

Judicial Division Record

American Bar Association

Volume 7 Issue 2 Winter 2004

Brown v. Board of Education and Beyond

by Judge Sophia H. Hall
Chicago, IL

We all want to be judged on the content of our character, not upon the color of our skin, our gender, our loved one's gender, our religious beliefs, our ethnicity, our physical abilities, our age, or our wealth or lack thereof. We want the opportunity to be judged on who we are and what we can do. However, sometimes barriers stand in our way; barriers of ignorance at the least, and of bias and prejudice at the worst. How do we transform our imperfect society so we can be assured that we are treated with dignity?

Our system of law gives us an avenue toward this goal. The decision in *Brown v. The Board of Education* was a reverberating statement that, in the public life of this country, citizens should be treated with dignity, in particular, our children. In *Brown*, the Supreme Court stated that equal opportunity to a state afforded education was worthy of constitutional protection.

As we all know, in that case, the Court held that if the government provides that educational opportunity in the form of segregated schools for blacks and for whites, then the government violates the equal protection clause of the 14th Amendment to the United States Constitution. The Court unequivocally stated that separate is inherently unequal.

Thereafter, the expression of principle regarding the education of our children, was expanded by the Congress to other areas of public life for us all. Despite a social order of segregation, the principle that government enforced separation is unfair was applied to, for example, public accommodations, public housing, and public recreational facilities. Additionally, as our society has grown and become more diverse, more differences have come within the embrace of the equal protection

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Brown v. The Board of Education: Yesterday, Today, and Beyond

Thursday, February 5, 3:30pm – 5:30pm, Marriott Rivercenter Hotel, San Antonio, TX.

In one of the seminal cases of the twentieth century, the United States

Supreme Court unanimously declared unconstitutional the maintenance of separate education systems for public school students based on race. In thus repudiating the decades-old "separate but equal" doctrine then enshrined in federal constitutional jurisprudence, the Court set in motion not simply a legal revolution, but political, economic and cultural changes whose effects continue into the present. In this celebration of the *Brown* ruling to mark

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Fourth Annual ABA Program To Urge Minority Law Students To Seek Judicial Clerkships

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

Approximately forty minority law students from at least a dozen law schools throughout the country will be encouraged and urged to seek judicial clerkships at a special program at the American Bar Association's Midyear Meeting in San Antonio, Feb. 5-Feb. 7, 2004. The Association's fourth annual Judicial Clerkship Program is being organized and conducted under the enthusiastic co-sponsorship of the ABA's Commission on Racial and Ethnic Diversity in the Profession and its Judicial Division, and with the generous financial support of LexisNexis.

All judges attending the Midyear Meeting are encouraged to participate.

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

Over parts of three days, the Program brings the minority law students together with approximately two dozen judges and several former law clerks for

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JUDICIAL
DIVISION

November New Members

Appellate Judges Conference

Wendy Jacobsen Harrison	Phoenix	AZ
Donald M Falk	Palo Alto	CA
Charles A Bird	San Diego	CA
Jill Anne Pryor	Atlanta	GA
Marla J Luckert	Topeka	KS
Page McClendon	Mandeville	LA
Sally A Morris	Yarmouth	ME
Robert P Young Jr	Detroit	MI
Thomas C Morrison	New York	NY
Robert H Henry	Oklahoma City	OK
Mary E Fairhurst	Olympia	WA
Ahmed Adebawale	Sapon Abeokuta	

National Conference of Administrative Law Judges

Robert S Cohen	Tallahassee	FL
David J Brent	Chicago	IL
Ira Sandron	Newburgh	IN
Christopher Wayne Broadus	Frankfort	KY
Robin J Arzt	New York	NY
Ahmed Adebawale	Sapon Abeokuta	

National Conference of Federal Trial Judges

Paul A Levine	Albany	NY
Francisco A Rodriguez	Miami	FL
Judge Nicholas Forwood	Kirchberg	

National Conference of Specialized Court Judges

Jeri Kaylene Somers	Washington	DC
Chandlee Johnson Kuhn	Wilmington	DE
Steven Kirkland	Houston	TX

National Conference of State Trial Judges

Patricia Banks	Chicago	IL
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Marty J Dickinson	Newton	KS
Tim Campbell	Xenia	OH

Lawyers Conference

Ahmed Adebawale	Sapon Abeokuta	
Susan Armendariz	Los Angeles	CA
Alex Sousa	Santa Clara	CA
Michael James Carroll	West Hills	CA
Kimberly Brion	Wilmington	DE
Rick Dwyer	Wilmington	DE
Nancy N Jerman	Coral Gables	FL
J Lee Gutteridge	Jacksonville	FL
Jerome Perry	Plantation	FL
Rick Nightingale	Waukee	IA
Helen Hester	Champaign	IL
K Arden Rowell	Chicago	IL
Roxanne E Formey	Boston	MA
Masayuki Sakaniwa	Cambridge	MA
David J Coughlin, Jr	Winchester	MA
Pochin Michael Hsu	Rockville	MD
Kristin A Gustafson	Augusta	ME
Rebecca Bree Torres	Ann Arbor	MI
Daphene R Davis-Bradfield	Detroit	MI
Victoria A Mullen	Grand Rapids	MI
Patton Carney Prunty	Minneapolis	MN
Marcia Madero	Saint Paul	MN
Thomas B Hadzor	Durham	NC
Barbara J Prince	Omaha	NE
George Sitaras	Astoria	NY
Andrew Jay Extract	Freeport	NY
Damian W Williams	New York	NY
John Mastrantonio	Scarsdale	NY
Marisol Gonzalez	Cayey	PR
Elizabeth P Wiygul	Greenville	SC
Seth A Miller	Austin	TX
Roland J Bernier, III	Houston	TX
Katherine A Stein	Plano	TX
Luke Daniel Martin	Charlottesville	VA
Linda M Shin	Williamsburg	VA

Unknown

Andrew J Wistrich	Los Angeles	CA
Lamar Pickard	Hazlehurst	MS
Robert G Lincoln	Johnson City	TN

Justice Center Seeks Nominations for John Marshall Award

The John Marshall Award, named in honor of the fourth Chief Justice of the United States, is meant to annually recognize a person who has

demonstrated a dedication to the improvement of the administration of justice. The inaugural John Marshall Award was presented in 2001 to Tom Ridge, then-Governor of Pennsylvania. In 2002, the recipient of the John Marshall Award was United States Supreme Court Justice Anthony Kennedy. The 2003 John Marshall Award was presented to former United States Senator Howell Heflin of Alabama.

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JUDICIAL DIVISION

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Mr. Rohit Punj
Syracuse, NY

2004 Award Applications Available

Nominations are currently being accepted for the following awards:

Excellence in Judicial Administration Award

The Excellence in Judicial Administration Award is presented by the ABA Judicial Division Lawyers Conference to recognize an individual who has shown extraordinary achievement in judicial administration.

Judicial Education Award

The Judicial Education Award is presented by the ABA Judicial Division National Conference of Specialized Court Judges to a person, institution or education/training entity in recognition of superior efforts in providing high quality education for judges.

Franklin N. Flaschner Judicial Award

The Franklin N. Flaschner Judicial Award is bestowed annually by the ABA Judicial Division National Conference of Specialized Court Judges. It memorializes the late Chief Justice of the District Court of Massachusetts Franklin N. Flaschner, who advanced the important contributions of judges of courts of limited jurisdiction around the country. The award recognizes a judge who promotes the ideals and character of Chief Justice Flaschner.

William R. McMahon Award

The William R. McMahon Award is presented annually by the ABA Judicial Division National Conference of Specialized Court Judges to a judge, court employee or attorney who has made the most significant implementation of technological advances in a court of limited or special jurisdiction. This award honors Judge William R. McMahon of Ohio, an outstanding member of the NCSCJ Executive Committee and chair of the Conference's Modern Technology in the Courts Committee from 1990 until his death in 1994.

Nominations for the 2004 Awards are due in the Judicial Division staff offices no later than March 5, 2004. To download the application forms and rules, please log onto: <http://www.abanet.org/jd/awards/2004/home.html> or to request a nomination form, please contact Kris Berliant, Meetings & Communications Manager, 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

ABA Delegate Highlights Issues to be Discussed at Midyear Meeting

by Judge Frederic Rodgers
Golden, CO

The American Bar Association ("ABA") House of Delegates ("House") will hold its semi-annual meeting to set ABA policy in San Antonio, TX, February 9, 2004. House Chair Tommy Wells of Birmingham, AL has predicted that because of a lighter than usual calendar, the House will likely complete all of its business in one day. Although the deadline for filing Reports has passed, state and local bar associations are permitted by House rules to file reports as late as one day before the House begins its session. The Rules and Calendar Committee of the House still has opportunities to revise or remove the items already calendared as of press time. If you have followed the House calendar since 9/11 bombing, you will note that at each of the semi-annual meetings of the House, one category of reports has been collected under the heading of "The War Against Terror." The San Antonio meeting is no exception.

The War Against Terror

Since the House approved a Report three years ago at the 2001 Midyear Meeting, recommending that the United States join the 120 other countries in approving the Rome Statute on an International Criminal Court, U.S. reluctance to approve the treaty has produced a continuing flow of House activity on the subject. In San Antonio, the Standing Committee on Law and National Security with other committees and sections has introduced Report 103A enunciating policy to govern the proper exercise of universal jurisdiction over international crime and clarifies the right of one nation's courts to preempt the exercise of such jurisdiction by prosecuting war crimes against the uniformed military personnel or government officials of another nation based on international consensus that the conduct alleged would constitute a war crime. This is in response to the actions of certain European

EDITOR'S NOTE

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

All persons interested in submitting articles for inclusion in future issues of the *Judicial Division Record* should contact Judge Joel Medd, Editor, *Judicial Division Record*, Northeast Central Judicial District, P.O. Box 6347, Grand Forks, ND 58206-6347; Phone: 701/795-3824 x220, Fax: 701/795-3886, E-mail: jmedd@ndcourts.com or contact Kris Berliant at ABA/Judicial Division, 541 N. Fairbanks Court., Chicago, IL 60611, Phone: 800/238-2667 x 5700, Fax: 312/988-5709; E-mail: berliank@staff.abanet.org

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ARTICLE SUBMISSION DEADLINES

Spring 2004: Wednesday, February 11
Summer 2004: Wednesday, May 5

DIRECTOR'S COLUMN



by Aimee Skrzekut
Torres
Chicago, IL

When Less is So Much More

Each year as December draws to an abrupt close, I begin to evaluate the previous year's accomplishments, struggles and experiences. As I began to assess 2003, it became apparent that proper analysis required a journey back to when I first became Acting Director and maybe even before. Having pondered the Division's path since 1996, my firm conclusion is that less is more. In order to support this conclusion, I reviewed staffing levels, overall budget, substantive initiatives and overall programming. Let me take you on a guided tour of a brief history of the Division and its remarkable growth.

In 1996, eighteen staff served Division membership. Staffing totaled eleven when I assumed the Acting Director's position in 1999 and I am myself shocked when I report that a mere 6.5 staff serve the entire membership today. Division staff are working hard to accomplish more than ever before. Do not be alarmed by the numbers, as what I am about to tell you will reassure you that the goals of the Division are not only being achieved but surpassed.

Now, let us go back to how less really is more. In 1996, the Division general revenue budget totaled approximately \$1.8 million, the fund balance was about \$35,000 and not all of the Conferences maintained support fund balances. In addition, Conferences did not receive dues

individually. By 1999, the Division was recovering from the 1998 budget cuts. Although reeling from a 30% general revenue decrease, the Division firmly established its Conference support fund accounts and began distributing general revenue and dues monies to each of its Conferences to cover expenses. The total general revenue budget was \$1.014 million and the fund balance grew to \$136,791. As I write to you today, I am pleased to report a general revenue budget of \$1.242 million, dues surpluses for some of the Conferences and an overall JD Fund Balance of \$319,675—the largest fund balance in Division history. All financial jargon aside, the bottom line is that the Division is working with less general revenue than ever before and has been able to build its fund balance as a nest egg for future initiatives in a way that has not been possible before.

You may ask how, with fewer staff and resources, the Division managed to survive and actually build its reserves. Before you ask that question, let me tell you how successful the Division has been in the key areas of planning, programming and partnering. In 1996, several of the Division Conferences engaged in separate planning meetings. By 1999, three Conferences agreed to meet in joint planning sessions alongside individual breakouts to chart a course for the entire Division. This year, the Division will conduct its annual joint planning meeting with participation by all six judicial Conferences, the ABA Justice Center and the President-Elect of the Association, Robert Grey. In 1996, the Division was not invited to participate in ABA Presidential initiatives. By 1999, the Division attended a few programs. Today, I am thrilled to report that the Division is being invited as a leader and participant in ABA and Justice Center initiatives

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Lawyers Conference Chair, Justin Connor Takes Leave Absence for Fullbright

Lawyers Conference Chair Justin Connor has been awarded a Fulbright fellowship starting in January 2004, under the auspices of the U.S. Department of State, to teach law overseas for one semester. He will be taking a six-month leave of absence from his present position with the U.S. Federal Communications Commission to travel to Beirut, Lebanon where he will teach international business law at the Sagesse University Faculty of Law. Because of this Connor will be unable to attend the upcoming ABA Midyear Meeting in San Antonio (the first ABA meeting he has missed in six years). In the meantime, Connor is therefore turning over the reins of leadership of the Lawyers Conference for the remainder of this bar year to Chair-Elect of the Conference, Mr. Jack Brown of Tulsa, Oklahoma.

Four California Women Justices Confirmed On Same Day

Four women were unanimously confirmed to fill Court of Appeal seats in the two Southern California districts. Justice Judith McConnell was sworn in as presiding justice of the Fourth District's Div; Joan Irion as an associate justice of that

division to succeed McConnell, Laurie Zelon was sworn in as a justice of this district's Div. Seven, and Madeleine Flier was sworn in as a justice of this district's Div. Eight.

All three of the new associate justices were appointed from trial courts—Irion from the San Diego Superior Court, Zelon and Flier from the Los Angeles Superior Court. It was noted that never before have four women been confirmed to Court of Appeal positions on the same day.

National Conference on Judicial Outreach

by Jack Brown
Tulsa, OK

The Judicial Division will host its first National Judicial Outreach Conference at the historic Peabody Hotel in Memphis, Tennessee, April 30 and May 1, 2004. The conference is being coordinated and presented by the Judges Network, which is the Judicial Division's nationwide program supporting judges and lawyers in the presentation of judicial outreach programs in community settings.

"The National Judicial Outreach Conference is the first effort of its kind undertaken by the Judicial Division," according to JD Chair, Richard Bien. "With the excellent work of the Judges Network in addition to local and state judges and lawyers in Tennessee, the conference has created much interest and should be a success," Bien said.

The conference is being held in conjunction with the ABA Young Lawyers Division spring national meeting. The dual meetings will enable the Judges Network and conference attendees to promote the involvement of young lawyers

to assist judges nationwide in the coordination and presentation of judicial outreach programs in their own communities.

The conference kicks off Friday morning, April 30, 2004 at 1:30 p.m. with judicial outreach activities in local schools addressing drug/alcohol avoidance and *Brown v. Board of Education* issues. Several sessions throughout the afternoon will address numerous topics including the need for outreach, the audiences for outreach, and ethical considerations involving judges undertaking outreach. Other sessions will address skills and training as well as other types of targeted outreach to select audiences such as to state legislators on judicial independence.

Friday evening, conference attendees will join forces with the Young Lawyers Division in a joint dinner and dance in the Grand Ballroom atop the Peabody Hotel. "This will be a wonderful opportunity for young lawyers and judges to spend time in a relaxed setting discussing conference-related topics," according to Bien.

The second day of the conference May 1, will not only include judges, but also young lawyers in several joint breakout sessions. The sessions will focus on various programs being presented by judges and lawyers across the country such as the

nationally acclaimed "Dialogue on Freedom" program and the Tennessee Supreme Court Advancing Legal Education for Students program (SCALES), and the ABA's "And Justice for All" National Issues Forum.

The conference will also present a dialogue program for high school students on *Brown v. Board of Education*, the famous Supreme Court decision decided over 50 years ago. The Young Lawyers Division will also be presenting a re-enactment of the *Brown v. Board of Education* trial. While judges throughout the country will be invited to attend the national conference on judicial outreach, emphasis will be placed on inviting judges within a two hundred mile radius of Memphis.

"With May 1 being Law Day USA, it is an incredible opportunity for judges nationally to participate in and observe Memphis area judges in the presentation of outreach programs," according to Tulsa lawyer Jack Brown, co-chair of the Judges Network.

Chairing the conference are Justice Joan Irion of California and Dan Gourash, Cleveland lawyer. Additional information and conference registration materials will be available at the website of the Judges Network at www.abanet.org/jd/judgesnetwork.html.

