

# Judicial Division Record

American Bar Association Volume 8 Issue 2 Winter 2005

## The Justice Center – 4 Years Old



by Judge John Vittono  
Washington, DC

In 2001, the Association created the Justice Center with the objective of coordinating the activities of various ABA entities who have a common objective of improving the administration of justice

and enhancing the efficiency of the American system of justice. The Justice Center is composed of the Judicial Division, the Coalition for Justice, the Standing Committee on Judicial Independence, and the Standing Committee on Federal Judicial Improvements. The Justice Center works to accomplish its objectives through the Justice Center Coordinating Council. The Council is composed of the chairs of its constituent agencies plus the Coordinating Council

Chair who is appointed by the ABA President.

The ABA Justice Center seeks to accomplish justice system reform by encouraging bench/bar/public collaboration. Among the issues high on the agenda of the Center are judicial selection reform in the states including the reinvigoration of merit selection, public awareness about the justice system, judicial outreach, interbranch relations and judicial ethics. To accomplish these goals, the Justice Center draws on the expertise of judges, bar leaders, law professors and deans, involved citizens, and others who help to accomplish reform and establish innovative activities while publicizing successful models to others with common interests. It provides models, technical assistance, and expertise to those seeking information and assistance about the justice system.

In the beginning there was some concern that the Justice Center through the Coordinating Council may exercise too much influence over the Judicial Division or the other agencies. It was never the goal of the Center to exercise any undue influence on any of its members. Rather, the objective and the practice of the center was to provide an opportunity for shared intellectual resources and promote communication among ABA entities dedicated to improvement of the judiciary and the justice system.

The record of the past four years demonstrates the Justice Center has accomplished that goal. The Justice Center concept affords efficiencies of cost and prevents duplication of effort. The Center encourages and simplifies coordination of efforts ranging from co-sponsorship of reports with recommendations to the House of Delegates to staff and other support for substantive Presidential Initiatives. Several recent

examples of this coordinated approach include the Commission on the 21st Century Judiciary and the American Jury Project. Improved coordination among the constituent agencies is especially important during these times of limited resources within the Association.

The successful operation of the Justice Center is due in large part to the appointment of Judge Norma Shapiro to be the first chair of the Center. Judge Shapiro was the Chair of the Center for the first three years of its life. Through her leadership, knowledge of the ABA operations, and counsel, a cooperative working arrangement was fostered among the various groups. Now, as a member of the Board of Governors, Judge Shapiro continues her involvement with the Center as our liaison to the Board.

Judge Shapiro instituted a practice of monthly conference calls of the Coordinating Council to discuss ongoing projects, status of joint programs, and to develop strategies to achieve the successful conclusion of the various programs. ABA staff members who have expertise in particular areas are active participants in the monthly calls. In addition, the Coordinating Council meets as a group at the Midyear and Annual meeting. As Judge Shapiro's successor, I have followed her example in managing the council through monthly conference calls and meetings in February and August.

Each year the Justice Center bestows to an individual who has made a significant contribution to the improvement of the justice system an award named in honor of John Marshall, the fourth Chief Justice of the Supreme Court. This award is presented each year by the ABA President at a ceremony just prior to the ABA Dinner in Honor of the Judiciary. During its short time, The

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by Judge Louraine  
Arksfeld  
Tempe, Arizona

## Embracing the Year

As I literally traded one suitcase for another on back-to-back trips, it did occur to me to wonder what I had gotten myself into by being Chair. But rather than being overwhelmed, I remembered the great advice I received before this year started—"Embrace the year—there will be opportunities you will never be offered again." My recent travels on behalf of the Judicial Division confirm the wisdom of that advice.

In October, I attended the Conference on Homeless Courts in San Diego. The Judicial Division was one of the co-sponsors of this event. A homeless court is another step in the evolution of problem-solving courts where the judge and staff actually go to the homeless shelter and hold court there. San Diego is the home of the original homeless court and serves as a model for all of us. Steve Binder from the Commission on Homelessness and Poverty and the impetus behind San Diego's court has written an article about this for our newsletter and I recommend it to you. I know the Arizona team came back inspired to move forward with this project.

The following week I was in Lexington, VA for the National Symposium on the Jury where those of us who have been laboring on the updated juror standards for the ABA presented our draft for discussion and comment. And what did everyone think of our baby? Well, a few thought he was ugly but most thought he was pretty cute but could use a little of this and a little of that. It was a very positive, collegial atmosphere as judges, lawyers, academics and former jurors focused on ways to make a good product excellent. In addition we received many, many written comments. Thanks to all of you who took the time to review, comment and improve our work. The standards are now submitted for consideration and hopefully approval by the House of Delegates at the Midyear Meeting. Many from JD have worked very hard on this project and I, for one, am very proud of the results.

At the beginning of November, I spent a week in Ottawa, Canada with over 300 judges and judicial educators from 88 countries at the International Conference on the Training of the Judiciary. I renewed old friendships as well as developed new contacts throughout the world. Particularly intriguing were the two days devoted to social context education—education related to equality, human rights and diversity. Materials for this portion of the conference began with this quote from The Honourable Claire L'Heureux-Dube, retired Chief Justice of Supreme Court of Canada: "There is no doubt that equality is a component of justice, just as independence and impartiality are. All three require that judges take into account the social context of facts and law in order to render justice since people are

contextual as much as law is...without social context, there is no justice." By listening to judges from other countries and cultures, the importance of understanding social context became very apparent. I came away inspired and just a little awed by judges and their educators' commitment to providing education to judges to guarantee the rule of law in each of their countries and sometimes under circumstances we can barely imagine and will fortunately never experience. I was never more proud to be a judge and to share that dream.

Finally I had an opportunity to observe our own judicial education system in action as I attended the Appellate Judges Education Institute kick-off event in Dallas. This was the first program since affiliating with the Dedman School of Law at Southern Methodist University. Attendance was excellent and the background and knowledge of the presenters was awesome. I want to make a special acknowledgement to our own Harry Lemmon who put this program together. Again I came away inspired—both at the quality of the education being provided and the commitment of our judges to receiving this education. In fact, I was so inspired that I committed to a reading list that includes *The Rise and Fall of the Roman Empire* (I mean, have you seen the size of that book? Maybe that is what all of these airplane rides will be for).

These opportunities are available to me because of my involvement with the Judicial Division; there are also opportunities that are available to you. I encourage each of you to embrace these opportunities when they are offered. You will never regret it.

## Justice Center

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John Marshall Award has become one of the most prestigious awards of the ABA. The honorees have included then-Governor Tom Ridge (2001); Supreme Court Justice Anthony Kennedy (2002), Retired Senator Howell Heflin (2003), and William T. Coleman (2004). Mr. Coleman is a former Cabinet Officer, one of the main architects of the Supreme Court brief in *Brown v. Board of Education*, and a highly respected lawyer in Washington, D.C. The John Marshall Award promotes the goals of the Justice Center and the ABA by promoting public awareness of the continued need to work for improvements in our legal system.

Finally, I want to pay respects to members of our staff who have worked so hard to ensure the success of the Justice Center. Luke Bierman was one of the moving forces in the creation and implementation of the Center. The Center was just one of Luke's many excellent contributions to the improvement of the legal system and the improved efficiency of the Association. Throughout his years of service to the ABA, Luke provided sage advice and historical context to many projects and programs within the Association. While we all wish him the best in his new venture in North Carolina, we will miss him personally and his wise counsel. Aimee Skrzekut Torres has taken over Luke's duties with respect to the Justice Center as well as continuing as the

Judicial Division Director. If past performance is any indication, we know that she will do an outstanding job. Finally, many thanks to Marcia Kladder who keeps the wheels of the Center moving forward. She is always available to respond to whatever problem arises at the moment and always with correct solution.

I have enjoyed my time with the Justice Center. The experience has been rewarding and helped me to continue working with some of the best members of our Association. Rewarding, Challenging, and Fun, What more could you ask for?



by Aimee Skrzekut  
Torres  
Chicago, IL

A year ago, I wrote extensively about the ways in which the Division, its leadership and its staff are achieving more than ever before with fewer resources. Maximizing efficiency seems to be my forte as I pen this column donning new responsibilities as the Director for both the ABA Justice Center and the Judicial Division. It has been said that the great reward for efficiency and hard work is more of the same and I assure you that my new role will in no way jeopardize Division programming and success.

Additional changes on the JD staff include Meredith White's promotion to Membership and Technology Administrator. Meredith's technological expertise and analytical savvy contribute

greatly to the work of the Division and the Justice Center. I am also recruiting for the vacant administrative assistant position and hope that the next issue will contain a bio on your new staff team member.

Without a strong JD staff team, this transition and all the Division accomplishes would be impossible. For this reason, I dedicate this column to my loyal, diligent and amazing Judicial Division staff that toils tirelessly to achieve more each day. Special thanks to a phenomenal team—Diane Babal, Kris Berliant, Gilda Fairley, Rebecca King, Paula Nessel and Meredith White! I am also thrilled to add Seth Andersen, Eileen Gallagher and Marcia Kladder to the team of talented professionals I am working with.

As with any transition, I appreciate your patience. I remain ready to assist and brainstorm new ideas as we forge an even more productive path for the Judicial Division and the Justice Center. Justice Center staff and I are working to identify and implement greater efficiencies, achieve goals and to expand upon the Justice Center's good work. I look forward to hearing your ideas and will see you in Utah.

## 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 2004-05 Division Nominating Committee members include:

- Mr. Rick Bien, Committee Chair
- Mr. Justin Connor
- Hon. Tyrone Butler
- Hon. James Wynn
- Hon. Andre Davis
- Hon. Sophia Hall
- Hon. Michael Pietruszka

The committee seeks nominations for the following vacancies:

### 1. JD Vice-Chair

*In accordance with the rotation schedule outlined in the JD Bylaws, the AJC has the nomination.*

### 2. JD Delegate to the House of Delegates

*In accordance with the JD Bylaws, the LC has the nomination.*

The committee will meet at the ABA Midyear Meeting in Salt Lake City, UT on Friday, February 11. The nominations will then be voted on at the ABA Annual Meeting in Chicago, IL. Please submit nominations to Committee Chair Mr. Rick Bien at [rbien@lathroppage.com](mailto:rbien@lathroppage.com) or the Division Director Aimee Skrzekut Torres via e-mail at: [torresa@staff.abanet.org](mailto:torresa@staff.abanet.org) or by fax at 312-988-5709.

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# Judge Sandra Thompson of Torrance, CA, Sworn in as President of the National Association of Women Judges

**I**NDIANAPOLIS, IN - On October 10, 2004 the National Association of Women Judges swore in their 2004-2005 Board of Directors. Judge Sandra Thompson, a Life member of the Association, accepted the honored position of President. She is a member and past director of the executive committee of the ABA National Conference of Specialized Judges.



The National Association of Women Judges provides strong, committed judicial leadership to ensure fairness and gender equality in American courts. Through effective judicial education and interaction, we promote equal access to justice for vulnerable populations. We also offer professional and personal support to enable judges to achieve their full potential on the bench.

Judge Sandra Thompson was appointed to the South Bay Municipal Court by Governor George Deukmejian on June 14, 1984. She was elected in 1988, 1994 and 2000, and elevated by unification to the Los Angeles Superior Court on January 22, 2000. During her 20 years on the bench, Judge Thompson presides over misdemeanor criminal matters.

*"I am very pleased that Judge Thompson has been elected and has agreed to serve this wonderful organization."*

*Supreme Court Justice Sandra Day O'Connor—Proud NAWJ member*

Judge Thompson is a graduate of the University of Michigan Law School and holds a Bachelor of Arts degree from the University of Southern California. Active in the area of judicial administration during her career, Judge Sandra Thompson is a former member of the Board of Directors of the National Center for State Courts and is the former chair of the Los Angeles County Municipal Court Judges Association.

Judge Thompson is an active member of numerous judicial and legal organizations, including, the California Judges Association, National Bar Association, California Women Lawyers Association, Black Women Lawyers Association, Black Women Lawyers Association of Los Angeles and Langston Bar Association.



