

Judicial Division Record

American Bar Association

Volume 7 Issue 3 Spring 2004

Model Code of Judicial Conduct Reviewed

by Mark Harrison and Hon. M. Margaret McKeown

The ABA Joint Commission to Evaluate the Model Code of Judicial Conduct is well into its comprehensive review of the Model Code, having held two public hearings and numerous commission meetings. The first meeting of the Joint Commission was held during the 2003 Annual Meeting, in August 2003. This initial meeting allowed the members to meet and begin discussing general ideas of how to proceed with the project. The Joint Commission then held two days of meetings in October 2003 in conjunction with the fall meeting of the Standing Committees of the Center for Professional Responsibility in Chicago, Illinois. During this session, the work of the Joint Commission began in earnest. Commission members agreed to evaluate the current structure of the code and consider a redrafting using the format of the Model Code of Professional Conduct.

The Joint Commission also used this meeting to identify a number of areas that need to be addressed and reviewed, including the use of the "appearance of impropriety" standard, the ethical obligations of a judge towards pro se litigants, and the unique ethical obligations for judges involved in problem solving courts.

In December 2003 the Joint Commission held its first public hearing. The hearing, which took place in Washington, DC, consisted of a portion for open, public testimony and a portion for invited guests to participate in a roundtable discussion. A number of people requested an opportunity to testify before the Joint Commission during the open hearing session, and the roundtable session had an excellent response as well. The December meeting also included a half-day meeting

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ABA Joint Commission to Evaluate the Model Code of Judicial Conduct

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Kansas City, MO

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Division Nominating Committee Results

by Judge James Scott Sledge
Anniston, AL

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

Judicial Division Vice-Chair
Judge Leslie Miller

NJC Board of Trustees
Judge Tyrone Butler

Judge Ruth Kleinfeld (Alternate)

Judge Kleinfeld was nominated as the second nominee to fulfill the Board's submission requirements. She abstained from the vote.

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 Atlanta in August, 2004. .

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JUDICIAL
DIVISION

Brown at 50

by Richard N. Bien
Kansas City, MO

"A near condition of apartheid existed."

Chief Justice Earl Warren in a May 22, 1974 interview quoted in *Chief Justice*, by Ed Cary, Simon & Schuster, 1997, p. 279.

Brown v. Board marked the beginning of the remedy to our country's great social and cultural ill and its half centennial is the catalyst for substantial JD programming. Our intentional focus on this watershed decision has provided the Division with opportunities for service, education, reflection and challenge.

Service. At this year's recently completed ABA Mid Year meeting, the Division's Judges Network introduced its latest program, a modified version of *Dialogue on Brown*. This outstanding program uses the *Brown* decision as a platform for discussion of the justice system and its impact on public policy and private practice.

The Judge's Network program pairs a judge and lawyer who present both the history of the case and a current day hypothetical tailored to fit a 50-minute middle or high school class period. I had the chance to observe the inaugural program in San Antonio. *Dialogue on Brown* was a success because every young person in attendance understood the issue. All of the students recognized that "fairness" and equality were at issue. They also appreciated the issues at play when competing interests debate fairness, opportunity and remediation. The real world scenario combined with the history of *Brown* made an impact on the high school participants.

In his opening remarks to the House of Delegates, ABA President Dennis Archer

publicly recognized the program as one of the ABA's significant contributions to the *Brown* activities this year. Examine *Dialogue on Brown* at www.abanet.org/jd/judgesnetwork. Congratulations to Judges Network chair Jack Brown and JD staffer Paula Nessell for their efforts in revising a lengthier version of the *Dialogue* program prepared by the ABA Division of Public Education. San Antonio attorney, Mark Sessions, arranged this successful Mid-Year program.

Education. A *Brown* forum will be JD's keynote education program at the ABA Annual Meeting. In addition to a live presentation at the meeting, a streaming video presentation will be available following the meeting for those who cannot attend. Harvard Law professors Charles Ogletree and David Wilkins, along with judges and civil rights lawyers, will discuss the continuing legal and sociological impact of *Brown*. Professor Ogletree chairs the ABA's *Brown* Commission and is a leading civil rights scholar. Professor Wilkins is the Division's Scholar in Residence for the Annual Meeting. Professor Wilkins' studies focus on the continuing sociological impact of *Brown*, backlash, the currents of discrimination, the justice system's response, and diversity in the profession. If you attend the Annual Meeting, make attending this program a priority. Also, plan to join the panelists and other attendees for a pre event reception. The reception and program begin at Noon on Friday, August 6, 2004 at the Westin Peachtree. Room assignments have not been finalized. Thanks to our cosponsor the Conference of Federal Trial Judges led by Chair Judge Andre Davis and program Chair Judge Sam Bufford for planning this program.

Reflection. The upcoming edition of the *Judges Journal* focuses on *Brown*, its aftermath and the heroes who implemented the decision, the Federal and State trial, and appellate judges who implemented and continue to implement the decision. Outstanding articles fill this

edition of the *Journal*. At the ABA Midyear Meeting, the Division's *Brown* committee presented a moving two hour discussion of the case and its impact in Texas. A panel of Texas lawyers and judges discussed its implementation and continued teaching. Their reflections and presentation were inspirational. Judges Sophia Hall and Andre Davis Chairs of the Division's *Brown* taskforce co-chaired this event.

Challenge. *Brown* reminds us of the worst – in human nature and public policy – prejudice, inequality and state endorsed programs that perpetuate intolerable private conduct. The best – a justice system where advocates and jurists working within the justice system can begin to remedy a wrong and a key moment in the advancement of civil rights for all citizens. Still, questions abound: 1.) Can courts really effect social change? 2.) What are the limits on remedy? 3.) Where will the search for equality of opportunity take the justice system and education system next?

Twenty-five years ago, in a speech inducting Wiley Branton as Dean of the Howard law school, Justice Thurgood Marshall summarized the challenge. He said:

Be aware of the myth that everything is going to be all right. Don't give in. I add that because it seems to that what we need to do today is to refocus. Back in the 30s and 40s, we could go no place, but to court. We knew then the court was not the final solution . . .

. . . It's a democracy if we can keep it. And in order to keep it you can't stand still. You must move, and if you don't move, they will run over you.

The *Brown* challenge compels the Association, the Division and each of us - lawyers and judges - to continue the public discussion on these issues - the search for answers - and as Justice Marshall said, "we must continue to 'move'."



by Aimee Skrzekut
Torres

The Judicial Division supports the idea that an active and committed citizenry is cultivated through outreach and erudition. Judicial Division initiatives target the public through a myriad of activities including outreach and opportunities for engagement such as National Issues Forums.

The Anniversary of the historic *Brown v. Board* decision provides ample opportunity for instruction, discussion and action. ABA President-elect, Robert Grey provided his perspective on *Brown v. Board* at fifty to a captive audience at Stockton College in New Jersey on February 26, 2004. No one in the audience stirred as he celebrated *Brown* on many levels. He discussed *Brown* as a celebration of education, which is "the most powerful of human experiences." Heads nodded as he emphatically stated that "separate was never intended, nor designed to be equal." He then asked the group to analyze where the United States is today in terms of equality and access stating that segregation today is due to impoverishment.

Individuals do not automatically become free and responsible citizens, but must be educated for citizenship- "The Civic Mission of Schools," Carnegie Corporation and CIRCLE

President-elect Grey also stated that *Brown* was a celebration of diversity as "the first concrete endeavor to bring blacks and whites together in a common enterprise." He emphasized the vast repertoire of assets diversity provides in tackling obstacles. He listed the many ways that diversity benefits the human experience through art, music, cuisine as well as the introduction of new thoughts and viewpoints.

In addition to diversity, *Brown* also celebrated the law as it effectuated change in American society via legal remedies and nonviolent action with the strong leadership of Dr. Martin Luther King and Justice Thurgood Marshall. Finally, President-elect Grey shared that *Brown* is a celebration of "America and our nation's ability to renew itself." It is America's ability to move forward "...to change and improve, renew and rectify" that distinguishes us as a nation. Grey concluded by emphasizing that audience members should take full advantage of the opportunity to be educated.

Building upon the momentum of the presentation by Robert Grey, the Judicial Division in cooperation with the Coalition for Justice presented a National Issues Forum (NIF) to Stockton students on February 27 to examine whether all citizens have access to fair and impartial justice. Discussion was spirited as students shared experiences of inequity and debated whether bias, barriers or politics should be removed to improve public trust and confidence and overall access to justice. Three more NIF's were convened at Colgate University March 1-2, 2004 in Hamilton, New York to deliberate the same access to justice issues. It was truly

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ABA Approves Electronic Filing Standard

At the ABA Midyear Meeting, the House of Delegates approved Standard 1.65, Court Use of Electronic Filing Processes. Shown below is National Conference of State Trial Judges (NCSTJ) Delegate, Judge Leslie Miller making the presentation before the ABA House of Delegates.

This newly adopted ABA Standard is consistent with the April 2003 standards on electronic filing approved by the Conference of State Court Administrators and the National Association for Court Management.

The COSCA/NACM standards contain guidance for court policies and rules, a conceptual model of a common technological approach, and functional standards for courts and vendors to follow in designing and building automated applications to support electronic filing. The ABA Standard deals only with the court policies and rules – the e-filing topics of greatest interest to lawyers and judges. The fact that the newly adopted ABA Standard is consistent with the COSCA/NACM standards should reinforce the validity of both sets of Standards for the benefit of the bench and bar. The ABA Standard, consisting of black letter and commentary, is 14 pages in length. The NCSTJ E-filing Standards Committee, co-chaired by Judges Hank Ridgely and Herbert Dixon, developed and proposed the Standard to the JD. Thereafter, the JD submitted a resolution to the House of Delegates to adopt the Standard. The Standard was co-sponsored by the following ABA sections: Litigation, Science & Technology Law, and Tort Trial and Insurance Practice.

An electronic copy of the Standard may be obtained on the NCSTJ website at <http://www.abanet.org/jd/ncstjweb.html>.



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 x220, Fax: 701/795-3886, E-mail: jmedd@ndcourts.com or contact Kris Berliant at ABA/Judicial Division, 541 N. Fairbanks Court., Chicago, IL 60611, Phone: 800/238-2667 x 5700, Fax: 312/988-5709; E-mail: berliank@staff.abanet.org

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ARTICLE SUBMISSION DEADLINES

Summer 2004: Wednesday, May 5

ABA Program Urges Minority Law Students to Seek Judicial Clerkships

by Justice Frank Sullivan, Jr.
Indiana Supreme Court
Indianapolis, IN

Fifty-one minority law students from fourteen law schools throughout the country were urged to seek judicial clerkships in a special program at the American Bar Association's Mid-Year Meeting in San Antonio, Feb. 5-Feb. 7, 2004. The fourth annual Judicial Clerkship Program (JCP) was organized and conducted under the enthusiastic co-sponsorship of the ABA's Commission on Racial and Ethnic Diversity in the Profession and its Judicial Division, and with the generous financial support of LexisNexis.

The Commission and the JD launched the JCP three years ago in response to a study by the National Association of Law Placement that showed minority representation among judicial clerks generally lower than in the law school population and to publicity over the absence of minority clerks at the U.S. Supreme Court.

Over parts of three days, the Program brought the minority law students together with 30 judges and several former law clerks for panel discussions, a research exercise, and informal social events. These activities were designed to introduce and then reinforce reasons for pursuing a judicial clerkship: (1) allowing a new lawyer to develop a close personal working relationship with a judge; (2) improving a new lawyer's legal research, analytical, and writing skills; (3) enhancing a new lawyer's career opportunities; and (4) permitting a new lawyer to participate directly in the process of shaping the law.

One panel, chaired by Judge Patricia Timmons-Goodson of the North Carolina Court of Appeals, consisted of a five judges from courts with different types of jurisdiction. They discussed with the

students the differences and similarities in clerking for trial courts, intermediate appellate courts, and courts of last resort at the federal and state level.

Another panel, chaired by Jacqueline Regis, a member of the Commission, consisted of six former law clerks, two of whom practice in law firms, two of whom are in-house counsel for major corporations, and one of whom is a law professor. They explored with the students their experiences as clerks and the ways in which their clerkships have been helpful to them.

Representatives of the placement office and students at the University of Texas at Austin Law School made a special presentation on considerations in applying for and techniques for securing judicial clerkships.

The most ambitious part of the Program was a "research exercise." In an effort to acquaint the students with the working relationship between judge and law clerk, the students convened in small groups of four to six students with several judges assigned to each group. Once in the groups, the students were asked to assume that they were judicial clerks and that the judge for whom they worked had been assigned to write an opinion on whether a state that offers taxpayer-financed scholarships for post-high school education can withhold the money from



San Antonio, TX - Hon. George C. Hanks, Jr., Texas Court of Appeals and Hon. Arthur L. Burnett, Sr., D.C. Superior Court were among the more than 30 judges leading discussions with law students on the benefits of clerking.

an otherwise eligible student who wants to use it to attend a religious college and major in theology. (The problem is based on a case currently before the United States Supreme Court.)

After discussing the "assignment" with their respective judges, the students used

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ABA Commission on State Court Funding

by Michael L. Buenger, Jefferson City, MO

The ABA Commission on State Court Funding continues to gather valuable information on the impact of state fiscal crises on court operations. The Commission held a meeting at the Midyear Meeting in San Antonio, hearing testimony from national experts on court budgeting, judges, and state bar leaders.

The Commission is chaired by Justice Joseph P. Nadeau of the New Hampshire Supreme Court and includes representatives from 17 ABA entities and the Conference of Chief Justices. I am pleased to serve as the Judicial Division's representative on the Commission. In addition, several liaisons from civic and business organizations and state governmental associations are participating actively in the Commission's work, offering valuable suggestions on how to build a stronger public constituency to support adequate funding of state courts.