SAVE THE DATE

April 30-May 1, 2004

The 2004 National Judicial Outreach Conference

Will be held in Memphis

In partnership with the ABA Young Lawyers Spring Meeting

Sessions on —

Ethics

Logistics

Model programs, including *Brown v. Board of Education* activities

For information, contact

Paula A. Nessel

ABA Judicial Division

541 N. Fairbanks Ct., Chicago, IL 60611

312/988-5450

paulanessel@staff.abanet.org

Judges Are Needed In Public Education More Than Ever

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



Close the borders!", "Don't let another one in here!". Oddly, you hear these statements even from African-Americans who fear immigrants and visitors of Arab decent. As judges and lawyers in the American Bar Association, we already know and appreciate the many contributions made by Arab-Americans to our justice system. If the public is to have

faith in our decisions as judges, we must continue to do more to educate the public on matters of concern, including how we treat our Arab-American citizens, immigrants and visitors.

The journalism industry has already done just that. Not long before the vicious September 11th attacks on our country, the Detroit Free Press and its parent Knight-Ridder, as part of their "...ongoing effort to improve news media by improving our collective understanding of the diverse communities we seek to write about and serve", published "100 Questions and Answers About Arab Americans: A Journalist's Guide". The 100 Questions and Answers provide readers with valuable insight into the various Arab-American cultures. You can find the guide on the world wide web at: <http://www.freep.com/jobspage/arabs.htm> or http://www.amalid.com/100_Questions.htm.

Yes, there are enemies among us who wish to do us harm. And yes, some of those enemies disguise themselves as law-abiding Arab or Arab-American citizens. Given that, it is prudent that we be careful and cautious. But we should also urge others to recognize that Arab is not a synonym for terrorist or suspected terrorist. Terrorists come in all colors and shapes and sizes. As judges, we should embrace the many cultures that make up this great country and share those experiences with our communities in the form of community and public education.

I hope you will join me in continuing to pray for those lost or injured during this war on terrorism and in assuring that, through public education, our anger is not misdirected. And when you have a moment, please take a look at the "100 Questions and Answers About Arab-Americans: A Journalist's Guide."

Section Of Dispute Resolution Spring Conference In New York, April 15-17

Make sure this premier dispute resolution event is on your spring calendar. Last year the Section's Spring meeting in San Antonio, Texas was a tremendous success attracting over 1,000 participants in spite of the fact that the Iraq war began simultaneously with the dispute resolution conference. This spring we will again provide a very high quality and phenomenal range of programming opportunities. The Annual Spring Conference is an essential gathering place for dispute resolution leaders, providers, consumers, scholars, students, from small firms, universities, large law firms, corporations, accounting offices, psychologists' offices, and others that comprise the wonderful world of dispute resolution.

Subject matter tracks this year will include: Arbitration, Community and Peer Mediation, Communication, Construction ADR, Corporate/Business ADR, Court-Connected ADR, Employment and Labor ADR, Ethics, Family, Government ADR, Environment & Public Policy, Intellectual Property and Technology, International, Practice Development and Management, and Technology.

For more information, please log onto: <http://www.abanet.org/dispute/conference/6th/home.html>

Judicial Clerkships

(continued from page 1)

panel discussions, a research exercise, and informal social events. These activities are designed to introduce and then reinforce reasons for pursuing a judicial clerkship: (1) allowing a new lawyer to develop a close personal working relationship with a judge; (2) improving a new lawyer's legal research, analytical, and writing skills; (3) enhancing a new lawyer's career opportunities; and (4) permitting a new lawyer to participate directly in the process of shaping the law.

The most ambitious part of the Program is a "research exercise." In an effort to acquaint the students with the working relationship between judge and law clerk, the students convene in small groups of four to six students with two judges (or one

judge and one former clerk) assigned to each group. Once in the groups, the students are asked to assume that they are judicial clerks and that the judge for whom they work have been assigned to write an opinion in a particularly interesting case.

After discussing the "assignment" with their respective judges, the students use computers and software provided by LexisNexis to research the issue. Following several periods of both research and discussion, the students prepare outlines of opinions deciding the issue. The "research exercise" above all else is meant to simulate to the maximum extent possible the kind of judge-clerk personal interaction characteristic of judicial clerkships.

Feedback from the law students, judges, and former clerks participating in past years has been extremely positive. Many of the participating students have secured

clerkships. In fact, I have been successful in convincing two participants to clerk for me.

Judges interested in participating in the program should feel free to contact me at fsullivan@courts.state.in.us. They can also communicate their interest in participating in the program directly to the ABA Judicial Division staff members working on this project, Gilda Fairley (FairleyG@staff.abanet.org) or Kris Berliant (BerlianK@staff.abanet.org).



Justice Frank Sullivan, Minority Clerkship Program Co-Chair and ABA President Dennis Archer appeared at a recent presentation on award winning program.

August 2003

Dear Judge:

As you know, the Judicial Division and the Commission on Racial and Ethnic Diversity co-sponsor the Judicial Clerkship Program at the Association's Midyear meetings with generous financial assistance of LEXIS-NEXIS. The purpose of the Program is to encourage more minority law students to seek judicial clerkships. In conjunction with the Program, the Division and Commission are compiling a directory of judges interested in recruiting minority law clerks. I hope you will agree to have your name listed.

The Division and the Commission launched the Program three years ago in response to a study by the National Association of Law Placement that showed

minority representation among judicial clerks generally lower than in the law school population and to publicity over the absence of minority clerks at the U.S. Supreme Court. Over parts of three days, the Program brings approximately three dozen minority law students from leading law schools together with approximately two dozen judges for panel discussions, a research exercise, and informal social events. These activities are designed to introduce and then reinforce reasons for pursuing a judicial clerkship: (1) allowing a new lawyer to develop a close personal working relationship with a judge; (2) improving a new lawyer's legal research, analytical, and writing skills; (3) enhancing a new lawyer's career opportunities; and (4) permitting a new lawyer to participate directly in the process of shaping the law.

Upon completing the Program, most participating students express a desire to

pursue a clerkship. To assist them and other students at participating schools in doing so, we would like to provide each school with a directory of judges interested in recruiting minority law clerks.

If you are interested in being listed in our directory (which will be provided only to those schools that participate in the Program), please contact Gilda Fairley via email at fairleyg@staff.abanet.org or at 312.988.5689.

Thank you for your time and I hope to hear from you soon.

Sincerely,

Frank Sullivan Jr.,
Justice, Indiana Supreme Court, and
Co-Chair, Judicial Clerkship Program

ABA JUDICIAL CLERKSHIP PROGRAM DIRECTORY OF JUDGES

Name: _____
Court: _____
Address: _____

Phone Number: _____
Fax Number: _____
Email Address: _____

Would you prefer applicants contact someone other than yourself?

Contact Person: _____
Phone: _____ Fax: _____ Email: _____

Will this clerkship be an:
Externship _____ Internship _____
Please check one

Positions Available: _____

Date clerkship begins: _____

Applications needed by: _____

Applications accepted by: regular mail fax email
Circle all that apply

Salary Range _____ *Optional*

Type of Externship, Internship or Clerkship

Federal Administrative _____ State Administrative _____
Federal Appellate _____ State Appellate _____
Federal Trial _____ State Trial _____

Which would you prefer a:

1L _____ 2L _____ 3L _____ Graduate _____

To be considered, the applicant must submit a cover letter, resume and:

- _____ writing samples
- _____ three letters of reference
- _____ have an oral briefing/interview

The Spirit of Innovation at CTC8



by Judge Hank
Ridgely*
Dover, DE

The spirit of innovation was alive and well at the 8th National Court Technology Conference (CTC8) held on October 28-30, 2003 in Kansas City, Missouri. CTC8 brought judges, administrators and technologists from

around the world to learn, network and explore new court technologies.

Keynote speakers for the conference were Chief Justice Jean Hofer Toal of South Carolina, Dr. Jerry Mechling of the Harvard College Kennedy School of Government, and Peter Bensinger, Esq. of Bartlit, Beck, Herman, Palenchar & Scott. Chief Justice Toal spoke of innovations to

create a new automation system in South Carolina through re-engineering, re-organizing and the application of Baldrige award quality concepts. Dr. Mechling discussed strategies to consider when investing in technology during difficult times for government financing as well as successful ways to control costs and improve services. Mr. Bensinger, who has been described as "the most wired lawyer in America", gave a high-tech attorney's perspective on expectations of the courts for the future.

"Super Sessions" involving distinguished panels of experts were held on automated court performance measurement systems, following the money to enhance court revenue, and defining your e-court. Focus sessions of special interest to judges, administrators, and technologists were held on topics ranging from decision support systems for judges to courtroom technologies to integrated justice systems. Courtroom 21 was on the site with the first courtroom use of single-run fiberoptic technology connecting all audio, video and computer technology. The high-technology courtroom is indeed

reinvented at every CTC conference. Then there was the world's largest court technology exhibition featuring more than 100 leading vendors offering a full range of court technology products and services.

Finally, my personal favorite was the experience of being part of a panel discussion program with D.C. Superior Court Judge Herbert Dixon and U.S. District Judge Joe Bataillon of the District of Nebraska on "Fighting The Naysayers: A Candid Discussion By Active E-Filing Judges." We shared stories on our experiences with implementing e-Filing in our respective courts and the obstacles we overcame ranging from reluctance of judges, attorneys and staff to litigation to stop electronic filing. We presented a series of questions asked by "naysayers" based on our experience and gave practical answers for the audience to use in their own jurisdictions. I also briefed the audience on proposed ABA Standard 1.65 Court Use of Electronic Filing Processes which the Judicial Division has endorsed and proposed to the House of Delegates as an amendment to the ABA Standards Relating to Court Organization.

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Midyear Meeting

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countries' magistrates under civil law systems (namely Spain and Belgium) who on their own initiative have commenced war crimes prosecutions against certain western hemisphere political figures and others, for example, General Augusto Pinochet of Chile and Henry Kissinger, the former U.S. Secretary of State. The Bush administration's unwillingness to follow President Clinton's lead in giving initial approval of the Rome Statute was based on fears that U.S. military personnel might be subject to International Criminal Court jurisdiction for acts arising out of armed conflict involving U.S. troops.

Report 104, introduced by ABA member Robert Weinberg of the District of Columbia Bar Association, urges that U.S. courts exercise jurisdiction over petitions for writs of habeas corpus from foreign nationals detained at the U.S. Naval Base at Guantanamo Bay, Cuba. The San Francisco Bar Association together with the ABA Litigation Section is sponsoring Report 105 which urges ABA lobbying support to

oppose (1) federal government delegation of civil immigration matters to state and local police for enforcement, and (2) federal legislation making an alien's mere undocumented presence in the U.S. a crime.

Judges and Courts

The Judicial Division has introduced a pair of Reports: Report 113A asks the House adopt an additional black letter Standard within the ABA Standards on Court Organization, *Standard 1.65, Court Use of Electronic Filing Processes*. Report 113B urges ABA lobbying support for a retirement plan for federal administrative law judges, separate from the retirement plan of other career civil servants and appropriate to their judicial status.

Dispute Resolution

Six ABA Sections have joined the Section of Dispute Resolution ("Section") in co-sponsoring Report 107 recommending adoption of the Code of Ethics for Arbitrators in Commercial Disputes, dated February 2004. Three other sections joined the Section in supporting Report 115 urging greater use of ombuds to resolve complaints involving

public and private entities. It also recommends approval of the revised *ABA Standards for the Establishment and Operation of Ombuds Offices, 2004*.

Criminal Justice

The New York Lawyers' Association has introduced Report 8A affecting criminal confessions, a measure that was deferred at the last Annual Meeting of the House. It is back for a second appearance, and remains as controversial as before. It recommends that the ABA adopt policy urging police and prosecutors to adopt the practice of videotaping of all interrogations where crime suspects are held for questioning. Critics of the Report fear that if adopted it will make its way into the ABA Criminal Justice Standards, and from there into appellate decisions which may exclude suspects' unrecorded statements under the Fifth amendment privilege against self-incrimination. The Criminal Justice Section has introduced Report 116 urging lobbying support for laws to address the complex problem of large numbers of mentally ill persons who become involved in the urban criminal and juvenile justice

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ABA Commission on State Court Funding

by Michael L. Buenger
Jefferson City, MO

Earlier this fall, President Dennis Archer announced the formation of the ABA Commission on State Court Funding to examine problems arising from chronic under-funding of state judicial systems and make recommendations on how states can ensure that courts have adequate resources. The Commission, chaired by Justice Joseph P. Nadeau of the New Hampshire Supreme Court, includes representatives from 17 ABA entities and the Conference of Chief Justices. Rick Bien, whose Chair's Column in the Fall 2003 JD Record discussed the state court funding crisis, asked me to serve as the JD representative to the Commission.

The group is studying ways to help courts set budget priorities, partner with bar associations to communicate the importance of adequate funding to legislatures, the media and the public, and gain a level of authority over their budgets that reflects the status of the judiciary as a separate and co-equal branch of government. The Commission will meet at the 2004 ABA Midyear Meeting in San Antonio on February 7 to collect additional information on court funding issues and begin to develop a report with recommendations that will be presented to the House of Delegates at the 2004 Annual Meeting. The Commission will meet a second time, on April 23 in Chicago, to finalize its recommendations. We welcome input from JD members nationwide, particularly examples of how budget cuts have hampered the ability of courts to serve the public and process cases in a timely fashion. Please contact me at Michael_Buenger@osca.state.mo.us with your comments and suggestions.

Time Off The Bench

Boat, Bicycles, Friends and Fast Cars!

by Judge Thomas C. Warren
Wenatchee, Washington

A trip for your 40th wedding anniversary has to be really something special, and ours turned out to be one heck of a great travel adventure! With the encouragement of friends, I put together a self-drive yacht cruise on the Rhine canal in the Alsace region of France with four couples. It is not easy to get 8 busy people to coordinate a trip to Europe, and commit to putting up their money for the yacht while the Iraq war is starting. However, we are talking about experienced and intrepid travelers, who probably would not let predictions of the end of the World deter them from an interesting trip. The group consisted of a Judge (me) and spouse of 40 years who is a social service program manager, a lawyer (also a graduate of West Point) and his wife a retired legal assistant, a world traveler consultant production engineer (breweries) and his wife, and a CPA/business chief executive with his wife, a medical center marketing manager. Now to get this organized we had to divide up responsibilities as you will see as the story unfolds. I became the tour director and put together the boat arrangements, meeting places etc. We also had to have a yacht captain and it was obvious the one guy who was in the Navy in the Viet Nam war was most qualified, even if he was only responsible for firing the guns from a destroyer. Thus the CPA was elected captain. He sure had fun giving orders. A frustrated officer?

Now this voyage was not your average canal barging, with crew and French chef. We had to do everything, with the limitation that our very independent wives said no cooking, except maybe continental breakfast and possibly picnic lunches. And then only if the guys behaved themselves and consumed only moderate quantities of the Alsace wines and beers. This meant dinner out, hopefully at fantastic restaurants and brasseries in the villages along the canal. Boy, this put a lot of pressure on the tour director! We traveled on an elegant 42 foot yacht (no mere barge for us!) with four staterooms, galley, two

heads with showers, dining area and captain's controls both from inside and from the top deck. Calling the sleeping areas staterooms may be a bit of an exaggeration. Mary Ann and I took the smallest stateroom because we were the smallest people. My bunk crossed over her bunk crosswise and only one of us could dress in the "stateroom" at a time. All of the arrangements for the boat and cruise were made on the internet. For information about this kind of travel take a look at www.crownblueline.com. A good website to learn about the French Alsace region is www.visit-alsace.com. The major city in the region is Strasbourg which can be found at www.strasbourg.com. The boat lease was \$3200 for seven days so the cost for each couple was \$800. Each couple put \$100 into a common fund for purchases when boating and we all got about a \$10 refund. Out of the common fund we bought all the drinks and food for on the boat, which included breakfast and lunch, mooring fees when we parked in a marina, and incidentals like shower tokens when available, when we parked for the night. I can tell you that the fund always bought daily fresh bread, cheeses, fruit and juice and all the wine, beer, and soft drinks we could drink.

So what did we know about running the boat and going through the 43 locks on the canal? Crown Blue Line told us we would get a half hour orientation on the boat and if we had ever driven a boat before we were "good-to-go." It took about 45 minutes because it was provided by a fellow who really did not speak English. But at the end of the training we were sent on our way.

