State–Federal Judicial Observer

NEWS AND COMMENTARY OF INTEREST TO THE STATE AND FEDERAL JUDICIARY

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Roman History, Health Care, and Crime Fiction Presentations Highlight 1995 Medina Seminar

Presentations by Rome historian Ted Champlin, political economist Uwe Reinhardt, and crime writer Elmore Leonard highlighted the sixth annual Harold R. Medina Seminar for State and Federal Judges on Science and the Humanities at Princeton University in June.

Twenty-four federal judges and 18 state judges from across the United States attended the five-day seminar.

Champlin, a professor in the Department of Classics at Princeton, presented a new perspective on Roman history, claiming that Rome actually didn't decline in the period after the Republic, but prospered and made its greatest contributions then.

State and federal judges visited Princeton University's famous cyclotron in the Department of Physics during the 1995 Harold R. Medina Seminar. Left to right: Princeton physics Professor David Wilkinson; Justice Karla M. Gray (Sup. Ct. Mont.); Susan Aspen; Judge Marvin E. Aspen (U.S. N.D. Ill.); Judge Richard M. Bilby (U.S. D. Ariz.); and Judge Norman W. Black (U.S. S.D. Tex.).

Reinhardt, in Princeton's Department of Politics, discussed the current health-care controversy and health-care reform proposals and reviewed for the judges different approaches to health care in the twenty-first century.

Leonard, talking to the judges as part of an evening program, recounted his experiences in writing crime novels, including his techniques of research and letters he received from readers. He also read passages from one of his recent novels.

The seminar opened with a discussion by molecular biology professor Shirley Tilghman on the human genome project. The first full day of the seminar was devoted to science presentations, with Professor David Wilkinson of the Princeton physics faculty discussing "Frontiers of Cosmology," a presentation about such cosmic phenomena as black holes, the "big bang" theory of creation of the universe, and some of the recent discoveries of the Hubble Telescope.

The chair of Princeton's Molecular Biology Department, Arnold J. Levine, finished the science day with a discussion of "Frontiers of Molecular Biology—Amazing Developments and Difficult Policy Issues," which featured comments about the discovery of DNA and many of the issues, scientific and moral, flowing from it.

The seminar also included the following:

• a lecture on pre-Columbian art by Princeton art curator Gillete Griffin;

• a lecture on religious pluralism by Professor Chester Gillis of the Georgetown University Department of Theology;

• a commentary on writing biographies by Princeton English Professor Arnold

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State Trial Judge Selected as New President of National Center for State Courts

Judge Roger K. Warren of the Sacramento, California Superior Court has been selected president of the National Center for State Courts (NCSC). He is the second judge to head the NCSC, an independent, nonprofit organization in Williamsburg, Va., established in 1971 to provide administrative and leadership support for state court systems.

Judge Roger K. Warren (Cal. Super. Ct.), new president of the National Center for State Courts

Judge Warren is the fourth president of the organization. He succeeds NCSC President Larry Sipes, who resigned to return to his home state of California.

Appointed to the Sacramento Municipal Court in 1976, Judge Warren was executive director of the Legal Aid Society of Sacramento County before becoming a judge.

Judge Warren will begin his tenure as NCSC president in March. Addressing a group of chief state court administrators at the annual meeting of the conferences of chief justices and court administrators in August, he said his first concern will be "about the people we serve."

"This is a critical time for the state judiciaries," said Judge Warren. "Courts must learn new and more efficient ways to use existing resources; technology is creating solutions for court operations, yet raising new questions; many citizens have lost confidence in their judicial system. The National Center is taking tangible steps to help with these and other issues, and I am excited about the opportunity to make a difference in the state courts across this nation.

"I intend to be very proactive," he said. "I am going to be spending the next few months learning who the players are on the national scene and how different agencies and organizations interact."

Chief Justice Ellen Ash Peters (Conn. Sup. Ct.), chair of the board of directors of the NCSC, said that "Judge Warren is an outstanding jurist, an innovative administrator, and a sought-after educator who is uniquely qualified to lead the National Center for State Courts into the next century."

A five-person search committee from the NCSC recommended Judge Warren—the search committee was chaired by Chief Justice Thomas J. Moyer (Ohio Sup. Ct.).

Judge Warren was elected the first presiding judge of the consolidated Sacramento Superior and Municipal Courts in 1993. He served as the presiding judge of the Superior Court in 1992. On behalf of the consolidated courts he received the 1992 Ralph N. Kleps Award from the California Judicial Council for improvement in the administration of the courts.

