief Judge Thomas Cane of the Wisconsin court at the annual meeting of the Council of Chief Judges of State Courts of Appeal in Seattle, Washington, in the Fall of 2000. Judge Cane saw it as an opportunity for the courts from the three states with geographical and other similarities to discuss common problems and ideas and to provide education for all concerned.

The planning was conducted by telephone conference among the three Chiefs, Chief Judge Tom Cane, Chief Judge Ed Toussaint of Minnesota, and Chief Judge Rosemary Sackett of Iowa, as well as the three chief staff attorneys of each court. The conference was held in Decorah, a college town in northeast Iowa, an easy drive for the Minnesota court, who all are headquartered in St. Paul, and for the majority of the Wisconsin judges. Interestingly enough, some of the Iowa judges were required to travel the furthest. Each court was responsible for planning a half-day program.

The conference format called for the judges and their staff attorneys to arrive on Wednesday afternoon, and for the conference to commence with a banquet

that evening for the judges. A basic tenet of the program required judges to join and confer with the judges from their sister states. The evening banquet program was informal and called for the chief judges of each court to introduce themselves and then to introduce the next judge in seniority, who in turn introduced the next judge in seniority, until all the judges were introduced. The introductions were not lengthy and included both professional and personal information. The discussions and dialogue followed the dinner and continued into the evening.

The Thursday morning program, which had been assigned to Iowa, began with a continental breakfast, included a presentation by an Iowa District Court (trial) judge, followed by a panel discussion by judges from the three states on the issue of appeals of termination of parental rights cases.

The Wisconsin segment of the program followed the luncheon and found Wisconsin staff attorney Ronald R. Hofer presenting a program on legal writing.

The Thursday evening program called for the judges to form into smaller groups, and for each group to select a Decorah restaurant for dinner, and thereafter to attend a program at Luther College where White House correspondent emeritus Helen Thomas was the featured speaker. A full day concluded when the Iowa court hosted a wine and dessert party at the hotel.

Minnesota designed the Friday morning program, at which three appellate lawyers from the three respective states spoke about their concerns and problems with the appellate process, and provided suggestions to address certain of the challenges that

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### EDITOR'S NOTE

Editor: Hon. Stephen McEwen, Jr. Media, PA

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All persons interested in submitting articles for inclusion in future issues of the *Judicial Division Record* should contact Judge Stephen McEwen, Jr., Superior Court, 201 W. Front Street, Media, PA, 19063, E-mail: judge.mcewen@superior.court.state.pa.us Phone: 610/565-9191; Fax: 610/565-9385 or contact Kris Berliant at ABA/Judicial Division, 541 N. Fairbanks Court, Chicago, IL 60611; Phone: 800/238-2667 x5700; Fax: 312/988-5709; E-mail: berliank@staff.abanet.org

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### ARTICLE SUBMISSION DEADLINES

Summer 2003: Wednesday, May 7

# On Appellate Judges Sitting at the Trial Level: A Useful Idea for the Judicial System

by Judge Steve Leben  
Olathe, KS

*Steve Leben has been a Kansas trial judge since 1993, and has served since 1998 as the Editor-in-Chief of COURT REVIEW, the quarterly journal of the American Judges Association.*

I write here to advocate a simple proposition: Where allowed by law, appellate judges should consider periodically sitting by designation as a trial judge.

The converse—a trial judge sitting by designation on an appellate court—is a common occurrence. As a Kansas state trial judge, I've had the opportunity to sit with both the Kansas Court of Appeals and the Kansas Supreme Court. Each of those experiences has made me a better trial judge.

Despite this frequent appearance of trial judges sitting by designation on the appellate bench, there appears to be little counter flow. Some of the reasons for this are easy to spot. Trial judges often seek to move "up" to the appellate courts, which are seen as more prestigious. Except for the occasional state-court appellate judge who moves to the federal trial bench, very few appellate judges seek to move permanently in the other direction. In addition, of course, many appellate courts have been overloaded with cases for some time. Thus, they have sought outside help. And while lots of trial courts are similarly overburdened with high caseloads, other trial courts still have more manageable workloads, making it easier to accept special assignments. So there are some natural reasons why appellate courts seek help from the trial bench, while appellate judges tend not to seek assignment "below."

But should this be the case? I think not. The same advantages accrue when judges of either level occasionally serve in a different capacity.

Advantages that have been suggested to accrue from having trial judges sit on the appellate court include:

- Familiarizing trial judges with appellate practices, including standards of review;
- Obtaining greater collegiality between trial and appellate judges, who would each learn from the interchange about the realities of decision-making at the trial and appellate levels; and
- Easing the burden of heavy workloads for some appellate courts.<sup>1</sup>

All of these same advantages could apply when an appellate judge sits as a trial judge. First, appellate judges—whose work largely consists of reviewing proceedings at the trial level—surely could benefit from personal experience with current trial court procedures and proceedings. We all learn somewhat different things from personal experience than from other methods of learning. Second, if greater collegiality results from the interchange between appellate and trial judges while the trial judge sits with the appellate court, the same should result any time an appellate judge handles any trial proceeding in a courthouse inhabited by trial judges. The interchange will be significant, and the trial judges will greatly appreciate the appearance there by a judge from a "higher" court. Third, though appellate courts are certainly very busy, some trial courts have inordinate caseloads as well, whether due to particularly high drug-offense caseloads, the location of a prison in the district, or other factors. In at least some parts of the country for at least occasional time periods, there probably are some trial courts that are busier than their appellate counterparts and, thus, in similar need of help.

There may be additional reasons to encourage this relatively uncommon practice, though we do not have any reported research or systematic study. For this article, I made some inquiries by e-mail to the members of the Law and Courts Section of the American Political Science Association, a group of about 800 knowledgeable folks, and learned that a substantial number of federal appellate judges have taken assignments to the trial bench for specific cases or terms, something that is specifically authorized under 28 U.S.C. section 291.

The Seventh Circuit's Richard Posner, one of the preeminent judicial thinkers of our time, attempts to preside over one trial each year (a goal that is sometimes foiled

by settlements). He usually does civil jury trials, but presided this February over the court trial of a patent dispute. He considers these experiences invaluable for getting "a better sense of the reality of a trial and the difference between a trial as experienced at the trial level and as refracted through the appellate briefing and argument at the appellate level."<sup>2</sup> Since he came to the appellate bench from academia, not from the trial bench or bar, he has found this practice particularly useful.

Other federal appellate judges who have taken assignments to the trial bench include Chief Justice William Rehnquist, who as an associate justice presided over a jury trial involving a section 1983 claim and was reversed by the Fourth Circuit;<sup>3</sup> former Supreme Court Justice Tom Clark; Second Circuit Judge Ralph K. Winter; Seventh Circuit Judge Frank Easterbrook; and Ninth Circuit Judges Betty Binns Fletcher, Alfred T. Goodwin, Alex Kozinski, Harry Pregerson, and Stephen Trott. I am told that a number of state judges have done so as well. And I'm told that state supreme court justices in Australia regularly engage in both trial and appellate work.

One of the political scientists who responded to my inquiry (whose name will be protected for reasons that will become obvious as you read ahead) pointed to one other potential advantage: "I find it disturbing to read opinions from appellate judges that illustrate a huge disconnect with the trial process." Now, I'm not sure I would have said "huge disconnect." The question raised is a valid one, though: Can an appellate judge who sits only on an appellate court for, say, 20 years remain sufficiently in touch with what goes on in the trial courts and law practice generally? Perhaps. But perhaps that understanding and sense of being in touch with the everyday work of the court system could be enhanced by occasional stints as a trial judge.

It may be too much to ask, even for those who come to the appellate bench from the trial court or trial practice, to keep abreast of what's going on at the trial level over a career of 10 or 20 years or more as an appellate judge without occasionally coming back to the lower court. In addition, for state supreme court members, who regulate the practice of law in addition to deciding appellate cases,

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## Good Things

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confront the bar. Following the luncheon recess, the attendees divided into discussion groups, with each group including an equal number of judges from each state. The staff attorneys met in a separate discussion group.

The conference was attended by full contingents from each of the three courts. Fortunately, Mary Ellen Donaghy, staff director of the Appellate Judges Conference, was able to attend and present her very special perspective upon issues and challenges. Although there was a strong consensus among all three courts that the conference was successful and should be scheduled every two years, state budget problems in the three states may curtail the next meeting tentatively planned for Lacrosse, Wisconsin. Each of the courts will undertake a special effort to determine funding sources to enable the conference to be conducted.

The success of the program can be credited to the preparation of each of the three courts, the quite purposeful programs each state provided, and the active personal participation by the individual judges. The location of the conference was also a key factor, as Decorah, a city of eight thousand people, is the home of Luther College, which featured a lovely campus as well as very accommodating administrators who were perfect hosts. Since there were few problems parking or driving to various points in town, the small town atmosphere provided an intimate setting difficult to duplicate in a larger city. Since the site was within a reasonable driving distance for the judges of all three states, they did not experience the frustration and time delays which accompany air travel. A further pleasant feature was the renovated turn-of-the-century historic hotel, the Hotel Winneshiek, the conference headquarters, which had undergone recent and total

renovation, making it a hotel of five-star caliber and reasonable tariff.

The courts used various funding methods to pay for their judges' expenses. While Minnesota and Wisconsin had money in their court budgets, Iowa met the out-of-state travel freeze by scheduling hearings and an education program upon parental rights in Decorah prior to the conference.

Should a neighborhood of state appellate courts be interested in such an undertaking, the sponsors of this conference welcome inquiries:

- Chief Judge Thomas Cane (WI): thomas.cane@courts.state.wi.us
- Chief Judge Edward Toussaint (MN): edward.toussaint@courts.state.mn.us, and
- Chief Judge Rosemary Sackett (IA): rssac@rconnect.com

## On Appellate Judges

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having periodic re-emersion at the trial court level—closer to the level of most everyday practice—could be especially valuable.

Most significantly, we are all part of what the public rightly regards as a single judicial system. To the extent that the public perceives strong tensions between different levels of the judiciary, rather than

a single court system primarily concerned with upholding the rule of law, we all suffer. Having both trial judges sit periodically as appellate judges and appellate judges sit periodically as trial judges can help all of us to see that we are in this together, while enhancing the ability of each of us, enhanced by these experiences, to do our respective, primary jobs to the best of our abilities.

<sup>1</sup> See Richard B. Saphire & Michael E. Solimine, *Diluting Justice on Appeal?: An*

*Examination of the Use of District Court Judges Sitting by Designation on the United States Courts of Appeals*, 28 U. Mich. J. L. Ref. 351, 361-62 (1995).

<sup>ii</sup> Correspondence with the author, Feb. 1, 2003.

<sup>iii</sup> See *Heislup v. Town of Colonial Beach*, 1986 WL 18609 (4th Cir. 1986).

## Monitoring and Troubleshooting: The Keys to Expediting Appeals

by Richard B. Hoffman, Alexandria, VA  
and Barry Mahoney, Denver, CO\*

American state intermediate appellate courts that succeed in handling their caseloads expeditiously have taken responsibility for the entire appellate process, beginning with the filing of the notice of appeal. They have recognized the public interest in minimizing delays, have committed them-

selves to deciding cases in a timely manner, and have mobilized themselves to pay sustained attention to effective case processing.

While resources are important to how effective an appellate court is in handling its caseload, what makes a significant difference in case processing time is how the resources are actually used: what caseload management strategies and techniques are adopted and employed by the court.

Those are some of the findings of a study we conducted of six American state intermediate appellate courts—the Appellate Caseload Management Improvement Project. It was designed to build on what was learned through previous studies, especially those that

focused on how long it took cases to proceed from filing in the appellate court to disposition by that court. We wanted to learn not only how long it was taking these six courts to decide their cases but even more, we were seeking out all the different mechanisms different courts, including many other state intermediate appellate courts, use to process their cases more effectively.

The project report, published in full as *Managing Caseload in State Intermediate Appellate Courts: What Mechanisms, Practices, and Procedures Can Work to Reduce Delay?* in 35 INDIANA LAW REVIEW 467 (2002), presents basic information about workloads, resources, operating procedures, and case processing times in state

(continued on page 15)

# Monitoring

(continued from page 14)

intermediate appellate courts in Maryland, New Mexico, Ohio, and Washington State. Even though we documented difficulties in making cross-jurisdictional comparisons of appellate court processing times, we were able to see major differences among the courts as well as identify common problems.