The initial problem was we got caught in the first lock at 5 p.m. which is the time canal locks were shut down for the night. This gave us an opportunity to meet the mobile lock master, who we saw often the next couple of days. Because of our timing, we just moored on the side of the canal and sent the scout (the West Point guy of course) out to check on the restaurants, on one of the two bikes we had on the boat. Naturally it was one of the numerous French holidays, so we had little hope of anything being open. We were enjoying wine and hors'd oeuvres, laughing about calling Domino's, when our scout Bill shows up with three pizzas on the back of the bike. So miracles do happen!

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JUSTICE CENTER

2004 Midyear Meeting – San Antonio, TX February 5-8, 2004

Meetings will take place at the Marriott Rivercenter unless otherwise noted. Rooms and times subject to change.

Tentative Schedule as of December 3, 2003. Check out www.abanet.org/jd for a more current schedule and other important information.

Thursday, February 5

11:45am – 1:00pm	Judicial Clerkship Program (judge participation)	
12:00pm – 5:00pm	Judicial Division Office	Conference Room 11, 3rd Fl.
1:00pm – 3:00pm	Judges Network Committee Meeting	Conference Room 12, 3rd Fl.
2:45pm – 3:45pm	Judicial Clerkship Program (judge participation)	
3:30pm – 5:30pm	The Promise of Brown v. Board: Yesterday, Today and Beyond TBD	
6:30pm – 8:00pm	Judicial Division Reception <i>Sponsored by LexisNexis</i>	Salon F, 3rd Fl.

Friday, February 6

7:30am – 5:00pm	Judicial Division Office	Conference Room 11, 3rd Fl.
7:30am – 8:30am	Division Welcome Breakfast	Salon F, 3rd Fl.
9:00am – 9:45am	Judicial Clerkship Program (judge participation)	
9:00am – 5:00pm	Joint Commission to update the Model Code of Judicial Conduct <i>Executive Committee Meetings</i>	TBD
10:00am – 12:00pm	Administrative Law Judiciary Lawyers Conference Federal Trial Judges Specialized Court Judges State Trial Judges	Conference Room 12, 3rd Fl. Conference Room 13, 3rd Fl. Conference Room 14, 3rd Fl. Conference Room 15, 3rd Fl. Conference Room 17/18, 3rd Fl.
12:00pm – 1:00pm	JD Strategic Planning Committee Meeting	TBD
1:00pm – 4:00pm	Study Group on Pre-Judicial Training	TBD
2:00pm – 3:00pm	Judicial Clerkship Program (judge participation)	
1:00pm – 3:00pm	Committee Meetings JD Brown v. Board Committee ALJ Strategic Comm. Cte. (1:00 – 3:00) JD Membership Committee JD Program Committee (1:00-2:00) JD Strategic Communications Committee (1:30 – 3:00) LC Technology Program Meeting (2:00-3:00)	Conference Room 15, 3rd Fl.
4:30pm – 6:00pm	Justice Center Coordinating Council Meeting	Conference Room 15, 3rd Fl.
5:00pm – 6:30pm	Reception at Bexar County Courthouse/Justice Talking	
Evening	Conference Events	

Saturday, February 7

7:30am – 5:00pm	Judicial Division Office	Conference Room 11, 3rd Fl.
7:30am – 8:30am	Jnt. Sr. Lawyers and JD Committee on Senior Judges Meeting	Conference Room 7, 3rd Fl.
8:00am – 9:00am	<i>Executive Committee Meetings</i> Administrative Law Judiciary Lawyers Conference Federal Trial Judges Specialized Court Judges State Trial Judges	Conference Room 8, 3rd Fl. Conference Room 15, 3rd Fl. Salon G, 3rd Fl. Conference Room 12, 3rd Fl. Salon A, 3rd Fl.
8:30am – 12:30pm	ABA Commission on State Court Funding	Conference Room 6, 3rd Fl.
9:00am – 11:15am	Judicial Clerkship Program (judge participation)	
9:00am – 12:00pm	<i>Judges' Journal</i> Editorial Board	Conference Room 4, 3rd Fl.
9:00am – 1:00pm	Standing Committee on Judicial Independence Meeting	Salon C, 3rd Fl.
9:00am – 5:00pm	Joint Commission to Evaluate the Model Code of Judicial Conduct	TBD
12:00pm – 2:00pm	Spirit of Excellence Award Luncheon	TBD
2:00pm – 2:30pm	Division Nominating Committee	Conference Room 8, 3rd Fl.
2:30pm – 4:30pm	Division Council Meeting	Salon A, 3rd Fl.
4:30pm – 5:30pm	Division Business Meeting	Salon A, 3rd Fl.

Sunday, February 8

7:30am – 10:00pm	Judicial Division Office	Conference Room 11, 3rd Fl.
7:30am – 9:00am	Joint Breakfast	
	Federal Trial Judges and SC on Federal Judicial Improvements	Salon I, 3rd Fl.
8:00am – 10:00am	Executive Committee Meetings	
	Administrative Law Judges	Conference Room 12, 3rd Fl.
	Lawyers Conference	Conference Room 15, 3rd Fl.
	Specialized Court Judges	Conference Room 7, 3rd Fl.
	State Trial Judges	Salon D, 3rd Fl.
	Standing Committee on Minorities	Conference Room 14, 3rd Fl.
8:00am – 12:00pm	Appellate Judges Executive Committee Meeting	Conference Room 8, 3rd Fl.
8:30am – 12:00pm	ABA Commission on State Court Funding	TBD
9:00am – 10:00am	Federal Trial Judges Executive Committee	Salon I, 3rd Fl.
9:00am – 12:00pm	Standing Committee on Federal Judicial Improvements	TBD
10:00am – 12:00pm	Division Council Meeting	Salon A, 3rd Fl.
1:00pm – 2:00pm	HOD Delegates Meeting	Conference Room 8, 3rd Fl.
2:00pm – 5:00pm	Coalition for Justice Committee Meeting	TBD

Brown v. Board

(continued from page 1)

clause. With the world so diverse, the determination of what is fair in distributing public benefits continues to be challenging.

The recent Supreme Court decisions in the University of Michigan cases reveal how challenging this is in the context of the continuing controversy over whether and how to consider the effects of past discrimination. At issue was the fact that the University of Michigan gave preferences to minorities in order to insure a more diverse student body. The plaintiffs claimed that these policies were unfair.

The majority of the Court, in both cases, found that the state has a compelling state interest in the goal of a diverse student body to promote a robust exchange of ideas. The Court majority decided that, to achieve this diversity, race could be considered in the University's admissions policies. The Court

decided that the Law School's method of considering race in its admissions policy, in order to achieve a "critical mass" of minorities, was narrowly tailored to that goal. However, the Undergraduate School's use of a point system was not appropriate.

However, all of the justices did not agree that the University of Michigan's admissions policies were supported by a compelling state interest, or were narrowly tailored. Only two justices further opined that race should be considered because of the past and continuing limitations on educational opportunities for African Americans. Two justices dissented finding that there was no compelling state interest to support the University's considerations of race. One stated that schools are not the place to teach about matters of race. The other justice stated that the state's provision of a Law School was not a compelling state interest.

I have only given a sample of the reasoning in the decisions, in the interest

of space. But reading the justices opinions is a walk through the psyche of the American people about matters of race. The differences in the reasoning of the justices reflect the differing views held by the general public. Though we all want fairness, and believe in equal opportunity under the law, we do not agree on how to ensure that that opportunity is provided in a fair manner.

Importantly, though we disagree on this controversial subject, we do so without violence because we can utilize our legal system. Our system of government is founded on the peaceful resolution of these disagreements through an independent court system which allows us to survive the discussion of our differences. More importantly, however, our continued questioning of the treatment of minorities in this country tests the vibrancy of our ideals of fairness, opportunity and the human dignity of all of us. Perhaps, someday, our imperfect society will achieve these ideals.

Yesterday, Today

(continued from page 1)

its Golden Anniversary in 2004, a panel of distinguished Texans will explore the impact of the case from a variety of perspectives. The presentation will be interactive and will also permit audience participation.

Panelists include: Hon. Edward C. Prado, San Antonio, TX; Hon. Wallace B. Jefferson, San Antonio, TX; Ms. Rose Spector, Esq., Austin, TX; Mr. Marlen D. Whitely, Esq., Austin, TX. Thanks goes to Ms. Jane Macon, our host committee contact. Coordinators include JD members Judges Andre Davis and Sophia Hall.

Innovation

(continued from page 8)

All in all, it was an experience I would recommend to you if you have the opportunity to attend the next Court Technology Conference. For more information on CTC8 visit the website at www.ctc8.net.

**President Judge Ridgely is the Chair of the Judicial Division Technology Committee and Chair-elect of the National Conference of State Trial Judges.*

ABA President Archer Urges Federal Judges Pay Raise

October 14, 2003

Honorable J. Dennis Hastert
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

I urge you to use your leadership position to assure that a provision securing a 16.5% pay raise for Federal judges is included in final version of fiscal 2004 appropriations legislation that will be considered by the House and Senate before adjournment this session. The Senate version of the Commerce, Justice, State (CJS) bill, as approved by the CJS Subcommittee, contains the pay raise provision. Rather than advancing as a freestanding bill, we understand that negotiations are underway to combine the CJS bill with other remaining appropriations measures into an omnibus bill for final passage. The Senate leadership has pledged its support for the judicial pay provision; we urge you to do the same.

As you know, President Bush has explicitly endorsed this 16.5% judicial pay raise. His Administration shares our concern that the growing inadequacy of federal judicial pay impairs the stature and threatens the quality of our federal bench. The problem has been well documented by many sources. The Chief Justice of the

United States repeatedly has used his Year-End Reports to Congress to explain why judicial pay remains "the most pressing issue facing the judiciary." The prestigious National Commission on the Public Service (otherwise known as the "Volcker Commission") released a detailed report on the public workforce last January, which concluded that "judicial salaries are the most egregious example of the failure of Federal compensation policies." The ABA and the Federal Bar Association recently issued a joint report documenting the urgent need for judicial pay reform. I enclose the latter for your ready reference.

I am aware that a major objection to enacting the proposed judicial pay raise is that it will disturb pay parity between Members of Congress and Federal judges by breaking the linkage in base salary levels. I am also aware that the salaries of Members of Congress, like those of our federal judges, have not kept pace with inflation and have not been adjusted to maintain some kind of reasonable relationship with the private sector. In short, there is no doubt that Congressional salaries also need to be raised.

I urge you to consider two important points.

First, history has amply demonstrated that, since emergence of the notion of linkage of the base salaries of top-level federal officials in 1969, disparities in salary levels between Congressional members and judges have arisen over the years and have always been temporary. Pay parity has always been restored because it is rooted in the firm public policy conviction that there should be inter-branch pay parity for work of comparable complexity and importance.

Second, no matter the legislative vehicle used to provide public servants in upper levels of government with the pay raise they deserve, a temporary delinkage of Congressional and judicial salaries will

inevitably result because of the requirements of the 27th Amendment to the U.S. Constitution respecting congressional pay.

Objecting to the proposed 16.5% judicial salary increase on the basis of its effect on linkage, therefore, is short sighted. The 27th Amendment and history lead to the conclusion that delinkage is a prerequisite to any future Congressional salary increase, but that linkage will be restored promptly because of this nation's strong, ingrained belief in pay parity.

I promise that I will use the power of my office as ABA president to support all efforts to raise Congressional salaries to comparable levels. Should Congress decide to include a comparable pay raise for its own Members in the omnibus appropriations measure, the ABA will support such a move and publicly defend it. If, on the other hand, Congress decides only to enact a judicial pay raise this session and defer its own pay raise until next session or next Congress, the ABA will support this strategy and use its resources to work for passage of appropriate legislation at the appropriate time.

I hope you will do all you can to assure that Congress enacts legislation this session that includes, at a minimum, the 16.5% judicial pay raise provision that has been endorsed by President Bush and included in the Senate version of the CJS legislation.

I would be happy to discuss ways the Associations might be of assistance in this matter. Please feel free to contact me at any time.

Sincerely,

Dennis W. Archer

Justice Center

(continued from page 2)

All persons who have demonstrated a dedication to the improvement of the administration of justice are eligible. Nominees need not be lawyers, judges or members of the American Bar Association.

August 2004 will mark the fourth year in which the John Marshall Award is given by

the ABA Justice Center. The award is presented during the Annual Dinner in Honor of the Judiciary, set for Sunday, August 8, 2004 in Atlanta, Georgia, in conjunction with the ABA Annual Meeting.

If you would like to make a nomination, or have questions about the award or the process, please access the Call for Nominations and the Entry Form at

<http://www.abanet.org/justicecenter/pdf/04marshallawardform.pdf> or contact Marcia Kladder at the ABA Justice Center at (312) 988-5722 or kladderm@staff.abanet.org.

Nominations are due no later than Friday, March 12, 2004. See flier and form on page 17.

Technology Column – Tech Topics

by Meredith White
Technology Coordinator
Chicago, IL

As a member of the Judicial Division, there is a tremendous professional tool at your fingertips that may be hiding in plain sight: the ABA website. Located at <http://www.abanet.org>, the site is a vast resource for legal news, membership benefits, publications, and more. And, as of December 2003, the ABA home page is sporting a brand new look-and-feel to make navigation easier and put the most important information at your fingertips. In addition, the JD hosts its own website, where you will find more specific updates about division initiatives, conferences and committees, and upcoming events.

From the newly revamped ABA main site, you have even easier access to news, resources, and member groups. The site is organized into three main sub-divisions: a top navigation bar, a variable left-side news panel, and a static main content section. *Hyperlinks* located in each of these three sections will bring you to any point within the internal ABA site. The top navigation bar, which is constant no matter what ABA page you are viewing, contains the links most important to all ABA members, including information on how to join the association, Continuing Legal Education, and the ABA Store, as well as a site-wide search engine. Along the left panel, you will find important messages from the association President, the most recent

news releases, links to the ABA Journal, and upcoming association meetings and initiatives. Finally, the main content pane will bring you to any individual ABA member group (including the Judicial Division), as well as numerous other legal resources for members and the public.

On the interior pages of the ABA website, you will find the left news pane replaced with a variable navigation bar. Each separate site - for individual sections, divisions, committees, etc. - has its own bar on the left side of the screen for navigation within its sub-directory of the main page. (This bar operates in a *tree* structure; if a small arrow or plus sign appears to the side of an item, simply click on the icon to view the hyperlink sub-categories below.) This navigation bar - along with the static top navigation - provides access to any page within the larger ABA site.

To view the JD website, you can enter directly by typing <http://www.abanet.org/jd> into your browser address bar or you can navigate from the ABA homepage. (If you are using Microsoft® Internet Explorer, you can add a *bookmark* to the JD website on your "Favorites" list by selecting **Add to Favorites** under the Favorites menu. To return to the site on future occasions, simply select the "Judicial Division" entry from your Favorites menu.)

From the main JD site, you have easy access to information about conferences, publications, and related discussion groups. On the site's interior, there is a wealth of information to explore. To review the work of, or request membership in, a judicial conference, click the **JD Conferences** link on the left navigation bar and select the entity of your choice. To

explore and order Judicial Division publications, click the **JD Publications** link on the navigation bar. You can also find information about participation in discussion groups, including list-serves and a Web Board, tailored to judicial-centric topics. Additionally, entities like the JD Press Center and division calendar are easily accessible from the JD home. Each page also contains appropriate contact information for each entity if you wish to contact a JD staff member for additional information.

Incorporated within many of the division's pages are *downloadable* documents, forms or pamphlets that you can view on your desktop with word processing or file-viewing applications that you probably already use regularly. For example, current and past issues of online journals like *Judicial Division Record*, *Highway to Justice*, and *The Judges' Journal* are available from the main JD page to view and print. Such tools not only provide easy access to materials but also cut down on environmentally harmful paper waste from printing.

The division's website is updated frequently to reflect the newest and most up-to-date information. As events in the Judiciary change, so does the JD website, adapting not only to new information but also technological advancements, allowing you the most user-friendly and beneficial experience possible.

Perhaps the greatest feature of the World Wide Web is that its technical progression is constant and its capacity for change is unlimited. For this reason, the ABA and JD websites will continue to adapt to the changing needs of the association and its members, enabling

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Division Seeks Nominations

In accordance with Division Bylaw Article 5, Section 5.01, there shall be a Nominating Committee, composed of the Immediate Past Chairs of each of the six conferences and chaired by the Immediate Past Chair of the Division. The 2003-04 Division Nominating Committee members include:

Hon. James Scott Sledge, Committee Chair

Ms. Anne Kelley
Hon. Ruth Kleinfeld
Hon. Craig Enoch
Hon. Irene Keeley
Hon. Carolyn Engel Temin
Hon. Eileen Kato

The committee seeks nominations for the following vacancies:

1. JD Vice-Chair

In accordance with the rotation schedule, the NCSTJ has the nomination of this position.

