**Message from the Chair**
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Last year I faced the same dilemma....could I afford time away from the office....??

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**Call for Liaisons to Local Appellate Groups**
Identifying liaisons to state and federal groups.

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**Past Newsletter Issues**
*Volume 1, Number 1 (March, 2002)*
I am pleased to report that the Council's Programs Committee has planned our Second Annual Conference, which will be held at the National Judicial College in Reno, Nevada on October 4-6, 2002. The Conference will be held in conjunction with the Appellate Practice Institute, the best appellate program in the nation. What makes the Conference and the Institute special is the involvement of over twenty-five federal and state appellate judges from across the country. And this year, the U.S. Solicitor General, Theodore B. Olson, will address both groups at a joint luncheon.

Reno will have something for every appellate lawyer, no matter what his or her level of expertise. Younger appellate lawyers will likely be interested in the Institute, as it will provide them an opportunity to be critiqued on a short 15-page brief and their delivery of a 15-minute oral argument. An experience like this, before federal and state appellate judges, is hard to come by elsewhere, so I urge you to take advantage of this opportunity.

More experienced appellate practitioners will likely be more interested in the Conference. One particular program that catches my eye is "Finding Your Place in the Sun: How to Create, Market and Manage an Appellate Practice." I am also looking forward to attending the other presentations, especially "Slipper Slopes, Camel's Noses and Floodgates - The Problem of Line Drawing in Legal Reasoning," to be delivered by UCLA Law Professor Eugene Volokh.

Also as part of the Conference, CAL will hold its annual meeting, elect officers, and conduct committee meetings. So come prepared to get involved and learn more about CAL's nationwide activities.

Sign up today as this will be the premier event for appellate lawyers in 2002, and spread the word to other appellate lawyers you know.

http://www.abanet.org/jd/ajc/cal02brochure.html (Conference brochure)
http://www.abanet.org/jd/ajc/api02brochure.html (Institute brochure)
Should You Go to the CAL Meeting?
Just Ask Someone Who's Been There!
by Steven Brannock, Holland & Knight LLP, Tampa, FL

Reno in October? By now you've received your brochure advertising the Second Annual Conference of the Council of Appellate Lawyers, and it raises this burning question: Do I spend a long weekend with my appellate colleagues in Reno and Lake Tahoe attending the conference, or do I enjoy a fall weekend at home or catching up with work at the office?

I can help you answer that question. Last year I faced the same dilemma when I heard about the First Annual Bench Bar Conference. Could I afford the time away from office and more time away from home to travel to New York City for another appellate seminar? At the urging of my partner, Cindy Hofmann, the chair-elect for the Council, I somewhat reluctantly signed up to attend. I am now grateful for Cindy's persistence. The meeting in New York was one of the highlights of my professional year. Based on that experience, I urge you to consider attending this year's conference in Reno.

I will leave it to the brochure to convince you of the value of this year's program. The list of speakers, including Solicitor General Ted Olson, and the topics to be presented speak for themselves. If you are one of those persons, however, who needs to see a review or two before you sign up, let me provide you with my perspective as an attendee of last year's conference. I showed up expecting the usual appellate program that we have all seen many times before. I expected to hear: Don't make your briefs too long. Don't use too many footnotes. Don't select too many issues. Put your best issue first. You know the drill. Instead, in addition to excellent nuts and bolts and advice that went far beyond the usual aphorisms, I was treated to thoughtful and stimulating presentations by distinguished academics, the likes of which I have not experienced since law school.

The meeting began with a poignant and compelling presentation by Chief Judge Judith Kaye of the New York Court of Appeals, concerning how the New York courts rose to the challenges of September 11. Judge Kaye's description of what it took to meet the physical and emotional challenges of that day made concrete for those of us from outside of New York City the extent of the destruction and the havoc it wreaked on those who lived and worked near Ground Zero. We were only three weeks removed from the disaster at that point, and, for a few minutes, we felt what it was like to be on the front lines.