Key problems common to many courts were:

- Delays in the preparation and filing of trial court transcripts
- Delays in appointment of appellate counsel for indigent defendants
- Case overloads facing attorneys in small law offices and major institutional litigants, especially public law offices
- Leniency by appellate courts in granting extensions of time to file briefs
- Sheer complexity of some cases and
- Existence of backlogs of undecided cases in many courts.

Monitoring and troubleshooting stood out as the most successful mechanisms used to assist appellate courts to reduce delays and improve performance. One good example is the need for court staff to keep a close watch on transmittal of transcripts and records on appeal: often, even when these are prepared speedily, time is wasted by convoluted procedural steps taken to get these essential components of an appellate case before the judges who will decide it.

Technological innovations may make it possible for some activities to proceed far more swiftly and efficiently but it turns out that many of these, such as computer-aided transcription (CAT), are employed relatively infrequently to expedite cases through appellate courts. Many state intermediate appellate courts exercise relatively little control over court reporters who work for trial courts.

Much data that would be useful to manage appellate case processing is currently stored in the automated information systems of most appellate courts. Nevertheless, it is not made available to court leaders in a useful and useable form. Alternatively, it may be

available but simply not used for monitoring, analysis, problem identification, and planning purposes.

We assembled a range of mechanisms that had proven successful. In the record preparation stage, these included:

- Using a transcript coordinator to track transcript ordering through completion
- Continuing oversight of transcript preparation by the appellate court
- Rapid transcription of audio tapes and
- Good communications between appellate and trial court staff.

At the briefing stage, we found other mechanisms were shown to work:

- Policies to control extensions of time or continuances and
- Resolving compliance problems of institutional litigants.

Finally, in the decision and opinion preparation stage, still other approaches were indicated as successful:

- Early assignment of cases to panels and a “lead judge”
- Augmenting judicial and staff resources on a temporary basis to eliminate backlogs
- Shorter opinions
- Monthly reports and judges’ meetings and
- Proactive leadership by the chief judge.

Our report recommends three initiatives to help catalyze action in these courts. We believe that implementing them will ultimately lead to significant improvement. First, a system is needed to collect and publish comparable data on workloads, resources, structures, operating procedures, productivity, and case processing times of intermediate appellate courts. Workload and case processing time data that are comparable simply do not exist. The major and highly useful study of case processing time in 1993 by the National Center for State Courts was a one-time effort and has not been repeated or replicated.

Second, demonstration projects to incorporate an array of modern procedures and technologies should be designed, implemented, and evaluated. We identified at least eight techniques—from goal-setting to electronic transmission of

records—that deserve to be implemented for testing.

Third, educational programs for judges and administrators that focus on appellate caseflow management are sorely needed. Several programs were conducted over a decade ago, but few vehicles now exist to educate appellate judges, key staff members such as appellate court clerks and central staff attorneys, bar leaders, and other stakeholders about the concepts and techniques of sound appellate caseflow management.

In too many ways, the experience with efforts to reduce the time it takes a case to proceed through the appellate process has changed relatively little in the past decade and even before then. While trial courts also have much work to be done to conquer backlogs and eliminate delay, there has been more emphasis on resolving bottlenecks at the trial level. Yet at both levels of court, we have known about solutions for a good many more years than we have been trying very hard to implement them.

It is our hope that the Project report will lend support to those judges, administrators, and bar leaders in the appeals courts who are striving to bring these courts current with their caseloads.

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We present here some findings and conclusions from a study conducted by The Justice Management Institute based on research conducted by the authors under a grant from the State Justice Institute (No. SJI-98-N-032). Points of view expressed herein are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

\* Richard B. Hoffman is now Principal Court Management Consultant and Project Director for the International Programs Division of the National Center for State Courts. Barry Mahoney is President Emeritus of The Justice Management Institute. We appreciate the information and insight of a great number of court officials and many others who assisted us and are identified in the report at 35 Ind.L.Rev. 467.

# Lawyers Letter

American Bar Association

## Lawyers Needed for Judges Network

**L**awyers Conference members have been very active in the work of the **Judges Network** since it's beginning two years ago. LC Vice-Chair Jack L. Brown was the initial chair of the Judges Network and the current co-chair along with Federal Judge Marvin Aspen. The Network was launched under LC past chair and current JD Chair-Elect Rick Bien's term as a method for lawyers to work with judges in the presentation of outreach programs on public trust and confidence in the justice system. Rick Bien along with LC secretary Dan Gourash brainstormed with Jack Brown and past JD Chair Judge David Horowitz to develop the web-based Network to disseminate judicial outreach programs.

The LC has proven to be a valuable training ground for LC members interested in working with the Network. LC Chair-Elect Justin Connor assisted in designing the Network website and continues to provide valuable technical assistance in updating its programs.

The Judges Network along with the Young Lawyers Division and Section of Litigation are developing a concerted plan of action to organize judges and lawyers at the local level to work with local and state bars and other community groups in the delivery of Network programming. LC members are needed to get involved in their communities with this effort. For more information on how you can become involved in the Judges Network, access the Judges Network website at: [www.abanet.org/jd/judgesnetwork.html](http://www.abanet.org/jd/judgesnetwork.html). Join the Judges Network list serve at [JD\\_Network@mail.abanet.org](mailto:JD_Network@mail.abanet.org)



Seattle, WA - Law Student Liaison Benjamin Longoria, LC Chair Anne Kelley, Hon. Ronnie Yoder and Hon. Sam Bufford leading a fun night of singing during the Evening of Enchantment held Friday, February 7 at the Washington Athletic Club. On the piano is Administrative Law Judge Ruth Kleinfeld.

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by Anne Kelley  
Seattle, Washington

It was a pleasure to be able to act as host in beautiful and sunny Seattle, Washington as the ABA gathered in my home city for the Midyear Meeting from February 7-9. The air was just cool enough to keep us crisp and brisk at our meetings and while

performing our tasks. And the sky was just sunny enough to lift our spirits and create great Judicial Division energy, starting with the Summit on Judicial Outreach held Friday, February 7.

The Summit, as reported throughout this issue of *The Record*, was a fantastic success and a great kick-start to former LC Chair **Rick Bien's** upcoming year as Chair of the entire Judicial Division. In 2003-2004, a broader national meeting on judicial outreach is planned, and there is lots to do to accomplish the goals of the Judges Network. The Summit created momentum to reach out to bar organizations and ABA sections and divisions for assistance. I encourage all LC Members to assist with the next phase of the Judges Network project! See the insert in this *Lawyers Letter* regarding participation in the Judges Network project.

The Executive Committee meeting was the best attended in recent memory—we are happy to include non-Executive Committee Members in our sessions, and are open to involving as many LC Members as are interested in attending. We particularly appreciated the participation of **Cheryl Cesario**, whom I mention below and who is the General Counsel for the Illinois Department of Children and Family Services, and **Gloria Wilson Shelton** of Baltimore, Maryland. Gloria is the LC's liaison to the Standing Committee on Minorities in the Judiciary and is head of the Correctional Litigation Division for the Office of the Attorney General of Maryland. On another note of appreciation, I commend the excellent support of the ABA Staff at the Midyear Meeting, particularly the special contributions of our own **Teri Curro**. Teri was a key force behind the Summit and all LC activities at the Midyear Meeting.

We were extremely efficient in Seattle at addressing the many issues on our docket and in focusing on the tasks ahead as we prepare for the Annual Meeting and the next ABA Year. Specifically, we reviewed the Millennium Task Force's comprehensive 5-year plan for the JD, and discussed opportunities to focus LC resources on key projects in the years to come.

One key project focuses on updating and promoting the adoption of model guidelines for judicial evaluation programs for state judiciaries. Retired Texas **Judge Frank Finn** is spearheading this project with the assistance of Cheryl Cesario. The goal of this important project is close examination of existing ABA guidelines for judicial evaluation, and, as necessary, updating the guidelines to reflect current best practices among the states. Upon completion of the project, which is envisaged to take approximately 18 months, the guidelines are to be presented to the ABA House of Delegates for approval as Association policy. The new guidelines will then be distributed widely to state and local judiciaries. As LC Chair-Elect **Justin Connor** agrees, this is a key focus for the next year and we are hoping to really make significant advances in the program planning in advance of the Annual Meeting. Indeed, this program, along with a variety of strategic goals and objectives, will be discussed as Justin leads the LC planning meeting in Aspen, Colorado at the end of April.

In session, we also focused on LC membership, which I am happy to declare is up! More significantly, we discussed how to encourage more involvement by Members with LC Committees. In the next issue of the *Lawyers Letter*, we will provide a breakdown of the Committees

which make up the LC and list the types of projects and assistance needed to support the LC's various programs. For LC Members wishing to become involved immediately, the very active Membership (**Michael Hyman**, Chair) and Publications (**Emily Barnhart**, Chair) Committees are in need of assistance. If you have an interest in committee involvement, or have questions about what involvement might entail, please feel free to email me directly at [annemu@microsoft.com](mailto:annemu@microsoft.com).

We are very excited about the Annual Meeting, and encourage Members who have yet to become active to come to the Meeting in San Francisco, California this August. (From personal experience, I would bring a warm sweater or jacket because you know what Mark Twain said about the coldest winter he ever spent!) The JD will sponsor many excellent programs, including a technology program focused on the security of court networks and information and a program articulating judicial and litigation perspectives on complex litigation. Also, new for the LC and due to the incredible participation of the membership this year, we will be awarding many of our Members for their great contributions to the administration of justice. As always, we will enjoy the camaraderie of the entire JD and the teamwork within LC in particular. August is just around the corner!

Finally, the LC Nominating Committee is in the process of identifying individuals for leadership roles in the upcoming ABA year. We look forward to any additional nominations as permitted under the JD rules, and to the election at the LC Business Meeting which is currently scheduled for Saturday morning, August 9 during the Annual Meeting in San Francisco.

### EDITOR'S NOTE

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

All persons interested in submitting articles for inclusion in future issues of the *Judicial Division Record* should contact Ms. Emily Barnhart. E-mail: [barnhart@ballardspahr.com](mailto:barnhart@ballardspahr.com), Publications Chair, 1735 Market St., 51<sup>st</sup> Fl, Philadelphia, PA 19103; Phone: (215) 864-8276; Fax: (215) 864-9809 or contact Teri Curro at ABA/Judicial Division, 541 N. Fairbanks Court, Chicago, IL 60611; Phone: 800/238-2667 x5689; Fax: 312/988-5709; E-mail: [currot@staff.abanet.org](mailto:currot@staff.abanet.org)

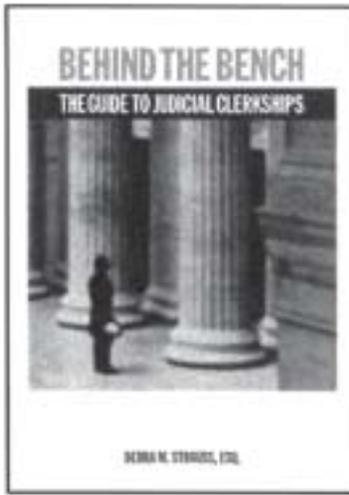
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### ARTICLE SUBMISSION DEADLINES

Summer 2003: Wednesday, May 7

## Debra M. Strauss' *Behind the Bench: The Guide to Judicial Clerkships* (BarBri Group 2002)

by Emily J. Barnhart  
Philadelphia, PA



The definitive source on every aspect of judicial clerkships, including information about the courts, the range of judicial clerkships, all phases of the application process, and what to do once you have the clerkship of your dreams, has finally arrived. *Behind the Bench: The Guide to Judicial Clerkships* by Debra M. Strauss, Esq. is the book I wish I had had when applying for a clerkship! *The Guide's* author, Ms. Strauss, is a fellow Lawyers Conference Member, and has been involved with the ABA for the past fifteen years.

Ms. Strauss is the national expert in the area of judicial clerkships. A graduate of Yale Law School, Ms. Strauss served two clerkship terms for the Honorable Charles L. Brieant, then-Chief Judge of the U.S. District Court for the Southern District of New York. She served the first directly after law school, and the second years later as a Permanent Law Clerk. In addition to her personal experiences applying for clerkships and acting as a federal court law clerk, Ms. Strauss' later work experiences make her imminently qualified to author a book about judicial clerkships and the application process.