The Commission has begun drafting its report with recommendations to the ABA House of Delegates, which will be considered at the 2004 Annual Meeting. The report will focus on the following aspects of court funding, with an eye to promoting the kind of long-term fiscal health that will allow state courts to better weather future economic downturns and maintain the independence of the judiciary:

- Documenting the funding needs of courts to provide thorough justification for budget requests;
- Documenting efficiencies, including those due to innovative programs;
- Adopting performance standards that form the basis for budget requests;
- Identifying primary and secondary funding priorities;

- Giving courts greater flexibility in budgeting and expenditures, including direct submission of budget requests to state legislatures or local funding sources and ability to carry over surpluses from one year to the next;
- Improving communication with executive and legislative branches at state and local levels throughout the entire fiscal year, not only during budgeting and appropriations processes;
- Building constituencies within the bar, the media, the business and labor communities, and the public to advocate for adequate court resources; and,
- Expanding the use of broad-based commissions or task forces, comprised of lay citizens, attorneys, and representatives of all three branches of government, to provide guidance on how courts can adapt to serve evolving needs.

I was able to conduct an informal survey of my fellow state court administrators regarding funding issues. The anecdotal responses highlighted the need for the courts to have more flexibility and autonomy in budgeting and expenditures, including the ability to retain savings from one year to the next so as to have "rainy day" funds available. Court administrators also stressed the need for court systems to be accountable for their budgets in order to enhance credibility with the public and funding bodies. The use of performance measures as a basis for justifying resource needs can help courts react to changing needs, plan for the future more effectively, and enhance the independence of the courts by demonstrating appropriate attention to the importance of public accountability for the use of public resources.

The Commission will meet on April 23 in Chicago to finalize its recommendations. We have received excellent input from JD members nationwide and hope to receive more information from judges, lawyers and court managers in the field over the next few months. In addition, the summer 2004 issue of *Judges Journal* will focus on state court funding issues.

Please contact me at Michael_Buenger@osca.state.mo.us with your comments and suggestions.

Coalition for Justice Plans Outreach Meeting

by Paula Nessel
ABA Staff
Chicago, IL

The Coalition for Justice, a diverse committee composed of lawyers, judges, and representatives of non-lawyer organizations such as the Committee for Economic Development, is planning its fifth Community Network Outreach Meeting in D.C. on May 4. ABA leadership and top level representatives of organizations such as the League of Women Voters, Interfaith Alliance, and National Governors Association will be

invited. The agenda will address court funding issues and include a round table discussion of concerns about the justice system.

The "And Justice for All: Ensuring Public Trust and Confidence in the Justice System" National Issues Forum program involves the public in discussions about improving the justice system using materials that frame the issue from three viewpoints: remove the bias, remove the politics, and improve access. It was created in partnership with the Kettering Foundation and the Standing Committee on Judicial Independence and includes free "issue" books, moderator's guides, and a 10-minute videotape that are accessible along with additional resources at www.abanet.org/justice/nif/home.html. Planned events of the NIF program include:



San Antonio, TX - Shown chairing the Coalition for Justice meeting in San Antonio is Judge Cara Lee Nevelle (right) and ABA Staff Paula Nessel (left).

- Feb. 27 – forum at Stockton College in NJ
- March 1&2 – series of 3 forums at Colgate University in NY

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Time Off The Bench

by Judge Thomas C. Warren
Chelan County District Court
Wenatchee, Washington

Not a directions argument – It is a navigational discussion!

My children tell Mary Ann and I that the only time they remember their parents arguing was on the car trips, when we might discuss proper direction and navigation in a louder than normal tone. As we have certainly matured in our midlife extravagances, we now only have navigational discussions. This fun part of our life together came back to visit us this past year on our two car trips in Europe. Having had a driver's license for 45 years, and even driven on the wrong side of the road in the United Kingdom and Ireland, I figured that driving on the continent would be a snap. Well it was a snap, but there are always a few high points as we shall see.

In the last issue of the JD Record you will recall the great boat trip in France.

That vacation also included renting a car in Frankfurt and traveling in Germany, Austria Switzerland, and France. Things didn't start out real well in the lot where we picked up the car. Even at my age, I really don't like to be embarrassed or to appear to strangers that I might be an idiot. We pack the car with all our stuff (mostly Mary Ann's!), start the car, and I then try to put the Opel station wagon into reverse. I would have sworn to God it had no reverse gear! I really did not want to go back to the desk and ask how to get it into reverse, due to the aversion of appearing crazy, and their then revoking my rental contract. Fortunately, one of the employees was parking a car nearby and we signaled him for help. Even with the language problem, with some hand motions and body language, he got the picture. It seems on many European cars, there is a ring at the bottom of the shift knob, which must be

raised as you move the knob into the reverse position. Ah, so simple when you know about it.

On to the autobahn. You learn quickly to get out of the fast lane, also known euphemistically as the "Mercedes lane". My little Opel was whizzing along at a speedy 80 mph (130 kph) and we were being passed like we were standing still. Mary Ann humorously wondered how that silver car always seemed to be getting behind us, and then passing again. All the high powered BMW's and Mercedes seem to be painted silver just like the speeding bullet.

You know you should be able to figure out all those international traffic signs since they are supposed to be visually simple. Oh sure! Maybe, I didn't study the chart enough. I had a little trouble with the "No Entry Signs" and found ourselves driving down the pedestrian only mall on a busy Saturday in Bern, Switzerland.

For those of you who are going to be driving in Europe I suggest you take a look at the following website: www.aviano.af.mil/newcomer/signs/

This past Thanksgiving we had a wonderful trip to Tuscany and Florence, Italy. Alas, again a car, a Ford Focus this time, and I got it into reverse right away. Then things went downhill. From the airport in Florence our destination was a villa (take a look at www.palagina.it) in the Chianti region of Tuscany but first we had to get on the autostrada going the right direction. We had a Hertz map, the map to the villa, but not a good road map. We ended up going to Bologna (wrong), then Pisa (wrong), and finally decided we should be headed to Rome. Back at the autogrille on the airport access road we bought a map, had a cappuccino, and figured it out. You learn in Italy that they do not give you directional hints.

OK, we are going good, then enter the toll gate for the autostrada, and immediately find no way to pay. The cars are backing up behind me, my blood pressure is climbing when the guy behind me yells (maybe in English) to hit the

flaming red button. Will wonders never cease, a toll ticket prints out just like in a parking garage! The next challenge is to exit the autostrada. There were seven or eight exit lanes, so which should we take? We elected wrong. Do not go the vincard or telepass lanes. When there was nowhere for me to pay, I back out and head to where we see a human. The lesson is go to the Biglietto (ticket) lane or where the big signs are with the man with his hand out for money. All I can figure out is that all these problems were the fault of Mary Ann for not giving me correct directions!

Driving in Tuscany is really very simple, just be careful on all the winding, twisty roads, and in my case watch for deer, as I am known to hit one every couple of years (local nickname: the Deerslayer). In November it gets dark early, and so we were always trying to return to the villa from a Tuscan hill town, when it was pitch black and sometimes raining. The city of Poggibonsi, between Florence and Siena, will always be indelibly engrained in my driving mind. Italian road signage, particularly on the roundabouts, tends to be at the last moment, with a whole stack of signs, thus making you drive right past your exit or where you want to turn.

Poggibonsi required leaving town (and returning) four times, before finding the miniscule sign to "Greve in Chianti". I hate Poggibonsi!

I want to reassure my children, and all of you, that our navigational discussions have not resulted in a marriage dissolution. These little problems just make each of our trips more memorable.

The Legal Stuff: All of the recommendations and advice of Time Off The Bench are personal to Judge Tom Warren and are not in any way connected or endorsed by the American Bar Association. If you follow any of my suggestions, I warrant nothing! You are all smart enough to evaluate your own risks when traveling. As always, I appreciate your feed back, comments or criticism (be gentle). Contact me at thomas.warren@co.chelan.wa.us

Traffic Court Program

by Judge William G. Kelly
Chair, Committee on Traffic Court Program
Kentwood, MI

The Traffic Court Program will be held October 13-15, 2004 in San Francisco. This year we will feature sessions on Sobriety Courts, Collection of Fines and Costs, Finding Qualified Interpreters in Traffic Court, Racial Profiling in Courts, Ethics and the Role of the Judge, and Elderly Drivers. We will

also present our well-regarded core curriculum with Judge Fred Rodgers teaching about procedural issues in Traffic Courts, Dr. David Fisher speaking on Speed Check Instruments, Dr. Robert Forney, Jr. discussing the effects of Alcohol on the Human Body, and Lt. William Tower speeding about Drug Recognition Evidence. Now is a good time to make plans to attend.

Funds for judicial education are tight but if you contact your state judicial educator you might find that Section 402 funds are available from the Federal government to pay for your tuition and expenses.

The Traffic Court Program held in Memphis was very informative. Attendees heard Judge Louraine Arkfeld discuss new technologies being used in various jurisdictions in the United States and around the world, such as Automated Speed Enforcement and Automated Traffic Light Enforcement. We also heard from Dr. Jim Frank talk about the seizure of automobiles from drunk drivers.

If you have any questions, please contact Rebecca King at 312-988-5742 or by e-mail at kingre@staff.abanet.org.

CEELI In The Middle East

by Judge Suzanne B. Conlon
US District Judge, Chicago, IL

Executive Director Elizabeth Andersen of ABA's Central European and Eurasian Law Initiative (CEELI) met with the National Conference of Federal Trial Judges during the Midyar Meeting. Ms. Andersen joined CEELI last fall. Her legal background includes a clerkship with a federal judge, and service as legal assistant to a judge of the International Criminal Tribunal for the former government of Yugoslavia. Most recently, she was Executive Director of the Europe and Central Asia Division of Human Rights Watch.

Ms. Andersen's strong background in international humanitarian, human rights and refugee law will serve her well in leading CEELI's initiatives. Significant programs are in development in the Middle East. The new initiatives are modeled on CEELI's successful programs in the former Soviet Union and Eastern Europe. For 13 years, CEELI has drawn upon volunteer judges, lawyers and legal educators to provide law reform assistance in countries emerging from Soviet domination. CEELI has developed into the leading provider of technical legal assistance in Central Europe and Eurasia, with staff based permanently in 23 countries. CEELI programs are recognized

as innovative, diverse and responsive to the needs of local governmental and non-governmental partners facing the challenge of developing democratic institutions. Judicial training and support for the rule of law continue to be important aspects of CEELI's agenda.

In 1999, CEELI established an international educational institute in Prague. The institute trains hundreds of judges and lawyers from Eastern Europe and the former Soviet Union. Courses include *Judging in Democratic Societies and Justice in a Market Economy*. The focus of these courses is on judicial independence, judicial ethics, and complex issues that arise in the operation of domestic and international market economies.

CEELI and its Prague educational institute are key partners in ABA's recently formed Iraq Initiative. Other ABA involved entities are the Section on International Law and the Asia Law Initiative. ABA Iraq Initiative participated in an assessment of Iraq's legal system last August. A month later, ABA organized a workshop in Bahrain for 38 prominent Iraqi professionals to discuss constitutional issues in preparation for impending reforms. The ABA Iraq Initiative is currently organizing two conferences with the same objectives for an additional 120 Iraqi judges, lawyers and community leaders. The workshop agenda includes panels exploring a working definition of democracy, exercises in constitutional drafting, and discussions on the rights and responsibilities of democratic citizens.

The workshops have a strong public education component so that participants may continue a dialogue on these issues with members of their communities throughout Iraq.

In addition to its vital role in the Iraq Initiative, CEELI is presently conducting assessments of the judicial systems in Jordan and Morocco and is considering an additional assessment in Oman. CEELI's extensive programs continue throughout Eastern Europe and the former Soviet Union. Judicial volunteers play an important role in these programs. Judges interested in participating are encouraged to apply through CEELI's website at www.aba.org/ceeli/ by clicking on "Get Involved."



Elizabeth Andersen, CEELI Director

ABA Delegates' Report

by Judge Frederic Rodgers
Golden, CO

This year, 2004, marks the sixty-fifth year that the ABA has assembled for its Midyear Meeting. Since the reorganization of the ABA in 1936 which led to the creation of the policy making House of Delegates (House), there have been only two years when the ABA failed to convene for the Midyear Meeting, once in 1938 for financial reasons and again in 1945 due to restrictions placed on travel and conventions during World War II.

Along with the House convening February 9, 2004 in San Antonio to review recommendations submitted by various ABA entities, many sections and committees were also meeting to review the business of their groups. In addition two ABA commissions held hearings on issues of importance: the Joint Commission to Evaluate the Model Code of Judicial Conduct held hearings which attracted considerable attendance and the attention of the press (partly because of Justice Scalia's duck hunting trip with Vice-president Cheney). Also, the ABA's decennial Governance Commission held hearings on the organization, structure, size and composition of the House of Delegates and the Board of Governors. Whether the Judicial Division gets to keep all six of its delegates in the House is a matter of serious consideration.

The House Nominating Committee met to choose nominees for ABA officers and members of the Board of Governors. Among those selected: Michael Greco, a partner in Kirkpatrick and Lockhart in Boston and a native of Italy, for president-elect, Armando Lasa-Ferrer of Guaynabo, Puerto Rico for secretary-elect, and William Robinson of Covington, KY for treasurer-elect. Former House Chair Karen Mathis of Denver emerged as the only as yet announced candidate for president-elect nominee to be determined at next year's 2005 Midyear Meeting.