The program then kicked off in earnest. We were treated to an excellent presentation by Professor William N. Eskridge, Jr. of Yale Law School concerning competing theories of statutory interpretation. As appellate lawyers and judges, we routinely engage in the exercise of statutory construction, but seldom stop to consider the competing values inherent in the contrasting approaches to statutory interpretation. Professor Eskridge's presentation was a wonderful marriage of academic theory with the practice of appellate law and decision making.

Later, Professor Akhil Reed Amar of Yale treated us to thoughtful observations on the various approaches to discern the intent of the framers of the Constitution. He used as his framework the long-running controversy over the meaning of the Second Amendment's
preservation of the right to bear arms. Professor Amar brought constitutional theory alive by examining critically the Libertarian (NRA) versus Statist (gun control) readings of the Second Amendment. Criticizing both interpretations, Professor Amar used the debate on gun control as a platform for his insightful commentary on Constitutional construction.

The next day's session was equally stimulating. The academic highlight was a presentation on rhetoric by Professor Michael Leff of Northwestern University. If your life is anything like mine, you probably don't spend much time thinking about the theory of rhetorical argumentation as described by Aristotle's Rhetoric, Cicero's De Oratore, and Quintilian's Institutes of Oratory. Professor Leff brought these venerable works to life by illustrating how the principles described by these ancient authors are still used to frame an effective appellate argument. It was fascinating to watch Professor Leff trace the roots of our profession back to Aristotle and Cicero.

Surrounding these excellent academic presentations were several nuts and bolts programs on effective appellate advocacy presented by some of the top appellate judges and practitioners in the country. The result was a wonderful combination of practice tips and academic theory that made both days' programs race by. I left feeling as though I had deepened my understanding of appellate practice in ways that I did not expect before I arrived.

If the high quality of the program is not enough, experiencing the program with fellow appellate practitioners and judges from around the country, makes the decision whether or not to attend a "no-brainer." Appellate practice is often intensely local, and I very much enjoyed the opportunity to compare notes with fellow practitioners about how other courts handle the same issues faced by the courts in which I practice. I came away with valuable insights that I have already used in my practice as well as in bar meetings with local appellate judges and practitioners.

To give you one example, the conference included a practical workshop on how to create appellate sections in your local, regional, and state bar associations. In Florida we are fortunate that appellate practice is an established specialty and that appellate sections within the state and local bar are thriving. Appellate practitioners from other jurisdictions seeking to organize similar appellate organizations were able to benefit from the head start gained by lawyers in states, like Florida, with thriving appellate sections.

Reno in October? For me, the answer is an easy yes. I hope I've helped you reach the same conclusion. This is a conference worth fitting into your busy schedule. Reach for your brochure and your phone and make those reservations today. I hope to see you there!
New Federal Rules Advisory Committee Formed!

The Honorable Samuel A. Alito, Jr., a Judge of the United States Court of Appeals for the Third Circuit, is the current Chair of the Advisory Committee of the Federal Rules of Appellate Procedure. Judge Alito recently wrote to CAL asking for feedback from CAL members for improvement in the Federal Rules. The Judge noted two possible areas of interest. First, whether the proliferation of local rules and procedures made practice difficult for attorneys who practice in foreign jurisdictions. The Judge suggested that a uniform national rule might solve this problem. Second, whether there were any types of interlocutory orders that should be made appealable pursuant to 28 USC ' 1292(e). Judge Alito welcomed feedback on these and any other Federal Rules topics that concerned CAL members.

Providing feedback on the appellate rules is an area where CAL's unique national bench-bar structure can be most beneficial. CAL has notified Judge Alito that we are very interested in providing recommendations to the Advisory Committee on the Federal Rules of Appellate Procedure.