After practicing at a commercial litigation firm, Ms. Strauss returned to Yale Law School as Director of Judicial Clerkship Counseling and Programs. She established the judicial clerkship program at Yale, which achieved national prominence and resulted in a record number of Yale students obtaining clerkships. She went on to serve as project director of the National Judicial Clerkship Study, sponsored by the National Association for Law Placement and the ABA, and authored the report on the 2000 National Judicial Clerkship Study, portions of which were reprinted in the *Judges' Journal* (Winter 2000).

Ms. Strauss is currently a professor and consultant, and has published and presented numerous articles and programs on clerkships and the courts. I asked her what prompted her to specialize and devote the majority of her career to the judicial clerkship area, and to write *The Guide*. She informed me that "the ideas for this book had been forming from my own experiences throughout the years, first as a student at Yale Law School applying for a clerkship myself with virtually no guidance or information, then as a law clerk. Through my subsequent years in private practice, I came to recognize the value of a clerkship in one's law practice and general career." Greatly appreciating her role as a Permanent Law Clerk, Ms. Strauss emerged an enthusiastic advocate, and returned to Yale "to spread the word of this remarkable world of clerkships." The idea for the book stemmed from the continued "void of resource materials to assist law students with this unique and mysterious process."

I highly recommend *Behind the Bench: The Guide to Judicial Clerkships* not only as an indispensable resource to law students about to embark on the quest for a clerkship, but also to judges as a reference and to attorneys interested in reconnecting with the judicial process and the administration of justice.

I recently had the opportunity to share *Behind the Bench: The Guide to Judicial Clerkships* with numerous judges while attending Judicial Division events at the ABA Midyear Meeting in Seattle, Washington. Many judges were caught by the title, and were very interested in looking at *The Guide*. All received *Behind the Bench* favorably. United States Bankruptcy Judge Samuel Bufford of Los Angeles, California noted that Ms. Strauss' *Guide* is "an excellent resource for students regarding the types of qualifications and criteria that are important to

judges making clerkship decisions." Judge Bufford went on to comment that his clerkship decisions are also influenced by his connection with an applicant during the interview process, and that *The Guide* "provides valuable tips to applicants throughout all phases of the application process, including interviewing with judges."

I also discussed Ms. Strauss' *Guide* with Judge Gregory Holiday, chair of the JD Standing Committee on Minorities in the Judiciary, prior to the ABA Midyear Meeting. After reading information and reviews about *The Guide* on Ms. Strauss' website ([www.judicialclerkships.com](http://www.judicialclerkships.com)), Judge Holiday was enthusiastic to connect law students to this valuable resource. "This book is a real treasure chest of information for law students and law graduates alike. It opens the door to a whole realm of potential experience that few law students and law graduates know the value of. While my group continually promotes judicial clerkships, we are simply unable to spread the word as quickly and thoroughly as Ms. Strauss has done." Brochures for *The Guide* were made available to law students participating in the JD's two-day Judicial Clerkship Program held during the ABA Midyear Meeting.

Additionally, Judge Holiday commented that the chapter devoted to a discussion of "Minorities, Women and Clerkships" and the appendix containing "Data on Minorities, Women, and Clerkships from the National Judicial Clerkship Study" were particularly relevant additions. Ms. Strauss was kind enough to donate several copies of her book to be awarded at the Minority Outreach Reception hosted by the LC during the Midyear Meeting. Law students Rosa Chavez of University of Oregon School of Law and Nikhil Chourey of Willamette University College of Law were excited to receive copies of *The Guide*, and look forward to using *The Guide* during their clerkships searches.

For more information about *Behind the Bench: The Guide to Judicial Clerkships* (BarBri Group 2002) and access to numerous other reviews and testimonials about her wonderful book, please consult Ms. Strauss' website at [www.judicialclerkships.com](http://www.judicialclerkships.com). For those interested in purchasing a copy of *The Guide* for a law student, judge, law school, or for personal reference, *The Guide* is available to order by phone at: 1-800-787-8717 (West Group); or on-line at [www.gilbertlaw.com](http://www.gilbertlaw.com) and [www.nalp.org](http://www.nalp.org) (ISBN 0-31-414396-3, 325 pages, \$21.95).

# Administrative Judiciary

## News and Journal

American Bar Association

### Midyear Educational Program-Chicago

by Judge Ann Breen-Greco  
Chicago, IL

There is still time to register for the NCALJ and the National Association of Administrative Law Judges (NAALJ) Midyear Educational Program to be held in Chicago May 29, 30, and 31, 2003, at the Illinois State Bar Association, 20 South Clark, Chicago.

The conference is entitled, "Administrative Law Judges and Agencies: Working To Enhance Public Confidence In Administrative Adjudication. The Illinois Association of Administrative Law Judges (IAALJ) is the host affiliate and the Co-Sponsors are the Chicago Bar Association Administrative Law Judge Committee, Illinois State Bar Association Administrative Law Section, and ABA Section on Administrative Law and Regulatory Practice.

Hotel rooms have been reserved at the Palmer House, 17 East Monroe (312/726-7500) and Hyatt Printers Row, 500 South Dearborn (312/986-1234), at the rate of \$130, plus tax. Call for a reservation and mention the conference. (Both hotels are within walking distance of the conference but Palmer House is only a block away). This two and a half day mid year educational program will focus on writing decisions and the relationship between Administrative Law Judges (ALJs) and Agencies.

The program is designed for all Administrative Law Professionals—Attorneys, Administrative Law Judges, Hearing Officers, Administrators, Case Presenters and Other Agency Staff, Law Faculty and Law Students.

CLE Credit: NAALJ/NCALJ programs have been given credit in many states toward fulfilling CLE requirements. To determine whether this program meets your state's requirements, please contact the appropriate agency in your state. A certificate of attendance will be issued at the conference which can be sent to the appropriate state agency.

The faculty will be comprised of Law School Professors, Judicial Branch Judges and Justices, ALJs, Chief ALJs, Attorneys, and agency General Counsels and Administrators.

The focus of the writing component will be to provide techniques for writing an objective, clear, and legally sufficient decision. Judges and Justices who hear appeals of ALJs' decisions will provide their insight, along with other faculty, to assist ALJs in writing a decision that will enhance the public's confidence that it has been afforded justice by an impartial decision-maker.

The second part of the program will focus on the relationship between ALJs and the agencies and will continue the emphasis on the public's expectation of and right to an impartial ALJ. Panels and round table discussions will provide for an exchange between the ALJs and agency representatives to identify ways of working together to ensure public trust in the administrative judiciary.

If you did not receive the program registration by email or in the mail, the program registration form can be downloaded from the NCALJ [www.abanet.org/jd/ncaljweb.html](http://www.abanet.org/jd/ncaljweb.html) or NAALJ web sites. For further information, contact: Ann Breen-Greco (President, IAALJ) 773/539-3292—email [annrun@aol.com](mailto:annrun@aol.com), Erika LaCerde (Vice President, IAALJ) 773/814-5498—email [clacerda@yahoo.com](mailto:clacerda@yahoo.com); LaVerne Rolle Sanders (IAALJ Education Chair); William Hall (IAALJ Program Chair)

### NCALJ/NHTSA Judicial Fellowship

NCALJ and the National Highway Traffic Safety Administration (NHTSA) are looking for applicants for the next Judicial Fellow. The deadline for all applications is May 1, 2003. You must be a member of NCALJ to be considered for the Fellowship. To become a member you can visit the Judicial Division website at <http://www.abanet.org/jd/> or call (800) 238-2667 ext. 5705 to request a membership application. If you have any questions or need more information about the Fellowship, please contact Yolanda Simmons at [simmonsy2@staff.abanet.org](mailto:simmonsy2@staff.abanet.org) (800) 238-2667 ext. 6716 or Rebecca King at [kingre@staff.abanet.org](mailto:kingre@staff.abanet.org) or ext. 5742

JUDICIAL  
DIVISION  
National Conference of Administrative Law Judges



by Judge Ruth  
Kleinfeld  
Manchester, NH

**G**reetings from blizzard-bound New Hamp-shire! The Seattle Midyear Meeting was a welcome break from a New England mid-winter, one of the snowiest and coldest on record. But in the balmy temperatures of Seattle, where it

was over 50 degrees and we could go coatless, the NCALJ officers, Executive Committee, and other members thoroughly enjoyed the pleasures of the Emerald City and its friendly inhabitants and enterprises, not the least of which were the Pike Place Market and the original Nordstrom's! We also managed to get a lot done at the business meeting and other activities. This particular Midyear Meeting brought together the six conferences of the Judicial Division in an all-day event called the Judicial Summit. Convened by JD Chair Jamie Sledge, a U.S. bankruptcy judge from Alabama, each conference's representatives were assigned to groups (literally roundtables) consisting of other conference representatives, thereby ensuring lively discussions and a wide range of views, on the subject of judicial outreach in public education. Using techniques developed in Leadership Institute training programs aimed at recognizing and utilizing adult learning styles, we achieved a consensus expressed in a resolution on judicial outreach. Even more rewarding was the sense of collegiality and respect that developed in the course of the JD-wide event among all the conferences, whether it was NCALJ, the state trial judges, the federal trial judges, appellate judges, specialized court judges, or lawyers conference, all of whom found significant common ground for moving forward to encourage judges of every stripe to undertake educational outreach in order to promote public confidence in our system of an independent judiciary and the rule of law.

I want to thank Chair-Elect Tyrone Butler, Vice-Chair Dan Solomon, and

Executive Committee member Dick Goodwin who came out to Seattle a day early to participate with me in a Leadership Institute in Judicial Education training program. It was a concentrated seminar for four hours Wednesday and eight hours Thursday where we worked hard to understand and apply the principles of adult learning styles to achieve a more effective design and execution of judicial education programs. Assessing our own styles and doing the Milestones exercise together with the lectures and insights of Professor Pat Murrell and Assistant Director Kathy Storey enriched our understanding of ourselves and each other and helped us address ways of institutionalizing the principles in the Judicial Division for the benefit of our members and audiences in the future. I will be returning to Memphis in June for a final Advanced Institute with the Chairs-Elect of the other conferences. Not only will our efforts be reflected in the programming for the Annual Meeting in August in San Francisco, but we will be focused on a way to ensure that incoming leadership of each conference in the Judicial Division is exposed to this methodology and approach to judicial education.

As reported at the meeting NCALJ, NAALJ and the National Judicial College are collaborating on a program on mediation for judges scheduled for March, and expect to announce other joint programs. NCALJ and NAALJ will be sponsoring a meeting in late May to explore key issues in the relationship between agencies and their judges as well as to provide training in writing skills. These are important links between organizations that promote the professional development of the administrative judiciary, and I hope you will take advantage of them.

The Health & Benefits Committee, co-chaired by Dan Solomon and Ron Bernoski, met to discuss the significant recent developments concerning the federal administrative judiciary, particularly the reorganization of the Office of Personnel Management, which has oversight over the selection and assignment of administrative law judges in federal agencies; the potential threat to the use of administrative law judges in Medicare appeals; and the status of

legislative efforts to enhance retirement provisions. At this time we have received no further information on the Social Security Administration's anticipated proposals to reform the appeals process affecting over half a million disability claimants each year.

Speaking of San Francisco, THIS IS THE YEAR TO ATTEND THE ABA ANNUAL MEETING—there will never be a less expensive opportunity to enjoy the embarrassment of riches that characterizes this event. CLE activities that are free or priced a la carte, social evenings, stimulating programs, and chances to network amid the myriad attractions of one of America's greatest cities will be yours at the modest cost of the registration fee (plus lodging at special ABA rates at a wide range of hotels). Because the ABA decided to restructure the pricing of the Annual Meeting, the members of our conference and of the other JD conferences will be able to take advantage of the \$150 registration fee for all attendees registering before the May deadline (\$275 for later registrations) with NO FURTHER COST for the Judicial Division educational programs. In addition to a major program on Sunday afternoon on our republican form of government featuring a distinguished scholar in residence, and leading up to the impressive Annual Dinner in Honor of the Judiciary Sunday night, there will be an outstanding program in recognition of the bicentennial of the seminal decision *Marbury v. Madison*. This year NCALJ is presenting as an added attraction to the traditional Judicial Division Reception on Thursday night Judge David Harfeld's acclaimed Judges on Broadway production featuring several known thespians among our ranks—not to be missed! I urge you to make plans to attend. The events of particular interest to NCALJ members run from Thursday, August 7 to Sunday night August 10. We have an Ad Hoc committee investigating options for a day trip, possibly an overnight, to wine country before or after the ABA meeting so stay tuned—but do block out the time in August to find out for yourself if you have never been why so many judges (and lawyers) return year after year to the ABA Annual Meeting. I look forward to seeing you there!