A synopsis of actions in the House follows:

Judges and Courts. The House voted to approve Report 113A sponsored by the ABA Judicial Division to adopt the black letter *Standard 1.65, Court Use of Electronic*

Processes, as an amendment to the *ABA Standards Relating to Court Administration*. The House also approved Report 113B urging Congress to adopt a retirement plan for administrative law judges befitting their judicial status. The House recognized that since judges come to the bench later in life than career civil servants, their retirement plans should be separate. The ABA Criminal Justice Section, IRR and others successfully sponsored Report 116 urging adoption of laws and policies to address the complex problem of mentally ill persons being dealt with in criminal courts rather than in mental health treatment programs.

The House also passed Report 8C sponsored by the Ohio Bar Association which urges ABA lobbying support for state and federal laws mandating public disclosure of contributions and expenditures of so-called "independent campaign committees" such as those sponsored by the U.S. Chamber of Commerce in the last election cycle that in any way influence voters and the public with regard to candidates for judicial office.

Civil Rights. Gathering the most attention in the nation's newspapers, the House approved Report 103D opposing any federal measure that would pre-empt states from defining marriage. The resolution engendered almost no controversy on the floor of the House, where no one spoke in opposition to the measure.

The War on Terror. Turning to another issue involving federal and state powers, Report 105, submitted by the ABA Litigation Section and others, the House voted to urge the federal government to retain exclusive jurisdiction over civil immigration matters. The resolution opposes delegating authority to state and local police to enforce immigration laws. It also opposes proposed federal legislation that would allow the government to seize assets of illegal immigrants and charge them with a crime for merely being present in the United States without proper documentation of legal entry. The Report may be aimed at a federal bill, H.R. 2671, known as the Clear Law Enforcement for Criminal Alien Removal Act. The bill would let local law enforcement officials detain and seize assets of suspected illegal immigrants and grant them qualified immunity for mistakes they make while doing so.

In other action, the House voted in favor of Report 8A submitted by the Criminal

Justice Section, IRR and others to urge law enforcement agencies to videotape interrogations of crime suspects. Supporters called recording a "valuable tool for law enforcement in addition to a safeguard for suspects." The House also passed Report 103A defining policies for one country's exercise of jurisdiction over foreign nationals for alleged international crime.

The House postponed indefinitely Report 104 which would have committed the ABA to urging federal courts to assume jurisdiction over habeas corpus petitions filed by foreign nationals held in detention at the U.S. Naval Base at Guantanamo Bay, Cuba. In another Caribbean matter, the House declined to become involved in what one Delegate called "the black hole of Puerto Rican politics" and voted to postpone indefinitely Report 8B sponsored by the Hispanic National Bar Association and the San Francisco Bar Association. This Report would have committed ABA lobbying support for a U.S. sponsored referendum on the locally contentious issue of statehood and suffrage for the four million citizens of the Commonwealth of Puerto Rico. The debate was fascinating and the logic of the proponents compelling, but in the end it seemed to a majority of Delegates that this was not the ABA's battle.

Legal Education. The House passed Report 109 sponsored by the Young Lawyers Division and others, encouraging federal and state legislation addressing school violence prevention and parent and teacher education, and urging lawyers to volunteer time and money to support such programs. The House also passed Report 110 which amends the Comment to Section 2 of the Model Rules for Mandatory Continuing Legal Education to include requiring separate ethics programs related to racial, ethnic, gender diversity and elimination of bias in the profession. Report 200 challenging removal of provisional accreditation from Western State University College of Law in Fullerton, CA, was withdrawn by its proponents partly for procedural reasons but mainly because of a U.S. District Court injunction entered shortly before the House met enjoining the ABA from enforcing any action the House might take regarding the College's accreditation, and preserving the status quo until a permanent injunction hearing in April.

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San Antonio, TX - ABA President Dennis Archer spoke at the Keith E. Nelson Memorial Military Law Committee Luncheon at the ABA Midyear Meeting. President Archer was sworn in, along with several others, to be admitted to the U.S. Court of Appeals for the Armed Forces.



Williamsburg, VA - Judges Louraine Arkfeld and Herbert Dixon represented the JD at the Courtroom 21 International Conference on the Legal and Policy Implications of Courtroom Technology in Williamsburg, Virginia on February 13 - 14. Judges Arkfeld and Dixon are shown here in the courtroom with Chancellor Professor of Law and Courtroom 21 Director Fredric Lederer.



San Antonio, TX - Federal District Judge Royal Furgeson, Jr. of San Antonio, Texas was presented the Spirit of Excellence Award at the ABA Midyear Meeting. The Award was presented by the ABA Commission on Racial and Ethnic Diversity in the Profession. Judge Furgeson was presented the Award for spending his legal career working to make resources and opportunities of the legal profession available to disadvantaged and minority communities in his area.

Director's Column

(continued from page 3)

exciting and enlightening to hear what today's college students think about inequity and access to justice and how their opinions are affected by their socioeconomic status and life experiences.

To learn more about recent Division education and outreach initiatives, please turn to the Chair's column by Rick Bien on page 2. For more information on NIF planning, please visit www.abanet.org/justice/nif.

Save the Date

2004 Annual Meeting - Atlanta, Georgia - August 5-9, 2004

Join the Division in Atlanta this summer for the 2004 Annual Meeting. The Division headquarters hotel is the the Westin Peachtree Plaza. Highlights of the meeting include a Welcome Reception at the Carter Presidential Center. Sponsored by LexisNexis and the Division, this event will give attendees an opportunity to network while visiting in the museum and walking through the gardens. Our Scholar in Residence, Prof. David Wilkins from Harvard, will be speaking at our Meet and Greet on Friday, August 6, followed by his presentation in our featured program on *Brown v. Board*. The weekend will top off with dinner, dancing and the presentation of the Justice Center John Marshall Award at the Annual Dinner in Honor of the Judiciary. The Fernbank Museum of Natural History promises to be a great location for this event. Information on tickets for Division and Conference social events will be available shortly. The deadline for Advance Registration and Housing is July 8, 2004 at 5:00pm CDT. Log onto: <http://www.abanet.org/annual/2004/> Please be sure to visit: <http://www.abanet.org/jd/meetings/2004annual/home.html> for meeting updates, program and social event information.

Model Code of Conduct

(continued from page 1)

of the Joint Commission. During this meeting, the commission members reviewed a partial draft of the Model Code, in a new format.

The Joint Commission held its second public hearing and roundtable during the 2004 Midyear Meeting in San Antonio, Texas, in February 2004. The Joint Commission also held a day-long meeting in conjunction with this hearing. Commission members heard extensive testimony on a variety of topics, including judicial campaign financing, the ability of a judge to speak on an issue involving the judge's interests, and whether there should be ethical obligations associated with reporting the impairment of a colleague.

In addition, public hearings and meetings are scheduled for March 26-27, 2004, in San Francisco, California; June 4-5, 2004, in Naples, Florida; and August 5-6, 2004 in Atlanta, Georgia. **The Joint Commission plans to host a roundtable discussion with the ABA Judicial Division in April 2004**, a roundtable discussion in New York City in May 2004; and an extensive roundtable discussion and meeting in conjunction with the American

Judicature Society National College on Judicial Conduct and Ethics in Chicago, Illinois in October 2004.

Relevant Issues

The Joint Commission has identified a number of substantive and structural issues to address in its work. Members have tentatively agreed to re-format the code into a Model Rules of Professional Conduct format, consistent with the ABA Model Rules on Professional Responsibility. In addition, members have begun to discuss topics such as the enforceability of provisions found within Canon 1 and 2, including the "appearance of impropriety" standard; whether there should be a rule addressing the impaired judge; and whether the code should include specific ethics guidelines for judges in problem solving courts, such as drug courts, community courts and mental health courts. Members are also reviewing the *ex parte* rules, in light of the growing number of *pro se* litigants; whether the recusal standards need to be modified in response to the changing nature of judicial elections; and whether there should be a rule addressing the judge's role in settlement. Given the almost immediate access to information via the Internet, members are considering whether the *ex*

parte rules need to be strengthened to address a judge seeking information outside the course of the proceedings.

All current canon provisions will be reviewed and analyzed, and the Joint Commission hopes to garner as much input as possible from interested parties. A website has been established that houses all information related to the Joint Commission's work. The address is www.abanet.org/judicialethics. A general informational discussion list has been established to provide information about upcoming hearings and meetings and to share drafts for comment. If you would like to join the general discussion list, please contact Eileen Gallagher at 312-988-5105 or e-mail: gallaghE@staff.abanet.org.

The Joint Commission is grateful for the involvement and active participation of the Judicial Division and encourages the Division's members to provide feedback on the Joint Commission's work, as drafts are circulated. Any questions about the work of the Joint Commission should be directed to the Commission's Counsel, Eileen Gallagher, 312-988-5105, gallaghE@staff.abanet.org, or George Kuhlman, 312-988-5300, gkuhlman@staff.abanet.org.

Family Court Judges – We Need Your Help!

by Judge William W. Nooter
Washington, D.C.

The National Conference of Specialized Court Judges Domestic Law Committee seeks help from any and all Family Court judges to compile sources for its Resource Page. This year's project of the Domestic Law Committee is to prepare and launch a list of organizations, publications and websites that pertain to family law issues, such as child abuse and neglect, juvenile delinquency, child custody and support, domestic relations and domestic violence. The Resource Page will be posted on the Judicial Division's website to provide assistance to all members of the Division as well as to public visitors of the site. If you have suggestions for specific organizations, publications or websites that should be included on the Resource Page, please e-mail Magistrate Judge William W. Nooter at nooterww@dcsc.gov. Thanks.

Coalition

(continued from page 5)

- April 15-16 – moderator training at Judicial Division's Spring Planning Meeting in Tempe, AZ
- May 1 – workshop demonstration at National Judicial Outreach Conf-

erence in Memphis, TN (in partnership with YLD Spring AOP)

- Spring semester 2004 – forum at University of Georgia

The Coalition's Web-based 2003 *Summary of State and Local Justice Improvement Activities* www.abanet.org/justice/03summary/home.html showcases bar and court

innovations such as unified family courts as well as citizen conferences, justice commissions, and efforts to reduce racial/ethnic/gender bias.

Model Code

(continued from page 1)

Thomas Fitzpatrick
Snohomish County Prosecutors Office
Seattle, WA

Donald Hilliker
McDermot Will Emery PC
Chicago, IL

Hon. M. Margaret McKeown
US Court of Appeals for the Ninth
Circuit
San Diego, CA

Hon. Cara Lee T. Neville
4th Judicial District
Minneapolis, MN

Hon. Harriet Turney
Industrial Commission or Arizona
Phoenix, AZ

Hon. James A. Wynn
North Carolina Court of Appeals
Raleigh, NC

Reporter

Charles Gardner Geyh
Indiana University School of Law

Advisory Commission

Robert H. Tembeckjian
New York, NY
Association of Judicial Disciplinary
Counsel

Hon. Randall T. Shepard
Indianapolis, IN
Conference of Chief Justices

Hon. Ellen Rosenblum
Portland, OR
National Judicial College

Hon. Peter W. Bowie
San Diego, CA
Judicial Conference of the United States

Robert P. Cummins
Chicago, IL
American Judicature Society

Hon. Carol Bagley Amon
Brooklyn, NY
Judicial Conference of the United States

Marvin Karp
Cleveland, OH
ABA Standing Committee on Ethics &
Professional Responsibility

D. Dudley Oldham
Houston, TX
ABA Standing Committee on Judicial
Independence

M. Peter Moser
Baltimore, MD
ABA Center for Professional
Responsibility

Seth Rosner
Greenfield Center, NY
ABA Center for Professional
Responsibility Coordinating Council

ABA Program

(continued from page 4)

computers and software provided by LexisNexis to research the issue. Following several periods of both research and discussion, the students prepared outlines of opinions deciding the issue.

The "research exercise" above all else was meant to simulate to the maximum extent possible the kind of judge-clerk personal interaction characteristic of judicial clerkships.

Initial feedback from the participating law students, judges, and former clerks has been extremely positive. Virtually all of the participating students said they intended to seek clerkships. The Program intends to keep in touch with the students in an effort to determine how many of them actually pursue clerkships.

As co-chair of the Program, I want to express appreciation to LexisNexis; to my co-chair Cunyon Gordan; to ABA President Dennis W. Archer, ABA President-elect Robert J. Grey, Jr., and Secretary Ellen F. Rosenblum for their

participation in the Program; to Lawrence R. Baca, chair of the Commission on Racial and Ethnic Diversity in the Profession, and the Commission's staff; to Richard N. Bien, chair of the Judicial Division, and the Division's staff; and to all of the judges and former law clerks who gave so generously of their time to this project. Most of all, I want to thank the students for joining us. Their willingness to put aside their studies for a few days to explore clerking with us was extremely heartening and invigorating.

Report

(continued from page 8)

Uniform State Laws. Despite a flurry of opposition lobbying in the weeks before the session, the House passed Reports 111B and 111C sponsored by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. These Reports amend, respectively articles 2A on Leases and 2 on Sales of the Uniform Commercial Code. The House also passed without opposition Reports 111A, 111D, 111E and 111F, approving for those

jurisdictions which choose to adopt them, respectively, the Uniform Commercial Code Article 7 on Documents of Title; the Uniform Apportionment of Tort Responsibility Act; the Uniform Estate Tax Apportionment Act and new Article 3, Part 9A of the Uniform Probate Code; and the Uniform Environmental Covenants Act. Anyone desiring any copies of these reports may contact me.