## *BENCH & BAR BANKRUPTCY CONFERENCE*

AMERICAN BAR ASSOCIATION  
JUDICIAL DIVISION

Our inaugural Bench & Bar Bankruptcy Conference offers unique opportunities to learn about cutting-edge issues from America's leading bankruptcy lawyers and judges.

MARCH 10-12, 2005  
MANDARIN ORIENTAL HOTEL  
WASHINGTON, D.C.

During two full days of programming, the Conference will offer opportunities to earn CLE/CJE and ethics credit, with special emphasis on interaction between, and sharing perspectives of, the bench and bar.

Join us March 10-12, 2005 in Washington, D.C.

For more information, visit the Bankruptcy Conference website online at <http://www.abanet.org/jd/bankruptcy> or call (800) 238-2667 x5147.

JUDICIAL  
DIVISION

PRESENTED BY THE ABA JUDICIAL DIVISION AND ITS LAWYERS CONFERENCE & NATIONAL CONFERENCE OF FEDERAL TRIAL JUDGES

ABA  
Defending Liberty  
Promoting Justice

# ABA Justice Center 2005 Midyear Meeting - Salt Lake City, UT

Little America Hotel  
February 9-15  
Tentative as of December 30, 2004

## Thursday, February 10

9:00am - 11:00am	SC on Minorities in the Judiciary outreach	West High School
11:45am - 1:00pm	Judicial Clerkship Program (judge participation)	Salt Palace Convention Ctr.
12:00pm - 5:00pm	Office	Sinclair, 1st Fl.
12:15pm - 1:30pm	ALJ Mock Hearing	Univ. of Utah, College of Law Moot Courtroom, 332 S. 1400 East
1:00pm - 3:00pm	Judges Network Committee Meeting	Uintah, 2nd Fl.
2:45pm - 3:45pm	Judicial Clerkship Program (judge participation)	Salt Palace Convention Ctr.
6:30pm - 8:00pm	Judicial Division Reception <i>Sponsored by LexisNexis</i>	Grand Ballroom C, 1st Fl.

## Friday, February 11

7:30am - 10:00am	Office	Sinclair, 1st Fl.
7:30am - 8:30am	Division Welcome Breakfast	Grand Ballroom A, 1st Fl.
8:30am - 9:30am	SSA and Disability Task Force Meeting	Grand America, Hermitage, 3rd Fl.
8:30am - 5:00pm	Joint Commission to Evaluate the Model Code of Judicial Conduct Public Hearing	Marriott, Grand Ballroom H/I 75 S. West Temple
9:00am - 9:45am	Judicial Clerkship Program (judge participation)	Salt Palace Convention Ctr.
9:00am - 2:00pm	SC on Judicial Independence Index Project Steering Group	Grand America, Versailles, 3rd Fl.
9:45am - 12:00pm	<i>Executive Committee Meetings</i> Lawyers Conference Federal Trial Judges Specialized Court Judges	Uintah, 2nd Fl. Sawtooth, 2nd Fl. Tucson, 2nd Fl.
9:45am - 1:00pm	<i>Executive Committee Meetings</i> Administrative Law Judiciary State Trial Judges Executive Committee	Sun Valley, 2nd Fl. Flagstaff, 2nd Fl.
1:00pm - 2:30pm	JD Nominating Committee	Sun Valley, 2nd Fl.
1:00pm - 3:00pm	Committee Meetings STJ Jury Trial Management (1-2) ALJ Strategic Planning Committee (1-2) ALJ Nominating Committee (2-3) SCJ Traffic Courts (2-3)	Tucson, 2nd Fl.
1:00pm - 2:30pm	JD Strategic Planning Committee (Chair-Elect and Vice Chairs only)	Uintah, 2nd Fl.
2:00pm - 3:00pm	Judicial Clerkship Program (judge participation)	Salt Palace Convention Ctr.
2:00pm - 4:00pm	Office	Sinclair, 1st Fl.
2:30pm - 4:00pm	JD Strategic Communications Committee	Uintah, 2nd Fl.
2:00pm - 5:00pm	Council of Appellate Lawyers Meeting	Grand America, Fountainbleau, 3rd Fl.
2:00pm - 5:00pm	Program on Servicemembers Civil Relief Act	Grand America
4:30pm - 6:00pm	Justice Center Coordinating Council Meeting	Uintah, 2nd Fl.
6:00pm - 9:00pm	Joint Reception/Dinner Administrative Law Judiciary, Federal Trial Judges, Lawyers Conference Ticket price:	
7:00pm - 10:00pm	Joint Dinner Specialized Court Judges/State Trial Judges	Panini, 299 S. Main Street 2nd Fl. of the Wells Fargo Bldg. The Paris
7:15pm	SC on Judicial Independence Dinner	

## Saturday, February 12

7:30am - 10:00am	Office	Sinclair, 1st Fl.
7:30am - 8:30am	Jnt. Sr. Lawyers and JD Committee on Senior Judges Meeting	Wasatch, 2nd Fl.
7:30am - 9:00am	State Trial Judges Executive Committee Meeting	Tucson, 2nd Fl.
8:00am - 9:00am	<i>Executive Committee Meetings</i> Administrative Law Judiciary Lawyers Conference	Uintah, 2nd Fl. Grand America, Oak Private Dining Rm #2, Lobby Level
	Federal Trial Judges Specialized Court Judges	Cheyenne, 1st Fl. Sun Valley, 2nd Fl.

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# Midyear Meeting

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8:30am - 1:00pm	SC on Judicial Independence Committee Meeting	Tucson, 2nd Fl.
9:00am - 11:15am	Judicial Clerkship Program (judge participation)	Salt Palace Convention Ctr.
9:00am - 12:00pm	Judges' Journal Editorial Board	Wasatch, 2nd Fl.
10:00am - 12:00pm	Tribal Courts Council Meeting	Sun Valley, 2nd Fl.
10:00am - 12:00pm	<b>PROGRAM</b> Time for a Dialogue between Congress and the Judiciary	Grand America, Ballroom C, Lobby Lvl.
12:00pm - 2:00pm	Spirit of Excellence Award Luncheon	
2:00pm - 4:00pm	Office	Sinclair, 1st Fl.
2:00pm - 4:00pm	SC Judicial Independence Media Training	Sawtooth, 2nd Fl.
2:00pm - 5:00pm	Division Council Meeting	Tucson, 2nd Fl.
5:00pm - 5:30pm	Division Business Meeting	Tucson, 2nd Fl.
<b>Sunday, February 13</b>		
7:30am - 10:00pm	Office	Sinclair, 2nd Fl.
7:30am - 9:00am	Joint Breakfast Meeting	Arizona, 1st Fl.
	Lawyers Conference/Federal Trial Judges/SC on Federal Judicial Improvements	
8:00am - 10:00am	Executive Committee Meetings Administrative Law Judiciary Specialized Court Judges Standing Committee on Minorities	Sun Valley, 2nd Fl. Tucson, 2nd Fl. Uintah, 2nd Fl.
8:00am - 11:00pm	State Trial Judges Executive Committee	Wyoming, 1st Fl.
8:00am - 12:00pm	Appellate Judges Conference Executive Cte. Mtg.	Idaho, 1st Fl.
9:00am - 10:00am	Executive Committee Meeting Federal Trial Judges	Arizona, 1st Fl.
	Lawyers Conference	Wasatch, 2nd Fl.
9:00am - 12:00pm	SC on Federal Judicial Improvements	Sawtooth, 2nd Fl.
2:30pm - 5:00pm	Coalition for Justice Committee Meeting	Wasatch, 2nd Fl.
4:00pm - 5:00pm	HOD Delegates Meeting	Uintah, 2nd Fl.

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## ABA Judicial Clerkship Program Salt Lake City, Utah February 10-12, 2005

Dear Colleague:

It is not too late to register for the fifth annual Judicial Clerkship Program. Visit us at the Salt Palace Convention Center in Salt Lake City, Utah. I guarantee you'll enjoy being a part of this program.



Justice Frank Sullivan Jr.

Indiana Supreme Court  
Co Chair

Register online today at:

<http://www.abanet.org/jd/forms/2005jcp.html>

# Whatever Happened to .....

by Judge Jamie Sledge  
Anniston, AL

This issue of the column finds a former Judicial Division chair. Chief Judge Deanell Tacha, United States Court of Appeals for the Tenth Circuit, was chair of Judicial Division in 1995, when the Annual Meeting was in Orlando. She was the last federal appellate judge as chair until Judge O'Scannlain in 2001. The annual dinner entertainment was innovative. She allowed Judge Fred Rogers to produce a vaudeville act with Division members as the performers. We should probably forgive her for that lapse of judgment. Charitably, we can say that the ABA leadership, dressed in formal attire, was surprised. The highlight of her year as chair was the controversial change of the organization from Judicial Administration Division to Judicial Division. The change was to emphasize the judiciary role and avoid the image of judicial administrators. Another big part was to revise the bylaws and the structure of the conferences. This revision started the Division on the path of unity and cooperation, leading to the Manhattan Project and the current status of a unified organization with common goals.

After her term as JD chair, Chief Judge Tacha was appointed by the President to the United States Sentencing Commission for a four year term. Chief Justice Rehnquist appointed her as chair of the Judicial Conference of the United States standing committee



on the Judicial Branch for four years, returning her to the same job she held in the early '90s. In this position, she had the challenge of leading a national strategy for the Congress to address the crisis of judicial compensation. She came oh so close to success last year, in the face of great obstacles. As if these responsibilities were not enough to keep her interested, she has been chief judge of the Tenth Circuit. How does she do it all? Well, she has just begun a term as national President of the American Inns of Court. So she will challenge us to do good in yet another capacity.

Chief Judge Tacha has kept close contact with Judicial Division and ABA. A couple of years ago, a strain on the relationship between the ABA and the Federal Judiciary developed. Each was issuing press releases criticizing the other. She organized a joint meeting of the leadership of both and solved the dispute. Now the relationship is the best in many years.

During her career, Chief Judge Tacha has raised four children, three of which are currently in college. Before her appointment to the bench by President Reagan, she was a Professor of Law and then Vice Chancellor of the University of Kansas.

In review of her exemplary record of public service, we have to ponder. Did her experience as chair of Judicial Division lead to her many other accomplishments? More likely, her record demonstrates what wonderful talent we have in Judicial Division. On a personal note, I credit Chief Judge Tacha with welcoming me to Judicial Division and involving me in its activities, when I attended my first meeting in 1995. If not for her, I may well have not become active. We all can strive to follow her examples.

## Miscellaneous News

### 2005 Award Applications Available

Nominations are currently being accepted for Judicial Division and Justice Center awards. The list includes: National Conference of Specialized Court Judges Judicial Education Award, Franklin N. Flaschner Award and William R. McMahon Award; and the Justice Center John Marshall Award. Nomination forms, eligibility and deadline information are available at: <http://www.abanet.org/jd/home.html>

### Sightseeing in Salt Lake City

Attending the 2005 Midyear Meeting in Salt Lake and don't know what there is to do? Visit <http://www.abanet.org/midyear/2005/sightseeing.html> for information about skiing, museums, restaurants and much more. Not registered yet? Be sure to log onto <http://www.abanet.org/midyear/>

[2005/home.html](http://www.abanet.org/2005/home.html) before the deadline, Friday, January 7.

### NEW RELEASE: Annotated Model Code of Judicial Conduct

This new publication from the ABA Center for Professional Responsibility and Judicial Division presents an authoritative and practical analysis of the judicial ethics rules and the cases, ethics opinions, and other legal authorities essential to understanding them. PC# 2150005, 7x10 paperback, \$75.00 (Regular); \$56.25 (Center for Professional Responsibility member); \$56.25 (Judicial Division Member).

To order: <http://www.abanet.org/abastore/> or call 800-285-2221.