# NCALJ OFFICERS

## Chair

Judge Ruth L. Kleinfeld  
1750 Elm Street, Ste 303  
Manchester NH 03104  
(P) 603-641-2963 X300  
(F) 603-623-4050  
Ruth.L.Kleinfeld@ssa.gov

## Chair-Elect

Judge Tyrone Butler  
NYS Department of Health  
3 Nilde Court  
Poughkeeps, NY 12603  
(P) 518/402-0748 (F) 518/402-0751  
ttb01@abanet.org

## Vice-Chair

Judge Daniel Solomon  
U.S. Dept. of Labor/OALJ  
800 K Street, NW, Suite 400 N  
Washington, DC 22310  
(P) 202-693-7500; (F) 202-693-7365  
dsolomon@oalj.dol.gov

## Secretary

Judge Chris Graham  
Administrative Hearing Commission  
P.O. Box 1557  
Jefferson City, MO 65102-1216  
(P) 573/751-7101; (F) 573/751-5018  
cgraha01@mail.state.mo.us

## Immediate Past Chair

Judge Jodi B. Levine  
SSA/OHA  
420 W. Main Place, Suite 400  
Oklahoma City, OK 73102  
(P) 405/234-5505; (F) 405/236-3105  
jblevine57@aol.com

## Delegate to ABA House of Delegates

Judge Edward J. Schoenbaum  
(P) 217/524-7836; (F) 217/524-7824  
edschoen@abanet.org

## ABA Board of Governors Liaison

Mr. Victor Futter  
(P) 516/627-4954; (F) 516/463-6091  
lawvzf@hofstra.edu

## Executive Committee

Judge Ronald G. Bernoski  
(P) 414/297-3141; (F) 414/297-1993

Judge Janet M. Coulter  
(P) 714/738/4021; (F) 714/738-4059

Judge Larry Craddock  
(P) 512/475-1306; (F) 512/475-1313

Judge Tela L. Gatewood  
(P) 405/234-5505; (F) 405/236-3105

Richard Goodwin  
(P) 209/222-9940; (F) 209/221-1157

Judge R. Bryan McDaniel  
(P) 850/488-9675; (F) 225/219-9983

Judge Errol H. Powell  
(P) 850/488-9675; (F) 850/487-1520

Judge Ronnie A. Yoder  
(P) 202/366-2137; (F) 202/366-7356

## Federal ALJ Issues

by Judge Daniel Solomon  
Washington, D. C.

### OPM Office of Administrative Law Judges

This month OPM will close the Office of Administrative Law Judges. The plan is to apparently distribute the current staff among other offices in a new structure. It is not clear where responsibility for the administrative law judge function will be placed in the new organization.

According to reports, the reorganization is oriented to agencies dealing with all matters affecting the agency for which they have responsibilities, and therefore matters such as hiring and transfer of ALJs will be decentralized within OPM. It is anticipated that the ALJ exam would be located in one OPM entity, but at this point its identity has yet to be decided. Other functions (e.g. hiring, inter-agency loan program, maintenance of the register) will need to be distributed.

Although representatives of OPM were to attend the ALJ Summit, scheduling conflicts will make it impossible to meet until sometime next month. Unfortunately, this may be after the fact as the staff at OALJ have been informed that "new" position descriptions are to be issued on March 1, 2003 (the effective date of the new OPM).

Acting Director Raymond Limon, Esquire, has been officially on a "detail" since August 2000 from an OPM OGC position, and it is not clear how he will be affected. He has been professional and is demonstrably committed to providing the best possible service to the Federal

agencies employing ALJs and to the entire ALJ community.

Our Conference passed a resolution in January, 1998 in support of the concept of a conference bill. NCALJ participated in the ALJ Summit that culminated in a draft of proposed language. It was initially offered as HR 5177 of 1999. But as of this date, the bill has not been introduced this term. Given the situation at OPM, this must remain a viable option.

### Rationalization of ALJ Use

ABA Lobbyists and members of this Conference continue to work with Congressional staffers in an attempt to amend the APA to provide prospectively that, absent a statutory requirement to the contrary in any future legislation that creates the opportunity for a hearing in an adjudication, such a hearing shall be subject to 5 U.S.C. §§ 554, 556 and 557.

### Adzell Case

The Federal Circuit today held that OPM properly adopted its 1996 scoring formula for ALJ examinations pursuant to the OPM Director's authority to grant a variation from strict adherence to the requirements of OPM's regulations and that the scoring formula therefore did not violate those regulations. The court therefore reversed the Merit System Protection Board's decision finding that OPM had violated the employment practice regulations at 5 C.F.R., Part 300. The court held that the Board had jurisdiction to address the question whether OPM's scoring formula was inconsistent with the employment practice regulations. However, the court held that the Board lacked jurisdiction to address the

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### EDITOR'S NOTE

*Administrative Judiciary News and Journal* is a publication of the ABA Judicial Division National Conference of Administrative Law Judges (NCALJ). The views expressed in the *Administrative Judiciary News and Journal* are those of the author only and not necessarily those of the ABA, the Judicial Division, the NCALJ, or the government agencies, courts, universities or law firms with whom the members are affiliated.

All persons interested in submitting articles for inclusion in future issues of the *Judicial Division Record* should contact Hon. Ann Breen-Greco. E-mail: anrun@aol.com, Publications Chair, P.O. Box 25988, Chicago, IL 60625-0988; Phone: 773-539-3292, Fax: 773/539-3292 or contact Teri Curro at ABA/Judicial Division, 541 N. Fairbanks Court, Chicago, IL 60611; Phone: 800/238-2667 x5689; Fax: 312/988-5709; E-mail: currot@staff.abanet.org

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ARTICLE SUBMISSION DEADLINES  
Summer 2003: Wednesday, May 7

# Issues

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claim that the scoring formula violated the Veterans' Preference Act. In light of its disposition, the court found it unnecessary to address whether preference-eligible applicants were denied due process by not being made parties to the Board proceedings at the outset or whether the Board's remedial order was proper.

## Retirement Proposal

This Conference has urged the effectuation of a retirement enrichment of existing Federal retirement plans for ALJs. A Bill was sent to the Congressional Research Service (CRS) by George Gekas, former Congressman from Pennsylvania. Unfortunately, Mr. Gekas was not returned to office. The Proposal had been at the Congressional Budget Office for scoring. However, without a sponsor, no work has been done on it since November.

The Social Security ALJ Association sent a copy of our proposed pension enhancement plan to the Commissioner. She advised that the plan should also be sent to the United States Office of Personnel Management because it will be the lead agency on this legislation when it is pending in the Congress. Judge Bernoski thinks that this is positive, "because the Commissioner's response is one of assistance and not opposition."

In essence, the plan is revenue neutral. As proposed, the CSRS and FERS annuity amount counted for the years of ALJ service would be increased. CSRS retirees could receive an additional one half percent (1/2 %) for each year of service as an ALJ. An ALJ in FERS may receive an additional seven-tenths percent (0.7 %) for each year of service as an ALJ. All non-ALJ countable federal service accumulated under CSRS and FERS would remain the same as it would be for any other employee. Other provisions would make the plan compatible with current early retirement rights and would make it effective upon enactment.

## Cap Legislation

We were unsuccessful in obtaining Cap Relief in the past year, but the President's proposed budget recommends a three-part civil service pay plan for next year, in which "all" employees would receive a 2 percent raise, high-performing employees

would be eligible for an additional base pay raise from a \$500 million "performance fund," and senior executives would see the cap on their salaries lifted from \$142,500 to \$154,700.

Both the American Bar Association and Federal Bar Association addressed compensation in a joint White Paper Report, A Need for Reform. According to the report, "it is undisputed that over the past decade the pay of most top-level federal officials has been insidiously eroded by inflation and that the government's executive pay system has not been adjusted to reflect the rapid escalation in salaries offered to comparably placed officials in the private sector. The failure of top-level federal salaries to keep pace with changing economic conditions has affected the government's ability to attract and retain qualified, experienced candidates in today's highly competitive job market."

We are concerned that OPM, OMB and the White House recognize that ALJs are an exception to "all" other employees, as we are precluded to be given awards for performance. As of this writing, there is no indication whether we are included in any cap relief. 5 U.S.C. § 4301(2)(D) exempts ALJs from the definition of "employee" for the purpose of performance appraisals. Other exempted employees include those of the CIA and other national security agencies, foreign service members (who have their own "up-or-out" system), certain employees stationed outside of the United States, certain medical personnel in the Department of Veteran Affairs, temporary employees of less than one year, and Presidential appointees. 5 U.S.C. § 4301.

## Other Pay Issues

Like other civilian employees, we received a 3.1% pay increase this year. However, both houses of Congress have passed an additional 1% increase to give parity to military pay. "The 4.1 percent raise in the omnibus bill, which is retroactive to the beginning of the year, reflects our support for pay parity and recognizes the need to pay our dedicated federal workforce well," David Marin, a spokesman for Rep. Thomas M. Davis III (R-Va.), said last week.

However, the President's new pay proposal would again provide a lesser raise to civilian than to military employees. Rep. Davis, Chairman of the House Government Reform Committee and Rep.

Steny H. Hoyer (Md.), the House's second-ranking Democrat, introduced a bipartisan resolution that calls for parity in pay raises between the military and the civil service.

## Social Security Issues

Claimants continue to be faced with change at SSA, but as of this writing, only the Principal Deputy and the Commissioner of Social Security are privy to what changes may be in store for them.

On October 9, ABA President Alfred P. Carlton, Jr. wrote the Commissioner, and in part noted, "we object strongly to any attempt to reduce or eliminate the availability of a hearing conducted by an Administrative Law Judge." Subsequently, Principal Deputy Garry met with ABA representatives. A full report of that meeting is contained in the column of Judge Ruth Kleinfeld, Chair of NCALJ in the Judicial Division Record.

## Medicare Appeals

There is a controversy regarding the relationship between ALJs at the Social Security Administration and CMS, the Centers for Medicare & Medicaid Services, Department of Health and Human Services. At present, SSA ALJs hear medicare appeals. In the 2004 proposed budget, the following language is found: "That the Secretary of Health and Human Services may use alternate mechanisms in lieu of Administrative Law Judge review" This is another instance where the rights of claimants to a due process hearing under the Administrative Procedure Act may be in jeopardy. .

## Transfer Policy at SSA

SSA ALJs won a favorable arbitrator's award in a transfer grievance case. SSA hired a class of new judges without first giving incumbent judges a right to transfer under a collective bargaining agreement. The agency was ordered to :

- Transfer each of the 23 grievants to the offices identified by them where a new judge was placed;
- Pay a back locality pay differential to each judge transferred under the award;
- Grant office seniority to each judge transferred under the award from the date of locality pay; and
- Entertain a Motion for attorney's fees.

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# Social Security Administration Corps of Administrative Law Judges Meet in Seattle

Excerpt from Judge Ron Bernsoki (Sussex, WI) President's Report

Judges Tom Robinson, Tom Snook, and I attended the ABA Midyear Meeting in Seattle, WA. We had an extremely productive meeting with our major areas of focus being the administrative law judge pension reform legislation, the 2004 budget bill provision that transfers Medicare hearings from SSA to DHHS and the AALJ Annual Conference. We were particularly concerned with the provision in the budget bill that permits the Secretary of DHHS to use alternate mechanisms in lieu of administrative law judge review of the Medicare cases. The ABA has pledged its support to attempt to prevent this change in the administrative law judge system.

During the course of the meeting Judges Tom Robinson (Chair CLE Committee) and Tom Snook met with the President of the National Judicial College (NJC). During these meetings they explored concepts for judicial education for our national education conference. They discussed several interesting forms of support for the conference by the NJC. A strong relationship with the NJC will enhance and strengthen the conference.

The SSA Corps of Administrative Law Judges have a significant presence on the NCALJ. Judge Ruth Kleinfeld is the current chair. I will complete my term on the Executive Board this summer. The ABA continues to be a strong advocate of administrative law judge issues.

## Issues

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The arbitrator's award does not have any impact on the hearing office assignments of the judges in the most recent ALJ class. The parties could file exceptions to the award within 30 days.

