

COURTLY CURRENTS

Standing Committee on Federal Judicial Improvements

Standing Committee on Judicial Independence

June 2009 - Volume 1

Summit on Fair and Impartial State Courts: Justice is the Business of Government

The ABA hosted its very successful summit, *Justice Is the Business of Government: The Critical Role of Fair and Impartial State Courts*, from May 7 to 9 in Charlotte, North Carolina. The chief justices of each state supreme court invited delegations representing all three branches of state government and justice system leadership. At the standing-room only Summit, the state delegations worked to develop strategies to maintain budgets and ensure their courts' institutional legitimacy by promoting communication, cooperation and collaboration among the three branches of government. Retired Supreme Court Justice Sandra Day O'Connor was the honorary Commission Chair, and gave keynote remarks. She told her audience, "the health of our entire legal system depends on our having a strong, appropriate state judicial system," and yet "we are confronting greater threats to judicial independence than in the past."



Edward W. Madeira, Jr. of Philadelphia, special advisor to the Standing Committee on Judicial Independence ("SCJI"), and Justice Mark D. Martin of the North Carolina Supreme Court, ABA Judicial Division member, are co-Chairs of the Commission. SCJI will partner with the Judicial Division and act as the central coordinator for national organizations that wish to partake in this initiative. More information is available on the [SCJI website](#).

SCJI will co-sponsor a program at the 2009 ABA Annual Meeting titled, *Justice is the Business of Government: The Summit and Beyond*. The program will take place on Saturday, August 1, from 10:00 AM – 12:00 PM at the Swissotel.

The ABA Division for Media Relations and Communication Services created an online media kit consisting of content from and relating to the Summit. To access the Kit and learn more about the Presidential Commission on Fair and Impartial State Courts, [click here](#).

Introductory Judicial Education

At the 2009 ABA Midyear Meeting in Boston, the House of Delegates approved Resolution 113, sponsored by the Standing Committee on Judicial Independence. Resolution 113 urges states to adopt Introductory Judicial Education programs. The Committee is currently working to launch this initiative in various states. To view Resolution 113 and the related report, [click here](#).

Immigration Justice Project

President Tommy Wells participated in events from February 25 to 28 in San Diego to mark the groundbreaking first anniversary of the ABA Immigration Justice Project ("IJP") housed at DLA Piper in San Diego. IJP is a joint effort among several ABA entities (including the Standing Committee on Federal Judicial Improvements ("SCFJI"),



Commission on Immigration ("COI"), Judicial Division, Section of Litigation, and Standing Committee on Pro Bono and Public Service), the Executive Office for Immigration Review, the federal courts, Georgetown University Law Center's Institute for the Study of International Migration, the American Immigration Lawyers Association, and the private bar. Mr. Wells' visit began with a trip to the Otay Mesa detention facility where he witnessed firsthand IJP staff giving legal rights orientations to detainees. Afterwards, Mr. Wells, IJP staff, SCFJI staff, and COI staff met with two former detainees who shared their very moving experiences with IJP. On February 27, the Federal Bar Association and the San Diego County Bar Association presented a panel on IJP at the U. S. District Court in San Diego. Judge M. Margaret McKeown, SCFJI Chair, appeared on the panel along with Immigration Judge Rico J. Bartolomei and special guest Mr. Wells. In addition, Mr. Wells met with a number of media outlets, including NPR, and attended a dinner hosted by Judge McKeown in honor of his visit. In attendance were members and leaders of the aforementioned bar associations as well as immigration judges.

Caperton v. Massey

On June 8, 2009, the U.S. Supreme Court announced its groundbreaking decision in the case of *Caperton v. Massey Coal Co.*, stating that "there is a serious risk of actual bias" when a judicial campaign contributor with a personal stake in a particular case has a "significant and disproportionate influence in placing the judge on the case by raising funds ... when the case was pending or imminent." Delivering the [majority opinion of the Court](#), Justice Kennedy cited to the ABA amicus curiae brief:

Almost every State—West Virginia included—has adopted the American Bar Association's objective standard: "A judge shall avoid impropriety and the appearance of impropriety." ABA Annotated Model Code of Judicial Conduct, Canon 2 (2004); see Brief for American Bar Association as Amicus Curiae 14, and n. 29. The ABA Model Code's test for appearance of impropriety is "whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." Canon 2A, Commentary; see also W. Va. Code of Judicial Conduct, Canon 2A, and Commentary (2009) (same).

