State–Federal Judicial Observer

NEWS AND COMMENTARY OF INTEREST TO THE STATE AND FEDERAL JUDICIARY

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Wisconsin Court Programs Promote Public Confidence

by Melissa Deckman Fallon
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The Wisconsin state court system, under the leadership of Wisconsin Supreme Court Chief Justice Shirley S. Abrahamson, has inaugurated specific court–community projects to build public confidence in the courts and promote respect for the judiciary.

In describing these innovative programs, Justice Abrahamson noted that the words of the late U.S. Supreme Court Justice Thurgood Marshall still ring true today: "We must never forget that the only real source of power that we as judges can tap is the respect of the people."

"The third branch is the least understood branch of government," said Justice Abrahamson. "If we are to maintain the respect of the people for the work of the courts, we must ensure that our partnership with the public is a strong one. We can strengthen that partnership by acknowledging that litigants and the bar are consumers of our services, and by looking at our roles from the perspective of those who appear before us and that of the entire community we serve. Public impressions of the system of justice are all-important—whether litigants, witnesses, and jurors are treated fairly and with respect; whether claims are promptly and efficiently resolved according to the law; whether, in short, our courts are seen as this society's chosen forum for resolving disputes and achieving justice."

Wisconsin Supreme Court Chief Justice Shirley S. Abrahamson—began innovative programs to build public confidence in the courts

One of the goals of the Wisconsin Supreme Court is to foster a court–community partnership that involves both judicial and public participation. The Wisconsin programs are basically divided into two categories: judicial outreach and public volunteerism. Members of the judiciary work with citizens to help them become better informed about the work of the court while the public is invited to learn about the courts through volunteer programs. Some of Wisconsin's programs include the following:

• *Justice on Wheels*—Each year since 1993, the Supreme Court has taken its proceedings "on the road" so that the public in other parts of the state can witness oral arguments. Past sites have included Green Bay, Eau Clare, and Milwaukee. Local attorneys give lectures to the audiences before each session. The lectures include a brief synopsis of the case about to be argued and an explanation of court procedures. Local schools are made partners in the event, participating in essay contests and shadowing local judges and court staff who are invited to the classroom to explain the court system. Last year in Milwaukee, proceedings from oral arguments were carried live on a local cable channel in Milwaukee, which garnered the program an "Ideas in Action: Youth Explore the Media" Award from the National Telemedia Council, Inc. Since 1993, over 4,000 Wisconsin citizens have participated in Justice on Wheels.

• *Speakers Bureau*—The director of state courts has created a speakers bureau to help more than 100 judges around the state share their areas of expertise with the public. The bureau works with civic groups, social organizations, professional associations, schools, law-enforcement groups, and veterans and senior citizen organizations to find a judicial speaker who will be appropriate to their audiences. Considerations of judicial ethics forbid certain public interest groups from using this service.

Spectators pack a courtroom in Green Bay, Wis., to hear arguments before the Wisconsin Supreme Court as part of the court's "Justice on Wheels" program. The court's principal office is in the state's capital, Madison.

• *Court with Class*—Begun last fall, this program is a joint venture of the Wisconsin state bar and the Wisconsin Supreme Court. "Court with Class" brings high school students to the state supreme court to hear an oral argument. Afterwards, one or more of the justices meets with students to talk about law-related issues of interest to the class. The state bar contacts each public and private high school across the state to make them aware of this opportunity. In addition, the local media is contacted regarding the school's visit. Since last September, 780 students have participated in the "Court with Class" program.

• *Seminar for the News Media*—Held on March 20, 1997, this seminar was a joint effort of the state supreme court and several professional journalism associations from Wisconsin. The seminar was designed by media representatives and judges to educate reporters and news directors. Participants were given lectures on how the supreme court and courts of appeals work, followed by tours of the law library and supreme court chambers. Questionnaires filled out after the seminar revealed a favorable reaction to the seminar. In addition to holding seminars every 2–3 years, plans are in the works to hold media seminars on a regional basis for the Wisconsin courts of appeals and Wisconsin circuit (trial) courts.

• *Law Day Program*—Chief Justice Abrahamson initiated the court system's first statewide effort to reach the public on Law Day. Over three-quarters of the state's courthouses have recently hosted Law Day celebrations to better acquaint the public with the work of the courts. In recent years, Supreme Court justices have taken to the Internet on Law Day by teaching interactive civics lessons to high school students.

