

# Judicial Division Record

American Bar Association

Volume 7 Issue 4 Summer 2004

## Judicial Division Hosts First National Judicial Outreach Conference Presented by the Judges Network

by Jack L. Brown, Tulsa, OK

Judges from all parts of the country took part in the Judicial Division's inaugural National Judicial Outreach Conference presented by the Judges Network April 30 and May 1, 2004 at the Peabody Hotel in Memphis, Tennessee. JD Chair Rick Bien from Kansas City, Missouri, welcomed attendees to the conference. In his comments, he emphasized the importance of judicial outreach by judges in their own communities and the incredible resource of outreach materials available to judges and lawyers from the Judges Network website: [www.abanet.org/jd/judgesnetwork.html](http://www.abanet.org/jd/judgesnetwork.html).

Past ABA President, Phillip S. Anderson, was the keynote speaker of the National Judicial Outreach Conference. Anderson indicated the purpose of judicial outreach was to help the public understand the profound stake that it has in our justice system and what it is that judges do. "Judges enforce our rights and protect our liberty, and an independent judiciary is essential to a free society. That is an important lesson and the public wants to learn it from judges," stated Anderson.

Anderson referenced the national survey conducted during his presidential term in 1998-1999 entitled Public Understanding and Perceptions of the American Justice System. Eighty percent of the people

surveyed believed the American system of justice is the best in the world; however, more than half of those believed that race and gender make a difference in how a person is treated by the system. Anderson challenged conference attendees to work on eliminating racial and gender bias in the system.

The first conference program consisted of a panel of judges discussing ethical issues that typically occur when getting involved in judicial outreach activities. The panel was moderated by the Honorable Richard L. Fruin, Jr. from Los Angeles, California. Panelists included the Honorable D'Army Bailey, the Honorable J. Daniel Breen, and the Honorable Janice Holder, all from Tennessee.

The second session focused on outreach skills that could be used by presenters to teach to different audiences. Kathy Story, Assistant Executive Director of the University of Memphis Leadership Institute in Judicial Education, presented "Teaching Around the Circle," which involves presentation strategies in a learning circle. Attendees found the circle approach to be challenging and a powerful tool in teaching judicial outreach programs.

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## Remarks of the Chief Justice Rededication of the Rotunda for the Charters of Freedom 10:00 a.m., September 17, 2003

Thank you, John. Members of Congress and honored guests, I am happy to be here today to participate in this ceremony in which the Declaration of Independence, the Constitution of the United States of America, and the Bill of Rights are again placed together on public display.

William Howard Taft was the only person ever to have served as both President of the United States and as Chief Justice of the United States. I recently received a letter from him. The letter, addressed to whoever was the Chief Justice in the year 2000, had been placed in a "time capsule" in 1926.

Chief Justice Taft wrote, "I sincerely hope that when this letter is presented to you the Constitution will still be maintaining the Ship of State on an even keel, and securing the blessings of individual liberty to all the people of the United States under a government of law and order." Chief Justice Taft's hope, of course, came to pass.

It seems to me that a major reason the Constitution has kept the ship of state afloat is the existence of an independent judiciary as a co-equal branch of our federal government. It is easy today to see the need for an independent

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JUDICIAL  
DIVISION

## Bricks, Mortar, People AND Programs

by Rick Bien  
Kansas City, Mo

On a Friday in June, the ABA celebrated the grand opening of the new headquarters building. This refurbished building in Chicago's Loop has all the bells and whistles to improve efficiency and provide a new home for the Association. The building is nice, however, it isn't the ABA. We are the ABA and more importantly we are the JD. Without you, volunteer judges and attorneys and our staff, the JD and the ABA do not exist. You, the programs you developed, and the relationships you made are the ABA, not a building and not a budget to run it. In my last column, I want to recognize you and your work.

The list of people to thank is long. If I begin to name names, I will surely forget some, embarrass others and either over state or understate their accomplishments. The Division officers, conference chairs, program chairs, committee members and in particular our staff have done a superb job of keeping our programs moving and productive. Through your efforts we have expanded our Judicial Outreach Programs, developed outstanding educational programs, continued excellence in our publications and periodicals, addressed the continuing impact of *Brown*, and begun to develop solutions for endemic state court funding problems all while continuing our dozens of ongoing programs. Most importantly, we have had a lot of fun along the way. I thank all of you for your commitment to JD and to the ABA. You took time away from career and family to improve justice, the law, and the practice of judging and the law.

Last year's summer edition of the *Record* included a picture of me on the back of a horse. (I was the one with glasses and a beard. The horse looked a lot better than I did.) The occasion was the Division's Spring Planning Meeting. JD and Conference officers' time together didn't improve our horsemanship, but it did help the Division and its Conferences work together throughout the year. At the

meeting, we agreed on a series of improvements to our planning processes and efforts to raise JD's profile and relationships with ABA and non-ABA entities. Over the last year our Strategic Planning Committee has continued the planning work of the Millennium Task Force and assisted Louraine Arkfeld, incoming JD chair in developing programming for her year. Jodi Levine, incoming vice chair will continue this work. Our Strategic Communications committee has analyzed our relationships with other ABA and non-ABA entities and has worked throughout the year to develop a communication and liaison plan that will continue to highlight the JD's role as the voice of judges inside and outside the ABA.

Planning, without programs is the ultimate in futility. The program that I believe benefited tremendously from our planning meeting was the Judges Network, Judicial Outreach effort. It should be no secret to you that the single program that I have promoted, pushed, cajoled and begged you to support is our Judges Network and judicial outreach. Lawyers can talk about the justice system, but Judges are the indispensable component of the system. Citizens of all ages want to know judges and hear about the system from Judges. You are the key to promoting trust and confidence in the justice system. Our citizens are poorly served by most civics education and the media's reporting regarding the justice system. We need to encourage judges and lawyers to fill the void and to increase trust and confidence in the justice system by speaking and writing about the justice system and discussing issues with the public.

This year you have moved our outreach efforts forward. In addition to continuing our four-year tradition of conducting demonstration outreach projects at the midyear and annual meeting we hosted the first National Conference on Judicial Outreach. Judges from across the country joined together with the ABA Young Lawyers Division to exchange program ideas about outreach and to participate in and observe outreach projects in Memphis area schools. (The programs from the conference are available on the JD web site.) We also expanded our outreach efforts to several college campuses. This National Conference and the program's growth are neither the end nor the beginning of our outreach efforts, rather, they mark the end of the beginning.

Division leaders for the next two years are committed to continuing the work of Judges Network. I look forward to celebrating the Network's continued successes.

Our members' ability to travel to conferences, participate in outreach programs and run their court rooms continues to be adversely affected by state, local and federal under funding of the justice system. Although the system is impacted at all levels, over the last three years, the most dramatic impact has been at the State Court level. In September, your Division leadership asked Dennis Archer to appoint an association taskforce to make specific recommendations to address chronic and cyclical under funding of the justice system. President Archer agreed and the taskforce commenced its work with seed money from JD. The Taskforce's report and recommendation will be considered at the ABA Annual Meeting.

Some of the Division's most thoughtful and interesting work this year has centered on the commemoration of the 50th anniversary of the Supreme Court's decision in *Brown*. Our efforts were introduced at the midyear meeting in San Antonio when Judges Andre Davis and Sophia Hall, chairs of the Federal and State Trial Judges Conferences invited us into their "living room" for a discussion of *Brown* and its impact in Texas and elsewhere. Jack Brown and JD staffer Paula Nessel developed a special version of *Dialogue on Brown* for classroom use. This outreach program, distributed through the Judges Network, has tremendous impact for students, judges and lawyers who participate. If you have not used it, do so. Finally, we conclude the year with an outstanding annual meeting program featuring two Harvard law professors, David Wilkins, our scholar in residence and Charles Ogletree who will, along with other scholars and practicing judges and lawyers discuss the limits of judicial remedy and the sociological impact of *Brown* on the profession and beyond.

Over the last 20 plus years, I have had the good fortune to work with many lawyers and judges in ABA and State and local bar programs. My work with you in the JD has been a highlight of this experience. I look forward to the observing the continued success of the Division from the best job in the JD – immediate past chair.

# Update on State Court Funding Commission

by Michael L. Buenger  
Missouri State Courts Administrator  
Judicial Division Representative to the Commission



The ABA's Commission on State Court Funding, chaired by New Hampshire Supreme Court Justice Joseph P. Nadeau, held its final meeting on April 23, 2004, to complete its report and recommendations for consideration by the House of Delegates. Although many state budgets seem to have turned the corner and the funding crises this year does not appear to be as broad or as deep as those of recent years, many state courts continue to suffer from the effects of the recent recession and from the politics of state budgeting. The Commission remained keenly aware of the fact that in many states, short-term improvements in budgets have not translated into improved resources for the courts. Additionally, recent budget difficulties have created a large backlog of demands that

courts must compete against when attempting to expand their own resources.

In its deliberations the Commission discussed at some length the need to balance judicial independence with judicial accountability. Courts are public institutions. While judges must enjoy a high level of decisional independence, the courts must also see themselves as institutionally accountable to the public for how they spend public resources. Today's increased competition for limited state dollars creates a heightened environment of scrutiny. Rather than run from that scrutiny, courts should embrace the opportunity to demonstrate to the public and the other branches of government both the careful stewardship of public dollars and the great needs of the courts and the larger justice system.

In light of these factors – the need for adequate funding to ensure judicial independence and the demand for accountability – the Commission embraced several recommendations that sought to strike a balance between independence and accountability. Courts, as an independent branch of government, must be provided with the resources necessary to fulfill their constitutional role, the most important of which is to guard fundamental

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## July 21 ABA Connection: Legal Issues for Gay Couples

On July 21 at 1:00 pm Eastern, the ABA Connection is presenting a one-hour CLE teleconference titled, "Legal Issues for Gay Couples." As the issue of gay marriage plays out on a policy level, it is causing practicing lawyers to grapple with practical questions in representing gay clients. In particular, practitioners must figure out how to balance the legal implications of formal recognition of gay marriages with precautionary steps that should be taken to protect the rights of the partners in the event that those marriages eventually might not be upheld. Other considerations may include how to provide for the possibility of "divorces" between gay couples, as well as current issues over such matters as benefits for partners, adoption and child custody. While few, if any, of these issues are settled, this ABA Journal article and teleconference will help to identify current thinking and point to some new directions for practitioners in the domestic relations field and also look at how changes in the law regarding gay couples could affect domestic relations law on a wider level. The program is sponsored by the ABA Journal, Membership and Marketing, and the Center for Continuing Legal Education. CLE credit has been applied for in states that accept the teleconference format. To register, call the ABA at 800/285-2221 from 8:30 a.m. to 6:30 p.m. Eastern weekdays, beginning Monday, June 21st or register online by Friday, July 16th at [www.abanet.org/CLE/connection.html](http://www.abanet.org/CLE/connection.html). There is a nonrefundable \$9.75 fee for the teleconference. If you are unable to participate in the live teleconference, the program is available, at no cost, for one month, on the ABA CLE Web Site at <http://www.abanet.org/cle/connection.html>. Tapes of the program are available to ABA members for \$50.00 two weeks after the program. To order a tape call the ABA Service Center at 1-800-285-2221.

### 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 Thomas C. Warren, Chelan County Dist Ct, PO Box 2182 Wenatchee, WA 98807-2182; Phone: 509/667-6491, Fax: 509/667-6556, E-mail: [thomas.warren@co.chelan.wa.us](mailto:thomas.warren@co.chelan.wa.us) 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](mailto:berliank@staff.abanet.org)

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### ARTICLE SUBMISSION DEADLINES

Fall 2004: Wednesday, August 25

## DIRECTOR'S COLUMN



by Aimee Skrzekut  
Torres  
Chicago, IL

### New ABA Home

I am pleased to announce that the Judicial Division's move March 15-17 was successful. The new offices in the former Quaker Oats Building are conveniently located in close proximity to public transportation, fine dining and a number of hotels offering deep discounts for ABA Meetings. The new ABA building houses several hundred staff members and boasts an expanded ABA Museum of Law (from 3,600 to over 4,300 square feet).

Additional meeting space includes an impressive new boardroom with seating for up to 270 people, three 120-inch electric screens, three 32-inch monitors and three mounted projectors with VHS/DVD/SAT TV capabilities, satellite GPS synchronized docks and data/voice outlets throughout for modem/LAN presentations. The new site also boasts a complete conference center with five meeting rooms that can be combined as well as seven other conference rooms throughout the building.

Chicago has housed the American Bar Association since 1926. Previous locations have included the Rookery Building Victorian at 1140 N. Dearborn, East 60 Street, 750 N. Lake Shore Drive and 541 N. Fairbanks Court. ABA staff occupy a single building which will provide greater opportunities for collaboration and partnership with other ABA entities. Additional groups occupying the building include the American Bar Endowment, American Bar Insurance, American Bar Retirement Association, American Lawyers Auxiliary and the National Association of Women Lawyers. The American Bar Foundation will remain at 750 N. Lake Shore Drive.

The ABA offices will be dedicated by President Dennis Archer on Friday, June 11, 2004. U.S. Supreme Court Justice Anthony M. Kennedy will provide the keynote address and a number of state, county and city officials will join in the festivities.



Although the Judicial Division mailing address has changed, email, telephone and fax numbers have not. You can reach JD team members as follows:

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*ABA offices moved  
to 321 North  
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The Judicial Division fax number is: (312) 988-5709. Please indicate specific recipient information on any faxed documents so they can be received as quickly as possible.

## JUDICIAL DIVISION

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# Together We're Better

by Judge Louraine Arkfeld  
JD Chair-Elect  
Tempe, AZ

I have been asked to write about my "philosophy" for my upcoming year as Chair. I am reminded that I often asked why I belong to the American Bar Association and the Judicial Division. Aside from the obvious educational benefits to me, I really believe that the opportunity to give back to both my profession and my community can be enhanced by all of the partnerships I have access to through our organization. I truly believe that we can accomplish many things working together. A look at my recent schedule demonstrates this very well.

Following the successful JD planning meeting in Tempe, I have been on the road attending various ABA meetings, starting with the Outreach Conference with the Young Lawyers in Memphis and ending with the Assembly of Court Associations in Arlington, Virginia. I also participated in ABA Advocacy Day and chaired the Coalition for Justice's annual outreach meeting with non-legal organizations. In each one of these gatherings I am reminded of the importance and impact of working collaboratively.

At the planning meeting all of our conferences were working together. This is the first time we have had all of the conferences in attendance. The spirit of excitement and cooperation makes me optimistic for the challenges of the year ahead. In Memphis, we not only met with the Young Lawyers, we also worked with several local judges and lawyers to do several simultaneous outreach programs. We brought the programs and they brought the talent to present them.

Reaching out to the non-legal organizations every year has created partnerships where we can engage and assist with their projects – and they assist us. Several of these partners were represented on the Commission on the State Court Funding Crisis. They will now carry that work back to their communities. They have also presented our National Issues Forum "And Justice for All" in their communities. Participating in Advocacy Day was a good reminder that outreach includes reaching out to, working with and educating our legislators. Many times there will be no more important partner in what we want to accomplish.

