IJA Report

The Newsletter of the Institute of Judicial Administration at the NYU School of Law

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A Message from the Executive Co-Directors

We welcome you to the inaugural issue of our Newsletter. IJA is a community over time of leading judges, practitioners and academics engaged in maintaining an enhancing our system of justice. We hope in this and coming issues to keep you informed of the activities of the Institute, and urge you to alert us to developments in your professional lives. Thank you very much for your continued support.

Professors Oscar G. Chase and Samuel Estreicher

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Mass. Chief Justice Marshall Exhorts Judges to Look Abroad in Annual Brennan Lecture

On February 9, 2004 an overflowing crowd packed into the NYU School of Law to hear Chief Justice Margaret H. Marshall of the Supreme Judicial Court of Massachusetts speak on the increasing influence of global jurisprudence on the state judiciary. More than twice the number of seats originally anticipated were required to accommodate the judges, attorneys, professors, and students who attended Chief Justice Marshall's Brennan Lecture on State Courts and Social Justice.

The lecture, "'Wise Parents Do Not Hesitate to Learn From Their Children': Interpreting State Constitutions in the Age of Global Jurisprudence," was an appeal to courts to look at countries with American-inspired constitutions and to consider the example of these foreign courts in dealing with uncharted waters in American jurisprudence.

"The question today is not whether state court judges should consider the work of foreign constitutional courts when we interpret our state's constitution. The question is whether we can afford not to," said Chief Justice Marshall, explaining, "Our constitutional offspring have much to tell us. We would be wise to listen."

She pointed to U.S. Supreme Court Justice Anthony M. Kennedy's 2003 opinion in *Lawrence v. Texas* as evidence of the growing use of foreign precedent in American courts. Chief Justice Marshall presented three contexts in which she has incorporated global jurisprudence into her decisions: personal autonomy, regulation of hate speech, and physical detention. She explained that other democratic countries have had significant litigation in each of these areas, which may bear on cases involving issues alien to American courts.

Chief Justice Marshall was appointed to the Supreme Judicial

Court of Massachusetts in 1996 and became Chief Justice in 1999, a position that she will hold until 2014. Born and educated in South Africa, Chief Justice Marshall came to the United States to pursue her studies at Harvard University and later at Yale Law School. Prior to her appointment, she served as Vice President and General Counsel of Harvard University and earlier as a senior partner at Choate, Hall & Stewart in Boston.

This was the tenth annual event in the Justice William H. Brennan Lecture Series on State Courts and Social Justice, which honors Justice Brennan's abiding vision of the responsibility of state courts to protect constitutional rights. Sponsored by the Institute of Judicial Administration, the Brennan Center for Justice, and the NYU School of Law, the lectures are intended to focus upon and highlight the role of the state judiciary. ■

The 2005 Brennan Lecture

The Eleventh Annual Brennan Lecture will be delivered by The Honorable Ronald M. George, Chief Justice of the Supreme Court of California, on January 26, 2005. The Lecture will be held in conjunction with the Conference of Chief Justices. All IJA members are invited to attend.

Previous Brennan Lecturers

1995 **Hon. Judith S. Kaye**
Chief Judge, Court of Appeals of the State of New York

1996 **Hon. Stewart G. Pollock**
Associate Justice, Supreme Court of New Jersey

1997 **Hon. Stanley Mosk**
Associate Justice, Supreme Court of California

1998 **Hon. Ellen Ash Peters**
Chief Justice, Supreme Court of Connecticut

1999 **Hon. George Bundy Smith**
Associate Judge, Court of Appeals of the State of New York

2000 **Hon. Shirley S. Abrahamson**
Chief Justice, Supreme Court of Wisconsin

2001 **Hon. Christine M. Durham**
Associate Justice, Supreme Court of Utah

2002 **Hon. Thomas R. Phillips**
Chief Justice, Supreme Court of Texas

2003 **Hon. Jeffrey L. Amestoy**
Chief Justice, Supreme Court of Vermont

2004 **Hon. Margaret H. Marshall**
Chief Justice, Supreme Judicial Court of Massachusetts

IJA Offers Training to New Appellate Judges

Chief Judge John M. Walker Jr. of the U.S. Court of Appeals for the Second Circuit (IJA Board of Directors) and Judge Carol Bagley Amon of the U.S. District Court for the Eastern District of New York (IJA Member).