### Joint Commission to Evaluate the Model Code of Judicial Conduct

The Joint Commission continues its intensive review of the ABA Model Code of Judicial Conduct and has released

preliminary drafts of Canons 1-4 for public comment. Drafts can be accessed from the Joint Commission's website at [www.abanet.org/judicialethics](http://www.abanet.org/judicialethics). The Joint Commission anticipates the release of Canon 5, the political activity canon, before the end of 2004. Division members are encouraged to review and comment on the preliminary drafts. The work of the Joint Commission will be greatly informed by the thoughtful participation and comment of the judiciary. The next public hearing of the Joint Commission will be held on Friday, February 11, 2005, from 9:00 AM to 12:00 PM during the ABA Midyear Meeting in Salt Lake City. The Joint Commission's meetings will be held at the Marriott Downtown, 75 South West Temple, Salt Lake City, UT 84101. Questions or comments regarding the Joint Commission's work may be directed to the Commission's co-counsel, Eileen Gallagher, at [gallaghE@staff.abanet.org](mailto:gallaghE@staff.abanet.org) or 312-988-5105.

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## Miscellaneous

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### ABA Connection Program: "The Verdict on Juries"

On April 20, 2005 at 1:00 pm Eastern, the ABA Connection is presenting a one-hour CLE teleconference titled, "The Verdict on Juries." The ABA House of Delegates is expected to act on a series of recommendations by the Commission on the American Jury to revive the public's faith in the jury system and to help stem recent trends away from using juries to decide cases. This program will take an initial look at the recommendations of the commission

and explore how they might help to bolster the jury system. The *ABA Journal* article and teleconference will also take a broader look at the practical considerations that come into play for litigants and their lawyers in making the strategic decision about whether to take their case to a jury and how these considerations come into play throughout a jury trial, from voir dire through closing arguments and verdict. The program is sponsored by the ABA Journal, Membership and Marketing, and the Center for Continuing Legal Education and cosponsored by the General Practice, Solo and Small Firm Section and the Judicial Division. CLE credit has been applied for in

states that accept the teleconference format. To register, call the ABA at 800/285-2221 from 8:30 a.m. to 6:30 p.m. Eastern weekdays, beginning Monday, March 21st or register online by Friday, April 15th at [www.abanet.org/CLE/connection.html](http://www.abanet.org/CLE/connection.html). There is a nonrefundable \$9.75 fee for the teleconference. If you are unable to participate in the live teleconference, the program is available, at no cost, for one month, on the ABA CLE Web Site at <http://www.abanet.org/cle/connection.html>. Tapes of the program are available to ABA members for \$50.00 two weeks after the program. To order a tape call the ABA Service Center at 1-800-285-2221.

## Program Aims to Halt Conflicts in Domestic Violence Orders

In an effort to improve protection for domestic violence victims and decrease confusion for law enforcement officers throughout Washington State, the Kitsap County District Court and the YWCA of Kitsap County have embarked on a model project to eliminate conflicts when two or more domestic violence orders are issued involving the same people. The project will ensure the strictest protection orders take precedence and that those orders are more clearly enforceable.

The District Court and YWCA were awarded a \$139,199 grant for two years under the federal grant to encourage arrest policies and enforcement of protection orders. The project was developed by Judge James Riehl in concert with the Kitsap County Trial Court Coordination Council, a council made up of each level of court established in Kitsap and other counties at the recommendation of statewide court officials to better coordinate resources among courts and to solve problems unique to each county.

"When a victim of domestic violence walks into a Kitsap County courthouse, we want to ensure that they are protected to the fullest extent of the law," said Kitsap District Court Presiding Judge James Riehl in announcing the new program.

Stating that conflicting domestic violence orders issued from different courts for the same parties has been an issue for a

number of years, Riehl explained the day-to-day issues that officers and courts face throughout the State of Washington and the nation. "No court has jurisdiction over the other, yet all of the orders are valid. It is an absolute built-in inconsistency that we are searching to remedy," he explained.

The project involves a half-time court clerk who will be responsible for reviewing all domestic violence orders issued in Kitsap Superior and District Courts and all Municipal Courts in the County. If the clerk finds multiple orders involving the same parties, with conflicting provisions in the orders, the case will be referred for a hearing to a part-time judicial officer designated specifically to settle conflicts among orders from different jurisdictions.

In addition, before signing an order, each judge will have the ability to review what orders are currently in effect between the parties. Riehl will serve as the "Unified Domestic Violence Order Judge," authorized to rescind conflicting orders, resolve any conflicting provisions and incorporate them into one order.

Domestic Violence orders can be issued by Superior, District and Municipal Courts and such cases frequently involve multiple issues that are handled at different court levels with different authority. An audit in December 2003 showed that approximately 1,050 domestic violence orders were in effect in Kitsap County and nearly half were multiple orders. Approximately two-thirds of the multiple orders contain inconsistent provisions. Police can be called by one party to enforce one court order (involving child visitation, for instance), while the other party has an order with different provisions.

Under the new program, criminal protection or restraining orders will take precedence over civil orders. In cases where orders are all criminal, the most restrictive order will take precedence.

"It's a unique project aiming to streamline extremely complicated legal issues," said Riehl. While the project has taken nearly a year to plan, Riehl says the immediate benefit for victims of domestic violence in his County and possible replications of the program statewide and nationally will be well worth the effort. "It will reduce confusion by the parties, frustration by law enforcement and ultimately enhance protection for victims of domestic violence. We owe it to the community to do this!"

"This was a problem we were all aware of," said Kitsap YWCA Director, Linda Joyce. "Judge Riehl just seems to have his finger on the pulse of what's happening in our County. His leadership has been instrumental in this. The partnership between the courts and law enforcement and the schools and the community is something we're very proud of."



# Homeless Court Program - Finding Opportunity in Adversity



by Steve Binder  
Deputy Public Defender  
Co-founder Homeless  
Court Program  
San Diego, CA.  
and  
Amy Horton-Newell  
Staff Director  
ABA/Commission on  
Homelessness and  
Poverty  
Washington, D.C.

In 1989, San Diego started the first Homeless Court Program in the nation in response to a survey where one in five homeless veterans stated they needed legal assistance to address outstanding criminal warrants. What began as an annual event for homeless veterans progressed to a monthly Superior Court session convened in a homeless shelter where any homeless person can voluntarily resolve outstanding misdemeanor offenses and warrants.

Homeless people are routinely issued citations for such minor offenses as illegal lodging, blocking the sidewalk, jaywalking, drinking in public and urinating in public, and riding the trolley/bus/subway without paying. In their daily struggle for food, clothing and shelter, the homeless population typically has no means for making reparations to the criminal justice system for misdemeanor criminal conduct. Consequently, misdemeanor citations and infractions are often not handled, compounding the problem by generating warrants and additional fines which can preclude a homeless person from accessing desperately needed services such as public benefits, mental health and/or substance abuse treatment, employment and housing. The Homeless Court Program (HCP) was created to offer homeless individuals an opportunity to resolve their outstanding criminal cases by substituting participation

in treatment programs and other shelter programs for fines, community service, and custody.

"The goal for the homeless defendant is to leave court with a clean slate," says the court supervising judge, Peter C. Deddeh. "The goal of the court is to relieve some of the backlog of pending cases, as well as to improve the trust and confidence of one of the city's most vulnerable populations."

The Homeless Court Program focuses on what the defendant has accomplished on his or her road to recovery and self-sufficiency rather than penalizing him or her for mistakes made in the past. The Court combines a progressive plea bargain system, alternative sentencing structure, assurance of "no custody" and proof of program activities, to address a full range of misdemeanor offenses, including under the influence of a controlled substance, theft, and driving under the influence charges.

Because the defendant participates in various shelter programs prior to appearing before the Court, the HCP offers a different plea structure from the traditional court proceeding. The plea agreement recognizes the participant has completed the court order before the court imposes sentence.

*"The Homeless Court Program brings the law to the streets, the court to the shelters and the homeless back into society."*

The alternative sentencing structure is not coercive or punitive in nature, but rather designed to assist homeless participants with reintegration into society. With alternative sentencing, the HCP gives "credit for time served" for the participant's accomplishments in shelter activities. These activities include life-skills, chemical dependency or AA/NA meetings, computer and literacy classes, training or searching for employment, medical care (physical and mental),

counseling and volunteer work. These activities replace the traditional court sentence options of fines, public work service and custody. According to Judge David J. Danielsen, "The Homeless Court Program sentence of program activities is a different form of currency."

The shelters perform the assessments of clients, provide for their basic needs (food, clothing and shelter), while building the motivation and support that leads clients to the services which, in turn, fulfill the court orders for alternative sentencing. The shelter is in the best position to evaluate the client's needs and design a plan with attainable goals and benefits. The shelter representatives submit to the Court detailed advocacy letters documenting each client's achievements and progress. Participants who appear in Homeless Court with serious misdemeanor cases submit proof of completion of significant program activities.

The HCP recognizes people can overcome great obstacles, and serious misdemeanor offenses, and that these cases represent but one part of their lives, not the whole of the individual. In many circumstances, the participant's program activities voluntarily exceed the demands a court might order for treatment for low term felony cases (e.g. certain drug and theft charges).

A successful HCP participant credited the support of the Homeless Court and his host shelter program for his emergence from homelessness. "I was surprised by the Court's willingness to work with me and allow me to continue my program without the burden of legal problems."

The Homeless Court Program brings the law to the streets, the court to the shelters and the homeless back into society. The Homeless Court Program provides access to court for homeless defendants, working with shelter services, holding proceedings in shelter community rooms and recognizing individual effort for purposes of sentencing. The Homeless Court Program's greatest achievement is the contribution of the shelter and homeless participants building a more inclusive criminal justice system and stronger community.

# Back to School!

## NCSC Brings Learning, Information to the Courts via the World Wide Web



*Chuck Ericksen  
Executive Director,  
Institute for  
Court Management  
National Center for  
State Courts*

Management (ICM) at [www.ncsonline.org](http://www.ncsonline.org).

The Internet has changed the way NCSC does business. Instant access has become the Internet's immediate gift to the world-and its long-term challenge to sustaining quality and depth. NCSC has embraced the challenge to provide premier services to the courts in new ways that were once thought impossible. Instant access to records, grant awards, library resources, research from a variety of sources, technology trends, best practices and model programs, other Web sites, and comprehensive studies of specific court-related topics from security to privacy to courthouse design to core competencies abound on NCSC's Web site-particularly on the CourTopics database.

ICM continues to develop E-Learning Programs to reach a more diverse court audience that may not otherwise have access to education and training programs. E-Learning uses convenient and reliable electronic media to eliminate costly travel, thus making online courses an attractive alternative to traditional education programs.

ICM offers three types of distance learning courses:

- **LiveWeb Classes:** These classes are conducted using computers and telephones, with each participant joining a conference call while logging in to an online program. These two

reliable technologies are available to almost all court personnel at their desktop, and no specialized skill is required to participate. The interactive conversation typically includes PowerPoint slides, polling questions, surveys, and other shared documents or Web sites. Classes are typically 75 to 90 minutes long and are limited to 12 to 15 participants to give all participants a voice in the class. ICM can schedule LiveWeb classes for a court group, or individuals can sign up for regularly scheduled programs.

- **WebCT:** An asynchronous learning platform, WebCT offers ICM the ability to deliver educational programs to court personnel 24 hours a day, 7 days a week. Using a Web browser, participants can access a rich learning environment containing PowerPoint presentations, PDF and Word documents, threaded discussions, polling and assessment questions, audio and video files, chat rooms, internal e-mail, learning groups, and much more. WebCT can deliver pre-course or post-course elements of a face-to-face class, be combined with a LiveWeb class, or offer standalone courses. Participants are not required to have high-speed Internet connections to view high-quality media content through WebCT.
- **Videoconferencing:** ICM video-conference programs use fully interactive, two-way video and audio connections over ISDN lines. By connecting multiple sites in the videoconference program, participants throughout the country or world can participate in an environment that emulates a face-to-face meeting without the inconvenience and expense of travel. A course can include video clips, computer presentations, Internet links, and document camera elements, as well as multiple presenters from any site throughout the country. ICM can schedule videoconferencing classes for a court group, or individuals can sign up for regularly scheduled programs.