• *Localized Court Visitors' Guide Program*—Launched to make the courthouses more user-friendly, this program has placed localized visitor guides in each of the state's 70 courthouses. Courts in Hawaii, Iowa, Kentucky, Maryland, and Montana are looking at duplicating this process.

• *Volunteers in the Court System: Partners for Justice*—The Wisconsin Supreme Court has launched an extensive effort to

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State, Federal Judges Share Bench in Maryland

Judge Joseph H. H. Kaplan (Md. Cir. Ct.), at left, and Judge Marvin J. Garbis (U.S. D. Md.) sat together in a joint settlement hearing on November 26, 1996, involving suits pending in both the U.S. District Court for the District of Maryland and the Circuit Court of Baltimore County, Md. The cases involved the same or similar issues relating to the alleged failure of the city school system of Baltimore to provide adequate special education for handicapped students. Judge Garbis and Judge Kaplan had previously agreed to conduct a joint trial of the federal and state cases and had entered an order setting forth the rules by which such a trial would be conducted before a settlement was reached. At the joint hearing the two judges received the terms of the settlement and entered an order relating to the terms of the settlement.

Colorado Forms State–Federal Judicial Council

State and federal judges in Colorado have organized a state–federal judicial council. Six state judges and five federal judges met in Denver on January 20, 1997, to consider a charter for the new organization.

Chief Justice Anthony F. Vollack (Col. Sup. Ct.) and Judge John C. Porfilio (U.S. 10th Cir.) led the effort to create the council and were elected co-chairs of the new organization, which will be known as the Colorado Judicial Coordinating Council.

The new council will be composed of not less than seven state judges and not less than four federal judges. The state judges will be selected from the Supreme Court, the Court of Appeals, and the District and County Courts. The federal members will include district judges, a court of appeals judge, and a bankruptcy judge.

Four standing committees were established: automation and security; judicial education and resources; dissemination of information; and concurrent jurisdiction.

A new charter for the council was formally adopted at a second meeting in Denver on March 15, 1997.

One of the projects of the new council will be an educational seminar for state and federal judges.

The new Colorado council is the 35th in the United States and its territories. ❑

Inside . . .

FJC, NCSC Jointly Publish Manual for Cooperation Between State and Federal Courts

This past March the Federal Judicial Center, the National Center for State Courts, and the State Justice Institute published the *Manual for Cooperation Between State and Federal Courts*.

The *Manual*, written by James G. Apple of the FJC and Paula L. Hannaford and G. Thomas Munsterman of the NCSC, covers cooperative efforts between the two court systems. Specific areas covered include the following: complex and multijurisdictional litigation; bankruptcy matters; habeas and appellate matters; certification and preemption issues; education and training; ethnic, gender and racial issues; and facilities and services.

The *Manual* also includes sections on state–federal judicial councils and regional state–federal conferences.

An appendix contains forms for various types of state–federal cooperation, sample judicial orders, and descriptions of administrative systems and procedures that have been established in different states to further state–federal cooperation.

Copies of the *Manual* may be obtained by writing to Information Services, Federal Judicial Center, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20002-8003, phone (202) 273-4153, fax (202) 273-4025, or the National Center for State Courts, 300 Newport Avenue, Williamsburg, VA 23185, phone (757) 253-2000, fax (757) 220-0449. ❑

Midwest State–Federal Conference Planned for Fall 1997

The American Judicature Society is planning a Midwest Conference on State–Federal Judicial Relationships to be held in the fall of 1997 in St. Louis, Mo.

The conference is being supported by a grant from the State Justice Institute. The Federal Judicial Center will provide funds for a limited number of federal judges to attend the conference.

One of the major topics of the meeting will be state–federal cooperation toward building and sustaining public confidence in the judiciary and the courts.

Dr. John C. Domino, assistant executive director of programs for the AJS, is the project director. A planning committee meeting of representatives of the state and federal courts was held in Chicago in early April.

The conference will consist of two days of plenary sessions and small-group discussions covering existing and potential state–federal cooperative activities in the 14 states making up the regions of the U.S. Courts of Appeal for the Sixth, Seventh, and Eighth Circuits. These states are Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Wisconsin. Each state will be represented by state and federal judges and court administrators.