Judge Warren previously served as presiding judge of the Sacramento Municipal Court, presiding judge of the appellate department of the Superior Court, and as presiding judge of the Sacramento Juvenile

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The Anatomy of a Successful State–Federal Judicial Council

by James G. Apple

There are currently 32 active state–federal judicial councils in the United States and its territories. The make-up, structure, meeting schedules, and manner of meeting vary greatly. Some councils are small, with as few as four members, have very little formal structure, and meet informally. Other councils exceed 20 members, have a formal organizational structure with a written charter, and function with a well-developed schedule of meetings and planned agendas.

But success doesn't flow from structures or schedules, and it is ultimately measured by results, by what is achieved.

One successful state–federal judicial council—successful in terms of meeting regularly and undertaking discussions and specific activities to improve the judiciary—is the California State–Federal Judicial Council.

Consisting of seven state and seven federal judges who serve staggered three-year terms, the California Council meets twice a year.

The following are four of the more recent, successful projects of the California council:

• Sponsorship of a series of capital case symposia, usually occurring twice a year in different parts of the state, for state and federal judges to promote understanding of the pitfalls in the handling of capital cases, the tensions that arise between state and federal judges while handling them, and the procedures that can reduce tensions and expedite the handling of such cases. The symposia held by the council in 1994 attracted more than 40 state and federal judges for each of the two sessions.

• Promotion of a "public confidence in the judiciary" program, first by including the subject on the agendas of several meetings of the council, and then by directing the preparation of a resource list of judges and programs involved in "public confidence in and understanding the judiciary." The list contained 28 contacts in different parts of the state and included judicial members of local and statewide bench, bar, and media committees; judicial history programs; law day committees; "meet the judges" programs; and bar association public relations, public information, and public outreach committees.

• Conduct of a court interpreters education program for state and federal judges, by bringing court interpreters to council meetings to air grievances and develop appropriate standards for court interpreters.

• Sponsorship of a program to provide law clerks for state judges to assist in the handling of capital cases and the conduct of legal research necessary for such cases, funded by a grant from the State Justice Institute. The grant application was prepared by the California council.

Council meetings have also been used for discussions between state and federal judicial members on a wide variety of topics. The following are some of the subjects discussed at recent council meetings:

• early warning system for habeas cases;
• certification of state law questions;
• federal court study committee recommendations;
• coordinating multiparty and mass tort litigation;
• resources for coordination of large cases;
• certification of inmate grievance procedures;
• cross designation of U.S. attorneys and district attorneys for prosecution of crimes;
• FAX filing in California state courts;
• CLE requirements for federal law clerks and legal staffs;
• impact of federalization of crimes; and
• long-range planning for the courts.

California Chief Justice Malcolm M. Lucas, commenting on the success of the council, said that "as far as I am concerned the success of a state–federal judicial council starts at the top. [A council] succeeds because of the dedication and devotion of judicial leaders. Chief Judge [Clifford] Wallace and I have worked together constantly for almost five years on our council."

"We alternately co-chair our council meetings," said Justice Lucas, "and we encourage perfect attendance of our members."

Chief Judge Wallace, a longtime supporter of the council, agreed: "Active leadership on a council is key, and so is commitment by the members and follow-up by the staff to see that the council's ideas are implemented. The California council has been fortunate to attract dedicated state and federal judges and court administrators who view the council as an important vehicle for cooperation between the two systems."

Other factors contributing to the success of the council, according to Justice Lucas, are:

• equal numbers of state and federal judges on the council;

• inclusion of bankruptcy judges on the council, "which has added another dimension to our meetings"; and

• selection of state judges for membership who have had some federal experience, such as working in a U.S. attorney's office, and selection of federal judges who have had some experience with the state judiciary.

The California council also has strong staff support through the offices of the California State Court Administrator and the Office of the Circuit Executive of the U.S. Ninth Circuit Court of Appeals.

William Vickery, California state court administrator, has designated a member of