2. National Judicial College Board of Trustees

In accordance with the rotation schedule, the NCALJ has the nomination of this position.

The committee will meet at the ABA Midyear Meeting in San Antonio, TX on Saturday, February 6 at 2:00pm. At that time they will review all nominations and make a recommendation to Council. The nominations will then be voted on at the ABA Annual Meeting in Atlanta, GA. Please submit nominations to Committee Chair Judge James Sledge or the Division Director Aimee Skrzekut Torres via e-mail at: torresa@staff.abanet.org or by fax at 312-988-5709.

Mediation for Judges Offered Again

by Judge Edward Schoenbaum
Springfield, IL

MEDIATION FOR JUDGES will be offered for the fourth time on March 1-5, 2004, at the United States District Court, 500 Camp Street, in New Orleans, Louisiana. It is once again sponsored by the American Bar Association, Judicial Division and the Section of Dispute Resolution. It will take place at the United States District Court with overnight accommodations across the street at The Whitney, a Wyndham Historic Hotel, 610 Poydras, New Orleans, Louisiana.

Acquire effective mediation skills while becoming a certified mediator. This course will meet the forty-hour training requirements in most states. Attend lectures, demonstrations, case study exercises, critiques by certified mediators, and practical exercises demonstrating the skills and abilities necessary to become a competent and effective mediator. Apply this knowledge and ability to mediation or settlement conferences.

Learn how to successfully shift the different roles of mediator and settlement judge while exploring the ways that mediation skills can improve judicial effectiveness. Fine-tune your skills in a highly interactive learning environment by focusing on the challenges and opportunities of mediation in the courts. Discuss ethical dilemmas, issues of confidentiality, and the importance of neutrality in helping the parties develop solutions that meet their interests and needs.

Explore the essential stages of mediation, as "assisted negotiation." Engage in exercises designed to guide you through the fundamental process of mediation - setting the stage, interactive listening skills, defining issues, identifying interests, transmitting information, communication skills, settlement strategies and agreement writing.

Practice the wide variety of mediation skills. Program components include: excellent presenters, demonstrations and group exercises led by skilled facilitators who will observe, critique and recommend improvements to individual techniques. This learning process allows each participant to conduct a complete mediation while learning from faculty, colleagues, and personal experience. Lively interactive presentations and personal coaching help refine your mediation skills.

Distinguished Faculty: Honorable Robert Burns, LA. District Judge (retired) New Orleans, LA; Honorable Morton Denlow, U.S. Magistrate Judge, Northern District of Illinois, Chicago, IL.; Professor Kim Kovach, University of Texas and Past Chair of the ABA Dispute Resolution Section, Austin, TX.; Honorable Michael Jordan, Circuit Court of Illinois (retired) Chicago, IL.; Professor Peter Robinson, Acting Director, Strauss Center for Dispute Resolution at Pepperdine University, Malibu, CA.; Prof. Edward Sherman, Tulane University School of Law; Honorable Sally Shushan, U.S. Magistrate Judge Eastern District of Louisiana..

Hotel Accommodations: The Whitney, a Wyndham Historic Hotel, 610 Poydras, New Orleans, Louisiana -- \$146.00 per night single or double plus 13% tax and \$1.00 per night.

The Educational Program will be conducted at the United States

District Court, 500 Camp Street.(across the street). Air travelers should arrive via New Orleans International Airport, shuttle is \$20.00. For more information about the program please contact Judge Ed Schoenbaum at edschoen@abanet.org or 217/524-7836 (phone), 217/524-7824 (fax).

REGISTRATION FORM MEDIATION FOR JUDGES

Please feel free to copy this and share with colleagues!

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____

E-Mail: _____

Title: _____

Court: _____

Year Judicial Service Began: _____

Affiliation: ABA Judicial Division ABA Dispute Resolution
 ABA Non-Member

The two most important things I want to learn and develop skills in are:

1. _____

2. _____

REGISTRATION FEES:

Received before January 15, 2004: Received after January 15, 2004:

\$700.00 ABA JD Members \$750.00 ABA JDMembers

\$750.00 ABA Members not JD Members \$800.00 ABA Members not JDMembers

\$800.00 Non-ABA Members \$850.00 Non-ABA Members

Fee includes: Refreshment breaks, lunches and all materials. Each registrant will receive a copy of Mediation: Principles & Practices and 350 pages of additional program materials. Do not miss out on this opportunity! We can only accommodate forty participants, so register early to reserve your place. A voucher is NOT payment and will not reserve a place.

Hotel Accommodations:

The Whitney, a Wyndham Historic Hotel, 610 Poydras, New Orleans, Louisiana 70130 504 207-0101 for reservations. Check out their website <http://whitney.wyndham-hotels.com>

I do not need hotel accommodations I do need accommodations at the Single \$146.00 Double Room \$146.00 single/double plus 13% tax and \$1.00 per night

Payment: Check CC #: _____

Expiration Date: _____ AMEX Mastercard Visa

Signature: _____ Date: _____

Make checks payable to ABA:

Judicial Division, 541 N. Fairbanks Ct., Chicago, IL 60611 Attn: Gilda Fairley

Time Off The Bench

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This canal cruising was not a speedy business. In the 7 days we only traveled about 125 miles from the South of Strasbourg near Colmar, through Strasbourg and into the Vosges Mountains via Saverne to the West. We only had to motor 5 hours a day to keep the batteries charged, and even with the many locks we made enough time to have a layover day in Saverne, keeping everyone happy with shopping and visiting the nearby castle. One of the challenging things about the boat was that it did not respond real well to the helm. Backing was particularly interesting. However, our captain really did know what he was doing and never ended up crosswise in the canal like other obvious rookies we saw. By spending some of the evenings in marinas we were able to regularly replenish the water supplies and use shore power for nighttime electricity. Everyone had a job on the boat. Our job assignments were: captain; navigator; tour

director and ladder monkey (me); linesmen and lineswomen); bike scout; deck crew; galley slaves; and beautiful woman on the stern of the boat reading a book.

Undoubtedly, the most fun was the evening dinners. We had scouts out every afternoon looking for the best village to be in with the most interesting restaurants. We never had a bad one. In one remote village we ended up at a converted farmhouse barn restaurant where we were required to raise our hands as to whether we wanted a hot or cold dinner. Certainly a modest menu! The dinner was terrific and one which none of us will ever forget.

The four couples each did different parts of Europe before and after the cruise. As for Mary Ann and I, we flew into and out of Frankfurt. This was our first experience driving in Europe. Those silver BMW's, Audi's, and Mercedes sure do blow by an Opel Astra station wagon. I thought I was really moving on the autobahn at 80 to 90 mph, but little did I know the standard in the fast lane was 120 to 150 mph. You do get an appreciation that Europeans drive a lot better than folks do in the United



States. Stay in the slow lane if not passing! Our before and after travels included Germany, Austria, Liechtenstein, France, Luxembourg and Switzerland, but all that fun will have to wait for the next article. Foreign travel really is fun. Driving is easy and the food is wonderful. Give it a try.

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

Director's Column

(continued from page 4)

important to the improvement of the administration of justice, judicial pay, sentencing, court financing, judicial selection, jury reform....the list goes on and on. The ability of the Division to engage in short and long-term planning to achieve Division, Conference and ABA-wide goals is more than noteworthy— it is phenomenal!

Still a skeptic? Effective JD planning directly led to greater partnering and more effective programming. In 1996, Division programming was independently produced. By 1999, Conferences began cosponsoring and partnering with other internal and external groups to a greater extent. Today, there is widespread Division and Conference support for programming and outreach as the Division

continues to produce a number of programs with multi-Conference, ABA entity and external entity participation. (Mediation for Judges, Judges Network, Joint programming with TTIPS, YLD, Litigation, the Commission on Racial and Ethnic Diversity, Section of Administrative Law and Regulatory Practice, IR&R, National Judicial College, State Bar Associations, International Bar groups—the list expands) In fact, Division leaders are contributing their expertise throughout the Association and to external groups serving as the voice of the judiciary. These partnerships have also extended to Division diversity initiatives developed since 1996. By 1999, the Division began planning the Minority Externship Program with the Section of Antitrust Law and the Judicial Clerkship Program (JCP) with the Commission on Racial and Ethnic Diversity in the Profession. In 2000, the Division and the Commission received the

ABA Meritorious Service Award for Excellence to recognize JCP. Preliminary reports suggest that as many as five students were selected as clerks by Division members after their participation in this program.

In conclusion, the Division is producing more substance with fewer resources than ever before. Greater efficiency, increased cooperation and enhanced participation have transformed its work. As 2004 unfolds, we are in a position to realize things that seemed impossible just a few short years ago. I am energized by this and believe that you too must now be a believer that less is more. Special thanks to the Division's strong leaders and amazing staff who make this success possible!

To become involved in the work of the Division or to get more information, please contact me: torresa@staff.abanet.org telephone 312/988-5687.

Technology

(continued from page 13)

invaluable tool for disseminating information to large audiences, serving not only to inform ABA and Judicial Division members

more access to more information than ever. Indeed, the web is an

about our association but also to inform the public about the important work that the association is doing on a daily basis.

If you have any questions about the ABA or JD websites, or any new ideas for our division's page, please feel free to contact me via e-mail at whitem@staff.abanet.org.

Midyear Meeting

(continued from page 8)

systems, often being sentenced to jail terms rather than referred to needed treatment, and to provide funding for public mental health systems.

The Young Lawyers Division has introduced Report 109 urging federal, state and local adoption of laws designed to help prevent school violence and to provide training and education for children, parents, teachers and school administrators.

Civil Rights

The Section on Individual Rights and Responsibilities has filed three Reports calendared for House debate in San Antonio, and each may draw opposing Reports from other quarters. Report 103D, cosponsored by the Family Law Section, opposes any federal law which would restrict the ability of a state to prescribe the qualifications for a civil marriage between two persons within its jurisdiction, or to give effect to a civil marriage validly contracted under the laws of another jurisdiction. Report 103B endorses the United Nations Declaration of Commitment on HIV/AIDS. It also urges ABA lobbying support for implementation of federal government initiatives consistent with science-based prevention, care, support and treatment objectives in furtherance of strengthening the ABA's policy statements adopted by the House in 1989 and 1990 on the civil rights of persons infected with HIV virus or diagnosed with AIDS. Finally, Report 103C urges Congress to address inadequate health care for American Indians and Alaska Natives through legislation reauthorizing the Indian Health Care Improvement Act.

The intellectual Property Law Section has resubmitted Report 108 supporting enactment of federal legislation amending Section 45 of the Lanham Act, 15 U.S.C. §1127, protecting an individual's right of publicity and identity from commercial exploitation. ABA member Darrell Stutes of Louisiana has returned with Report 112 to urge the ABA to adopt a policy supporting the right to life of unborn children, a measure which in the past has been postponed indefinitely.

Law Schools and legal Education

While it is usually left to the ABA Standing Committee on Legal Education and Admission to the Bar (the "Committee") to determine law school accreditation matters, under terms of a U.S. district court consent decree, there is an appellate remedy for aggrieved parties in the House of Delegates. The Committee's decision not to grant full approval to the Western State University School of Law in Fullerton, CA has been appealed to the House, which must conduct a trial *de novo* of the issue. Imagine a trial with witness testimony before 535 judges, some of whom may leave the room for coffee and comfort breaks during the proceedings. Often these matters are calendared but are later resolved, although the case which led to the aforementioned consent decree was tried before the House during a Kansas City snowstorm at the 1994 Midyear meeting.

The House will also consider the Standing Committee on Legal Education's Report 110 recommending adoption of a mandatory continuing legal education rule requiring credit for courses on the topic of eliminating bias in the legal profession, and another recommending reaccreditation of the specialized Family Law Trial Advocacy program.

Uniform State Laws

At one time the National Conference of Commissioners on Uniform State Laws was part of the greater ABA. Like the Conferences of Chief Justices and the American Law Institute, to name just two, the Conference left to become a free-standing entity. Under terms of an agreement with the ABA, all uniform state laws are submitted to the ABA House for approval or disapproval. It is often difficult for the House to resist tinkering and fine-tuning submissions, and sometimes joint task forces emerge to amend Conference submissions. At Midyear, the House will consider the following: (1) Report 111A, revising Article 7 of the Uniform Commercial Code relating to electronic transactions involving documents of title; (2) Reports 111B and 111C approving, respectively, amendments to the Leases Article (2A) and the Sales Article (2) of the Uniform Commercial Code, both promulgated jointly by the American Law

Institute and NCCUSL; (3) Report 111E adopting the Uniform Estate Tax Apportionment and Uniform Probate Code §3-916 as both a stand-alone act and amendment of the Uniform Probate Code pertaining to apportioning tax liability among beneficiaries; (4) Report 111D adopting the Uniform Apportionment of Tort Responsibility Act; and (5) Report 111F adopting the Uniform Environmental Covenants Act which provides for recording and enforcement of use restrictions on contaminated properties during the period of clean-up, irrespective of contrary common-law doctrines.

Various

The ABA Commission on Lawyer Assistance Programs has introduced Report 114 adopting the Revised *Model Lawyer Assistance Programs*, 2004, to assist local and state bar associations set up programs to identify and help chemically dependent and impaired lawyers, judges and law students.

The Section of International Law and Practice has offered Report 106A urging all parties to the North American Free Trade Agreement insure that non-parties may be admitted before Chapter 11 Tribunal proceedings, and Report 106B supporting the creation of a "Democracy Caucus" in the United Nations.

Copies of many of these documents are available from any Judicial Division members of the House, and may be posted on the ABA website as the Midyear meeting draws closer. Consider observing a session of the House or even signing up to address the House on any topic of interest to you. Simply ask one of the members of the Delegation and he or she may arrange for you to have the privileges of the floor.

Fred Rodgers is past Chair of the Judicial Division, a Member of the ABA Board of Governors and serves as Liaison to the National Conference of State Trial Judges. He has been a member of the House of Delegates since 1993.



Call for Nominations

This award is named in honor of 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 John Marshall Award was established by the American Bar Association Justice Center to recognize those dedicated to the improvement of the administration of justice.

The fourth annual presentation of the John Marshall Award will take place at the ABA Judicial Division 2004 Annual Dinner in Honor of the Judiciary.

Criteria for Selection

The John Marshall Award may be presented to any individual who has made a positive national impact on the justice system.

Nominees may be non-lawyers as well as lawyers. Eligibility is open to any individual responsible for extraordinary improvement to the administration of justice in the categories of:

- *Judicial Independence*
- *Justice System Reform*
- *Public Awareness about the Justice System*

Nomination Guidelines

Nominations should include:

- Resume or biographical sketch
- Description of the contribution and impact
- Letters of support (limit of 5) for the nomination
- The name of the person(s) or organization making the nomination
- Any other information deemed pertinent by the nominator, e.g., news items, video, program materials, etc.

Nominations and supporting documentation should be sent to:

ABA Justice Center
John Marshall Award
541 N. Fairbanks Court, 13th Floor
Chicago, IL 60611

Telephone: 312/988-5722
Fax: 312/988-5709

The deadline for nominations is March 12, 2004.

JUSTICE CENTER
AMERICAN BAR ASSOCIATION

This award is made possible with the generous support of LexisNexis.

**ABA Justice Center
John Marshall Award
Entry Form
Deadline March 12, 2004**

NOMINATOR INFORMATION:

Name: _____

Business/Firm: _____

Address: _____

City, State, Zip: _____

Telephone: _____ Fax: _____ Email: _____

NOMINEE INFORMATION:

Name: _____

Business/Firm: _____

Address: _____

City, State, Zip: _____

Telephone: _____ Fax: _____ Email: _____

Nomination Materials Checklist

- Resume or biographical sketch of nominee
- Description of the contribution and impact
- Letters of support for the nomination (limit of 5)
- Any other information deemed pertinent by the nominator, e.g. news items, video, program material, etc. Please specify _____

Nominations and supporting documentation should be sent to:

***ABA JUSTICE CENTER
JOHN MARSHALL AWARD
C/O MARCIA KLADDER
541 NORTH FAIRBANKS COURT
Chicago, IL 60611
Telephone: 312/988-5722
FAX: 312/988-5709***

WE ARE MOVING...



The American Bar Association Justice Center will be moving May 13, 2004.
Our office will be closed Friday, May 14, 2004 and will re-open Monday, May 17, 2004.

Our telephone numbers and e-mail addresses will remain the same.

If you have any questions please contact your Conference Administrator.