On July 11-16, 2004, judges from the United States, Canada, and the Republic of Palau attended the Appellate Judges Seminar: New Appellate Judges Series, a program sponsored by IJA, the NYU School of Law, and the Federal Judicial Center. The week-long conference, co-chaired by Professors Oscar G. Chase and Samuel Estreicher, IJA Executive Co-Directors, provides state and federal judges with up to three years of experience on the appellate bench, in dialogue with a resident judicial and academic faculty, the opportunity to explore the challenges inherent in judicial decision-making and issues unique to appellate courts.

Keynote speaker Theodore B. Olson, having just completed service as Solicitor General of the United States, delivered a welcoming address that reviewed the Supreme Court's most recent term. Previous Solicitors General who have welcomed the new judges to the Seminar have included Kenneth W. Starr and Walter E. Dellinger (both IJA Board members), and Seth Waxman.

In the opening session a panel of judges (including Justice Roderick L. Ireland of the Supreme Judicial Court of Massachusetts; Judge Harriet Lansing of the Minnesota Court of Appeals; Judge Diarmuid F. O'Scannlain of the U.S. Court of Appeals for the Ninth Circuit; Justice Bea Ann Smith of the Texas Court of Appeals, Third District; and Judge Martha Craig Daughtrey of the U.S. Court of Appeals for the Sixth Circuit) heard a mock oral argument presented by Katherine B. Houlihan and Gregory T. Parks, both from Morgan, Lewis & Bockius, LLP. The

IJA Summer Fellow Update

Every year since 1995, IJA has selected four excellent first-year students for its Summer Fellows program. The fellowship, a full-time summer commitment, integrates an intensive note-writing experience with research responsibilities for IJA's New Appellate Judges Seminar. Recent IJA Summer Fellows have gotten clerkships with judges on the Supreme Court of the United States, various U.S. Courts of Appeals, State Supreme Courts, and U.S. District Courts. We are proud to report on some of the current activities of previous Fellows:

Kristina Daugirdas ('03 Fellow) will be clerking for Judge Stephen Williams of the U.S. Court of Appeals for the District of Columbia Circuit.

Brian Hochleutner ('00 Fellow) works at Munger, Tolles & Olson LLP in San Francisco.

Matthew B. Larsen ('02 Fellow) is clerking for Judge Wilfred Feinberg of the U.S. Court of Appeals for the Second Circuit.

Maggie Lemos ('99 Fellow) finished her clerkship with Justice John Paul Stevens of the Supreme Court of the United States. She is now a Furman Fellow at the NYU School of Law.

Since completing his clerkship with Judge Kimba M. Wood of the U.S. District Court for the Southern District of New York, **Derek Ludwin** ('98 Fellow) has been an associate at Covington & Burling in its Washington, D.C. office. His practice focuses on antitrust and litigation.

Bill McGeveran ('00 Fellow) finished his clerkship with Judge Sandra L. Lynch of the U.S. Court of Appeals for the First Circuit. Now he works as an associate at the Boston office of Foley Hoag LLP.

Jennifer Presto ('01 Fellow) finished her clerkship with Judge Lawrence M. McKenna of the U.S. District Court for the Southern District of New York. She has started working at Sullivan & Cromwell.

Ajay Salhotra ('02 Fellow) is working as an associate at Debevoise & Plimpton LLP in New York.

Robert Schwartz ('01 Fellow) finished a clerkship for Judge Amalya L. Kearse of the U.S. Court of Appeals for the Second Circuit this past July. Now he has started as an associate in the Washington D.C. office of Arnold & Porter, LLP. Recently he published an article in the *University of San Francisco Law Review*, "The Nature of Consent in the American Republic: Substance or Procedure? The Elections Clause and Single-Member Congressional Districts," 38 *U.S.F. L. Rev.* 467 (2004). It examines the constitutional underpinnings of the federal statute that requires states to elect members of congress from geographically based, single-member districts.