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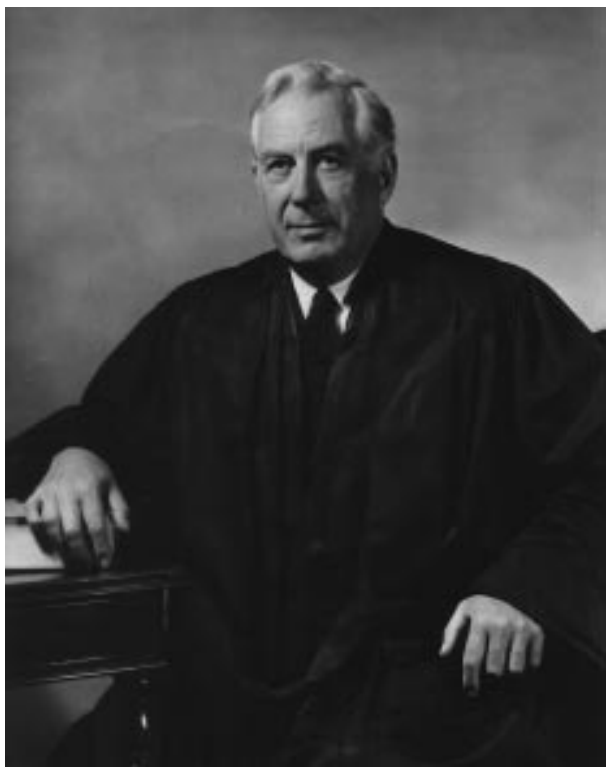

Photo by Harris & Ewing, Collection of the Supreme Court of the United States

CHIEF JUSTICE WARREN E. BURGER
1907–1995

Warren E. Burger, who served on the U.S. Supreme Court from 1969 to 1986, took seriously his title of "Chief Justice of the United States." In that role, he did much to promote state–federal judicial relations. He urged the creation of state–federal judicial councils in his first "State of the Judiciary Address" to the American Bar Association in 1970, and in 1971 he reminded the National Conference on the Judiciary that "the basic structure of the courts in this country contemplated that state courts would deal with local matters while federal courts would serve a limited and narrow function. I hope we will never become so bigoted as to think that state judges are any less devoted to the principles of the federal Constitution than other judges and lawyers."

On the other hand, he knew that much work needed to be done to make both state and federal courts more effective in the face of a steady increase in litigation that was just beginning as he took office. Not the least of his contributions was to urge creation of the National Center for State Courts. He was also a strong proponent of judicial education. He knew, as Chief Justice Rehnquist said in eulogizing his successor, that "the system of justice . . . was staffed by fallible human beings, and he bent his efforts to see that these people had all the help in the way of training and education that they could in order to succeed in their difficult task." ❑

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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

Judge Schwarzer Revived Interest in Judicial Federalism; Left National Legacy

by James G. Apple
Chief, Interjudicial Affairs Office
Federal Judicial Center

During the three-and-one-half years of its existence, this column has been devoted to issues of judicial federalism and discussions of various ideas and principles relating to that subject. This particular contribution to *Obiter Dictum* is a departure from that "tradition," in that it relates to an individual rather than an idea, principle, or proposal. But the individual is worthy of mention here because of his role in promoting national-level interest in and discussions about judicial federalism and its importance to federal and state courts.

Senior Judge William W Schwarzer (U.S. N.D. Cal.), recently retired director of the Federal Judicial Center, brought to the Center an abiding interest in the subject. Before his appointment he had served as the first chair of the Judicial Conference Committee on Federal–State Jurisdiction and gave that committee its initial sense of direction.

Upon his arrival at the FJC in the spring of 1990 he was determined to enhance the Center's historic role in exploring state–federal issues and in promoting state–federal cooperation for the benefit of both the federal and state court systems.

Judge William W Schwarzer

One of his first actions was to dispatch his law clerk to interview federal and state judges in different parts of the country about cooperative efforts in handling cases and to record examples of state–federal cooperation, to prepare a major article on the subject.

At the same time, Judge Schwarzer began working with the State Justice Institute, the National Center for State Courts, and the Judicial Conference to sponsor, plan, and conduct a nationwide conference on judicial federalism, a first of its kind. For the conference, Judge Schwarzer and two FJC staff members produced a seminal paper, *Judicial Federalism in Action: Coordination of Litigation in State and Federal Courts*. In its own words, "this article tells the stories of how several state and federal judges forged into uncharted territory to coordinate complex litigation pending in their courts. These stories offer a cornucopia of ideas and lessons for both judges and lawyers."

Judge Schwarzer presented the key parts of this paper at the first National Conference on State–Federal Relationships, held in Orlando, Fla., in April 1992. His comments served as one of the major addresses at the conference and provided the framework for discussions and other presentations. Chief Justice Rehnquist referred to it in his videotaped address to the participants.

The conference itself was a watershed event. It was attended by more than 325 state and federal judges, state and federal court administrators, and legal scholars. It not only raised the consciousness of those attending about the possibilities and benefits of cooperation between state and federal judges and state and federal courts, but it also provided the stimulus for follow-up actions and events at national, regional, and local levels.