New Address:

American Bar Association
Justice Center
321 N. Clark, Mail Stop 19.1
Chicago, IL 60610

Appellate Judges News

American Bar Association

Appeals in Cyberspace and The Paperless Court of Appeals

by Chief Judge Philip G. Espinosa
Arizona Court of Appeals, Division Two

It's probably fair to say courts are generally not on the forefront of change, especially when it comes to technology. In contrast, consider commerce and industry today in terms of electronic transactions, automated business management, and Internet presence. In accordance with visionary supreme court strategic planning, the Arizona Court of Appeals, Division Two, has broken with tradition and embraced technology, particularly the Internet, and developed a substantially "paperless environment" to radically improve the efficiency of the court, provide better service to the public, and help reduce the cost of justice. In accomplishing these goals, Division Two, located in Tucson, is well on its way to becoming the first appellate "paperless court" in Arizona and possibly the nation.

Foremost in achieving this transformation has been the court's adoption of a comprehensive electronic document management system (EDMS) for processing and storing documents digitally in place of voluminous paper files requiring labor intensive manual processing and retrieval. The EDMS is integrated with all other court information systems to allow court personnel to view and work with all documents in a case electronically on their desktop computers, regardless of how they were delivered to the court. The documents are viewed at multiple locations simultaneously and printed out if desired. After conversion to the EDMS, a number of related projects were phased in over time to implement the "paperless court."

ODSPlus An electronic case management system (ECMS) developed in-house, tracks, produces, and maintains all case "documents." It utilizes a simple "web browser" user interface and is fully integrated with both electronic filing (e-filer) and the EDMS.

Imaging Documents that come to the court in traditional hard copy media are routinely and efficiently scanned, automatically converted to digital text format, and stored in the EDMS.

E-filer Electronic filing is the gold standard for court automation. Any Arizona attorney can access this user-friendly system, with no special software or training, and transmit their filings directly to the court over the Internet, saving substantial time and money. Once an attorney e-files, he or she can view all electronic filings in that case from the convenience of any computer with Internet access. In 2003, Division Two has received over 150 e-filings every month, and the number is growing.

Electronic Blueback This system provides inter-court data transfer, essentially e-filing between courts. The trial court transmits the entire court record and index electronically to the court of appeals in lieu of physically transporting large and voluminous paper records on a weekly basis.

E-Distribution Orders, notices, and decisions are now "paperlessly" delivered via the Internet not only to litigants but to all recipients on the case distribution list. This results in great savings of time, labor, and money, eliminating the need to print, copy, collate, stuff envelopes, affix labels, and pay postage. It also reduces delay, improves communication between the court, litigants, and the public, and greatly enhances the efficiency of court operations.

e-PR When petitions for supreme court review of criminal cases are filed in

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Canadian/American Appellate Education Seminar Convenes in Victoria

by Associate Justice Thomas E. Hollenhorst
California Court of Appeal, Fourth Appellate District, Division II

It would be hard to imagine a better setting for an educational joint venture between the Canadian National Judicial Institute and the American Bar Association than Victoria, British Columbia. It is a quaint city, started by fur trappers and further developed during the Canadian Gold Rush. Immigrants from Europe and those still looking for fortune moving north from the United States settled it. The town is easy to navigate as the streets are well signed and laid out in grid like fashion.

Our program was conducted from October 26-29, 2003, at the Empress Hotel. It is a turn of the century monument that proudly stands in lush garden like grounds directly across the street from a charming wharf area containing a mixture of private yachts, commercial fishing vessels and excursion vessels. An added treat was a seaplane port featuring interesting multi-passenger aircraft. In short, it was a fabulous location with fairly good weather.

The planning for this conference was extensive and extraordinary. From a seed of an idea that began to germinate two years ago, a planning team of appellate judges and academics from

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JUDICIAL
DIVISION
Appellate Judges Conference

CHAIR'S COLUMN



by Judge James
Wynn, Jr.
Raleigh, NC

Forging the Future of AJC and Appellate Education

Last year, nearly half of the appellate judges in the United States attended one of our educational programs. No doubt that with the turnover in the judiciary and new issues constantly arising, the need for continuing education is greater than ever. That's why I am particularly pleased to share good news on the progress of our initiatives to forge a new future for appellate judicial education.

Under an agreement brought about as a result of the negotiating skills of the AJC Leadership (particularly Justice Craig Enoch of the Texas Supreme Court) and ABA Staff members and liaisons (particularly ABA Board of Governor members William Robinson and Judge John Vittone), we embarked on a bold adventure to greatly enhance the future of quality appellate judicial education programs. In that agreement, the AJC decided to form a 501(c)(3) nonprofit

corporation entitled the "Appellate Judge's Education Institute" (the Institute) which would undertake fund-raising activities to finance the provision of appellate education programs for the AJC, as well as its committees: Council of Chief Judges of Courts of Appeal (CCJCA); Council of Appellate Staff Attorneys (CASA); and Council of Appellate Lawyers (CAL). After site visits to several law schools including NYU and Virginia, Southern Methodist University's Dedman School of Law in Dallas was selected as headquarters for the Institute. The agreement requires that at least half of the board for the Institute be members of the AJC.

During the first weekend of November 2003, the Executive Committee of the AJC met in Dallas with the Chairs and Chairs-elect of each of its committees entities, CCJCA, CASA and CAL. Members of the Institute Board also attended, including Bill Robinson and Judge John Vittone as well as the Chair of the National Conference of Appellate Court Clerks and the Chair of the Spencer-Grimes Committee.

In short, there are two major classifications of monies utilized by the AJC to accomplish its work. The basic support budget of the AJC which covers the governance expenses of the AJC, CAL, CASA and Chiefs executive committee functions is funded by a \$25,000 allocation from the ABA's general revenues. In addition, the AJC receives approximately

\$35,000 annually from dues revenues. These funds totaling \$ 60,000 support the governance meetings, teleconferences and publications of AJC and its committees.

The AJEI will fund educational programs for the AJC through a draw on the ABA Judicial Improvement Fund per the terms of the signed agreement between the ABA Board of Governors and the Institute. The Institute will also rely on grants and other fund-raising tactics to support educational programs.

Perhaps the most important accomplishment of the Dallas meeting was the consensus agreement of the AJC, the Institute, and our committees to undertake one major continuing appellate education program in the fall of 2004. The program committee, chaired by Justice Denise Johnson of the Vermont Supreme Court and Judge Harris Hartz of the 10th Circuit Court of Appeals, will coordinate up to a week-long series of educational programs to be highlighted by a major series of events during the weekend with the hopeful inclusion of a United States Supreme Court Justice. This program will be the marquee event for the AJC and Institute for 2004 with the aim of pulling together judges and appellate members from across the nation. Our aim is to "kick off" the start of the Institute and bring it to the forefront of appellate judicial education planning in the nation. You'll hear more on this later . . .

Cyberspace

(continued from page 20)

Division Two, they, along with the entire record on appeal, are provided to the Court via secure Internet access. A special notice and "hotlink" are electronically transmitted to the clerk of the supreme court who then distributes the link to staff attorneys and justices, enabling them to instantly access all case documents at any time on their desktop PCs.

Public Access A wealth of information, including comprehensive real-time docket and calendaring, is available on Division Two's interactive web site. As new public access rules are promulgated by the Arizona Supreme Court, Division Two anticipates providing open Internet access to case files in accordance with those rules.

The most significant advance may be one that is not technological at all but involves the internal culture of the court. Division Two's judges, perhaps more than any other court personnel component, found themselves reluctant and apprehensive about "going bare," that is, sans paper. A virtual paradigm shift in attitudes and work habits throughout the court was necessary and gradually occurred as each new system was tested and deployed. Ergonomic LCD computer monitors were installed and greatly eased the transition to viewing everything electronically. As initial resistance to change was overcome, benefits were immediately realized - many that are now in the "how-did-we-ever-get-by-without-it?" category - such as instantaneous and simultaneous access to the entire record on

appeal with a few clicks of a computer mouse, the ability to access a file or document from a home PC or a laptop computer on the road, and court-wide liberation from constant paper shuffling. But the benefits to the legal community and public are even greater. The "paperless court" is here to stay.

Editor's Note: In October 2003, the Arizona Court of Appeal, Division Two, made a feature presentation on "Building the Paperless Court" - An Appellate Odyssey" at the 8th National Court Technology Conference in Kansas City, Missouri. Chief Judge Espinosa may be contacted for more information on this topic at espinosa@apltwo.ct.state.az.us.

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Canadian/American

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both countries worked together with a common goal of producing a conference on topical issues affecting appellate judges.



A "royal" welcome was extended to Chief Judge Chris Armstrong and his wife Liz by a Queen Elizabeth impersonator at the AJC Education Seminar in Victoria, B.C.

Conceptually, the program was planned to provide a quality educational offering in a comparative theme to allow for cross-cultural exchanges between judges of both countries. Presentations included: Appellate Judging as a Craft, Reproductive Technologies, Comparative Constitutional Law Issues, and Judging in an Age of Media Scrutiny: How to Cope. Most of these topics were taught through a combination of panel discussions and table exercises. Judges attending the program were assigned seats at round tables to ensure that Canadian and American jurists sat in balanced numbers at each table. Discussions were quite lively during the

time set aside for problem resolution. Reports of solutions to issues raised frequently highlighted the different approaches between Canadian and American jurisprudence.

The social activities were equally eventful. On the night of our arrival, we were treated to a visit at Government House where the Honourable Iona Campagnolo, Lieutenant Governor of British Columbia, met us. She is an appointee of Queen Elizabeth and the visit to the magnificent building was truly inspiring. The facility is regal in its appointments, and the evening certainly had a royal flavor.

Our second social event was a group dinner at a local country club. The event also carried the royal theme as we had a surprise visit from Queen Elizabeth's look alike, complete with crown, who entertained us with her majesty. The entertainment for the evening was a Celtic musical group, Tiller's Follie, who sang and played their various instruments. Two Irish Step Dancers, who performed flawlessly, accompanied them.

The reports from attendees of the program suggest that all took home valuable insight about the topics studied. Most importantly, judges reported that the opportunity to mix with their colleagues from the North was an invaluable experience. Many want to know when the next joint educational program would occur.

EDITOR'S NOTE

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

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

All persons interested in submitting articles for inclusion in future issues of the *Judicial Division Record* should contact Hon. Martha Curtis Warner, Court of Appeal, P.O. Box 3315, West Palm Beach, FL 33402 E-mail: warnerm@mail.flcourts.org (P) 561-242-2023 (F) 561-242-2100 or contact Paula Nessel at ABA/Judicial Division, 541 N. Fairbanks Court, Chicago, IL 60611; Phone: 800/238-2667 x5450; Fax: 312/988-5709; E-mail: paulanessel@staff.abanet.org

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ARTICLE SUBMISSION DEADLINES

Spring 2004: Wednesday, February 11

Summer 2004: Wednesday, May 5

Chief Judges Gather in Boston For Annual Conference

by Chief Justice Christopher Armstrong
Appeals Court of Massachusetts
President Judge Joseph A. Del Sole
Superior Court of Pennsylvania

The Chief Judges held their 24th Annual Conference in beautiful, historic Boston October 8-11. Hosted by Chief Judge Christopher Armstrong and his wife Liz, the Conference was blessed with beautiful Indian summer weather and the nightly excitement of the Red Sox locked in end-of-season contention for a Championship that tradition dictates they will almost, but cannot, win.

The Education Committee, chaired by President Judge Joe Del Sole (PA), together with Chief Judges Tom Cane (WI), Sandy Brook (IN), Gene Pigott (NY 4th Div.), Gene Thibodeaux (LA, 3rd Cir.), and Chris Armstrong (MA), put together an exciting program featuring Brown Prof. Sergei Khrushchev, son of Nikita Khrushchev, on the difficulties facing our attempts to democratize peoples with fundamentally different histories and cultures from ours; United States A.I.D. Director Gerald Hyman, on the strategies employed by the U.S. government to try to build democratic institutions and independent judiciaries abroad; bioethics experts Nancy Dubler of Montefiore Medical Center in Manhattan and Fr. John Paris of Boston College on a wide range of issues from decision-making in end-of-life care to legal problems awaiting judges in public health emergencies (quarantines, mass immunizations, etc.); and former Chief Justice Joseph Weisberger of Rhode Island on a review of last term's most important Supreme Court cases. Justice Weisberger then chaired a panel discussion

(with panelists Deborah Goldberg, Director of the Brennan Center's Democracy Program at N.Y.U. Law School, Prof. Edward Foley of Ohio State University, Justice James Wynn (N.C.), Chairman of the Appellate Judges Conference, and Lawrence Mandelker, Esq. of New York) on the impact of Republican Party of Minn. v. White on Judicial elections, appointments, and confirmations.

The program included Dr. Mahzarin Banaji of Harvard's Department of Psychology, with a convincing interactive demonstration that even those who, like judges, have been specially trained by education and experience to avoid stereotyping, nevertheless bring to our work deep seated, hidden prejudices that can distort our perceptions of reality. A panel discussion on the always relevant subject of collegiality, was chaired by Justice Kermit Lipez, U.S. Court of Appeals, 1st Cir. with panelists, Chief Judges Art Scotland, Gene Thibodeaux, and Sid Eagles. Prof. Corrine Cooper conducted an interactive demonstration of the ways in which audiences' responses to public speakers are affected dramatically by factors of voice, language, expression, gesture, posture, proxemics, and environment, that are subject to analysis and capable of control. The program was highlighted by a lunch address from Dr. Ronald Cass, Boston University Law School, on "The Rule of Law in America", a thoughtful analysis of the meaning of the phrase "rule of law", and how well we live up to the concept. He autographed copies of his book of the same title.

The Boston Conference was set against a historical backdrop of Boston's large role in the founding of the nation: Highlights included an address by Massachusetts Supreme Judicial Court Chief Justice Margaret H. Marshall, on the contribution of John Adams to the writing of the Massachusetts Constitution (1780) and of the nation's Constitution (1789) and

particularly the creation of separate branches with elaborate checks and balances. The judges also enjoyed an extended tour of the USS Constitution, the world's oldest commissioned warship, which included the roar of cannons at the striking of the colors and a tour of all decks of the ship, led by marines in 1812 dress uniforms, who described the complex workings of the ship in battle conditions. The ship tour ended with a traditional New England clambake in the Constitution Museum. Other events included duck tours (amphibious) of Boston and the Charles River basin, and a walk through the historic North End, from Paul Revere's house to the Old North Church.



The King and his Court: Council of Chief Judges President Tony Cardona (5th from left) welcomes his colleague Chiefs to the 24th Annual Conference held in Boston in October. From Left to Right: Justice Clint Peterson, ret. (CA), Chief Judge Tom Cane (WI); Judge Pat Schott, ret. (LA); Chief Judge Rosemary Sackett (IA); Presiding Justice and Council President Tony Cardona (NY); President Judge Joe Del Sole (PA); Chief Judge John Irwin (NE); and Presiding Justice Gene Pigott (NY)

At the concluding business meeting, Stephen J. McEwen, Jr., Pennsylvania, was elected President, John Irwin, Nebraska, President-Elect, and additional officers and Executive Committee members were chosen. That evening, the conference ended with the annual dinner in the Museum of Science, replete with a swing band and a 180B view of the Charles River and the Boston skyline.

Lawyers Letter

American Bar Association

International Perspectives

The Lawyers Conference is pleased to introduce the first of two new *International Perspectives* articles relating to justice and the administration of justice in Kosovo. *International Perspectives* features articles written by or about attorneys, administrators and others within the LC community who are working or have worked with other countries abroad to improve their judicial systems. *International Perspectives* also features articles by or about people who have interesting experiences to share regarding the administration of justice around the globe.

If you or someone you know has had an interesting experience or has held a position abroad that touches on the administration of justice, please contact Emily J. Barnhart at: barnhart@ballardspahr.com; (215) 864-8276, to share your story with the Lawyers Conference. We would love to hear from you.

Justice in Kosovo



by Jeffrey Locke
Kosovo

I am currently working for the United Nations Mission in Kosovo (UNMIK) in the Criminal Division of the Department of Justice. I assist international prosecutors in developing their cases. The role of the Criminal Division and International Prosecutors is twofold: (1) to prosecute cases where local prosecutors are unable to do so in light of threats to their safety or because of the appearance of bias due to the conflict; and

(2) to assist in the transition process, which involves preparing the local prosecutors to handle all types of future cases.

The war in Kosovo ended in June 1999 after the NATO bombing ceased and the Yugoslav forces left Kosovo. At that time, the international community entered Kosovo and started the rebuilding process within Kosovo. Kosovo is currently run by the United Nations. The final status of Kosovo is still undecided. The primary issue is whether it will remain part of Serbia and Montenegro, if so, in what manner, or if Kosovo will become independent.