Joel Thollander ('99 Fellow) clerked for Justice Craig Enoch of the Supreme Court of Texas after graduation. Then from 2002-04 he worked as an associate in the Austin office of McKool Smith, a Dallas-based commercial litigation boutique. He began the position of Assistant Solicitor General for the State of Texas in October.

Lindsay Traylor ('03 Fellow) will clerk in the Central District of California in downtown Los Angeles for Judge Stephen Wilson.

Douglas Tsoi ('97 Fellow) has left corporate law. He writes that he now teaches "high school history at George School, a Quaker boarding school in Newtown, PA. Please tell everyone I'm happy and content."

argument and subsequent deliberation explored the U.S. Supreme Court case to be decided in 2005, *Azel P. Smith v. City of Jackson, Mississippi*, wherein 30 police officers and public safety dispatchers have alleged that the City's performance pay plan had a disparate discriminatory impact on them because they were over the age of forty. Professor Estreicher, Judge Daughtrey, Judge Lansing, and Professor Chase then moderated a discussion about appellate decision-making.

Professor Timothy Terrell of Emory University School of Law explored elements of successful judicial opinion writing in three sessions over the course of two days. The participating judges lauded these sessions for their relevance to the challenges inherent in authoring opinions.

Statutory interpretation took center stage later in the week, with a lively discussion of the judge's role in interpreting legislation led by Judge O'Scannlain, Judge Robert A. Katzmann of the U.S. Court of Appeals for the Second Circuit (an IJA Board member), and Professor William Eskridge of Yale Law School. Judge Rosemary Barkett of the U.S. Court of Appeals for the Eleventh Circuit and Judge John Gleeson of the U.S. District Court for the Eastern District of

Professor Samuel Estreicher (Executive Co-Director of IJA) and Judge Linda Ann Wells of the Court of Appeals of Florida (2004 IJA Alumna).

Upcoming New Appellate Judges Seminar: July 10-15, 2005

Judges with up to three years of experience on the appellate bench can apply to this Seminar. To receive an application in January, please send your complete contact information to IJA, care of Alison Kinney, IJA Program Coordinator. For more information on the past 2004 Seminar, please visit our Web site, www.law.nyu.edu/institutes/judicial. See page 10 for contact information.

New York discussed recent important developments in criminal law, such as the viability of the U.S. sentencing guidelines after the Supreme Court's *Blakeley* ruling. Another session examined ethical rules, issues, and challenges with Judge Carol Bagley Amon of the U.S. District Court for the Eastern District of New York and Professor Geoffrey P. Miller of the NYU School of Law. The seminar culminated in discussions on state constitutional law, including Justice Ireland's reflections on the Massachusetts gay marriage case, a panel on the Craft of Judging, and a review of the Supreme Court's upcoming docket.

The social highlights of the seminar included a dinner at the Water Club Restaurant and an outing to see *Wonderful Town* on Broadway, including a talkback with cast members after the show. Commenting on the week's events, Professor Chase said, "We are proud of the continued success of our New Appellate Judges Series because it provides invaluable tools for some of the most influential people in the legal field today." Estreicher added, "We had a tremendous turnout of state and federal judges from around the country and were lucky to have many former attendees return as faculty, obviously convinced of the seminar's value."

Attendees included judges from: the U.S. Courts of Appeals for the Third, Fifth, Sixth, Ninth, Tenth, and Eleventh Circuits; intermediate and supreme courts in Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Missouri, New Jersey, New York, Tennessee, Texas, and Vermont; the U.S. Court of Appeals for Veterans Claims and the Navy-Marine Corps Court of Criminal Appeals; and Canada and the Republic of Palau.