Finally, the Assembly of Court Associations is an amazing eye-opener as to the number of organizations there are representing every niche of the court system. But instead of looking at these organizations as competitors, I prefer to look at them as potential partners. In fact, we immediately discussed collaboration on some upcoming programs with two of the organizations.

My most important partners are the members of the Judicial Division. Each and every one of you brings unique knowledge, talent and experience to the table. I look forward to working with everyone in the year ahead because I truly believe that "Together We're Better".



Tempe, AZ - Above are pictures from the Tempe High School judicial outreach program on the Judges Network Brown v. Board of Education Program presented April 15, 2004 to four senior government classes taught by Mr. Scott Madine (middle) and Tempe attorney Javier Delgado (pictured in suit). JD Chair-Elect Judge Louraine Arkfeld assisted in presenting the interactive outreach program.



Tempe, AZ - Judge Arkfeld is featured with her daughter, Courtney. Courtney is a senior at Tempe H. S. and attended one of the programs.



Tempe, AZ – Specialized Court Judges E. Jeanette Ogden, Sharon Hatten and Tom Warren enjoy the warm weather at the Spring Planning Meeting.



Tempe, AZ – Judge Leslie Miller, State Trial Judges and Dan Gourash, Lawyers Conference.

## Gender and Ethnicity



by Judge Gregory Holiday  
Chair, Judicial Division Standing Committee on Minorities in the Judiciary  
Detroit, MI

**W**hy do professional associations, including the ABA, want to know your gender and ethnicity?

Many professional associations, including the ABA, seek to reach out to women and ethnic minorities through targeted membership efforts. Associations also seek to balance committees by making them inclusive and representative. Identifying your gender and ethnicity on association membership records allows the association to do a better job in meeting goals of inclusiveness, and to gauge the success of its outreach efforts.

## Save the Date

**T**he inaugural meeting of the Judicial Division's upcoming Bankruptcy Council will be held from March 10 – March 12, 2005. The Council will be co-chaired by Paul Levine (Lawyers Conference) and Hon. Barbara Lynn (National Conference of Federal Trial Judges). Accommodations and meetings will be at the Mandarin Oriental Hotel in Washington, D.C.

Please watch the Judicial Division website and quarterly publications for more information about joining the council and attending the meeting next year. Please contact Meredith White at (312) 988-5147 or [whitem@staff.abanet.org](mailto:whitem@staff.abanet.org) with any questions.

## The Homeless Court Program: Taking the Court to the Streets

A National Conference on Homeless Courts  
Friday, October 8, 2004

Joan B. Kroc Institute for Peace & Justice, University of San Diego  
Conference information will be posted shortly at [www.abanet.org/homeless](http://www.abanet.org/homeless)

## Minority Bars Encourage Law Students to Become Judicial Interns and Law Clerks

by Senior Judge Arthur L. Burnett, Sr.  
Washington, DC

**A**s a result of a conversation at the 2002 Judicial Clerkship Program, Robert E. Wone, Esq., a former judicial law clerk to United States District Court Judge Raymond A. Jackson in Norfolk, Virginia and Senior Judge Arthur L. Burnett, Sr. of the Superior Court of the District of Columbia, a member of the Standing Committee on Minorities in the Judiciary, a new program was developed in the Summer of 2003. Judge Burnett and Mr. Wong served as catalysts for all of the minority bars in the District of Columbia coming together to sponsor a one-half day presentation on September 20, 2003 at Howard University School of Law attended by nearly 60 law students from the several law schools in the Washington metropolitan area. While the outreach effort was designed to attract as many minority law students as possible in the quest to increase diversity in the number of minority judicial law clerks in the federal and state court systems, the program was open to all law students in the law schools in the metropolitan area.

The thrust of the presentations focused on the value of judicial internships and clerkships and the process involved in obtaining these positions. Judicial internships after the first year in law school were urged for those students who did not do as well as they desired in the first year in order to increase their analytical legal skills in identifying issues and in legal writing, thus giving them a realistic chance to improve their grades in the second and third years of law school study. A judge in considering such an individual for a judicial clerkship in the third year might well consider that the grades in the first year did not reflect that individual's true abilities. Second, it was stressed that

internships at any stage of law school studies can be like a bar preparation course, especially when the intern functions in the same manner as a judicial law clerk and drafts memoranda or proposed opinions and orders for a judge. The third advantage of an internship is the exposure the law student obtains concerning the judicial process and the inner workings of a court on how to get things done, which provides much practical know-how on the actual *practice of the law*. From the judges' perspective, this is an opportunity for judges to render service in the nature of teaching, much as lawyers render *pro bono* service, and to improve the quality of future lawyers in the profession.

The minority bars sponsoring the event were the Asian Pacific American Bar Association, the Hispanic Bar Association, the Native American Bar Association, the South Asian Bar Association and the Washington Bar Association. Judicial participants included judges from the United States District Court, the United States Court of Appeals for Veterans Claims, the United States Court of Federal Claims, the Maryland Court of Special Appeals, the Maryland State District Court, the Superior Court of the District of Columbia, and administrative law judges from federal agencies. Several current and former judicial law clerks also recounted their experiences. The program was supported by Akin, Gump Strauss Hauer & Feld, LLP; Foley & Lardner; Finnegan, Henderson, Farabow, Garrett & Dunner, LLP; and Covington & Burling. Other sponsors included LexisNexis and Howard University School of Law.

This program has been designed to be an annual event. To the extent that more minority law students become judicial interns and then judicial law clerks, this result can increase diversity in the legal profession and ultimately the number of members of minority groups who will have the opportunity to become judicial officers and judges in either the federal or state judicial systems. Increased diversity in the judiciary should promote more confidence of all American citizens in the sensitivity and fairness of our judicial system.

# ABA Annual Meeting in Atlanta, GA August 5-9, 2004

The Judicial Division will meet in conjunction with the ABA Annual Meeting in Atlanta, GA, August 5-9, 2004. Division meetings and events will

## Judicial Division Programs

### Information as of 5/19/04

All programs will take place at the Westin Peachtree Plaza, unless otherwise indicated.

#### Thursday, August 5

9:30am – 4:00pm

#### What Judges need to Know About Business Valuations and Corporate and Commercial Litigation

Georgia State University, Urban Life Building,  
Room 100

Fee: \$25.00

This seminar is designed to provide judges who must deal with business valuation issues, digital discovery disputes and cutting edge corporate and class action litigation with the tools to manage those cases. Each topic will be addressed by judges, lawyers and experts who will provide guidance on how judges can resolve the novel questions confronting them in these developing areas of the law. Each panel is composed of leading experts in the field who will cover the newest problems confronting judges. The program focuses on emerging issues which will confront judges who must deal with complex litigation problems. Judges will learn how to resolve costly digital discovery disputes, resolve conflicting testimony of business valuation experts, address corporate governance issues after Enron and deal with the rising number of state class actions.

*Speakers:* R. Franklin Balotti, Esq., Wilmington, DE; Thomas M. Byrne, Esq., Atlanta, GA; Chancellor William B. Chandler III, Georgetown, DE; Everette L. Doffernyre, Esq., Atlanta, GA; Charles M. Elson, Charlotte, NC; Gregory P. Joseph, Esq., New York, New York,

take place at the Westin Peachtree Plaza. Highlights for the Division include a Welcome Reception at the Carter Presidential Center, sponsored by the Division and LexisNexis, a Meet and Greet for our Scholar in Residence David B. Wilkins followed by a program on *Brown v. Board*, and the Annual Dinner in Honor of the Judiciary and presentation of the John Marshall Award at the Fernbank Museum of Natural History.

*Nicholas M. Pace, Santa Monica, CA; Gregory P. Schaffer, Washington, DC; Hon. Myron Steele, Dover, DE; Hon. Ben F. Temille, Greensboro, NC*

Sponsored by: National Conference of State Trial Judges, the National Judicial College and LexisNexis

#### Friday, August 6

1:00pm – 3:30pm

#### Brown v. Board of Education — Impact on the Legal Profession and Judicial Limitations

Westin Peachtree Plaza, Atlanta Ballroom E, Lvl. 7

*Brown* had a profound impact in the legal profession as well as in the schools. This panel will explore the broader impact of the *Brown* decision in the legal profession. It will also explore the extent to which the courts are a suitable tool for social change, and the limitations on using them as the governmental leader in this process.

*Speakers:* Prof. Erwin Chemerinsky, USC Law School, Los Angeles, CA; Prof. Charles Ogletree, Harvard Law School, Cambridge, MA; Prof. David Wilkins, Harvard Law School, Cambridge, MA.

Sponsored by: Judicial Division and Federal Trial Judges

3:30pm – 5:30pm

#### The High Tech Court: Expectations for the Future

Westin Peachtree Plaza, Atlanta Ballroom G, Lvl. 7

Many technological advances are allowing judges and court personnel to more easily and efficiently interact with the public, other justice organizations and the broader legal community. This session will focus on the methods being used to meet the goals for interacting with the public, and in the process promote public trust and confidence in the courts. Speakers will focus on a variety of topics: the recently developed standards for

The deadline for advance registration and housing and to order social event tickets is July 8, 2004 at 5:00pm CDT. To register for the meeting, log on to: <http://www.abanet.org/annual/2004/home.html>

For an updated list of Division events, programs and social events, log on to: <http://www.abanet.org/jd/meetings/2004annual/home.html>

electronic filing, and demonstrations of the use of technology in various stages of the litigation process, including new technologies for searching judge's own notes and materials.

*Speakers:* Victoria Cashman, Esq., Middleton, OH; Hon. Herbert Dixon, Jr., Washington, DC; Richard K. Herrmann, Wilmington, DE; Hon. Henry duPont Ridgely, Dover, DE.

Sponsored by: Lawyers Conference

4:30pm – 6:00pm

#### ALJ Decisions: Final or Fallible?

Office of State Administrative Hearings (across from Westin Peachtree Plaza)

Join the policy debate between academicians about the appropriate role of ALJs as decision makers. Opportunity for audience participation in this debate of significance.

*Speakers:* Professor Jim Rossi, Professor James Flanagan

Sponsored by: National Conference of the Administrative Law Judiciary

#### Saturday, August 7

9:30am – 12:00pm

#### Are Jury Trials Vanishing?

Georgia World Congress Center, Rm. A305, Lvl. 3

The jury trial is the hallmark of our American justice system. Yet despite enormous increases in our general and legal population, the number of civil trials in federal courts is declining. Is this decline good for Americans, or not? A blue ribbon panel of judges, practitioners, academics and our audience, will help explain what is going on, why, and what, if anything, should be done about it.

Sponsored by: Judicial Division and Section of Litigation

2:00pm – 3:30pm

**Can Paper Stop a Bullet? - The Relationship Between State Protective Orders and Federal Firearms Laws**

*Westin Peachtree Plaza, Atlanta Ballroom B, Lvl. 7*

This CLE program will review the relationship between state court domestic violence protective orders and the federal firearms laws applicable to domestic violence and protective orders. Attendees will be introduced to the laws surrounding

firearms possession, confiscation, and purchase if the firearms' owner, possessor or purchaser is subject to a domestic violence order of protection. They will learn about the role of the court in being a source of data in regards to the national registries on protective orders and firearms licenses, as well as being introduced to the workings of these national registries. Furthermore, they will be instructed on methods of confiscating firearms after a

protective order for domestic violence is issued.

*Moderator:* Hon. Ruth D. Reichard, Indianapolis, IN.

*Speakers:* Hon. Margarita Solano Bernal, Tucson, AZ; Fanny Haslebacker, Clarksburg, WV; Darren Mitchell, Washington, DC; Nancy Turner, Alexandria, VA.

Sponsored by: National Conference of Specialized Court Judges

## 2004 ABA Annual Meeting - Atlanta, GA

Judicial Division  
Westin Peachtree Plaza  
Tentative schedule as of May 19, 2004  
For more information, visit: [www.abanet.org/jd](http://www.abanet.org/jd)

### Thursday, August 5

9:30am – 4:00pm

**PROGRAM**

**What Judges need to Know About Business Valuations and Corporate and Commercial Litigation**

*Georgia State University  
Urban Life Bldg, Rm 100*

12:00pm - 5:00pm

Office

*Atlanta Ballroom A, Lvl. 7*

1:00pm - 3:00pm

Judges Network Meeting

*Atlanta Ballroom F, Lvl. 7*

3:00pm – 5:00pm

Division Committee Meetings

*Atlanta Ballroom G, Lvl. 7*

6:30pm - 8:30pm

Welcome Reception at Carter Presidential Center  
*Sponsored by the JD and LexisNexis*

*453 Freedom Parkway*

### Friday, August 6

7:30am – 5:00pm

Office

*Atlanta Ballroom A, Lvl. 7*

8:00am - 9:00am

Welcome Breakfast

*Atlanta Ballroom B/C/D, Lvl. 7*

9:00am - 10:00am

Conference Committee Meetings

*Atlanta Ballroom G, Lvl. 7*

9:00am - 11:30am

*Executive Committee Meetings*

Administrative Law Judiciary

*Conference Room 1206, Lvl. 12*

Lawyers Conference

*Conference Room 1204, Lvl. 12*

Federal Trial Judges

*Conference Room 1205, Lvl. 12*

Specialized Court Judges

*Augusta Room III, Lvl. 7*

State Trial Judges

*Atlanta Ballroom F, Lvl. 7*

9:00am – 12:00pm

**PROGRAM**

**The Cost of Justice: Funding the State Courts**

*Atlanta Ballroom E, Lvl. 7*

9:00am – 5:00pm

Joint Commission to Evaluate the Model Code of Judicial Conduct

*Atlanta Ballroom H, Lvl. 7*

12:00pm - 1:00pm

Scholar in Residence Meet and Greet

*Atlanta Ballroom B/C/D, Lvl. 7*

12:30pm – 5:00pm

Pre-Judicial Training Group

*Augusta Room III, Lvl. 7*

1:00pm – 3:30pm

**PROGRAM**

**Brown v. Board of Education – the Sociological Impact and Judicial Limitations**

*Atlanta Ballroom E, Lvl. 7*

2:00pm - 5:00pm

State Trial Judges

*Atlanta Ballroom F, Lvl. 7*

*New Committee Chairs Meeting (2:00pm – 3:00pm)*

*New Committee Meetings (3:00pm – 5:00pm)*

3:30pm – 5:30pm

**PROGRAM**

**The High Tech Court: Expectations for the Future**

*Atlanta Ballroom G, Lvl. 7*

4:30pm – 6:00pm

**PROGRAM**

**ALJ Decisions: Final or Fallible?**

4:30pm – 6:00pm

Justice Center Coordinating Council

*Conference Room 1205, Lvl. 12*

6:30pm

Specialized Court Judges Dinner (\$90.00)

*South City Kitchen, 114 Crescent Ave.*

7:00pm

State Trial Judges Dinner (\$75.00)

*City Grill, 50 Hurt Plaza*

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# Annual Meeting

(continued from page 8)