For information regarding specialized programs or scheduling, contact the ICM Registrar at (800) 616-6160 or [icmregistrar@ncsc.dni.us](mailto:icmregistrar@ncsc.dni.us). Bookmark NCSC's Web site, [www.ncsonline.org](http://www.ncsonline.org).

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# Time Off The Bench

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

## What Have I Learned From Travel Planning?

I am not sure you would call travel an addiction, but it certainly gets into your blood. Because Mary Ann and I usually go to locations outside of the United States, people who know us have an expectation that we are off to somewhere exotic in the near future. When we do not have something planned, I think it is a disappointment for the questioner that we have not planned the next trip. I must admit that I find myself anxious, and somewhat at a loss, when no trip is in the works! It is only in the last ten years that we have been traveling frequently, and I have learned a lot about travel and planning for a successful trip.

- I receive several free travel newsletters by e-mail each week, and one of them arrives three or four times during the week. This newsletter is the Frommers newsletter. Their format includes a section on "deals and news" and then a section of "Reader's Voices" asking questions, stating problems, or making suggestions. This "Reader's" section allows for answers or responses. The newsletter is a great resource and I print many items that might be fun, helpful, or educational in the future. You can subscribe to the newsletter by going to the website at [www.frommers.com](http://www.frommers.com).
- The most unusual newsletter I receive is *The Travel Insider* written by David M. Rowell. It arrives on Friday and is mostly informational and editorial about interesting developments in the travel industry, alerting readers about travel problems, and lambasting the big air carriers. His weekly column

is a fascinating read. You can sub-scribe to the newsletter by signing up at the website which is [www.travelinsider.info](http://www.travelinsider.info).

- The third newsletter is *Smarter Living* deal alert. It sets out the top travel deals of the week, travel advice with references to articles by Smarter Living travel writers (and others by hyperlink), and sponsor deals. All of these newsletters are free, other than being subjected to their ads. Subscription to Smarter Living can be found at [www.smarterliving.com](http://www.smarterliving.com).
- The fourth newsletter I receive is the *Independent Traveler*. Each week it provides information on destination communities, travel articles, the editor's picks, travel resources, bargain box deals, and interactive opportunities on message boards. Sign up for the newsletter is at [www.independenttraveler.com](http://www.independenttraveler.com).
- I also receive the monthly *National Geographic Travel* newsletter. This newsletter has been substantially upgraded and is now very helpful with interesting destination articles, travel tips, and great photography. You can subscribe (for free) to the newsletter at [www.nationalgeographic.com/travel/](http://www.nationalgeographic.com/travel/).
- If you have been following my travel articles, you know that I am a frequent user of [go-today.com](http://go-today.com). This is a website travel packager that can be accessed only by the internet (or by phone for an extra fee). I have purchased foreign trips from them on the internet to Vienna, Tuscany, Paris, London, Brussels, and Bangkok and everything they have promised has been delivered. Check out their new website and you will see the wide array of one week trips offered to Europe, South and Central America, and Asia. The package usually will include air



travel, hotel, breakfast, sometimes pickup and return to the destination airport, and a half day city tour the day after arrival. It is well worth your looking at their website at [www.go-today.com](http://www.go-today.com). A competitor to Go-Today is Gate1 Travel. I have their website on my favorites. Their similar packages (and escorted trips) are found at [www.gate1travel.com](http://www.gate1travel.com).

- Finally, for those of you who enjoy travel writing literature (like I do), please look at [www.worldhum.com](http://www.worldhum.com). This site reviews recent travel books and interviews travel writers. It is also a very helpful site for hyperlinks to travel journals, travel magazines, travel blogs, newspaper travel sections, book stores, and a myriad of interesting travel websites. The title of the site is World Hum—Travel dispatches from a shrinking planet. Take a look at it.

The Legal Stuff: All of the recommendations and advice of *Time Off The Bench* are personal to the author 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, suggestions, or criticism (be gentle). Contact me at [thomas.warren@co.chelan.wa.us](mailto:thomas.warren@co.chelan.wa.us).

*Travel – I am not the same having seen the moon shine on the other side of the world.*

# 2004 Traffic Court Program

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

Eighty participants attended the Traffic Court Program at the Sir Francis Drake Hotel in San Francisco, October 13-15. Fortunately, this hotel was one of the few in San Francisco that was not on strike. Next year's program will be held at Loyola University, New Orleans, October 12-14, 2005.

Ted Kolb, a long time Committee member and past chair, was recognized at the reception with a well-deserved plaque. Throughout his many years of service, the Traffic Court Program has been recognized as the premier annual educational program for Traffic Court judges.

The core curriculum of the Traffic Court Program was well received. Judge Fred Rodgers sang and spoke about the Fourth Amendment and Supreme Court decisions on Advice of Rights. Dr. David Fisher reviewed the advantages and disadvantages of various speed measurement devices and Dick Williams spoke about the admissibility of speed check evidence. Dr. Robert Forney, Jr. spoke about the effects of alcohol on the human body and Lt. William Tower spoke about Drug Recognition Evidence.

The 80 participants heard from Judge Patrick Bowler of Grand Rapids about the rewards of setting up a Sobriety Court. The involvement of the judge meeting with defendants on a regular basis and providing positive rewards and negative consequences can have a significant effect on changing the behaviors and attitudes of

defendants. Judge Bowler said that Sobriety Court requires extra work but the extra effort is worth it.

Professor David Harris of the University of Toledo spoke about the negative effects of racial profiling both in combating



terrorism and in the enforcement of traffic laws. Professor Harris spoke about how "Driving While Black" offenses can erode public confidence in law enforcement and can impact the court system. Professor Peter Keane of Golden Gate University spoke about the need for Judicial Ethics and how we must be careful that our friends and family do not imply that they can obtain special favors.

Timothy Fautsko of the National Center for State Courts led a discussion on effective ways of collecting fines and costs. As he pointed out, an unpaid fine is an untaught lesson in accountability. Some programs are judge-based while others are staff-based and others are outsourced or a hybrid of the above. Whatever system is used must allow for due process and must hold defendants accountable.

Captain Bridget Lott of the California Highway Patrol spoke about the problems of elderly drivers and traffic safety. The elderly have functional impairments, such as, vision, strength, flexibility, peripheral sensation of extremities, and coordination. They also have cognitive impairments such as attention, judgment, and problem solving. Many elderly people take significant amounts of prescription medications and sometimes no one but the patient knows all of the prescription medication that is being used. They are also frail. Some of the elderly drivers are careful and self-regulate by not driving at night or on busy roads. Taking away someone's license can significantly impact that person and his or her family but not taking it away can also have serious negative consequences. The judge can review the driving record of a defendant who is before the court for sentencing. The judge can determine if there were prior collisions and who was at fault and ask if health factors were involved. If the judge is aware of these problems, he can urge the defendant to take a Mature Driving Course or obtain a physical examination or the judge can refer the defendant for a re-examination. The judge can also suggest to the defendant that he or she used public transportation. Judges can also be a part of grassroots efforts to improve public transportation.

Judge Bill Kelly spoke about the needs for qualified interpreters and the advantages and disadvantages of using friends of the defendant, forms, slide shows, live interpreters, and over-the-phone interpreters from Language Line.

The participants evaluated the program very highly and preparations have begun for next year's program at Loyola University New Orleans, October 12-14, 2005.



Chicago, IL - Judges Elibu Berle, William Missouri and Herbert Dixon attended the Section Officers Conference. After the conference, they sat down to talk with Judges Ramona See and Andre Davis. Judges See and Davis attended a one-day training conference for the education program chairs. Shown here are Judges Missouri, See, Dixon, Berle and Davis.

# Protecting Our Service Members in Our Courtrooms

by Judge Peter Evans, Palm Beach, Florida and Col. Linda Strite-Murnane (Ret.), Washington, D.C.

Whether from blue states or red states all Americans agree that our young men and women in uniform deserve our respect and support. Events have highlighted the responsibility of the judiciary to protect the rights of our service members. The Soldiers and Sailors Civil Relief Act, first enacted in 1940, was amended and renamed the Servicemembers Civil Relief Act (SCRA) in 2003. With the call up of the National Guard and Reserve, the citizen-soldiers from your own community may be the ones you are protecting.

The stated purpose of the act is to protect the civil rights of active duty, uniformed service personnel from any demonstrated prejudice arising from judicial proceedings conducted by or against them in their absence. This hopefully enables service members "to devote their entire energy to the defense needs of the Nation."

Judges must familiarize themselves with the SCRA. In our special and limited jurisdiction courts, the most frequent application is when the special court judge is called upon to enter a judgment based upon a default. The Servicemembers Civil Relief Act, 50 USC App. §521(b)(1) provides:

(1) In any action ...the Court, before entering judgment for the Plaintiff, shall

require the Plaintiff to file ... an affidavit stating whether or not the Defendant is in military service and showing necessary facts to support the affidavit; or if the Plaintiff is unable to determine whether or not the Defendant is in military service, stating that the Plaintiff is unable to determine whether or not the Defendant is in military service.

A mere conclusory statement that the Defendant is not in the military is insufficient. Facts, of which the affiant must have personal knowledge, must reasonably lead to the conclusion that the Defendant is not in the military, must be set forth. A simple statement that the Defendant is not in the military is insufficient.

Compliance with this provision can be time consuming and tedious. Many courts have become comfortable with a "no harm no foul" approach. They believe if a mistake is made they can later set aside the voidable final judgment. This approach is sloppy and not in compliance with the mandates of this often ignored statute.

There is an easy, inexpensive, fast and reasonable method to obtain data which can reasonable be relied upon by the court. Advise litigants and court staff about the availability of the Defense Manpower Data Centers (DMDC) Military Verification Service. There is a short simple registration process. Thereafter searches can be completed in a matter of moments. This information can be used to support the allegations of the required affidavit. Further information on the service may be obtained by writing to the Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209-2593, calling them at 703-696-4156 or by simply going to their web site located at <http://www.dmdc.osd.mil/>.

Beyond this technical requirement, the meat of the statute is the protection it offers our service members. Under the SCRA, a service member has the right to stay court or administrative hearings for at least 90 days. Additional stays can be granted at the discretion of the judge or the hearing official.

Among the key provisions that have hit home for many Guard and Reserve families, are the provisions of the SCRA dealing with evictions. These provisions allow a service member to abate rent and/or terminate a lease agreement upon being called to active duty, or upon receipt of reassignment (called Permanent Change of Station or PCS) order, and to terminate a lease when ordered deployed for more than 90 days.

There is also a new provision to allow termination of automobile leases upon reassignment or upon deployment for a period of 180 days or more.

It is critical for judges to understand that the Servicemembers' Civil Relief Act applies to civil but not criminal matters. There are many provisions and protections, too numerous to be discussed fully in this article. The judge must be aware they exist and be careful to consult the statute when proceeding with a civil action involving a service member.

Showing your support for the citizen-soldiers by following the guidelines in the SCRA is the right thing to do for your community and the nation. If you would like to know more about the SCRA, please contact Judge Peter Evans at [pevans@co.palm-beach.fl.us](mailto:pevans@co.palm-beach.fl.us) or Colonel Linda Strite Murnane, USAF, Retired, at [Kmurnane98@aol.com](mailto:Kmurnane98@aol.com) or the visit: [www.abanet.org/jd/](http://www.abanet.org/jd/)

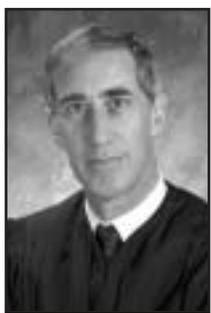
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## John Marshall Award - Call for Nominations

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 ABA Justice Center to recognize those dedicated to the improvement of the administration of justice. The fifth annual presentation of the John Marshall Award will take place at the ABA Judicial Division Annual Dinner in Honor of the Judiciary. The deadline for nominations is March 15, 2005. For more information on the award or a copy of the nomination guidelines and entry form, please visit: <http://www.abanet.org/justicecenter/johnmarshall.html> Nominations and supporting documentation should be sent to: ABA Justice Center, John Marshall Award, 321 N. Clark, 19th Floor, Chicago, IL 60610, (P) 312-988-5722; (F) 312-988-5709.

