

# JUDICIAL DIVISION RECORD



Volume 16 Issue 1 Fall 2012

## INSIDE

**Appellate Judges Conference** .....8

**Lawyers Conference** .....11

**National Conference of the Administrative Law Judiciary** .....14

**National Conference of Federal Trial Judges** ..... 18

**National Conference of Specialized Court Judges** .....20

**National Conference of State Trial Judges** .....23

## CHAIR'S COLUMN

By Hon. William D. Missouri (Ret.), Upper Marlboro, MD



**A** little past noon on August 4, 2012, at the Westin River North Hotel in Chicago, IL, the gavel of leadership was passed from the Hon. Richard “Dick” C. Goodwin to me and I became the Chair of the Judicial Division (JD) for 2012-2013. The simple act of passing the gavel from Richard to me carried with it the duty, honor and obligation of increasing the profile of the JD and continuing the efforts to increase our membership. As the Division’s past chairs know, leading the entity that is the voice of the Judiciary within the ABA requires commitment, dedication, and hard work. I pledge to work hard to ensure that the JD continues its upward progression.

Speaking of past chairs, I am indebted to all who have preceded me in this position for their dedication and hard-work in increasing the JD’s visibility within the Association. I am particularly indebted to the past chairs, beginning with the Hon. James A. Wynn, who devoted significant energy to the issue of judicial disqualification. Even after Judge Wynn’s efforts, the need for work necessary to address this important issue persisted and consumed an inordinate amount of the Hon. G. Michael Witte’s year as JD Chair. After much work, Judge Witte and his successor, Judge Goodwin, likely thought that the issue was settled after the HOD (House of Delegates) passed Resolution 107 at the 2012 ABA Midyear meeting in New Orleans, LA. However, just as we thought it was safe to move on to other initiatives, the disqualification issue has appeared once again on the radar screen in a manner that demands attention. Fortunately, the JD has cemented a strong relationship with the ABA’s Tort Trial and Insurance Practice Section (TIPS), which provides the basis for a strong partnership through which the issue of judicial disqualification can be addressed. In particular, the TIPS/JD partnership ultimately resulted in establishment of a respectful working relationship with the Standing Committee on Ethics and Professional Responsibility and the Standing Committee on Professional Discipline. We look forward to continuing the working relationship with the two standing committees to facilitate an acceptable amendment to Rule 2.11 by the February 2013 Midyear meeting in Dallas, Texas.

As most JD members know, the ABA Midyear Meeting will signal the half-way mark for me as JD Chair and Laurel G. Bellows’ tenure as ABA President. I point out the obvious because President Bellows initiatives – Human Trafficking; Improving Cyber security; Preserving Justices; Preservation of the Civil Jury Trial; and Promoting Diversity – must be a part of all JD members’ conversation by that time.

Because there are vehicles to address the issue of human trafficking (Task Force on Human Trafficking) and the preservation of civil jury trials (Commission on the American Jury Project), I am confident that important work on those issues will have been completed by the Midyear Meeting. In fact, with the exception of preserving justice by adequate funding of the courts and promoting diversity to ensure gender equity, all of President Bellows’ initiatives can be addressed by articulating plans of action and taking steps to carry out the action plans. Court funding and diversity/gender equity in the judicial system, on the other hand, require the commitment of those with allegiance to specific constituencies. For example, court funding can only be improved through legislative and executive action, while gender equity can only

*Continued on page 2*



# JUDICIAL DIVISION COUNCIL 2012-13

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Soledad McGrath  
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*Continued from page 1*

be adequately addressed by all of us being sensitive to implicit bias that creeps into our daily lives.

Indeed, implicit bias and gender equity are first cousins to discrimination, but the relationship is denied by many. Those accused of discriminatory behavior against another may take great pains to assure the accuser that they do not discriminate. But, it seems that all too often, if a woman and man address the same issue, the man's statement or question is praised: "That is a solid answer." Or, "Your question goes to the heart of the matter." However, the woman's remarks are too frequently effectively ignored. Failure to acknowledge the value of a person's contribution because of that person's gender is discriminatory, even though those who commit such transgressions are loathed to admit it.

We as members of the legal profession must lead the effort to eradicate implicit bias and promote gender equity. As President Bellows opined, "We [lawyers] are the first responders when liberty and justice are imperil." She went on to say during that conversation that, "Without us, the rule of law is a mere abstraction." If they are to be eradicated, the judges and lawyers of the JD are obligated to ensure that discrimination's first cousins – implicit bias and gender inequality – receive the attention that is deserved. No longer can those two wrongs be perceived as mere unintentional oversights, void of malicious intent. A lack of gender equity due to implicit bias is subject to strict scrutiny and discriminatory impact is presumed. Together, we shall hold the mirror for ourselves and others, because at the end of the day implicit bias and a lack of gender equity diminishes everyone, and the judiciary more so than others.



The ABA Justice Center thanks LexisNexis for their continued support of the John Marshall Award. Shown at award dinner are (L-R): Hon. Mark Martin, Rebecca Love Kourlis (award winner) with husband Tom, Hon. Ruth McGregor, James Silkenat, Vicky Cashman, Hon. Richard Goodwin, and Hon. William Missouri.



## DIRECTOR'S COLUMN

By Peter M. Koelling, Chicago, IL



Membership has been one of the main concerns of ABA over the last decade, as we have seen declines in both the total number of members and the percentage of the legal profession represented. Moreover, with the recession that began in 2008, we have recently experienced even deeper declines in ABA membership. In response, the ABA commissioned a study of membership, which found that membership pricing was

one of the biggest impediments to joining the ABA. A fairly radical new pricing structure that would reduce prices across the board was recommended in the report. The Board of Governors started to implement this pricing plan. Specifically, the House of Delegates approved a new rate for judges, government lawyers, and solo practitioners, set at \$225. In fact, membership in these three sections has been growing even though ABA membership has declined. The second part of the plan contemplated lowering rates for all ABA members. This would result in a steep drop in dues revenue, but, if the model was correct, those losses would be followed by a robust increase in membership that, within three to five years, would recover all the lost revenue. However, as painful as the reductions have been, with losses of 4 to 5% of revenue, there was no stomach for causing a 35% drop in dues revenue, and so the second part of the plan has never been implemented. Fortunately though, this year it seems that membership numbers have stabilized and we saw a modest increase of one half of one percent in overall membership.

Notably, the pilot group membership plan that has helped give rise to the growth was initiated by the efforts of Judge Barbara Lynn, even before the new pricing structure. The idea was based on the group plan that the ABA offers law firms, but at a discount. The original price was based on flat rates for up to 5, 10, 20 members, etc. If a group had 9 members the rate would be as low as \$65 for everyone, but if they added one the rate would go up to the next level and everyone would pay \$118. While this pricing model might work for a law firm, where the firm was writing the check to pay for its members, group membership did not work in the same way in the government setting. For the most part courts were not paying the ABA dues; individual judges were writing their own checks. Accordingly, we asked the Standing Committee on Membership (SCOM) if the pricing structure could be changed to one flat rate per member. They agreed and set the amount at \$70. We were frankly surprised and excited by this low rate, as we could offer membership in both the ABA and Judicial Division for a total of \$105.

The JD and the conferences began to market this program. Among other things, we developed a group membership brochure, and advertised in the *Judges' Journal* and other publications. To ensure that we were bringing new members to the ABA, in order to form a group, at least half of the members had to be *new* members. Indeed, today we have about 56 groups comprised of 773 members, and 368 of these members are new to the ABA. This is a program that is really working. Judicial Division membership is up 10.7% over the last two years. Part of the success is because the program offers a benefit to both our present members and to our prospective members. Despite this success, however, and while they are still allowing for the creation of new groups, SCOM has asked JD to stop promoting and marketing this program. This is because SCOM is concerned that the price is too low and that we are cannibalizing dues revenue from our current members. A joint committee of members from SCOM and the Section Officers Conference has been formed to review this program. Importantly, two of those members are part of JD, so we will be well represented. Our hope is that we will be able to continue our outreach and marketing of this program in the near future.

We have put a lot of focus on growing the membership of the JD and its conferences. Why should we be doing this? What are the benefits to our organization and what are the benefits to individual numbers? Obviously one advantage is financial – for each new member, we get another \$35 to spend. More importantly, however, the more members we have the stronger our voice is inside and outside the ABA. Expanded membership allows us to be more effective in our projects and programs. Increased numbers widens the diversity of the points of view and gives us better perspective on what is going on in courts all throughout the country. It is a worthwhile goal to pursue.

Judge James Lockemy is our new JD Membership Chair. I am sure that under his leadership we will be able to continue our development and serve the conferences as we move forward. He will have a difficult job following in the footsteps of Judge Carpenter, though, as he has seen nothing but growth in membership under his tenure.



# 100 YEARS OF SERVICE

By Hon. Gary B. Randall, Omaha, NE

October 1, 2012, the citizens of Douglas County, Nebraska will celebrate the 100th anniversary of the opening of the Douglas County Courthouse located in Omaha, Nebraska. This is the third courthouse to be constructed in Douglas County throughout our history. The first was built in 1858, located 2 blocks from the present courthouse and the second in 1885. The second courthouse was built on the same 4 acre plot which houses the existing courthouse, completed and occupied on October 1, 1912. The current Douglas County Courthouse was built literally around the 1885 courthouse, as you can see in the photo from 1912.



The Douglas County Hall of Justice, as it prepares for its centennial birthday.



The Douglas County Courthouse in 1912.