Further information about the conference can be obtained from Dr. John C. Domino or Seth Anderson, American Judicature Society, 180 North Michigan Ave., Suite 600, Chicago, IL 60601-7401, phone (312) 558-6900, fax (312) 558-9895. ❑

USAID Project in Haiti Seeks Assistance from Judges and Court Personnel

The Administration of Justice Project in Haiti, funded by USAID and implemented by Checchi and Company Consulting, Inc., of Washington, D.C., is currently seeking judges and court personnel, including retired or senior judges and retired court personnel, to serve as mentors to judges in the Haitian judicial system. Mentors will live and work in regional court centers throughout Haiti. Responsibilities include mentoring current or newly appointed judges in judging skills (not substantive Haitian law). Subjects included in the mentoring project include independence of the judiciary, judicial ethics, critical thinking and decision-making, human rights, courtroom conduct, and the fact-finding process.

The project needs commitments of three to twelve months from interested and eligible persons. Compensation includes transportation, living expenses, and, for those who are eligible, salary. Applicants must have experience as judges or as judicial educators, speak fluent French, and have knowledge of civil-code-based legal systems through reading or practical experience. Work experience in developing legal systems would be helpful. Interested persons should send a c.v. with cover letter to International Project Coordinator, 104 Proctor Circle, Williamsburg, VA 23185, and to Projet d'Administration Judiciaire, Port au Prince, Haiti, fax: 011 509 45 6466. ❑

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A note to our readers

The *State–Federal Judicial Observer* welcomes comments on articles appearing in it and ideas for topics for future issues. The *Observer* will consider for publication short articles and manuscripts on subjects of interest to state and federal judges. Letters, comments, and articles should be submitted to Interjudicial Affairs Office, Federal Judicial Center, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20002-8003.

OBITER DICTUM

Judicial Federalism in Congress: The Year in Review

by Senator Orrin G. Hatch (R-Utah)

The end of the 104th and the first months of the 105th U.S. Congress provide an appropriate time to consider the efforts the Congress made in 1996 in accommodating the unique roles of the state and federal judicial systems. Certainly, the 104th Congress paid close attention to issues of state and federal jurisdiction and made concerted efforts to ensure that the two systems work together.

For example, the Congress passed product liability reform legislation that was crafted to respect the authority of the states and the role of state courts. At the same time the legislation addressed some of the more extreme litigation abuses in cases subject to federal jurisdiction—cases involving out-of-state defendants and products in interstate commerce. The legislation included a preemption provision that set outer boundaries on state legislation but permitted states great leeway within those bounds to enact whatever limits on product liability litigation they might conclude were most appropriate. Unfortunately, President Clinton vetoed the product liability bill, as he did the other major civil litigation reform measure, the securities litigation reform bill. Although Congress was able to override the veto of securities litigation reform, it lacked the necessary votes to override the product liability reform veto.

Judicial Improvements Bill

On other fronts, we saw more concrete results. In July 1996, the Senate Judiciary Committee considered and favorably reported a judicial improvements bill, the Federal Courts Improvement Act of 1996, which I cosponsored with Senators Grassley and Heflin. A number of provisions involved issues of state and federal judicial relations. For instance, the legislation raised the amount-in-controversy requirement in federal diversity cases from $50,000 to $75,000. This provision should help keep cases out of federal courts that have little justification for being there.

The bill also reauthorized the State Justice Institute, a federal agency that provides grants related to the state court systems. Some in Congress, myself included, have been concerned that the State Justice Institute should provide grants more closely related to improving the efficiency of the state courts and should distribute grants more equitably among the states. Accordingly, the Subcommittee on Administrative Oversight and the Courts included provisions requiring the State Justice Institute to make and administrate grants within those guidelines.

Three-Branch Conference

The 104th Congress also hosted a "Three-Branch Conference" in January 1996. That conference—the second of its kind—provided a forum for an informative and open discussion of many topics of importance to the federal judiciary, including the mission of the federal courts, the federal judiciary's role in the legislative process, and the remedial power of federal courts over state institutions. Not only did I include representatives of the three branches of the federal government in the discussions, but I also invited a number of prominent state government officials to add their perspectives on federal–state relations. Their viewpoints were enlightening and remain valuable to Congress in considering legislation that affects the states.

Much work remains for us in the 105th Congress. We certainly need to address some of the outrageous litigation abuses that plague both our state and federal courts. I would like to have the Judiciary Committee continue to take a hard look at the legal profession. As a trial lawyer and a legislator, I have had the opportunity to participate in the legal system from a variety of perspectives for almost 35 years. Like many Americans, I have grown increasingly concerned that the legal profession is in crisis. Lawyers are widely perceived as avaricious, amoral, and concerned more with financial gain and self-promotion than with justice and individual rights. There is justification for such perceptions. Judges are frequently viewed as unable or unwilling to control the abuses arising out of these characteristics.