<b>Friday, August 6</b>	<b>(continued)</b>	
7:30pm	Joint Dinner (\$75.00) Lawyers Conference, Administrative Law Judiciary, Federal Trial Judges	Commerce Club, 34 Broad Street
<b>Saturday, August 7</b>		
7:30am - 5:00pm	Office	Atlanta Ballroom A, Lvl. 7
7:30am - 8:30am	Joint Committee of the Senior Lawyers and Judicial Division	
7:30am - 10:00pm	Specialized Court Judges <i>Business Meeting/Elections</i>	Atlanta, Ballroom G, Lvl. 7
8:00am - 12:00pm	<i>Executive Committee Meetings</i> Lawyers Conference Federal Trial Judges	Conference Room 1402, Lvl. 14 Conference Room 1206, Lvl. 12
8:00am - 11:30am	State Trial Judges <i>Business Meeting/Elections</i>	Atlanta Ballroom F, Lvl. 7
8:00am - 11:30am	Administrative Law Judges <i>Executive Committee Meeting/Business Meeting/Elections</i>	Conference Room 1205, Lvl. 12
8:30am - 12:00pm	Judges' Journal Editorial Board Mtg.	Conference Room 1404, Lvl. 14
8:30am - 1:00pm	SC on Judicial Independence Cte. Meeting	Atlanta Ballroom B, Lvl. 7
9:00am - 5:00pm	Joint Commission to Update the Model Code of Judicial Conduct	Atlanta Ballroom H, Lvl. 7 GWCC, Rm. A305, Lvl. 3
9:30am - 11:30am	<b>PROGRAM</b> <b>Bench &amp; Bar Program with Litigation – The Vanishing Trial</b>	
10:00am - 12:00pm	Conference Committee Mtgs.	Conference Room 1403, Lvl. 14
12:00pm - 5:00pm	Division Council Meeting <i>Business Meeting will take place at 4:00pm.</i>	Atlanta Ballroom G, Lvl. 7
2:00pm - 3:30pm	<b>PROGRAM</b> <b>Can Paper Stop a Bullet? The Relationship Between State Protective Orders and Federal Firearms Laws</b>	Atlanta Ballroom B, Lvl. 7
<b>Sunday, August 8</b>		
7:30am - 5:00pm	Office	Atlanta Ballroom A, Lvl. 7
8:00am - 12:00pm	Appellate Judges Conference Executive Committee	Conference Room 1202, Lvl. 12
8:00am - 10:00am	<i>New Executive Committee Meetings</i> Administrative Law Judiciary Specialized Court Judges State Trial Judges	Conference Room 1204, Lvl. 12 Atlanta Ballroom D, Lvl. 7 Atlanta Ballroom C, Lvl. 7
8:00am - 10:00am	<i>Joint Breakfast</i> Federal Trial Judges, Lawyers Conference Standing Committee on Federal Judicial Improvements	Atlanta Ballroom B, Lvl. 7
8:00am - 11:00am	Judicial Performance Evaluation Committee	TBD
9:00am - 12:00pm	Standing Committee on Federal Judicial Improvements	Conference Room 1203, Lvl. 12
10:00am - 12:00pm	<i>New Executive Committee</i> Federal Trial Judges Lawyers Conference	Atlanta Ballroom B, Lvl. 7 TBD
11:30am - 1:30pm	Margaret Brent Luncheon	
2:00pm - 5:00pm	SC on Minorities in the Judiciary	Conference Room 1204, Lvl. 12
2:00pm - 5:00pm	Coalition for Justice Committee Meeting	Conference Room 1203, Lvl. 12
3:30pm - 5:00pm	Division House of Delegates Meeting	Conference Room 1202, Lvl. 12
6:30pm - 11:00pm	Reception Annual Dinner in Honor of the Judiciary at Fernbank Museum of Natural History <i>Presentation of the Justice Center John Marshall Award</i>	
<b>Monday, August 9</b>		
7:30 a.m. - 10:00 a.m.	Office Atlanta Ballroom A, Lvl. 7	
8:00am - 10:00am	JD New Council Meeting	Atlanta Ballroom H, Lvl. 7

# Judicial Division Event Registration Form

2004 ABA Annual Meeting  
Atlanta, GA – August 5-9, 2004

Tickets for these events are available through ITS.  
Deadline for advance tickets is Thursday, July 8, 2004

*The following information must be completed clearly and include proper payment in order for ITS to process request (please print):*

Registrant Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State, Country, Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

Method of Payment (check one):

Credit Card:  Visa  Mastercard  American Express  Check enclosed (Made payable to ABA)

Credit Card Number: \_\_\_\_\_ Expiration: \_\_\_\_\_

Name as it appears on credit card: \_\_\_\_\_

Signature of credit card holder: \_\_\_\_\_

Credit card orders may be faxed to ITS at 800/521-6017.

## EVENTS:

### Friday, August 6

(Event Code: SDJ1)	National Conference of Specialized Court Judges Dinner	6:30pm	\$90.00	# of Tickets_____
(Event Code: SDJ2)	National Conference of State Trial Judges Dinner	7:00pm	\$75.00	# of Tickets_____
(Event Code: SDJ3 )	Joint Dinner	7:30pm	\$75.00	# of Tickets_____
	National Conference of Federal Trial Judges, Lawyers Conference and National Conference of the Administrative Judiciary			

### Sunday, August 8

(Event Code: SDJ4 )	Cocktail Reception followed by the Annual Dinner in Honor of the Judiciary <i>Presentation of the Justice Center John Marshall Award</i>	6:30pm	\$100.00	# of Tickets_____
(Event Code: CLE 1)	Generic CLE Ticket		\$25.00	# of Tickets_____

Capacities for all events are strictly limited. Reservations will be filled as received on a first-come, first-served basis until capacities are reached. To ensure adequate time for processing, **reservation forms must be received by ITS by Thursday, July 8, 2004.** On-site sales are made on space-available basis at the ABA Ticket Desk, located next to the ABA Registration Desk. All cancellations must be made 72 hours in advance of the event to receive a refund. No refunds will be issued after an event has taken place.

Please send this completed form along with your check or credit card information to the following:

I.T.S./ABA Annual Meeting  
108 Wilmot Road, Suite 104  
P.O. Box 825  
Deerfield, IL 60015-0825  
Phone: 800/421-0450 FAX: 800/521-6017  
[www.abanet.org](http://www.abanet.org)

# Update

(continued from page 3)

constitutional principles against impermissible encroachment by the other branches. At the same time, state courts cannot escape behind constitutional principles to avoid their obligation to be accountable for the expenditure of public resources. The Commission, therefore, is recommending to the House of Delegates adoption of the following principles:

1. States and territories should be urged to adopt judicial budget procedures that ensure the efficient and effective use of public resources. To that end, state courts should be provided with a general funding stream that is not tied to fee generation. State courts should also be granted the respect of an independent branch and allowed to submit their budgets directly to the appropriating authority. Finally, state courts should be given a reasonable degree of flexibility in the use of

public resources to meet the constantly changing needs of, and demands upon the justice system.

2. Courts are urged to demonstrate their fiscal responsibility by providing clear and precise documentation of their needs and by establishing measures by which expenditures of public funds can be evaluated. Courts should identify those costs that are beyond their control and driven by such factors as caseload increases, new laws, unfunded mandates, and the effect of other state and federal funding decisions relative to other justice system entities. Courts should also be prepared to demonstrate to the public the benefits of new programs.
3. Courts are urged to engage in regular communications with the other branches of government as well as public and civic interests to build a better understanding of the costs associated with the administration of justice.

4. To help secure needed funding, courts are urged to establish broad based advisory bodies representing attorneys, members of the public and representatives of the other branches of government.

As one can see from the recommendations, the Commission was keenly aware that providing adequate funding for the judiciary was not just the responsibility of appropriation bodies. Courts, the public and interested entities also have a role to play. Perhaps most importantly, courts cannot expect the appropriation of money simply because they demand it. Courts must take a leadership position through advocacy, education and coalition building if they expect their budgets to be secure in good times and bad.

The Commission is grateful to the Judicial Division for supporting its efforts and looks forward to adoption of its recommendations by the House of Delegates in Atlanta this August.

## Time Off The Bench

### Luggage Incompatibility?

by Judge Thomas C. Warren  
Wenatchee, WA

After 40 years of marriage and always traveling together, you would think Mary Ann and I had things pretty well worked out. *Au Contraire!* We seem to have had a four-decade dialogue about what luggage is necessary for any particular trip. The conversation begins in earnest as the suitcases come out for packing. Needless to say, I have never won the argument. I have come to the conclusion that our luggage and packing philosophies are exact opposites. Here are the basic positions:

*Mary Ann's Philosophy:* She has never seen a suitcase she didn't like, or in other words, the continuing quest for the perfect travel bag.

*Tom's Philosophy:* Who would ever need more than a lightweight backpack to carry the three t-shirts, two pairs of khaki pants, underwear, extra pair of shoes, and six cigars? Of course, this traveler is a person

of excellent taste, style, and looks like an ugly American at Disneyland.

As this saga has continued through the years, I think it has resulted in the purchase of at least 50 suitcases. Every relative in our family has at least one discarded set of our old (meaning we bought new) suitcases. In addition, if you are a traveler you really do want to attend our yard sales, as luggage is always available. As a new bag arrives my question is always "Do we need that bag?"

In our travel the basic complement is at least three bags:

- **The Carry-On Bag** – Must fit under the seat in front of you (no easy task with airline seats that are shrinking) and also serve as a footstool for a certain short legged woman.
- **The Husband's Bag** – Must be capable of holding everything the male needs, plus space for six pairs of women's shoes.
- **The Wife's Bag** – A bag bigger than the husband's bag because she will need at least two changes of clothes for each day of traveling. This is complicated, because most often the wife I know best can't make up her mind about which outfits she will want to wear, so the

possibilities multiply far beyond the 2 X travel day basic formula.

All fun aside I do have some basic true advice about luggage:

- Do try to pack only what you really need (remember your back problem!). Most travelers, including Mary Ann and I, always take too much.
- Remember you have only two hands to lift and pull luggage.
- Every bag you have must be on wheels and have a pull bar.
- If the bag isn't light before you pack it, it sure won't be light after you put all that stuff in it!
- Remember when you are a frugal traveler you may have to lift all those bags up four stories of the European *penion* that has no elevator.

As I think back about all those suitcases, my only wish is that I had bought stock in Samsonite in 1963!

### The Rest of the Story

By Mary Ann Warren

(I must be a saint to live with that man!)

First of all you must understand the first part of this article was written by a man

(continued on page 13)

# Outreach Conference

(continued from page 1)

The final program for the Friday, April 30 session was entitled Pennsylvania Commonwealth Partners Program. The model program was created by Pennsylvania judges to meet with state legislators for dinner to discuss issues of common concern, particularly judicial independence. Philadelphia attorney, Edward W. Madeira, Jr., introduced Pennsylvania Superior Court Judge Jack A. Panella who presented the program.

The National Judicial Outreach Conference was held in conjunction with the ABA Young Lawyers Division Affiliate Outreach Conference, also hosted at the Peabody Hotel. On Friday evening, conference attendees had a dinner and dance with young lawyers on the rooftop of the Peabody Hotel. Judges enjoyed the opportunity to interact with young lawyers about assisting in the presentation and coordination of judicial outreach programs in their communities.

Day two of the conference on Saturday, May 1 (Law Day) consisted of three workshop programs that were attended by



both judges and young lawyers. The first workshop session was a presentation of the "And Justice for All" National Issues Forum program by the Honorable Louraine Arkfeld of Tempe, Arizona and the Honorable Charles A. Johnson, presiding judge of the Oklahoma Court of Criminal Appeals. This program, sponsored by the ABA and the Kettering Foundation, engages small groups in discussions about how to improve the justice system and ensure that it provides equal access to impartial justice. The program is very

popular with adults and college and high school students.

The second workshop session featured highlights from the "Dialogue on *Brown v. Board of Education*," which was presented at three Memphis area high schools on Friday morning prior to the start of the conference. United States District Court Judge Bernice Donald of Memphis, Tennessee and Memphis Municipal Court Judge Ernestine Hunt Dorse hosted the presentations. The workshop also featured other Memphis area judges and lawyers who participated as presenters of the *Brown v. Board of Education* program in Memphis area high schools. The ABA created the "Dialogue on the *Brown v. Board of Education*" program to celebrate the 50th anniversary of the landmark decision. The program guides discussions among high school students, judges and lawyers concerning the significance of the *Brown v. Board* decision.

The third workshop was presented by Tennessee Supreme Court Chief Justice Frank F. Drowota (Pictured). The Tennessee SCALES Program (Tennessee Supreme Court Advancing Legal Education for Students) is a multi-part program in which judges and lawyers engage high school students in interactive activities to improve their understanding of the courts. The program begins with lawyers visiting classrooms to provide information about the judicial branch. Students also attend Supreme Court oral arguments, followed by a lunch with the justices, local judges, attorneys and other officials.

Judges Network Chair Jack L. Brown of Tulsa, Oklahoma recognized the incredible work by the Honorable Bernice Donald of Memphis, Tennessee in coordinating all judicial outreach activities at three Memphis area high schools and two middle schools. Four of the five programs featured the Judges Network *Brown v. Board of Education* interactive outreach programs while the fifth program was a modified "Courage to Live" (don't drink and drive) presentation. The schools and judges and

lawyers participating in the judicial outreach programs were as follows:

1. Central High School  
Judge: Rita L. Stotts  
Lawyers: Richard Fields and Jonathan Hancock
2. Cypress Middle School  
Judges: Karl Grube and Ernestine Hunt Dorse  
Lawyers: Van Turner and Gary Vanasek
3. Sheffield High School  
Judge: Gwen Rooks  
Lawyers: Frank Cantrell and Harrison McIver
4. White Station Middle School  
Judges: Louraine Arkfeld and Carolyn Blackett  
Lawyers: Bruce McMullen and Susan Ratner
5. White Station High School  
Judge: Andre Davis  
Lawyers: Oscar "Bo" Carr, James Gilliland, and Irma Merrill

Over 15 judges who attended the conference participated as observers of the judicial outreach programs at the various Memphis area schools.

Recognition was also given to LexisNexis for their assistance in providing scholarship support for Tennessee state judges attending the national conference plus the services of a "Cyber Café." According to Bien, by all accounts, "the inaugural National Judicial Outreach Conference was a huge success." Recognition was also given to ABA staff member, Paula Nessel, for her outstanding work on the conference. The following representatives of JD conferences also attended the national program:

1. Federal Trial Judges: Honorable Andre Davis of Baltimore, MD and Honorable C. N. Clevert, Jr. of Milwaukee, WI
2. State Trial Judges: Honorable Richard L. Fruin, Jr. of Los Angeles, CA, Honorable Sarah P. Springer of Meridian, MS, and Honorable Dewey C. Whitenton of Bolivar, TN
3. Administrative Law Judges: Honorable Jody Levine of Oklahoma City, OK
4. Specialized Court Judges: Honorable Louraine Arkfeld of Tempe, AZ and Honorable Michael Pietruszka of Lancaster, NY
5. Lawyers Conference: Jack L. Brown of Tulsa, OK

# Time off the Bench

(continued from page 11)

who has never packed his own suitcase, nor has he ever traveled with only three tee shirts, two pairs of Khaki pants, underwear, and an extra pair of shoes. He does, however, always pack at least one cigar for each day of the trip.

He is also wrong in saying I have never seen a suitcase I didn't like. The problem is that I am indeed in search of the perfect bag and have yet to find it. This, however, does not stop me from trying and I have learned a lot of things about luggage in this search.