# Appellate Judges News

## Successful AJEI Kickoff and Developing a "List Serve"



by Judge Harris Hartz  
Albuquerque, NM

For some time, the focus of almost all AJC's time, attention, and energy has been our educational programs. Adding to the burden during the past several years has been the need to regroup because we have lost much of our outside funding. Thanks to the efforts of my predecessors—Judge Danny Boggs, Justice Craig Enoch, and Judge Jim Wynn—and many others, we have successfully made the transition. As you already know, the Appellate Judges Education Institute (AJEI) has been created at the SMU Dedman School of Law in Dallas. The AJEI Board consists primarily of the AJC Executive Committee and two ABA representatives. The Institute's programs are co-sponsored by the ABA.

I can now happily report the success of the first AJEI presentation—a kickoff program in Dallas from November 10 to 14. Even with relatively short notice of the event, 128 judges and more than 100 attorneys attended. Feedback has been enthusiastic. Justice Harry Lemmon, a familiar face in our educational programs over the years, worked tirelessly and imaginatively to put the program together. Without him, I doubt that we could have conducted the event, much less had a success. Thank you, Harry. And thanks,

too, to the SMU/AJEI Dallas team for great support work that often extended into the wee hours of the morning.

Encouraged by the kickoff, we are proceeding with plans for an even bigger and better event in October 2005 in San Francisco. Keep an eye out for a save-the-date message.

Also, now we can turn our attention to some ABA activities that have necessarily been neglected in recent times. There are a number of JD and other ABA activities that can benefit from AJC participation, and AJC members can themselves enjoy and learn from these activities. At the Midyear Meeting coming up in Salt Lake City the Executive Committee will be discussing how we begin to work better with other ABA entities.

One resource we can certainly begin to exploit is the list serves within the AJC. More than half our members can now be reached through list serves for CAL, CASA, the CCJCA, and Appellate Education. Already we have publicized requests for AJC participation on two ABA committees and have asked for volunteers. I have been able to appoint representatives and alternates within a week of the ABA request. Using snail mail would have been prohibitively expensive, and using this column would cause too great a delay. Please give your consent to being on an AJC listserv by sending an Email to paulanessel@staff.abanet.org.

## Council of Chief Judges Meets in Dallas, Passes Presidency to Irwin

The Council of Chief Judges of Courts of Appeal conducted its Annual Conference in Dallas on November 10-12, before joining the sessions of the Appellate Summit Conference of the AJEI on November 13 and 14. The focus of the programs at the Chiefs Conference was the role of the Chief Judge as the CEO/COO/CFO of the intermediate appellate court system, and the topics were designed by Education Chair Johanna Fitzpatrick of Virginia and former Chief Judge Sid Eagles of North Carolina. A featured speaker was Donna Melby, President of ABOTA (American Board of Trial Advocates), who echoed in enlightening fashion the national concern about the diminished role-played by the jury in the justice system. The conference concluded with the traditional Council Dinner Dance, where Steve McEwen of the Pennsylvania Superior Court passed the golden necklace of President to Judge John Irwin of Nebraska.



Participants discuss issues at a joint meeting of the Appellate Judges Conference Executive Committee and the Appellate Judges Education Institute on Nov. 11, 2004. Left to Right: Hon. Patricia Timmons-Goodson (AJC Secretary), Hon. Harris Hartz (AJC Chair), Hon. James Wynn, (AJC Immediate Past Chair), Hon. Denise Johnson (AJC Chair-Elect), Hon. Ronald Gilman, Hon. Christopher Armstrong, Hon. Craig Enoch (AJEI President). Photograph taken by Bill Lowe Staff Director, Court of Appeal, Second Circuit, State of Louisiana.

# Images from the AJEI Kickoff SMU Dedman School of Law Dallas, Texas November 10-14, 2004



Appellate Judges pose for a Spencer-Grimes group photo at the SMU Dedman School of Law during the 2004 Appellate Judges Education Institute Summit in Dallas, Texas.



The Judicial Selection in Relation to Judicial Independence presentation sparked lively discussion. Pictured: Justice Stephen N. Limbaugh Jr., Missouri Supreme Court.



The Anita Martinez Ballet Folklorico children's company performed at the AJEI Tex-Mex Fiesta.



Justice Denise Johnson, Vermont Supreme Court, Justice John Gerrard, Nebraska Supreme Court, and Presiding Judge Judith Billings, Utah Court of Appeals, visit during the Tex-Mex Fiesta on Nov. 13.



Dr. Rufus Fears, University of Oklahoma, discusses the relation of law and history with conference attendees.



Professor Alan Morrison, Stanford Law School, and Justice Harry T. Lemmon (Retired), Louisiana Supreme Court, visit at the reception at the Trammell Crow Asian Art Museum in Dallas, Texas.

# Lawyers Letter

## CHAIR'S COLUMN



by Jack L. Brown  
Tulsa, OK

At the ABA Midyear Meeting, the JD will present to the House of Delegates its recommendation that the ABA adopt the black letter Guidelines for the Evaluation of Judicial Performance, which is the product of the LC's Judicial Performance Evaluation Committee (JPEC). Chaired by Cheryl Cesario of Chicago, Illinois. The Committee began its work last year to review and update the Guidelines. The initial Guidelines were developed in 1985, with the improvement of judicial performance as its primary goal.

The revised Guidelines account for changes since 1985 in the legal practice and in judicial roles and responsibilities. These changes include increased specialization in the practice of law, the growth of specialized and problem-solving courts, the expanded use of alternative dispute resolution, the growth of pro se litigation, the availability of new technologies for the courtroom, and greater sensitivity to issues of bias in the justice system.

Also considered by the JPEC were judicial evaluations being performed across the country by interest groups seeking to influence the composition of the judiciary. Utilizing a formal judicial evaluation program established by either the judiciary or the organized bar should provide a more accurate understanding of a judge's performance, rather than evaluations identifying judges allegedly sympathetic or hostile to positions maintained by special interest groups.

The eleven member Committee had representation from all six JD Conferences,

as well as from the Standing Committee on Judicial Independence. Other LC Committee members include Michael Aprahamian, Kristen Gustafson, Patricia Smith, Ed Madeira, and Dr. Hugh Collins.

The Executive Committee will be in session during the Midyear Meeting. LC members from the Salt Lake City area will be invited to the JD welcome reception, as well as Executive Committee meetings.

The Executive Committee will also review and discuss the Revised Standards Relating to Jury Trials proposed by the American Jury Project Committee appointed by ABA President Robert J. Grey. A draft of the standards was considered and debated at the National Symposium on the American Jury System which was held October 15, 2004 at Washington and Lee School of Law in Lexington, Virginia. The ABA Jury Standards cover jury composition, treatment, comprehension and related issues. Judges, lawyers, academics, jury experts, court administrators, bar leaders and others interested in the nation's jury system attended the symposium to provide important comment to the initial draft of the Revised and Consolidated Jury Standards. Final recommendations of the proposed Revised Jury Standards will be presented to the ABA House of Delegates at the Midyear Meeting.

The LC Judicial Clerkship Project, chaired by Benjamin Longoria of San Francisco, California, will also be reviewed at the Midyear Meeting. The Judicial Clerkship Project features web-based information on clerkship opportunities throughout the country as well as useful information regarding salaries, state versus federal positions, application needs, and comments from both clerks and judges. It is anticipated that the clerkship website will be finalized in the spring of 2005.

Many LC members continue to actively participate in judicial outreach programming initiated and promoted by the JD Judges Network. LC Chair-Elect

*(continued on page 17)*

## Judicial Performance Evaluation Committee Completes Update of ABA Guidelines

by Cheryl D. Cesario  
Chicago, IL

As Chair of the LC Judicial Performance Evaluation Committee (JPEC), I am proud to announce that we have now entered the final phase of the project to revise and update the ABA Guidelines on the Evaluation of Judicial Performance. After a very successful three hour meeting held at the Annual Meeting, with many Committee members as well as other interested persons attending, we set and met a rigorous schedule to complete and deliver our report to the House of Delegates for consideration at the February 2005 Midyear Meeting. Two additional drafts of the guidelines were discussed and dissected thoroughly in conference calls after receiving fifteen sets of written comments from JD members, bar association leaders, and scholars with expertise in judicial evaluation. In addition, the Committee communicated during the entire process with the Conference of Chief Justices.

I would like to acknowledge and thank all the Committee members for their hard work and commitment to this important project. This last year in particular has been a very busy and time consuming one and I appreciate all the time and energy they have donated to this effort. They include: Justice Frank Sullivan, Jr., Judge Alexander P. White, Jr., Judge Michael F. Pietruszka, Judge Andre M. Davis, Judge Daniel F.

*(continued on page 17)*

## Performance

*(continued from page 16)*

Solomon, Edward W. Madeira, Jr., Kristin Gustafson, Michael Aprahamian, Patricia A. Smith, and Joan C. Lipin. In addition, two individuals, Honorable William F. Dressel (Ret.), president of the National Judicial College, and Lynn Hecht Schafran have my sincerest appreciation and thanks for their constant help and advice throughout this project.

Very special thanks go to Dr. Malia Reddick, our reporter who was consistently patient with the debate that accompanied this revision process and who expertly crafted a set of guidelines that reflect the consensus of the group. ABA staff members Seth Andersen and Gilda Fairley have been invaluable to making this project happen and steering us on the proper course.

The original Guidelines on the Evaluation of Judicial Performance were adopted by the ABA in 1985, and have served as a model for over twenty states. The LC undertook this revision to ensure that the guidelines continue to serve as a useful model for the states. One of the primary motivations for updating the 1985 guidelines was to recognize the dual uses of judicial performance evaluation:

judicial self-improvement and informing decision makers regarding the continuation of judges in office. The revised guidelines continue to recommend that all state judicial branches develop and implement judicial performance evaluation programs, while recognizing the need for separate evaluation programs in states where judges are chosen in contested elections. When contested elections are held, bar associations are called upon to develop and administer performance evaluations according to these guidelines.

The revised guidelines also reflect changes in legal practice and in judicial roles and responsibilities. These changes include increased specialization in the practice of law, the growth of specialized and problem-solving courts, the expanded use of alternative dispute resolution, the growth of pro se litigation, the availability of new technologies for the courtroom, and greater sensitivity to issues of bias in the justice system. The revised and expanded guidelines on criteria for evaluation programs reflect these new developments.

The proposed guidelines, as submitted for consideration by the ABA House of Delegates at the 2005 Midyear Meeting, are available on the LC's website at: <http://www.abanet.org/jd/lawyersconf/home.html>.

## Chair's Column

*(continued from page 16)*

Daniel Gourash of Cleveland, Ohio is Co-Chair along with Judge Joan Irion of San Diego, California. Former LC and immediate past JD Chair Richard Bien of Kansas City, Missouri is involved in the Judicial Division National Sub-Grant Program which is soliciting judicial outreach related programs on the jury system from ABA groups as well as local and state bar associations. Programs chosen to be replicated throughout the country and promoted by the Judges Network will receive sub-grants from the Network. The LC has committed \$2,000.00 in support of the sub-grant program. Awardees will be announced at the 2005 ABA Midyear Meeting and select subgrant projects will be showcased at the 2005 Annual Meeting.

The LC is also co-sponsoring the Inaugural Bench & Bar Bankruptcy Conference, scheduled March 10-12, 2005, in Washington, D.C. at the Mandarin Oriental Hotel. LC member Paul Levine of Washington, D.C. along with Judge Barbara M. G. Lynn of Dallas, Texas co-chair the Conference. More information about the Conference can be obtained from the ABA JD website at <http://www.abanet.org/jd/bankruptcy>. A dinner at the United States Supreme Court will be among the many highlights of the conference.