Miscellaneous. The *ABA Code of Ethics for Arbitrators in Business Disputes* was sponsored by the Business Law Section and others, and passed the House. The Section on

Administrative Law and Regulatory Practice and others successfully sponsored Report 115 which endorses the revised *Standards for the Establishment and Operation of Ombuds Offices*. The ABA Commission on Lawyer Assistance Programs secured adoption of Report 114, adopting the black letter *Model Lawyer Assistance Programs*.

The House of Delegates will next meet in Atlanta August 9 and 10. Please contact me or any member of the Judicial Division Delegation for further information.

Appellate Judges News

American Bar Association

SMU Dedman School of Law Welcomes AJEI

A commitment is a pledge one makes for the betterment of a task or project. SMU's commitment to the Dedman School of Law has been unbroken for the last 79 years and has allowed the law school to develop into one of the nation's top law schools. No one understands this better than the Dedman Family, after whom the law school is named. The family committed \$20 million to the law school and charged it to become not only one of the top 25 law schools in the country but one of the top ten. The arrival of the Appellate Judges Education Institute (AJEI) at the SMU Dedman School of Law is a giant step in that direction.

"The Appellate Judges Conference of the American Bar Association enjoys a rich history of providing quality appellate judicial legal education programs for state and federal appellate judges," said James A. Wynn, Jr., Chair of the ABA's Appellate Judges Conference and North Carolina Court of Appeals Judge. "Providing future educational programs through the AJEI in affiliation with the Dedman School of Law at SMU represents a bold venture designed to import the benefits of professional legal academia into the provision of educational programs for our modern appellate judiciary."

Craig Enoch, president of the Appellate Judges Education Institute and former Justice of the Texas Supreme Court, said the AJC visited a number of top law schools to determine who would host the new headquarters for the Appellate Judges Education Institute. After reviewing schools across the country, SMU was selected for its national academic reputation, its central geographic location



Dedman School of Law

and its strong support from SMU and Dedman alumni for judicial education, Justice Enoch said.

"We are indeed honored to host the nation's premier institute on appellate judicial education," said John B. Attanasio, Dean and William Hawley Atwell Professor of Constitutional Law for the SMU Dedman School of Law. Dean Attanasio has conducted many conferences for justices of the Supreme Court of the United States and other appellate judges both in this country and around the world. The SMU Dedman School of Law has always been an innovator in legal education, and we will be happy to continue this tradition by helping the AJEI meet and exceed its lofty goals. Already William Dorsaneo, one of the leading professors on appellate practice in the country, is helping to prepare a major educational program next October.

"It's a privilege to be of assistance to the judiciary in providing a pedagogical expertise in developing the best program for presentation to the participants whether they are appellate judges, appellate lawyers or academic professionals," said Professor Dorsaneo, Chief Justice John and Lena Hickman Distinguished Faculty Fellow and Professor of Law at the SMU Dedman School of Law.

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AJC Call for Nominations

The AJC Nominating Committee is seeking candidates to fill the following Executive Committee positions that will become vacant at the conclusion of the 2004 Annual Meeting:

Vice-Chair (1 year term ending August 2005)

Delegate to House of Delegates (3 year term ending August 2007)

2 Members-at-Large (2 year term ending August 2006)

The elections will be held at the Conference business meeting at the ABA Annual Meeting on August 8 in Atlanta, GA. All Conference members in good standing and present at the business meeting are eligible to vote.

If you are interested in any of these positions, please send your letter of intent and resume to the Nominating Committee Chair, Hon. Craig T. Enoch, and to Conference Manager Paula Nessel for receipt no later than April 30.

Craig T. Enoch

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Paula Nessel

ABA/Judicial Division
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JUDICIAL
DIVISION
Appellate Judges Conference

UVA Judges' Program Graduates Tenth Class

If twenty-nine judges engage in exuberant celebration in Charlottesville, Virginia, on May 16, it is well deserved, as they become the tenth graduating class of the University of Virginia School of Law Graduate Program of Judges. The judges will receive the degree of Master of Laws in the Judicial Process and will have benefited from a judicial educational experience like none other.

Commenced in 1980 with cooperation from the Appellate Judges Conference of the ABA, the Masters program was not designed to replace the more traditional judicial seminar of significantly shorter duration, which primarily focuses on a review of current case trends or appellate issues. As Graduate Program Dean Earl Dudley explains, "We don't want to be teaching people how to be judges. What we're looking for is to expose them to what has been going on in the legal academy for the last twenty-five years. To the extent that it affects their judicial decision making we hope it will be by enriching their thought processes and not by exposure to any special area of the law."

Present Chair of the Council of Chief Judges Stephen J. McEwen, Jr., a past graduate of the program, commends the school for achieving its goals. "The benefits are not simply educational, rather, each participant comes to enjoy a deeper awareness, an expanded vision, and a brightened insight, and, as well, becomes a more enlightened and fulfilled individual."

The Masters program consists of two demanding six-week summer sessions of intense courses and production of a well researched thesis written by the judge. This graduating class spent its first summer in courses on Contemporary Legal Theory, Constitutional Law, Law and Economics, Legislation, and Constitutional History. In the second summer, the judges studied European Union law, Courts and the Social Sciences, Constitutional History, International Law in American Courts, Issues in Scientific and Expert Evidence and Environmental Federalism. Each course is taught by a nationally recognized law professor, each of whom who look forward to the very lively interchange



Graduate Program for Judges Class of 2004 with professors and assistants

Front Row: Justice John Buckley(NY), Judge Ann Barnes (GA), Justice Jan Patterson(TX), Judge Barbara Wecker (NJ), Justice Eileen Moore (CA), Judge Inez Smith Reid (DC), Judge Connie Callaban (9th Cir), Judge Yvette Miller(GA), Justice Patti Kitching (CA), Judge Terry Hopkins (IL), Judge Debra Todd (PA)

Second Row: Erin Segal (intern), Justice Janice Brown (CA), Justice Ignazio Ruvolo(CA), Judge Terri Love (LA), Justice Robert Edmunds (NC), Judge Jon Blue (CT), Justice Richard Aronson (CA), Justice Carol Beier (KS), Judge Thomas Daley (LA), Judge Greg Shaw (AL)

Third Row: Sarah Hobeika (intern), Joyce Holt (Program coordinator), Justice Tom Saylor (PA), Judge Dan Barker (AZ), Justice James Worthen (TX), Judge Terry Kern, (U.S.D.C. OK), Judge Don Middlebrooks(U.S.D.C.FL), Justice Oliver Diaz (MS), Prof. Chuck McCurdy

Fourth Row: Prof. Jon Cannon, Prof. George Cohen, Dean Earl Dudley, Prof. George Rutberglen, Justice Myron Steele (DE), Judge John Tyson(NC), Judge Herbert Phipps(GA), Judge Daryl Hecht(LA)

between professor and judge. What has become self-evident throughout the years is that judges enjoy the intellectual stimulation of class discussion with their fellow judges and engaging professors.

Each judge also selects a thesis topic to research and write as part of the course requirement. The topic is reviewed with a law professor, who serves as the judge's thesis advisor and reviewer. This year topics ranged from current subjects, such as the applicability of the Eighth Amendment to Three Strikes Laws, to a

historical topic on the supreme court appointments of President James K. Polk. Many of the judges publish their theses in law reviews or other publications.

Equally important to the overall experience is the fact that the judges and their families are welcomed to Charlottesville each summer and live in four bedroom university apartments. The feeling of camaraderie which develops leaves lifelong friendships between the judges. They frequently share not only

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EDITOR'S NOTE

Editor: Hon. Martha Curtis Warner, West Palm Beach, FL

Appellate Judges News is a publication of the ABA Appellate Judges Conference (AJC). The views expressed in the *Appellate Judges News* are those of the author only and not necessarily those of the ABA, the Judicial Division, the AJC, 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. Martha Curtis Warner, Court of Appeal, P.O. Box 3315, West Palm Beach, FL 33402 E-mail:warnerm@mail.flcourts.org (P) 561-242-2023 (F) 561-242-2100 or contact Paula Nessel at ABA/Judicial Division, 541 N. Fairbanks Court, Chicago, IL 60611; Phone: 800/238-2667 x5450; Fax: 312/988-5709; E-mail: paulanessel@staff.abanet.org

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ARTICLE SUBMISSION DEADLINES

Summer 2004: Wednesday, May 5



by Judge James Wynn, Jr.
Raleigh, NC

Before giving an update on the work of the Executive Committee at the ABA Midyear Meeting, let's begin by wishing our very own, former Justice Harry Spencer (NE SCT) a happy 100th birthday. Born in Bishops, Walton, England on 16 Sep-

tember 1903, Justice Spencer was one of the founders of the AJC's Educational Program Series which bears his name- the Spencer/Grimes Education Program. At the February Midyear Meeting in San Antonio, 11 members of the Executive Committee attended along with representatives from our affiliate groups, Council of Chief Judges of Courts of Appeals (CCJCA), Council of Appellate Lawyers (CAL), and Council of Appellate Staff Attorneys (CASA). Also in attendance were representatives from the Dedman School of Law at SMU and the Appellate Judges Educational Institute (AJEI). The Councils noted their scheduled annual meetings this year - CCJCA (San Francisco); CAL (Chicago) and CASA (Park City, Utah). However, the Councils agreed to encourage their members to participate in the fall "Kickoff" program of AJEI in Dallas. That event is being planned by a committee co-chaired by Justice Denise Johnson (Vermont) and Judge Harris Hartz (10th Circuit U.S. COA).

The Fall "Kickoff" in Dallas event will feature judicial and legal educational programs with well-known presenters from around the country. Preliminary plans indicate full-day programs for Friday, Saturday and a wrap up on Sunday

morning. The highlight of the conference will be a Saturday evening dinner featuring a United States Supreme Court Justice whose availability will determine the date of the event in mid to late October. We continue to be especially grateful to Dean John Attanasio and the staff of the Dedman School of Law at SMU for their financial and administrative support of the AJEI. With their assistance, the fundraising efforts of AJEI are well underway including significant personal contributions to the Institute by former Justice Craig Enoch (Texas SCT); Chief Justice Harry Lemmon (LA SCT); Judge Hartz, William T. Robinson, III. (ABA Bd. of Gov), Justice Ming Chin (CA SCT), Joe Merling and Janette Thompson (CASA). Within the ABA, Paula Nessel ably staffs the AJC. Thank you Paula for keeping us abreast of issues and matters arising from our strong commitment to the ABA. Additionally, the AJC maintains a strong relationship with the JD wherein our members serve on several committees and commissions.

Notably, in this year's Judicial Clerkship Program, our members contributed significantly to the success the events. Many thanks to Judge Frank Sullivan (IN COA), Judge Danny Boggs (6th Cir. U.S. COA), Judge Patricia Timmons-Goodson (NC COA) and other members of AJC for their leadership, time and commitment to the program this year. Also, a very special thank you to Judge Bud Arnot (TX COA) for agreeing to serve as our interim representative to the ABA House of Delegates replacing Chief Judge Sid Eagles who by reason of our by-laws could no longer serve following his retirement from the judiciary. The Executive Committee gave tentative approval to a draft of new by-laws for the AJC following the report of a committee chaired by Judge Boggs and Justice Chin. The amended bylaws address our relationship with the AJEI and will be presented to the AJC membership for vote at the ABA Annual Meeting in Atlanta.

Paula Nessel Settles in as AJC Program Manager

Paula Nessel doesn't let grass grow around her. She's moving too fast with all of her responsibilities in the ABA. In September 2003 Paula took over as AJC Program Manager, serving the programming needs of the AJC, including staffing the Council of Appellate Staff Attorneys (CASA), the Council of Appellate Lawyers (CAL), and the Council of Chief Judges of Courts of Appeal (CCJCA).

But that's not all that Paula does in the ABA or for the Judicial Division. She is also the JD Outreach Specialist in charge of the Judges Network and JD's support to judges in reaching out to the public to explain the judicial function. One of her immediate activities is planning a National Judicial Outreach Conference in Memphis on April 30 and May 1. That conference will make available multiple resources to assist judges in dealing effectively with the public.

Paula also spends time on the ABA Coalition for Justice, where she had served as staff director before the position was eliminated due to budgetary constraints. The Coalition brings together lawyers, judges, and representatives of non-legal groups, such as the League of Women Voters, for the purpose of justice reform activities. In the past, the Coalition has conducted bar/court surveys on justice issues and has created several publications to explain issues dealing with justice reform. These included publications on judicial independence, problem solving courts, and similar topics.

Altogether Paula, a native Chicagoan, has worked in the ABA for thirteen years, ten with the Division for Public Education. In that position she worked with lawyers, judges, and teachers to create programs for school children to educate them about the law.

The AJC welcomes the opportunity to work with Paula. You can reach Paula at 800/238-2667 (x 5450) or via e-mail at: paulanessel@staff.abanet.org

Judges' Program

(continued from page 13)

study time together but the opportunities for recreation and exploration in and around Charlottesville and the Virginia countryside, which are remarkable particularly for the strong legacy of Thomas Jefferson and scores of other individuals of deep historical note.

Class participant Judge John Tyson, North Carolina Court of Appeals, agreed that the program was beneficial. The contact and friendships with distinguished faculty, administrators, and thirty other colleagues nationwide is very rewarding. Being able to interact with other judges and to learn how their courts operate as compared to ours provided great insights. Also, the opportunity to have six consecutive weeks to study in-depth subjects not taught in law school, particularly the three courses in

Constitutional History, was educational. Discussing constitutional issues with outstanding faculty and judges and to evaluate their thought processes was invaluable."