The seminar was presented in cooperation with the Federal Judicial Center and supported by West Group and Cravath, Swaine & Moore, LLP. ■

The 2004 New Appellate Judges Seminar attendees and faculty, including IJA Executive Co-Director Oscar G. Chase (seated, far left), with the IJA Summer Fellows: (front, far left) Jason Burge and Teddy Rave, and (front, far right) Lee Pollack and Ari MacKinnon.

IJA and Federal Judicial Center Co-Sponsor Workshop on Employment Law for Federal Judges

On March 11-12, 2004, the Federal Judicial Center (FJC) and the Institute of Judicial Administration joined the NYU School of Law's Center for Labor and Employment Law to host a two-day workshop on employment law attended by approximately fifty federal judges. This is one of the FJC's most highly rated programs. Twenty-five experts delivered presentations.

Day One

Case Management

The first panel addressed developments in case management. Judge Patti B. Saris of the U.S. District Court for the District of Massachusetts highlighted summary judgment trends since the 1986 *Celotex* trilogy of Supreme Court decisions, particularly in light of 2003's *Desert Palace v. Costa* decision recognizing "mixed motive" instructions. She credited an article by Professor Arthur Miller of Harvard and NYU Schools of Law with causing her to rethink her initial enthusiasm for judges deciding cases without a jury: "He wrote that [summary judgment] is supposed to screen out frivolous litigation, but that we are using it too much." Summary judgment is used regularly in antitrust, securities, and increasingly in employment discrimination cases. Miller's biggest criticism of this trend was that summary judgment ends up mixing facts and law. Judge Saris queried: "Was the supervisor's response adequate, did the employee take reasonable steps to alert management of the problem?" Facts must be weighed before the issuing of a summary judgment, which is problematic because issues of fact are normally reserved for the jury. "In a negligence case," Judge Saris pointed out in contrast, "[the question of] 'reasonableness' always goes to the jury."

Joseph D. Garrison, an attorney in the plaintiffs' bar and member of Connecticut firm Garrison, Levin-Epstein, Chimes & Richardson, P.C., concurred in part, declaring that the audience members were unfit to replace a jury of laypersons. "I would guess that in this room probably none of you have ever been fired, probably none of you have been demoted…probably none of you have even gotten a bad grade! This is a rare kind of life experience." The opposing view was given by Kathleen McKenna, defense counsel with Proskauer Rose in New York, who stated that summary judgment is used too infrequently, and went on to add that "in [her] experience there is usually no material fact that precludes summary judgment!" She attributed the increase in summary judgments to "an explosion of often frivolous employer discrimination lawsuits." Judge Saris acknowledged the value of summary judgment as a valuable method for caseload "triage."

The panelists also discussed the benefits of mediation, concluding that where mediated settlements are reached, results are often not as one-sided as a judge-made ruling, and the process can be cathartic for the aggrieved parties. Garrison, who works increasingly as a mediator, cited high rates of settlement and satisfaction among parties as advantages of mediation. Contrary to its touchy-feely reputation, mediation is also pragmatic for companies, which often view a claim as a "business problem" and litigation as "unproductive activity," and for the individual, who may see "a wrong" but also wants to move on with life. Says Garrison, "Every case that has any merit at all has evidence on both sides. There are two sides to every case. Justice, if you will, is a compromise between two sides…A mediation is usually more satisfactory to both sides…A case that was worth $100,000…after litigation, has $100,000 in fees on the plaintiff's side, and $200,000 on the defendants'. You can't settle this case any more." He recommends that judges get parties to mediate as early and as quickly as possible, before the expensive and ego-entrenching discovery stage begins.

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>
> –Joseph D. Garrison

Garrison and McKenna acknowledged judges' fears of injecting bias into the legal process, and both agreed that judges should not fear having undue influence over the parties. "You will have influence over the parties, but it will be a positive thing," Garrison declared. McKenna added that, while courts have been slow to integrate ADR methods, judges are often actually more effective than private mediators because of their authority. She pointed out that it is useful for parties to hear a judge's opinion early on, as a "reality check."