Upcoming LC projects include a bench bar program at the Annual Meeting chaired by Gloria Wilson Shelton of Baltimore, Maryland, and a review of all LC publications by Emily Barnhart of Philadelphia, Pennsylvania.

The LC continues to excel through its numerous projects, programs and publications which support the judiciary and the justice system. The current LC officers and Executive Committee members are very active in promoting the LC. I encourage all LC members to become involved and actively participate. You can also support LC by identifying and recruiting new members. The best time to get involved is the present. Make plans to attend the Midyear Meeting in Salt Lake City. If you can't make the meeting, please feel free to contact me at [jbrown@jonesgivens.com](mailto:jbrown@jonesgivens.com) to let me know your interest in becoming an active LC member.



Members of the Lawyers Conference Executive Committee - (l-r) Michael Hyman, Daniel Gourash, Charles Patterson (back), Emily Barnhart (front), Cheryl Cesario, Jack Brown, and Benjamin Longoria.

# Administrative Judiciary

## News and Journal

### CHAIR'S COLUMN

by Judge Dan Solomon  
Washington, DC

In an ABA survey, "Perceptions of the U.S. Justice System", only 26% of respondents could be termed "highly knowledgeable" about the American justice system. When asked how they would prefer to learn about the justice system, 75% wanted to learn from judges. I assume that this survey approximates the extent of national knowledge about the justice system.

I find it amazing that I must continue to explain what we do for a living. However, the administrative judiciary is the "face" of the American justice system for the average person. And the growth of administrative adjudication has been phenomenal. For example, the Social Security hearings and appeals system that started in 1940 with 12 referees has developed into the largest hearing body in the world, with over 52,000,000 beneficiaries, 672,000 pending claims (SSA + Medicare) at the end of October 2004 to be heard by more than 1100 ALJs, and 92,047 requests for review of decisions during last fiscal year. Extrapolating that growth across state and local administrative adjudication is staggering.

Once I explain that I am a judge, most people next ask whether I am influenced by my agency in my decisions. Judicial independence is the ultimate test to determine whether I am "really" a judge. People recognize that a judge is not supposed to be biased or prejudiced. Most people recognize that our democracy depends on independent adjudication where decisions are based on the facts and the rule of law. Most people recognize that judges should have the authority to exercise their constitutional obligation to make hard, and often unpopular decisions,

without concern for retribution. The ABA and NCALJ are dedicated to the concept.

Education is the key to public confidence in the judicial system. At NCALJ, we have been holding mock hearings to provide judicial outreach, to educate the public, consistent with the goals of the Judicial Division Judges' Network judicial outreach initiative. We try to demonstrate to the public how our decisions are based on the facts and the rule of law.

In the past several years, we have held our mock hearings off site, free of charge, so that we could bring in non-ABA groups, such as law student and advocacy groups. Last August in Atlanta, we held a Mock Hearing on Medicare, in anticipation of new adversarial Medicare hearings mandated by the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Public Law No: 108-173). We had a terrific turnout. In October, we held a Social Security Disability Mock Hearing at Capitol Hearing that was attended by several dozen enthusiastic Congressional staffers. We are planning a Mock Hearing at Salt Lake City, co-chaired by Judges Jodi Levine and Kathleen Switzer, and a program on state administrative law in Chicago, co-chaired by Judges Anne Breen Greco and Bill Wenzel and our good friend, Cheryl Cesario of the Lawyers' Conference. These programs are held in conjunction with our membership in the Joint Disability and Medicare Task Force, with Ad Law, the Health Law Section, TTIPS and other ABA entities. Generally half of the program is devoted to a demonstration and the remainder is for questions and answers. The programs are not only educational, but they have become a social event. And we have developed long and lasting relationships from some of the new members who have become attracted to NCALJ.

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## NCALJ Sponsors Mock Social Security Disability Hearing on Capitol Hill

by Peter M. Keltch  
Oklahoma City, OK

On October 20, 2004, NCALJ, with its cosponsors the Sections of Administrative Law and Regulatory Practice, Health Law, Individual Rights and Responsibilities, TTIPS and the Commission on Law and Aging, presented a Mock Social Security Disability Hearing before Congressional staff members in the Hearing Room of the Committee of Ways and Means at the Rayburn House Office Building. The purpose was to continue the ABA's contribution to the ongoing dialogue that Social Security Administration Commissioner Barnhart has encouraged as she develops plans for improving the disability appeals process. Disability Hearings ordinarily are closed to the public due to privacy concerns so the Mock Hearing was presented to give the audience a sense of the format and the issues addressed at an actual hearing.

The cast was Jodi B. Levine, JD Chair-Elect, portraying the Judge, Bruce K. Billman, and Rudolph K. Patterson, Co-Chair of the Benefits Committee of the Section of Administrative Law and Regulatory Practice, were the Claimant and the Claimant's Representative and Peter M. Keltch, NCALJ member, was the Expert Witness.

The program was very well received by the audience, which included staff members of the House Subcommittee

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## Chair's Column

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We'd like to hold more of these programs. We'd like you to be involved. We would like to use local members, who can target the audience and who can identify current issues. If you are interested in hosting or participating in programs, or have ideas about subject matter, please let us know. Contact Gilda Fairley: fairleyg@staff.abanet.org, Phone: (312) 988-5689, Fax: (312) 988-5709, or email me. Solomon.daniel@dol.gov.

The NCALJ sponsored draft resolution that the American Bar Association encourage Congress to establish the Administrative Law Judge Conference of the United States as an independent agency, will be marked up for the August ABA Convention rather than for Mid Year to give other ABA entities an opportunity to co sponsor the proposal. The new agency would assume the responsibility of the United States Office of Personnel Management ("OPM") with respect to Administrative Law Judges ("ALJs"), including their testing, selection, and appointment.

NCALJ and the ABA Administrative and Regulatory Law Section are drafting proposed Model Rules of Practice before administrative agencies. During the 1980's, the Administrative Conference of the United States (ACUS) began examining the feasibility and practicality of preparing model rules for agency adjudications. In 1983, ACUS forwarded

rules of procedure adopted by the Department of Labor (DOL) for comment. However, in general, the responses from the agencies did not support the development of uniform rules; but another alternative began to emerge—development of model adjudication rules. ACUS was defunded, but in 1994, the principal investigator for an ACUS rules project, Michael Cox, published *The Model Adjudication Rules*, at 11 T.M. Cooley L. Rev. 75. In addition, our Health and Benefits Committee has proposed a set of rules for use in non-adversarial proceedings. When these are approved by the appropriate ABA entities, they will be submitted as proposed ABA Model Rules. NCALJ also plans to draft model rules for state practice.



## CORRECTION:

In Vol. 8, Issue 1, Judge Bryan McDaniel's term on the NCALJ executive committee was listed incorrectly as ending in 2005. His term expires in 2006.

## Disability Hearing

(continued from page 18)

on Social Security, staffers from the offices of various Senators and Representatives, representatives from the Office of the Commissioner of Social Security and Washington representatives of organizations working with the disabled. Congressional staffers reported this hearing was most valuable because of the explanations and answers given during question and answer period. The staff members and representatives of the Office of the Commissioner of Social Security all expressed their interest in continuing to work with the ABA in learning more about the administrative hearing process.

## Administrative Hearings: Evidentiary Issues and Judicial Standards of Review

Join us for a mock hearing and panel discussion

Place: Traynor Moot Courtroom  
S.J. Quinney College of Law  
332 South 1400 East  
Salt Lake City, Utah

Date: Thursday, February 10, 2005

Time: 12:15 p.m. (Noon-time)

RSVP, ABA Contact: Gilda Fairley,  
1.800.238.2667 x5689; 312.988.5689

# Federal Trial News

## CHAIR'S COLUMN



by Judge Mary Ann  
Vial Lemmon  
New Orleans, LA

In my last chair's column, I shared my concern about the deteriorating relationship between Congress and the Courts, and pointed out some steps which are being taken to ease some of the tensions. Since that column, the 2004

elections have brought changes to the composition of Congress which may impact the situation.

There are calls from many sectors to begin the work toward improving the relationship between Congress and the Judiciary. Some members of Congress have opined that it may be helpful for individual judges to have informal meetings, luncheons, shadowing sessions and the like with their respective legislators to better inform them of what we are about. In this manner, the members of Congress will obtain more accurate knowledge about the operations of the judiciary.

The development by the judges of closer relationships with their individual Senators and Representatives is perhaps more effective than a generic outreach by judges to all members. I invite my colleagues on the bench to reach out to the new members of Congress and to renew relationships with the old. I also invite the new members of Congress to search for means to improve the relationship between Congress and the Courts. I disagree with the person who commented that judges

and members of Congress do not come from the same gene pool. We do! But we must focus on understanding each other's concerns in order to meet on common ground.

President Bush's theme of unity in his victory speech pointed out that "when we come together and work together, there is no limit to the greatness of America." Senator Kerry made similar statements in his concession speech: "In the days ahead, we must find common cause . . . America is in need of unity." He personally pledged to "do my part to try to bridge the partisan divide." Senate Majority Leader Bill Frist added, "It is time to heal the partisan divide and begin the process of reconciliation." And Senator Tom Daschell, in his farewell speech to the Senate, stated that "common ground" will not be found on the far left, or on the far right.

Tenth Circuit Chief Judge Deanell Tacha, chair of the Judicial Conference's Committee on the Judicial Branch, points out that public trust and confidence in the legal system has been undermined as a result of the conflicts between the legislative and judicial branches. Judge Tacha has agreed to help with the efforts of the NCFTJ and the Standing Committee on Federal Judicial Improvements by participating in a program on Court and Congressional relations at the Midyear Meeting in Salt Lake City, along with Judge Berle Schiller of the U.S. District Court for the Eastern District of Pennsylvania, and others who will be announced soon.

Everyone recognizes that the legislative and judicial branches have different roles and functions under the constitutional scheme adopted by our founding fathers. Generally, the legislature makes the laws and thereby establishes policies, while the judiciary interprets the laws consistent not

only with legislative intent, but also with the Constitution, and does not make policy. This seemingly simple scheme has basic problems: legislative intent is not always clear, and reasonable minds often can interpret a law or the Constitution in more than one manner. The roles and functions of the two branches sometimes seem to come into conflict, especially when viewed from an ideological standpoint.

At the heart of these conceptual difficulties is the fact that officials in the legislative branch are representatives of their constituency and of those who elected or appointed them, while judges are not. The absence of partiality toward either side of a controversy is the hallmark of a fair and independent judiciary, which in turn is the very essence of the judicial process.

The place where this difference has the highest visibility today is in the process of appointing and confirming federal judges. In a program sponsored by the NCFTJ at the ABA Annual Meeting in 2003 on the Role of Ideology in the Selection of Federal Judges, every member of the outstanding panel agreed that ideology is a proper consideration in the selection process, and is even an important one, but should never be the only consideration or the most important one. The greater the emphasis on ideology, the less the emphasis on the impartiality and independence of the person under consideration for the judiciary.

A judge's role is not to make policy or to become an advocate for a particular position on controversial issues with strong ideological division, and while the judicial nominee may be questioned on issues, he or she certainly should not be asked to commit to a particular position on an issue

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## Chair's Column

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that may come before the court. Indeed, such commitments are forbidden by most codes of judicial conduct.

Insistence on confirming only those nominees who are willing to commit to a certain position on a difficult issue can only confuse the public and confound the judicial process, which was founded on the assumption of an impartial judiciary. The legislature is the appropriate place for policy arguments, and policy prejudice must stop at the courtroom door.

Furthermore, while ideology has a place in the selection process, ideology is not an

appropriate consideration in decisions made by a judge after confirmation, because a judge is not a representative of those public officials or private interests who promoted his or her appointment. A judge comes into office with certain inclinations, but must put all ideological considerations aside in making judicial decisions impartially and independently.