The Douglas County Courthouse was designed by well-known Nebraska architect John Latenser, Sr., in a French Renaissance Revival style. The building as originally designed contains six floors, housing the offices of all the County Officials, the Douglas County Court and the District Court of Douglas County. The sixth floor of the structure was uniquely designed to serve as the Douglas County jail.



A beautiful inlaid terrazzo marble floor adorned the entrance to the Douglas County Hall of Justice.

Once the current courthouse was completed, the 1885 courthouse was removed and the lawn, sidewalks, gardens and lamp posts were reinstalled. The cost of such a construction project in 1912 - \$160,000.00.

man Hatchet representing the power of Justice, the American Eagle representing freedom, and the Scales of Justice representing equality in the law. These symbols are carved in stone on the exterior and they are incorporated in the interior in painted murals, carvings in the woodwork, depicted in designs in the terrazzo flooring and included in the scenes in the stained glass dome topping the rotunda. The murals surrounding the dome depict the transition of the State of Nebraska from the beginning of time through Native American presence, to the Westward Ho Movement, through Statehood and Farming.

The Douglas County Courthouse was added to the National Register of Historic Places in 1979. The courthouse foundation is granite with an exterior of Bedford Limestone. The interior walls are marble and the flooring is terrazzo. The stained glass dome topping the rotunda allows sunlight to shine down from the roof to the second floor of the courthouse which is the main entrance. In classic French Revival style, this structure contains 6 thematic symbols repeated in its interior and exterior. The symbols are a wreath and fruits and vegetables as signs of welcome, a



Above the terrazzo floor is an equally impressive stained glass domed ceiling and murals painted by E. Martin Hennings.

In recent years the Douglas County Courthouse was renamed the Douglas County Hall of Justice and it has been repurposed to house all of the Courts of the Fourth Judicial District including thirteen Douglas County Courts, five Separate Juvenile Courts, sixteen District Courts, and the Nebraska Workers' Compensation Court.



## WHAT WE ARE READING: *Deadball*, by David B. Stinson

Review by William K. Olivier, Golden, CO

Written by a lawyer, you might think *Deadball* is a crime story. It is not, unless you believe the death of the early years of baseball and its old baseball parks is a crime. *Deadball* takes its name from those early baseball years of the late 1800s and early 1900s called the Deadball Era, before baseballs were constructed to be livelier by being more tightly wound. With a new type of baseball starting in the 1920s, during the rise of Babe Ruth, the balls flew farther resulting in more home runs. But the Deadball Era was anything but dead.

*Deadball* claims to be a “metaphysical baseball novel.” It takes the reader on a journey to long forgotten baseball parks and the memorable players who played in them. Some say the players are still playing at the old baseball parks, but there are rules that must be followed for the now dead players to continue playing their game at the old ballparks. The author, David Stinson, unveils those rules in the book. He also recounts events long forgotten, except by only the most avid baseball fans, such as the “two foot home run,” where a baseball once got stuck in the mud near home plate allowing the batter to circle the bases or how the groundskeeper at the old Union Park ball field in Baltimore would mix soap shavings in with the dirt around the pitcher’s mound so opponent pitchers who rubbed their hands in the dirt to get a better grip would instead lose their grip.

Intertwined with modern day reality, Stinson brings the past to life by describing interactions of his protagonist, a former minor league ball player named Byron Bennett, with memorable personalities of baseball’s past in a time warp scenario. For example, after visiting a museum in Newcomerstown, Ohio, the hometown of baseball great Denton True “Canton Cyclone” Young, Bennett parks his car in front of the old home of the deceased Cy Young and sees an apparition of Young on the front porch of his home. Before Bennett can say anything, Young rises from

his rocking chair and imparts the only wisdom Bennett would get from the old ball player, “Son, your headlights are on.”

Peppered with actual facts in this work of fiction, there is a major focus on descriptions of old ball parks from the 1800s as Bennett visits them on his journeys. Included are such parks as Union Park in Baltimore, League Park in Cleveland, Bennett Park in Detroit, Forbes Field in Pittsburgh, the Polo Grounds in New York, and Ebbets Field in Brooklyn, just to mention a few. The descriptions are fascinating as Stinson juxtaposes the original configurations of the old ball parks against the remnants left today or what now stands in their stead.

Underlying this journey to baseball’s past is a love triangle between Bennett, his ex-wife, and baseball. Bennett never made it to the major leagues in his real life and his love for baseball conflicted with his love for his former wife. Baseball was his mistress and his devotion to baseball strained his relationship with his wife to the point of divorce. Maybe it was an addiction. Maybe not. Read the book to see how it comes out.



Judge Herbert B. Dixon, Jr., NCSTJ Delegate to House of Delegates, Judge Richard Goodwin, outgoing JD Chair, Laurel Bellows, Esq., incoming ABA President, Judge William D. Missouri, incoming JD Chair and Justice Mark Martin, outgoing Chair of the AJC gather at the 2012 ABA Annual Meeting in Chicago.

# Judicial Division Calendar Call

## 2012 National Symposium on the American Jury Project

The Optimal Jury Trial

October 4-5, 2012

Chicago, IL

## Appellate Judges Education Institute Summit

November 15-18, 2012

New Orleans, LA

## ABA Midyear Meeting

February 6-12, 2013

Dallas, TX

Hilton Anatole

## ABA Annual Meeting

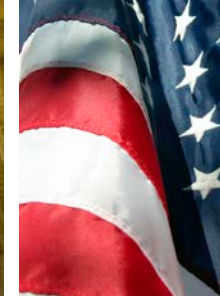
August 8-13, 2013

San Francisco, CA

San Francisco Marriott Hotel

For more details on these and  
other events, visit:

[http://www.americanbar.org/  
groups/judicial/events\\_cle.html](http://www.americanbar.org/groups/judicial/events_cle.html)



## 2013-14 ABA JUDICIAL DIVISION CONFERENCE CALL FOR NOMINATIONS

The JUDICIAL DIVISION recognizes the growing diversity in American society and the need to reflect this reality in its leadership, policies and programs. Through increased diversity, the Division can more effectively address societal and member needs with the varied perspectives, experiences, knowledge, information and understanding inherent in a diverse membership. To that end, we invite all interested Judicial Division members, and encourage minorities, females and those with disabilities, to apply for one of the open positions within your Conference listed below. Please fax your resume and a cover letter to 312.988.5709, mail it to ABA Judicial Division, 321 N. Clark Street, Chicago, IL 60654 or email it to the respective Conference Staff listed below.

**The deadline for submitting resumes is January 21, 2013**

### **Appellate Judges Conference**

Vice Chair (1 year term expiring in 2014)

Four Executive Committee Members-at-Large  
(2 year term expiring in 2015)

Send resume to [christie.brietner@americanbar.org](mailto:christie.brietner@americanbar.org)

### **National Conference of the Administrative Law Judiciary**

Vice Chair (1 year term expiring in 2014)  
Secretary (1 year term expiring in 2014)

Four Executive Committee Members  
(2 year term expiring in 2015)

Send resume, a statement of ones interest for serving the position and how one plans to forward the mission of the Conference to [denise.jimenez@americanbar.org](mailto:denise.jimenez@americanbar.org)

### **National Conference of Specialized Court Judges**

Chair Elect (1 year term expiring 2014)  
Vice Chair (1 year term expiring 2014)  
Representative for District 2  
(CT, DE, MD, NJ, PA, OH)  
Representative for District 9  
(AK, ID, MT, NE, OR, WA, WY)

Executive Committee Member at Large  
(3 year term expiring 2016)

Send resume to [gena.taylor@americanbar.org](mailto:gena.taylor@americanbar.org)



### **Lawyers Conference**

Vice Chair (1 year term expiring in 2014)  
Secretary (1 year term expiring in 2014)

Three Executive Committee Members  
(3 year term expiring in 2016)

Send resume to [denise.jimenez@americanbar.org](mailto:denise.jimenez@americanbar.org)

### **National Conference of Federal Trial Judges**

Vice Chair (1 year term expiring in 2014)  
Secretary (1 year term expiring in 2014)

Three Executive Committee Members  
(3 year term expiring in 2016)

Send resume and cover letter to [shawn.sanford@americanbar.org](mailto:shawn.sanford@americanbar.org)

### **National Conference of State Trial Judges**

Chair Elect (1 year term expiring in 2014)  
Vice Chair (1 year term expiring in 2014)  
Secretary (1 year term expiring in 2014)

Five Executive Committee Directors  
(2 year term expiring in 2015)

Send letter of interest and resume to [denise.jimenez@americanbar.org](mailto:denise.jimenez@americanbar.org)

Executive Committee Director positions will be elected by Delegates at the business meeting held at the 2013 Annual Meeting in Chicago.

## **Call for Judges' Journal Articles**

Attention Judicial Division members: If you are interested in contributing an article for *The Judges' Journal* magazine, please see the list of upcoming themes and author deadlines below and contact ABA Staff Editor Melissa Ladwig to discuss your article idea. She can be reached at 312.988.5458 or by email at [melissa.ladwig@americanbar.org](mailto:melissa.ladwig@americanbar.org).

- Winter 2013, Human Trafficking (author deadline 11/1/2012)
- Spring 2013, Reflections on the Future of the Courts (author deadline 2/1/2013)
- Summer 2013, Judicial Disqualification (author deadline 5/3/2013)

## **Call for JD Record Articles**

Division members are encouraged to submit articles for our standing columns of the *JD Record*. Contact *JD Record* Staff Editor Jo Ann Saringer at [joann.saringer@americanbar.org](mailto:joann.saringer@americanbar.org) for questions or article submission.