The panel next turned to the issue of electronic discovery. Judges commented on the need to enlist "techies" in order to overcome the inability to manageably extract information, given the estimated 2.8 billion emails sent daily. Participants discussed issues surrounding the disabling of

automatic email purging systems, and problems with saving communications for discovery or in anticipation of possible discovery.

The final case management topic involved arbitration clauses and class action cases. "Suddenly, the AAA is getting cases, and an arbitrator is deciding whether a class can be maintained!" said Garrison, who is himself involved in the first of such major cases. In employment law, the big boom has not been in employment discrimination cases, but in Fair Labor Standards Act (FLSA) cases. FLSA cases are different from Rule 23 class actions, in that they are "opt-in" rather than "opt-out" cases, while large actions can be a mixture of opt-in and opt-out cases. "Case management is critical, conferences should be early and often," emphasized Garrison.

Employer Liability for Sexual Harassment

The next panel of practitioners—Eugene S. Friedman of Friedman & Wolf, Amber L. Kagan of Morgan, Lewis & Bockius, and Wayne N. Outten of Outten & Golden—discussed where the courts stand regarding sex discrimination and sexual harassment issues. Although six years have passed since the Supreme Court's two sexual harassment decisions of 1998, *Burlington Ind., Inc. v. Ellerth* and *Faragher v. City of Boca Raton*, the limits of vicarious liability remain imperfectly defined. The concept of "tangible employment action" (TEA) which these decisions developed, if proven, negates the defendant's affirmative defense that the employer should not be liable where plaintiff did not use available internal remedies. The panelists disagreed as to whether a "constructive discharge"—in which an aggrieved employee feels compelled to quit as a result of harassment—can constitute a TEA. Ms. Kagan argued for the defense: "Clearly a constructive discharge is not an official company act. It is a resignation, an employee choice," said Kagan. Mr. Outten disagreed: "Losing one's job is the most tangible evidence of conduct too intolerable to endure. What is important is the source of the conduct. If the supervisor is the source, the company is strictly liable. If co-workers are the source, a negligence standard will be applied. Ultimately, if the quitting is not voluntary, it is a constructive discharge." While the panelists argued both sides of the issue, it was clear that context is critical.

Although six years have passed since the Supreme Court's two sexual harassment decisions of 1998, *Burlington Ind., Inc. v. Ellerth* and *Faragher v. City of Boca Raton*, the limits of vicarious liability remain imperfectly defined.

The discussion anticipated the Supreme Court's 2004 ruling in *Pennsylvania State Police v. Suders*.

The workshop also featured Commissioner Paul Steven Miller of the Equal Employment Opportunity Commission (EEOC) speaking about the Americans with Disabilities Act (ADA). He noted that, with few of the legislators present at the creation of the ADA currently in office, we run the risk of losing full appreciation of the problems that the ADA was established to address. Now on the University of Washington Law faculty, Commissioner Miller also pointed out that while Title VII protects the population as a whole, the ADA protections are individualized. Implementation of ADA accommodations requires a case-by-case balancing of a person's needs against an employer's capacity to accommodate these needs, and must consider factors like company size, stability, and resources. An issue of great contention is that many "hidden" or commonplace conditions are not currently covered under the Act. Recent decisions have made it difficult for individuals to prove the existence of hidden, common disabilities. In a Catch-22 for victims, permitting stereotyped blanket judgments about certain conditions (e.g., the assumption that high blood pressure is never a disability), denies legitimately afflicted workers grounds to seek relief by precluding any requirement for reasonable accommodations, such as periodic breaks, occasional leave, a place to take medications, etc. A large class of workers who suffer from mental conditions that are mild yet nonetheless real, diagnosed, and capable of being reasonably accommodated, also is generally not protected by the ADA. Mr. Miller argued that while normal and temporary stress should not qualify under the Act, it should not, at the same time, cover only the most extreme and visible disabilities. He felt that while the EEOC tries to stay within the guidelines of Supreme Court rulings, the purpose of the EEOC "is not to hold back," and that it has a responsibility to give guidance as its mandate requires, until a higher authority tells it otherwise.