To be sure, some of the sentiment about lawyers is overstated and may be based at times on a limited appreciation for the burdens facing our courts and for the role of lawyers—which necessarily means that the lawyer must at times be on the unpopular side of an issue or dispute. Nonetheless, I am increasingly convinced that the perceptions about lawyers contain more than a grain of truth, and it is one about which all of us involved with the state and federal justice systems should be deeply apprehensive.

Legal Profession Falling Prey

I am also concerned that the legal profession may be falling prey to its worst elements. A lawyer's ability, it seems, is often measured by the size of his or her verdicts or partnership draw rather than service to the client and to the legal system. On another front, our bar associations are becoming more concerned with political agendas and less concerned with ethics. There are trial lawyers who have abused our legal system by filing frivolous or unfounded suits. Our courts often face unnecessary litigation—or unnecessarily protracted and unnecessarily complicated litigation. I think the legal profession and the courts would do well to support critical legal reform to correct these abuses. In conjunction with other measures, legal reform is going to be a necessary component of any attempt to address what is wrong with the litigation system today.

Of course, the relative size and composition of the federal judiciary continues to be an issue that is periodically raised before the Judiciary Committee. My own view is that we should focus on making our federal courts more efficient instead of continuing indefinitely to increase the size of the federal judiciary. We should look carefully at the burdens we may be placing on state courts when enacting federal legislation so that state courts are not forced to grow without adequate justification or resources. State courts, no less than other components of state governments, should not be subject to "unfunded mandates" passed on by Congress.

Courts Can Improve Efficiency

There is of course much that the courts can do under their own authority to improve the efficiency of litigation. I support and encourage those efforts. I would like to see courts continue to encourage alternative dispute resolution and improved case management. Courts should sanction abusive litigation practices and move cases along. Courts should take a hard look at the appropriateness of judgments, particularly excessive punitive damage awards. By overseeing the litigation process closely, courts can help remove some of the excesses that too

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Frontier "Hanging Judge" Isaac Charles Parker Helped Tame American West

by Thomas C. Bogle
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During the period of the great westward expansion of the nineteenth century, a vast, 70,000 square mile territory extending west of Fort Smith, Arkansas, covering what is now western Arkansas and the state of Oklahoma, was a "no-man's land," commonly called the Indian Territory, that served as a haven for all kinds of fugitives from justice—murderers, thieves, and rapists. It was called "Robbers' Roost" and had virtually no law enforcement.

Glenn Shirley, an expert on frontier justice, noted of this area that "no American frontier ever saw leagues of robbers so desperate, any hands so red with blood . . . decent men, red and white alike, cried to the government for protection."

The only court with jurisdiction over this vast territory was the U.S. District Court for the Western District of Arkansas, in Fort Smith. But the judges who presided over this district before 1875 were unable to curb the violence. One judge of that court was even threatened with impeachment because of high court costs and the few cases being tried. He resigned from his office.

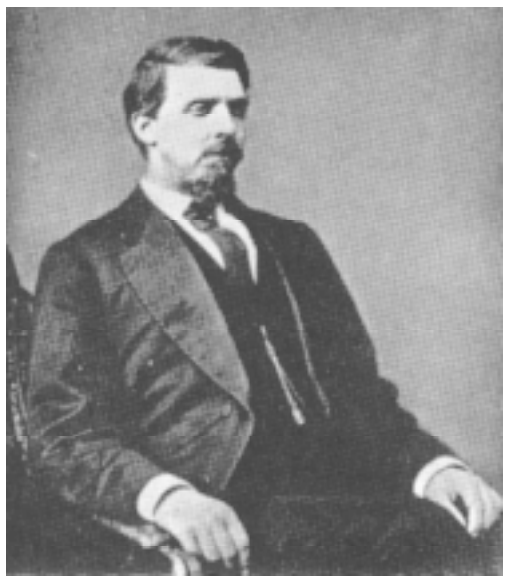
All this changed with the appointment and arrival in Fort Smith of Judge Isaac Charles Parker, a man whose strength of principle and tough justice led to his being named "the hanging judge."