## Joint Conference Dinner

by Judge Jodi Levine  
Oklahoma City, OK

At the Midyear Meeting in Seattle, NCALJ was joined by the Lawyers Conference and the Federal Trial Judges Conference for a dinner par excellence. The event was held Friday, February 7th, at the Washington Athletic Club. It was a wonderful opportunity for fellowship and relaxing with new and long time friends. The highlight of the evening was the planned and impromptu entertainment provided by our own Chair, Ruth Kleinfeld, and Sam Bufford, a Federal Trials Judge. They ably were joined by Lawyers Conference Chair Anne Kelley, NCALJ Fellow and Executive Com-

mittee Member Ronnie Yoder, Federal Trial Judge Andre Davis, and Jack Brown, Vice Chair of the Lawyers Conference (and an O-k-l-a-h-o-m-a attorney). The good-natured rowdy crowd thoroughly enjoyed the music and the interaction with our entertainers. Those attending are hoping for an encore and are seeking copies of their favorite songbooks to keep the music flowing. Bravo to the "K" Chairs Irene Keeley, Anne Kelley and Ruth Kleinfeld proving with these 3Ks you are "out" for a fabulous event.



Seattle, WA – (L – R) Judge Sam Bufford, Judge Andre Davis, Jack Brown, Anne Kelley and Judge Ronnie Yoder sing at the Joint Conference Dinner held at the Washington Athletic Club on Friday, February 7. Judge Ruth Kleinfeld accompanied the group on piano.

## Review of NCALJ Bylaws Underway

by Judge Ruth Kleinfeld  
Manchester, NH

At the Chair's request, the Bylaws Committee under the very capable leadership of Judge Jean Cooper has initiated a review of our by-laws. This is a demanding undertaking, and she and the committee are to be congratulated on the tremendous amount of work and thought that produced a draft proposal for revisions

of the bylaws in time for the Midyear Meeting. The Executive Committee began discussion in Seattle, and will continue to consider the draft and the various issues raised, especially how to provide for orderly succession in the event of a vacancy, how retirement affects a judge's eligibility to serve as an officer or member of the Executive Committee, term limits on Executive Committee membership, and eligibility for conference membership. We hope to reach a final proposal in time to submit it with the prescribed notice to the general membership for a vote at the Annual Meeting.

## Office of Chief Judge Bill

Last term's bill to strengthen the Office of the SSA Chief Judge does not have a sponsor as Mr. Gekas was not returned to office.

## Required Reading

Jeffrey Scott Wolfe, "Are You Willing to Make the Commitment in Writing? The APA, ALJS, AND SSA", 55 *Okl. L. Rev.* 203 (Summer, 2002).

Sidney Shapiro and Richard E. Levy, "Marbury's Unfulfilled Promise: Government Benefits and the Rule of Law," Upcoming *University of Kansas Law Review* (2003).

Ronnie A. Yoder, "The Role of the Administrative Law Judge", 41 *ABA Judges' Journal* No.4, 13( 2002).

<sup>1</sup> *Washington Post*, February 3, 2003.

# Federal Trial News

American Bar Association

## Are You Having an Out of Court Experience?



by Judge Berle Schiller  
Philadelphia, PA

At the recent ABA Midyear Meeting in Seattle, I found myself in a room with 100 judges (federal, state and appellate) word-smithing a resolution which declares that judges should do more than judge or resolve disputes between and among litigants. I confess, as a Federal Trial Judge, all the “Sturm and Drang” mystified me since I have always known our bench (Federal Trial Judges) to be consistently involved in activities beyond the courtroom. Evidently, some state trial judges consider this issue with some urgency and must have been pilloried by the press or litigators for “doing good works” during the day.

To test my beliefs about the Federal Trial bench required “heightened scrutiny.” I, therefore, conducted a quick and dirty unscientific study. We “deserve congratulations!” All my colleagues in this

district and friends from other districts around the nation confirm that we are involved in multiple kinds of activities to strengthen the rule of law. Much of our involvement is a celebration of the diversity of personality on the bench. One extreme features judges like the Honorable Norma L. Shapiro who is an active participant in a multitude of bar committees and commissions with the ABA as well as educational outreach in the Philadelphia region. On a more pensive note (and you know who you are) hundreds of judges confine themselves to writing important articles and books advancing the cause of justice. The bulk of us are somewhere in the middle. We speak to community groups, attend bar functions, involve ourselves in the Inn of Court movement and are ever ready to visit the schools in our hometowns. Having the sense of commitment beyond the courtroom is part of our Federal Trial Judges’ psyche.

Like everything else, we can always do better. During the Seattle meeting, I spent several hours with minority law students who are interested in Judicial Intern/Clerkships. So many of them had little or no idea of how and where to apply, job requirements, pay, length of service, etc. These law students, recommended by their law schools because of achievement and academic potential, gathered from around the country and met with participant judges and also worked on a research project for two days. It was an extremely worthwhile and informative activity for all. At present, there are pilot programs sponsored in Chicago and Houston, which provide stipends to selected interns. Some law schools have special

programs as well. Those judges who are interested should contact the ABA or law schools near your court for more details.

As alluded to earlier, some of the most rewarding time you can spend is with elementary and high school students. Some courts have already established programs with most area school districts. Choose a contact person at your court and let the school districts know of judicial availability for speaking to classes and the invitations will come early and often. The flip side is having groups of students visit with you and experience a real trial. As an alternative, I hosted sixty middle school students who met the federal judges and magistrate judges from that school district who are on the Eastern District of Pennsylvania. The students then broke into two groups which alternated in presenting a previously assigned problem in a courtroom, while the other group attended an actual jury trial in front of a magistrate. At the end of the day all the students came to my chambers where they engaged in a free wheeling question and answer session with me. The consensus was that the students were reluctant to leave before the verdict in the trial was announced and wanted to be informed at a later date as to what happened. I was not only impressed with their observations but became excited for the future of the justice system.

If you are still reluctant, peruse the ABA website which has several scripts under the title “Dialogue on Freedom” ([www.abanet.org/dialogue](http://www.abanet.org/dialogue)). These lessons are easily accessible and have proven successful. Give them a try and amaze your children and grandchildren. All of a sudden the kids will think you’re “cool” again.

However, occasionally some of our colleagues seem to lapse into the doldrums. He or she is not clinically depressed, but may be a victim of professional cryogenics. If you see someone on your court suffering from this

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United States District Judge Andre Davis of Baltimore, Maryland summarizes his discussion group's conclusions about encouragements and barriers to judicial outreach. At left is Judge Leslie Miller of Tucson, Arizona, chair of the Judicial Division Millennium Task Force.

# Experience

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affliction act immediately. Thaw your colleague out with sunshine and warmth generated by involvement in outside activities. Start your own "adopt a colleague" program until he or she is restored. In this way, we will "leave no judge behind."

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## CHAIR'S COLUMN



by Judge Irene M.  
Keeley  
Clarksburg, W.Va.

ference, before the ABA House of Delegates. Judge Tacha, a member of the ABA and former chair of the Judicial Division, urged the delegates to support the special resolution under consideration by the House of Delegates for an immediate and significant pay raise for federal judges. That resolution was the direct result of President Carlton's strong support for the recommendations of the Volcker Commission concerning federal judicial pay.

Judge Tacha also met with the Executive Committee of the National Conference of Federal Trial Judges (NCFTJ) at its joint breakfast with the Standing Committee on Federal Judicial Improvements and the Judicial Division's Lawyers Conference. From her presentation it was obvious why she is recognized as one of the judiciary's leading advocates. As a result of her presentation, all in attendance understood the importance of working together and coordinating our efforts to achieve our joint goal of increased judicial pay.

As you know, the Volcker Commission cited judicial salaries as "the most egregious example of the failure of federal compensation policies" and documented that judicial salaries have lost 24% of their purchasing power since 1969. Arguing that this is inconsistent with the Constitutional

At the Midyear Meeting in Seattle in early February, the issue of federal judicial salaries took center stage with a special appearance by Chief Judge Deanell Tacha, chair of the Judicial Branch Committee of the Judicial Con-

provision that judicial salaries may not be reduced by Congress, the Commission stated that "the lag in judicial salaries has gone on too long and the potential for diminished quality in American jurisprudence is now too large." The Report concluded that the shortfall in "real judicial compensation" requires immediate correction. In addition, it has started to become painfully obvious that the salary issue is now causing an exodus of experienced judges to the private sector. Judge Tacha lamented that this trend will most likely get worse and the long-term effects on the judiciary will not be insignificant. The Chief Justice has noted this turn of events and is rightly concerned that the strength and vibrancy of the bench depends upon attracting candidates from the private sector as well as the public. Salary erosion will and has diminished this effort. Judge Tacha's appearance before the House of Delegates was at the request of President Carlton, who has provided truly inspired leadership on the issue of judicial pay. This is the main plank in his presidential agenda, and as a result of his focus on and splendid advocacy for a pay raise for federal judges, on Monday, February 10, 2003, the ABA House of Delegates passed a special resolution supporting the Volcker Commission's recommendations. Specifically, the ABA is on record as urging Congress to enact "an immediate and significant increase in federal judicial salaries and break the statutory link between Congressional and judicial salaries."

I want to conclude this Chair's Column by pointing out the obvious. The ABA is making an extraordinary effort to obtain an increase in judicial salaries. We should all be grateful for this and do whatever we can to assist the effort. One final comment. Plans are underway for a great program at the Annual Meeting in San Francisco, August 7-10. Please make plans to attend if at all possible.

### EDITOR'S NOTE

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All persons interested in submitting articles for inclusion in future issues of the *Judicial Division Record* should contact Judge Berle Schiller, NCFTJ Editor, USDJ, U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106; E-mail: compoundbow@yahoo.com, (P) 267/299-7620, (F) 267/299-5073 or contact or contact Teri Curro at ABA/Judicial Division, 541 N. Fairbanks Court, Chicago, IL 60611; Phone: 800/238-2667 x5689; Fax: 312/988-5709; E-mail: currot@staff.abanet.org

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### ARTICLE SUBMISSION DEADLINES

Summer 2003: Wednesday, May 7

# Special Court News

American Bar Association

## Advice of Rights by a Slide Show

by Judge William G. Kelly  
Kentwood, MI

How many times have you given a misdemeanor defendant the advice of rights? Do defendants really hear us as we race through the litany? We can say them in our sleep but we want defendants to understand them and we have to satisfy the appellate courts that we have touched all the bases.

One alternative to endlessly reciting the Advice of Rights is to use Corel Presentations or Powerpoint. Our court now uses a slide show containing the judge's voice on .wav files reading the rights while the slide show automatically changes to the appropriate slide and information. The slide show has photographs of a judge trial, a jury trial, and a police officer in the witness stand being cross-examined because a picture is worth a thousand words.

Corel Presentations software and Powerpoint software are user-friendly and are used in just about every continuing education program that one attends. They are used in seminars because one retains and comprehends much more if one sees

and hears information as opposed to just hearing the information. The programs can likewise be useful in a courtroom to increase comprehension. The program can be easily changed if the court rules change whereas a videotape of the rights requires shooting new video (sometimes at significant cost.)

We also have slide shows in Spanish, Vietnamese, and Bosnian to explain the rights in the primary languages of many people who come to our court. We then follow up using Language Line over the phone to discuss the individual case. By using the program, I know that the plea is bullet-proof on appeal because each right has been given. The program goes fairly slowly through each right rather than rushing through the rights.

In addition to misdemeanor advice of rights, we have slide presentations for felony arraignments, probation revocation hearings, landlord-tenant cases, and small claims cases.

In August, we moved into our new courthouse. The courthouse is based on Courtroom 21 at the National Center for State Courts with 11 television monitors, a document camera, personal computer inputs, and a touch screen annotation system. You can see a panoramic photo of the courtroom at our website, <http://www.ci.kentwood.mi.us/court/default.asp>.  
<http://www.ci.kentwood.mi.us/court/>.

## Traffic Court Program in Memphis

Traffic Courts directly affect more citizens than any other court. Over the years, the Annual Traffic Court Program has been the premiere educational program for judges of traffic courts. We continue that tradition this year October 15-17 at the Fogelman Center in Memphis Tennessee, with exciting new presentations on Reducing Recidivism among Drunk Drivers and on New

Technologies in Traffic Enforcement in addition to the core courses on Speed Detection Devices, Defendant's Rights, Search and Seizure, and the Effects of Alcohol and Drugs on the Body.