Evidence Issues

In a panel discussing evidence issues, featuring New York lawyers Darnley D. Stewart Esq. of Bernstein, Litowitz, Berger & Grossmann and Robert S. Whitman Esq. of Orrick, Herrington & Sutcliffe LLP, panel chair Judge Denny Chin of the U.S. District Court for the Southern District of New York evaluated the *McDonnell Douglas* model, in light of the Supreme Court's *Desert Palace v. Costa* decision. *McDonnell* advances a burden-shifting paradigm: a prima facie case is made, the defense is then raised, the prima facie

case "drops out," and pretext is then analyzed. Judge Chin called it a "yo-yo rule, a ping-pong match," saying, "It is billed as a three-prong test, but it is really an eight-part test." He explained that the prima facie case is really four parts, the fourth part having evolved to require a demonstration of "circumstances that give rise to an inference of discrimination." The second prong articulates a non-discriminatory reason, which is a light burden ("all employers can provide a reason"). The third prong addresses pretext, asking first, "Is there pretext?" and second, "Is it a pretext for discrimination?" Finally, said Chin, "We are instructed to look back at all of the evidence as a whole…Some of the steps you have to do twice…If there are multiple claims you must repeat [this analysis] several times." In practice, he concluded, the ultimate question is whether the plaintiff has proven that the adverse employment decision had, at least in part, a discriminatory motive. The judge's assignment of the burden of proof is critical in determining whether a plaintiff's case will avoid summary judgment and make it to a jury, where, surprisingly, different legal standards apply, leading Judge Chin to remark, "It is time to get rid of [*McDonnell*]."

This panel concluded with a spirited discussion of evidence admissibility hypotheticals, including the admission of testimony from a sexual harassment expert, which some judges might hear in private, but would not allow the jury to hear, and from vocational experts for disability accommodations, which some judges would allow depending on the "scientific level" of the testimony. The most contentious hypothetical involved motions for conducting mental examinations. Judge Chin said that there is a fair amount of discretion, and that while it is usually not allowed for proving "garden-variety pain and suffering," there is good cause for granting such a motion if the plaintiff claims a particular disorder.

Day Two

Age Bias

The second day of the Workshop kicked off in Lipton Hall with a short, spirited introduction by NYU School of Law Dean Richard Revesz, who thanked the event's sponsors and organizers. The first panel, entitled "Age Disability Discrimination Law and Theory," began with Mindy G. Farber of Maryland's Farber Taylor, LLC, describing her experiences: "It used to be ADA stuff and sexual harassment, but in the last few years, the big push has been on age discrimination." Though such claims have become more prevalent, she also remarked that "it's not unnatural that people who bring age discrimination claims bring other disability claims." Theodore O. Rogers Jr. of New York's Sullivan & Cromwell focused on the ability of claimants to succeed in disparate treatment claims.

Professor Deborah C. Malamud of the NYU School of Law followed with her observations about "the big picture," including an analysis of employment law as a form of "boundary maintenance," (e.g., between Title VII, related case law, and other anti-discrimination statutes). She remarked that "to the extent that [statutory] language does not require distinctions…the Supreme Court is dictating a theory of what age discrimination is." The impact, she explained, is that "when the court limits our notion of what discrimination is in one particular field, it has the tendency to start expanding its scope and changing the way we see discrimination more broadly."

Judge Jerry E. Smith of the U.S. Court of Appeals for the Fifth Circuit, an alumnus of IJA's Appellate Judges program and former faculty, rounded out the panel with points on how employment law operates in practice. He also explored the theoretical underpinnings of Title VII and the Disabilities Act—the first of which focused on erasing prejudice for individuals equally able to participate in the workplace, and the second of which responded to persons legitimately disabled but able to participate with reasonable accommodations. He finally offered his own perspective on employment law, as "largely an exercise in summary judgment law." This is a problem, he explained, because too many "plaintiffs go through the civil system and never see a live judge…It gives the impression that employment law cases are not getting enough attention."