Judge Parker had considerable experience in the law and in public service in his home state of Missouri before his arrival in Fort Smith. He had served as attorney for the city of St. Joseph, Missouri; as a Missouri state prosecuting attorney; and as a judge of the Missouri Ninth Judicial Circuit. He had been elected to two terms in Congress and was an unsuccessful candidate in Missouri for the U.S. Senate.

President Grant originally appointed Parker as Chief Justice of the Territory of Utah in 1875. Parker informed Grant that he would rather take the judgeship in the Western District of Arkansas because it was closer to his home in Missouri. Parker had practical knowledge of Indian affairs, and Grant immediately withdrew the Utah appointment in favor of the judgeship in Fort Smith.

When he arrived in Fort Smith, Judge Parker immediately appointed 200 marshals and sent them out into the Indian Territory, which was the court's geographical jurisdiction. Of fugitives in hiding, he reportedly instructed his marshals to "Bring them in alive—or dead."

Eight days after his arrival, he opened his first session of court. After 18 trials, 15 defendants were convicted, of which eight were sentenced to hang. President Grant commuted one sentence to life in prison; a second prisoner was killed in an escape attempt. Four months later the remaining six men were hanged together on the town's gallows.



Isaac Charles Parker, the "Hanging Judge" of Fort Smith, Arkansas, helped bring order to a violent territory filled with fugitives from justice.

(Photo from Law West of Fort Smith *by Glenn Shirley, copyright © 1957 by Glenn Shirley. Source: University of Nebraska Press.)*

The public hangings drew the attention of the nation, and media from all parts of the country came to Fort Smith to cover them.

Over the next 20 years, Parker's U.S. marshals brought in thousands of fugitives from all parts of the Indian Territory. This was not without danger: during Parker's tenure on the bench, more than 65 marshals were killed in the line of duty. Nevertheless, the flow of arrested fugitives into Fort Smith continued, and they were treated with swift justice. Parker worked from dawn to dusk, and often into the late evening. He observed few holidays, but did refrain from work on the Sabbath.

Parker's reputation as a "hanging judge" was well deserved. No American judge has ever sentenced as many men to die as Judge Parker did. In his 21 years on the bench, over 13,000 criminal cases were docketed. Of this total, over 9,000 entered pleas of guilty or were convicted. Of the 344 cases that were punishable by the death penalty, 160 were convicted and 79 men were hanged.

Over the course of Judge Parker's long tenure on the bench, murderers and thieves could use the Indian Territory as a refuge less and less, largely because of the efforts of the judge's marshals and his own diligence in conducting criminal trials.

The public perception of Parker as a "hanging judge" seemed to indicate that he was an insensitive brute, a judge who sentenced convicted criminals to death lightly. Parker actually was a very gentle man, but someone who believed in the rule of law, and especially believed in respect for the law.

These deeply held convictions are illustrated by a case recounted by J. Fred Patton, a Fort Smith historian, in his book *A History of Fort Smith, Arkansas*. A member of the Creek Indian tribe once stood before Judge Parker charged with the killing of a Cherokee Indian police officer. Though cases involving Native Americans as defendants did not usually fall under Judge Parker's jurisdiction, this particular case presented an exception because the murder victim was a law enforcement official.

The testimony in the case showed that the Cherokee policeman entered the defendant's home just before daylight in the belief that he was harboring a train robber. In fact, he was not. Not knowing the nature of the intrusion, he shot the police officer and was brought to trial for murder. Judge Parker instructed the jury to acquit the defendant of the murder charge on the grounds that he had a right to resist the intrusion of his house without a warrant of arrest.

When the verdict of "not guilty" was given in the case, there were cheers and applause from the courtroom, and spectators threw their hats in the air. Outraged at this expression of joy in the courtroom, Parker admonished the crowd, "Justice is justice—not chivalry." He arrested every man who participated in the outburst and fined them each $50.

Another reflection of the Judge Parker's compassion lay in his belief that the accused were innocent until proven guilty. "I am mindful," he once said, "of the wise and merciful provision of the law which declares it better that ninety-five guilty ones should escape than that one innocent man should suffer."

Parker was also a physically strong man. In one case, a powerful defendant stood before him charged with a capital crime. The man suddenly sprang from the witness chair and jumped on Parker's desk with the intent of escaping through the back door. Parker threw his arm around the man's legs and forced him to the ground until deputy marshals could relieve him.