- Cheap is not always good. When I have purchased inexpensive luggage that looks perfect, it always comes apart on the first trip. The zippers seem to be the first thing to go, and that can be embarrassing if the suitcase comes open as you pick it up in the airport.
- The larger the better is really not a good idea. I admit as I have gotten a little older I find a nice mid-sized bag much easier to move around. Of course this does mean you have to cut

down on what you take, but not by much.

- I do love the person who invented wheels for luggage. One reason for new bags is that the design of the wheels keeps getting better and the luggage is easier to pull.
- Another favorite, which I always carry, are plastic bags of all sizes. You can buy large vacuum bags for sweaters, which when you push the air out will compress the clothes to a quarter the space and they still look great when you arrive. Also, zip lock bags can be used for everything from candy to bottles that might break.
- Always carry extra folding bags in your suitcase when traveling. They are great for coming home with extra bottles of wine or gifts for the family, and are a whole lot easier to use as extra carry-on bags than paper shopping bags.



Please remember while the Judge is honorable, and very honest, his view of luggage is a bit tainted by back pain.

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 feedback, comments or criticism (be gentle). Contact me at [thomas.warren@co.chelan.wa.us](mailto:thomas.warren@co.chelan.wa.us).

## Remarks

(continued from page 1)

judiciary, the authority to enforce the terms of a written constitution, but back in 1787, when the Founding Fathers were drafting our Constitution, it was an entirely novel concept. I believe that the creation of an independent constitutional court, with the authority to declare unconstitutional laws passed by the state or federal legislatures, is probably the most significant single contribution the United States has made to the art of government.

When Thomas Jefferson wrote the Declaration of Independence in 1776, one of the reasons he gave for the need to declare independence from Great Britain was that King George III "had made Judges dependent on his will alone, for the Tenure of their Offices, and the amount and payment of their salaries."

The drafters of the Constitution addressed this in Article III of our

Constitution, which confers upon the judiciary life-long tenure during good behavior, and contains a prohibition against diminution of compensation while in office. Article III judges can only be removed from office through the mechanism of impeachment.

The power of judicial review in the United States was established very early in our history, but it was primarily used at that time to establish the supremacy of the federal government within its limited sphere, rather than to protect the rights of individuals against the state. The great constitutional battles of the first half-century of American existence were fought about the extent of the power granted to the federal government, and the extent of the power reserved to the states.

The Constitution as originally adopted contained no Bill of Rights, with guarantees such as the freedom of speech, religion and the press, the right to a trial by jury and to counsel in criminal cases. These rights were added in the first ten

amendments to our Constitution in 1791. In 1868, after the Civil War, the Fourteenth Amendment was added, prohibiting the states from depriving any person of life, liberty, or property without due process of law, and prohibiting any state from denying to any person the equal protection of the laws.

It is these provisions found in the Bill of Rights and the Fourteenth Amendment, which secure individual rights against the federal and state governments, that have increasingly formed the staple of the Supreme Court's constitutional business during the last hundred years.

Without an independent Judiciary, the Constitution may not have survived to, as Chief Justice Taft said, "Secure the blessings of individual liberty to all the people of the United States under a government of law and order." And much of the credit is due to the foresight of the drafters of these Charters.

Thank you.

## Getting You the News

by Judge Joel D. Medd  
Chair, JD Publications Committee  
Grand Forks, ND

Most of the Judicial Division members do not make it to the Annual Meetings to say nothing of the Midyear Meetings or all the committee and commission meetings which affect America's judges. The *Judicial Division Record* is a very important part of keeping our members informed about the ABA, its members and programs.

We have striven to show how the leaders of the Judicial Division are working hard to improve the judiciary. We have also attempted to highlight the works of JD members who have given outstanding service to the ABA and their communities. In a way we have tried to motivate judges to get involved and stay involved with the ABA and their profession.

I have had the privilege of chairing the Judicial Division Publications Committee the last two years. This is my last issue. I would like to thank all the Conference Editors: Judges Martha Curtis Warner, Appellate Judges; Ann Breen-Greco, Administrative Law Judges; Berle Schiller, Federal Trial Judges; Michael Kwan, Specialized Court Judges; Alexander P. White, State Trial Judges and Ms. Emily Barnhart, Lawyers Conference. I would also like to thank Judge Dick Fruin who has done a marvelous job of chairing *The Judges' Journal* Editorial Board. Also many thanks to all the authors who have given their valuable time to write for the *Record*.

I would also like to thank Kris Berliant our very capable staff person who has been instrumental in putting together the final product despite the mess we sometimes send to her. I would also like to plead guilty to downright harassment of people to submit material and apologize if I have pushed a little too hard sometimes.

My best wishes to Judge Tom Warren who will assume the Publication Chair next year. He has been the author of the "Time Off the Bench" columns which I have enjoyed reading and publishing.

## ABA House of Delegates Agenda Items For Atlanta, GA Annual Meeting August 9 – 10, 2004



by Judge Fred Rodgers  
Golden, CO

The House of Delegates (House) will meet in conjunction with the ABA Annual Meeting in Atlanta, GA, August 9 and 10. The House last met at its Midyear Meeting February in San Antonio, TX and at least a portion of its upcoming agenda represents unfinished business left over from that meeting.

Proposals for adoption of ABA policy may be initiated by state or local bar associations, by ABA committees, sections or divisions, and also by individual ABA members. The person or entity initiating a proposal must file a "Report" with the House stating the policy sought to be adopted, such as a commitment of ABA lobbying support to initiate a bill in Congress, approval of a new law school or creation of a model rule of professional responsibility. The Report must indicate whether its adoption would modify or overturn current ABA policy, its fiscal impact and its likely supporters and opponents. Some reports resemble legal briefs and are usually quite well researched and annotated. The Atlanta filing deadline for most reports by ABA entities and affiliated organizations was May 7, 2004, which trenches on the *Judicial Division Record* press deadline for this report. Consequently, the information presented here is subject to change as the annual meeting draws closer, so it's helpful to confer with your conference delegate. Furthermore, state and local bar associations are exempt from filing deadlines until the House begins its sessions, and sometimes the most contentious reports emerge shortly before the House assembles to begin its work.

## BYLAWS AND CONSTITUTIONAL CHANGES

The National Association of College and University Attorneys is petitioning to be removed as an affiliated organization of the ABA, thereby losing its seat in the House, because it no longer takes positions on legal or societal issues. Ned Jacobs of the Virgin Islands has resubmitted his proposal to include defending the right to life of unborn children as an ABA corporate purpose. Mr. Jacobs has lately failed to attend the meetings of the House to present his proposal and it usually fails for lack of a motion of support. There are a variety of other arcane bylaws changes proposed, many of which relate to membership requirements in the Section of International Law and Practice and in Forum committees.

## COURTS AND JUDGES

Responding to the funding crisis in state courts, the Judicial Division and the Standing Committee on Judicial Independence have filed a Report urging states to support quality and accessible justice under all economic conditions by adopting flexible, transparent and accountable judicial budget procedures to foster stable and long term funding of the courts. Also the Litigation Section has proposed amendments to the 1999 ABA Civil Discovery Standards that relate to electronic discovery, including certain new standards. The Section of Administrative Law has submitted a Report encouraging administrative penalties – both civil and criminal—as part of a balanced enforcement scheme under the Administrative Procedures Act.

## CRIMINAL JUSTICE

The Justice Kennedy Commission has proposed a Report on minimum sentences and sentencing guidelines along the lines of his strong remarks to the opening assembly at last year's annual meeting in San Francisco, reported earlier in this publication. The Report would have the ABA adopt policy discouraging the use of mandatory minimum sentences and inflexible sentencing guidelines as well as encouraging greater use of parole and pardon and also studying ways to reduce the disparate representation of minorities in prison. Two Reports have been

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# Agenda Items

*(continued from page 14)*

introduced by the Criminal Justice Section. One would adopt new Speedy Trial Standards significantly changing the provisions of the current second edition of the Standards. The other addresses both the pending SAFE Act (Security and Freedom Ensured Act of 2003) relating to surveillance and search warrants and the VICTORY Act (Vital Interdiction of Criminal Terrorists Organizations Act of 2003) provisions related to money laundering and asset forfeiture. The Standing Committee on Substance Abuse filed a Report asking the ABA to take a stand urging federal, state and local governments to eliminate policies allowing discrimination against persons who seek treatment or recovery from drug and alcohol problems.

## MISCELLANEOUS

Responding to rising costs of professional liability insurance for physicians, the Standing Committee on Medical Professional Liability has a Report for the House to consider adopting policy assisting physicians with the burdens of their insurance costs. The Commission on Immigration Policy has introduced two Reports relating to immigrant children facing removal proceedings. The first supports appointment of Child Protection Advocates for unaccompanied minors, and the second proposes Standards for the care and age-appropriate detention of unaccompanied immigrant children while awaiting hearings. The Commission on Homelessness has filed a Report urging ABA support for policies assuring uninterrupted access to education by children whose parents are homeless or who are in out of home placement. The Standing Committee

on Client Protection has proposed a Model Rule on Insurance Disclosure which would require a prospective client be informed of the lawyer's professional liability insurance coverage.

If any Judicial Division member desires copies of the reports described above, please contact me or any of the members of the Division delegation: **Chuck Patterson, Esq.** and **Judges Marvin Aspen, Sid Eagles, Ed Schoenbaum, Bob Pirraglia, and Leslie Miller.** The privileges of the House Floor may be made available to a member wishing to address the House on these or any other issues on the calendar as long as we have a few days' advance notice.

*Fred Rodgers is past chair of the Judicial Division, a member of the House of Delegates since 1993 and a member of the ABA Board of Governors.*



Tempe, AZ – Judge Sophia Hall, State Trial Judges, Cheryl Cesario, Lawyers Conference, Gilda Fairley, Division staff, Gloria Wilson-Shelton, Lawyers Conference and Judge Andre Davis, Federal Trial Judges.



Tempe, AZ – (l-r) Judge Jodi Levine, Judge Louraine Arkfeld and Cheryl Cesario enjoy dinner and dancing at the Desert Botanical Gardens.

## Preliminary Drafts of Canons for Model Code

The ABA Joint Commission to Evaluate the Model Code of Judicial Conduct has released preliminary drafts of Canons 1 and 2 for public comment from the judiciary, the legal profession and the public. The drafts are the first in a series to be released as the Joint Commission continues its comprehensive revision of the ABA Model Code of Judicial Conduct. The link to that draft can be found at <http://www.abanet.org/judicialethics/home.html>

An initial decision of the Joint Commission was to reorganize the structure of the Canons, moving various code provisions to other parts of the Model Code. Due to this reorganization of the Model Code, the revised Canons 1 and 2 do not directly correlate with the existing Canons 1 and 2 in the Model Code. Reference to the existing canons have been noted in footnotes.

In addition to the preliminary drafts, the Joint Commission has issued a memorandum with a series of issues needing further exploration. The Joint Commission would be receptive to any thoughts people might have on the following subjects:

# Brown v. United States of America: Debating the Issues Past, Present, and Future

On August 7, 2004, the ABA Commission on the 50th Anniversary of *Brown v. Board of Education* will conclude a year of special programs commemorating the *Brown* decision with "*Brown v. United States of America*." This event – an interactive exploration, in the form of a trial, of the decision's legacy in American law and society – will ask some of the nation's top judges, lawyers, scholars, and policy experts to debate four key issues emanating from the *Brown* decision that remain unresolved today.

The suit will be brought by the family of Oliver Brown against the United States of America. The suit will allege that, as a nation, the United States has failed to deliver the relief promised by the Supreme

Court's decision in *Brown v. Board of Education of Topeka, Kansas* because:

- The resegregation of many of the nation's school districts has created a situation of *de facto* segregation that, in terms of practical effects, is no different from the *de jure* segregation that prevailed before the *Brown* decision.
- Minority students must have access to majority white elementary and secondary schools to achieve their highest potential, and such access has not been adequately provided in the 50 years since the *Brown* decision.
- The Supreme Court has refused to ensure that minority groups will be proportionately represented among student populations at U.S. colleges and universities by ruling against the use of quotas in affirmative action programs and substituting the more dilute concept of "critical mass" as an acceptable means to achieve diversity.
- The United States, through the majority opinion of its Supreme Court in *Grutter v. Bollinger*, has suggested that affirmative action policies may no

longer be necessary in 25 years, thus creating an unrealistic expectation of the progress the United States will be able to make to remedy the past effects of segregation.

The four allegations will be tried by two teams of lawyers, one for each side, through the testimony of expert witnesses called by the plaintiff Brown family and the defendant United States. The trial will be presided over by a panel of approximately nine judges (confirmed thus far are Justice Stephen Breyer, Judge Roger Gregory, and Judge Charles Wilson) before a jury of 24 ABA members representing the breadth of the Association's membership. At the end of the trial, the jury will deliver a verdict on the four allegations made by the plaintiffs. Audience members will also have an opportunity to render their verdict in the case. Journalists will be on hand to report on the proceedings and interview participants in the trial.

The Judicial Division is proud to be a cosponsor of this event.

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## Guide for Judges Now Available - Service Members Civil Relief Act

Section of Family Law member and retired Army Reserve Colonel, Mark Sullivan has written a guide for judges on the newly-enacted Service Members Civil Relief Act. The new statute was signed into law December 19, 2003 to replace the Soldiers' and Sailors' Civil Relief Act. This statute has important applications to any civil or administrative dispute in which a servicemember, and, in some cases their family members are involved.

Sullivan is also a past chair of the ABA Standing Committee on Legal Assistance for Military Personnel and was awarded the Legion of Merit for his work as "the Army's foremost expert in family law."

Download the Guide at: [http://www.abanet.org/family/newsletters/2004/Apr\\_SCRA.pdf](http://www.abanet.org/family/newsletters/2004/Apr_SCRA.pdf)

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Judge Ed Schoenbaum at [edschoen@abanet.org](mailto:edschoen@abanet.org),

217.524.7836 (phone), 217.524.7824 (fax)

# 2004 John Marshall Award Winner – William T. Coleman, Jr.

Judge John M. Vittone, Chair of the Justice Center Coordinating Council has announced that William T. Coleman, Jr. will receive the 2004 ABA Justice Center John Marshall Award. The award honors individuals who have made a positive national impact on the justice system.

The award was established in 2001 to honor John Marshall, fourth chief justice of the United States, who is credited with establishing the independence of the judiciary and enhancing its moral authority. The 2004 John Marshall Award Review Committee was chaired by Judge Gregory Holiday.

The award will be presented to William T. Coleman, Jr. during the reception for the Judicial Division's Annual Dinner in Honor of the Judiciary on Sunday, August 8 at the Fernbank Museum of Natural History in Atlanta.

Mr. Coleman has had a life in law, business, public service and family that includes advisory or consultant positions to six former Presidents and the present President. Mr. Coleman, an ardent defender of civil rights, was one of the authors of the legal briefs that persuaded the Supreme Court in 1954 to outlaw racial segregation in public schools.

In addition to the 2004 John Marshall Award, Mr. Coleman is the recipient of numerous prestigious awards including the Presidential Medal of Freedom, our nation's highest civilian award; the Thurgood Marshall Lifetime Achievement Award from the NAACP Legal Defense and Educational Fund, Inc.; the Fordham-Stein Prize from the Fordham University School of Law; and the Marshall-Wythe Medallion from the College of William & Mary Marshall-Wythe Law School.