The [ABA amicus curiae briefs](#), which the Standing Committee on Judicial Independence was instrumental in preparing, urged the U.S. Supreme

Judging Aging

At the ABA Midyear Meeting in Boston, the Standing Committee on Federal Judicial Improvements voted to advance with a project focusing on aging and judges. The Committee retained Dr. van Gorp, Professor of Clinical Psychology and Director of Neuropsychology in the Department of Psychiatry at Columbia University College of Physicians & Surgeons, to draft a white paper on the effects of aging on the judiciary. Once the paper is drafted, the Committee will work to create a "best practices" guide for the courts. In addition, the Committee will host an informational CLE program, *Judging Aging*, at this year's ABA Annual Meeting in Chicago. The program will take place on Friday, July 31st from 10:00 AM- 11:30 AM at the Drake hotel.

Judicial Disqualification Project

The Standing Committee on Judicial Independence received an ABA Enterprise Fund Grant to undertake the Judicial Disqualification Project ("JDP"). The Committee retained Indiana University law professor Charles Geyh as the consultant to the project. The project staff researched the state of disqualification rules and practices around the country, then developed proposed recommendations to address the problems identified and subsequently issued a draft report. The full draft report of the Judicial Disqualification Project is available on the SCJI website and can be accessed [here](#).

SCJI members and others interested in JDP convened in Boston during the ABA Midyear Meeting to discuss the draft report and ideas for an ABA resolution and report on point. The Committee is currently working on a draft resolution and report which it will circulate widely. For more information on JDP, please visit the [SCJI website](#).

2009 Burnham Hod Greeley Award

Doreen D. Dodson, a partner with The Stolar Partnership of St. Louis and immediate past Chair of the Standing Committee on Judicial Independence, received the American Bar Association Coalition for Justice Burnham "Hod" Greeley Award. That award recognizes extraordinary outreach efforts designed to enhance public awareness of the need for a fair and impartial judiciary. The award was presented February 13 at a welcome breakfast for the ABA Judicial Division during the Association's 2009 Midyear Meeting in Boston. Learn more [here](#).



Courtly Currents is a publication for members and collaborators of the Standing Committee on Federal Judicial Improvements and the Standing Committee on Judicial Independence. Opinions expressed herein are not to be deemed to represent the ABA unless and until adopted by the ABA.

Honorable M. Margaret McKeown, Chair
Standing Committee on Federal Judicial Improvements

William K. Weisenberg, Chair
Standing Committee on Judicial Independence

Court to address whether and when the due process clause of the Constitution of the United States requires judges to recuse themselves, or withdraw, from ruling in cases in which they have accepted campaign contributions from parties to a case. In his June 8 [press release](#), President Tommy Wells stated "the ABA Standing Committee on Judicial Independence, working through its Judicial Disqualification Project, will continue to refine those and other factors into a series of guidelines for courts to assess whether contributions to judges' campaigns implicate the due process rights of parties appearing before them. This evaluative process is one way to restore the public confidence in our courts so critical to preserving our government of laws."

Media Attention

Caperton v. Massey has drawn national attention, and with it, the ABA has also caught sight of the public eye. On June 10, just after the Court's decision was released, the *New York Times* interviewed Mr. Wells, and explained that "to Mr. Wells of the bar association, the Caperton decision suggests that states should have tough standards on recusal like those proposed in the association's model code of judicial conduct, including an 'absolute dollar amount' for contributions to trigger recusal, determined state by state." On June 11, the *Voice of America* Radio Broadcast, "[Money, Influence and the Election of Judges](#)," featured SCJI Chair William Weisenberg. Mr Weisenberg announced that SCJI is working on guidelines for when judges should recuse themselves.

On March 19, the *USA Today* article, "[At the Supreme Court, a case with the feel of a best seller](#)," noted the similarities between *Caperton v. Massey* and John Grisham's 2008 novel, *The Appeal*. Explaining the issue of judicial recusal, the article quoted the ABA brief, specifically stating that "[i]n its own brief, the American Bar Association seeks to change the system. 'Few actions jeopardize public trust in the judicial process more than a judge's failure to recuse in a case brought by or against a substantial contributor to the judge's campaign,' the group says."

To access these and other articles with mention of the ABA and *Caperton v. Massey*, click [here](#).

SCJI is planning an Annual Meeting Presidential CLE Center Showcase Program titled, *Justice for Sale?: Contributions to Judicial Elections in the Wake of the Supreme Court's Decision in Caperton v. Massey*. This program is scheduled to be held at the Hyatt Regency Chicago on Thursday, July 30 from 10:30 AM to 12:00 PM.



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