Perhaps the most amazing fact concerning Parker's reign on the bench was that, for 14 of his 21 years as judge, there was no appeal from Parker's court. The only hope of a convicted criminal for relief from a sentence was a commuting of the sentence or a full pardon by the President of the United States. It wasn't until 1889 that Congress passed a statute providing for appeals from certain district courts, including Parker's court, to the U.S. Supreme Court.

Patton notes that from 1875 to 1889 Judge Parker quietly lobbied for presidential action when he felt that the prescribed sentence was too strict. In one instance, Parker assisted in the commuting of a sentence of death for three Creek Indian boys to prison because of their age.

Judge Parker literally worked himself to death. In 1895 he was only 58 years old, but the 21 years of serving on the bench had taken its toll on the judge's health. He resigned his appointment and died two months later. In a final interview before his death, Parker was asked his motto. His response was "To do equal and exact justice." ❑

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often encourage even greater excesses.

In the criminal justice area, Congress enacted antiterrorism legislation in April, which included some much needed reforms to our habeas corpus system and laws governing other prisoner lawsuits. The Prisoner Litigation Reform Act and the Habeas Reform Act will help curb excesses of prison inmate litigation that have burdened federal courts and states.

The Judiciary Committee also kept a busy hearing schedule. The committee held oversight hearings on the handling by the FBI and the White House of confidential FBI personnel files, on the prevalence of church burnings, and on the resurgence in drug use.

In the 105th Congress, I look forward to continuing to work with members of the state and federal judiciary to improve the operation of the courts and their ability to provide justice to our citizens. The judiciary may indeed be our smallest branch of government, but it is a branch coequal with the executive and legislative in importance. It is no less essential as part of our tripartite system of government, a system on which freedom depends. ❑

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expand the use of volunteers for support of certain specific court programs, including sponsoring a one-day conference for such court volunteers. A multidisciplinary coordinating committee, which has been established to foster court volunteer programs, is working with the American Association of Retired Persons on a pilot project to recruit and train volunteers in six counties who will ensure the well-being of individuals placed under guardianships. Other potential volunteer programs currently under examination involve supervising visits between noncustodial parents and their children and serving on panels to make recommendations on minor, first-offender juvenile matters.

Costs Minimal, Benefits Great

The costs associated with these programs are minimal. The "Justice on Wheels" program costs between $6,000 and $10,000 annually, depending on the city the court is visiting and how many activities are planned there. Costs for the other programs are typically lower, as a result of their joint sponsorship. For example, the "Courts with Class" program costs the supreme court less than $80 a month because the Wisconsin state bar pays for most of the mailing and set-up involved in running the program. The only expenses for the court in the conduct of the media seminar were the price of table skirts and information packets; the cosponsors paid for the rest of the expenses.

Justice Abrahamson asserts that the benefits of these programs "far exceed any costs or inconveniences of implementing them." She notes that members of her own court and staff have been "astounded at the number of ideas that have begun coming in from both inside and outside the court system since we have been proactive in reaching out to the people of the state."

Conference of Chief Justices Shows Interest

The success of these programs has led other states to contact the Wisconsin Supreme Court for materials about the programs. Further, the Conference of Chief Justices has expressed interest in promoting the Wisconsin programs. The hope of Chief Justice Abrahamson and others is that these programs will be duplicated by other states to increase public involvement and awareness in the judiciary. ❑

State, Federal Judges Attend Human Rights Seminar

Fourteen federal and two state judges participated in a conference on "Human Rights Law: Its Application in National Jurisprudence" at the Aspen Institute's Wye Center in Queenstown, Md., November 1–3, 1996.

Also participating in the seminar were two judges from courts in other countries: Justice Pius N. Langa of the Constitutional Court of South Africa and Justice H. J. McNally of the Supreme Court of Zimbabwe.

Nicolas Bratza, Q.C., of London, England, represented the European Commission on Human Rights at the conference. Dr. Juan E. Mendez, director of the Inter-American Institute for Human Rights, San Jose, Costa Rica, also attended.

The conference opened with a session by Professor Louis Henken of Columbia University Law School on the background, standards, and principal instruments of international human rights.

Successive sesssions dealt with international human rights in U.S. case law and jurisprudence, assessing evidence of human rights violations, political and regional implementation of international human rights, and international human rights in immigration and refugee cases.

The seminar was the fifteenth that the Aspen Institute has conducted for federal and state judges since 1982, when the first seminar was held.