By joining with Judges and Traffic Court Personnel from around the country, you will have an opportunity to discuss the latest developments in traffic court law, scientific evidence and effects of drugs. This is a must program for all judges in our nation's traffic courts, both new judges and experienced judges.

For registration information contact Rebecca King at 312-988-5742.

## 2003 Nominating Committee Report

The NCSCJ Nominating Committee met via e-mail and respectfully submits the following slate of candidates for the positions stated:

Chair-Elect: Hon. Sharon Hatten,  
Midland, TX  
Vice-Chair Hon. G. Michael  
Witte, Lawrenceburg,  
IN

District 1 (ME, MA, NH, NY, RI, VT)  
Hon. Michael Higgins (RI)

District 3 (DC, IL, IN, KY, VA, WV):  
Col. Linda Strite Murnane,  
USAF (DC); Hon. William  
Nooter (DC)

Elections for the 2003-04 Association year will take place at the NCSCJ Annual Business Meeting at the San Francisco Hilton on Saturday, August 9, 2003.

**JUDICIAL**  
DIVISION  
National Conference of Specialized Court Judges

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Tucson, AZ

## CHAIR'S COLUMN



by Judge Eileen Kato  
Seattle, WA

Seattle. The frenetic activities of meetings, networking, renewing old acquaintances, and making new ones took place last week in Seattle under beautiful blue skies and sunshine! Which brings to mind - Spring - which is just around the corner, bringing with it tulips and daffodils, and taxes and baseball.

### Recap of the Midyear Meeting:

Our conference dinner took place on Friday evening at Sea Garden Restaurant in the heart of Seattle's International District. Our conference members celebrated the lunar new year by feasting on such delicacies as lobster, crab, scallops, barbecue pork, shrimp, and many other seafood delights. It seemed as though the food courses were never going to end. As we made our way from the restaurant, some of our members decided to explore Seattle's nightlife in the Pioneer Square District, where they took in some music and ambiance of the old town area of Seattle.

The first of our executive committee meetings took place on Saturday morning.

Judge William Kelly, the new chair of the Judicial Division Committee on Traffic Court, reported on his transition and the committee activities

We are still seeking nominations for the Education Award, McMahon Award, Flaschner Award, and John Marshall Award. These awards were described in the last issue of the *JD Record*. I encourage you to seek out deserving individuals to nominate for these very prestigious awards which recognize significant contributions to the justice system.

An ad hoc diversity plan committee was appointed to prepare a conference diversity plan to present to our conference membership for vote at the business meeting in August. The members are: Judge Eileen Kato, Judge Ernestine Gray, Judge Susan Moiseev, and Judge Robert Pirraglia. Please contact me if you are interested in joining this committee.

A committee needs assessment was performed, with significant recommendations being made to the conference chair. Overall, we have a number of committees in which no activity has taken place over a number of years. After follow-up contact takes place with each committee chair, the conference chair may take action as provided in the conference bylaws. Any input you may have regarding any of the committees, would be greatly appreciated. Please forward your comments to the conference chair.

This year's nominations committee is Judge Michael Pietruszka, chair, Judge Marcia Walsh, Judge Clinton Deveaux,

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### EDITOR'S NOTE

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All persons interested in submitting articles for inclusion in future issues of the *Special Court News* should contact Judge Michael Kwan, NCSCJ Editor, 5486 S. 1900 W., Suite A, Taylorsville, UT 84118-9025 (P) 801/936-0268 (F) 801/963-0576 E-mail: mkwan@ci.taylorsville.ut.us or contact Rebecca King at ABA/Judicial Division, 541 N. Fairbanks Court, Chicago, IL 60611; Phone: 800/238-2667 x5742; Fax: 312/988-5709; E-mail: kingre@staff.abanet.org

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### ARTICLE SUBMISSION DEADLINES

Summer 2003: Wednesday, May 7

## Chair's Column

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and Judge Ernestine Gray. Please forward your nominations to these individuals.

Judge Judy Macaluso, our conference membership chair, presented a very thorough plan to recruit new members to our conference. This plan requires the commitment and participation of each of us to increase our conference membership. A mass mailing will be made in a few months to as many judges as we can identify in each district.

Judge Ernestine Gray from New Orleans, Louisiana and Judge William Self from Macon, Georgia, treated us to an unexpected raffle of gifts from their cities. Judge Gray had a very special surprise flown in for Sunday morning's meeting: King Cake, a traditional part of the Mardi Gras celebration in New Orleans,

complete with a history of the traditional pastry. Making an executive decision, the committee decided to eat the King Cake themselves, rather than raffle it off. What a move! Thank you, Judge Gray!

### Preview of the Annual Meeting

Conference Vice Chair Judge Sharon Hatten, provided us a preview of this year's annual meeting activities in San Francisco. The Annual Meeting activities for our conference begin on Thursday, August 7, with the always festive LexisNexis reception, to be held at the 9th Circuit Court of Appeals. The reception will include docent-led tours of this very historic and recently renovated building. Friday, August 8, begins with a welcome breakfast for all members of the Judicial Division, followed by the Conference Business Meeting and then the Conference Executive Committee Meeting. The annual Judicial Awards Luncheon is a

ticketed event, which will be held at noon on Friday.

The ABA President's Reception is scheduled for Saturday evening at City Hall. And our annual Judicial Division Dinner Honoring the Judiciary will be held on Sunday evening. After the last three dinners at Tavern on the Green in New York, the Shedd Aquarium in Chicago, and the U.S. Supreme Court in Washington, D.C., our ABA staff is being challenged to find an affordable, yet equally fabulous site for this year's dinner. Wherever the venue, I encourage all of you to attend this wonderful evening to network with not only our conference members, but other conference members as well. It has always been a very delightful evening, filled with wonderful memories. The very prestigious John Marshall Award will also be presented at this dinner.

I hope to see you all in San Francisco - Save the Dates: August 7-11.

## Judge Karl Grube Honored For Service to National Judicial College

Florida Judge Karl Grube was recently honored for his 20 years of service as a volunteer faculty member at the National Judicial College (NJC) in Reno, Nevada. Judge Grube has been a member of the volunteer faculty and has chaired the College Faculty Council. Presenting honors and remarks about his great contributions to judicial education were NJC President William F. Dressel, Nevada Supreme Court Chief Justice elect Deborah Agosti, Rhode Island District Court Judge Robert Pirraglia representing the American Bar Association, Brian Chodrow on behalf of the National Highway Traffic Safety Administration and Judge Peter Evans representing the Florida Conference of County Court Judges.

At the conclusion of the program Judge Grube said, "It is a special honor to have the privilege of teaching at the National Judicial College, the greatest judicial education and training institution in the world."

## Hawaii Photo Cam Traffic Citation Law Thrown Out



Hawaii Judge Leslie Hayashi recently held that the Hawaii photo citations statute impermissibly shifts burden of proof, and was therefore unconstitutional. The law authorized the issuance of traffic citations for speeding red light violations by cameras, a system adopted in a number of states as well as other counties. Section 12, entitled Prima Facie Evidence, presumed that the registered owner (RO) was driving at the time of the offense. The RO could shift liability to the actual driver by way of declaration, which included the alleged driver's signature and an admission to the driving.

The 1998 law lie dormant. Finally enforcing the three year old law, caused an uproar among motorists. Everyone had an opinion on the van cams ("Tali-vans" as they were referred to by some) and was willing to express it. Despite the opposition, the number of citations increased until finally the volcano erupted. Judge Hayashi specifically stated that her ruling only applied to criminal trial cases and not to the civil hearings. In less than a week the legislature voted to repeal the law, which passed unanimously. People cheered and celebrated while others breathed a sigh of relief. The volcano was calm again. One radio station declared a "Judge Leslie Hayashi Day". For a copy of the opinion or more information on the case you can contact Judge Hayashi at [leslie.a.hayashi@courts.state.hi.us](mailto:leslie.a.hayashi@courts.state.hi.us).

# Trial Judges News

American Bar Association

## Officer Profile: Judge Elihu M. Berle

Judge Elihu M. Berle is the NCSTJ Secretary. Concurrently, he is also serving as chair of the Conference's Education Committee and Speakers Bureau. In those capacities, he is in the process of planning some stimulating programs for the ABA Annual Meeting scheduled for San Francisco in August, 2003. Judge Berle's other ABA activities include serving as judicial liaison to the ABA's Business Law Section and Business Courts Committee.

Judge Berle was appointed in 1996 to the Superior Court of the State of California for the County of Los Angeles, one of the busiest and, with 548 judicial officers, the largest trial court in the world. He currently presides over a civil



individual/direct calendar court in downtown Los Angeles, and previously sat in a criminal calendar/felony jury trial department.

*(continued on page 32)*

## Highlights of Judicial Conduct Cases

by Judge Alexander White  
Chicago, IL

In *Inquiry Concerning Graham*, 620 So. 2d 1273 (Florida 1993), the Florida Supreme Court stated that the failure to show remorse by a judge was evidence that sanctions such as a reprimand or suspension would not cause the judge to change his or her behavior, leaving removal the only option. Noting that a "judge who refuses to recognize his own transgression does not deserve the authority or command the respect necessary to judge the transgressions of others," the court concluded it could "only presume that if this Court reprimanded [the judge], he would continue to violate the precepts of the code of judicial conduct."

In *re White*, 651 N.W. 2d 551 (Nebraska 2002), the Nebraska Supreme Court

confirmed that the prohibitions on ex parte communications and public comments apply to cases pending before other judges. At the county court level, Judge White had revoked a defendant's probation in a domestic violence case and sentenced him to the maximum statutory penalty of 180 days' confinement and a \$1,000 fine. On appeal, the district court found a reasonable person could question the judge's impartiality, vacated the sentence, and remanded for resentencing to another judge. The court found that Judge White's "quarrel with the district court's decision caused the judge to abandon the impartiality required of a judge no matter what accusations are made against those who appear before the court." The court held the judge violated prohibitions on ex parte communications and public comments even though the case was pending before a different judge for re-sentencing at the time of her ex parte communications with the prosecutor and her petition for a special prosecutor.

*(continued on page 33)*

## Midyear Meeting Summarized

by Judge Donald Haley  
Seattle, WA

The stated purpose of the NCSTJ is to serve the public and the profession, by promoting justice, judicial independence, professional excellence public trust and confidence in the justice system as well as to serve as the national voice of the state trial judges. Seven Programs, although some were social, showed clearly that giant steps were made to make this mission statement a reality.

**Minority Clerkship Program:** Several State Trial Judges participated in this program including Judges Don Haley from Seattle, William Missouri from Maryland and Joel Medd from North Dakota. The Division and the Commission on Racial and Ethnic Diversity in the Profession cosponsored this 3-day program that was attended by minority law students from law schools throughout the country and by judges from every level of the judiciary.

**Judicial Division Reception:** As usual, the Judicial Division reception, sponsored by LexisNexis was an excellent opportunity for social interchange and substantive dialogue.

**Outreach Reception:** The Judicial Division, the Standing Committee on Minorities in the Judiciary, the Lawyers Conference and the ABA Law Student Division held an Outreach Reception for minority students with a special tribute to retiring Washington State Supreme Court Justice Charles Z. Smith.

*(continued on page 31)*

**JUDICIAL**  
**DIVISION**  
National Conference of State Trial Judges

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Philadelphia, PA

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Hon. Henry duPont Ridgely  
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### District 11

Hon. Donald D. Haley  
Seattle, WA

### District 12

Hon. W. Terry Ruckriegle  
Breckenridge, CO

## CHAIR'S COLUMN



by Judge Carolyn  
Temin  
Philadelphia, PA

The months from the 2002 Annual Meeting until now have passed very quickly and I am very proud of the way in which the members of our conference have stepped in to participate in so many meaningful activities.

I think our increased use of the National Judicial Dialogue to communicate with members has accomplished my goal of involving our entire membership, whether they are able to attend our meetings or not, in the important work of the Conference. By using the NJD I was able to have our members participate in an important survey of electronic discovery for the National Center for State Courts and to obtain volunteers for other activities. If you haven't already signed on, it's important to do so or you'll miss some very important communications. Just email Athir Mahmud at mahmuda@staff.abanet.org.

I am very excited about the work of the Courts and Community Committee chaired by the Judge Joan Irion. Our members had a major role in planning the Summit meeting on judicial outreach that was held at the midyear meeting. It was attended by the entire Judicial Division and everyone present agreed that it was a very eye opening and meaningful session. Our Conference provided the funds for

taping the program in exchange for having the first opportunity to use it on our Web page as a distance learning opportunity. This committee is also meeting by teleconference on a regular basis.