I hope and believe that there are many legislators who fundamentally understand this distinction in roles, and I look forward to working with them to reach beyond the partisan fracas surrounding the judicial nomination process and other issues affecting an independent judiciary, an essential element in the balance of governmental power contemplated by the founding fathers.

## Is It Time to Rethink Diversity Jurisdiction?

by Judge Faith Hochberg, U.S.D.J.  
United States District Court for the District of  
New Jersey  
Newark, NJ

A recent Rule 16 conference involving a slip-and-fall in a motel bathroom made me think again about the amount-in-controversy requirement of diversity jurisdiction. I mentioned it to a colleague who observed that in her circuit, "any allegation beyond a hangnail" seems to get into federal court these days. The number of diversity cases in federal court is huge and appears to be growing. The purpose of requiring diversity cases to be valued greater than \$75,000 in order to obtain subject matter jurisdiction is to limit the number of diversity cases in federal courts to serious disputes yet still provide a federal forum for appropriate cases. However, the reality is that our federal courts are flooded by diversity cases which are *de facto* worth less than \$75,000, but stay in federal court because it is impossible to say with "legal certainty" that they are not worth \$75,000. Perhaps it is time to revisit a more effective way to evaluate diversity jurisdiction.

Every new law clerk is reminded at this time of year that, under 28 U.S.C. § 1332, diversity jurisdiction requires complete diversity of citizenship and an amount in controversy exceeding the jurisdictional

minimum of \$75,000. In 1989, Congress raised this minimum from \$10,000 to \$50,000, and in 1996 raised it to \$75,000. Congress' stated intent in raising the minimum was to reduce the number of diversity of citizenship cases in federal court and to account for the effects of inflation. In cases originally filed in federal court, it must appear, on the face of the pleadings, to a legal certainty that the plaintiff's claim is less than the jurisdictional amount in order to justify dismissal. *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938). This test makes it far easier to stay in federal courts with an original filing than is a case is removed from state court to federal court, because great deference is accorded to the sum claimed by the plaintiff.

In removal cases, the standard is virtually the opposite. There, the remaining party asserting federal jurisdiction has the burden of showing that the amount in controversy exceeds the statutory minimum of \$75,000. The Third Circuit, for example, requires the defendant to demonstrate to a legal certainty that the plaintiff's claim exceeds \$75,000 or face remand. *Samuel-Bassett v. Kia Motors Am.*, 357 F.3d 392, 398 (3d Cir. 2004). (Other circuits require the defendant to show the jurisdictional minimum by a preponderance of the evidence.) Further, the Third Circuit has specifically advised that the estimation be realistic and that the court's "inquiry should be objective and

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# Diversity

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not based on fanciful, 'pie-in-the-sky,' or simply wishful amounts, because otherwise the policy to limit diversity jurisdiction will be frustrated." *Id.* at 403. Thus, judges are able to use their common sense and experience to remand a case that realistically is not worth \$75,000.

Comparatively, the standard for cases originally filed in federal court needs to be revisited. There are cases pending in my court that I know are not realistically worth \$75,000, but it is very difficult to so state "to a legal certainty" early in the case based on the pleadings alone. As a result, these cases stay on the docket, even though we all know they do not really satisfy the amount in controversy, and thus basic subject matter jurisdiction may well be lacking. We settle these cases day in and day out for sums of \$10,000, give or take. Even discounting for a weak case on liability that will be there from time to time, these small settlements are a

testaments to questionable federal jurisdiction.

Is it time to again raise the jurisdictional minimum? What about shifting the burdens in cases originally filed in federal court to require the plaintiff to show—say, to a preponderance of the evidence—that their claims meet the requirement? Another possible solution is to exclude certain types of otherwise qualifying cases, such as medical malpractice or car accidents from federal court entirely. All of this begs the question of whether diversity jurisdiction is really necessary at all in this country filled with "tri-state" regions.

Many of these issues were raised in the mid-1990s, when the congressionally established Federal Courts Study Committee examined the procedural problems facing the courts. The Committee, in 1995, suggested relieving the workload of the federal courts by removing diversity jurisdiction entirely or at least limiting federal jurisdiction by: (1) forbidding plaintiffs from invoking diversity jurisdiction in their home states;

(2) limiting the amount in controversy to economic damages alone; or (3) raising the jurisdictional floor to \$75,000 (a change that was enacted in 1996). This discussion largely fell away after the minimum amount was raised, but it is now eight years later and once again it is time to look carefully at diversity jurisdiction.

The most common reason cited in support of diversity jurisdiction is to avoid the effects of prejudice against out-of-state defendants. Is this a realistic concern in today's world? This is a difficult question and the answers are not clear, but if the federal judiciary is spending a significant part of its resources adjudicating diversity cases that may not meet the amount in controversy standard, we should surely be able to cite valid reasons in support of maintaining diversity jurisdiction. And if diversity jurisdiction is a sacred cow in the federal judicial system, maybe the best alternative is to give a legal standard in original jurisdiction cases that allows judges to dismiss suits that are not worth \$75,000.

## 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 one of the editors as listed or contact Kris Berliant at ABA/Judicial Division, 541 N. Fairbanks Court, Chicago, IL 60611; Phone: 800/238-2667 x5700; Fax: 312/988-5709; E-mail: [berliank@staff.abanet.org](mailto:berliank@staff.abanet.org)

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## ARTICLE SUBMISSION DEADLINES

Spring 2005: Wednesday, February 16, 2005

Summer 2005: Wednesday, May 4, 2005

# Special Court News

## CHAIR'S COLUMN



Judge Sharon Hatten  
Midland, TX

As the 2005 Midyear Meeting approaches, our Conference is gearing up for the challenges it brings. The following is a sample of some of the progress and the direction our Conference is heading. A complete update is expected at the Midyear. I look forward to seeing you there.

### Traffic Court Committee

Several programs are in the works for our Conference to promote and educate judges in their home states. The first traffic court program of the year will be held in Salt Lake City, February 14-16th directly after the Midyear. Also for 2005, programs in Arkansas, Texas and Kentucky are being planned. In addition,

Indiana, New York and Ohio have all indicated some interest. Judge Larry Sage is currently developing a faculty roster. If you think you would like to present a topic at one of these seminars or be a faculty member, please contact Judge Larry Sage. Proceeds from these seminars go directly to our Conference to further the education of judges like us.

### NHTSA Judicial Fellow

Judge Mike Cavanaugh from New Mexico has been selected as the new NHTSA Judicial Fellow. In addition to the Judicial Fellow, NHTSA also has three Regional Judicial Outreach Liaisons: Judge Karl Grube, Southeast Region, Judge Judith Eiler, Northwest Region and Judge David Hodges, South Central Region. With our close relationship with NHTSA and having these outstanding Judges as Conference members, I expect we will be hearing a lot from them in the months ahead. Look in the next issue of *The Highway to Justice* for more information.

### Tribal Courts Council

The recently created Tribal Courts Council has begun a recruitment process.

Judge Cloud, Rebecca King, and Jeff Davis from the Lawyers Conference have been visiting the Indian Nations across the states recruiting new members. Along with Judge Cloud, Judge Matt Martin is working on this new project. A full update is expected at the Midyear Meeting.

### Conference Committees

As you can see, our Conference Committees are hard at work. Many of you have submitted your plans and objectives for the upcoming year. My thanks to those who are working hard to accomplish these goals. I am impressed by all the enthusiasm and energy our Conference members have shown. There will always be something to do within our Conference in the year ahead. As Conference members, I encourage you to identify with a committee that interests you and contact that chair or your conference representative and get involved.

## NCSCJ Therapeutic Justice Committee

by Judge E. Jeannette Ogden  
Buffalo, NY

The Therapeutic Justice Committee examines and promotes the creative use of therapeutic justice principles in connection with sentencing on misdemeanor and petit offenses.

Therapeutic justice views crime as a manifestation of illness of an Offender's body or character, which should be addressed through treatment. Consequently, therapeutic justice focuses primarily on the rehabilitation of an Offender, while at the same time teaching accountability.

Sentencing goals are designed to correct/heal the offender, who receives services and benefits. Incarceration may be used as a sanction and to protect the community. Success is measured by the regained health of the Offender, who demonstrates accountability in work, family, and community as well as by low recidivism.

Wellness Courts, Drug Courts, Mental Health Courts, and some Youth and Tribal Courts incorporate therapeutic justice principals into all of their sentencing structures.

The Committee is currently examining the use of therapeutic justice principles as sentencing alternatives for Traffic Defendants in New York State through the use of a combination of fines and driver education with the imposition of a sentence of conditional discharge in

criminal traffic cases involving persons who drive while their license is suspended or revoked.

The New York State Department of Motor Vehicles (DMV) has examined and approved thirteen (13) "Accident Prevention Courses" with full credible research to show that the courses actually work. The research involved an examination of the driving records and professional analysis of those records before and after the drivers had taken the course. The State of New York has determined, based upon scientific study, that completion of the six (6) hour Accident Prevention Course resulted in a reduction of accidents by approximately twenty (20) percent, and a reduction of repeat traffic offenses by approximately sixty (60) percent, for first time takers

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## Justice Committee

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of the course. The reduction in repeat offense rates for drivers who have taken the course more than once is approximately ninety (90) percent. The six (6) hour program is remedial and strives to modify repeated negative and aggressive driving behavior.

The AAA Foundation for Traffic Safety has reported that drivers who drive while their license is suspended or revoked are the highest risk group for causing accidents, deaths, injuries and property damage. The published report indicates that such drivers are five (5) times more likely to be involved in a fatal crash than drivers with a valid license. Unfortunately these drivers are falling through the cracks because courts and prosecutors are plea bargaining criminal traffic misdemeanors down to mere violations of driving without a license to avoid trials and requiring Offenders to pay lesser fines.

In New York State there are currently 740,000 drivers with suspended licenses. Many of these drivers are recidivists who have already been charged with criminal traffic misdemeanors who undoubtedly plea bargained their cases down to traffic infractions in consideration of a guilty plea to a violation without any corrective action demanded on the part of the prosecutor or the court.

Accident Prevention and/or other Driver Education Courses are fully implemented and available to drivers in each county in New York State. Unfortunately, most of the aforementioned drivers do not generally take the course. In fact, less than ten (10) percent of the drivers with violations on their record take the course.

A principle concern of courts handling traffic cases is that the Defendant not repeat the offense(s) which brought the Defendant into the court in the first place. Participation in Driver Education Courses such as the Accident Prevention Course

has proven to be effective, improving overall motor vehicle safety and lowering the repeat traffic offense rate.

Mandating participation in New York's Accident Prevention Course or other Driver Education Program as a condition of a sentence of conditional discharge will serve to promote the use of therapeutic justice principles in connection with sentencing on misdemeanor and violation traffic cases.

A list containing the names and telephone numbers of the following approved sponsors is provided to each defendant along with an authorization form which enables the sponsor to advise the court of the Defendant's completion or non completion of the course:

### Course Provider

National Safety Council

(800) 962-3434

American Association of Retired Persons

(Only for drivers 50 yrs. old & older)

(888) 227-7669

Drive Safe New York

(800) 732-6242

National Traffic Safety Institute

(800) 733-6874

Driver Training Associates

(800) 243-2196

American Automobile Association

(Contact local AAA)

USA Training Company

(800) 746-7690

American Institute for Public Safety

(800) 458-2477



*Hon. Sharon Townsend, the Administrative Judge of New York's Eighth Judicial District, Erie County Commissioner of Jurors Mehrl King and Erie County Judge Michael Pietruszka observe prospective jurors using the newly unveiled "Justice Talking" kiosk during Juror Appreciation Week ceremonies in Buffalo during November. Judge Pietruszka won the kiosk at the 2004 ABA Midyear Meeting in San Antonio.*

# Trial Judges News

## CHAIR'S COLUMN

by Judge Elibu M. Berle  
Los Angeles, CA

The American Jury Initiative is the focus of the ABA this year. To implement the objectives of the Initiative and pursue its theme in 2004-2005, ABA President Robert Gray has established the American Jury Project and the ABA Commission on the American Jury.