One of the immediate consequences of the National Conference was Judge Schwarzer's reestablishment, in April 1992, of the Interjudicial Affairs Office at the Federal Judicial Center. A major responsibility assigned to that office was the promotion of state–federal judicial cooperation and discussion of issues of judicial federalism. The office, since its creation, has published a manual on organizing and maintaining state–federal judicial councils to assist judges in their formation and continuation. It has also surveyed and regularly monitors all existing councils and has created a database of information about them. It also began publication of this newspaper, the *State–Federal Judicial Observer*, devoted to publicizing events and issues related to judicial federalism.

Other events followed the Orlando conference. The *Virginia Law Review* published the proceedings of the Orlando Conference (Issue no. 8, vol. 78, Nov. 1992) in an issue referred to by California Chief Justice Malcolm M. Lucas as the "bible of judicial federalism." Two regional conferences on state–federal relationships have been held: one in Stevenson, Wash., in 1993, for states in the region of the U.S. Ninth Circuit; and the other in Williamsburg, Va., in 1994, for states in the region of the U.S. Fourth Circuit. Judge Schwarzer presented major papers at both of these conferences.

Perhaps most significantly, the Orlando conference had a direct effect on the creation of new state–federal judicial councils and the revival of dormant ones. Immediately prior to Orlando, the number of active state–federal councils was less than 20. An exact accounting is not possible because of the unavailability of information and statistics. After the Interjudicial Affairs Office began tracking councils around the United States in 1992, better statistics became available. By the time of Judge Schwarzer's retirement in March of this year, there were 32 active state–federal councils in the United States and its territories.

Another major event, tangentially related to matters of judicial federalism, occurred as a result of the efforts of Judge Schwarzer and his interest in state–federal cooperation. In November 1994, the first national conference on mass torts was held in Cincinnati, Ohio, planned by the FJC, the State Justice Institute, the National Center for State Courts, and the U.S. Judicial Conference Committee on Court Administration and Court Management. The Cincinnati conference featured both state and federal judges as speakers and as participants, and one of its major themes was cooperation between state and federal courts in the handling of mass tort litigation. Judge Schwarzer made a major substantive presentation at the conference. The conference proceedings have been compiled and printed in a recent issue of the *Texas Law Review*.

One additional major contribution of Judge Schwarzer to the national discussion on judicial federalism was his co-authorship, with FJC Deputy Director Russell R.Wheeler, of an FJC long-range planning paper titled *On the Federalization of the Administration of Civil and Criminal Justice*, published in 1994. The final section of that paper contains a set of guidelines "to preserve a limited role for the federal courts" that was developed by Judge Schwarzer for a national conference on judicial federalism sponsored by the Brookings Institution in 1993.

Judge Schwarzer, in his five years at the Center, left several important legacies. The Center produced an unprecedented number of manuals, booklets, and papers on many different and important topics of interest and use to judges, including case management, scientific evidence, complex litigation, and the future of the courts. The number and types of educational seminars and conferences for both judges and court administrators were significantly increased, and the number and scope of research topics were expanded, all during his tenure as director and as a result of his leadership. But as important a legacy as any may be the interest and discussions he provoked on the subject of judicial federalism, and the focus he provided on its importance to the court systems of the United States. ❑

State and Federal Judges Return to University for Advanced Law Degrees

Judicial "Students" Take Exams and Write Theses to Earn Master of Laws Diploma

by James G. Apple

Late Associate Justice of the U.S. Supreme Court Tom C. Clark, first director of the Federal Judicial Center, observed in a 1974 law review article about the Center that "when I first entered law practice many years ago, the judges were so jealous of their prerogatives that a lawyer might as well have turned in his shingle if he suggested that judges needed to go to some sort of school."

Justice Clark was describing in his article the enthusiasm with which federal judges had embraced judicial education programs offered by the Center. But even Justice Clark would probably be surprised at the success of a formal course of study for state and federal judges at the University of Virginia Law School in Charlottesville, Va., that leads to a Masters of Laws (LL.M) in the Judicial Process degree.

Founded in 1980 by visionary Virginia Law School Professor Daniel H. Meader, the program has graduated over 200 state and federal judges from every part of the United States. Although some trial judges have been admitted, the program has been mainly designed for, and largely appealed to, appellate judges.

Judge James A. Wynn, Jr.(N.C. Ct. App.), a 1995 graduate of the program, said it was "probably the best learning experience of my legal career, law school included. It provided a unique opportunity, after practicing law and sitting as a judge, to bring to an outstanding academic forum many of the lingering questions that arise in law."

His observations were seconded by Senior Judge Peter Beer (U.S. E.D. La.), who graduated in 1986. "The opportunity to participate in the program was one of the best experiences I have ever had as a district judge," he said. "It was a first-class operation in every way, from the outstanding calibre of the faculty to the serious and continuing interest of all the participants. The chance for interaction with the state judges was a substantial plus."