## **Historical Courthouses**

Provide an article and photo of a historical court house that you would like to feature.

## **What We Are Reading**

Please send the name of a book, its author along with a few lines about why you liked it and would recommend it.

## **What We Are Writing**

Have you written a book? Do you know a JD member who has? This column features short reviews of books by JD members - regardless of subject matter. Please send the title and author's name to Judge Mary-Margaret Anderson at [maggie.anderson@dgs.ca.gov](mailto:maggie.anderson@dgs.ca.gov).

### **Connect with the Judicial Division**



# APPELLATE JUDGES CONFERENCE 2012-2013 Executive Committee

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Hon. Elizabeth A. Lang-Miers  
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## VICE-CHAIR

Hon. Scott Bales  
Phoenix, AZ

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Hon. Mark D. Martin  
Raleigh, NC

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Matt Lembke  
Birmingham, AL

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Los Angeles, CA



# APPELLATE JUDGES CONFERENCE

## CHAIR'S COLUMN

By Hon. Elizabeth A. Lang-Miers, Dallas, TX



Appellate judges and staff attorneys from federal and state appellate courts, as well as appellate lawyers from across the country, comprise the membership of the Appellate Judges Conference. Our mission is “[t]o bring together state and federal appellate judges, staff attorneys, and practitioners to improve the administration of appellate justice through quality professional development and education programs and to promote fair and impartial justice through a diverse judiciary.” We created a strategic plan to fulfill our mission and identified five goals and several strategies to

achieve those goals. Our Vice-Chair, Judge Scott Bales, will spearhead the efforts to refine the strategic plan this year.

Several initiatives are already fulfilling the goals of the plan. For example, our technology committee has worked hard on plans to increase communication with and resources for our membership through technology. The committee will focus this year on how to implement new ways to use technology to communicate with and support our members, including use of social networking.

The Appellate Judges Conference will celebrate its 50th Anniversary during the 2014 ABA Annual Meeting in Boston. The AJC will commemorate its 50-year history in several ways and we hope that you will join us for the celebrations.

As in past years, the Appellate Judges Education Institute will present its excellent Summit to be held this year in New Orleans on November 15-18, 2012, at the historic Hotel Monteleone in the New Orleans French Quarter. This year's program promises again to provide a timely, lively and highly informative continuing legal education program. Highlights will include remarks by U.S. Supreme Court Justice Antonin Scalia, a reception at the historic Louisiana Supreme Court building and a dynamic presentation by returning speaker Professor J. Rufus Fears. Other nationally recognized speakers will share their expertise with the hundreds of judges and lawyers who will attend, making the Summit the premier educational opportunity in the nation for appellate judges and lawyers. Please join us for this great event by registering at <http://www.law.smu.edu/AJEI/Home>.

We will continue our efforts to increase AJC participation in the Judicial Clerkship Program. Last year, we welcomed participation by members of the Council of Appellate Staff Attorneys (CASA) and the Council of Appellate Lawyers (CAL). This year the program will be held during the ABA Midyear meeting in Dallas, Texas, on February 7-9, 2012. We look forward to increasing participation by AJC members this year.

*Continued on page 9*





*Continued from page 8*

Another key priority is keeping our membership informed about the judicial disqualification debate within the ABA. The AJC has evaluated the proposals and worked within the Judicial Division to ensure that our voice is heard on these important proposals that affect the judicial system.

Our membership is fortunate to include the members of CAL, led by its Chair Matt Lembke, and CASA, led by Susan Dautel. We are also very fortunate to have had the leadership of Justice Mark Martin and look forward to his leadership as Immediate Past Chair as well as in his positions as Chair of the AJEI and Chair-Elect of the Judicial Division. Furthermore, we appreciate the excellent and hard work of all of the members of our committees, the leadership of our Executive Committee, and the great support of our ABA staff.

## COUNCIL OF APPELLATE LAWYERS CHAIR'S COLUMN

By Matt Lembke, Birmingham, AL



**A**s we head toward the end of the year, we are focused on making this year's Appellate Judges Education Institute Summit in New Orleans the best summit yet. The summit will take place November 15-18 at the historic Hotel Monteleone in the French Quarter.

The summit is the premier appellate CLE program in the country each year for several reasons. First, the quality of the programming is second to none. Highlighting the list of speakers this year is Justice Antonin Scalia, and the agenda is full of experienced judges, practitioners, and academics who will provide valuable insights for appellate lawyers of any experience level. You can review the program at [www.law.smu.edu/AJEI](http://www.law.smu.edu/AJEI).

The summit is also unique in offering an opportunity for extended interaction between appellate judges and lawyers. Over the course of the program's three days, there are many opportunities to meet federal and state appellate judges from across the country in an informal setting.

Finally, the summit provides an excellent opportunity for networking with other appellate lawyers from all parts of

the country. This year, we have scheduled a kickoff reception on Thursday, November 15 for all the appellate lawyers attending the summit to make sure that first-time attendees can get the most out of the summit by meeting other lawyers very early in the conference. We also will continue the tradition of a dine-around on Friday evening, which offers another chance to get to know a group of appellate lawyers. The hardest part of the dine-around will be choosing which of New Orleans' outstanding restaurants to select.

I hope you will make every effort to attend the summit – you will not be disappointed.

At the conclusion of the summit, Vince Buzard of Rochester, New York will take over as Chair of the Council of Appellate Lawyers. Vince has big plans to continue to move the Council forward. As for me, I want to express my thanks for having had the opportunity to serve as Chair of this dynamic organization. I encourage you to get involved in the Council's work. You will get a lot out of your involvement.



## **SAVE THE DATE**

**Join us at the  
Appellate Judges Education Institute  
2012 Summit in  
New Orleans, Louisiana  
November 15-18, 2012**

Registration is now open for the 2012 Summit of the Appellate Judges Education Institute (AJEI).

Each year, the AJEI Summit provides lively and informative continuing legal education and is unique in its focus on the challenging issues that judges, lawyers, and staff attorneys confront in the appellate arena.

The Hotel Monteleone, a historic hotel in New Orleans' French Quarter, will serve as the host hotel of the 2012 Summit. Highlights of this year's event include remarks by U.S. Supreme Court Justice Antonin Scalia, a reception at the Louisiana Supreme Court, and a dynamic luncheon presentation by Professor J. Rufus Fears. The AJEI Annual Dinner, on Saturday, November 17, will showcase entertainment by some of New Orleans' finest musicians.

As always, the four-day Summit will feature presentations and invigorating discussion by leading Federal and State judges, scholars, and appellate practitioners on topics of interest to the AJEI audience.

Registration details and the full program agenda are available on the AJEI website:

<http://www.law.smu.edu/AJEI/Home>

The website also includes information on a limited number of scholarships, including criteria and availability.

The 2012 AJEI Summit is co-sponsored by the Appellate Judges Conference of the American Bar Association's Judicial Division and by the SMU Dedman School of Law.

# LAWYERS CONFERENCE



## CHAIR'S COLUMN

By Phyllis B. Pickett, Raleigh NC



### Lawyers, Einstein & the Courts

As even I can understand it from the eloquent explanation of science writer George Johnson, Einstein's Theory of Relativity is based on the simple notion that "you can only describe your position in relationship to something else—with that 'something else' being able only to describe its position in relationship to you."<sup>1</sup> I assert, humbly, that the relationship between the Lawyers Conference and the Judicial Division reflects

Professor Einstein's basic concept exactly. Lawyers are officers of the court who continually define themselves in relation to the court, and the court is linked vitally to lawyers who are critical to the proper administration of justice. This "relative" relationship can be seen in the LC's roots in the JD. In 1975, when an esteemed group led by lawyer Howard Stern sought its creation, Mr. Stern concluded that securing a position for lawyers within the JD provided "greater opportunity for contact and communication and that the traditionally more active role of the lawyer in support of judicial reform must be stimulated, constructively channeled and be made a more viable force in approaching the goals of the Division."<sup>2</sup> The core mission of the LC today is to improve the administration of justice, advance confidence in the judiciary, and promote a diverse and adequately funded justice system.

The LC's role within the JD continues to evolve with the adoption of **REFRESH 2015**, a clear and innovative strategic plan adopted by the LC Executive Committee during the 2012 Annual Meeting to guide conference efforts and activities over the next three years. The LC action plan consists of three salient goals and several focused targets for attaining those goals. To summarize, the **REFRESH 2015** goals are to: (1) focus on the LC core mission; (2) increase its visibility and relevance within the JD and the larger ABA; and (3) make membership recruitment, services, and retention a top priority. Notably, the year 2015 will mark both the LC's 40th anniversary and the culmination of **REFRESH 2015**.

Thanks in advance to the other members of the LC Leadership Council: Chair-Elect Michael Bergmann, Vice-Chair Keith Roberts, and Secretary Rachel DuFault; to Executive Committee members, committee chairs, and all active LC members; and to JD judges, especially JD Chair Judge William D. Missouri, who help the LC achieve **REFRESH 2015** goals and targets.

**"Want to know what a few dedicated people can do?"** – Former LC Chair Stanley R. Lowe of Casper, WY.<sup>3</sup>

The LC will maintain its tradition of service, scholarship, and advocacy benefitting the bench and bar with the continued dedication of our membership, which now totals more than 1,200 lawyers and law students. Active committees form the foundation of our success. For 2012, LC members have the opportunity to serve on the following committees: Awards; Coalition for Justice; Diversity; Ethics; Marketing & Membership; Nominating; Program; Public Service; Publications, Website, and Media Activities; Strategic Planning; and Technology. Visit the **LC Committees page** for detailed descriptions and to join a committee.