International prosecutors and international judges began arriving in Kosovo in 2000. International prosecutors and judges came to Kosovo to guarantee fair trials to both the victim and the accused and to ensure the prosecution of all cases. The Criminal Law in Kosovo is derived from five separate sources: 1) the Criminal Code of Kosovo; 2) the Criminal Code of Serbia; 3) the Criminal Code of the Former Yugoslavia; 4) UNMIK Regulations promulgated by the Special Representative of the Secretary General; and 5) international law, such as the European Convention of Human Rights and other international treaties. A new Provisional Criminal Code and Law on Criminal Procedure will enter into force in April 2004.

I have been assisting prosecutors for about nine months. I assist prosecutors by working with the police before an arrest is made. After an arrest is made, I help prosecutors prepare the case for trial by drafting court documents, researching different aspects of local and international law and discussing court strategies. The three main types of cases handled by international prosecutors are War Crimes/Ethnic Murders, Terrorism and Organized Crime. Although the war ended more than four years ago, war

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CHAIR'S COLUMN



by Justin Connor
Washington, DC

The 2003-04 bar year is one of growth, new opportunities, important projects and improving our services to members for the Lawyers Conference (LC). We are very pleased to report that a new Conference Admin-

istrator, Gilda Fairley, has recently come on board to assist the Lawyers Conference in organizing our many programs and activities. Gilda did an outstanding job in filling in for this position in the interim period while we were without a Conference Administrator and we are deeply appreciative to her for the excellent work she did on our behalf.

The LC continues to benefit from a terrific chair of our Publications Committee, Ms. Emily Barnhart, an attorney in the Philadelphia office of Ballard Spahr Andrews & Ingersoll, LLP. Emily has ensured that the LC publications continue to be timely, of very high quality and include photos and interesting stories about all Conference activities. Immediate Past Chair Anne Kelley, an attorney at Microsoft, heads up the Membership Committee and has done similarly excellent work. Anne has developed an exciting new recruitment initiative which offers a round-trip airfare to the site of the next ABA meeting for the member who is personally responsible for bringing in the most new members to the Conference.

Membership currently remains strong, but we can always do better. To report any new members that you have brought into the LC, contact Anne at: annemu@microsoft.com

Cheryl Cesario, our recently elected Secretary-Treasurer, has two important responsibilities. First, Cheryl is directing a project to review, update and revise the 1985 ABA Guidelines on Judicial Performance Evaluation programs. We are pleased to report that this review will be done under the auspices of the National Judicial College, under the personal direction of its President, the Honorable William Dressel. Cheryl is working closely with Bill to look at how at important changes in how judicial performance evaluation is being done nationwide and how the ABA guidelines on this subject should be updated in order to get them re-approved as official ABA policy. Cheryl's committee plans to have the updated ready for approval at the August 2004 meeting of the ABA House of Delegates. To get involved with this project, contact Cheryl at: ccesario@sbcglobal.net

Secondly, Cheryl is responsible for coordinating the LC role in the ABA's upcoming commemoration of the 50th anniversary of the U.S. Supreme Court's decision in *Brown v. Board of Education*. The Judicial Division, including the LC, has a leading role in preparing for what promises to be an outstanding series of events and programs at our 2004 ABA meetings.

A major initiative of the current Judicial Division Chair, Rick Bien, past chair of this Conference, is a National Conference on Judicial Outreach. This conference will take place in conjunction with the ABA

Young Lawyers Division spring conference, to be held April 29 – May 2, 2004 in Memphis, Tennessee at the historic Peabody Hotel. Furthermore, Division officers should save the dates April 15-18, 2004, as that is when the Division will be holding its annual planning meeting in Tempe, Arizona.

I have some exciting personal news to report. I have been awarded a Fulbright fellowship starting in January 2004, under the auspices of the U.S. Department of State, to teach law overseas for one semester. I will be taking a six-month leave of absence from my present position with the U.S. Federal Communications Commission to travel to Beirut, Lebanon where I will teach international business law at the Sagesse University Faculty of Law. I am therefore unable to attend the upcoming ABA Midyear Meeting in San Antonio (the first ABA meeting I have missed in six years). In the meantime, I am therefore turning over the reins of leadership for the remainder of this bar year to Chair-Elect, Mr. Jack Brown of Tulsa, OK. I know that the Conference will be in very good hands and that he will lead us admirably during this important time. I will miss you all at the Midyear Meeting, but look forward to seeing you at the 2004 Annual Meeting in Atlanta, and hope to have fascinating tales about life in present-day Beirut and what life is like there since the end of the brutal and destructive 16-year Lebanese civil war in 1991.

I appreciate all of the efforts of the LC officers, the Executive Committee, each of our committee chairs and members, as well as the staff who work hard to ensure the success of our meetings and activities. Thank you to each and every LC member for your dedication to the principles of access to justice for all, the rule of law, independence of the judiciary and the fair administration of justice.

EDITOR'S NOTE

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

All persons interested in submitting articles for inclusion in future issues of the *Judicial Division Record* should contact Ms. Emily Barnhart. E-mail: barnhart@ballardspahr.com, Publications Chair, 2100 Delancy Street, Apt. 1E, Philadelphia, PA 19103; (P) 215-864-8276; (F) 215-864-9808 or contact Gilda Fairley at ABA/Judicial Division, 541 N. Fairbanks Court, Chicago, IL 60611; Phone: 800/238-2667 x5689; Fax: 312/988-5709; E-mail: fairleyg@staff.abanet.org

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ARTICLE SUBMISSION DEADLINES

Spring 2004: Wednesday, February 11

Summer 2004: Wednesday, May 5

Court Information Sharing Is Tall Order

by Victoria S. Cashman
Middletown, Ohio

You hear it discussed all over the courthouse...justice system information integration. And you know it means creating an information environment where courts, government agencies, attorneys and other stakeholders, including the public, can share accurate and appropriate details in order to administer justice effectively.

Sounds great. But you also know that translating the concept into working models is a tall order. But it is being done. At the ABA Annual Meeting, a panel of judicial leaders—who also lead their courts' technology committees—showed how this catch phrase for future justice is becoming reality.

Every court may vary in caseload type, organization, staffing, even political environment, noted Judge Herbert Dixon. But peel back the individuality that covers the jurisdiction, and discover many similar technology upgrading and maintenance issues.

Judge Dixon held out his own District of Columbia Superior Court as a model. Several years ago, none of the court systems—including more than 18 computer databases, some more than 20 years old—was integrated. Each system required separate data entry. A report often meant querying every data bank. Answering ad hoc queries was, at best, difficult. The impact on productivity was clear.

So was the impact on effective justice, Judge Dixon added. For example, the court couldn't readily identify and track persons and families involved in multiple cases. And the lack of integration hampered cross-division initiatives within the court and inter-agency data sharing.

"These are the issues that are recurring in courts across the country," he said.

Fortunately, some best practices for creating technology solutions are evolving, Judge Dixon added.

The most vital first step to achieving a successful technology solution is securing

substantial cooperation from judges and elected clerks who manage court records and financial transactions, emphasized Justice Frank Sullivan of the Indiana Supreme Court.

Before his Indiana Judicial Technology and Automation Committee set its long-term agenda on uniting Indiana court systems, it set out to win buy-in from trial court judges and clerks by showing them a glimpse of the possible future.

Using a state grant, the committee arranged e-mail and Internet access for all Indiana trial court judges and clerks who did not have it. They provided surplus computers to trial courts, and state vocational/technical colleges supplied basic computer classes. Modest funding from the state legislature made the LexisNexis™ services available for all trial court judges and county clerks.

These initiatives ensured enough backing that the legislature established a court filing fee of \$7 per case dedicated to the technology project, providing it an annual cash flow, Justice Sullivan reported. Sullivan's committee is optimistic that the new Indiana court management system will be deployed in at least one test county by year's end and in three pilot counties—including Indianapolis—by early 2004.

Another important tenet in court technology implementation is designing a system with enough functionality and scalability to accommodate the needs of everyone involved, including judges, attorneys, the public as well as court administrators and staff, says retired Judge Judith Ford.

The system designed for the Alameda County, CA, courts can accommodate, among other things, the capturing of clerks minutes—real-time—in the courtroom, universal case numbering, and case filing in all county court locations, regardless of where the case is to be heard. The courts' Web site was enhanced so the public can view the entire civil case file, including imaged documents. "We thought judges would be the hardest group to convince to learn to work differently," she added. But over time, many judges have actually embraced the new environment. Most now have laptops and PDAs. With remote access to the court network, "They can review their cases and work while at home or traveling."

A phased approach to a jurisdiction's technology rollout can also help ensure success, offering continual improvement feedback, says Justice Ming W. Chin. The implementation of the California Court Technology Committee's vision is divided into two major initiatives, covering 13 courts and 74 percent of the statewide population.

The idea behind the committee's Project for criminal and traffic cases is to test and enhance the system so it can be deployed in any California court. For example, Justice Chin notes, migrating to a Web or browser-based architecture will foster easier deployment and maintenance.

Policies on sharing information are evolving to match court's efforts to modernize, Alan Carlson, president of the Justice Management Institute, noted. The



San Francisco, CA - Participants in the Court Information Sharing Program at the ABA Annual Meeting included Judge Herbert B. Dixon, Jr. (Moderator), Victoria S. Cashman (Program Coordinator), Alan Carlson (Panelist), Justice Ming W. Chin (Panelist), retired Judge Judith Ford (Panelist) and Justice Frank Sullivan, Jr. (Panelist).

conference of Chief Justices has already developed important standards on privacy to address information-sharing concerns. Carlson also laid out basic policies on collecting and exchanging information.

As Justice Sullivan summed up, "As each day goes by, the challenges of our statewide CMS project seem bigger and more complicated than the day before. But the benefits to our courts and the people of our state seem even bigger and more valuable. And so the Indiana Supreme Court is more committed than ever to equipping every Indiana court with a 21st century CMS and connecting individual courts' CMS to each other and to users of court information."

Kosovo

(continued from page 24)

crimes are still being investigated and arrests are still being made. There are three main types of War Crimes cases: (1) Serbians committing war crimes against Kosovar Albanians; (2) Kosovar Albanians committing war crimes against Serbians; and (3) Kosovar Albanians committing war crimes against other Kosovar Albanians.

In assisting the international prosecutors, I focus mainly on terrorism cases. In Kosovo, terrorism consists mainly of different armed extremism groups aiming to form a greater Albania by uniting the different Albanian minorities in Kosovo, Macedonia, and Serbia with Albania proper. The terrorist organizations commit a wide range of crimes to achieve this goal from bombings to extortion. The difficulty in investigating these crimes is determining which crimes are committed by armed extremist groups, as opposed to groups/individuals who purport to be armed extremists to economically capitalize on the fear provoked by the names of these terrorist groups.

The trial process is divided into three distinct phases: (1) the judicial investigation; (2) the indictment and pre-

trial; and (3) the trial. The judicial investigation stage usually begins within 72 hours of an arrest. The judicial investigation is led by the Investigating Judge, who has the authority to direct future police actions, although the prosecutor may request certain police actions as well. The duty of the Investigating Judge is to call all witnesses that may have information about the case and prepare the case for trial. If there is sufficient evidence in the case upon completion of the judicial investigation, an indictment is filed by the prosecutor. The indictment is a detailed account of what allegedly occurred and what the prosecutor will prove at trial, as well as an analysis of the defense. After the indictment is filed, the trial occurs.

The trial consists of three or five judges. If there is more than one international judge on the panel, there are three judges, but if there is only one international judge or no international judge, then the panel consists of five judges. During the trial the accused is called to testify first. The accused, although not compelled, usually testifies. This locks the accused into a story. After the accused testifies, other witnesses testify. The panel of judges question the witnesses first, followed by the prosecutor, defense lawyers, the injured party, and even the accused. The

accused can also question the co-accused in court. When evidence that contradicts the testimony of the accused is presented in Court, the judges can ask the accused to explain the discrepancy. After the Court is finished taking evidence, the Court hears closing argument and renders a verdict. After the verdict given in court, the Presiding Judge must prepare a written verdict. Only after the written verdict is lodged can an appeal be filed.

Besides learning about and working in a different, non-adversarial criminal justice system and using international law and norms in criminal cases, I have learned a lot working with international prosecutors and legal officers who have been trained in different criminal law traditions. The prosecutors and legal officers come from six different continents with a mixture of common and civil law experience. Discussing the principles of criminal law with my colleagues has forced me to re-examine many of the criminal law traditions that I used while practicing as a Public Defender in Philadelphia, such as the jury system, the adversarial system and the inadmissibility of evidence based on police misconduct. Overall, working as a legal officer for UNMIK has been a tremendously rewarding experience, both personally and professionally.

Seeking Nominations

All members who are interested in serving on the Executive Committee of the Lawyers Conference are encouraged to send your resume to the members of the Nominating Committee. Along with your resume, interested parties are asked to submit a cover letter detailing the reasons why your application should be considered for a position as an Officer or Executive Committee Member. This year, the committee will nominate individuals to fill the following positions:

Vice-Chair
Secretary
One Executive Committee Member

If you are interested in applying, please send your resume and cover letter no later than January 30, 2004 to:

Ms. Anne M. Kelley, Chair
Microsoft Corporation
1 Microsoft Way
Redmond, WA 98052

Mr. Charles J. Vanstrom
1751 Gilpin Street
Denver, CO 80218-1205

Mr. Benjamin Longoria
278 Beacon Street, Apt. 14
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Administrative Judiciary

News and Journal

American Bar Association

Excerpt from Association of Administrative Law Judges

President Ron Bernoski's Report November 2003

AALJ Training Conference

Commissioner Barnhart met with the Board for over 3 hours and then met with the attendees on Wednesday for another several hours after lunch. Commissioner Barnhart described her reform plan for SSA disability in greater detail and answered questions from the judges. She stated that she was committed to the changes and projected that implementation would commence about 10 months after the full implementation of the E-DIB system. She stated that the plan is based on the principle of providing a more developed hearing file for the administrative law judge for hearing. The enhanced development of the record will start early in the process by obtaining more medical evidence with the use of medical expert panels. The Commissioner is committed to having attorneys serve as the reviewing officials. These reviewing officials will be in the Office of Hearings and Appeals, but their location has not yet been determined. She is committed to the administrative law judge hearing for Social Security claims and to improving the quality of the decision writing. The greatest uncertainty appears to be with the three judge review panel. At present no claimant appeal is anticipated to these panels and the number and location of the panels has not been determined. Most claimant appeals will go

directly to the Federal district court from the administrative law judge hearing. The Commissioner stated that she planned to have a small new class of judges and that she intended to comply with the transfer article of the contract before the class was hired. The Commissioner also stated that the agency would, at this time, remain neutral on the administrative law judge pension reform legislation.

The agenda for the conference included sessions on hepatitis C and tobacco dependence by Dr. Frank James; professional responsibility and judicial ethics by the Hon. William F. Dressel; proposed rules of practice and procedure by Judges Tom Snook and Bob Droker; veteran's rights and benefits by Judge Seymour Fier; SSA disability policy by the Hon. Martin Gerry; judicial accountability for administrative law judges by Professor William F. Fox Jr.; circuit law breakouts; and a peer review quality report. The agenda also included several reports from agency officials on policy issues and electronic initiatives such as video teleconferencing, digital recording, the case processing and management systems and a session from LexisNexis on the use of its system.

National Executive Board Meeting

The National Executive Board Meeting of the Association met on Monday. A brief summary of subjects of interest considered by the Board is as follows:

- The legislative priority for next year was established as the ALJ retirement legislation (H.R. 2316), ALJ conference bill and pay compression;
- The Association will conduct a drive from our judges to raise additional funds for use in support of the ALJ retirement bill;
- The Constitutional Committee presented its final recommended

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Judges Graham/Butler Elected to NAALJ President, President- Elect

NCALJ Vice Chair Chris Graham (Mo) was recently elected President of the National Association of Administrative Law Judges at its annual meeting in Orlando, held in October 2003. Judge Butler (DC) was elected President-Elect. The outstanding conference was most ably coordinated by NCALJ Executive Committee and NAALJ Board member Errol Powell (Fl). Two former NAALJ presidents, Bryan McDaniel (La) and Larry Craddock (Tx), are members of the NCALJ Executive Committee, and a third, Ed Schoenbaum, is JD representative to the House of Delegates. Judges Graham and Butler will be working closely in coordinating their respective organizations' plans to promote public understanding of the administrative adjudicatory process. Both NCALJ and NAALJ will be co-hosts with the Council of Canadian Administrative Tribunals (CCAT) at the Third International Administrative Justice Conference, June 20-23, 2004, in Toronto. NAALJ will be breaking new ground in the hiring of an executive director to solicit grants and other funding sources, and to promote NAALJ nationally. Negotiations are being finalized with former NAALJ President and NCALJ Chair-Elect John Hardwicke (Md) to work on this pilot project.