Judge Elihu Berle has done an excellent job of putting together a special all day education program on the subject of trying complex civil and criminal cases. Judge Berle sits on the Board of Directors of the National Judicial College (NJC) which has agreed to cosponsor the program. We are indebted to our past chair and current president of the NJC Judge William Dressell for his assistance in mounting what promises to be a "gold standard" program on this subject. This is an opportunity that will only be available to ABA members with a special low price of \$35.00 (to cover the cost of breakfast and lunch) to JD members. When I announced the program to the division at our Council meeting there was avid interest on the part of all the conferences. Sign up early to reserve your place and tell your friends about it. This is a good reason to join the JD this year. Details of the program will be available on our Web page. The program will take place on Thursday, August 7 during the Annual Meeting. I hope that many of you will plan to come in a day early to participate. The meeting officially begins at 6:30pm that evening with the LexisNexis hosted reception. To participate in the all day educational program will require arriving in San Francisco on Wednesday evening if you don't live within easy driving distance.

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### EDITOR'S NOTE

*Trial Judges News* is a publication of the ABA Judicial Division National Conference of State Trial Judges. The views expressed in the *Trial Judges News* are those of the author only and not necessarily those of the ABA, the Judicial Division, the NCSTJ, or the government agencies, courts, universities or law firms with whom the members are affiliated.

All persons interested in submitting articles for inclusion in future issues of the *Judicial Division Record* should contact Judge Alexander P. White, Jr. E-mail: alnmar130@aol.com, Publications Chair, 1300 East River Drive, Des Plaines, IL 60018 or contact Rebecca King at ABA/Judicial Division, 541 N. Fairbanks Court, Chicago, IL 60611; Phone: 800/238-2667 x5742; Fax: 312/988-5709; E-mail: kingre@staff.abanet.org

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### ARTICLE SUBMISSION DEADLINES

Summer 2003: Wednesday, May 7

# Midyear Meeting

(continued from page 29)

**Judges Network:** A full-day Judges Network Summit on Judicial Outreach presented excellent tools for judges and lawyers to increase public trust and confidence in the justice system.

**Conference Reception:** The Seattle Space Needle was the site for state trial judges to socialize and partake of Seattle cuisine. Judge Donald Haley arranged for the venue which provided a spectacular view of the city.

**Executive Committee Meeting:** At the Executive Committee meetings, Judge Carolyn Temin, chair of the State Trial Judges Conference, was happy to report accomplishments of the Conference and on work in progress in several areas. Conference members participated in an important survey of electronic discovery for the National Center for State Courts.

The Courts & Community Committees played a major role in planning the successful summit meeting at this year's midyear meeting. Plans are complete for a special all day education program on the subject of trying complex civil and criminal cases at the annual meeting in San Francisco. Executive Committee members were given a demonstration on the developing concept of a web board, by Technology Chair Judge Gary Randall. Finally, the Conference has formed a committee to draft Standards for Electronic Filing, Chaired by Judge Hank Ridgely. Chair-Elect, Judge Sophia Hall, because of the excellent work of committee chairs, plans to keep them as chairs when she becomes chair of the Conference, as well as continue to use the communication devices used by Judge Temin. Judge Hall will also bring to conclusion the E-Filing Project, chaired by Judge Hank Ridgely of Delaware. Public Relations will increase, using *Marbury vs.*



*Madison* as a catalyst. Judge Hall will seek increased help from the National Judicial College for several other new initiatives.

**Educational Program:** Attendees were presented a stimulating debate on the Treatment of Enemy Combatants in the Courts: Judicial Review and Assistance of Counsel.

The full minutes of the Executive Meeting are available on our website <http://www.abanet.org/jd/ncstjweb.html>

## Profile of Executive Committee Member Judge A. Susan Peck

Judge A. Susan Peck is a graduate of the University of Massachusetts, Amherst (B.A., English), Boston University (M.S., Public Communication), and the University of Connecticut Law School (J.D.). She served as law clerk to United States District Judge Robert C. Zampano, New Haven, Connecticut, from 1976 to 1977. From 1977 to 1996, she was engaged in the private practice of law in Hartford, Connecticut, specializing in employment law, criminal defense, commercial and victim's rights litigation. She has been a lecturer at the University of Connecticut Law School and has been on the faculty of numerous legal and judicial continuing education seminars including the Connecticut Judges Institute.

Governor John G. Rowland appointed her as a Superior Court Judge in March 1996. Since that time she has served in

the criminal, juvenile and civil divisions of the Superior Court. She currently presides over the Complex Litigation Docket at the New Britain Superior Court in New Britain, Connecticut.

Judge Peck is a fellow of the Connecticut Bar Foundation and founder and chair of its Oral History of Connecticut Women's Lawyers' project. She is a member of the executive committee of the Connecticut Judges Association, a Connecticut delegate to the Judicial Division of the American Bar Association and the District 2 (representing Connecticut, New Jersey, New York and Vermont) member of the executive committee of the NCSTJ. She also serves as a member of the Hartford County Bar Association, the Connecticut Bar Association and the Oliver Ellsworth Inn of Court.

Judge Peck was born and raised in the Boston area and is an enduring Red Sox fan. She and her husband, Michael Ruben Peck, a principal in the Hartford law firm of Moller, Peck & O'Brien, LLC, Hartford,

Connecticut, were long time Hartford residents who now live in Chester, Connecticut with their two Labrador retrievers. They also have two sons, Paul, age 24, a recent graduate of Tulane University, who lives and works in New Orleans, Louisiana, and Jonathan, age 21, a graduating senior at Skidmore College, in Saratoga Springs, New York.



Judge A. Susan Peck

## Chair's Column

(continued from page 30)

Judge Gary Randall has been hard at work developing the concept of a Web board for the conference and he gave a wonderful demonstration of this process during our midyear business meeting. It was so good that Division Chair Jamie Sledge, has asked that it be shown to the Division Council at the Annual Meeting.

Judge Leslie Miller, a past chair of the Conference remains active and attended the Conference of Chief Justices on my behalf.

We are indeed fortunate to have so many of our past chairs remaining active in the conference and we have to thank past chair

Judge Don Haley for arranging our reception for local judges in Seattle. This was a concept that originated at a planning meeting when Judge Joel Medd chaired our conference last year and I am pleased that we were able to continue this practice. The reception was held at the famous Seattle Space Needle and achieved our goal of attracting local judges to join the conference.

Judge Alex White continues to do yeoman service as the editor of our news organ and Judges Abe Gerges and Dewey Whitenton are working hard to increase our membership rolls.

Vice-Chair Hank Ridgeley and Judge Herb Dixon have formed a committee to draft Standards for Electronic Filing. If you are on the NJD you have been able to follow a lively discussion of this issue.

The Annual Meeting in San Francisco promises to be an exciting and enriching experience. If you've never attended a meeting – this is the one to try. In addition to the marvelous ambience of San Francisco and the unique educational opportunity planned by Judges Berle and Dressel, Judge Joyce Kean has planned a fantastic evening for us at an outstanding restaurant at Half Moon Bay. The ticket price, a very reasonable \$65.00, will include a romantic bus ride to the location. Check our Web page for the exciting details.

In my next message I will be telling you about various efforts within the ABA to address the issues of funding of State Courts and judicial compensation. In the meantime – I hope to hear from you on the "Net" and look forward to seeing you in San Francisco.

## Officer Profile

(continued from page 29)

He also chairs the court's local court rules committee. Additionally, he is chair of the State of California Judicial Council Civil and Small Claims Advisory Committee, which is responsible for reviewing and initiating proposals for legislative and rule changes affecting civil law and procedure in California.

Judge Berle was elected as a member of the Board of Trustees of the National Judicial College which will give him an opportunity to work on planning joint educational programs between the college and the NCSTJ. Continuing to pursue his

interest in legal education, Judge Berle is also a member of the ABA's Sections Officers Conference CLE Task Force, and has lectured and published materials on a variety of legal subjects.

Judge Berle has been a strong advocate for civility among counsel in litigation. (See Berle, E. M., "A Proposal for Civility in Litigation," *National Judicial College Alumni Magazine*, Vol. XIII, No. 4 (1998)). He has suggested that judges be involved in establishing seminar size clubs or groups of judges and lawyers, such as those sponsored by the American Inns of Court, which would meet regularly for the purpose of educating, mentoring, inculcating values, and setting examples of courteous true professionals within the legal community.

Judge Berle received his Juris Doctor degree from Columbia University School of Law. He also holds a Master of Business Administration degree in finance from the Wharton School of Finance and Commerce of the University of Pennsylvania and a Bachelor of Arts degree from Brooklyn College of the City University of New York. Prior to his assuming judicial office, Judge Berle was in the private practice of law in Los Angeles for twenty-six years, specializing in business and commercial litigation. He also served as president and as a member of the board of governors of the Association of Business Trial Lawyers.

## NCSTJ Nominations Committee Report

The NCSTJ Nominating Committee, chaired by Immediate Past Conference Chair Judge Joel D. Medd met by conference call to discuss nominations whose names had been submitted. The other members of the Nominating Committee were: Judges Noel Kramer, Francis Darigan, and William Missouri. The following judges are being nominated:

(1) Chair-Elect: Henry duPont Ridgely of Delaware

(2) Vice-Chair: Elihu Berle of California  
(3) Secretary: Abraham Gerges of New York

Judge Sophia Hall of Chicago, the current Chair-Elect automatically assumes the position of Chair.

The elections will be held at the Conference business meeting in San Francisco in August of 2003. All state delegates at the business meeting are eligible to vote.

Delegates from the following district are scheduled to elect Executive Committee Representatives from the states in **BOLD** for two year terms. Delegates from the states in these Districts will caucus at the

business meeting elect their District Representatives to the Executive Committee. If a state from which a member is scheduled to be elected is not represented at the Annual Meeting at which the election is held, a member from the next scheduled state shall be elected.

District 1 (**ME**, MA, NH, RI)

District 4 (AR, OK, LA, TX)

District 6 (IL, IA, MO, SD)

District 7 (MN, MT, ND, WI)

District 8 (AZ, CA, NV, **Guam**, HI)

District 10 (GA, AL, FL, MS, PR)

## Highlights

(continued from page 29)

Discussions by telephone between a judge and counsel for both parties, to resolve discovery disputes without formal papers, are not ex parte communications. Letters to a judge with copies to opposing counsel and letters to opposing counsel with copies to the court are not prohibited ex parte communications, but a judge should discourage letters on matters that should be addressed by formal motions. *Arizona Advisory Opinion 02-3.*

A judge's spouse may work as a volunteer or paid employee in a political campaign but should make all efforts to avoid any suggestion that the judge supports the candidate. *Arkansas Advisory Opinion 2002-6.*

A judge who has been appointed to office may not use "reelect" in campaign advertisements but may use "retain". *Florida Advisory Opinion 02-7.*

A judge may read and respond to a letter from an unrepresented criminal defendant as long as copies of the letter and response are provided to all parties as soon as possible. The proper response may be a form letter advising the defendant that the judge cannot respond, and the defendant should contact a lawyer or schedule a hearing in accordance with the court rules.

A judge is not obligated to respond to an ex parte communication from a defendant's spouse, parent, other relative, or friend but may direct court staff to send a form response advising these individuals that the court will not discuss a case with a non-party. Counsel, if any, should be provided copies of all correspondence, and copies should be retained in the court file. *Washington Advisory Opinion 02-14.*

Several disciplinary commissions have rules requiring cooperation and proscribing misrepresentations and concealment in commission proceedings. For example, Rule 5 of the Colorado Rules of Judicial Discipline provides: "Failure or refusal of a judge to cooperate or the intentional misrepresentation of a material fact during any stage of a disciplinary proceeding may constitute willful misconduct in office."

\* \* \*

AJS has links on its web-site ([www.ajs.org/ethics/eth\\_advis\\_comm\\_links.asp](http://www.ajs.org/ethics/eth_advis_comm_links.asp)) to judicial ethics advisory opinions from Alabama, Alaska, Arizona, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Massachusetts, Michigan, Nebraska, Nevada, Ohio, Pennsylvania, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

\* \* \*

With a grant from the State Justice Institute, the American Judicature Society Center for Judicial Ethics has developed a three-part judicial ethics curriculum comprised of a presenter's notebook and three separate presentations that can be used with Microsoft PowerPoint® presentation software. The three presentations are: Ethical Standards for Judges; Ex parte Communications; and Charitable Fund-raising. The presenter's notebook contains directions for preparing a program, including basic instructions for modifying the presentation to fit a presenter's time constraints and to reflect local rules. The CD-ROM containing the presentations and the notebook is available without charge except for \$7.50 to cover postage and handling. To order, see [www.ajs.org](http://www.ajs.org) or contact [rwilson@ajs.org](mailto:rwilson@ajs.org) or 312-357-8821.