### JD Vice-Chair Nominations

The LC has the honor of nominating the JD Vice-Chair for 2013–14 who will ascend automatically to Chair-Elect of the JD the following year. In accordance with LC Bylaws, the Nominating Committee will be appointed not later than 90 days after the date of the closing assembly of the 2012 ABA Annual Meeting. The names and mailing addresses of the members of the committee will be published in a regular publication of the Conference or the JD no less than 90 calendar days prior to the opening assembly at the 2013 Annual Meeting. The committee's report will either be sent to all members or published in any regular publication of the conference or JD no less than 60 days prior to the opening assembly at the Annual Meeting. Additional nominations may be made by nominating petition signed by at least nine voting members and received by the conference staff at least 30 days prior to the Annual Meeting. Contact Denise Jimenez at [Denise.Jimenez@americanbar.org](mailto:Denise.Jimenez@americanbar.org) for more information on the nomination process and/or to submit nominations.

The LC Executive Committee Members were all smiles at the successful 2012 Annual ABA Meeting. L-R: Christopher Browning, Robert Saunooke, Phyllis Pickett, Rachel DuFault, William K. Olivier, Rick Bien, J. Phenise Poole, Keith Roberts, Christina Plum, Shaunda Patterson-Strachan, and Hon. David Horowitz (ret.).



1 G. Johnson, "Quantum Leaps'Einstein's Jewish Science,' by Steven Gimbel," *The New York Times* (Aug. 3, 2012).

2 See "Lawyers Conference 35th Anniversary Monograph," Published by the ABA Judicial Division Lawyers Conference (2010), for the interesting history of the Lawyers Conference.

3 *Ibid.*

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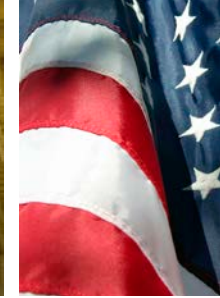
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## Lawyers Conference Member Profile: Mark O'Halloran, Seattle WA

Lawyers Conference Executive Committee Member  
Lawyers Conference Program Committee Chair

**Education:** Seattle University School of Law

**Practice:** Plaintiffs' Civil Litigation, Personal Injury

**Enjoys:** Skiing, beaches, baseball

**Reading:** "Half Empty" by David Rakoff

A graduate of the University of Washington, Mark O'Halloran began his professional career at Starbucks in corporate marketing. Working closely with the legal department sparked his interest in becoming a lawyer. Today, Mr. O'Halloran is a successful plaintiffs' civil litigator for The Gosanko Law Firm on Mercer Island, WA, where he will be entering partnership this year. Mr. O'Halloran is also a member of the Seattle University Law Alumni Board, chairing the Development Committee. It is no surprise that the last legal book he read was "Reptile" by Don Keenan and David Ball. Mr. O'Halloran ably chairs the Lawyers Conference Program Committee, which oversees the development of all conference educational programs to provide quality instruction and training opportunities to those involved in the court system.

Mr. O'Halloran's outstanding record of bar leadership began at the state level. Initially, he chaired the Washington State Bar Association Young Lawyers Division (WSBA YLD) Public Service Committee. That led to an elected three-year term on the WSBA YLD Board of Trustees, where he also served on the Editorial Advisory Board and as chair of the Bridging the Gap Conference. Next, Mr. O'Halloran was elected President of the WSBA YLD. In addition, he served as a member—and then chair—of the Washington Initiative for Diversity Governing Council. In the ABA, Mr. O'Halloran was active formerly in the Young Lawyers Division, where he served as a member of the Membership Team, Membership Board, and National Conferences Team. He was National Conferences Coordinator and Public Service Director, on the Leadership Advisory Board, and served as Liaison to the LC Executive Committee.



Mr. O'Halloran's view of the ABA has changed over time. "I once thought the ABA was a vast, non-personal organization of unconnected lawyers," he confessed. "I now see it as an invaluable practice resource, an outlet for my idealism, a break from my grind, and the organizational home of many close friends." When asked why he is an active member of the LC, Mr. O'Halloran stressed his appreciation for the opportunity to interact with "exceptional lawyers and judges from across the county."



## Lawyers Conference Represented at First Annual Law Student Division Mixer

By Phyllis B. Pickett, Raleigh NC

A highly successful inaugural Law Student Division Mixer was one of the main networking events of the ABA Annual Meeting in Chicago, IL. Held at the Swissotel on Thursday evening, August 2, 2012, the lively event sponsored by the ABA Law Students Division included participation from the Lawyers Conference and 21 other ABA entities. Incoming LC Chair

Phyllis Pickett and Secretary Rachel DuFault represented the LC. The ratio of three lawyers to every 10 students in attendance set an energetic tone for the evening. The event was scheduled to conclude at 7:30 p.m., but the last group of 20 lawyers and law students did not leave the function until hours later.

## 2013 Burnham “Hod” Greeley Award Call for Nominations

Awards Committee Co-Chairs: J. Phenise Poole, Cincinnati, OH and Larry Stein, Wheaton, IL

The Lawyers Conference is now accepting nominations for the 2013 Burnham “Hod” Greeley Award, which is given annually to individuals and organizations dedicated to promoting increased public awareness of the need for a fair and impartial judiciary. It is named in honor of the late Hawaii attorney Burnham “Hod” Greeley, who was an esteemed leader within the ABA, and was committed to promoting public trust and confidence in our judicial system.

Last year’s recipient was Thomas C. Barnett, Jr., Executive Director of the State Bar of South Dakota. The seventh annual presentation of the Burnham “Hod” Greeley Award will take place during the Judicial Division Welcome Breakfast at the 2013 ABA Midyear Meeting in Dallas, TX.

### Criteria for Selection

The Greeley Award may be presented to any individual or organization that has made a significant, positive impact on public understanding of the role of the judiciary in a democratic society and its importance to the Rule of Law. The award recognizes extraordinary outreach efforts designed to enhance public awareness of the need for a fair and impartial judiciary.

The LC Award Committee will review the nominations and, if appropriate, select one award recipient. The Committee

may decide not to present an award if the nominations do not meet the stated award criteria. Legal and non-lawyer organizations are eligible. Individual nominees need not be lawyers.

### Nomination Guidelines

- Completed nomination form
- Resume or biographical sketch for individual nominee; program description for organizational nominee
- Description of the nominee’s efforts and impact
- Letters of support (limit 3) for the nomination
- Assurance the nominee is available to attend the award ceremony

### Submission

Visit [www.ambar.org/jdlc](http://www.ambar.org/jdlc) for more details. Please send [nomination form](#) and supporting documentation no later than Friday, November 30, 2012 to:

American Bar Association  
Judicial Division – Kris Berliant  
321 N. Clark, Chicago, IL 60654  
Phone: 312.988.5700 Fax: 312.988.5709  
[kris.berliant@americanbar.org](mailto:kris.berliant@americanbar.org)

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**CHAIR'S COLUMN**

By Hon. Ira Sandron, Washington, DC



I am honored and privileged to have this opportunity to address you in my first column as NCALJ Chair. I wish to thank my predecessor, Judge Ann Breen-Greco, with whom working was a pleasure. I hope that my year as chair is as productive and as beneficial to the administrative law judiciary as was hers, and as were the previous terms of Judges R. Bryan McDaniel and Thomas Snook, during which I also served as an officer.

Within the judiciary, the administrative law judiciary faces particular issues in these days of budget constraints and the hostility toward both the judiciary and government in general by certain segments of society. Because of our connection to the executive branches of the federal and state governments, we are particularly vulnerable to attack by way of incursions into our independent decision-making, pay and benefits, and ability to dispense justice in a meaningful and timely fashion.

Judicial Division Chair William Missouri's theme for this year is access to justice. In line with this theme, NCALJ is the initiating co-sponsor of a joint program proposal for the 2013 ABA Annual Meeting in San Francisco, on the subject of cultural diversity in the courtroom, with a focus on recognizing and handling foreign cultural norms that differ from our own. I thank the Commission on Immigration, the Lawyers Conference, and the National Conference of Specialized Court Judges for already committing to be co-sponsors. Education and Program Committee Co-Chairs Judge Mary Kelly and Judge Judson Scott and I will be seeking additional co-sponsors and speakers in the months to come, and I will, in later columns, keep you apprised of developments.

Recently, Judges Bruce T. Cooper and Kelly put on a very successful webinar program, details of which can be found on the NCALJ website. In light of what will no doubt be increased use of this form of programming in the future, I have established a new committee, "Webinars," with Judges Cooper and Christina Kalavritinos as co-chairs. Webinars promises to be a means by which we can provide educational benefits to our members and to other judges and attorneys outside of our Conference.

*Continued on page 15*



*Continued from page 14*

The Conference will continue monitoring developments in the Office of Personnel Management's operation of the Federal ALJ program and continue to press for implementation of fair application procedures that will ensure selection of the best-qualified candidates. We will do the same in the state administrative judge arena.

I look forward to working with Chair-Elect Judge Cooper, Vice-Chair Judge Judith Boggs, Secretary Judge Julian Mann, and the other members of our Executive Committee, committee chairs, and all other NCALJ members who wish active involvement. To-

gether, we can play our part in educating the public and those in the political sphere of the importance of our work and the integral role that we play in the fabric of the American judicial system.