Jury Issues

The second panel of the day focused on "Jury Instructions," addressing three main issues. The panelists included Judge Frederic Block of the U.S. District Court for the Eastern District of New York; defense lawyers Frederick D. Braid of Holland & Knight, LLP, and Jeffrey Kohn of O'Melveny & Myers, LLP; and plaintiff lawyers Ethan A. Brecher of Liddle & Robinson, LLP, and Jon W. Green of Green & Savits, LLC. The first issue, prompted by a discussion of mixed motive cases and instigated by Professor Samuel Estreicher, Executive Co-Director of IJA, was whether, in non-Title VII cases, a plaintiff may ever enter an affirmative defense instruction over the defendant's objection. Although Judge Block had never seen the issue raised in practice, the panelists recognized how such a situation might arise due to the shifting burden of proof.

The next discussion examined whether evidence of previous findings made by agencies outside of the judicial system should be admitted in judicial examination. The participants distinguished between determinations made by investigatory agencies, such as the EEOC and its state counterparts, and arbitrators. Judge Block observed that "a well-reasoned arbitration decision can have great weight in summary judgment."

The final issue explored was whether a jury should always be charged on punitive damages upon the plaintiff's request. Judge Block answered that, absent a compelling reason to do otherwise, these decisions should be left with the jury. However, he strongly urged a bifurcated trial by which the issue of liability should be decided before the defendant's "ability to pay." This, he explained, "keeps prejudice out of the case." In his final comments, Judge Block offered these words of wisdom on charging juries: "keep it simple, keep it focused, give them just the questions that they have to answer." ■

IJA Community News

We welcome news updates from our Board, Members, Fellows, and Appellate Judges Seminar Alumni. If you would like to submit an item for the next issue of our newsletter, please email Alison.Kinney@nyu.edu or fax (212) 995-4036.

Hon. Shirley S. Abrahamson, Chief Justice for the Supreme Court of Wisconsin and an IJA Board member, is the first recipient of the Dwight D. Opperman Award for Judicial Excellence, which honors a sitting state judge of a trial or appellate court with a career of distinguished judicial service extending at least ten years. It is named for Dwight D. Opperman, an IJA Board Member and Chairman of Key Investment, Inc. Chief Justice Abrahamson is also the new President of the Conference of Chief Justices, having assumed office on August 1, 2004. The same day she also began her term as chair of the National Center for State Courts.

On September 5, 2003, **Hon. Carol A. Beier**, an IJA member and alumna of the 2000 New Appellate Judges Seminar, was elevated to the Kansas Supreme Court from the Kansas Court of Appeals, where she had served since February 2000.

The following members of the IJA Board have recently been honored with chaired professorships at the NYU School of Law: **Oscar G. Chase** (Russell D. Niles Professor of Law), **Samuel Estreicher** (Dwight D. Opperman Professor of Law), **Linda J. Silberman** (Martin Lipton Professor of Law), and **Diane Leenheer Zimmerman** (Samuel Tilden Professor of Law).

Evan R. Chesler (NYU School of Law '75), head of litigation at Cravath Swaine & Moore, LLP and President of IJA's Board of Directors, received an Alumni Meritorious Service Award at the NYU Alumni Association's annual awards dinner on April 16, 2004. Mr. Chesler is a member of the FAS Board of Overseers and is the founder and chair of the Lawyer Alumni Mentoring Program, which he has generously supported financially as well as with his personal time. He was also inducted into the American College of Trial Lawyers this past Fall.

After twenty-two years on the bench, **Hon. Craig T. Enoch**, a longtime member of IJA, recently retired from the Supreme Court of Texas and re-entered private practice. He joined the Texas firm of Winstead, Sechrest & Minick and has found life in the fast lane exciting. He looks forward to continuing his involvement with IJA and its work in judicial administration.