The requirements for the programs are rigorous: a six-week residential course of study (including final examinations) at the Law School, for two successive summers, plus the preparation and submission of a thesis.

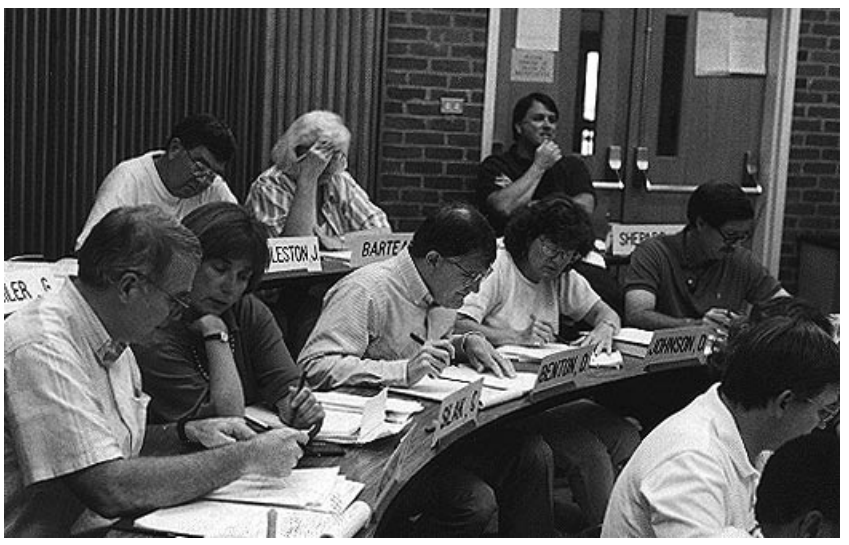
Priority is given to judges of state supreme courts, state intermediate appellate courts, and U.S. courts of appeal. Each class is limited to 30 judges.

The program was in jeopardy in 1991 because of problems with funding and finding qualified applicants. It was saved by the intervention of loyal alumni of the program. A major reason for the effort to save it was the impact it was having on the appellate judiciary in the United States—with 1100 appellate judges in the state and federal systems, the program had provided advanced education for 10% of these judges.

One major change in the program that occurred as a result of the crisis was the inclusion of a "vacant" summer when no classes would be conducted.

Six classes of judges graduated from the program in 1982, 1984, 1986, 1988, 1990, and 1992. The most recent graduates received their diplomas at the regular graduation ceremonies of the university in May 1995.

Professor George A. Rutherglen, current administrator of the program, said that the change has been successful. He anticipates continuing the program on that basis.



State and federal judges ponder a legal problem in one of the lecture halls at the University of Virginia Law School during a 1994 summer class of the Law School's graduate judges program that leads to a Master of Laws Degree in the Judicial Process.

He noted, however, that "a more serious question now is sources of funds." Because of possible reduction or loss of funds from the State Justice Institute, the program must "actively seek funds from states that send judges to the program."

The program tries to achieve as much geographical diversity as possible. As of June of this year 46 states, Puerto Rico, and the District of Columbia have been represented in the seven graduating classes.

The program has included 26 federal judges and 182 state judges. Of the total federal judges, 7 have been circuit court of appeals judges; the remainder have been federal district judges, except for 1 bankruptcy judge.

Forty-six state supreme court justices, 120 intermediate appellate court judges, and 16 state trial judges have participated in the program.

Expenses for the program are approximately $9,000 per judge for each residence session, or $18,000 for the total program. For most judges, all or part of these expenses are covered by allowances from state judicial education budgets. The Federal Judicial Center has covered part of the costs of attendance for federal judges.

The course of study includes four separate areas of concentration, from which a judge may choose one: historical, jurisprudential, comparative, and interdisciplinary.

Typical courses for a program are Anglo–American jurisprudence, law and economics, contemporary private law, comparative legal institutions (U.K., German, and European systems of law), courts and social science, chemical hazards, government regulation and private liability, contemporary legal thought, courts and corporate governance, and issues of law and medicine.

Classes are taught either by permanent members of the University of Virginia Law School faculty or by visiting professors.

The program also has a six-judge advisory committee of five state judges and one federal judge. The committee is chaired by Justice Elizabeth B. Lacey (Va. Sup. Ct.).

Applications are being accepted by the Law School for a class of judges that will begin study during the summer of 1996 and graduate in the spring of 1998.

Interested judges should write or call Professor George Rutherglen, Graduate Program for Judges, University of Virginia School of Law, Charlottesville, VA 22903-1789, phone (804) 924-4787.