## **NCALJ at the Annual ABA Meeting**

*By Hon. Ann Breen-Greco, Chicago, IL*

**O**ur get together with Judicial Division and the National Association of Women Judges (NAWJ) at the ABA Annual Meeting was very successful and well attended. As attendees entered the hotel lobby they were greeted by a sign that said: "Judicial Division Welcomes the National Association of Women Judges." There to greet NAWJ was the Illinois State Bar Association (ISBA) President-Elect Paula Holderman who stayed to visit with attendees. My 15-year old daughter, Jasmia, and her friend were also part of the receiving line!

The next day the joint NCALJ/NAWJ program, "Finding Representation for the Unrepresented," was held at the John Marshall School of Law's Fair Housing Clinic. The program was well attended and there

was lively interaction between the panelists and attendees, who also included NCALJ members and local Illinois ALJs, along with the Chair of the Illinois Association of Administrative Law Judges, Camela Gardner, and the ISBA Administrative Law Section Council Chair, Judge Sheila Harrell. Many attendees were very complimentary of the program.

I am privileged to have been appointed to the ABA Task Force on Human Trafficking by ABA President Laurel Bellows. I will be planning a NAWJ program on this topic in Chicago for March 2013.



## The Gavel and the Robe

By Hon. Randall B. Zorick, Los Angeles, CA

So, I was asked to speak at my son's First Grade Class for career day. In all honesty, I was quite flattered by the request, thinking that it would be a great way to instill a sense of pride in my son of his father and his career. Also, it just so happened to fall on my regular day off, so of course I gladly accepted. My son's teacher indicated I should bring whatever props I could to enhance the children's understanding and to help keep their attention focused. I planned on bringing my robe and gavel.

Needless to say, before the event I was a little nervous. Visions of "Kindergarten Cop" (although in this case Kindergarten Judge) danced in my head. I planned out a rough outline of what I was going to talk about, law school, the differences between being a lawyer and a judge, and a little insight as to what we do and why we do it. You know, a big picture kind of speech.

The day before the event, the school provided me a schedule of where to hold my presentation and potential talking points. I was to speak for a half hour per first grade class, with three classes total. The schedule also reiterated the necessity of props. I thought my badge might be kind of neat to pass around the class, so I decided to bring that too. I really could not think of anything else to bring that would be either entertaining or educational to a first grade child. The schedule also showed that the two other dads were a nurse and a police officer. That was my first indication of trouble.

So I showed up early, wearing my robe, with gavel and badge in hand. When the other two dads showed up, I knew I had my work cut out for me. The nurse brought a huge tray of surgical equipment, including a bonecutter, stethoscope and plethora of other fun and fascinating tools of the trade. He also brought a box of surgical masks to give each kid. The police officer brought a bag of equipment, including riot gear, shield, helmet and various billy clubs, and he rolled his squad car right up to the classroom to let each of the kids get inside.

I, trying to make light of the matter, joked that the nurse and police officer were going to make me look bad because I had nothing near as entertaining as a bonecutter or riot shield.

At any rate, I did my best to make my presentation educational and entertaining. I held a mock hearing in each room, where I swore in all the kids (probably the only time the students seemed truly engaged with my presentation...). I left, thinking I had done the best I could, still

certain I should have brought more props (the last class I spoke to asked what kind of car I drove, if it were a special vehicle or anything).

So, when I picked up my son from school, I asked him who was his favorite presenter and why. "The police officer," he said, "because the shield and the clubs were so cool, and we got to go in the police car."

Then, I asked him what he thought of Daddy's presentation.

He said, "Oh, Daddy, yours was the LAMEST! It was soooo lame! All you brought was your little baby hammer and your black dress. Why didn't you bring anything cool, like a club or something?"

I just laughed and shook my head. I suppose what many adults may consider tools of power — a gavel and a robe — in a child's eyes are just little baby hammers and black dresses.

### ABA Resolution 300B - Judicial Disqualification Proposed Amendments to the Model Code of Judicial Conduct

By Hon. Richard Goodwin, Fresno, CA and  
Randy J. Aliment, Seattle, WA

The Tort Trial & Insurance Practice Section (TIPS) and the Judicial Division (JD) reviewed the July 16, 2012 "Revised draft for Comment - Rule 2.11 of the Model Code of Judicial Conduct." Representatives of TIPS and JD participated in the roundtable discussion on August 3, 2012, at the ABA Annual Meeting in Chicago. The process was conducted with transparency and fairness and with cooperation by all involved. TIPS and JD have deferred Resolution 300B until February 2013, and will possibly withdraw the resolution at that time. While we remain concerned with some aspects of the proposed amendments, we plan to work together with the Center for Professional Responsibility in good faith to resolve all remaining issues. JD chair, Judge William Missouri, has appointed an Ad Hoc committee of the JD to prepare comments to the proposed code revisions that were presented to the JD Council in September and forwarded to the Center for Professional Responsibility and other committees.





## NCALJ Webinar Breaks New Ground

By Hon. Bruce T. Cooper, Los Angeles, CA

**A**s part of the Judicial Division's webinar series, working with the ABA CLE Center, NCALJ presented its first webinar, "Medicine 101 for Judges and Attorneys: Orthopedics - Neck, Shoulder, Back, and Knees." The program was attended by more than 50 people and set the "gold standard" for the Judicial Division webinar series.

NCALJ Executive Committee member Judge Mary Kelly, who is a founder of the National Nurse Attorney Association, organized, coordinated and moderated the 90-minute program. She led a panel of experts through a discussion concerning the anatomy of the neck, back and knees, an evaluation of associated damages, and malingering.

Panel experts included Dr. Justin T. Hata, M.D., Assistant Clinical Professor, Department of Anesthesiology & Perioperative Care, University of California, Irvine, CA; Director of University of California Irvine Center for Pain Management; Dr. Robert A. Bitonte, M.D., M.A., J.D., LL.M., As-

sociate Clinical Professor, Departments of Physical Medicine and Rehabilitation and Family Medicine, University of California, Irvine, CA; Past President, Los Angeles County Medical Association; Author and expert in the quantification of human damages; and, Dr. Manuel Saint Martin, M.D., JD, Professor and Medical Director, Department of Health Sciences, City of New York, York College, Jamaica, NY; Psychiatric Expert for the Central and Northern Districts of California and District of Nevada, and California Medical Board.

The doctors expressed a desire to help educate judges and attorneys on other subjects in medicine and hoped to continue their collaboration with NCALJ on future webinars. Feedback from attendees was extremely positive, and NCALJ is working to develop the next installment in this webinar series.

The webinar is available for [purchase online](#) through the ABA CLE Center.

## Hi-Tech Courtroom and Internet-Sourced Evidence

By Hon. Judith Boggs, Washington, DC

**O**n June 21, 2012, NCALJ presented an ABA Brown Bag Program, "Administrative Judging in the 21st Century: the Hi-Tech Courtroom and Internet-Sourced Evidence," in Washington, DC. The program was co-sponsored by the ABA's Sections of Administrative Law and Regulatory Practice, and Government and Public Sector Lawyers. Members may listen to the program audio, view the resource list and speaker bios at [www.ambar.org/jdncalj](http://www.ambar.org/jdncalj).



Panelists, Moderator and NCALJ "Brown Bag" Program Committee members (L-R) Judges Judith Boggs, C.F. "Spike" Moore (panelist), Mary Henry, Chuck Adkins-Blanch (panelist), Funmi Olorunnipa (panelist), Prof. Jonathan Band (moderator), Judge H. Alexander Manuel. Photograph by Judge Christina Kalavritinos.

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**CHAIR'S COLUMN**

By Hon. Daniel Breen, Jackson, TN



**G**reetings from Chicago where the Executive Committee of the National Conference of Federal Trial Judges just completed its annual meeting. I am privileged to be taking over as Chair from Judge John Tunheim who so ably led the Conference this past year. Although competing with Lollapalooza, the NCFTJ conducted its business through lively and spirited discussions of issues affecting our membership. The Committee also approved and welcomed four new members whose brief biographies are included in this edition of the *JD Record*. The Committee has just sent out a notice for the election of one additional Committee

member, and I hope that you will consider submitting your name or those of colleagues for consideration.

The highlight of the Chicago meeting for our Conference was the program, "Federal Judicial Selection, Perspectives from the White House, the Senate and the Department of Justice." Moderating this timely and relevant discussion was Professor Stephen Burbank of the University of Pennsylvania Law School. His panelists included four individuals intimately familiar with the selection process: David Best, Chief Nominations Counsel, Republican Staff U.S. Senate Committee on the Judiciary; Rachel Brand, former Assistant Attorney General for Legal Policy, U.S. Department of Justice; Renee Landers, former Deputy Assistant Attorney General, Office of Policy Development, U.S. Department of Justice; and Andrew Blotky, Director of Legal Progress, Center for American Progress. Prior to the panelists presenting their initial observations, Benjamin Hill, an attorney from Florida and former chair of the ABA Standing Committee on the Federal Judiciary, provided his insight into the closely guarded workings of the Committee as it reviews nominees to fill vacancies from the district courts to the U.S. Supreme Court. Mr. Hill, without revealing any of the secretive discussions of his group, enlightened the attendees on the extraordinary number of hours spent by each federal circuit representative in interviewing, reviewing, and providing their assessments of the nominees to the White House as to integrity, professional competence, and judicial temperament.



Federal Judicial Selection Panel (L-R) Andrew Blotky, Rachel Brand, David Best, and Renee Landers.

*Continued on page 19*



Continued from page 18

Each panelist gave his or her take on the workings of their respective offices in reviewing nominees, interacting with the home state's U.S. senators or their appointed committees, and ultimately shepherding the judicial candidates through the intense scrutiny of not only the background investigation, but also the Senate Judiciary Committee. Notwithstanding respectful disagreements on the reasons for the reduction in confirmed judges or the slowness in the confirmation process, all agreed that some regimented format whereby aspirants to the judiciary would be moved through more expeditiously would be preferred.