Hon. Wilfred Feinberg, IJA Member, senior judge and former chief judge of the U.S. Court of Appeals for the Second Circuit, was selected as the 2003 recipient of the Edward J. Devitt Distinguished Service to Justice Award. The award recognizes members of the federal judiciary who have dedicated themselves to public service. Past recipients include the following IJA members: **Hon. Jack B. Weinstein** of the U.S. District Court for the Eastern District of New York and **Hon. Milton Pollack** of the U.S. District Court for the Southern District of New York.

Hon. John M. Greaney of the Supreme Judicial Court of Massachusetts, an IJA member and alumnus of the 1998 and 2002 Judges Seminars, spoke on November 15, 2004 at "What Is a Family?" the Melvyn and Barbara Weiss Public Interest Lecture and the Law Alumni Annual Fall Lecture (co-sponsored by the NYU Law Alumni Association and the Public Interest Law Center). He and co-panelists Professor William Eskridge and Associate Justice Barry A. Cozier of the Appellate Division of the Supreme Court of the State of New York discussed the historical evolution of the legal definition of family.

Hon. Robert A. Katzmann of the U.S. Court of Appeals for the Second Circuit joined IJA as a Board member in August 2004. He has offered courses on administrative law, constitutional law, and the judiciary at several universities, including Georgetown, UCLA (Washington, D.C. program), and the University of Oregon, and he is presently serving as Visiting Adjunct Professor at the NYU School of Law.

Michael John Moroney, a long-standing IJA member and retired FBI legal counsel, was appointed to the Board of Regents of Harris Manchester College at Oxford University, and also serves as Special Advisor to the College's Principal, Dr. Ralph Waller. In February 2004, he was formally recognized by the U.S. Department of State as the Honorary Consul General of the Republic of Palau, Honolulu, Hawaii, after having received his appointment from Palau's President Tommy Remengesau Jr.

Hon. Thomas R. Phillips, former Chief Justice of the Supreme Court of Texas who delivered IJA's Eighth Annual Brennan Lecture, recently retired from the Court to join the faculty of South Texas College of Law as a Visiting Professor. He is an IJA member as well as an alumnus of the 1999 Advanced Appellate Judges Seminar.

Hon. Barbara J. Rothstein, Director of the Federal Judicial Center, joined IJA as an ex-officio Board member in August. She is a District Court Judge on the U.S. District Court for the Western District of Washington.

Hon. Richard B. Teitelman, an IJA Member and 1998 New Judges Seminar alumnus, was elected to the Executive Committee of the American Judicature Society, on which he still serves. He also recently received the President's Outstanding Service Award from the Bar Association of Metropolitan St. Louis.

In Memoriam

We regret the passing of **Hon. Florence K. Murray**, an alumna of IJA's 1980 and 1992 Appellate Judges Seminars, the first woman to serve on Rhode Island's Supreme Court, and former Director of the American Judicature Society. She was a good and honored friend of the institute.

Our next issue will discuss the many contributions of **Judge Richard Arnold** of the U.S. Court of Appeals for the Eighth Circuit.

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Court of Appeals of Texas for the Twelfth District

Members who joined after December 31, 2004 will be listed in the next issue of the newsletter.

IJA Calendar of Events

January 26, 2005
Eleventh Annual Justice William J. Brennan Jr. Lecture on State Courts and Social Justice
The Honorable Ronald M. George
Chief Justice, Supreme Court of California

March 17-18, 2005
Workshop on Labor and Employment Law for Federal Judges
Co-sponsored by the Federal Judicial Center and the NYU School of Law's Center for Labor and Employment Law

Summer 2005
Chinese Judges' Training Program

July 10-15, 2005
Appellate Judges Seminar—New Judges Series
Co-sponsored by the Federal Judicial Center

August 2005 (Date TBD)
Appellate Judges Seminars Alumni Reunion and IJA Membership Meeting
In conjunction with the annual ABA Meeting in Chicago

November 3-4, 2005
Twenty First Century Conference on Appellate Justice In Washington, D.C.

November 10-11, 2005
State Employment Law

The Institute of Judicial Administration
New York University School of Law
40 Washington Square South, Room 314
New York, NY 10012