If you have any thoughts or recommendations on proposed rule changes, please forward them to CAL's newly formed ad hoc committee, chaired by Robert Vort (Pearce, Vort & Fleisig LLC, Hackensack, NJ). You may contact him at rvort@pearcelaw1.com. The committee will receive comments from CAL members, organize them, and then submit a brief report to Judge Alito by September 1.
Ohio State Bar Charters Appellate Practice Committee
by Andrew S. Pollis

The Ohio State Bar Association chartered a new Appellate Practice Committee within its Litigation Section. Inspired by CAL members who blazed the trail before me, I convened a surprisingly large informal meeting of appellate judges and lawyers from around Ohio last January. The consensus of the group was to form a committee within the OSBA, rather than to go it alone. The founders received enthusiastic support from the Ohio State Bar. The OSBA Board of Governors approved a proposal in April, and the Appellate Practice Committee will soon set its agenda for the coming year. I have the privilege of serving as the Committee's first chair.

I look forward to the synergy that our new Ohio Appellate Practice Committee can create with CAL and with other appellate committees in Ohio's several municipal bar associations. Many thanks to my CAL colleagues for their support, encouragement, and inspiration.
The Task Force on Appellate Advocacy has commenced its review of state and federal court systems that have implemented separate admission requirements or certification standards for appellate practitioners. Our objectives are: to assess the means these courts have adopted to improve appellate advocacy; to learn from their individual and collective experiences; and to make recommendations to the Executive Board of the Council of Appellate Lawyers on future areas of study and possible action points. We anticipate that, through the work of the Task Force, CAL can serve as valuable resource and sounding board for state and federal appellate courts that are considering vehicles for improving the quality of advocacy. In short, they should be able to turn to CAL for practical information on measures that work and those that do not.

Having collected the standards and application forms from almost all relevant jurisdictions, our next steps are as follows: (1) to generate a comprehensive, uniform set of areas of inquiry so that our study of existing programs will have the necessary consistency to permit useful comparisons; and (2) to develop a list of appropriate contact persons in each relevant jurisdiction so that our efforts can proceed smoothly and expeditiously. These contacts should include practitioners, judges, court administrators, clerks of court and staff counsel, as it will be most productive to have input from all component groups in the appellate process. Although only a small number of jurisdictions currently have appellate certification systems (or appellate court bar membership requirements) in place, our information-gathering process will require substantial resources and time commitments. To that end, we will need to supplement the small membership of the Task Force with additional volunteers from the CAL membership. Through the Executive Board and the CAL newsletter, persons interested in participating in this project should be encouraged to contact the Task Force chair, Jerry Ganzfried, (by e-mail) at ganzfriedj@howrey.com (or by telephone) 202-383-6512.
Call for Liaisons to Local Appellate Groups

CAL is in the process of identifying state and federal local appellate groups in order to establish a working relationship with those groups. We hope that this relationship will enable both CAL and local groups to achieve their goals. To this end, we are seeking volunteers to serve as liaisons to these local groups. If you belong to a state or federal appellate practice organization, please visit CAL's web site at [www.abanet.org/jd/ajc/cal/home.html](http://www.abanet.org/jd/ajc/cal/home.html). If your group has no liaison identified, or isn't listed at all, please consider serving as the group's liaison to CAL. If you would like to volunteer, contact one of CAL's officers and we will make sure that you are listed on the web site! Thank you.
Program Committee
During the past quarter, the Program Committee, led by a Steering Subcommittee, has shaped the program for the CAL annual meeting in Reno, Nevada on October 4 -6, 2002.

Some of the programs and activities at our annual meeting will be held jointly with the Appellate Practice Institute chaired by Judge Hartz. Other programs will take place independently. We believe that CAL members will thereby have an opportunity to hear some of the top speakers at the API session, while participating in many of their own events.

One of the highlights of the meeting will be the kick off luncheon with the keynote address by Ted Olson, Solicitor General of the United States.