Thanks are in order to former NCFTJ chairs, Judge John Tunheim and Judge Delissa Ridgway and Executive Committee Member Judge Stephen Limbaugh, Jr., who were all instrumental in securing the presence of this outstanding group of insiders, whose institutional knowledge was both informative and revealing.

Not to rest on our laurels, the NCFTJ will continue to present quality and informative programs for its membership. On the horizon for future meetings are presentations on e-discovery, apps for judges, and cultural diversity in our courts.

The NCFTJ continues to work on behalf of the federal judiciary on the issue of pay. At its request, the ABA filed an

amicus brief in *Beer v. U.S.*, which is scheduled for argument before the Federal Circuit in early September.

Those of you who are members of the Judicial Division know the bargain we are receiving by way of group membership. Because of that structure, I encourage you to speak to your colleagues about joining the ABA and JD. During this past year, the NCFTJ had the highest percentage of increase in membership of any of the constituent conferences of the Judicial Division. We are proud of that accomplishment and ask for your continued support.

In order to increase our presence as a representative of federal trial judges, we are teaming up with other similar organizations such as the Federal Judges Association (FJA), the Federal Magistrate Judge's Association, and the National Conference of Bankruptcy Judges. Several NCFTJ members are also board members or former officers of these groups. Efforts will be made to share resources, ideas, and support for matters of common concern. We anticipate having FJA President Royal Furgeson speak to us at the Dallas 2013 Midyear Meeting on ways we can jointly represent our constituents.

I am excited about our year and hope that you let us know how the NCFTJ can better serve you.

## New NCFTJ Executive Committee Members

By Hon. Daniel Breen, Jackson, TN

Joining the NCFTJ Executive Committee are Judges J. Michelle Childs, Robert Pratt, Frank Bailey and Nancy Joseph.

Judge Michelle Childs became a district judge in 2010 and sits in Greenville, South Carolina. She previously served as a state trial judge and as a Deputy Director for the South Carolina Department of Labor. Judge Childs has been actively involved in local, state and national bar organizations and has received numerous awards for her bar work and community service.

Senior District Judge Robert Pratt has served the federal judiciary in the Southern District of Iowa since his appointment in 1997. He was chief judge of the district before assuming senior status in 2012. Judge Pratt came to the bench from private practice and after working for the Polk County Legal Aid Society. He also is a member of the National Advisory Council of the American Judicature Society.

Judge Frank Bailey was appointed to the United States Bankruptcy Court in the Eastern District of Massachu-

setts in 2009 and now serves as the Chief Judge. Prior to assuming his position, Judge Bailey practiced in the private sector, focusing primarily on complex business litigation and business technology. He has been actively involved in the work of the National Conference of Bankruptcy Judges, serving on various committees. He also serves on the boards of local non-profit organizations, including a center which provides English-language education to new Americans, and Judge Bailey has traveled to Eastern Europe and Central Asia where he has lectured on U.S. legal systems to lawyers and business leaders.

United States Magistrate Judge Nancy Joseph sits in the Eastern District of Wisconsin following her appointment in 2010. She previously worked as a trial and appellate attorney with the Federal Defenders Services of Wisconsin, Inc. She has been recognized by the *Wisconsin Law Journal* as one of its Women in the Law honorees and has worked closely with Milwaukee city children in teaching them about the work of the federal courts as well as potential careers in the federal court system.

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**CHAIR'S COLUMN**

By Hon. George W. Perez, Saint Paul, MN



The NCSCJ and its members are still buzzing with excitement and activity after the ABA Annual Meeting in Chicago. I would like to start by introducing our new Officers, District Representatives, and Committee Chairs. I was elected Chair; I am the Chief Judge of the Minnesota Tax Court in St. Paul, Minnesota. Judge Earl Penrod, from Indiana State Courts, was elected Chair-Elect, Col. Rodger Drew, Military Courts stationed in Florida, was elected Vice-Chair, and Judge Beth Gibson Chief Judge, 92nd District Court, Newberry, MI, was elected Secretary. District Representatives elected are Judge

Vicki Carmichael representing District 3, Col. Tara Osborn representing District 4, and Col. Linda Murnane as Member-at-Large.

The following members were appointed as NCSCJ Committee Chairs: Education: Judge Vicki Carmichael; Membership: Judge Earl Penrod; Native American Tribal Courts: Judge J. Matthew Martin; Nominating: Judge Elizabeth Finn; Publications (*JD Record*): Judge Elizabeth Finn; Publications (*Judges' Journal*): Judge Beth Gibson; Strategic Planning: Judge George W. Perez. Our appointments to the Judicial Division committees include: JD Membership: Judge Earl Penrod; JD Standing Committee on Diversity: Judge Elizabeth Finn; JD Court Technology: Judge William Kelly; JD Ethics and Professionalism: Judge J. Matthew Martin; JD Judicial Outreach Network: Judge Richard Nunes; JD Program: Judge Vicki Carmichael; JD Judicial Clerkship Program: Judge Ernestine Gray. Congratulations to all the new Officers, District Representatives and Committee Chairs.

I want to extend a special thank you to Judge Elizabeth Finn, who served as our Conference Chair during the past year. Judge Finn worked tirelessly, particularly in developing a NCSCJ Strategic Plan that will serve us well heading into the future. Judge Finn also led and was instrumental in the major task of updating our conference bylaws. It was a pleasure working alongside Judge Finn and we are grateful for her leadership and contributions to our conference!



We gave awards to four outstanding recipients. Judge A. Elizabeth Keever of Fayetteville, NC, was presented the Franklin A. Flaschner Award; Judge

*Continued on page 21*



*Continued from page 20*

William G. Kelly of Kentwood, MI was presented the William R. McMahon Award; Mr. Marty Sullivan, Arkansas Judicial Branch Education Director, Little Rock, AR was presented the Judicial Education Award. Major Elizabeth Harvey was presented the plaque given in Recognition of Academic and Judicial Excellence in the Military Judges Course. Brian Chodrow, who has served as our liaison from the National Highway Traffic Safety Administration (NHTSA), was recognized for his outstanding years of service facilitating the Cooperative Agreement between NHTSA and the Judicial Division. We also extend a warm welcome to Sam Sinclair the new NHTSA liaison. Kudos to all our recipients!

Our initiatives for the coming year include supporting ABA President Laurel Bellows' goal on Human Trafficking by presenting a CLE at Midyear, (planned by Judge Pamela Brown) and a CLE at Annual on Cultural Diversity in the Courts; a new membership program; present CLE Webinars; and to develop enhanced communication with other JD conferences, sections, forums, and commissions to explore mutual interests and collaborations. Please join me with your ideas, participation and hard work for a productive and exciting year.



Justice Brent Benjamin and Judge George Perez at the 2012 ABA Annual Meeting Forum on Judicial Independence: The Changing Landscape of Judicial Disqualification.

## **Brown Bag Luncheon Series: Representing Traffic and DUI Clients**

By Hon. Beth A. Gibson, Newberry, MI

**T**he NCSCJ conducted its inaugural brown bag luncheon series in collaboration with the ABA Solo, Small Firm and General Practice Division (GPSolo) on July 11, 2012. The program was titled, "Everything You Need to Know About Successfully Representing Traffic and DUI Clients: Trial Tips for the Solo and Small Firm Lawyer." The panel consisted of NCSCJ members Judge Joan Bossman Gordon, District Court Baltimore City (MD), Judge Earl G. Penrod, Gibson Superior Court (IN), and Judge Pamela J. Brown, District Court Howard County (MD). The panel was moderated by Trish Sexton of GPSolo who serves as the Leadership Training Committee Chair and Membership Director. The panel discussed administrative proceedings including the MVA and Office of Administrative Hearings, trial preparation including challenges to stops and DUI and Drug Courts.

This program is in the first in a series of programs that the Conference will be conducting with GPSolo. GPSolo represents one of the largest Sections in the ABA and focuses

its programs and services for those in solo and small firm practice. The brown bag series is a call-in type of webinar (audio only) program which requires registration and is an exclusive member benefit which is recorded and available for replay. The operator fields live questions for the panel at the conclusion of the oral presentations. The July 12th program was a huge success and had the largest number of participants to date, with over 320 callers on the line.

To listen to the audio recording of this program, please visit:

[http://www.americanbar.org/groups/gpsolo/events\\_cle/brown\\_bag\\_sessions.html](http://www.americanbar.org/groups/gpsolo/events_cle/brown_bag_sessions.html)

In addition the panel fielded several questions. The Conference looks forward to working with the Division and other sections as we explore ways to do outreach.



# The Renewed Trials by Military Commission Under the Obama Administration: A Historical Perspective

By Col. Rodger A. Drew, Freeport, FL

**O**n Saturday, August 4, in conjunction with the ABA Annual Meeting, the NCSCJ presented the very informative and timely program, “The Renewed Trials by Military Commission Under the Obama Administration: A Historical Perspective.” The program was co-sponsored by ABA entities including the Standing Committee on Armed Forces Law (SCAFL), the Standing Committee on Law and National Security, the Solo, Small Firm and General Practice Division, the Government and Public Sector Lawyers Division, the Criminal Justice Section, and the National Security Committee of the Section on International Law.

The Panel discussion was moderated by the SCAFL Chair, Major General (U.S. Army, Retired) John Altenburg. General Altenburg was the original Convening Authority, Office of Military Commissions, when the modern military commissions were established by President George W. Bush on November 13, 2001.