This year's class represents state supreme court and appellate court judges and justices from nineteen states. Two Federal District court judges also attended. In what may be a first for the program, two judges were appointed to higher courts while participating in the program. Judge Consuelo M. Callahan was appointed to the United States Ninth Circuit Court of Appeals from a position on the California Court of Appeals, and Judge Carol Beier was elevated from the Kansas Court of Appeals to the Kansas Supreme Court during the term of the program.

The application process for the next Graduate Program class will begin later this year. More details about the application process will be available in the next issue of *The Judicial Division Record*.

SMU

(continued from page 12)

Members of the SMU Dedman School of Law faculty are known as academic leaders in their fields, nationally and internationally. The law school's core strengths include the areas of litigation, appellate practice and alternative dispute resolution, as well as business law, private and public international law, and expertise in a number of specialty areas.

"The school has a highly talented full-time faculty whose members are nationally and internationally recognized scholars and dedicated teachers. The Underwood Law Library is the largest private law library in the Southwest, containing more than 580,000 volumes. Recently, our facilities have been renovated so that we can provide the best quality education available," Dean Attanasio said. "While the Dedman School of Law will serve as the AJEI headquarters and host many of its programs, the Institute will continue to hold programs around the country."

"Dean Attanasio and the Dedman School of Law have been wonderfully supportive. Not only have they done

everything we have asked, but they have volunteered for things we haven't even thought to ask," said Harris Hartz, AJC Chair-Elect and judge on the U.S. Court of Appeals for the 10th Circuit. "I am very optimistic about the Institute because of the support we have had and because of the enthusiasm of the appellate judges as they have learned what is planned."



Dean John B. Attanasio

APPELLATE JUDGES CONFERENCE 2003-2004 EXECUTIVE COMMITTEE

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Lawyers Letter

American Bar Association

Moving Ahead In Revision of Judicial Performance Guidelines



by Cheryl Cesario
Chicago, IL

The LC Judicial Performance and Conduct Committee has been very busy this past year. Co-Chair, Frank Finn and I, began a review of the 1985 Guidelines for the Evaluation of Judicial Performance last year after the Midyear Meeting in Seattle. We quickly

determined that more assistance and expertise was needed. With the support of our Immediate Past Chair Anne Kelley, and our Present Chair Justin Connor the LC voted at the Annual Meeting in San Francisco to undertake a review of the current literature and best practices before proceeding any further.

As Committee Chair, my first step was to establish a relationship with The National Judicial College and its President,

the Honorable William F. Dressel. Judge Dressel made it possible for the LC to work with the University of Nevada, Reno and their Grant Sawyer Center for Justice Studies, lead by Dr. Jim Richardson. He and Research Assistant, Alayna Jehlea presented their findings to the Executive Committee at the Midyear Meeting in San Antonio.

With this research as a foundation, the Executive Committee decided to proceed to the next phase of the project. The Justice Center has been working with the LC, monitoring our progress from the beginning. They will now become full partners in this effort. Meetings are being planned on numerous levels in preparation for the Spring Planning Meeting in Tempe, AZ. Each Conference Chair has promised to appoint a designee to a special committee which will meet in Chicago to ensure that the expertise of all of our membership is utilized. We will then choose a Reporter who will actually draft the new guidelines.

That's where those of you on the Committee come in. We will be sending you a draft copy for review and comment when it is complete. If you want to be involved sooner, please email me at 7cesario.jmls.edu or call 312-427-2737, ext. 317. I look forward to working with all of you to accomplish this worthwhile goal on behalf of our profession.

LAWYERS CONFERENCE OFFICERS

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by Jack L. Brown
Tulsa, OK

Having assumed the Interim Chair's role just three weeks prior to the ABA's San Antonio Midyear Meeting, I was somewhat overwhelmed with the Chair's responsibilities in preparing for such a national meeting. As

I delved into the advance materials prepared by our excellent staff member, Gilda Fairley, I began to marvel at the incredible works LC members are contributing not only to the Lawyers Conference but also to the Judicial Division and the ABA as well.

Late last year, Conference Chair Justin Connor of Washington, DC, was awarded a Fulbright fellowship, and was given an incredible opportunity to teach international business law in Beirut, Lebanon. Justin will return to complete his term this summer. Nevertheless, Justin set a solid framework of programs in place that are proceeding with much success.

Secretary Cheryl Cesario of Chicago, Illinois, is chairing the LC Judicial Performance and Conduct Committee which has initiated a review of the guidelines of judicial performance and conduct. The original guidelines were written and approved by the ABA House of Delegates more than 10 years ago. Over 40 LC members are involved in the work of this committee.

In San Antonio, the Executive Committee decided to expand the

membership of the committee to allow judges from other conferences to participate in reviewing the guidelines. ABA staff with work with the committee to develop the methodology and procedure for updating the guidelines.

Vice Chair Dan Gourash of Cleveland, Ohio, is co-chairing the JD Judges Network's first National Judicial Outreach Conference at the historic Peabody Hotel in Memphis, Tennessee April 30 and May 1, 2004. His co-chair is the Honorable Joan Irion from San Diego, California. The national conference is being held in conjunction with the ABA Young Lawyers Division Spring National Meeting, and will give the LC an incredible opportunity to recruit young lawyers into LC membership.

Dan Gourash is also chairing the Bylaws Committee which presented proposed updates at the Midyear Meeting. The Executive Committee will vote on the proposed bylaw amendments at the Annual Meeting in Atlanta, Georgia this summer.

Former Executive Committee member, Blake Tartt of Houston, Texas, is beginning his third year as a member of the ABA Board of Governors. We look forward to Blake's return to the Executive Committee upon the conclusion of his board service. Also, new Executive Committee member Ben Longoria, has relocated to San Francisco, California and will finally be on board at the Atlanta Annual Meeting.

Former Los Angeles County, California Judge David Horowitz joined the Executive Committee in his first term at the San Antonio Midyear Meeting. Judge Horowitz was former JD Chair and is currently JD Liaison to the Litigation Section where he will also represent the LC in member recruitment efforts.

Executive Committee member Emily Barnhart continues to do outstanding work on LC publications while Michael Hyman of Chicago, Illinois, former Membership Chair, is credited with over 250 new LC members joining last year. Our Immediate Past Chair Anne Kelley, continues to increase LC membership in her new role as Membership Chair.

While a little stretched for time to fulfill all commitments, I am completing my last year as co-chair of the JD Judges Network. The Judges Network performed judicial outreach programs during the San Antonio Midyear Meeting at three area high schools.

The outreach programs featured the interactive classroom program of *Brown v. Board of Education* and was presented by San Antonio judges and lawyers. The LC and Judges Network credits San Antonio attorney, Mark Sessions, for his superb assistance in coordinating the program presentations not only with the school district but also with the San Antonio judges and lawyers.

Executive Committee Member Charles Patterson of Los Angeles, California, continues to represent JD in the ABA House of Delegates with distinction. Charles has been a great asset to LC and JD for his many years of service.

The Executive Committee will join the other JD conferences at the Spring Planning Meeting in Tempe, Arizona April 15-18, 2004. I will work with Executive Committee members in planning the programs and committee member appointments for next year. LC members who wish to become more active in the work of the conference should complete the Committee Appointments Preference Form which is set forth on the JD website at <http://www.abanet.org/jd/home.html>.

Finally, all LC members are encouraged to attend the ABA Annual Meeting in Atlanta, Georgia to be held August 5-9, 2004. The LC Education Committee, chaired by Vicki Cashman of Middletown, Ohio, will present an outstanding program titled "The High-Tech Court: Expectations for the Future." This program will feature the latest in courtroom technology and how lawyers and judges can utilize this technology to their advantage in courtroom presentations.

It is an honor to serve as Interim Chair and I look forward to serving as your Chair in the coming bar year.

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, Publications Chair, 2100 Delancy Street, Apt. 1E, Philadelphia, PA 19103; (P) 215-864-8276; (F) 215-864-9808 or contact Gilda Fairley at ABA/Judicial Division, 541 N. Fairbanks Court, Chicago, IL 60611; Phone: 800/238-2667 x5689; Fax: 312/988-5709; E-mail: fairleyg@staff.abanet.org

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ARTICLE SUBMISSION DEADLINES

Summer 2004: Wednesday, May 5

Administrative Judiciary

News and Journal

American Bar Association

Report of the NCALJ Liaison Committee to the Third International Conference on Administrative Justice

by Judge R. Bryan McDaniel
Baton Rouge, Louisiana

Organization and planning for this conference is well on its way. The conference is scheduled for June 20-24, 2004 in Toronto Canada. It is sponsored by the Council of Canadian Administrative Tribunals, the (Canadian) Society of Administrators and Regulators, the Ontario Bar Association, NCALJ, and NAALJ, with CCAT taking the primary responsibility and financial risk of the conference. Conference Information

and registration can be found on <http://www.abanet.org/jd/ncalj/events.html>

Three days (Sunday, Monday, and Tuesday) are jam-packed with interesting presentations on "Bring Administrative Justice to the People of the World," followed on Wednesday by a full day of "Training the Trainers" for those who want to advance their ability to lead in this field.

There will be opportunities to network with colleagues from around the world. It is expected that 50 countries will be represented with perhaps 600 administrative adjudicators. The Conference also includes enjoyable entertainment, like the reception at the Hockey Hall of Fame and a Gala Banquet.

Details about the conference and applying for a tuition scholarship can be found at the above link or at: www.ccatctac.org/en/conferences/2004_Brochure.pdf. NAALJ is offering a similar scholarship program.

Report of the NCALJ Strategic Planning Committee

by Judge R. Bryan McDaniel
Baton Rouge, Louisiana

The NCALJ Strategic Planning Committee met in San Antonio during the ABA Midyear. Present were judges R. Bryan McDaniel, Jean S. Cooper, Edwin L. Felter, Tela Gatewood, Chris Graham, Ruth L. Kleinfeld, Errol H. Powell, Edward J. Schoenbaum, Daniel F. Solomon, and Tyrone Butler, Ex Officio.

The purpose of this meeting was to brainstorm ideas for revising the strategic plan, which was approved in 1999, by reviewing what has been accomplished on the previous plan and to updating it. The committee made its way through about one-half of the plan. It was noted that several of the goals/tasks had been accomplished and many new ideas were discussed. The next meeting is being scheduled for next month by teleconference. Prior to the meeting, revisions made in San Antonio will be sent to the members to review. Anyone with ideas should present them to one of the committee members prior to the next meeting.

President's Report

(Excerpt from President Ron Bernoski's February 9 Report)

FLRA Complaint

The Federal Labor Relations Authority recently issued an unfair labor practice complaint and notice of hearing on a charge that we had filed. The charge alleged that the agency failed to bargain in good faith over the short term initiatives that included the changes of ALJs being involved in early screening and analysis of cases and the termination of the certification of cases as ready to hear. As you may recall, the agency team just presented us with a "last best offer" and then said they had no authority to negotiate further.

The hearing is scheduled for March 9, 2004. Judge Tom Kennedy and I will be the primary witnesses at the hearing.

AALJ Annual Conference

Judge Tom Robinson, AALJ Regions VIII and X Vice President and Chair of our Education Committee, is completing the execution of our contract with the Royal Plaza Hotel in Orlando, Florida for our next conference. The conference will be held during the period of October 18 to 21, 2004. Please start making your plans to attend the conference.

Federal Employee Pay

The President's proposed budget for next year proposes a 1.5% increase in pay for Federal employees. The budget comes at a time when bipartisan calls in both the House and Senate are urging pay parity between military and civilian workers.

The pay for administrative law judges is separate from the General Schedule and is within the discretion of the President by law.

JUDICIAL
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National Conference of Administrative Law Judiciary

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CHAIR'S COLUMN

by Judge Tyrone T. Butler
Chief Administrative Law Judge
Washington, DC

I have just returned from the ABA Midyear Meeting in San Antonio, Texas and I think that I will take a vacation from refried beans, tortillas, cowboy hats, the Alamo, and Margaritas, at least until next week anyway. The weather was warm and sunny for most of the days and the hospitality was excellent. Everywhere I went people were smiling and friendly. Congratulations San Antonio you hosted a memorable mid year gathering.

The staff and committees of NCALJ have not been sitting idle since the Annual Meeting in August 2003. Dan Solomon and his committee were very successful in drafting and submitting ABA Resolution 113 B to the ABA House of Delegates. The House passed the resolution with little or no opposition. Resolution 133 B proposes a reasonable retirement system for federal ALJs.

Dick Goodwin, Ronnie Yoder and Dan will be working in collaboration with the Ad Law Section to come to consensus on Mike Asimov's Prescriptive APA Recommendations.

Ed Felter, Brian McDaniel and yours truly, request your attendance at the Council of Canadian Administrative Tribunal's Third International Conference in Toronto, Canada, June 20, 2004 through

June 23, 2004. NCALJ is funding 5 scholarships to defray the registration fee. Sorry folks the candidates of our largesse have already been selected, however, NAALJ, which is sponsoring a similar scholarship fund is still seeking candidates from its ranks. I attended the last International Conference in Quebec City and I can safely say that there is much to be gained by meeting and greeting administrative law judges from all over the world who share the same problems and triumphs as we here in the USA.

Larry Craddock continues to work with Texas University's law School on the organization of the LBJ Project. The LBJ Project is a research program that will utilize students to perform a canvass of state administrative judiciaries throughout the US with the prospective goal of improving the adjudication process. NJC, NCALJ and NAAL are sponsors of this effort.

NCALJ's executive board members will be in attendance at the JD Spring Planning Meeting in Tempe, Arizona, April 15 though 18, 2004.

NCALJ's Nominating Committee is looking for a few good people to take leadership roles in the conference. Anyone interested in stepping up and assuming a position of responsibility should contact the Committee Chair Ruth Kleinfeld through the NCALJ staff administrator, Gilda Fairley.