The American Jury Project is mandated to gather and update best practice standards for the conduct of jury trials. Additionally, the Project will consider reforms in procedures governing jury trials in an effort to enhance jury comprehension during trial and increase public participation in jury service. The new and amended standards are expected to be submitted to the ABA House of Delegates for its approval at the Midyear Meeting.

In support of the American Jury Project, the National Symposium on the American Jury System was held at Washington and Lee University School of Law in Lexington, Virginia on October 15, 2004. The symposium brought together judges, lawyers, jury consultants, court administrators, bar leaders, academics, and former jurors, to discuss the proposed new standards and the condition of the jury system in general. Members of NCSTJ participated extensively in the debates and presentations on the various proposals. By all accounts, the conference was very stimulating, and energized participants to work towards re-evaluation and modernization of some of the jury trial practices around the country.

The Commission on the American Jury, chaired by Supreme Court Justice Sandra Day O'Connor and co-chaired by New York Chief Judge Judith S. Kaye, is

undertaking efforts in outreach to the public in support of more citizen participation in jury service. The goal of this public education platform is to ensure jury venires that are diverse and representative of the communities in which they serve.

NCSTJ will carry the American Jury Initiative theme into the 2005 Annual Meeting in Chicago by presenting a full day seminar program on Thursday, August 4, 2005, on "New Developments in Jury Trial Management." Judges, trial lawyers, jury consultants, and legal educators will present panel discussions on: outreach efforts for jury service; use of high technology demonstrative evidence (e.g. virtual reality, holograms) before juries; new ABA jury trial standards; and innovations in jury trials (including such practices as mini opening statements before voir dire, scope of voir dire, juror note taking, juror questions, juror deliberations during trial, multiple opening statements and closing arguments during each phase of trial, and multiple closing arguments in hung jury cases). Judges, lawyers, and anyone interested in the health of the jury trial should attend this presentation. Since the program will begin at 9:30 a.m. on August 4, it is suggested that attendees make arrangements to arrive in Chicago the day before, on Wednesday, August 3, 2005.

The Bankruptcy Council of the Judicial Division will be presenting a Bench/Bar Bankruptcy Conference in Washington, D.C. on March 10-12, 2005. I have the privilege of participating in the segment of the program dealing with the implications of a bankruptcy filing on pending state court litigation. The presentation will address, among other issues, the automatic stay of the Bankruptcy Code and how it affects state court litigation involving a debtor-defendant's co-defendants, state court provisional remedies already in place, family law issues, discovery, evidentiary treatment of bankruptcy

schedules, and unlisted creditors. The program should be of interest to all judges who handle cases that may be affected by the filing of a bankruptcy petition.

At the Midyear Meeting, NCSTJ will participate for the fifth consecutive year in the annual Judicial Clerkship Program. This outstanding mentoring and law student research and writing program brings together judges and minority law students, who are interested in obtaining a simulated law clerk experience in preparation for seeking judicial clerkship employment. Judges who have participated in the program in the past have not only enjoyed the opportunity to work with bright, enthusiastic, dedicated law students, but also have been enriched and inspired by the project. Registration for the program is available online at: [www.abanet.org/jd/forms/2005jcp.html](http://www.abanet.org/jd/forms/2005jcp.html).

NCSTJ welcomes your participation in the committees and work of the Conference. Information about NCSTJ and its projects may be obtained online at the NCSTJ website: [www.abanet.org/jd/ncstj](http://www.abanet.org/jd/ncstj). Please contact me or any of the other officers if you would like to become involved in the Conference, have any questions, or would like to suggest new projects or programs. See you in Salt Lake!



Lake Tahoe, NV - NCSTJ members attend the Fall Planning Meeting. (l-r) Judges Leslie Miller, William Missouri, Elibu Berle, Stephanie Domitrovich, Sophia Hall, Herbert Dixon, Ramona See and Terry Ruckriegle.

# Lawyer Assistance Programs Have Long History of Helping Impaired Lawyers, Judges, and Law Students

by Janet Piper Voss  
Chicago, IL

In the mid 1970s and early 1980s, the first lawyer assistance programs began popping up throughout the country to help legal professionals impaired by substance abuse. Lawyers, particularly those who had struggled with their own addiction and found recovery, saw the impact of alcoholism in the legal community and wanted to help their colleagues. Thus began a powerful movement that has led to an important resource for those in the profession of law.

Today, there is a lawyer assistance program in nearly every state, in the Canadian provinces, and in Great Britain. These programs are in different stages of evolution and range from those unfunded that primarily offer support groups run by volunteers to those well funded, fully staffed, and operating like efficient employee assistance programs. Most continue to depend on dedicated volunteers who provide peer assistance and support the efforts of staff members. All assistance programs stress the importance of complete confidentiality.

The American Bar Association estimates 15% to 20% of lawyers suffer from alcoholism or substance abuse—nearly twice the rates of the general population. Substance abuse also includes other drugs and ranges from abuse of prescription drugs to dependency on illegal drugs, including heroin and cocaine. Some studies indicate lawyers use cocaine at twice the rate of non-lawyers.

While alcoholism continues to be the major issue these programs confront, mental health problems impact the legal community at alarmingly high rates. Lawyers work more hours than most professionals and experience stress that is immediate, ongoing, and not confined to office hours. A recent Johns Hopkins study

of 103 professions indicates lawyers top the list when it comes to depression. Benjamin Sells, in his book *The Soul of the Law*, writes that lawyers are four times more likely to be depressed than the general population, along with alarmingly high levels of suicide. Lawyers now have the highest suicide rate of any profession, surpassing (in the late 1990's) the high rate of suicide among dentists.

These significant mental health problems have led many lawyer assistance programs to adopt a more comprehensive program of services. Many programs directly address such problems as depression, bi-polar illness, dementia, and compulsive behaviors that interfere with work and living. Nearly all maintain close contact with professional treatment resources that provide specialized treatment beyond the capacity of volunteers and staff members.

Lawyer assistance programs vary in structure, funding, and programs. A 2002 study of these programs indicates nearly 59% are funded by state bar associations and nearly 10% are funded by local bars. 37% have comprehensive programs that address both substance abuse and mental health concerns; 43% address alcohol and other substance abuse; 18% deal only with alcohol abuse and addiction. Programs vary but the services they provide may include professional assessment, peer counseling, professional counseling, referral to treatment, intervention, 12-step programs, support meetings, monitoring, and education.

In 1988, the ABA created the Commission on Lawyer Assistance Programs (CoLAP) to develop and implement an association-wide program to assist lawyers suffering from alcohol and drug dependency. In 1996, CoLAP expanded its mission to educate the legal profession concerning alcoholism, other forms of chemical dependency, stress, depression, and other mental health problems and to assist bar associations and lawyer assistance programs in developing and maintaining effective solutions for recovery. CoLAP serves as a networking body for directors and volunteers of lawyer assistance programs. The Commission holds an annual workshop for staff, volunteers, and interested legal professionals. This year's conference, *Striving*

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# Lawyers Assistance Programs

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for Balance: Creating Healthy Lawyers, Families, Firms, Courts, and Clients, is October 11-15 in Philadelphia. (For information, contact CoLAP Executive Director Donna Spilis at [spilisd@staff.abanet.org](mailto:spilisd@staff.abanet.org) or (312) 988-5359.)

Janet Piper Voss is the executive director of the Illinois Lawyers' Assistance Program. Established in 1980 and one of the oldest lawyer assistance programs, LAP provides assessment, referral to treatment, peer support, intervention services and education. Recent stable funding enabled LAP to open a second downstate office in 2004.

## The 24th Annual State and Local Taxation Conference

by Judge Alexander White  
Des Plaines, IL

The 24th Annual State and Local Taxation Conference of the National Conference of State Tax Judges took place in Chicago, Illinois on Thursday, September 30 through Saturday, October 2, 2004.

Thomas Jaconetty, Conference Chairman and the Chief Deputy Commissioner of the Cook County Board of Review, welcomed the attendees and had each of them describe their positions, duties and where they are performed. This was followed by presentations by Judge Harold A. Kuskin of the Tax Court of New Jersey, Judge Thomas Fisher of the Indiana Tax Court and Albert Shamash, a member of the New Hampshire Board of Tax and Land Appeals. Case law presentations were also given by a number of attendees on issues relating to property tax valuation, real estate tax exemptions and state taxes and procedures.

The luncheon speaker, David Brunori of State Tax Notes, gave an excellent presentation on "The Politics of State and Local Taxation."

In the afternoon, Tom Jaconetty discussed several decisions in respect to making decision models relative to the valuation of contaminated property. This was followed by a presentation by Steven Gombinski, Chief Administrative Law Judge of the New York City Tax Appeals Tribunal and Richard Sorenson, an MAI affiliated with Appraisal Management Consultants, who addressed the problem of appraising the appraisal. The final session consisted of a review of sales ratio studies by George Perez, Chief Judge of the Minnesota Tax Court, and Alan Dornfest, Tax Policy Supervisor of the Idaho State Tax Commission.

On Friday, October 1, 2004. Judge Alexander P. White gave a presentation on "The Legal Ramifications of Tax Increment Financing." This was followed by a review of the reliability of data collection in the income approach to value including market rents and cap rates. This segment was presented by Tribunal Judge Victoria Enyart of the Michigan Tax Tribunal and Richard Marchitelli of Cushman and Wakefield, Inc. Later, Assistant Professor Bethany Berger of the Wayne State University Law School discussed "Issues in Indian Law: State and Property Taxation." The final session of the morning was a review of "Ethical Challenges: Conflicts of Interest Recusal and Decision-making," by Glenn Neuman, President, New York City Tax Commission and Appeals Tribunal,

and Jeffrey Shaman, Professor of Law, De Paul University, which emphasized the impact of the recent U.S. Supreme Court case of *Minnesota v. White*.

In the afternoon a presentation was given by Michael Kelly of Real Estate Analysts Corporation on the subject of the "Use of Costs Manuals". This was followed by reports of the membership, publication and web site committees. A dinner at the Tower Club at the Civic Opera House was enjoyed by the attendees.

The Saturday, October 2, 2004 session was devoted to state tax issues dealing with the State Streamlined Sales Tax Project (SSTP), the proposed ABA Model State Administrative Court Tax Tribunal Act, the constitutionality of state tax incentives and the implications of recent state tax cases on state and local government. Presentations were made by James Peters, a prominent tax attorney, Professor Walter Hellerstein of the University of Georgia School of Law, Craig Fields of Morrison and Foerster, Garland Allen of State Tax Consulting and Tom Johnson, former Director of the Illinois Department of Revenue. The attendees were unanimous in their praise of the Conference and the Conference Chair, Tom Jaconetty, and are looking forward to the 25th Conference at Harvard University in September of 2005.

# Save the Date

**February 10-13, 2005**

ABA Midyear Meeting  
Salt Lake City, UT  
More information: 800/238-2667 (x5700)

**March 10-12, 2005**

Inaugural Bench & Bar Bankruptcy Conference  
Washington, DC  
More information: 800/238-2667 (x5147)  
Register at:  
<http://www.abanet.org/jd/bankruptcy/home.html>

**April 14-16, 2005**

Section of Dispute Resolution Spring Conference  
Los Angeles, CA  
More information: <http://www.abanet.org/dispute/>

**April 14-17, 2005**

Division Spring Planning Meeting (invitation only)  
Newport Beach, CA  
More information: 800/238-2667 (x5700)

**April 27-28, 2005**

ABA Day  
Washington, DC  
More information: 800/238-2667 (x5700)

**August 4-8, 2005**

ABA Annual Meeting  
Chicago, IL  
More information: 800/238-2667 (x5700)

**September 22-24, 2005**

Section Officers Conference (SOC)  
Chicago, IL  
More information: 800/238-2667 (x5742)

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



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