## The panelists were:

The Honorable Will Gunn, Chief Counsel, U.S. Department of Veterans Affairs, Former Chief Defense Counsel, Office of Military Commissions.

Colonel Ralph Kohlmann (U.S. Marine Corps, Retired), Former Chief Trial Judge, Office of Military Commissions.

Brigadier General Mark Martins (U.S. Army), Chief Prosecutor, Office of the Chief Prosecutor, Office of Military Commissions.

Mr. Bryan Broyles, Deputy Chief Defense Counsel, Office of the Chief Defense Counsel, Office of Military Commissions.

General Altenburg began the program with some brief opening remarks, after which Mr. Gunn provided some thought provoking insights into the role of the defense counsel during the early years of the modern military commission with the rules as they existed at that time. General Altenburg joined Mr. Gunn’s acknowledgment that the initial rules and procedures were lacking in some significant respects.

Colonel Kohlmann described some of the revisions to the original rules and procedures, but likewise acknowledged challenges in the written rules and procedures. However, he pointed out that the military and civilian lawyers involved with the military commissions at the time, prosecutors, defense counsel, and judges, each carried out their duties in a way that ensured that any due process failings in the written rules were adequately addressed in the way they were actually implemented.

General Martins detailed the reforms to the modern military commissions during the Obama Administration and articulated how the procedural and substantive rights provided to military commissions accuseds meet or exceed all international norms, including providing rights superior to those available to defendants in the international military tribunals in The Hague and in most criminal courts in continental Europe.

Mr. Broyles, however, argued that military commissions are not necessary and that other U.S. courts, civilian or military, could have adequately addressed the cases that have been brought before the modern military commissions.

In response to questions from the audience and from the moderator, Mr. Broyles and General Martins in particular, engaged in a very lively discussion of the necessity for military commissions and the sufficiency of the rights afforded to persons brought before them.

The feedback from the audience after the end of the program indicated that the information was thought-provoking, entertaining, and professionally rewarding.



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# National Conference of STATE TRIAL JUDGES



## CHAIR'S COLUMN

Hon. William C. Carpenter, Jr., Wilmington, Delaware



As with any first article from a new chair, it is perhaps important to know a little bit about the person you have chosen to serve as chair for the upcoming year. I am a native Delawarean who grew up on a large farm in the rural part of our state. I attended the University of Delaware (yes, I am a big Blue Hen fan) and then proceeded to Widener University School of Law. After a short time

in private practice, I joined the United States Attorney's Office as an assistant and eventually became the United States Attorney for Delaware in 1985 serving Presidents Reagan, Bush and Clinton. I was appointed to the Superior Court bench in 1993 by Governor Carper.

I got re-involved with the ABA in 2003 at the encouragement of my President Judge and since then have served on the National Conference of State Trial Judges Executive Committee as a representative and officer, served for the past 3 years on the Executive Board on the Section Officer's Conference (SOC) and have been Membership Chair for the Judicial Division for more years than I can remember. My wife, Marilyn, has been my partner for 35 years, and we have two children and one wonderful grandson. Finally, I must admit, I am a golf addict, but enough about me.

This year begins a three year journey for the NCSTJ as together Judge Toni Clarke from Maryland who will follow me and Judge Christopher Whitten from Arizona thereafter have been working on a three year vision and strategic plan for the Conference. We expect to finalize it this fall, and while I will share more details in future communications, let me briefly cover some big issues with you that obviously need to be addressed.

First is membership. There are approximately 11,700 general jurisdiction judges in the United States and we have about 1,000 members in our Conference or roughly 9% of the total. To put it in some perspective, about 23% of the federal judges and 48% of the state appellate judges have joined the ABA. So together we need to do a better job of asking and convincing our colleagues to join us.

That naturally leads to the second big picture item of communications. There is no dispute that our members would benefit from more regular and consistent communications from the Conference. Whether it is the work of a committee, an upcoming CLE or general information about a new innovative approach to a problem by one of our courts, the timely providing of this information is critical if our members are going to benefit from it. How to do that in the best and most cost-efficient manner is the challenge. We hope to announce some significant efforts in this area later this year.

The third big initiative relates to our delegates. As the governing body of our Conference, it is critical that each state be represented and has a voice within the NCSTJ. This past year Judge Ramona See began the process of reaching out to states that did not have delegates to our Conference and made significant progress toward the goal of each state having at least one delegate. But having delegates is simply not enough. We need to explore ways to engage them in the work of the NCSTJ and have them become our ambassadors in their respective states. So if you are a delegate, look for some communications directed to you this fall.

Finally, we need to address how to best incorporate members into our organization and since most will never attend an ABA meeting, how we can best provide benefits to them. Like any successful organization, we have to ensure our members believe they are receiving a benefit to retain their membership.

These are all big challenges but ones Toni, Chris and I are committed to addressing, and we hope we can count on your help.

I look forward to the upcoming year serving as chair, and please do not hesitate to contact me. My office number is 302-255-0670, and my e-mail address is William.Carpenter@state.de.us. Thanks for your confidence.

**NATIONAL CONFERENCE  
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2012-2013  
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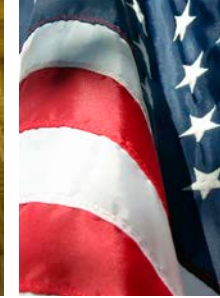
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## Reflections from NCSTJ Immediate Past Chair

By Hon. Ramona G. See, Los Angeles, CA



What a wonderful Annual Meeting in Chicago! There were many new faces at our Conference meetings. New and returning delegates attended from Alabama, Arizona, California, Colorado, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Texas, Virginia, Washington, DC, West Virginia, and Wisconsin.

Our "Access to Justice" program, more fully described by Judge Annette Scieszinski (Iowa) in a separate article, was a great success. Over 60 judges and lawyers attended. All attendees received ethics credit. This was one of our collaborative efforts with the ABA

Solo, Small Firm and General Practice Division whose member, Chauntis T. Jenkins, was a wonderful panelist. They also involved us in their successful Brown Bag lunch seminar series.

We also collaborated with the Commission on the American Jury Project, the Criminal Justice Section, the Section of Litigation, and the Tort Trial and Insurance Practice Section (TIPS) in the presentation of our Second Annual Town Hall Meeting. Over 50 attendees from the bench and bar participated in the discussion of the jury principles. We were fortunate to have as our moderator Ginger Busby, the Immediate past chair of the Section Officers Conference and former TIPS chair. Many thanks to US District Court Judge James Holderman (Commission Chair), Dick Semerdjian (Chair of TIPS), Pauline Weaver (Litigation), John McDowell (Criminal Justice) and our NCSTJ members, Judge Guy Reece, III (Ohio) and Judge Toni Clarke (Maryland)(Chair-Elect) for their contributions to this successful program.



Speakers at the NCSTJ Town Hall Meeting on the Update of the Principals for Juries and Jury trials (L-R) Judge Guy Reece, Judge Ramona See, John McDowell, Ginger Busby, Pauline Weaver, Dick Semerdjian, Judge Toni Clarke, Judge James Holderman.

Many of our members attended important discussions regarding President Bill Robinson's initiative on support for our courts and the potential methods upon which the greater ABA can assist the Judicial Branch with its many issues, including funding.

In the wake of *Caperton v. Massey*, issues have arisen regarding potential ABA financial disclosure rules for judges in the "ABA Model Code of Judicial Conduct" – Judicial Disqualification. Draft Rule 2.11 concerns in part whether and to what extent judges running for re-election/retention are required to disclose the identities of all financial contributors over an amount certain (to be determined) to their campaigns. Further information will be provided to you in the coming months.

It was an honor and a privilege to serve as your chair during the 2011-12 association year. I take with me many fond memories and experiences. We are indeed the oldest, largest, and most prestigious organization of general jurisdiction judges in the United States (and let's not forget the most fun!) and I know we will continue to thrive and grow under the astute leadership of Judge Bill Carpenter and all those who will follow.





## Model Time Standards for State Courts

By Hon. W. Terry Ruckriegle, Breckenridge, CO

The ABA *Standards of Timely Disposition* for various types of cases were originally developed by the Commission on Standards of Judicial Administration and adopted by the ABA House of Delegates in 1976. The National Conference of State Trial Judges and then-named Judicial Administration Division prepared significant updates to the Standards, including additional case types, in 1992 which were approved as Amendments in the House of Delegates. This latest iteration of the *Model Times Standards for State Trial Courts* was a collaborative review of the four-decade experience with time-to-disposition standards, funded by the State Justice Institute. It was conducted over two years by representatives of the NCSTJ, National Center for State Courts (NCSC), Conference of Chief Justices (CCJ), Conference of State Court Administrators (COSCA), National Association of Court Managers and the Institute for the Advancement of the American Legal System.

### Model Times Standards for State Trial Courts

Those efforts culminated in the first time ever adoption of one single set of *Model Time Standards for State Courts* in August 2011 by the CCJ, COSCA and the ABA. Cleanup amendments were approved by HOD in February 2012. The Standards are intended to establish a reasonable set of expectations for the courts-achievable goals, lawyers-a time framework within which to conduct their investigation and preparation, and the public as consumers-to outline what can be expected of their courts. They reflect case disposition times currently being achieved in some jurisdictions as well as various time standards adopted by states and local orga-

nizations. The Standards can be used by individual or state courts to improve timeliness of case disposition and service to litigants. They set forth a tripartite model in recognition of many differentiated case management systems. The first tier time period is composed of cases (75%) that are disposed of with little court involvement; the second tier (90%) reflects those disposed of after the court has addressed one or two pending issues; and tier three (98%) recognizes that a small portion of cases can only be resolved by trial. The first two are intended to show points of measurement to encourage effective caseflow management; the third tier can be used to establish a backlog measurement/baseline setting forth the maximum time within which a case should be resolved.