## Model Code

*(continued from page 15)*

- Canon 1. The Commission has drafted the provisions of this canon to retain the admonishment that judges avoid impropriety and the appearance of impropriety while addressing concerns for vagueness. The Commission requests input as to whether the provisions, as drafted, achieve this goal.
- Rule 2.02 The Duty to Decide. The Commission is uncertain whether the final sentence of the Commentary to this Rule is best placed under this Rule, or whether it may be better placed in the Commentary accompanying Rule 2.12 (Disqualification).
- Rule 2.07 Demeanor and Decorum. It has been brought to the Commission's attention that many courts throughout the country have developed procedures, formally or informally, whereby judges engage in a "debriefing" process with jurors after their jury service has been concluded. The Commission seeks input on what additional discussion or description of this practice might be appropriate in the Commentary in paragraph [3].
- Rule 2.08 Ensuring the Right to be Heard. Comment paragraph [2] discusses judges' actions in encouraging parties and their lawyers to settle disputes where possible, cautioning that judges should not use coercion in doing so. Those who

made presentations on this subject are not of one mind as to several aspects of judges' involvement in promoting settlements. For example, the question of whether a judge who participates in facilitating settlement of a matter pending before him or her should be permitted to hear that matter if settlement efforts are unsuccessful is answered with strong conviction going both ways, i.e., opposing it and encouraging it. Comments and proposed language that might address the appropriate aspects of judicial participation in settlements are eagerly sought by the Commission.

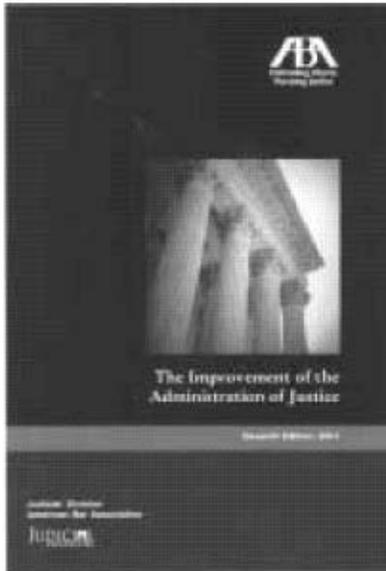
- Rule 2.09 Ex Parte Communications. Section 2 A. (2) of this Rule discusses a judge's obtaining information and opinions from disinterested experts in a proceeding. Should the Rule or its accompanying comment address directly the newly expanded range of information available to judges through the use of the Internet, or other electronic research methods? With respect to Section 2 A. (3), which authorizes judges to consult with other judges under certain limited circumstances, the Commission inquires whether the Rule should address the possibility of disqualifying interests that might be attributed to "consulted" judges. Finally, many persons appearing before the Commission, as well as Commission members, have concerns that the present draft (and the present Model Code) does not address sufficiently

certain types of communications that are encouraged or required of a judge in the course of his or her service on "specialized courts," such as drug courts, domestic abuse courts, etc. Comments on this subject from judges and others who are knowledgeable about the operations of specialized courts will be greatly appreciated.

- Rule 2.12 Disqualification. Comment [2] of this Rule urges that judges disclose information that the parties or their lawyers might consider relevant to disqualification even if the judge himself or herself believes it does not constitute a basis for disqualification. Is this process (also suggested in the present 1990 Code) necessary? Does it create a difficult situation for at least one of the lawyers in the proceeding?
- Rule 2.20 Immunity for Discharge of Duties. The Commission is interested in hearing comment on whether a Rule that purports to establish legal immunity is appropriately placed in an ethics code, or whether it may be more appropriately placed in applicable laws for judicial disciplinary enforcement.

The Joint Commission requests that public comment be submitted in writing, preferably by e-mail, to Eileen Gallagher at [gallaghE@staff.abanet.org](mailto:gallaghE@staff.abanet.org), or at mailing address 321 N. Clark Street, Chicago, IL 60610. Written submissions should be received by the American Bar Association no later than the close of business on July 15, 2004.

# THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE 7TH EDITION



Written for judges, judicial leaders, court administrators, legislators, policymakers, students, news editors, civic reformers, and others with a broad interest in judicial administration, the Seventh Edition of *The Improvement of the Administration of Justice* is a major new publication of the ABA Judicial Division. It seeks to explain the current posture of the justice system and visit the issue of future judicial improvements.

Lawyers, judges, law professors, consultants, and court administrators have contributed their expertise to thirty-nine articles covering a wide range of issues from court technology and court interaction with the media to recent developments in appellate justice and judicial independence.

Each chapter contains a bibliography to guide readers through the text and highlight the "hottest" issues within. *The Improvement of the Administration of Justice* is a superb starting point for generalist readers seeking to learn more about the justice system. It resolutely investigates the challenges facing the

system, analyzes the system's current responses, and offers visionary thinking about what lies ahead.

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# Appellate Judges News

American Bar Association

## AJEI Announces Inaugural Conference

A new era in appellate legal education is about to begin as the Appellate Judges Education Institute (AJEI) announces its inaugural conference for Nov. 11-14, 2004, at the Omni Mandalay in Dallas, Texas. The conference, which is being planned by the AJEI Planning Committee and co-sponsored by the ABA and the SMU Dedman School of Law, is designed to meet the challenges facing appellate judges, appellate court personnel, and lawyers specializing in appellate practice.

"I think people have been waiting for a program like this for a long time, and it wouldn't surprise me to see 150 to 200 appellate judges attend," said Craig Enoch, President of the AJEI and retired Justice of the Texas Supreme Court. "The Appellate Judges Conference has produced some great programs in the past, and we think this trend will continue through the AJEI."

"This is a program designed by appellate judges for appellate judges, as well as for appellate lawyers and judicial staff members. It will be a great accomplishment to get all of these groups together in an excellent setting, with the opportunity to discuss mutual problems and to exchange ideas to improve appellate practice and appellate judging," said Harry Lemmon, Chair of the Education Committee of the AJEI and retired Justice of the Supreme Court of Louisiana.

The conference will offer attendees a unique opportunity to focus on issues that appellate courts face. Some of the topics include standard of review of fact-findings and summary judgments; standard of

review of judicial discretion, including *Daubert* challenges; international law; styles of judicial reasoning; the future of appeals in America; and a review of recent Supreme Court decisions. This inaugural event will also feature social activities and a keynote dinner with a nationally acclaimed speaker.

"The fall conference of the AJEI and ABA's Appellate Judges Conference presents the opportunity for state and federal judges across the country to share the commonality of their appellate judicial experiences and reap the benefits of judicial educational programs on substantive and timely subjects," said James A. Wynn, Jr., Chair of the ABA's Appellate Judges Conference and North Carolina Court of Appeals Judge.

Attendees will also get to enjoy the urban resort ambiance of the Omni Mandalay Hotel at Las Colinas. Patterned after the exotic charm of a Burmese city, the Omni Mandalay invites guests to experience the elegance of a luxurious hotel with an Asian touch of distinction. Located in the prestigious Las Colinas Urban Center on the Mandalay Canal, this AAA Four-Diamond hotel provides all the contemporary amenities for business and leisure travelers alike.

Those wanting to enjoy Dallas entertainment have a host of award winning golf courses, museums and sites to choose from as well as shopping in some of the finest malls and shops in the country.

John B. Attanasio, Dean and William Hawley Atwell, Professor of Constitutional Law for the SMU Dedman School of Law said, "SMU is honored to host this conference, and we are endeavoring to make this a memorable event for judges and lawyers alike."

## Looking for a Good Summer Book? Judges Contribute List of Favorites to Share with Colleagues

by Judge Martha C. Warner  
West Palm Beach, FL

Ah, summer! It's time for rest and relaxation and maybe a little reading, other than briefs! We all look for that perfect book to curl up in the cabin in the mountains, on the beach, or even on the airplane to our vacation destination. Searching for recommendations, I looked to our colleagues to suggest memorable books. They have provided an eclectic list, guaranteed to have something of interest to everyone.

Michigan Court of Appeals Chief Judge William Whitbeck, a military history buff, recommends *Intelligence in War: Knowledge of the Enemy from Napoleon to Al Qaeda*, by John Keegen. It is a fascinating historical look at military intelligence and its limits, a timely topic.

Also timely in its explanation of current international relations, Massachusetts Appeals Court Chief Justice Christopher Armstrong finds that *Of Paradise and Power: America and Europe in the New World Order*, by Robert Kagan, makes an interesting read. A short essay on the changing relationship between Europe and America, it explains why

(continued on page 21)

JUDICIAL  
DIVISION  
Appellate Judges Conference

## CHAIR'S COLUMN



by Judge James A. Wynn, Jr.  
Raleigh, NC

Last month, the Judicial Division held a planning conference in Tempe, Arizona. I attended, along with incoming chair, Hon. Harris Hartz (USCA 10th Cir.), Council of Chief Judges Chair-Elect Hon. John Irwin (Nebraska Court of Appeals), Council of

Appellate Staff Attorneys Secretary Lorry Kohrs Kelly (MO Court of Appeals, W. Dist.), Council of Appellate Lawyers Chair Mary Vasaly (Maslon Edelman Borman & Brand LLP), and Paula Nessel (AJC Conference Administrator). The meeting included discussions on strategic planning and a budget outline for the Division. Pertinent to the Appellate Judges' Conference, our governance budget is derived from conference member dues and ABA general revenue. Funding for educational programming is derived from ABA general revenue and the continuing Judicial Improvement Fund, which is our interest-bearing revenue investment fund.

During several breakout sessions, the AJC representatives, who were joined by former Chief Justice Harry Lemmon, discussed the upcoming fall kick-off event of the Appellate Judge's Education Institute (AJEI) to be held in Dallas. Since that meeting, the Executive Committee met by conference call and set the event dates for November 11-14. Those dates allow for those of us involved in elections to get them behind us, so that we can enjoy the festive activities of the conference with our colleagues. Chief Justice Lemmon, who agreed to take on the yeoman's job of pulling this program together, will chair the event. He has garnered support from the WestGroup and has contacted members of the U.S. Supreme Court to invite one of them to speak at our Saturday night marquee dinner. Other speakers tentatively scheduled include Arthur Miller and writing guru Brian Garner, and the list is growing each day.

In addition to the events already listed, the Joint Commission to Evaluate the

Model Code of Judicial Conduct met in New York and agreed to unveil the first complete draft of the proposed revisions to the ABA Model Code of Judicial Conduct at the AJEI kick-off event. Chairman Mark Harrison expressed delight in knowing that this event would provide an opportunity to solicit reactions and comments to the first draft, which, after further revision, will be presented to the ABA for formal approval at the 2005 annual meeting. For those of you who are interested in the progress of the committee, visit the Website of the Joint Commission at <http://www.abanet.org/judind/judicialethics/>. The commission posted draft revisions to Canons 1 and 2 on the Website in May.

Our fundraising efforts with the SMU Dedman School of Law, the affiliated educational institution of the AJEI, continues to progress. Dean John Attanasio and his efficient staff are working hard to ensure that the kick-off event will mark the beginning of a very long affiliation. We are grateful too for the continued work of Sandy Roos, a longtime coordinator of the AJC, now working for AJEI. Sandy's efforts ensure that much of the success of our Spencer Grimes Education Committee will be carried over with the AJEI.

Finally, I must give special recognition to the AJC's conference administrator Paula Nessel. Last month in Memphis, Paula coordinated the National Judicial Outreach Conference that covered subjects ranging from ethical issues arising from judicial outreach efforts to demonstrations of model outreach programs that judges are undertaking across the nation. Thanks to Paula for her efforts.



AJC-CAL Chair Mary Vasaly, AJC Chair-Elect Hon. Harrison Hartz, AJC-CASA Secretary Lorry Kohrs Kelly, and AJC Chair Hon. James A. Wynn, Jr., dance in the Desert Botanical Gardens at the Judicial Planning Event in Tempe, Arizona



AJC Council of Chief Judges Chair-Elect Hon. John Irwin and AJC Chair-Elect Hon. Harrison Hartz participate with other Judicial Division leaders in training to be moderators of National Issues Forums

### 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@flcourts.org](mailto:warnerm@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: [warnerm@flcourts.org](mailto:warnerm@flcourts.org)

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ARTICLE SUBMISSION DEADLINES

Fall 2004: Wednesday, August 25

# Executive Committee of Council of Chief Judges Meets In Fort Worth

by Chief Judge Kaye G. Hearn  
Conway, SC

The Executive Committee of the Council of Chief Judges met at the Renaissance Worthington Hotel in Fort Worth, Texas on April 23-25. Those present included Judge Stephen McEwen (PA), President of the Council of Chief Judges, and fellow Chiefs John Irwin (NE), Kaye Hearn (SC), Art Scotland (CA), Tom Lytton (IL), Tony Cardona (NY), Richard Barajas (TX), Bud Arnot (TX), Rosemary Sackett (IA), Joe Del Sole (PA), and Chris Armstrong (MA). Also present was ABA Representative Paula Nessel.

The purpose of the meeting was to establish the Council agenda for the year 2004-05 and to plan the Chiefs' Annual Conference scheduled for November in Dallas. The Annual Conference will be held in conjunction with the Appellate Judges Educational Institute's Summit for Appellate Judges, Appellate Staff Attorneys, and Appellate Lawyers. Since its founding a quarter-century ago, education has been the basic undertaking of the Council of Chief Judges. In Fort Worth, the Executive Committee reviewed

the educational program proposed by the Education Committee of the Council of Chief Judges, chaired by former chief judge Sid Eagles of North Carolina.

This year's educational conference, which will be held separately from other aspects of the Summit, will focus on the chief judge as CEO of the court. To this end, CEOs, CFOs, and other chief executives from the Dallas business community will be on hand at the annual conference to share their knowledge with the chiefs. Topics proposed for the educational program include the management of employment issues, such as hiring, tenure, discharge, benefits, and salaries, the chief's role in integrating new judges into the court, and judicial outreach programs which take the appellate process to the public through traveling and the telecasting of court sessions. The annual conference will culminate with the traditional annual dinner to be held at The Tower Club in The Thanksgiving Tower in Dallas.

The executive committee also met for an extended period with John B. Attanasio, Dean of Dedman School of Law at Southern Methodist University, where a session of the Chiefs' Conference and several sessions of the AJEI Summit will be held. Dean Attanasio fielded questions



Executive Committee Chiefs relax at dinner in Fort Worth.

from the committee about the progress of the Appellate Judges Educational Institute which was recently established at SMU to carry out the educational undertakings of the Appellate Judges Conference, including the Annual Conference of the Chiefs Council. Dean Attanasio is very enthusiastic about SMU's role with AJEI and particularly about the upcoming Summit. He expressed his view that the Council of Chiefs is pivotal to the success of AJEI, and that the attendance of chiefs and other appellate judges at the upcoming Summit will ensure the success of this joint undertaking.

The executive committee concluded its time in Fort Worth with dinner at Joe T. Garcia's Mexican restaurant (see photo) and dancing at Billy Bob's. Under the guidance of Texas Chief Judge Richard Barajas, several Chiefs actually mastered the Texas Two-Step.

## Books

(continued from page 19)

America had to become the world's enforcer nation.