\* \* \*

The *Judicial Conduct Reporter* is published quarterly by the American Judicature society. The cost is \$32 per year; single copy \$9. An index to the *Judicial Conduct Reporter* is available on the AJS web site at [www.ajs.org](http://www.ajs.org). Contact [cgray@ajs.org](mailto:cgray@ajs.org) for information on discounts for group subscriptions.

## Recent Judicial Conduct Decisions

In Arizona Advisory Opinion 02-2, a judge was found not to be disqualified from cases in which a law clerk's future employer or prospective future employer represented a party. Under most authority, however, the judge should exclude the law clerk from any participation in cases before the court. This obligation "arises whenever an offer of employment has been extended to the law clerk and either has been, or may be, accepted by the law clerk."

In re Davis, order dated July 2, 2002, the Texas Supreme Court affirmed a decision of the State Commission on Judicial Conduct, and publicly reprimanded a judge who had engaged in a personal vendetta against a young prosecutor; used profane, distasteful, and inappropriate language in a letter to the district attorney;

and publicly attacked the district attorney's office by sending the letter to the media. The court also ordered the judge to receive 8 hours of instruction from a mentor judge.

In Public Admonishment of McBrien, dated April 25, 2002 ([cjp.ca.gov/publicdisc.htm](http://cjp.ca.gov/publicdisc.htm)), the California Commission on Judicial Performance publicly admonished a judge who pled nolo contendere to a misdemeanor charge of willful or negligent cutting or mutilation of trees growing on public land without permission. The judge had cut trees and removed limbs from trees in a public park to improve his view of a nearby river.

In the Matter of McCormick, 639 P.3d 735 (Iowa 2002), the Iowa Supreme Court publicly reprimanded a judge who had (1) given permission for a campaign sign supporting the sheriff to be placed in the yard outside his home, and (2) told the Judicial Qualifications Commission it was his wife who had authorized the sign.

In re Shea, 815 So. 2d 813 (Louisiana 2002), the Louisiana Supreme Court accepted the recommendation of the Judiciary Commission and a judge's stipulation and publicly censured the judge for making contributions from his excess campaign funds to candidates for public office.

In re Shannon, 637 N.W. 2d 503 (Michigan 2002), the Michigan Supreme Court censured and suspended for 30 days a magistrate who advised defendants found guilty of traffic violations to purchase tickets to a police event. The defendants were asked how many children they planned to take, and if the number was too low, they were told they needed to take more children. Others were told to "dig deeper," call someone, or go to an automated teller machine. After one defendant said he had \$116 on him, the magistrate told him to buy \$100 worth of tickets.

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# Judicial Conduct

*(continued from page 33)*

In the Matter of Restino, dated November 19, 2001 ([www.scjc.state.ny.us/restino.htm](http://www.scjc.state.ny.us/restino.htm)), the New York Commission on Judicial Conduct, based on an agreed statement of facts and a joint recommendation of the New York Commission on Judicial Conduct, determined that admonition was the appropriate sanction for a judge who had (1) permitted another judge to participate in a conference in chambers and did not rebuke him when he stated that the alleged victim of the assault was a "piece of shit" and a stalker, (2) failed to report the other judge's misconduct to the Commission, and (3) failed to maintain complete and accurate records of the receipt and disbursement of court funds and to timely deposit funds.

In the Matter of Reid, dated May 17, 2002 ([www.scjc.state.ny.us/reid.htm](http://www.scjc.state.ny.us/reid.htm)), the New York Commission on Judicial Conduct, based on an agreed statement of facts and a joint recommendation, determined that censure was the appropriate sanction for a non-lawyer town court justice who had (1) written an article for a newsletter in which he attempted to obtain support among local residents for construction of a highway bypass and stated that he had increased the fines on truck drivers to discourage them from using local routes, and that he would continue to do so, and (2) in 16 cases after accepting guilty pleas, imposed fines that were \$20 to \$70 in excess of the statutorily authorized maximum.

In the Matter of Shanley, 98 N.Y.2d 310 (2002), the New York Court of Appeals held that simply using the phrase "law and order" in judicial campaign literature was not a prohibited pledge, promise, or commitment because the phrase is "widely and indiscriminately used in everyday parlance and election campaigns." The Court, however, accepted the Commission's determination that a judge be admonished for referring to herself as a "graduate" of the judicial law courses that she took in her capacity as court clerk.

In *Office of Disciplinary Counsel v. Kiacz*, 763 N.E. 2d 590 (Ohio 2002), the Ohio Supreme Court, based on stipulated facts, publicly reprimanded a judge who asked state highway patrol officers to keep the number of traffic tickets level so that he would not have to raise court costs.

In the Matter of Recant, dated November 19, 2001, the New York State Commission on Judicial Conduct, based on an agreed statement of facts and joint recommendation, determined censure was the appropriate sanction for a judge who, among other misconduct, engaged in an improper ex parte conversation with a prosecutor's supervisor.

In the Matter of Morton, 770 N.E. 2d 827 (Indiana 2002), the Indiana Supreme Court approved a conditional agreement for discipline and publicly reprimanded a judge who (1) had an ex parte conversation with the attorneys for the father in a custody case in which the attorneys told the judge that a psychologist who had counseled the mother and children had committed forgery; (2) at the father's attorney's suggestion, had referred the matter to the

police without telling the mother's attorney or disqualifying himself from the case; and (3) made comments about the alleged forgery.

In the Matter of Lukevich, CJC No. 3514-F-96, dated May 9, 2002, ([www.cjc.state.wa.us](http://www.cjc.state.wa.us)) the Washington State Commission on Judicial Conduct, based on a stipulation agreement, entered an order of admonishment against a judge who released a defendant on his own recognizance at arraignment following the defendant's representation that he would stay away from the victim. The victim then appeared at the counter before the judge and explained her fear that the defendant's release would result in her death. The defendant had already left the courtroom. At sentencing, the judge disclosed the communication for the first time, noted that the victim was terrified, crying, and upset, and stated that he was imposing the sentence "with the vivid memory of Ms. Thiele in my mind." The conviction had been reversed and the case remanded to a different judge because of the judge's reliance on the ex parte communication and failure to disclose prior to trial.

In *Inquiry Concerning Baker*, 813 So. 2d 36 (Florida 2002), the Florida Supreme Court adopted the recommendation of the Judicial Qualifications Commission and publicly admonished a judge who, while presiding over a trial, solicited communications from computer consultants and experts concerning technical issues relating to damages without the involvement of the litigants or their attorneys.

## Judge Rosborough Chairs Rural Courts Committee

**M**ichael J. Rosborough, Vernon County Circuit Court Judge and Chief Judge of the 7th Judicial District of Wisconsin, is the current chair of the NCSTJ Rural Courts Committee and previously served as the District 7 representative to the Executive Committee. Chief Judge Rosborough sits in Viroqua, Wisconsin, which is located approximately 25 miles south of La Crosse and 90 miles northwest of Madison in southwestern Wisconsin. Wisconsin circuit court judges are trial judges of general jurisdiction and Chief Judge Rosborough maintains a full calendar in addition to his duties as chief judge. As chief judge he works with the district court administrator to oversee matters of court administration in twelve Wisconsin counties.

During his 17 years on the bench, Chief Judge Rosborough has also served on a number of statewide committees and has continued to do so since becoming chief judge. Currently, he serves on the Wisconsin Trial Judges Criminal

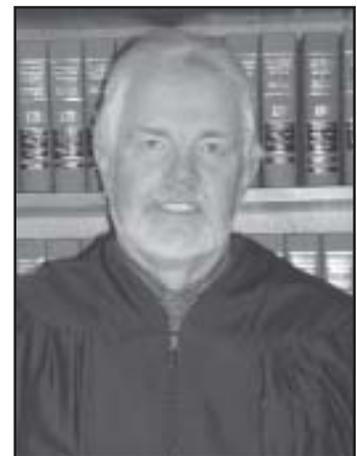
Benchbook Committee and the Consolidated Court Automation Program Steering Committee, which oversees the court technology issues in the Wisconsin Court System. He also has been appointed by the Wisconsin Supreme Court to chair an ad hoc court financing committee, which is investigating alternatives to the current methods for financing the Wisconsin court system.

Chief Judge Rosborough and his wife, Ellen, live in a rural home in northwest Vernon County, which overlooks the Mississippi River. They have an adult son and daughter, both of whom are law school graduates, a non-lawyer daughter-in-law and two grandchildren.

Judge Joel Medd of North Dakota revived the rural courts committee about two years ago during his tenure as NCSTJ Chair. Other NCTSJ members who have assisted with committee work include John McClintock of North Dakota and Jon Stafholt of Minnesota. Since its revival the committee has determined that its mission is to identify issues, which are either unique to rural courts or affect rural courts in a unique way, to develop and promulgate standards with regard to rural court issues, and to provide a forum and network for communication among rural court judges. Issues identified to date include, professional isolation, adequate

and consistent funding, and consolidation or elimination of rural courts and judgeships. Currently, the committee is working on issues and guidelines relating to rural courthouse security and safety.

Courthouses where 4 or fewer judges have chambers serve approximately 79% of the counties in the United States. However, there is no universally accepted definition of a rural court; whether an NCSTJ member is a rural judge is a matter of self-identification. Members interested in the work of the Rural Courts Committee are encouraged to contact Chief Judge Rosborough (P.O. Box 448, Viroqua, Wisconsin 54665, 608/637-5364, michael.rosborough@vernon.courts.state.wi.us).



## Save the Date

**Thursday August 7, 2003**

(Before the ABA Annual Meeting  
Weekend in San Francisco)

National Judicial College and Judicial  
Division Joint Special All Day Program:

“New Techniques for Managing  
Complex Civil and Criminal Cases”

Full day participatory seminar program  
will be offered free to all JD members  
(nominal fee for lunch)

Application forms will be available in the  
next few months. For further information,  
please contact Rebecca King at  
ABA/Judicial Division, 800/238-2667  
x5742; e-mail: kingre@staff.abanet.org



Seattle, WA – Shown (L-R) Vicky Cashman, Middletown, OH; Hon. Carolyn Temin, Philadelphia, PA; Matt Cegelis, LexisNexis, Kerri Rupp and Michele Vivona of LexisNexis CourtLink.

## Save the Date

### March 30-April 2, 2003

Spencer-Grimes Appellate Judges Seminar Series  
Tampa/St. Petersburg  
More information: 800/238-2667 (x5696)

### May 1, 2003

Law Day: Independent Courts Protect our Liberties  
Washington, DC  
More information: 800/238-2667 (5735)

### May 29-31, 2003

NCALJ/NAALJ Midyear  
Educational Program  
Chicago, IL  
More information: 773/539-3292

### July 14-20

CASA – Council of Appellate Staff Attorneys  
Charleston, SC  
More information: 800/238-2667 (x5704)

### July 24-27, 2003

Spencer-Grimes Appellate Judges Seminar Series  
Providence, RI  
More information: 800/238-2667 (5696)

### July 24-27, 2003

3rd Annual Conference of the Council of  
Appellate Lawyers  
Providence, RI  
More information: 800/238-2667 (x5696)

### August 7-13, 2003

ABA Annual Meeting  
San Francisco, CA  
The Division will meet August 7-10, 2003  
More information: 800/238-2667 (x5700)

### September 18-20, 2003

Section Officers Conference  
Chicago, IL  
More information: 800/238-2667 (x5633)

### October 7-12, 2003

Council of Chief Judges Annual Meeting  
Boston, MA  
More information: 800/238-2667 (x5704)

### October 15-17, 2003

Traffic Court Program  
Memphis, TN  
More information: 800/238-2667 (x5742)

### October 26-29, 2003

Canadian/American Appellate Judges Seminar  
Victoria, British Columbia, Canada  
More information: 800/238-2667 (x5696)

\* Visit [www.abanet.org/jd](http://www.abanet.org/jd) for more information on upcoming meetings.



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