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DIVISION
National Conference of Administrative Law Judiciary

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CHAIR'S COLUMN

*Judge Tyrone T. Butler
Washington, DC*

Where has the time gone? It seems like only yesterday when we were making plans to travel to San Francisco for the 2003 Annual Meeting. Now we find ourselves gearing up for the 2004 Midyear in San Antonio, February 5 -10, 2004. Don't forget to register early. The Judicial Division has been assigned headquarters at the Marriott Rivercenter from Thursday, February 5 through Sunday, February 8. A casual look at our tentative schedule reveals that NCALJ has a myriad of activities, business and social, that will keep everyone very busy.

During the past several weeks I have had the pleasure of consulting with Chair-Elect Dan Solomon as he led the Federal Legislation Committee in their project to create a retirement plan for Federal Administrative Laws Judges. The Report with Recommendations, the Executive Summary and the General Information

Excerpt

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changes in the Association Constitution to the Board for consideration. The Board approved the changes and voted to submit the constitution to the members for ratification. The changes relate primarily to incorporating the Department of Health and Human Services Judges into our organization and streamlining problems that we have noted in the administration of our finances. The proposed changes will be posted on our website and the vote on the ratification will be conducted shortly;

-The Election Committee presented proposed election rules that are to be used for the 2004 election. The Board made some changes to the proposed rules and they will be returned to the Board for further consideration after the modifications are completed. After the rules are approved by the Board they will be posted on our website. The Election Committee reported that it has been

Form will be distributed to the Division for Policy Administration, the Judicial Division and the other entities supporting it. Hopefully it will be ready for introduction to the House of Delegates at the 2004 annual Meeting.

Our own Ed Felter from Colorado and Past Conference Chair has informed me that he will be going to Viet Nam as a consultant on the Bilateral Trade Agreement (How to Ensure Due Process with Administrative Tribunals). Good luck Ed. I can't think of a better administrative adjudicator to carry the word on independence, fairness and due process to a society that is in the process of reforming its administrative court system.

Finally, yours truly has been enjoying our national capitol's balmy summer climate while engaged in organizing the country's latest Central, or "Core", Office of Administrative Adjudication. The enabling statute is the latest in central panel concept innovations and is an exemplar for those law makers considering similar future enactments. Central Panel Administrative Adjudication is the obvious legal evolutionary result of our specialty.

advised that the Department of Labor (DOL) will not tolerate any use of government equipment or computers to access the AALJ website to view election campaign materials. This includes all use, including during break times and lunch breaks. The DOL has no de minimis rule regarding this issue and accidental access could lead to discipline, to include removal;

-Judge Frye briefed the Board on the "duty of fair representation" as required by law. He will prepare a proposed policy statement for consideration by the Board;

-The Conference Committee presented its report to the Board. The Board then confirmed the recommendation of the Conference Committee to host the 2004 AALJ Training Conference in Orlando, FL. The conference will be held during the month of October. The Conference Committee will soon make a recommendation to the Board for the site of 2005 conference;

-The IFPTE will explore the feasibility of adopting a private supplemental pension

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Reception in Honor of the Administrative Judiciary

by Judge R. Bryan McDaniel
Baton Rouge, LA

The Federal Bar Association held its Sixth Annual Reception in Honor of the Administrative Judiciary at FBA headquarters in Washington, DC, on November 6, 2003, sponsored by the FBA DC Chapter, Judiciary Division, and Federal Career Services Division. The 59 attendees were welcomed by Jim Richardson, Secretary of the FBA; Judge Gail Randall, Chair of the Judiciary Division; and Judge Ronnie A. Yoder (NCALJ Chair 1994-95), President of the DC Chapter. Judge Yoder noted that the reception has enjoyed the active support of federal ALJs and other federal hearing officers, and that, since the inauguration of the reception, both the Sixth Circuit Court of Appeals and the Federal District Court in Arkansas have recognized that every administrative judge has a constitutional free speech right to decisional

independence.¹ "We don't claim that the reception and its recognition of the important role of the Administrative Judiciary prompted those decisions, but we have certainly supported them."

Judge Yoder noted that both the FBA and ABA have supported resolutions and congressional initiatives for rationalizing ALJ use and for pay and retirement relief for ALJs. The FBA was also instrumental in convening the Summit of ALJ organizations and has supported the establishment of an ALJ Conference of the United States to take over the administrative functions previously performed by the now defunct Office of ALJs at the Office of Personnel Management.

Judge Yoder introduced the speaker, Michael Asimow, Professor Emeritus of Law at UCLA Law School, as a long-time friend of ALJs and laborer in the vineyard of administrative law. Professor Asimow stated that some of his favorite people are ALJs and affirmed that they are "the face of justice for the American people."² Professor Asimow presented a power-point show describing a long-standing project within the Administrative Law Section of

the American Bar Association, which culminated in the Black Letter statement of administrative law reflected in the Guide to Federal Agency Adjudication (ABA 2003)(Asimow, ed.). The Ad Law Section is now considering changes to the Administrative Procedure Act (APA), which would create two new tiers of APA adjudication: (1) general adjudication for all hearings required by statute but not required to be on the record before an ALJ and (2) all other agency adjudication (informal adjudication), including all agency determinations of rights, e.g., every hiring decision. Under general adjudication some of the APA provisions concerning ex parte, separation of functions, etc., would apply; and notice and reasons for decisions would be required in informal adjudication. The proposals would also enact the rationalizing ALJ use provisions endorsed by the ABA and the FBA, so that future statutes requiring hearings would be ALJ hearings in the absence of specific language to the contrary. He assured all those present that the Ad Law Section wants to work with the AJ community to

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Excerpt

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plan for its members and it is planning to implement a pilot project. The IFPTE has requested permission to conduct an anonymous survey of our judges in the New York Region to study the feasibility of the plan. The Board granted this request to the IFPTE;

-Reports were also received from the Chairs of the Bargaining Committee, Health and Safety Committee, Labor/Management Committee and Joint Technology Committee;

-Judge Scott Williams, Region IV North Vice President, announced that he plans to resign from the Board at the end of the month. Judge Williams has been a member of the Board for over 10 year. He has always worked diligently and has served the interests of the judges of his Region in a superior manner. He devoted considerable time and effort as a member of the Joint Rules Committee. This Committee drafted the proposed rules of practice and procedure that are now

pending before the agency. His judgment, careful thought and deliberation will be missed by the Board; and

-The Secretary's minutes for the meeting will be posted on our website.

Administrative Law Judge Pay

The United States Senate recently passed an appropriation bill that provided for a 4.1% increase for Federal civilian employees next year. This increase is for

the General Schedule workers. Our pay increase is within the discretion of the President. The President will receive a recommendation from the Director of the Office of Personnel Management, who will be acting as his pay agent on this issue. In the recent past the Presidents have followed the increase provided to the General Schedule workers when determining our pay increase, but there is no requirement that the President do so.

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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 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
Spring 2004: Wednesday, February 11
Summer 2004: Wednesday, May 5

Excerpt

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The conference report on the Defense Authorization Bill, recently released and approved by the House, does not appear to contain any pay compression relief for administrative law judges. The legislation does include the DOD personnel reform package together with the SES pay-for-performance provisions. No other occupational groups appear to be included in the legislation.

We worked very hard to be included in the legislation completed by the DOD Conference Committee. However, after

considerable effort, it became clear that the Administration was insisting on a pay-for-performance provision for administrative law judges. We suggested that the ABA Model Code of Professional Conduct for Federal Administrative Law Judges be used, but the Administration insisted that the code related to conduct and not performance and would not move from its position. All of the administrative law judge organizations were in agreement that a pay-for-performance pay system for administrative law judges is contrary to the Administrative Procedure Act and inconsistent with the responsibilities of a judge. We will continue to work on the pay compression issue during the remainder of this Congress and in the future.

Sponsors For The ALJ Retirement Bill

We now have 13 co-sponsors for the ALJ retirement bill (H.R. 2316). The co-sponsors include the following members of the Congress: Rick Boucher [D-VA], Mac Collins [R-GA], Diana DeGette [D-CO], Barney Frank [D-MA], Gene Green [D-TX], Martin Frost [D-TX], William L. Jenkins [R-TN], Tom Lantos [D-CA], Zoe Lofgren [D-CA], Steve C. LaTourette [R-OH], Major R. Owens [D-NY], Janice D. Schalowsky [D-IL] and Louise McIntosh Slaughter [D-NY].

Reception

(continued from page 30)

assure that the proposals are technically and practically feasible.

Judge Yoder thanked Professor Asimow for his presentation and urged all present to join and be active in the FBA and ABA and monitor closely the progress of the APA proposals.

NCALJ Chair Tyrone Butler established the Strategic Planning Committee in San Francisco this year for the purpose of planning the future direction of NCALJ. The committee consists of the following: Judge R. Bryan McDaniel, Chair, Judges

Jean S. Cooper, Edwin L. Felter, Tela Gatewood, Chris Graham, Ruth L. Kleinfeld, Jodi B. Levine, Errol H. Powell, Edward J. Schoenbaum, Daniel F. Solomon, John M. Vittone.

The committee will have its initial meeting at the ABA Midyear Meeting in San Antonio, Texas, on Friday, February 6, 2004, from 1:30pm to 3:00 pm. The purpose of the initial meeting is to brainstorm ideas for a revised strategic plan. There was a prior 5 year strategic plan formulated in 1998 by a committee chaired by Judge Edwin F. Felter. This will be an opportunity to review what has been accomplished on the previous plan and to update it. NCALJ is a vital part of the

American administrative judiciary and this is an opportunity to further its mission for the future. Anyone with ideas should present them to one of the committee members prior to the February meeting.

¹ Perry v. McGinnis, 209 F.3d 597 (6th Cir. 2000); Harrison v. Coffman, 35 F.Supp.2d 722 (E.D. Ark. 1999).

² See Yoder, "The Role of the Administrative Law Judge," 22 NAALJ Journal 321, 323 (2002) ("For the vast majority of those encountering any kind of civil adjudication, the ALJ is the face of justice for the American people.")

NACLJ Seeking Nominations

All members interested in serving on the Executive Committee NCALJ are encouraged to submit your resume. Send your resume and a cover letter to each member of the Nominating Committee detailing the reasons why your application should be considered for a position as an Officer, Executive Committee Member. This year, the committee will nominate individuals to fill the following positions:

Vice-Chair

Secretary

Four Executive Committee Members

National Judicial College position on the Judicial Division Council

If you are interested in applying, please send your resume and cover letter no later than January 30 to:

Honorable Ruth L. Kleinfeld, Chair
Social Security Administration
1750 Elm Street, Ste. 303
Manchester, NH 03104

Honorable Jean S. Cooper
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Federal Trial News

American Bar Association

Suggestions for Improving Judge-Clerk Interaction

by Judge Berle Schiller
Philadelphia, PA

I asked my law clerks, Maresa Torregrossa, Adav Noti, and Aimee Hector, to prepare this article because I thought it would be both informative and instructive for my colleagues to hear their clerk's suggestions for how to improve both interaction within chambers and the eventual work product.

There are as many variations in the judge-clerk relationship as there are judges. Nonetheless, when asked how federal judges can maximize the benefits they receive from their law clerks, clerks agree there are certain practices and approaches that would help all judges improve the working relationship in their chambers.

This article briefly describes the four most common suggestions made by present and former clerks in response to a confidential survey conducted in October and November 2003. While not a scientific sample, we believe these comments are representative of what federal clerks as a whole would recommend to their employing judges.

1. Keep an Open Door

By far the most common suggestion made by clerks in response to our survey is that judges should have an "open door" policy. Clerks feel strongly that their judges benefit from a practice of open and frequent communication. Specifically, clerks feel that the opinion-writing process is greatly improved by substantive discussion among clerks and the judge.

Clerks recommend that judges take two approaches to substantive communication. First, if the issue is one with which the judge is familiar, the judge should convey his or her understanding of the law—not just the outcome—to the clerk, who will then conduct the research necessary to confirm (or disprove) the judge's reasoning and to write an opinion that conforms with the judge's outlook. Second, if the judge is not familiar with the issue, the clerk should research the issue and explain it to the judge, either orally or in writing, and then discuss the correct resolution in light of these findings. In both situations, the key is to engage in substantive discussion with the clerk before she begins writing an opinion, so that the judge's thought process is clear to the clerk and can be reflected in the written product. Of course, questions will probably arise after the initial discussion; accordingly, the judge should encourage the clerks to

return with questions throughout the drafting process.

Promoting an open environment in which clerks feel free discussing their cases with the judge is essential, but many clerks noted that such an environment can also be intimidating. Thus, judges should be sensitive to approach conversations with their clerks in ways that facilitate dialogue rather than shut it down. Judges have a depth of experience, knowledge, and practical insight to share with their clerks, but this knowledge base should not be used to automatically "trump" the clerk's viewpoint instead of engaging in debate. Both the chambers dynamic and the clerk's work product can only benefit from an environment in which substantive debate, and even occasional disagreement, flow freely.

2. Involve Clerks in All Aspects of Their Cases

Many clerks note that they would assist their judges more effectively if they were involved in all of the developments in their cases. Instead, clerks are often not permitted to accompany their judges into the courtroom or to conferences in chambers. As a result, clerks must write opinions without being familiar with the facts, procedural posture, and other quirks of the case at hand. Without such familiarity, clerks are unable to tailor their research to the exact contours of the particular action and cannot perform the detailed factual and legal analysis that is most helpful to the judge.

The solution to this problem is simple: Ensure that clerks read every filing and attend every conference and argument in their cases, regardless of whether the judge actually needs help with the particular

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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 (P) 267-299-7620, (F) 267-299-5073 or contact Gilda Fairley at ABA/Judicial Division, 541 N. Fairbanks Court, Chicago, IL 60611; Phone: 800/238-2667 x5689; Fax: 312/988-5709; E-mail: fairleyg@staff.abanet.org

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Spring 2004: Wednesday, February 11

Summer 2004: Wednesday, May 5

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CHAIR'S COLUMN



by Judge Andre Davis
Baltimore, MD

Once again, the NCFTJ Executive Committee will meet at the ABA Midyear Meeting. The gathering will convene in San Antonio from February 5 through February 8, 2004. Executive Committee members would be pleased to hear from any federal judges as to any discussion issues or agenda items we should consider in our deliberations. Several highlights of the San Antonio meeting are discussed below.

The NCFTJ is once again a full participant in the Judicial Division's award-winning Judicial Clerkship Program (JCP). Under the JCP, minority law students from an array of law schools are afforded an opportunity over a three-day period to learn about judicial clerkships and to engage in one-on-one interactions with state and federal judges and their past and present law clerks. The program includes a research exercise that is intended to simulate the practical and intellectual experience of a judicial law clerk. I encourage the participation of all judges attending the Midyear Meeting in the JCP; it is an excellent chance for judges to contribute to the professional development of law students. Judges who have participated in the program have given it high praise. I can personally attest to the value of the JCP (and of the enjoyment each judge-participant experiences); I have hired a participant from last year's JCP and she will serve as my law clerk during the 2004-05 term.

It is expected that the Justice Kennedy Commission, on which I am privileged to serve, will hold a second round of hearings during the Midyear Meeting. The Commission held its first round of hearings in Washington, D.C., from November 12-14, 2003, at the George Washington University School of Law. Chairman Stephen A. Saltzburg, Howrey Professor of Trial Advocacy, Litigation and Professional Responsibility at the law school, has set an ambitious agenda for the Commission. The Commission's charge from ABA President Dennis Archer is to examine thoroughly the nation's criminal justice sentencing policies, including but not limited to mandatory sentences, binding and non-binding sentencing guidelines, prison policies in respect to education and work opportunities, parole, pardons, clemency, offender re-entry, and other issues, many of particular currency in the federal criminal justice system. The Commission's report is expected to be delivered at the 2004 Annual Meeting in Atlanta. As one member recently put it, "We should start discussing how we can prevent this from becoming just another report . . . [W]e should bring into our discussion any resources the ABA may have in dealing with public opinion." The Commission welcomes comments, views, and ideas from all federal judges.

Finally, the Judicial Division program, *The Promise of Brown v. The Board of Education: Yesterday, Today and Tomorrow*, will be presented at the Midyear Meeting, on Thursday, February 5, 2004, from 3:30pm until 5:30pm. Judge Sophia Hall, chair of the National Conference of State Trial Judges, and I will moderate a highly interactive panel discussion by distinguished Texans to explore the continuing meaning of the *Brown* case, with a focus on the impact of the Supreme Court's decision on the legal, cultural and political institutions of Texas.

Suggestions

(continued from page 32)

issue involved. By broadening clerks' exposure to their cases, the judge can ensure that clerks stay up-to-date on the details of those cases, which, as discussed above, is crucial for their effective participation in the opinion-writing process.