Chief Judge Edward Toussaint of the Minnesota Court of Appeals suggests *Bowling Alone*, by Robert Putnam. Using bowling as a metaphor, Putnam explains why people take less part in the activities of a community than they did in the past. It is an important book for anyone engaged in nonprofit or charitable activities.

Our AJC leader, Judge Jim Wynn, North Carolina Court of Appeals, has concentrated on the anniversary of *Brown v. Board of Education* in his current reading list. One of the best on the subject is the recently released *Simple Justice* (4th ed.) by

Richard Kluger. In this edition, Kluger not only portrays the main participants, including Charles Houston, Thurgood Marshall, and Earl Warren, but he also traces the progress of race relations during the years since the decision. Judge Wynn also recommends *Groundwork* by Dr. Genna Rae McNeil, an excellent biography of Charles Houston, who developed the NAACP's school desegregation campaign.

Administrative Presiding Justice Judith McConnell, California Fourth Appellate District, suggests *Running with Scissors* by Augustin Burrows. Burrows writes a memoir about his life in the ultimate dysfunctional family. As Judge McConnell says, "If you've been a judge, you've dealt with people like this." Reviewers describe it as both heartbreaking and hilarious, but ultimately uplifting.

Going back to the 1930's, Justice Denise Johnson, Vermont Supreme Court, recommends Caroline Miller's *Lamb in His Bosom*, which won the Pulitzer Prize in 1933. Justice Johnson writes, "It tells the story of Georgia back country folk between the Revolutionary and Civil Wars. This beautifully written novel is a great deal more than regional fiction. Although it is told in what is apparently authentic dialect, its story of a backwoods family and the challenges they face is profound and universal. This is an overlooked gem of American writing."

For those who like politics, Judge Robert Gross, Florida Fourth District Court of Appeal, offers *Tommy the Cork* by David McKean. It is a readable, well written biography about Washington's "ultimate

(continued on page 22)

## Books

(continued from page 21)

insider" from Roosevelt to Reagan. Thomas Corcoran (Tommy the Cork) began as a law clerk to Oliver Wendell Holmes and became the first "super-lobbyist" in Washington. On a lighter note, Judge Gross also suggests *The Coffee Trader* by David Liss, a novel of intrigue about a commodities trader in Amsterdam in 1659. Judge Gross says it is "most enjoyable in a Starbucks easy chair with a nice latte, or also good beach reading."

Judge Robert Henry, US Court of Appeals, Tenth Circuit, was enchanted by *Winona's Web* by Priscilla Cogan. He describes it as "one of the most endearing works I have read on life, death, prayer, and love." Winona, an elderly Lakota, is being seen by a psychologist. The novel details the relationship which develops between these two women and the lessons that the psychologist learns from her patient. "The Lakota teachings, like those of the Native American Church, offer solace, comfort, and wisdom to our modern fast-paced world," explains Judge Henry.

Instead of dinner and a movie, Chief Judge Chris Altenbernd, Florida Second District Court of Appeal, suggests reading *Girl with a Pearl Earring* by Tracey Chevalier and then seeing the movie of the same name. The novel creates a story behind the Johannes Vermeer painting, suggesting

that the girl in the painting was a servant in the Vermeer household. Judge Altenbernd describes the movie filmed as though it itself is a Dutch painting.

For twenty years Council of Chief Judges President Steven McEwen has been touting *Death of a Fox* by George Garrett, a historical novel of Elizabeth I of England and Sir Walter Raleigh. Garrett is given high praise for his literary style in writing historical fiction. For a lighter read, Judge McEwen suggests *Roscoe* by William Kennedy, a fictionalized look at New York State politics in the first half of the 20th Century.

If you're looking for a series for "retirement reading," Chief Judge Sheldon Weisberg, Arizona Appellate Court, Division One, praises Patrick O'Brien's *Aubrey/Maturin* series, beginning with the now movie-famous *Master and Commander*. A series of twenty novels, Judge Weisberg says O'Brien pays superb attention to detail in his writing.

With all these recommendations, I'm not sure which one I'm going to pick first. However, I'm bound for Montana this summer, so I just might reread Stephen Ambrose' *Undaunted Courage*, the fascinating history of the Lewis and Clark Expedition, and hope I don't run into the descendant's of the big bear that chased their expedition!

Enjoy your summer reading and relaxation!

## APPELLATE JUDGES CONFERENCE 2003-2004 EXECUTIVE COMMITTEE

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# Lawyers Letter

American Bar Association

## INTERIM CHAIR'S COLUMN



by Jack L. Brown  
Tulsa, OK

The Judicial Division Lawyers Conference is undergoing an internal restructuring process in order to maximize its member resources and achieve more member participation. The LC will be restructured with all projects coming under the oversight of the Executive Committee. The projects that will be pursued in the coming year by the Executive Committee and the proposed Project Chair are as follows:

### LC Projects

Judicial Performance and Evaluation  
Clerkships (Law Student Division)  
Career Advancement (Young Lawyers)  
Bench Bar (Legal Community)  
Annual Meeting Planning (Lexis reception,  
LC Members, judges from the community, etc.)  
Outreach programs

### LC Project Chair

Cheryl Cesario  
Ben Longoria  
Justin Connor  
Gloria Shelton  
Mike Hyman  
  
Daniel Gourash

Projects such as judicial clerkships and career advancement will focus on recruiting new members to the LC from the Law Student Division and the Young Lawyers Division. The LC will be more proactive in annual meeting programming including outreach to LC members in the host city with an invitation for them to bring a potential member guest to the JD annual meeting reception and LC Executive Committee meetings. Additional projects will be added as determined by the Executive Committee. LC members will be encouraged to actively participate in project implementation.

The LC Bylaws require a Nominating Committee in addition to the Executive Committee. The Nominating Committee will continue in its current form and makeup of committee members. All other LC committees will be sunsetted under the restructuring. No bylaw changes are anticipated as a result of the restructuring.

In addition to working on the LC projects, Executive Committee members will serve as liaisons to JD programs and committees. LC liaisons will be responsible for participating in the assigned JD committee or program in addition to reporting to the LC Executive Committee. The JD program and/or committee, along with the LC liaisons for next year, are as follows:

### JD Committee/Program

Newsletter  
Bylaws  
Strategic Planning  
Meeting Planning  
Judges' Network  
Standing Committee on Minorities in the Judiciary

### LC Liaison

Emily Barnhart  
Cheryl Cesario  
Daniel Gourash, Cheryl Cesario  
Jack Brown  
David Horowitz, Jack Brown  
Gloria Shelton

Restructuring the LC was the primary focus of Executive Committee members attending the Spring Planning Meeting April 15-18, 2004 at the Tempe Mission Palms Hotel in Tempe, Arizona. Under the old LC committee structure, committees acted independent of one another without a unified cohesiveness in their work. The restructuring allows the Executive Committee to be more hands-on and involved in project work as well as actively recruiting new members to the LC. In addition, the restructuring permits the Executive Committee to continually evaluate its projects and programs for improvement or replacement by other projects.

LC Interim Chair Jack L. Brown requests LC members to e-mail to him their comments about the LC restructuring. Jack's e-mail address is [jbrown@jonesgivens.com](mailto:jbrown@jonesgivens.com). Members are also encouraged to contact Jack Brown with requests to participate in any of the new LC projects or programs.

The LC's next meeting will be held during the 2004 ABA Annual Meeting in Atlanta, Georgia August 5-8, 2004. The LC Executive Committee meeting will be held on Friday, August 6, 2004 from 9:00 a.m. until 11:30 a.m. in the Westin Peachtree Plaza Hotel. The new Executive Committee of the LC will also meet on Sunday, August 8, 2004 from 10:00 a.m. until 12:00 p.m. All LC members attending the Annual Meeting, or those residing in and around the Atlanta, Georgia area, are invited to attend the Executive Committee meetings.

# Annual Meeting Highlights

Join Lawyers Conference members for education, fun and networking at the 2004 Annual Meeting in Atlanta. The weekend starts on Thursday, August 5 with the Division Welcome Reception at the Carter Presidential Center. All LC members are invited to attend with their guest. The LC will join the Federal Trial Judges and the Administrative Law Judges

for a joint dinner at the Commerce Club on Friday, August 6. The deadline to order advance tickets is July 8. A ticket form is included in this issue, so be sure to get your order in! Vicky Cashman is planning an outstanding educational program on Friday, August 6 from 3:30 – 5:30 entitled, "The High Tech Court: Expectations for the Future." Executive committee meetings will take place over the weekend on Friday, Saturday and Sunday mornings.

For more information on the Annual Meeting and the Division, be sure to visit: <http://w3.abanet.org/jd/meetings/2004annual/home.html>



Tempe, AZ - LC Executive Committee members attending the recent planning conference in Tempe, Arizona are, from left to right, front row: Interim Chair, Jack L. Brown of Tulsa, Oklahoma, Ben Longoria of San Francisco, California, and Cheryl Cesario of Chicago, Illinois. Top row: Judge David Horowitz of Los Angeles, California; Dan Gourash of Cleveland, Ohio, and Gloria Wilson Shelton of Baltimore, Maryland

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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 Ms. Emily Barnhart. E-mail: [barnhart@ballardspahr.com](mailto:barnhart@ballardspahr.com), Publications Chair, 137 Carpenter Street, Philadelphia, PA 19147; (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](mailto:fairleyg@staff.abanet.org)

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### ARTICLE SUBMISSION DEADLINES

Fall 2004: Wednesday, August 25

# Administrative Judiciary

## News and Journal

American Bar Association

### Report of the NCALJ Nominating Committee

In accordance with Section VII of our By-Laws, the Nominating Committee is charged with making and reporting one nomination for each of two officer positions (Vice Chair and Secretary) and for each of four positions as members of the Executive Committee. Election is by vote of the NCALJ membership present and voting at the NCALJ business meeting portion of the ABA Annual Meeting to be held in Atlanta on August 7, 2004. *The offices of Chair-Elect and Chair are filled by automatic succession of the Vice Chair and Chair-Elect respectively.*

After consideration of an outstanding and unusually large group of candidates, the Nominating Committee nominates the following members of the National Conference of the Administrative Law Judiciary to serve in the indicated positions:

#### Vice Chair

Judge Tela Gatewood, Oklahoma

#### Secretary

Judge Larry Craddock, Texas

**Member of the Executive Committee**  
(two-year term expiring August 2006)

*Elect 4 members*

*(Listed in alphabetical order)*

Judge Robin Arzt, New York

Judge Ann Breen-Greco, Illinois

Judge Richard Goodwin, District of Columbia

Judge Bryan McDaniel, Louisiana

Other candidates for these 6 positions may be nominated by petition of no less than 20 members for each such candidate. The petition must state that the nominated person would accept the nomination, and must be submitted to the Chair of the Conference (Judge Tyrone Butler) no later than 60 days prior to the election date—in this case, by June 8, 2004.

If there are any contested elections, the Nominating Committee Chair will give notice to the NCALJ membership no later than July 8, 2004.

The Nominating Committee is without jurisdiction to nominate a person to fill a vacancy that may be created when a current member of the Executive Committee is elected to office. However, having reviewed the outstanding qualifications of the various candidates for the nominations we have made in this report, we also take this opportunity to recommend to the Executive Committee that if our nominee Judge Craddock is elected as Secretary, the Executive Committee should fill the resulting vacancy on the Executive Committee (on which he currently serves) by electing Judge Lois Oakley, Georgia to complete his unexpired term (one year remaining).

This report complies with the By-Laws provisions to give notice of the nominations made by the Nominating Committee to members of NCALJ. At a later date brief background sketches of the candidates will be provided to illustrate their diverse backgrounds and quality of experience they represent. We have maintained the traditional practice of alternating state and federal officers, and of balancing state and federal members of the Executive Committee.

As Chair, I thank the members of the Nominating Committee for their diligent

*(continued on page 27)*

### Fellowship Papers/Articles

by Judge Edwin Felter  
Denver Colorado

1. The 2004 NAALJ Fellowship Winner is Dean Harold J. Krent of Chicago-Kent College of Law. His Fellowship Paper will be entitled "Accommodating ALJ Decision-making Independence With Institutional Interests of the Administrative Judiciary." He will deliver a 50-minute presentation on his Fellowship Paper at the Fall 2004 NAALJ Annual Meeting in Baltimore.

2. JudgeEd Felter's previously published law review article, "Special Problems of State Administrative Law Judges," 53 AD.L.REV. 403 (2001) [surveying ethical structures for ALJs with a focus on central panels] has recently been re-published in 8-10 LAW & JUSTICE: JOURNAL OF THE UNITED LAWYERS ASS'N 41 (2001-2003), New Delhi, India

JUDICIAL  
DIVISION  
National Conference of Administrative Law Judiciary

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## CHAIR'S COLUMN

by Judge Tyrone T. Butler  
Washington, DC

*"Old soldiers never die they just fade  
away...."*

I believe that the adage is not true for outgoing conference chairs. I for one intend to remain active in the National Conference of the Administrative Judiciary, the Judicial Division and the ABA. I urge all of my predecessors and successors to adopt a policy of remaining active in the conference and association. The need for organizational memory and experience is invaluable to those who will take leadership responsibility in the future and our mentorship should not be lost to them.

This has been an eventful year for the conference and me. Various projects were undertaken to better the lot of the administrative judiciary and the profession as a whole. NCALJ sponsored or cosponsored the following initiatives: The Administrative Law Judges Pay Reform Act of 2004, The University of Texas LBJ school project (cosponsored with the National Association of Administrative Law Judges), A Retirement Plan for Federal ALJs, and ALJ Pay Compensation and OPM are among the many projects supported and manned by members of NCALJ.

This administration year has witnessed the establishment of a central panel in Alaska and the appointment of a new Chief ALJ to the SSA Office of Hearings. Congratulations to both Alaska and CALJ

David B. Washington. The NCALJ and its members stand ready to offer assistance whenever needed.

Conference members have been present and taken active roles in SOC meetings, a meeting of the Financial Committee. The conference has also sponsored, along with NAALJ, registration scholarships to the Council of Canadian Administrative Tribunals meeting in Toronto Canada in June.

I want to thank all the conference members for their dedication to the NCALJ and a special thank you to Ms. Gilda Fairley without whose help the scheduling of these myriad tasks would have been impossible. I also want to thank her for keeping this chair alert to every aspect of the conference's agenda.



It is with mixed feelings that I look forward to the Annual Meeting in Atlanta. It will be the end of my chairmanship and a very busy and exciting year but I also know that I will have an opportunity as Immediate Past Chair to participate in and contribute to the future goals of the conference.

Shadowing the work and activities of the conference during my tenure and indeed

*(continued on page 27)*

## 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  
Fall 2004: Wednesday, August 25

# Report

*(continued from page 25)*

consideration and discharge of this responsibility to the Conference. The interest shown by so many people in taking leadership positions in the Conference attests to the growing influence and achievements of the

Conference both within the ABA and in the broader world of administrative justice. There are many positions such as Committee Chairs, Vice Chairs, and ad hoc Task Force members that our membership can use as a platform for more active roles in the Conference, and we welcome all those who share our commitment to due process, judicial excellence, and collegiality.