The National Judicial College at Reno, Nev., also offers an advanced degree program, in cooperation with the University of Nevada–Reno, leading to a Master of Laws in Judicial Studies degree. Forty-four state judges have completed that program, and another 95 are current degree candidates. ❑

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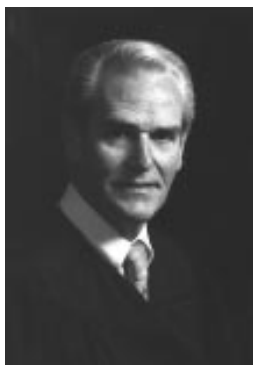
his staff, David Halperin, to assist the council, and Mark Mendenhall, assistant circuit executive for the U.S. Ninth Circuit Court of Appeals, provides staff support from the federal side.

Chief Judge J. Clifford Wallace (U.S. 9th Cir.)



Chief Justice Malcolm M. Lucas (Sup. Ct. Cal.)

Provide strong leadership for California State–Federal Judicial Council

These staff members aid in planning meetings, setting agendas, contacting members and speakers about times and places for meetings, and preparing minutes and follow-up papers for the council.

The California council, although formally organized with a charter in October 1988, actually came into existence on September 29, 1980, when state and federal judges met in Monterey, Cal., in conjunction with the annual meeting of the California Judges Association.

State and federal judges formally organized the California council in 1988 and approved a charter for the organization on October 27 of that year. According to the council's charter, the Chief Justice of California is an *ex officio* member of the state delegation and appoints the other delegates from the state courts. The Chief Judge of the U.S. Ninth Circuit Court of Appeals (or designate) is the *ex officio* member of the federal court delegation and appoints the other federal representatives.

A recent project of the council has been to stimulate the organization of regional councils within the state. As a result of discussions at several council meetings and follow-up actions and meetings by state and federal judges in different areas, seeds have been planted for the organization of the three regional councils: in Los Angeles, eastern California (Sacramento area), and southern California. The purpose of the regional and local councils is to take the work of the state–federal council one step closer to the day-to-day work of the judges from both systems.

There are at least 18 states that do not have state–federal judicial councils. Reasons given for the lack of action in those states often reflect an ignorance of the potential for such councils.

One state judge remarked that there was no reason for a council in his state because "we get along well with our federal judges." Such an attitude undervalues the real potential of state–federal judicial councils, as exemplified by the one in California—joint action and activities on issues of common concern, discussing and working out common solutions to common problems, and providing ideas for sharing resources during times of scarcity.

The California council is not the only successful council in the United States, but it amply illustrates the worth of the councils and provides a formula for their success. Considering its past and the enthusiasm of its present leaders, a safe prediction to make about the California council is the same one that was made 15 years ago about it: "Unlike some other councils across the nation, dormancy is not likely to be the fate of California's State–Federal Judicial Council." ❑

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Court.

In January 1994, he was appointed by California Chief Justice Malcolm M. Lucas to the California Judicial Council. Chief Justice Lucas also designated Judge Warren to serve as his representative on the California Constitution Revision Commission.

Judge Warren was selected as Trial Judge of the Year in 1987 and 1993 by the Capital City Lawyers Association. In 1994 he was selected as Trial Judge of the Year by the Sacramento County Bar Association.

Active in California judicial education programs, Judge Warren has been chair of the Center for Judicial Education and Research's (CJER) California Juvenile Law Institute, vice chair of CJER's continuing judicial studies planning committee, and a member of CJER's new judge education planning committee.

He has taught and lectured extensively in the fields of criminal law and procedure, civil law and procedure, ADR, delay reduction, trial management, juvenile law and procedure, court management, trial court funding and organization, and justice system planning.

He graduated from Williams College in 1963, received an M.A. in political science from the University of Chicago in 1966. In 1969 he received a law degree from the University of Chicago, where he also served as projects editor of the law review. ❑

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Rampersad, biographer of Langston Hughes and Arthur Ashe, who is now working on a biography of Jackie Robinson; and

• a multimedia presentation on current Russian culture by Princeton Professor Ellen Chances of the Department of Slavic Languages and Literature.

On the final day of the seminar, Jack Coleman, former president of Haverford College and now a Vermont innkeeper, commented on the worth of experiences such as the Medina Seminar. Coleman noted that judges lead an insular and protected life, and need the stimulation of intellectual confrontation in areas other than the law as a humbling experience and to develop new perspectives.

The Medina Seminar is sponsored by the Federal Judicial Center; the Judiciary Leadership Development Council, a private, nonprofit corporation in Washington, D.C.; and Princeton's Council of the Humanities and Council on Science and Technology.