The NCSTJ Trial Court Standards Committee met at ABA Annual August 4, 2012 in Chicago. The committee discussed various approaches to encourage states to consider the updated Standards in reviewing their existing ones. Judges Domitrovich and Ruckriegle have already participated in programs presented by the NCSC in Pennsylvania and Ohio focusing on the newly adopted *Model Time Standards* and caseflow management. NCSC is currently seeking funding to facilitate such workshops in other courts. At the suggestion of Judge Jeanette Clark, the committee will specifically urge NCSTJ Chair Bill Carpenter to issue a call-to-action enlisting all state delegates and members at large to encourage their own jurisdictions to revisit current standards in light of the now-unified *Model Time Standards*. Please contact Judge Ruckriegle, [terry.ruckriegle@judicial.state.co.us](mailto:terry.ruckriegle@judicial.state.co.us) or Dan Hall, [djhall@ncsc.org](mailto:djhall@ncsc.org), V.P. of NCSC with any requests or suggestions.

## Jury Management Committee – 2012

By Hon. William Caprathe, Bay City, MI

The NCSTJ Jury Management Committee submitted in July the final draft of the article, “Are Your Jury Pools Representative of the Community?” for consideration of publication to *The Judges’ Journal*. A similar article, “Checklist for a Representative Panel,” is currently on the NCSTJ website. The Committee is hopeful that the article will help jury administrators and chief judges increase the likelihood that their jury pools will include a fair cross section of the community.

The Committee met at the ABA Annual Meeting in Chicago and discussed whether to peruse publication of the article, “A Plain Language Jury Manual in the Age of Cyber Communication.” Committee members also discussed the prospect of developing a modern prototype of such a manual, in

understandable language, that could be used by individual jurisdictions to create their own manuals for educating students, prospective jurors, and the community about the current jury trial process. Such a project became more feasible with the possibility of receiving assistance from Professor Dawn McQuiston of the Division of Social and Behavioral Sciences, Arizona State University. The committee also welcomed its new chair, Judge Guy Reece, of Ohio, who will initiate contact with Dr. McQuiston regarding the project.

The Committee encourages all NCSTJ members who are interested in juries and jury trials to join. The more input received, the better the product will be. Let’s help Judge Reece and the Jury Management Committee to continue projects that are in tune with advancing society.



## A First Time Delegate's Experience

By Hon. Tiffany G. Chase, New Orleans, LA



I was elected to the New Orleans Civil District Court bench in May 2007. My focus has always been to make fair, just and impartial rulings and I have always sought to ensure that the litigants and lawyers were treated with professionalism and respect. However, a judge's duties do not end there. In 2011, as a member of the Executive Committee for the Louisiana District Judges' Association, I was selected to serve as the Louisiana delegate to the National Conference of State Trial Judges. While I have attended the ABA Annual Meeting for years, as both a lawyer and a judge, I was quite curious to learn what my specific duties would be as a delegate to the NCSTJ.

The "Welcome Reception" was my first event. If I said I was not excited I would not be telling the truth. Not only did I not know a single person at the reception, but I did not see any signs directing me to the reception. So now I was lost and nervous. As I stood in the lobby considering returning to my room until the business meetings, I spotted several ladies I had seen while registering and asked for directions. That was the last time I felt alone the entire conference. My colleagues quickly identified themselves as judges from the Chicago area and welcomed me as a first time delegate. I walked to the reception with my new found friends and was pleasantly surprised with the warm reception I received from my judicial colleagues. A simple smile to a few others in the room revealed that we "first timers" were welcomed. Soon there were three other "first timers" in our group laughing and talking about the fact that none of us knew our duties. Nonetheless, what became immediately evident to me was that I was not alone in this room of complete strangers. Rather, I was surrounded by other members of the judiciary who, like me, are committed to promoting a more effective and efficient judiciary.

We were all officially introduced at the first business meeting. The meeting revealed to me the true purpose of my role as a delegate. Namely, judges must take a leadership role in improving our profession. I learned that issues facing the judiciary are not isolated to certain geographic areas; rather, members of our country's judiciary are experiencing many of the same issues. I quickly realized that this was not just a group of people who sat in a room and "discussed" issues. This was a committed group of judges who recognized issues and problems and were crafting so-

lutions and devising plans for resolution. The business meetings were filled with useful information I have taken back to Louisiana. The seminars held in conjunction with the meetings were phenomenal! While I enjoyed the meetings and seminars, I was most impressed by the executive leadership's willingness to explain, on a one-on-one basis, the importance of the Judicial Division's roll in the ABA and its commitment to improve our profession. Judges Ramona See (2011-12 Chair), Toni Clarke (Vice-Chair), Herbert Dixon (Delegate to HOD), Christopher Whitten (Secretary) and Stephanie Domitrovich (Immediate Past Chair) ensured that I felt genuinely embraced and welcomed. As judges, we have an obligation to ensure that the judiciary attracts the best and brightest and we must work with our colleagues and take a stand, together, on issues that affect the judiciary as a whole.

My experience as a first-time delegate was insightful and enjoyable. I returned to New Orleans and called the President of my district judges' association and thanked him for my appointment. I told him that I'd left my first meeting encouraged knowing that the principles of promoting a fair and effective judiciary are echoed by others across the country. So, if you are appointed by your state as a delegate; do not despair, you may enjoy your appointment more than you imagine.



The NCSTJ Executive Committee, pictured after the Annual Meeting: seated (L-R): Judges Stephanie Domitrovich, Toni Clarke, Ramona See, William Carpenter and Christopher Whitten; standing (L-R): Judges Terry Ruckriegle, Peter Buchsbaum, James Gleason, Elihu Berle, Gary Randall, Cheryl Cesario, Heather Welch, Calvin Scott, Gail Andler, Guy Reece and Annette Scieszinski.



# State Trial Judges Deliver Ethics Program at ABA Annual Meeting

By Hon. Annette J. Scieszinski, Albia, IA

Assuring access to justice—a tenet of American government—presents at once, both dilemma and opportunity for our country’s judges. At the ABA Annual Meeting August 2nd, the Judicial Division’s Conference of State Trial Judges tackled issues that confront judges daily, and that bear upon a court’s ability to deliver services to its customers. The program focused on the “access” implications presented by people with limited English proficiency, those unrepresented by attorneys, and people left without timely service due to funding shortfalls. Iowa District Court Judge Annette J. Scieszinski moderated the lively two-hour discussion, introducing discussion topics to illustrate the broad span of individuals entitled to access the courts, as well as the multi-faceted circumstances confronting today’s jurists.

The discussion was fueled by a rich collection of experience and insight shared by four panelists:

- **Judge Marcella A. Holland** of the Circuit Court for Baltimore City, Baltimore, Maryland;
- **Judge Guy L. Reece, II** of the Franklin County Common Pleas Court in Columbus, Ohio;
- **Judge Christopher T. Whitten** of the Arizona Superior Court, Phoenix, Arizona; and
- **Lawyer Chauntis T. Jenkins** of the firm Porteous Hainkel and Johnson, New Orleans, Louisiana.

Aided by electronic responders, the audience supplied survey answers to a number of questions posed by Judge Scieszinski. Judges and lawyers in attendance were then charged with thinking “outside the box” regarding how people get to justice, and the vital role both judges and lawyers play in that process. Speakers explored the ABA’s 2012 Standards for Language Access to the Courts, used

a variety of real-life scenarios to show the breadth of the issues, and grounded the entire discussion in the “ABA’s Model Code of Professional Conduct” and “Model Code of Judicial Conduct.”

The State Trial Judges’ 2012 program, “Access to Justice: Confronting the Ethical Challenges Posed by Self-Represented Litigants, Language Interpretation, and Inadequate Funding” is available for replication in the states by contacting Peter Koelling, Director of the Judicial Division at [peter.koelling@americanbar.org](mailto:peter.koelling@americanbar.org).



Speakers at the NCSTJ annual educational program, “Access to Justice,” (L-R) Judge Guy Reece, Chauntis T. Jenkins, Esq., Judge Annette Scieszinski, Judge Marcella Holland, and Judge Christopher Whitten (not pictured).



## Get Involved

The best way to get involved in the NCSTJ, and to help our Conference continue its great work, is to join a committee that interests you and start working. Below is a list of NCSTJ committees. To join in a committee, visit the [NCSTJ website](#) and select the “enroll in an NCSTJ committee” option. Members must enroll on a yearly basis.

### **Business and Commercial Courts**

**Bylaws**

**Children and Family Law**

**Criminal Justice**

**Delegates**

**Diversity**

**Education**

**International Law**

**Jury Management**

**Litigation**

**Long Range Planning**

**Membership**

**Publications**

**Technology**

**TIPS**

**Tribal Court Leadership**



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(L-R) Judge Christopher Whitten, NCSTJ Vice-Chair, Jo Ann Saringer, Member Communications Specialist at the ABA Justice Center; and Judge William F. Dressel, President of the National Judicial College and past NCSTJ Chair, enjoy the view of Grant Park (and the Lollapalooza concert) during the Annual Dinner in Honor of the Judiciary and presentation of the John Marshall Award to Rebecca Love Kourlis, Executive Director of the Institute for the Advancement of the American Legal System