The CAL Executive Board meeting will occur at 10:30 a.m. on Friday, October 4, 2002, in advance of the CAL annual meeting. An optional panel discussion on ethics will take place concurrently, so that CAL attendees who are not Board members will be able to attend a useful program. We have also arranged for the CAL committees to meet at breakfast on Saturday morning in advance of the CAL annual meeting, so that they can discuss work in progress.

The CAL and the API are being promoted by a single, multi-page brochure. This will reduce costs as well as highlight the unique synergy in these combined events.

Membership Committee
The Council currently has 467 members, which is approximately the same number we had in January, 2002. The majority of our members continue to come from three states: Texas (181), California (64) and Florida (42).

Since the last board meeting, David Raupp prepared a standard "invitation" document to inform prospective members about the Council and its benefits. Each of the board members can use this document to respond to inquiries about the council and to recruit prospective members. The invitation is currently in the form of a Word document, but we are looking into the possibility of preparing an alternative version in HTML format, so we can add some graphics and send it out as an e-mail.

In addition to preparing an HTML version of the "invitation" document, the committee is going to develop a "welcome" document. The welcome document will not repeat everything discussed in the invitation, but should hit a few highlights and then refer new members to our website for additional information and updates. Ideally, the welcome document will be sent by e-mail automatically to each new member when they join the Council.

The chair has attempted to increase involvement by sending each committee member a list of states where our membership is disproportionately low (or nonexistent). Each committee member has been asked to take responsibility for boosting membership in at least one of these states.

For each of the states where our membership is low, the committee intends to contact existing
appellate groups, if any. It will attempt to find members of such groups who are willing to spread the word about the council within the group. If it does not find any volunteers, we will contact the members of those groups directly. For states where there are no existing appellate groups, it will try to identify prospective members by working with CAL members within those states (if any) or appellate judges in those states who are members of the ABA appellate judges' conference.

**Newsletter**
The newsletter committee was pleased with the input and assistance from everyone for our inaugural issue. We are always seeking volunteers to write short pieces related to the practice of appellate law.

**Speakers' Bureau**
The Speakers Bureau Committee has been busy defining and cementing its "mission." The Speakers Bureau has hit upon an idea for creating a "pre-packaged" CLE program that it hopes to make available to various appellate groups who wish to use it as a vehicle for improving the level of appellate advocacy in their states. What is envisioned is that the CAL Speakers Bureau will provide the speakers for the CLE program and that it will write the papers to accompany those speeches on universally applicable topics (such as brief writing, appellate argument, tone, ethics and other similar matters) that can be supplemented with specific items. The idea is to provide states that do not have a developed appellate bar with a CLE program that will help them educate trial lawyers about appellate practice.
Get Involved

As the only national appellate bench-bar organization in the country, the Council of Appellate Lawyers offers many benefits unavailable elsewhere. CAL is devoted to promoting the professionalism of appellate attorneys and providing them tailored continuing legal education. CAL provides an informational network nationwide among attorneys practicing in varying state and federal courts, facilitating dialogue and resolution of like problems. If you are not a CAL member or know other appellate attorneys who are not members but may be interested please let them know. Membership is open to any lawyer who practices, teaches or has an interest in appellate law and procedure. Dues are $35 plus ABA dues. To become a member, print and complete the attached membership form and fax it to Paula Nessel or contact her at paulanessel@staff.abanet.org or call 800/238-2667 x5704.

Anyone interested in getting more involved with the Council is encouraged to contact one of following committee chairs for their area of interest.

Programs: Chuck Cole, Steptoe & Johnson, Washington, D.C., ccole@steptoe.com; Membership: Curt Cutting, Horwitz & Levy, Encinco, CA, ccutting@horvitzlevy.com; Speaker's Bureau: Shawn Stephen, Locke Liddell, Dallas, TX, sstephens@lockeliddell.com; Publications: Bruce Brightwell, bruce@brightwell-law.com; Rachel Helyar, Akin Gump, Strauss, Hauer & Feld, L.L.P - RHeyar@AkinGump.com.