Respectfully submitted,  
Judge Ruth L. Kleinfeld, Chair of the Nominating Committee  
Judge Jean S. Cooper  
Judge Chris Graham  
Judge Greg Holiday  
Judge Errol Powell  
Judge Edward Schoenbaum  
Judge Dan Solomon

---

## Newsletter Editor Remarks

*by Judge Ann Breen-Greco  
Chicago, Illinois*

For five years it has been my privilege to serve as the newsletter editor and my pleasure to have worked with five dedicated chairpersons. This will be my last issue. It is always hard to leave a gratifying position but it is time for a new editor to bring different insights and views to the work. I will continue to be active and look forward to seeing you all in Atlanta.

## Chair's Column

*(continued from page 26)*

the entire operation of the association has been the specter of the reduced budget constraints. NCALJ has been very successful in reducing spending while still remaining functional. Once again I owe this success to staff and the many members who reduced their requests for reimbursement.

Lastly, the conference Nominating Committee has done yeoman's work in presenting a slate of officers that will carry on the excellent work and program of the conference in 2004 - 2005. Good luck everyone, see you in Atlanta.



*Judges Jodi Levine, Tela Gatewood and Louraine Arkfeld at ABA Day in Washington, DC*

# Federal Trial News

American Bar Association

## It's Time to Start A Dialogue

by Judge Berle M. Schiller  
Philadelphia, PA

Not in recent memory have relations between Congress and the Judiciary been this strained. This poisoned atmosphere not only is a disservice to all involved, but implicates the constitutional boundaries between the legislative and judicial branches of government. Separate legislative initiatives immediately come to mind because they reflect attempts by Congress generally or a vocal segment to severely limit judicial independence.

Understandably, with elections looming every two years, some members of the House of Representatives need issues for re-election and the judiciary can be a convenient "whipping boy" for some. Consequently, we have seen an increase in Congress' attempted oversight of sentencing discretion. While increasing penalties may look good in a press release, they may have no impact (or not enough) on the "war on drugs." The tightening straight jacket of sentencing guidelines is a simplistic approach to a serious problem

(crime and penology). Mandatory minimums have been attacked publicly by some Justices on the United States Supreme Court. The Feeney Amendment drafted by the Justice Department and introduced at the eleventh hour is an example of a "knee-jerk" piece of legislation which was never deliberated. It's no wonder that the federal and state prison inmate populations rose to 1.3 million in 2001 from 488,000 in 1985.

Of course, Congressman Feeney cannot be faulted alone for being the front-man for a myopic corps within the Justice Department. Some members of Congress have introduced legislation that suggests that impeachment be employed if federal judges base decisions on law from countries other than the United States. Of course, this gratuitous slap is unnecessary (although I suppose backers will curry favor with uninformed constituents) since we all swore to uphold the United States Constitution when we took our oaths of office. I might point out that our founders did not draft the Constitution in a vacuum, but relied heavily on English, French and Biblical laws or rules. In fact, it is flattering to the United States that other nations base their decisions on our laws. Nevertheless, the fact that any other country has a good idea, should not escape notice so long as it is consistent with

American Constitutional law. Additionally, some other members of Congress have suggested both orally and with legislation that federal judge's terms be limited to ten years at which time a judge should be reconfirmed. The fact that such legislation is probably unconstitutional does not matter to the public relations machine of certain congressmen. What does matter is that these attempts to curtail judicial independence, invade the constitutional separation of powers and diminish judicial discretion are symptomatic of a mind set that plays into the hands of those who place a minimal importance to "checks and balances" in our government.

Perhaps the saddest part of all these ruminations and fulminations is that they go unchecked and in some cases empowered by Congressional leadership. Where are the voices of restraint? Maybe leadership on responsible committees should require constitutional sensitivity training of some of its members. The longer this degeneration of relationship exists and the gap widens, the harder it will be to restore balance.

Public respect for our judicial system and the courts should not be undermined by deleterious comments of a few demagogues. At the end of the day, it will be a judge standing alone against the short-termed rule of the mob who will protect the demagogue with the rule of law. This column is not meant to pour gasoline on an already existing fire, but is an attempt to stanch the unwholesome and counterproductive attacks of a few. Hopefully, we can begin meaningful dialogue. The judiciary appreciates the support it receives from the ABA on issues of judicial independence. All other civic and legal organizations must also join in the discussion.

### EDITOR'S NOTE

*Federal Trial News* is a publication of the ABA Judicial Division National Conference of Federal Trial Judges (NCFTJ). The views expressed in the *Federal Trial News* are those of the author only and not necessarily those of the ABA, the Judicial Division, the NCFTJ, 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 Berle Schiller, NCFTJ Editor, USDJ U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106; E-mail: [compoundbow@yahoo.com](mailto: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](mailto:fairleyg@staff.abanet.org)

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ARTICLE SUBMISSION DEADLINES  
Fall 2004: Wednesday, August 25

# Special Court News

American Bar Association

## A Model Drug/DUI Programs for Courts of Limited Jurisdiction

by Judge Michael W. Kwan  
Taylorsville, Utah

Over Twenty-five million Americans reported driving under the influence of alcohol at least once in the last twelve months. Law enforcement efforts resulted in about 1.5 million DUI/DWI arrests nationwide. 258,000 people were injured in an alcohol related motor vehicle accident, the equivalent of sixteen busloads every day. Each of us has about a 3 in 10 chance of being involved in an alcohol related accident in our lifetime.<sup>1</sup>

Illegal drug use among 18-25 year old adults has increased from 13.3% in 1994 to 18.8% in 2001. 1.9 million Americans tried Ecstasy for the first time in 2002, about triple the number of first time uses in 1999.<sup>2</sup> 64% of men arrested in 2000 tested positive for cocaine (undistinguished between crack and powder), marijuana, opiates, methamphetamine, or PCP.<sup>3</sup>

Given these alarming statistics, we should not be surprised that drugs or alcohol played a role in the arrest and prosecution of many of the individuals appearing in our courts. For those of us with jurisdiction over DUI, controlled substance or intoxication crimes, the implications are obvious. In addition, crimes such as retail theft/shoplifting, prostitution and domestic violence are often related to alcohol and drug abuse.

To address the underlying dependence/abuse issues, jurisdictions have turned to specialized calendars modeled after the Drug Court Programs

which began in Florida in the mid-1980s. With over two decades of scientific validation, the efficacy of these courts is well established. According to a National Institute of Justice study, 2000 randomly selected graduates from the nation's 100 largest drug courts had a recidivism rate of 16.4% after one year and 27.5% after two years. This success rate reflects felony drug court participants, most of whom have progressed in their disease to the point where they are unable to maintain regular employment and have resorted to committing felonies in support of their addiction.

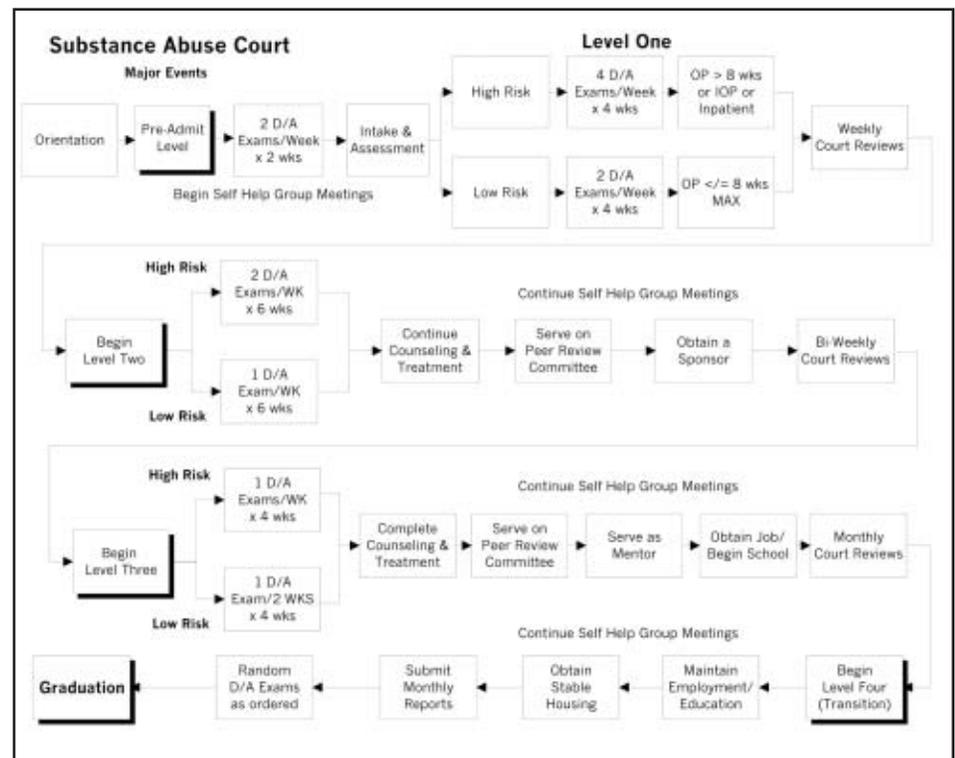
One theory states that by adapting the felony drug court model to misdemeanants, we may achieve even better results. The hypothesis is that by intervening earlier in the individual's addiction disease, we may be better able to

make long-lasting behavioral changes. Initial results have been encouraging.

One of the first programs was the Substance Abuse Court (SAC) Program in Taylorsville, Utah. The SAC program is divided into five levels. This first is a short Pre-Admit level where the program is explained to the participant. Should the participant decide to opt-in to the program, they are given two weeks to have a substance abuse assessment completed, complete four random drug/alcohol use examinations showing no new drug/alcohol use, begin attending self-help group meetings of their choice twice a week and abstain from any drug or alcohol use or consumption.

Upon successful completion of the Pre-Admit phase and upon the recommendation of the Peer Review

(continued on page 31)



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## EDITOR'S COLUMN

# (AKA This Space Available)

by Judge Michael W. Kwan  
Taylorsville, Utah

As I draft this issue's column, I reflect on the amazing ease with which we are able to communicate with others. Over the past few decades, we've gone from rotary dial, hard wired telephones to cordless phone which operate at frequencies once only attainable by NASA; from "mobile" phones the size of carry on luggage to cell phones so small they can be misplaced under a Post-it note. Robin Williams jokes that the next step will be implantable phones that we answer by tugging on our earlobe. I don't want to speculate which orifice your faxes would come out of with one of those phones.

A survey of my closest friends reveals that each has an average of four telephone numbers each with voicemail, a fax number, three email addresses and at least one "Instant Messenger" ID. Some also have their own websites, pager number, text messaging ID and TELEX address (don't ask me, I don't know what that is). Yet for all of this technology, ostensibly designed to bring us closer together, I can't help but feel somewhat *disconnected*. For instance, I sent an email message to our conference committee chairs a few months ago asking them to submit brief reports which could then be published. Many replied that they would be sending in articles. A couple did send articles which have been published.

I'm sure the reason I have not received articles from the committee chairs is that they have been busy taking calls, retrieving voicemail, replying to email messages, and reading faxes. In addition, they have to manage their caseloads, attend to their committee business and try to squeeze in something resembling a personal life. We all know how hard it is to juggle all of the demands on our time. So to help them (and, more importantly, me) out, I call on you, our faithful reader to contribute to this publication. I quote from my message to the committee chairs for the strict editorial guidelines for publication:

"The articles can be on any topic. A quick suggestion would be a brief report on issues, projects or topics your committee (court) is working on. Another idea is an article on judicial retention at your court level. How is it done? What factors influence retention? How do you deal with the elected officials in the legislative and executive branches of your government?"

I don't have any major editorial/publishing rules except that you write in English. I won't even trouble you for "proper English." I also promise not to tell anyone if it isn't in proper English. Sending articles in electronic format would be preferred, but I'll even take hard copies by mail, fax, carrier pigeon, etc."

You should be emboldened to write since our colleagues would no doubt rather read about the latest judicial news from the most remote areas of the Alaskan wilderness than the semi-deranged ramblings of yours truly. Please forward your submissions to:

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TELEX: None (I told you I didn't know what it was)



Tempe, AZ – (l-r) Judges Sharon Hatten, Michael Pietruszka and E. Jeanette Ogden meet with Conference Administrator Rebecca King at the Spring Planning Meeting.

# DUI Programs

(continued from page 29)

Committee, a participant may be admitted to the program at Level 1. Like the felony drug court model, participants progress through the program by maintaining sobriety, submitting to frequent random drug and alcohol use examinations, appearing for regular court reviews and attending counseling, treatment and self-help group meetings.

Through Levels 2 and 3, the participant also serves on the Peer Review Committee. These committees are comprised of prosecutors, public defenders, treatment providers, case managers and participants. They are responsible for staffing and reviewing all of the SAC participants' progress on a weekly basis. There are currently four Peer Review Teams which rotate on a weekly basis.

At Level 4, the participant begins the "Transition" phase which is comprised of random drug and alcohol testing. By the time a participant is eligible for Level 4, they will have completed their counseling and treatment; obtained stable housing; obtained and maintained stable employment or be enrolled in school; maintained at least four consecutive months of sobriety; and, have the recommendation of the Peer Review Committee. It takes about a year to 18

months to reach Level 4. The flowchart appended to this article illustrates levels of the SAC Program.

Statistically, 175 participants have graduated from the program in the first five years. 25 graduates (14.3%) were convicted of a new offense over the five years studied. Of the 25 recidivists, seventeen of them committed a new drug or alcohol offenses (9.7%). Only one graduate committed a new offense in Taylorsville (0.6%). Most significantly, nearly 86% of our graduates have had no new offenses after five years.

The SAC program has not been without its critics and opponents. Initially, advocacy groups like Mothers Against Drunk Drivers (MADD) and Freeway Watch were opposed to allowing DUI offenders into the program. Their initial objection was the use of a "Plea-in-Abeyance" as an enticement to get offenders to voluntarily enter the program. Until this year, Pleas-in-Abeyance did not count for enhancement purposes. However, after reviewing the stringent requirements of the program, both of these groups became supporters of the program, even contributing funds for members to attend national drug court trainings.

There are those who criticize the entire premise of restorative justice, particularly in courts of limited jurisdiction. Some prosecutors oppose such programs as "soft on crime." Some defense attorneys

complain that we should not demand such intense and comprehensive terms on misdemeanor offenses. Some judges have opposed the creation of such programs as they did not wish to be viewed as "social workers." Yet, as information about the program has been disseminated, more programs have been planned and implemented. In Utah alone, three SAC programs exist and others are being planned. A boost came from the Utah Legislature this year which statutorily mandated the use of this program in any plea-in-abeyance compromise of a DUI offense. In addition, the Legislature authorized and funded a comprehensive two year study to validate the efficacy of these programs.

This model was designed to work in the justice courts of Utah which exist in a "two-tiered" system which provides a trial de novo for defendants upon appeal. The model can be adapted to work in courts of record which offer appeals on the record.

- <sup>1</sup> The foregoing statistics were derived from the National Household Survey, Monitoring the Future Survey, Drug Abuse Warning Network and from the National Drug Court Institute.
- <sup>2</sup> Id.
- <sup>3</sup> 2000 Arrestee Drug Abuse Monitoring: Annual Report, National Institute of Justice

## EDITOR'S NOTE

*Special Court News* is a publication of the ABA Judicial Division National Conference of Specialized Court Judges (NCSCJ). The views expressed in the *Special Court News* are those of the author only and not necessarily those of the ABA, the Judicial Division, the NCSCJ, 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 *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

Fall 2004: Wednesday, August 25

# Trial Judges News

American Bar Association

## Judicial Conduct Report

by Judge Al White  
Chicago, IL

In Vol. 25, No. 4 Winter 2004 of the *Judicial Conduct Reporter*, a publication of the American Judicature Society Center for Judicial Ethics, the following partial summary of judicial discipline for 2003 was presented.