Judges interested in participating in future seminars can obtain information by contacting Ms. Alice H. Henken, Director, Justice and Society Program, Aspen Institute, 787 Seventh Ave., 36th Floor, New York, NY 10019, phone (212) 554-1311, fax (212) 554-3745. ❑

State–Federal Judicial Council Roundup

California—The California State–Federal Judicial Council met on November 1, 1996, in San Francisco. The main topic of discussion was a proposal to permit federal appellate courts to certify to the California Supreme Court state-law questions of first impression that would be pivotal to the decision in the federal case.

Jerry Gardner, senior staff attorney with the National Indian Justice Center in Petaluma, addressed the council on tribal court relations. The tribal court system in California has the second largest Indian population of any state. Three new tribal consortium courts have been proposed. A subcommittee was created for further research on ways the council might assist the tribal courts in the formation of the new tribal courts and through resource sharing.

Chief Justice Ronald M. George (Cal. Sup. Ct.) updated the council on recent state legislation affecting capital cases that failed to pass this session but is expected to pass this year. Other topics discussed at the meeting included public confidence in the judiciary, civil and prisoner pro se litigation, and the status of the proposed split of the Ninth circuit.

Georgia—The annual meeting of the Georgia State–Federal Judicial Council was held June 5, 1996, in Savannah. Five judges from the federal courts, 31 judges from the state courts, and representatives from Georgia State University College of Law, the Georgia Administrative Office of the Courts, and the Georgia Institute of Continuing Judicial Education attended. U.S. Bankruptcy Judge Joyce Bihary (U.S. N.D. Ga.) moderated a panel discussion on automatic bankruptcy stays and their impact on the state courts.

Hawaii—Honolulu was the site of the June 13, 1996, meeting of the Hawaii State–Federal Judicial Council meeting. Judge Melvin Soong (Haw. Cir. Ct.) updated the council on the activities of the state court committee for the certification of court interpreters. Using the federal court certification program as an example, the committee developed training programs for judges, a code of ethics for interpreters, and a questionnaire for potential interpreters.

U.S. Magistrate Judge Francis Yamashita (D. Haw.) reported on changes in the outer island misdemeanor calendar. Three magistrate judges now ride circuit to the outer islands. State judges permit the federal magistrate judges to use their courtrooms for hearings and trials.

Reports were also given concerning the status of the split of the Ninth Circuit, the construction of a new prison facility, and the introduction of videoconferencing in the state courts. The council also discussed the need for tighter security in the state courts through the use of X-ray and walk-through metal detector equipment.

Iowa—The Iowa State–Federal Judicial Council met during the Iowa Bench-Bar Conference on May 18, 1996. The two major topics for discussion were (1) jury nullification and its impact on upcoming judicial elections and (2) the recommendations issued by the Equality in the Courts Task Force. The task force's recommendations included the training of judges and court personnel on equality issues; the formation of a related committee by the Iowa Bar Association; and the amending of ethical rules governing sexual relationships between attorneys and clients, and membership in discriminatory groups.

The council also discussed the use of evaluations to help identify judges who need counseling from other judges about their demeanor and behavior.

Louisiana—The State–Federal Council of Louisiana held a luncheon meeting in Lafayette on April 11, 1997. Chief Judge Henry Politz (U.S. 5th Cir.) and Chief Justice Pascal F. Calogero, Jr. (La. Sup. Ct.) discussed the historical and current working relationship between the state and federal courts and the benefits the State–Federal Judicial Council has brought to both judiciaries. Both judges noted that open communication between the two judiciaries has made the moving of federal prisoners to state courts for revocation hearings easier and more efficient. The Federal Judicial Center/National Center for State Courts' publication *Manual for Cooperation Between State and Federal Courts* was discussed. Other topics considered included the need for tracking death penalty cases and the status of the state Indigent Defender Board. An update on prisoner civil rights cases in Louisiana was given by District Judge Frank J. Polozola (U.S. M.D. La.). Each judge was called on by Judge Politz to publicize the council's activities to other state and federal judges. He suggested that judges need to be better aware of the services available through this council.

Missouri—The University of Missouri-Columbia law school was the site of the April 26, 1996, meeting of the Missouri State–Federal Judicial Council. The judges discussed the new federal habeas corpus statute signed by President Clinton in 1996 and the issue of lawyer discipline. Currently, lawyers can be readmitted to practice law in Missouri without review by federal judges. Council members expressed concern over this procedure. Chief Justice John C. Holstein (Mo. Sup. Ct.) indicated that he would ask the disciplinary counsel to make inquiry of the federal district courts if they objected to the readmission of an attorney to practice law.