It is time to register for this year's ABA Annual Meeting in Atlanta, Georgia, August 5 to 10, 2004. Hope to see you all there.

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: annrun@aol.com, Publications Chair, P.O. Box 25988, Chicago, IL 60625-0988; Phone: 773-539-8468, Fax: 773/539-3292 or contact Gilda Fairley at ABA/Judicial Division, 541 N. Fairbanks Court, Chicago, IL 60611; Phone: 800/238-2667 x5689; Fax: 312/988-5709; E-mail: fairleyg@staff.abanet.org

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ARTICLE SUBMISSION DEADLINES
Summer 2004: Wednesday, May 5

Federal Trial News

American Bar Association

IT Ramblings

by Judge Berle M. Schiller
Philadelphia, PA

What has your IT Committee done for you lately? By this time all of you should have the capability for remote access to your desktop computer from home. This is normally accomplished by plugging your court lap top into a telephone line and then tying in codes or by connecting your home computer to high speed lines (for extra money out of your pocket) and using various passwords. Both of these current methods will enable you to work at home (high speed connection) or on the old (lap-top telephone plug-in). The question most often asked is how to get the efficiency of high-speed lines, but without being tied to a particular connection. The answer is here. The IT Committee for the EDPA is currently trying three approaches to remote access which are in general use in non-court settings.

Hand-held devices (Blackberry & Palm Pilot) are now being used by an increasing number of judges. The newest versions will allow wireless internet access and a telephone in one unit. To use this technology on a broad scale will require the installation of a new server to handle the units and require a monthly fee. The

screens on these devices will require good eyesight and the message sending may require nimble fingers. While some judges gush about their utility, others don't think the investment/benefit is worthwhile.

I am experimenting with a wireless laptop. It has been fitted with a special card so that I can communicate securely with my desktop and access all my documents, the internet, lotus notes, etc. It is as if you are traveling with your desktop. The long (five hours) lasting battery enables me to stay in touch from airports, hotels and from some boats. If you are near a conventional wall socket, merely plugging it in *without* a telephone is all you need. So far the access has been flawless. Screen sizes vary, but I recommend a minimum of a 15". It's light-weight and comes with easily attachable CD and floppy accessories. It doesn't work while flying (I guess you are above the signal) and I haven't tried it from beyond the US borders so I can't comment.

As a further follow-up to a past article on CM/ECF, I note that more courts are now on line. There is no substitute for enthusiastic bar support. The system will only succeed if everyone buys-in to its utility. This requires constant encouragement from the court to the organized bar.

Remember, your IT works for you - but only if you care enough to ask, to experiment and to learn. Good luck!

Panel Discusses The Promise of *Brown V. Board*

Judge Andre M. Davis of Baltimore, MD, left and Judge Sophia Hall of Chicago, IL moderated a panel discussion of the aftermath of *Brown V. Board* at a very lively and informative program entitled "The Promise of *Brown v. Board*: Yesterday, Today and Beyond." The panel discussed in personal terms how the Court set in motion not simply a legal revolution, but a political, economic and cultural changes whose effects continue into the present. In this celebration of the *Brown* ruling to mark its Golden Anniversary in 2004, a panel of distinguished Texans explored the impact of the case from a variety of perspectives. Also on the panel were: Ms. Nina Perales of the Mexican American Legal Defense and Educational Fund; Texas Supreme Court Justice Wallace Jefferson; Ms. Denise Pierce, school district attorney; Mr. Marlen D. Whitley, Austin attorney; and former Texas Supreme Court Justice Rose Spector.



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 Gilda Fairley at ABA/Judicial Division, 541 N. Fairbanks Court, Chicago, IL 60611; Phone: 800/238-2667 x5689; Fax: 312/988-5709; E-mail: fairleyg@staff.abanet.org

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Summer 2004: Wednesday, May 5

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CHAIR'S COLUMN

In Praise Of "Nose-Holding"



by Judge Andre Davis
Baltimore, MD

Like any federal district judge who has been "on the job" (as they say on Law & Order and N.Y.P.D. Blue) for more than two years or so, I have found that sometimes at sentencing I must "hold my nose." But today, I come to praise "nose-holding,"

not to denigrate the practice.

If you are a "nose-holding" judge, take heart. We "nose-holders" are judges who perceive the profound injustice of some of the sentences we are mandated by law to dispense. We regularly see the criminal justice system "down here on the ground." To be sure, we see in the flesh some really bad people who do some really bad things. Such offenders are people who pose an incalculable risk of harm to the community. As to them, we impose appropriate sentences, sentences intended to remove such persons from the community for extraordinarily long periods.

On the other hand, we not infrequently see fundamentally good and decent offenders who, though they may be (permanently or temporarily) dysfunctional, or mentally unbalanced, or undisciplined, or morally weak, or economically desperate, or addicted, or abused, have also done bad things. At

sentencing, there ought to be a difference in the manner in which we dispose of these disparate cases. Increasingly, the law seems to pretend that there is not a difference between the two groups, and compels us to pretend that justice is best achieved by ignoring these individual differences. "It was a wise man who said that there is no greater inequality than the equal treatment of unequals." *United States v. Dennis*, 339 U.S. 162, 184 (1950) (Frankfurter, J., dissenting). Thus, despite the unfounded assertion in some quarters that we regularly violate the law in imposing sentence, we routinely "hold our noses" and follow the law.

But some of our respected and beloved colleagues have found, finally, that the "nose-holding" experience is too much to bear and have departed the bench, or have declined to preside in criminal cases. All of us can understand their despair. But let's not give up hope that the pendulum has nearly reached its apogee and that the federal criminal sentencing regime will soon leave the political realm and return to the sphere of "justice" where it belongs. Join me in the belief that, ultimately, "nose-holding" will be a fleeting distraction to judges committed to the ideal of equal justice under law. Join me in the belief that as the costs (both economic and moral) of spiraling incarceration rates, made possible by the wholly discredited view that when it comes to time and conditions of incarceration, "more is better" and "harsher is better," together with the notion that judges and offenders alike are fungible commodities, this "Dark Age" of federal sentencing jurisprudence will soon end.

I am confident that History will judge us harshly. But we will be able to say, not only that "we told you so," but that we were honorable, "nose-holding" judges all the while.

Special Court News

American Bar Association

Proposed NCSCJ Diversity Policy

The NCSCJ recognizes the growing diversity in American society and the need to reflect this reality in its own policies and programs.

Diversity is a necessity. One of the greatest strengths of the NCSCJ is that our conference is diverse. We are a richer and more effective conference because of our diversity, as it increases our conference's strengths, capabilities and adaptability. Through increased diversity, our conference can more effectively address societal and member needs with the varied perspectives, experiences, knowledge, information and understanding inherent in a diverse membership. It takes all of our members, working together in an atmosphere of mutual respect, to make a successful organization. Embracing different perspectives and frames of reference offers significant advantages to our conference. We must acknowledge, respect and utilize the differences and similarities of our members to create an inclusive and productive environment that reflects American society.

The NCSCJ is committed to the protection of equality rights within the conference. The NCSCJ is dedicated to respect for equality and the elimination of discrimination in all aspects of the work of its membership by:

(1) promoting inclusiveness in the organization of the NCSCJ, in its leadership, in its activities, in the development of its policies and in the formation of its committees;

(2) supporting the development and inclusion of equality and diversity components in NCSCJ educational programs; and

(3) supporting policies that foster a judiciary of qualified members reflective of American society.

Editor's Note: The foregoing proposed policy was emailed by Conference Chair Judge Michael F. Pietruszka to the NCSCJ list server for comment. To comment on the proposed policy, please email your comments to the list server at NCSCJ@MAIL.ABANET.ORG or directly to either Judge Pietruszka at Pietruszka@AOL.COM or to me at mkwan@ci.taylorsville.ut.us.

Results of the NCSCJ Nominating Committee

The NCSCJ Nominating Committee met at the 2004 Midyear Meeting in San Antonio. The nominations for the 2004-05 Association year are as follows:

Chair-Elect: G. Michael Witte
Lawrenceburg, IN

Vice-Chair: James Riehl
Port Orchard, WA

Col. Linda Murname was appointed to the position of Secretary by Chair-Elect Sharon Hatten.

The nominee for the District 8 Representative is Larry Sage from Sparks, NV.

Representatives for Districts 4, 6 and 9 will be elected at the Annual Meeting in Atlanta, GA.

Elections for the 2004-2005 Association year will take place at the NCSCJ Business Meeting on Saturday, August 7 in Atlanta, GA.

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Eileen A. Kato, Seattle, WA

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CHAIR'S COLUMN



by Judge Michael
Pietruszka
Buffalo, NY

that you couldn't see your breath when you spoke was a great improvement.

The JD Brown vs. Board Committee, chaired by Hon. Andre Davis and Hon. Sophia Hall, welcomed us Thursday afternoon with an insightful program tailored to the host city, which highlighted the effect that the *Brown* decision had in the San Antonio area.

Our conference meeting was well attended by the members of the Executive Committee and committee chairs. I would like to thank all those who took time away from their courts and families to participate.

The Committee decided to award the Franklin N. Flaschner Award, Judicial Education Award and William R. McMahon Award at the annual business meeting in Atlanta rather than at the Judicial Division luncheon.

The committee chairs reported on the committee activity that has been mentioned in earlier editions of this column. Many committees, especially the Native American Tribal Court Committee, the Probate Court Committee, the Small Claims Committee, the Membership Committee and the Outreach to the Community Committee are doing a great job and I urge them to continue with the same vigor.

Vice Chair and Program Committee Chair Hon. Mike Witte has put together a very interesting program for the Annual Meeting in Atlanta. The working title is *Can a Piece of Paper Stop a Bullet?* and it looks at the interplay of orders of protection with the Brady law. It is scheduled for Saturday afternoon.

MIDYEAR MEETING - Many of us have just returned from our Midyear Meeting at the Rivercenter Marriott in San Antonio. The weather cooperated with us during our stay, but then again, after the January that we had in Buffalo this year, anywhere

The Diversity Plan Committee's formal work has been put on hold until after the Planning Meeting in April to coordinate its efforts with the JD Diversity Policy Committee activities. Col. Linda Murnane has accepted the appointment as the conference official representative to this JD Committee.

Three of our courts won Justice Talking kiosks for their jury assembly rooms during the reception at the Bexar County Courthouse on Friday night: Chelan County District Court, WA (Hon. Tom Warren), Oakland County District Court, MI (Hon. Susan Moiseev) and Erie County Court, NY (Hon. Mike Pietruszka). The Justice Talking program is an exciting education and outreach tool. More information on the program is available from www.justicetalking.org. The lucky courts were chosen at random by ABA President-Elect Robert Grey, Jr.

Our conference dinner with the State Trial Judges Conference at the Firewheel was a great success. It was an excellent way to mingle with state trial judges that face the same types of issues that we face. Some of our conference committee chairs have made contacts with their state trial counterparts and joint activities between our two conferences are being discussed. The Executive Committee voted to have a joint dinner with the State Trial Judges Conference at each Midyear Meeting to keep the lines of communication open.

As usual, the Executive Committee outdid themselves with the gifts that they brought from their home jurisdictions for our drawings for Exceptional Door Prizes. Thanks to all who brought gifts and to Hon. Bill Self for acting as MC for the drawings.

MEMBERSHIP - The Membership Committee's recent efforts have brought about 20 new members into the conference. I continue to urge all Conference members to spread the word about our Conference to your colleagues. A larger membership enhances our ability to achieve our Conference goals. One-on-one contact has proven to be the best way to attract new members to our Conference. If you have any prospects, please send their contact information to Rebecca King so that written materials on the JD and our Conference can be sent out to them to help you in your task.

(continued on page 25)

EDITOR'S COLUMN

by Judge Michael W. Kwan
Taylorsville, Utah

Ah, January has come and gone, February is fleeting and soon, spring will be in the air. For those of us in Utah, this can only mean one thing, the legislature is back in session (or as we call it, the forty-five days from Hell). Despite the fact that we are now in the 21st Century and our population is thousands of times larger, we choose to pack all of our law-making into six short weeks a year. As you can imagine, this concentration of hot air combines with Utah's famous winters to create another annual event: The Temperature Inversion. So, those of us involved in the political end of the judiciary get to run around madly in air the quality of industrial waste. Imagine trying

to catch your breath while sucking on the exhaust pipe of a Mack truck and you will appreciate what it's like.

Last year, our legislature decided to define the practice of law as only those activities which occur in the courtroom. Everything else is fair game for any shyster, con artist or Perry Mason Wannabe (PMW). Fortunately, they decided not to have the law go into effect until May 2005. This law was enacted as a message to our State Bar to find ways for better access to legal services. I suppose that funding our state's public interest law firms did not seem easier than exposing those most in need of legal services to the fraud and chicanery that unlicensed PMWs will undoubtedly perpetrate upon them.

This year, there is a bill to allow anybody to represent anybody else in small claims court provided they are not "compensated." The bill also raises the jurisdictional limit of small claims court

from \$5,000 to \$7,500. Hmm, anybody see a problem with this? The fact that the PMW does not receive compensation does nothing to ensure that they are in anyway competent to provide representation in court. There is nothing in the bill to ensure neither competence nor any provision for recourse in the event one's chosen advocate turns out to be an idiot. At least if your lawyer is a lemon, there is the Client Security fund through the State Bar along with malpractice actions. Needless to say, we in the judiciary are opposed to this bill as is the State Bar. Of course, our opposition virtually guarantees that the bill will be enacted.

Hope all is well in your corner of the world. If you have any interesting legislative activities, please email them to me. Please send your comments, articles and complaints to me at mkwan@ci.taylorsville.ut.us.