The 1996 seminar will be held at Princeton, June 6–12. Interested federal judges should contact Robb Jones, Director, Judicial Education Division, Federal Judicial Center, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20002-8003. Interested state judges should contact the president of the Judiciary Leadership Development Council, Senior Judge John H. Kern III, 2510 Virginia Ave., N.W., Washington, DC 20037, phone (202) 338-5513.❑

Evaluation System Reforms Processing of Nevada Pro Se Prisoner Cases

An early case evaluation system for the screening and handling of pro se prisoner cases developed by the federal district court in Nevada in cooperation with the Nevada Attorney General's office has reformed the processing of such cases by the federal court and has substantially reduced the workload of the U.S. Marshal's Service related to them.

The number of prisoner cases has been increasing significantly in both state and federal courts in many parts of the United States in the past five years. The number of such cases filed in Nevada now constitutes a major part of that court's civil caseload.

In 1994, 24% of all civil cases filed in the U.S. District Court for the District of Nevada were civil rights cases filed by state prison inmates. From 1992 to 1994, 40–47% of all civil cases filed in the unofficial northern division of the District of Nevada were prisoner civil rights cases.

The early case evaluation system was implemented in April 1994 and has been in operation since then. The purpose of the system is to identify those causes that appear to have merit and those that appear to be frivolous and should be dismissed. One of the objectives of the system is to remove as quickly as possible frivolous actions or frivolous counts and defendants in a complaint.

Evaluation hearings are conducted only for prisoner, pro se, *in forma pauperis* civil rights (section 1983) actions.

Nevada Attorney General Frankie Sue Delpapa, who worked with Nevada federal judges in setting up the system, commented that "we have found the early case evaluation system to be very effective in eliminating cases that shouldn't be in court, in consolidating claims to save time and work, and in eliminating unnecessary defendants."

According to a memorandum prepared for other judges by Judge Howard D. McKibben (U.S. D. Nev.), who played a major role in establishing the system, the process operates as follows:

• Upon receipt of a prisoner, pro se, *in forma pauperis* civil rights petition and the assignment of a case number to the petition, the pro se law clerk reviews it to determine whether the plaintiff should be permitted to proceed *in forma pauperis*. At the same time, the pro se clerk reviews the complaint to determine whether it appears to be frivolous on its face. If it appears to be completely frivolous, full *in forma pauperis status* is granted, and the action is dismissed without the need for a hearing.

• For those cases not dismissed immediately as frivolous on their face, the pro se law clerk prepares a bench memorandum on the case. The bench memo summarizes the counts and factual allegations and identifies which, if any, of the counts and named defendants should be dismissed as frivolous. Two of the most common reasons for dismissal are lack of factual support in a count to show personal involvement of a defendant and immunity of a defendant from suit.

• If the entire case is not dismissed as frivolous, the pro se law clerk secures a date and time for a telephonic early case evaluation hearing. The cases are generally set for 10-minute intervals. A courtesy copy of the complaint and order are sent to the Nevada Attorney General's office at least a week in advance of the scheduled hearing.

The Attorney General's office then assigns a deputy to participate in the hearings. The deputy contacts employees of the Nevada Department of Prisons about the allegations in each complaint and arranges to have a representative from the department at the hearing to answer any questions the court may have and for possible administrative resolution of the dispute.

• The early case evaluation hearing opens with the judge advising the plaintiff about the reasons for the hearing. The judge then summarizes the allegations in the complaint. The plaintiff is asked whether the court has correctly interpreted the allegations. If not, the plaintiff is directed to explain any misinterpretation and state any facts supporting the allegation. The court advises the plaintiff about any deficiences in the complaint with respect to parties or contents of the complaint. The court then explains to the plaintiff that certain counts and/or defendants should be dismissed where appropriate. In many cases the plaintiff is willing to dismiss counts and/or defendants, particularly where at least one count and one or more defendants remain.

• Most dismissals are without prejudice. Only in rare cases have dismissed claims been refiled. The court may then order the complaint to be amended to conform to the stipulation about removal of defendants or counts in the complaint without the necessity of filing additional pleadings.

• While in the presence of an official from the Nevada Department of Prisons and aware of the fact that the official has already had an opportunity to investigate the complaint, some plaintiffs have been willing to voluntarily dismiss the entire action without prejudice to refile if the problem is not resolved administratively.

• If the plaintiff is unwilling to dismiss counts and/or defendants, the court reviews the sanction provisions of Rule 11 so the plaintiff understands what may happen if he or she persists with frivolous claims.