Other issues before the council included Missouri's "cameras in the courtroom" project and concern over the backlog of criminal cases in Kansas City.

Nevada—The Nevada State–Federal Judicial Council met in Las Vegas on November 22, 1996. Chief Justice Miriam Shearing (Nev. Sup. Ct.) suggested inviting representatives from tribal courts to future meetings.

Council members heard reports on the status of two committees studying racial and economic bias in cases and the processing of death penalty cases, respectively. Judge Melvin T. Brunetti (U.S. 9th Cir.) reported on legislative efforts to split the Ninth Circuit because of case-processing delays in the circuit. Although unsuccessful in the 104th Congress, a renewed effort is expected to begin with the 105th Congress.

U.S. Bankruptcy Judge Robert Clive Jones (D. Nev.) observed that a change in Chapter 13 to include child support and spousal support obligations has the potential for conflict with state family court decisions.

Anne Cathcart of the Nevada Attorney General's Office reported on the potential for video-teleconferencing between the courts and prisons and the impact of the new Federal Litigation Reform Act of 1996, designed to reduce the number of frivolous prisoner lawsuits in the federal courts.

North Carolina—Judge James Dickson Phillips Jr. (U.S. 4th Cir.) hosted the May 31, 1996, reorganizational meeting of the North Carolina State–Federal Judicial Council in Chapel Hill.

After a brief review of the council's history, the members discussed future formats and possible topics, including habeas corpus reform, death penalty litigation, videoconferencing for prisoners, and courtroom security. Other suggestions included sending a questionnaire to all state and federal judges to identify issues that the council should address.

The issue of certification of state laws by federal courts was debated and deferred for action to the next meeting of the council.

Oklahoma—Members of the Oklahoma State–Federal–Tribal Judicial Council met on November 14, 1996, in Oklahoma City. Magistrate Judge Bana Roberts (U.S. W.D. Okla.) discussed several issues concerning prisoners' lawsuits, including a new prison grievance process now in place that requires prisoners to exhaust certain administrative procedures before being allowed to file some civil suits. Additionally, she reported changes in how prisoners pay filing fees for the filing of civil suits under the Prison Litigation Reform Act.

Judge Michael Burrage (U.S. E.D. Okla.) reported on scheduling conflicts between state and federal courts and circulated the statute from Georgia (as a model to follow) and a draft proposal for Oklahoma.

Justice Yvonne Kauger (Okla. Sup. Ct.) observed that the Oklahoma Supreme Court is considering new approaches to training court personnel in alternative dispute resolution. Judge Patrick Moore of the Muscogee (Creek) Nation District invited council members to an upcoming Sovereignty Symposium dealing with tribal issues.

Rhode Island—The Rhode Island State–Federal Judicial Council meeting on January 15, 1997, included discussion on certification of questions of law from the federal courts to the Supreme Court of Rhode Island. Members noted that the establishment of clear procedures regarding certification and a willingness on the part of the state supreme court to give certification questions appropriate priority has ensured a good working relationship between the two courts concerning this issue.

A discussion of "civility" in court proceedings was led by Chief Justice Joseph Weisberger (R.I. Sup. Ct.), who reported that a study of courtroom behavior was recently completed by the state courts.

Justice John Bourcier (R.I. Super. Ct.) discussed the impact of rapidly changing technology processes on the courts. Justice Victoria Lederberg (R.I. Sup. Ct.) reported on the judicial evaluation program in the state courts.

Virginia—Chief Justice Harry L. Carrico (Va. Sup. Ct.) chaired a meeting of the Virginia State–Federal Judicial Council in Richmond on September 24, 1996. Professor Earl C. Dudley of the University of Virginia School of Law discussed the importance of judicial independence and separation of powers and the effect of the judicial selection process (both at the state and federal level) on judicial independence.

The Parental Rights and Responsibilities Act currently before Congress was reviewed by Judge Jean Clements (Va. Dist. Ct.). Judge William Sweeney (Va. Cir. Ct.) shared a new settlement process currently being used in his circuit where cases before one judge are sometimes referred to another judge for a settlement conference.

The Virginia council also met in Richmond on April 8, 1997. The council adopted a new charter after Chief Justice Carrico reviewed the history of the council. Other subjects discussed at the meeting were the proposed victims' rights amendment pending in the U.S. Congress and the proposal of the American Bar Association for state and federal courts to develop a standard, format-neutral citation system. ❑

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