Are You Receiving Your Copy of Our Electronic Newsletter?

by Judge Thomas C. Warren
Wenatchee, WA

During the past four years, on an irregular basis, the NCSCJ has had the unique advantage of an electronic newsletter published via e-mail for the benefit of the Conference leaders. This year the newsletter is being published on a bi-monthly basis for the benefit of both the leadership and the entire membership to the Conference. Three issues have been distributed this year and the next issue will be out in February 2004. The "Specialized Court Leader" is widely distributed throughout the Judicial Division to leaders, staff, and friends of our Conference as a communication supplement to our printed publications.

The *Leader* gives announcements of upcoming events, opportunities within the ABA, profiles of Judicial Division leaders, committee reports, requests for assistance, photos of past events, a bit of gossip, and generally a timely effort to help our Conference be a better help to the judiciary, the ABA, and to the public. The *Leader* can be a very useful tool for the Officers and members of the Executive Committee as it costs absolutely nothing to publish. The beauty of e-mail!

As the Chair of the Publications committee, and editor of the *Leader*, I want as broad a distribution as possible. If you have not been receiving a copy of *Specialized Court Leader* on your e-mail, please send your e-mail address to me at:

thomas.warren@co.chelan.wa.us. I will be happy to add you to the distribution list and will make sure you receive both the last issue and all future issues. In addition I would like to have your input and communication. Please send me your comments, articles, announcements, reports and any other information relevant to our Conference.

The Specialized Court Leader is not an official publication of the Judicial Division. The views expressed in the Specialized Court Leader are those of the author(s) 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.

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, 2600 W. Taylorsville Blvd, 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 2004: Wednesday, May 5

Chair's Column

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COMMUNICATION - Our conference list serve is a great tool for disseminating information and networking with other judges around the country. Every conference member should be on the listserv. For information on how to get on

the list serve, see <http://www.abanet.org/jd/listservs.html>.

OTHER NEWS - The conference will be participating in the National Conference on Judicial Outreach in Memphis, TN on April 30 and May 1, the ABA Day in Washington, DC on May 5 and 6, and the ABA Day at the United Nations in New York on April 27.

In closing, I encourage all of our members to become active and work together with Conference leadership and the committee chairs to ensure that our conference goals and mission are realized.

Admission Trip to the Supreme Court

*by Judge Sharon Hatten
City of Midland, Texas*

Recently, I had the opportunity to be a part of a group admissions ceremony to the U.S. Supreme Court. For those of you who have not sought to be admitted to the Supreme Court I strongly encourage you to do so. The process can be done by written motion presented to the Court and does not require your presence or you may, as I did, make an appearance before the Court. I recommend making the appearance before the Supreme Court to get the full effect of this momentous event. I might also add that doing so in the fashion made possible by ABA Tort Trial and Insurance Practice Section (TTIPS) was well worth it.

In December, TTIPS once again sponsored a group admissions ceremony at the Supreme Court. The Section graciously invited members of the Judicial

Division to participate in this event. Our group included attorneys from 22 different states and territories including Hawaii and the Virgin Islands. Just getting the chance to meet with these outstanding attorneys was fascinating.

TTIPS conducts a lottery for this event in September. This was done through a series of e-mails. The ceremony was scheduled for Monday, December 15, 2003. The result included a group of 36 attorneys plus guests. TTIPS handled the arrangements, which included accommodations at the historic Jefferson Hotel, a day of sightseeing, and a fabulous dinner the night before. This year's chair, Linda Klein, presented the entire group for admission before the Chief Justice and the Court.

On the morning of the event, we all gathered for a continental breakfast at the Supreme Court before the ceremony began. After Chief Justice Rehnquist admitted us all to the Bar, we retreated to a private room where we all congratulated each other and a group photograph was taken as a keepsake memento.

Judge Steve Smith (pictured below), a member of the NCSCJ and currently serving as the Judicial Division liaison to TTIPS, was instrumental in the process. My personal thanks to him for all his assistance and encouragement. This is his second year to coordinate this event with TTIPS representatives. I encourage you to consider applying next year should the opportunity arise. Or better yet, suggest the Judicial Division organize their own group admission trip. It was a very enjoyable experience and a fun weekend in D.C.



Trial Judges News

American Bar Association

NCSTJ Nominating Committee Report

The NCSTJ Nominating Committee chaired by Immediate Past Chair Judge Carolyn Engel Temin, met at the 2004 Midyear Meeting in San Antonio, TX. The members of the Nominating Committee present were Judges William Caprath, William Missouri and A Susan Peck. The following judges are being nominated:

1. Chair-Elect: Elihu M. Berle
Los Angeles, CA
2. Vice-Chair: Herbert B. Dixon
Washington, DC
3. Secretary: W. Terry Ruckriegle
Boulder, CO

Judge Henry duPont Ridgely of Dover, DE, current Chair-Elect, automatically assumes the position of Chair.

The elections will be held at the Conference Business Meeting in Atlanta,

GA in August 2004. All state delegates at the business meeting are eligible to vote.

Delegates from the following districts are scheduled to elect Executive Committee Representatives from the states in BOLD for a two year term. Delegates from the states in these Districts will caucus at the business meeting to elect their District Representatives to the Executive Committee. If the 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 2	CT, NJ, NY, VT
District 3	DE, MD, DC, WV, PA
District 5	IN, MI, KY, OH
District 9	TN, SC, NC, VA
District 11	AK, UT, OR, ID, WA
District 12	KS, CO, NE, NM, WY

Kennedy Commission to Make Recommendations on Sentencing

by Judge William D. Missouri
Upper Marlboro, MD

In September 2003, ABA President Dennis Archer, based upon Justice Anthony M. Kennedy's August 9, 2003 ABA address in San Francisco, as amended, named a Commission in honor of the Justice. The Justice Kennedy Commission is charged with receiving and making recommendations as to:

- (1) the use of mandatory minimum sentences at the State and Federal level;
- (2) the over representation of minorities in prison populations;

- (3) whether sentencing guidelines need to be revised and whether they have had an adverse impact on judicial discretion in sentencing;
- (4) prison conditions and the reasons for high rates of recidivism; and
- (5) the pardon process at the State and Federal level.

Professor Stephen A. Saltzburg, law professor at George Washington University Law School in Washington D.C. was named committee chair. Among the committee members are several judges, including this author, who was designated by the Honorable Sophia S. Hall to represent the National Conference of State Trial Judges (NCSTJ).

The Commission has held public hearings in Washington, D.C and San Antonio, Texas. Two other hearings are scheduled (Sacramento, California, on

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Justice James Graves, Jr. May Face Tough Election

The *Clarion-Ledger* news of Jackson, Mississippi reports that former NCSTJ officer, Justice James Graves may be facing a tough election, after being appointed to the Mississippi Supreme Court several years ago. Justice Graves was a former Mississippi trial judge and served on the NCSTJ Executive Committee. The article in the February 8, 2004 issue reports that the race may attract "huge campaign spending" by various interest groups concerned with tort reform and medical malpractice.



San Antonio, TX - NCSCJ Conference Chair Judges Mike Pietruszka and NCSTJ Chair Sophia Hall hosted a joint conference dinner at the Firewheel. Plans are to make this an annual event.

JUDICIAL
DIVISION
National Conference of State Trial Judges



by Judge Sophia H. Hall
Chicago, IL

Good people do make a difference. If you are seeking to contribute more to improve our system of justice, you can do so through working with the dynamic and dedicated members of the Conference. The effect of our work is enhanced because

the ABA adopts it. Here are some of the things NCSTJ members are accomplishing.

Electronic filing is the new aid to efficient case management. Hank Ridgely, NCSTJ Chair-Elect and Herb Dixon completed the Electronic Filing Guidelines prepared with the help of John M. Greacen Esq. of Greacen Associates, LLC. They have marshaled support from other Conferences and from ABA sections including Litigation and Science and Technology. The House of Delegates approved the Guidelines at the Midyear Meeting. These Guidelines are now a national authoritative source to guide jurisdictions interested in establishing e-filing. You will find the Guidelines on the NCSTJ website at <http://www.abanet.org/jd/ncstjweb.html>

Our goals of providing education to our judges presents an opportunity which past Conference Chair Carolyn Temin, and Ben Tenille, chair of Business Law, have taken

on. They are designing the education program to be held on Thursday, August 5, from 9:30pm. to 4:00pm. at the Annual Meeting in Atlanta. The program is about business problems arising in corporate, commercial and family litigation. This includes how to value a business and the problems of electronic discovery.

Jurors' participation in trials can be the best way for the community to understand the role of judges. William Caprathe, chair of the Jury Management Committee, and Tom Barland are steadily working on the use of parallel thinking to facilitate jury decision making. Their expertise will make a difference in the ABA's upcoming consideration of updating jury standards.

The Unified Family Court is seen as a means to effectively handle the multiple legal problems of families who come through the courts. Stephanie Domitrovich, Chair of Children and Family Law, will soon assume convening responsibilities as the NCSTJ will soon facilitate the collaboration of other sections and entities in the ABA who are interested in the unified family court approach.

The methods of successful problem solving court are being used to develop solutions to prevent recidivism of persons released from jail. Bill Missouri, chair of the Criminal Law Committee is working on a primer for the design of such a court to address the needs of released incarcerated individuals reentering the community.

Other issues before the ABA are giving members their chance to make a difference. With the advent of problem

solving courts, the need for judicial outreach to the community to explain the legal system, and the increase in access to justice for self represented litigants, more guidance is needed on how to ethically satisfy these increased judicial responsibilities. Annette Scieszinski is monitoring and reporting to us on the activities of the ABA's Joint Commission to Evaluate the Model Code of Judicial Conduct which is looking at these rules and met at the ABA Midyear Meeting in San Antonio in February. Additionally, court funding is a critical issue being reviewed by the ABA Commission on State Court Funding appointed by ABA President Dennis Archer. Christopher Browning attended its meeting at the Midyear Meeting and is the new chair of our Court Funding Committee.

Finally, opportunities to improve the understanding of the courts include reaching out to explain our system of justice. Andre Davis, chair of the National Conference of Federal Trial Judges and I created and moderated a program at the Midyear Meeting called "The Promise of *Brown v Board of Education*: Yesterday, Today and Beyond". Jane Macon of Fulbright and Jaworski assisted us in obtaining for the panel including Texas Supreme Court Justice Wallace Jefferson, past Texas Supreme Court Justice Rose Spector, Nina Perales Regional Counsel of MALDEF, Attorney Denise Pierce and Attorney Marlen Whitley.

You, too, can make a difference by joining the committees and working with the wonderful people dedicated to volunteering their time to improve the administration of justice.

Medd Replaces Mattson on NCSTJ Ex Committee

Judge Doug Mattson resigned as the District Seven Representative on the NCSTJ Executive Committee. Conference Chair Sophia Hall replaced Mattson with Judge Joel Medd also from North Dakota. Under the bylaws, District Seven, consisting of Delegates from the

states of Minnesota, Montana, North Dakota and Wisconsin, will select a replacement District Representative at the Annual Meeting in Atlanta. Medd is a former conference chair and serves at the JD Publications Chair.

Jury Kiosks Won by Judges at Midyear Meeting

Two NCSTJ judges won Justice Talking kiosks for their jury assembly rooms during the reception at the Bexar County Courthouse in San Antonio at the Midyear Meeting: Judge Joel Medd of Grand Forks, North Dakota and Retired Judge Thomas Barland of Eau Claire, Wisconsin. More information on the program is available from www.justicetalking.org. A total of ten kiosks were given away at the drawing by ABA President-Elect Robert Grey, Jr.



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Kennedy

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April 15, 2004 and Washington, D.C. tentatively scheduled for May 15, 2004) prior to the submission of its final report at the ABA's annual meeting in Atlanta, Georgia.

Testifying before the Commission were correction officials, defense attorneys, judges, law professors, members of state legislative bodies, prosecutors, probation agents, treatment providers, a U.S. Congressman, and others. The testimony from that diverse group addressed a wide range of issues, but dovetailed into one central theme, which was the disproportional incarceration of minorities considering their percentage of the general population.

Justice Kennedy presented a snapshot of this phenomenon in his address to the ABA when he opined that, "forty (40) percent of the prisoners nationwide are African-American. The highest rate of incarceration for any ethnic group are young men in their mid to late twenties, and in the United States, one in ten African-Americans in that age group are behind bars." Most testifiers before the Commission agreed that Justice Kennedy had identified a huge, but often ignored, problem with the American Criminal Justice System. In fact, almost to a person, those testifying before the Commission applauded Justice Kennedy for speaking out on a pervasive problem, but pointed out that he had understated the percentage of minorities populating the nation's detention centers, jails, and prisons. They opined that statistics reveal that the percentage of African-Americans

incarcerated is fifty (50) percent or greater, and the percentage of Latino incarcerated individuals is almost, if not exceeding, thirty (30) percent. The testimony also stressed the high, and ever increasing, numbers of African-American and Latino females who are either incarcerated or under supervision of the criminal justice system.

The professionals testifying before the Commission attributed the high rate of minority incarceration to several societal problems including poverty, lack of education, addiction, dysfunctional families, and racism. Although the list is not all-inclusive, there was no disagreement that the dominant reason for the high minority incarceration rate is racism. This point had been alluded to during the three days of hearings in Washington, D.C., but it was forcefully offered by Travis County, Texas District Attorney, Ronnie Earle, Texas Representative, Ray Allen, as well as Judge John Creuzot. ACLU sentencing reform advocate, Ann Del Llano, also supported the contention that racism was the dominant reason for the high minority incarceration.