3. Establish and Maintain Clear Expectations

Many clerks are unclear about their judge's expectations of them, leading to frustration and disappointment on the part of both. The sources of this problem are twofold: Insufficient discussion during the interview process and lack of specific guidance at the start of the clerkship.

Clerks feel it is crucial for judges to give a candid description of their work style and expectations during the interview process. For example, if a judge prefers for his clerks to work independently without much interaction in the office, or if he prefers to limit clerks' contact with attorneys, the judge should say so. Every judge has different preferences; a frank discussion during the interview will allow each applicant to pursue the clerkship that suits him or her best.

In addition, judges should clearly articulate their specific expectations of their

clerks early in the clerkship. Providing important details, such as how far in advance of an argument clerks should draft memoranda or what kind of preparation the judge requires for sentencing hearings, etc., helps prevent clerks from missing deadlines or providing memoranda that are not helpful to the judge.

4. Engage Clerks Socially

Most clerks feel strongly that interaction with the judge on a regular basis outside of discussing law or work fosters a more productive environment in chambers. The most common suggestion was that judges and clerks periodically eat lunch together (many clerks suggested this as a weekly routine). The benefits of such interaction are obvious: The free flow of ideas and suggestions is less inhibited by awkwardness and hierarchy.

5. Additional Suggestions

- Embrace a pedagogical role. Take the time to discuss with your clerks the strategies employed by lawyers appearing before you.
- Do not ask your clerks to run personal errands for you.
- Avoid giving secretarial tasks to clerks. If you need to do so, remember that many clerks have no secretarial experience and are likely to make mistakes.
- Have your clerks read each others'

work. At the very least, this will serve as a preliminary proofread and will keep all clerks apprised of what is going on in chambers. At best, the clerks will engage each other substantively and with greater force than they are likely to employ with the judge, leading to opinions that are both better written and better reasoned.

- Ensure that your criticism is constructive.
- If there is a problem with a clerk's work, say so immediately. Do not let the problem continue unaddressed.
- Conduct a monthly docket meeting with all of your clerks. This will not only ensure that your cases are progressing efficiently, but will serve to keep staff informed about all of the cases on the docket.

As a final note, it is interesting that three of the four most common suggestions (representing approximately 70% of the total comments we received) involve improving verbal communication between judges and clerks. This indicates that intra-chambers communication may be a weak point, in general, in the judge-clerk relationship. Accordingly, judges may wish to discuss amongst themselves their different approaches to this issue and share ideas for improving communication with their clerks.

NCFTJ Seeking Nominations

All members interested in serving on the Executive Committee of the National Conference of Federal Trial Judges are asked to submit your resume along with a cover letter to each member of the Nominating Committee. This year, the committee will nominate individuals to fill the following positions:

Vice-President
Secretary

Two Executive Committee Positions

If you are interested in applying, please send your resume and cover letter no later than January 30, 2004 to:

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Special Court News

American Bar Association

NHTSA & NDCI Join to Host Regional Meetings on DUI/DWI Courts

*Judge. Michael W. Kwan
Taylorsville, Utah*

Representatives from North Dakota, South Dakota, Wyoming, Colorado, Montana and Utah recently met in Denver, Colorado to discuss the efficacy of DUI/DWI Courts in reducing recidivism. The regional meeting was hosted by the Traffic Safety Institute of the National Highway Traffic Safety Administration (NHTSA) and the National Drug Court Institute (NDCI). In addition to a description of the typical DUI/DWI courts, information regarding funding for the purpose of implementing a new program or expanding existing programs was presented.

DUI/DWI courts are "problem solving" courts combining intensive supervision, offender accountability, mandatory treatment, and random compliance testing. Similar to the drug court model, DUI/DWI courts typically require weekly court reviews at which participants meet with the judge to discuss their progress. Drug court studies suggest that one of the key factors to success is close supervision and

monitoring of participants by the judge. Existing DUI/DWI courts have been successful in reducing recidivism.

In Utah, a "hybrid" substance abuse court was created in Taylorsville five years ago. "Hybrid" courts combine DUI/DWI and drug court programs. Of all of the participants charged with DUI, sixty-six have graduated from the program. None of the sixty-six have had a new DUI charge. Overall, 160 participants have graduated from the program with only two participants committing new offenses. An article detailing the structure and procedures of this type of court will be published in a future edition.

NDCI has developed a program for creating DUI/DWI courts. In addition to step-by-step guidance, specific training for judges, prosecutors, defense attorneys, treatment providers, case managers, and court staff is available directly from NDCI. Federal funding, available for the creation of new DUI/DWI courts or enhancing an existing program, can result in new programs being created at little or no cost to local jurisdictions.

Additional information on DUI/DWI courts can be gained by attending the NHTSA/TSI regional meetings which are being held over the next few months. Information can also be obtained from NDCI at their website <http://www.ndci.org> or by contacting me at mkwan@ci.taylorsville.ut.us.

Nominations Sought for Officers, District Representatives

The Nominating Committee, Chaired by Sharon Hatten is seeking nominations for the positions of Vice-Chair and District Representatives as noted below. The nominations will be voted on at the Business Meeting at the 2004 Annual Meeting in Atlanta, GA. The deadline for nominations is **January 30, 2004**. Please submit nominations to Rebecca King at the ABA via e-mail at kingre@staff.abanet.org or via fax at (312) 988-5709.

Delegates from the following districts are scheduled to elect Executive Committee members in Atlanta, GA to fill terms:

District 4: Georgia, North Carolina, Puerto Rico, South Carolina, Tennessee

District 6: Iowa, Michigan, Minnesota, North Dakota, South Dakota, Wisconsin

District 8: Arizona, California, Colorado, Hawaii, Nevada

District 9: Alaska, Idaho, Montana, Nebraska, Oregon, Washington, Wyoming

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CHAIR'S COLUMN



Judge Michael
Pietruszka
Buffalo, New York

- At the beginning of November, we had our first Committee Chairs on-line meeting and learned that some of our committees are working on very interesting projects. The Domestic Law Committee (Hon. William Nooter, Chair) is compiling information for a webpage of domestic violence and family related resources for our Conference website. The Small Claims Committee (Hon. Michael Patchen, Chair) is working on a "How to Handle Small Claims Cases" booklet for pro se litigants. The Probate Court Committee (Hon. Vivian Ross-Bennett, Chair) is preparing a national directory of Probate Court Judges, while the Native American Tribal Law Committee (Hon. J. Matthew Martin, Chair) is reaching out to Tribal Judges around the country. The Military Law Committee (Col. Linda Strite Murnane, Chair) is working to place a member of our Conference on the faculty of the Interservice Military Judges Seminar at Maxwell Air Force Base in April. As you can see, our committees have undertaken some very exciting tasks and I thank the committees and their chairs for their hard work and dedication.

CONFERENCE WEBSITE - If you have not visited our Conference website lately

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

Spring 2004: Wednesday, February 11

Summer 2004: Wednesday, May 5

(<http://www.abanet.org/jd/ncscjweb.html>), I suggest that you do so. The JD has a new Technology Coordinator, Meredith White. Ms. White has done a great job of updating our web presence and the Conference website remains one of the best ways to stay in touch with what is happening. One of the new features of our Conference website is a one-click e-mail capability for just about every Officer, Executive Committee member and Committee Chair.

MIDYEAR MEETING - The Midyear Meeting in San Antonio is rapidly approaching. The agenda book for this meeting will once again be on-line at our Conference website. I would like to remind all Conference committee chairs that a written report of your committee's activities is to be filed for the Midyear Meeting. Even if you have missed the deadline for inclusion in the on-line agenda book, please e-mail or fax your report to me and Rebecca so that it can be added to our agenda. Plans are underway for our Conference and the NCSTJ to have a joint dinner in San Antonio. The Judicial Clerkship Program will be highlighted by the JD at Midyear. Midyear promises to be a very productive meeting.

MEMBERSHIP - Once again, I urge all Conference members to spread the word about our Conference to your colleagues. As our committees progress with their projects, we will have even more to offer new members. If you need any information about membership benefits or need help with a prospective member, please contact Membership Committee Chair Hon. Judith Macaluso.

As always, I encourage all of our members to take an active part in our Conference. Please continue to use the Conference list serve and web boards. A small investment in time and effort can bear fruit which will enable you to better serve the law, your court and the people of your jurisdiction. See you in San Antonio.

Trial Judges News

American Bar Association

Update On Judicial Salaries

Salaries for judges of state general jurisdiction trial courts, intermediate appellate courts and courts of last resort increased on average by a little more than 2 percent in 2002, according to the latest survey of Judicial Salaries (vol. 28, no. 1) published by the National Center for State Courts (NCSC). The survey breaks down salaries state by state and provides selected cost-of-living adjusted figures for the 50 states and 30 cities. Increases for state court administrators were just under 4 percent. This compares to an average increase of 4 percent annually for each group from 1996 to 2001.

Judicial salaries as of April 1, 2003:

Salaries of state chief justices ranged from \$90,842 to \$185,773, with a mean of \$128,886 and a median of \$125,018.

Salaries of associate justices ranged from \$89,381 to \$170,319, with a mean of \$124,738 and a median of \$121,740.

Salaries of intermediate appellate court judges ranged from \$91,469 to \$159,657, with a mean of \$121,251 and a median of \$116,521.

Salaries of general jurisdiction trial court judges ranged from \$82,600 to \$154,700, with a mean of \$112,229 and median of \$109,810.

Salaries of state court administrators ranged from \$82,567 to \$175,728, with a mean of \$111,664 and a median of \$107,900.

NCSC's Knowledge and Information Services publishes the Survey of Judicial Salaries twice each year. Printed copies can be obtained for the cost of shipping and handling from NCSC's fulfillment house by calling (888) 228-6272, e-mailing ncsc.orders@aidcvt.com, or using the online Publications Catalog (log on to NCSC's Web site at www.ncsconline.org and click on "Publications"). The survey is also available online as a pdf document on NCSC's Web Site.

National Association for Court Management Receives Howell Heflin Award

by Judge Alexander White
Chicago, IL

On November 20, 2003, at a reception and dinner at the United States Supreme Court attended by Chief Justice William H. Rehnquist, other distinguished members of the judiciary, members of the National Center for State Courts and representatives of the ABA Judicial Division, the State Justice Institute (SJI)

Board of Directors presented the Eighth Annual Howell Heflin Award to the National Association for Court Management (NACM) for its "Core Competency Guidelines" project. The Award is given in recognition of an innovative SJI-supported project that has a high likelihood of significantly improving the quality of justice in State Courts across the nation.

The Core Competency Guidelines project, supported by four SJI grants over a span of five years, defines court management as a profession that requires specific skills, knowledge and abilities. The Guidelines contemplate that a professional court administrator should be competent in ten areas: the Purposes and Responsibilities of Courts, Leadership;

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NCSTJ Seeking Nominations

The Nominating Committee, Chaired by Judge Carolyn Engel Temin, is seeking nominations for the positions of Chair-Elect, Vice-Chair, Delegate to the House of Delegates and District Representatives as noted below. The nominations will be voted on at the Business Meeting Atlanta, GA. The deadline for nominations is **January 30, 2004**. Please submit nominations to Rebecca King in the Judicial Division via e-mail at kingre@staff.abanet.org or via fax at (312) 988-5709.

Delegates from the following districts are scheduled to elect Executive Committee representatives in Atlanta, GA to fill a 2-year term (the states in **BOLD** are those next in the rotation):

- District 2 – CT, NJ, NY, VT
- District 3 – DE, MD, DC, WV, **PA**
- District 5 – IN, MI, KY, OH
- District 9 – TN, SC, NC, VA
- District 11 – AK, UT, OR, ID, WA
- District 12 – KS, CO, NE, NM, WY

Please note: Delegates must be present at the business meeting in order to be elected as a representative to their district.

JUDICIAL
DIVISION
National Conference of State Trial Judges

CHAIR'S COLUMN



by Judge Sophia H. Hall
Chicago, IL

While in New Orleans for the Conference planning meeting, I was entranced by the vibrancy of the French Quarter. Immersed in the location and stories of its history, I felt the richness and power of the joining of cultures in that

place. I heard the stories of the people, African, English, French, Italian and Spanish, who were all finding their way to live there together. The stories of their experiences, the advantages and their struggles, were inspiring.

We see these struggles continuing all over the United States as we face the diversity that contributes to the character and ideals of our country. This year, the NCSTJ, our sister Conferences in the Judicial Division and other entities of the ABA are finding opportunities to discuss the continuing efforts of our people to live

together. This is a special year for that discussion because 50 years ago, as of May 17, 2004, the United States Supreme Court in *Brown v. The Board of Education of Topeka Kansas* held that it was unconstitutional to require segregated facilities in providing a publicly supported education. This decision was followed by a reinvigorated civil rights movement and the passage of federal laws prohibiting segregation in other publicly supported facilities.

Together, our Conferences are planning a panel to be held at the ABA Midyear Meeting in San Antonio, Texas on Thursday, February 4, 2004. The panel will discuss the effect of *Brown* from the perspective of the judges, lawyers and citizens in and around San Antonio. We will look back, look at the present, and look to the future.

The goal of the panel is as exciting as the planning for it. In this planning, and in other conversations I have had in Chicago planning events to discuss the many perspectives of *Brown*, I have learned new things and revisited tough questions. Questions like, did the vision of an integrated public school system for the betterment of society fail where many are choosing education in historically all black

schools? Can the vision of a more integrated society be achieved where race still matters and is exacerbated by the economic separations of poverty and wealth? What is the role of affirmative action in ensuring places for historically excluded minorities and should others pay the price?

The dialogue of the justices in the decisions issued in the Michigan University *Grutter* and *Gratz* cases on affirmative action in its Law School and undergraduate schools, are illuminating because the justices, in articulating their views, sharply differed in some respects. Such are the differences of view that exist in this society. We must all engage in the discussion.

This conversation about who we are as a nation of immigrants has poignant and painful currency as we assess America's role in the world today. As I wandered around the French Quarter, noticing the beautiful blending of architecture, cuisine and music as a result of its 200 years of history, I knew that the results achievable, from the necessity of working through how we can live together peacefully, are well worth our continuing efforts.

Minnesota Judge Receives Rehnquist Award

On November 20, 2003, Chief Justice William Rehnquist of the United States Supreme Court presented Judge Kevin S. Burke of the District Court in Hennepin County, MN the National Center for State Courts' (NCSC's) 2003 William H. Rehnquist Award for Judicial Excellence, at a ceremony in the Great Hall of the United States Supreme Court in Washington, D.C. This award is presented annually to a state court judge who exemplifies the highest level of judicial excellence, integrity, fairness, and professional ethics.

NCSC President Roger K. Warren stated "I don't know of a more innovative trial judge in America, or one who has had a greater national impact." "Judge Burke has traveled extensively around the United

States – and over-seas to share successful approaches with other judges. Judge Burke is indefatigable in the pursuit of judicial reform."

Judge Burke is credited for his numerous achievements and innovative leadership style during his 20 years on the bench. He



was instrumental in establishing Minnesota's public defender system, and he worked effectively to improve judges' courtroom communications skills, which has bolstered public trust and confidence in the courts. He served on NCSC's Board of Directors and received its 2002 Distinguished Service Award.

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Heflin Award

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Caseflow Management, Information Technology Management; Education, Training and Development; Human Resources Management; Resources, Budget and Finance; Visioning and Strategic Planning; Court-Community Communications; and Essential Components. More than 20 state and national judicial branch educators have already incorporated the Guidelines, into their curricula. For more information about the Guidelines please visit the NACM web site at <http://www.nacmnet.org/CCCG/ccchomepage.htm>.

Prior winners of the Heflin Award are the Family Violence Prevention Fund's CD-ROM educating judges about key issues in criminal domestic violence cases (1996); the Maricopa County, Arizona, Superior Court's Self-Service Center (1997); the American Judicature Society's guidebook for judges and court managers on meeting the challenges of *pro se* litigation (1998); the University of Memphis' Leadership Institute in Judicial Education (1999); the National Center for State Courts' Technology Information Exchange Service ("TIES") project (2000); Michigan State University's Judicial Education, Reference, Information, and Technical Transfer ("JERITT") project (2001); and the New Mexico Judicial Center's Internet Education for the New Mexico Judiciary (2002).

EDITOR'S NOTE

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

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ABA Midyear Meeting
San Antonio, TX
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February 13-14, 2004

Int'l Conference on the Legal and Policy Implications
of Courtroom Technology
Williamsburg, VA
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March 1-5, 2004

Mediation for Judges
New Orleans, LA
More information: Edward Schoenbaum
edschoen@abanet.org; (P) 217/524-7836

April 15-18, 2004

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April 29-30, 2004

National Conference on Judicial Outreach
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August 5-9, 2004

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September 9-11, 2004

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