Between 1980 and the end of 2002, approximately 294 judges were removed from office as a result of state judicial discipline proceedings. In 2003, 13 judges (or in two cases former judges) were removed from office, 20 resigned or retired in lieu of discipline pursuant to agreements with judicial commissions that were made public, one judge resigned pursuant to an agreement that also included a public reprimand, and two former judges were barred from serving in judicial office, one at any time in the future and one until the end of the term he was serving when he resigned. (Those numbers do not include two removal decisions pending on appeal at the end of the year).

In addition to the judges who were removed or agreed to resign or retire, 82 judges (or former judges in 10 cases) were publicly sanctioned in 2003. In 52 of those cases, the discipline was imposed pursuant to the consent of the judge or based on stipulated facts.

There were 15 suspensions without pay with the length of the suspensions ranging from one month to one year. (Four of the suspensions also included a censure, one required the judge to have his disability treated before he returned to judicial

duties, one was followed by a one-year probation, one required the judge to complete 20 continuing legal education credit hours on ethics, and one provided that the judge not be allowed to resume duties until he completed a course for judges of limited jurisdiction courts). There was one additional suspension that was stayed pending the judge's compliance with several conditions and will be dismissed if the conditions are completed within the time limits set.

In addition, there were 21 public censures (one censure also barred the former judge from receiving an assignment, appointment, or reference of work from any state court) and 14 public admonishments (one admonishment also included an order of additional education and one included a former judge's agreement not to seek or hold any judicial office or perform any judicial office or perform any judicial duties without approval from the Commission.) There were 28 public reprimands (one reprimand also included a \$50,000 fine, two included agreements by former judges never to seek or accept a judicial office without the permission of the state supreme court, and one included an order that the former judge not seek another judicial position unless first authorized to do so by the court) and 3 public warnings (one of the warnings also included an order of additional education). One recommendation of removal was dismissed as moot following the judge's resignation.

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## Social & Education Agenda Replete at 2004 Atlanta Meeting

by Judge Elibu M. Berle  
Los Angeles, CA

Atlanta, Georgia, home of the Brave(s), CNN, and Coca Cola, will be the site of this year's ABA Annual Meeting. This vibrant modern city with southern hospitality has become a favorite location for annual meeting attendees. As usual, the Annual Meeting will provide an abundance of education and social opportunities for all the judges attending the conference. Among the many local attractions welcoming our Judicial Division members will be: Stone Mountain, Carter Presidential Center, Martin Luther King, Jr. National Historic Site, Margaret Mitchell House, historic Buckhead, High Museum of Art, and Centennial Park.

The highlight of the education part of the Annual Meeting will be a full day seminar-type program set for Thursday, August 5, 2004, on the subject of "What Judges Should Know About Business Valuation and Corporate and Commercial Litigation," jointly sponsored by the National Conference of State Trial Judges, the National Judicial College, and LexisNexis. This program will take place within walking distance of the ABA hotels (at Georgia State University) and will be of interest to all judges who have to grapple with business, property, assets, corporate or

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



by Judge Sophia H. Hall  
Chicago, IL

This year as your Chair has been a wonderful year of activity with the members of our Conference and the Judicial Division. It has also been a year of introspection. Because of the activity around the commemoration of

*Brown vs. the Board of Education*, I have revisited why I became a lawyer and my role as a judge. Such an opportunity for introspection is not often presented during the press of our daily lives. However, we can make that opportunity for ourselves.

Each time judges reach out to the community to explain our role and our lives as judges we contribute to the community's knowledge, as well as, reaffirm for ourselves, our own purpose. The Judicial Division's Judges Network provides access through its web page to turnkey programs to help us to do that. Some of these programs were discussed at The Judicial Outreach Conference, held in conjunction with the ABA Young Lawyers' Meeting in Memphis, Tennessee. April 30 to May 1, 2004. Two of our Conference members Sarah Springer and Dewey Whinton attended learned about some of the programs and hints in managing them.

Sarah reports that some of the presentations included ethical concerns about receiving funds from independent foundations which might have pending litigation. Another discussion included how to shape your presentation to the learning styles of your audience. A "Dialogue on Brown v. Board of Education" was one such program discussed.

Legislators are another outreach audience for discussion about the courts and judicial independence. With the crisis in court funding, such an effort can help to build positive relationships between the courts and the legislature. The advantage of this is more than obvious. At the Judicial Division Spring Planning Meeting in Tempe, Arizona in April, one of the judges reported that in their state there was almost open warfare with that state's legislature about court funding, whereas another judge reported that in his state a collaborative process resulted in joint suggestions to the legislature on the funding issues. A binder of forms was provided at the Conference to help put on an outreach event for legislators.

Another very interesting workshop at the Conference was on the "...And Justice For All" conversation which allows an interactive discussion about how to improve the administration of justice. I had an opportunity to participate in one of these conversations at the Spring Planning Meeting. The discourse was illuminating since judges are painfully aware of the effect of the perceived shortcomings of our legal system.

The Annual Meeting in Atlanta, Georgia, on August 5 through 8, 2004, will provide us with an additional opportunity to meet together to further discuss ways to engage the community in understanding our legal system. Also you will be able to take advantage of an outstanding substantively informative educational program to be presented all day Thursday August 5. Business issues which arise in business and commercial litigation, and divorce litigation will be discussed. These issues include business valuation, corporate governance and e-discovery. So be sure to arrive on Wednesday, August 4, so that you can attend the program the next day.

Intellectual stimulation is enhanced when you are in an environment to get to know others in the Judicial Division and the ABA. The Judicial Reception is on Thursday night August 5th at the Carter Presidential Center, and our Conference Dinner is Friday night August 6th at the City Grill.

Next year, the focus of President-Elect Robert J. Grey, Jr. is one important to the judiciary and already the subject of one of this Conference's committees-Jury Management. Committee Chair William A. Caprath and Tom Barland have been researching ways to facilitate the jury's process of decision-making and will share their information with members of the President Elect's workgroup.

NCSTJ activities during the coming year will be exciting under the leadership of Hank Ridgely. Stay tuned for his vision.

## A Review of the Tenth Annual Clifford Symposium on Tort Law and Social Policy

by Judge Al White  
Chicago, IL

On April 15 and 16, 2004 the Clifford Symposium on Tort Law and Social Policy presented, at DePaul University College of Law, its Tenth Annual Symposium entitled "Starting Over? Redesigning the Medical Malpractice System."

### Background on the Clifford Symposium

In 1994, Attorney Robert A. Clifford gave \$1 million to DePaul University College of Law to endow a faculty chair in tort law and social policy. The chair gives meaningful expression to his belief that the civil justice system serves a number of vital interests in American society. The Clifford Chair at DePaul provides a vehicle for exploration of the civil justice system in an intellectually rigorous fashion. Professor Stephan Landsman is the holder of the Chair.

In addition to providing support for faculty research and teaching, the endowment makes possible an annual symposium addressing a timely issue in the

civil justice area. The purpose of the symposium is to bring the latest scholarship and advances in legal practice to lawyers and scholars who specialize in tort law and related fields.

Conference topics have included:

- 2003 - After Disaster: The September 11th Compensation Fund and the Future of Civil Justice
- 2002 - Export/Import: American Civil Justice in a Global Context
- 2001 - Smoke Signals: Civil Justice in the Wake of the Tobacco Wars
- 2000 - Civil Litigation and Popular Culture
- 1999 - Judges as Tort Lawmakers

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## Clifford Symposium

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1998 - The American Civil Jury:  
Illusion and Reality

1997 - Contingent Fee Financing of  
Litigation in America

1996 - Tort Law and the Science of the  
Twenty-First Century

1995 - ADR and Torts: Implications for  
Practice and Reform

The 2005 symposium topic will be: Do  
Pain and Suffering Mean Anything  
Anymore?

### Background on Medical Malpractice Reform

A debate now rages across America  
about what should be done to improve the  
response to injuries suffered during  
medical treatment. Some champion  
continued reliance on the civil justice  
system and the tort law which has  
developed to address medical malpractice.  
Others challenge that system and argue for  
one or another reform approach. The issue  
has become highly politicized and is  
presently being debated in Congress as  
well as elsewhere.

### Overview Of The Tenth Annual Clifford Symposium

The Tenth Annual Clifford Symposium  
examined the issue of medical malpractice  
reform. Its main purpose was to ask:  
Should we be starting over?

If we decide that we need to start over, a  
host of further questions arise. One of the  
most important is what type of approach to  
use in place of the current medical  
malpractice system. A large number of

alternatives have been proposed, and some  
of the leading proponents of change  
discussed their ideas at the symposium.  
This discussion was followed by a look at  
the consequences of restricting or ending a  
patient's opportunity to sue his or her  
health care provider for malpractice.

The legal response to malpractice does  
not exist in a vacuum. It is intimately  
intertwined with the delivery of health  
care services and backstopped by a vast  
network of insurance industry operations.  
The symposium explored the role of both.  
With respect to insurance, speakers  
examined the underwriting cycle as well as  
the setting of malpractice premiums. With  
respect to health care, the symposium  
focused on innovative medical  
practitioners who have devoted themselves  
to redesigning the delivery of services in  
order to create a culture of safety that  
shrinks the risk of patient injury.

The time for significant change may be  
at hand. How that change is accomplished  
and what it requires is likely to affect the  
legal, medical and insurance worlds for  
years to come.

### The Tenth Annual Clifford Symposium

Opening Remarks were presented by  
Glen Weissenberger, Dean, DePaul  
University College of Law and Stephan  
Landsman, Robert A. Clifford Professor of  
Tort Law and Social Policy, DePaul  
University College of Law.

Session I included topics included:  
Alternatives to Medical Malpractice,  
Reforming Medical Malpractice in a  
Radically Moderate and Ethical Fashion,  
Why Binding Offers by Defendants, not  
Plaintiffs, in Personal Injury Suits?,

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### EDITOR'S NOTE

*Trial Judges News* is a publication of the ABA Judicial Division National Conference of State  
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### ARTICLE SUBMISSION DEADLINES

Fall 2004: Wednesday, August 25

# Clifford Symposium

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Governments as Insurers, A Multi-Attribute Utility Analysis of Legal System Responses to Medical Injuries. Commentary was provided by Richard Epstein, Troyen Brennan.

The luncheon speaker was Marc Galanter who discussed, "Doctor-Lawyer Antagonism: From Rivalry to Victimization"

Session II topics included: The Consequences of Ending the System as we Know it, Can you Trust a Doctor You Can't Sue?, Profiling the Invisible: Medical

Malpractice Claims and Settlement, Studying Medical Error in Situ: Implications for Malpractice Law and Policy. Commentary was provided by Robert Rabin and Michele Goodwin.

On Day two, Session III topics included: Insurance and Medical Malpractice, The Underwriting Cycle and Other Obstacles to a Stable Medical Malpractice Insurance Environment, Malpractice Premiums and the Legitimate Interests of the Medical Profession in Tort Reform. Commentary was provided by Michelle Mello and William Sage.

Session IV topics included: Systems for Safety – Going Around Medical Malpractice, Black, Grey and Free Markets

in Healthcare Information, Near Misses: The Importance of Looking Below the Water Line, Cognitive Work, Computers, and Responsibility for Patient Safety. Commentary was provided by Jerry Mashaw and Stephan Landsman.

This symposium provided an in-depth review of the past, present and future of medical malpractice and what reforms, if any, are necessary. The symposium proceedings will be published in 2005. It will be interesting to see what reforms, if any, are recommended and if so, what steps will be taken for reform implementation.

## Agenda Replete

(continued from page 32)

accounting issues, whether they sit in a general civil court or in a family law, probate or guardianship court. The seminar will address business valuation problems, digital discovery disputes and cutting edge corporate governance and class action litigation. The presentation will provide case management tools for judges dealing with newly emerging issues and complex litigation difficulties. Panels of judges, lawyers, and experts, including Justice Myron Steele of the Delaware Supreme Court, Chancellor William B. Chandler of the Delaware Chancery Court and Judge Ben Tennille of the North Carolina Business Court, will provide guidance on how novel questions in developing areas of law may be resolved.

Judicial Division members are invited to attend the annual Judicial Division Welcome Reception, sponsored by LexisNexis and the Division, scheduled for the evening of August 5, 2004. The reception will take place at the Carter Presidential Center. The museum includes numerous photographs and memorabilia from President Carter's White House. The Oval Office of President Carter is replicated, and many of the gifts received during his presidency are on display. Additionally, the museum maintains an

outstanding exhibit portraying the significant events that occurred during President Carter's term in office, as well as in other periods of his life. Among the unique items on display is President Carter's Nobel Peace Prize.

The social calendar of the Annual Meeting will continue on Friday night August 6, with a dinner for Conference members at the City Grill, a popular upscale restaurant in downtown Atlanta. Getting together with old friends and establishing new relationships with colleagues from across the nation is always interesting, entertaining, and great fun.

In recognition of the fiftieth anniversary of the United States Supreme Court decision in *Brown v. Board of Education*, the Judicial Division and Conference of Federal Trial Judges will present a program on Friday, August 6, 2004, entitled, "*Brown v. Board of Education* – Impact on the Legal Profession and Judicial Limitations." A panel of distinguished law professors, including Erwin Chemerinsky, Charles Ogletree and David Wilkins, will explore the broad impact of the *Brown* decision in the legal profession, the extent to which courts are a suitable tool for social change, and the limitation on using courts as the governmental leader in such process.

The business meeting of the National Conference of State Trial Judges will take place on Saturday morning, August 7.

During that meeting the chair will present the annual report to the members, and state delegates will elect representatives to the executive committee.

At 9:30 a.m. the Judicial Division and Litigation will present a program at the Georgia Congress Center on the topic, "Are Jury Trials Vanishing?" A blue ribbon panel of judges, lawyers, and academics will discuss the decline in the frequency of jury trials and what, if anything, should be done about it.

The Opening Assembly will be held on Saturday evening, August 7, at 5:30 p.m. at the Georgia World Congress Center. Following the Opening Assembly, the Presidential Reception will take place at the Omni Hotel at CNN Center.

The Conference's participation in the ABA Annual Meeting will close with the Annual Dinner in Honor of the Judiciary at the Fernbank Museum of Natural History on Sunday evening, August 8, 2004. At this elegant dinner, the ABA Justice Center will present the prestigious John Marshall Award to an individual who has made a positive national impact on the justice system by bringing about extraordinary improvement in the administration of justice.

We look forward to visiting with old friends and greeting new members at the interesting planned gatherings of the Conference. See you in Atlanta!

# Save the Date

**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)

**November 29-December 3, 2004**

Mediation for Judges  
Phoenix, AZ

More Information: <http://www.abanet.org/jd>

**March 10-12, 2005**

Bankruptcy Conference  
Washington, DC

More information: 800/238-2667 (x5147)

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

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