The high incident of minority incarceration comes not only from front-end (after trial or plea) sentences, but also because of back-end sentences. The back-end sentence refers to incarceration due to parole or probation violations. Minorities are more often incarcerated at the back-end of the criminal justice system for technical violations than are members of the majority population. A technical violation is one such as failing to report to a probation agent.

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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 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 2004: Wednesday, May 5

New Soldier's & Sailor's Act Explained

1. Purpose. To provide information about the new Servicemembers Civil Relief Act.

2. Facts.

a. On 19 December 2003, President Bush signed into law the "Servicemembers Civil Relief Act" (SCRA). This law is a complete revision of the Soldiers' and Sailors' Civil Relief Act (SSCRA).

b. The SSCRA provided a number of significant protections to servicemembers. These include: staying court hearings if military service materially affects servicemembers' ability to defend their interests; reducing interest to 6% on pre-service loans and obligations; requiring court action before a servicemember's family can be evicted from rental property for nonpayment of rent if the monthly rent is \$1,200 or less; termination of a pre-service residential lease; and allowing servicemembers to maintain their state of residence for tax purposes despite military relocations to other states.

c. The SSCRA was largely unchanged from its enactment in 1940. The SCRA was written to: clarify the language of the SSCRA; to incorporate many years of judicial interpretation of the SSCRA; and to update the SSCRA to reflect new developments in American life since 1940. The SCRA:

(1) Extends the application of a servicemember's right to stay court hearings to administrative hearings. It now requires a court or administrative hearing to grant at least a 90-day stay if requested by the servicemember. Additional stays

can be granted at the discretion of the judge or hearing official.

(2) Clarifies the rules on the 6% interest rate cap on pre-service loans and obligations by specifying that interest in excess of 6% per year must be forgiven. The absence of such language in the SSCRA had allowed some lenders to argue that interest in excess of 6% is merely deferred. It also specifies that a servicemember must request this reduction in writing and include a copy of his/her orders.

(3) Modifies the eviction protection section by precluding evictions from premises occupied by servicemembers for which the monthly rent does not exceed \$2,400 for the year 2003 (an increase from the current \$1,200). The Act provides a formula to calculate the rent ceiling for subsequent years.

(4) Extends the right to terminate real property leases to active duty soldiers moving pursuant to permanent change of station (PCS) orders or deployment orders of at least 180 days. This eliminates the need to request a military termination clause in leases.

(5) Adds a new provision allowing the termination of automobile leases for use by servicemembers and their dependents. Pre-service automobile leases may be cancelled if the servicemember receives orders to active duty for a period of 180 days or more. Automobile leases entered into while the servicemember is on active duty may be terminated if the servicemember receives PCS orders to a location outside the continental United States or deployment orders for a period of 180 days or more.

(6) Adds a provision that would prevent states from increasing the tax bracket of a nonmilitary spouse who earned income in the state by adding in the service member's military income for the limited purpose of determining the nonmilitary spouse's tax bracket. This practice has had the effect of increasing the military family's tax burden.

(7) Adds legal services as a professional service specifically named under the provision that provides for suspension and subsequent reinstatement of existing professional liability insurance coverage for designated professionals serving on active duty. While the SSCRA specifically names only health care services, legal services have been covered since 3 May 1999 by Secretary of Defense designations. The SSCRA permitted such a Secretarial designation, but this revision will clarify this area.

d. Historically, the SSCRA applied to members of the National Guard only if they were serving in a Title 10 status. Effective 6 December 2002, the SSCRA protections were extended to members of the National Guard called to active duty for 30 days or more pursuant to a contingency mission specified by the President or the Secretary of Defense. This continues in the SCRA.

Mr. Meixell/(703) 588-6718

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Servicemembers Civil Relief Act (SCRA), Public Law 108-189, 117 Stat. 2835, effective 19 December 2003 (the date the SCRA was signed by President Bush).

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San Antonio, TX - Shown dancing at "Poly Ester's" after a hard day of meetings are Judge and Mrs. Dick Fruin of California.

San Antonio, TX - Making his stand at the Alamo is Judge Herbert B. Dixon, Jr. of Washington, D.C.



Recent Judicial Discipline Cases

by Judge Al White
Chicago, IL

In *Inquiry Concerning Kinsey*, Per curiam (January 20, 2003), the Florida Supreme Court reprimanded a judge and fined her \$50,000 for statements during her campaign that demonstrated a commitment to the prosecution side of criminal cases and knowingly misrepresented the actions of her opponent, the incumbent, in two criminal cases.

In *Matter of Prochaska, Reprimand* (October 7, 2002), the Nebraska Commission on judicial qualifications publicly reprimanded a judge who had facilitated a campaign contribution to a candidate for city council by personally communicating the solicitation to her husband and delivering the check written by her husband on their joint account to the campaign.

In *Matter of Crnkovich, Determination* (November 18, 2002) (www.scjc.state.ny.us/Determination/C/crnkovich.htm), based on an agreed statement of facts and joint recommendation, the New York State Commission on Judicial Conduct censured a judge for making public statements on behalf of a candidate for another judicial office in a radio advertisement, sending the statement to a newspaper, and authorizing the candidate to use it in a campaign advertisement.

In *Inquiry Concerning Gibson, Order* (April 3, 2003) (cjpca.gov/pub_disc.htm), pursuant to a stipulation for discipline by consent, the California Commission on Judicial Performance censured a former judge for (1) false and misleading statements to a

television reporter during his campaign for re-election, (2) threatening to bring a legal action against the television station to prevent broadcast of facts that he knew to be true, and (3) improper campaign activities in and around the courthouse. The Commission also barred the former judge from receiving an assignment or appointment.

In *re Fuselier*, 837 So. 2d 1257 (Louisiana 2003), the Louisiana Supreme Court suspended a judge for 120 days without pay for a pattern of failing to follow the law; accepting ex parte requests to fix traffic tickets and having a court employee relay the messages to the prosecutor's office; and initiating a worthless check program that did not meet statutory requirements.

In *Commission on Judicial Performance v. Justice Court Judge S.S.*, 834 So. 2d 31 (Mississippi 2003), the Mississippi Supreme Court privately reprimanded a judge who as a member of a county concerned citizens association participated in writing a petition requesting the removal of a deputy sheriff.

In *Inquiry Concerning Block, Order* (December 9, 2002) (cjp.ca.gov/pubdisc.htm), pursuant to a stipulation for discipline by consent, the California Commission on Judicial Performance censured a retired judge for (1) inappropriate sexual conduct, (2) attempting to intimidate potential witnesses during the investigation of his sexual conduct, (3) having his bailiff handcuff a court interpreter as a joke when she was late, and (4) attempting to intercede in a matter on behalf of an acquaintance. The Commission also barred the former judge from receiving an assignment or appointment.

In *Inquiry Concerning Holloway*, 832 So. 2d 716 (Florida 2002) the Florida Supreme

Court reprimanded a judge and suspended her from office for 30 days without pay for (1) angrily engaging in an *ex parte* discussion with another judge, (2) making materially incomplete and misleading statements in her disposition in deposition in a case and in an errata sheet, and (3) requesting a scheduling favor for a family member from another judge.

In *the Matter of Fiechter, Determination* (November 18, 2002), (www.scjc.state.ny.us/Determination/F/fiechter.htm), pursuant to a joint recommendation, the New York State Commission on Judicial Conduct determined that censure was the appropriate sanction for a judge who had widely disseminated a letter to the Commission that contained inaccurate, unsubstantiated allegations denigrating a fellow judge.

In *the Matter of Coady, Reprimand* (Nebraska Commission on Judicial Qualifications, March 25, 2003), the Nebraska Commission on Judicial Qualifications publicly reprimanded a judge who, without notice to either counsel, visited a defendant in jail to discuss his mental health as disclosed in the probation report. The judge also gave the defendant a document that discussed depression and anxiety.

In *Public Admonition of Cox* (Indiana Commission on Judicial Qualifications, March 21, 2003), In Brief: pursuant to his consent, the Indiana Commission on Judicial Qualifications publicly censured a judge for granting an *ex parte* petition for change of custody without requiring prior notice to the custodial parent of her counsel and without requiring the petitioners to comply with the court rule establishing the prerequisites for a petition for an emergency change in custody.

Kennedy

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Suffice it to say, the testimony before the Commission has been extremely illuminating and at times discouraging. But

despite the lack of appropriate resources, the witnesses before the Commission have offered solutions to the problems they highlighted. Unfortunately, the solutions will require financial resources and a paradigm shift or sea change by society at large. Witnesses pointed out that although minorities are not barred from public

conveniences, they are still treated differently by the majority society merely because they look different. And as one judge said to this author in a candid, casual conversation, "so long as people look different from each other, there will be racism."

Relief Act

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References are to the sections within the SCRA.

Overview:

The SCRA represents a complete restatement, in modern legislative language, of the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), which had been amended numerous times since its adoption before the beginning of World War II and was badly in need of a complete update. Many of the areas of the former SSCRA that had precipitated either litigation or disagreements among experts on the law have been eliminated by clarifying language in the new SCRA. "Articles" in the SSCRA are now referred to as "Titles" in the SCRA, in keeping with modern legislative drafting style. The basic organization and outline of the act is maintained from the SSCRA to the SCRA. However, the following summarizes some significant additional areas of protection added by the SCRA:

- a. Extends SCRA coverage to *all administrative agency proceedings* of the United States and all states (and political subdivisions thereof), in addition to all civil judicial proceedings (§101(5));
- b. Defines "dependents" under the SCRA to include anyone for whom the servicemember had provided more than 50% of their support during the 180 days prior to an application for relief under the SCRA (*intended to include dependent parents and disabled adult children within the protections of the SCRA whenever dependents are protected*) (§101(4));
- c. Provides that credit reporting agencies may not note in their records that a person who claims the benefits of the SCRA is a member of the National Guard or a reserve component (§108(5));
- d. Clarifies how to proceed in a civil action in which a default judgment is sought if the Court cannot determine if the defendant is in military service (§201);
- e. Establishes an automatic 90-day stay in civil proceedings upon application by the servicemember if certain conditions are met. The stay could be extended upon further application by the servicemember. An application for a stay **would not constitute a general appearance in the suit**. Requires appointment of counsel for the servicemember if the request for a stay is *denied*. (§202);
- f. Clarifies that interest in excess of 6% on *pre-service* obligations by the servicemember (or jointly with the member's spouse) is forgiven and requires recalculation of payments at the 6% rate of interest. Also requires written notice by servicemember to the creditor with a copy of the member's orders (§207);
- g. Increases the maximum monthly rental of leased premises that may be protected from eviction except on court order from \$1,200 to \$2,400 (increased to \$2,465 in 2004) (§301);
- h. Clarifies that pre-service installment purchase contracts **or leases (including vehicle leases)** are protected from cancellation and/or seizure of the property by creditors except upon court order (§302);
- i. Completely revises the protections for servicemembers who need to cancel premises leases – **and adds an important provision for cancellation of motor vehicle leases** – due to deployments or PCS orders (§305). There are different criteria for cancellation of premises leases and motor vehicle leases. *The ability to cancel premises leases upon receipt of PCS orders or deployment orders of more than 90 days and the ability to cancel vehicle leases upon notification of a mobilization for 180 days or more, a PCS move overseas or deployment of 180 days or more is a huge additional benefit to servicemembers;*
- j. Increases the amount of life insurance that qualifies for protection against cancellation for non-payment of premiums under the Act from \$10,000 to \$250,000 (or the maximum of SGLI coverage, whichever is higher) (§402);
- k. Specifically includes property jointly owned by the servicemember and a dependent as being protected against seizure and sale (without a court order) for payment of delinquent taxes (including licenses and fees) and assessments (§501);
- l. Adds clear guidance concerning residence for tax purposes that a nonresident servicemember's military compensation cannot be used to increase the tax liability (by putting them in a higher tax bracket) for other income of the servicemember or spouse (§511);
- m. Adds legal services to the express coverage for protections concerning professional liability insurance policies (§703);
- n. Requires that applications for reinstatement of health insurance policies be made within 120 days of the servicemember's release from military service (§704); and
- o. Adds a new provision protecting the non-business assets of a servicemember-businessman (regardless of the form of the business) from seizure if the servicemember is personally liable for the debts of the business (§706).

Save the Date

April 15-18, 2004

Division Spring Planning Meeting
(invitation only)
Tempe, AZ
More information: 800/238-2667 (x5700)

April 29-30, 2004

National Conference on Judicial Outreach
Memphis, TN
More information: 800/238-2667 (x5450)

May 5-6, 2004

ABA Day
Washington, DC
More information: 202/662-1764

May 7-8, 2004

Joint Commission to Update the Model Code
Roundtable discussion
New York, NY
More information: 800/238-2667 (x5105)

May 17, 2004

50th Anniversary of Brown v. Board of Education

June 4-5, 2004

Joint Commission to Update the Model Code
Roundtable Hearing and Committee Meeting
Naples, FL
More information: 800/238-2667 (x5105)

June 11-12, 2004

SC on Judicial Independence Spring Meeting
Chicago, IL
More information: 800/238-2667 (x5147)

August 5-6, 2004

Joint Commission to Update the Model Code
Public Hearing and Committee Meeting
Atlanta, GA
More information: 800/238-2667 (x5105)

August 5-9, 2004

ABA Annual Meeting
Atlanta, GA
More information: 800/238-2667 (x5700)

September 9-11, 2004

Section Officers Conference
Chicago, IL
More information: 800/238-2667 (x5700)

October 13-15, 2004

Traffic Court Program
San Francisco, CA
More information: 800/238-2667 (x5742)

* Visit www.abanet.org/jd for more information on upcoming meetings.



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