• For those claims and defendants remaining, the court requests the deputy attorney general to accept service of process for all defendants currently employed by the Nevada Department of Prisons. This procedure avoids problems associated with preparing and issuing summonses (usually multiple summonses because not all defendants are effectively served on the first attempt).

• After counsel has accepted service of process, the court orders counsel to file an answer or otherwise respond to the complaint, generally within a 20-day period. The hearing is then concluded.

Statistics from the Nevada court during the first six months of using these new procedures indicate that 69 of the 166 original causes of action filed remained after the early case evaluation hearings, a 57% reduction. Of the 279 original defendants, 131 defendants remained after the hearings, a reduction of more than 50%. Almost all of the dismissals of causes of action and defendants were voluntary on the part of the plaintiffs at the time of the hearing.

In addition, in most instances the U.S. marshal did not have to effect service of process, service being accomplished at the hearing. As an indication of the success of the program for the Marshal's Service, there were 700 individual processes served either by mail or in person from April 1, 1993, through September 30, 1993. For the period April 1, 1994, through September 30, 1994, there were 270 individual services.

Judge McKibben identified some of the advantages he has perceived in the new system:

• The focus is on the real complaints of the plaintiff, thus avoiding the expenditure of time, money, and effort litigating frivolous claims against unnecessary parties.

• It encourages early dispute resolution by the parties wherever possible. It saves the time and cost of having the U.S. marshal issue and serve process on prison officials.

• It appears to reduce the period between the service of process and the trial by at least four to six months.

• It provides the inmate plaintiff with a better understanding of the legal standards required for proceeding with claims.

• It provides the plaintiff with an opportunity to amend the complaint to plead facts that would satisfy those standards.

• It permits the court to advise the plaintiff of potential sanctions that may be imposed for pursuing frivolous claims.

The volume of prisoner cases is an issue that has been discussed extensively at meetings of the Federal–State Jurisdiction Committee of the U.S. Judicial Conference. Ways to handle prisoner complaints expeditiously before they become lawsuits, as well as after filing, are under study by the National Association of Attorneys General in Washington.

The Nevada system and other methods of handling prisoner pro se cases are currently being evaluated by the Research Division of the Federal Judicial Center.

The increased attention to this type of litigation stems from the general view that a significant number of prisoner complaints in many states are frivolous. ❑

English Inns of Court, Scottish Law Libraries Highlight Harlan Seminar

Visits to English and Scottish courts and conversations with English and Scottish judges were mixed with luncheons and dinners at the Inner and Middle Temple Inns of Court in England and tours of the libraries of the Faculty of Advocates and Writers of the Signet in Scotland during the third annual John Marshall Harlan Seminar for State and Federal Judges in July.

Nineteen state and federal judges participated in the seminar, held in London and Edinburgh. All costs were paid by the participants.

The academic sessions of the London portion of the seminar, covering six days, were held at the London offices of the Law Society of England and Wales. Lectures for the three days of the Scottish part of the seminar were held at the Faculty of Law of the University of Edinburgh.

The theme of the seminar, "contemporary challenges in Anglo–American law," was incorporated into the London lectures, which covered English legal history, an introduction to the English legal system, comparisons of legal practice in the English and American systems, appellate practice and procedure in Britain, operation of magistrate's courts, and the European Court of Human Rights.

Edinburgh sessions covered introduction to Scot's law, Scot's criminal law in comparative perspective, operation of the Scottish commercial court, and recent developments in public international law.

The participating judges also visited the Royal Courts of Justice, the Central Criminal Courts (Old Bailey), the Lord Chancellor's office, the Law Committee of the House of Lords, the Court of Session of Scotland, and the Sheriffs Court of Scotland.

A dinner in the medieval dining hall of the Middle Temple Inn of Court concluded the London segment of the seminar, and an evening in the great hall of Borthwick Castle south of Edinburgh marked the end of the seminar.

The Sheriff's of Edinburgh treated the judges to a special reception and tour of the new courthouse for the Sheriffs Court.

The seminar is held every year in July. It is open to both state and federal judges and is limited to 20 judges. Spouses may attend most of the scheduled events.

The seminar is sponsored by the Judiciary Leadership Development Council, a nonprofit corporation in Washington, D.C., the University of Edinburgh, the Law Society of England and Wales, and the General Council of the Bar of England and Wales.

Judges interested in attending the seminar in the summer of 1996, to be held the first two weeks in July, should contact Senior Judge John Kern, president of the Leadership Council, at 2510 Virginia Ave., N.W., Washington, DC 20037, phone (202) 338-5513. ❑

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