

# IJA Report



The Dwight D. Opperman Institute of Judicial Administration at NYU School of Law

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## O'Connor Celebrates IJA and the Judiciary

To celebrate the dedication and formal renaming of the Dwight D. Opperman Institute of Judicial Administration, retired Justice Sandra Day O'Connor of the Supreme Court of the United States visited NYU School of Law on October 11, 2006. She and Oscar G. Chase, Russell D. Niles Professor of Law and IJA Ex-

ecutive Co-Director, engaged in a conversation on "The Importance of Judicial Independence," attended by an audience of four hundred Law faculty, students, and friends of the Law School and IJA, followed by a dinner honoring Board member Mr. Opperman for his long history of unstinting service to the courts and generosity for judicial education and recognition programs throughout the country. (For a profile of Mr. Opperman and the Opperman Institute's name change, please refer to *IJA Report* No. 3, which is available on the IJA Web site).

A true independent spirit, among her activities since retiring from the Supreme Court, Justice O'Connor sits as visiting judge in the courts of appeals and a member of the Baker-Hamilton Iraq Study Group whose recommendations the nation awaits. She has decided to make her special cause the promotion and protection of an independent judiciary in the United States. Judicial independence, she



Professor Oscar G. Chase and Justice Sandra Day O'Connor

urges, is under attack from politicians and others who do not understand the role of courts in a free society.

Today, an atmosphere of "angst about judges," as Justice O'Connor termed it, seems to be encouraged by the idea that judges should be political, rather than serving as checks and balances for the politically accountable branches. Even the term "independent judiciary," she says, has become negatively loaded. "We use the term independent because it's in

the constitution," said Justice O'Connor, who favors the more accurate description of "a fair, impartial and independent" judiciary.

In an op-ed published by the *Wall Street Journal* on September 27, 2006, she wrote, "An independent judiciary does not mean, of course, that it is somehow improper to criticize judicial decisions. To the contrary, it is a healthy sign for a democracy that the public is engaged with the workings of the judicial system."

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During her conversation with Professor Chase, Justice O'Connor listed a number of features of the current system that she felt impinged upon the independent nature of the judicial branch. Judicial elections were at the top of her list of threats to independence. Colorado has cut the terms of appellate judges in half so elections and reshuffling occur more often to suit political groups' agendas. Repeated attempts to dismantle Arizona's method of judicial appointments, rather than elections, often have been tried as well. "Our country can do better on judicial selection," she said.

Politically motivated limitations placed on the jurisdiction of courts have also become a dangerous trend within the past few years. Justice O'Connor referred to the Terry Schiavo case as a unique intervention by Congress and President Bush to take special measures and force one hot-button case to the federal courts.

Most disturbingly, however, she cited JAIL 4 Judges, the purposefully menacing name for a California-based interest group that placed on South Dakota's November ballot an amendment that would eliminate judicial immunity and allow judges to be censured. Judges could even be subjected to jail time for making "wrong decisions."

Professor Chase asked what could be done about the threatened judicial branch, and how to combat some of the support that has been garnered for stripping away its equal standing with the legislature and executive.

"Bring back civics education," said Justice O'Connor. She believes that ig-

norance about how our government works is the root of the problem. She cited an alarming statistic that only one-third of Americans are aware of the judiciary branch. "No one knows what we do," she said.

She seemed confident that a review of the Court's most historic cases would demonstrate the value of indepen-

dence. In *Brown v. Board of Education*, for example, by deciding that "separate but equal" should not apply to public education, the Court began a domino effect that overturned laws promoting racial segregation. "It was an unbelievable, necessary step, and trying to enforce it was hard," she said. "But today, it's history." ■

## 2006 Seminar for New Appellate Judges



Faculty and attendees of the New Appellate Judges Seminar

On July 9-14, 2006 IJA hosted the New Appellate Judges Seminar, co-sponsored by NYU School of Law and the Federal Judicial Center. The six-day conference, co-chaired by Professors Oscar G. Chase and Samuel Estreicher, IJA Executive Co-Directors, provided state and federal judges with up to four 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. The Seminar has been held every year since 1956, and in recent years has been conducted with the generous support of West Group and Cravath, Swaine & Moore.

Judges who attended the Seminar gave overall excellent evaluations of the program. In particular they highlighted the usefulness of the written materials for future reference, the valuable opportunities to interact with other judges, and the quality of the experienced, practical-minded, and diverse faculty.

The Seminar opened with a reception and dinner welcoming the judges. Keynote speaker Paul D. Clement, Solicitor General of the United States, returned to IJA to deliver a keynote address reviewing highlights of the Supreme Court's 2005-2006 term. Previous Solicitors General who have welcomed the new judges to the Seminar have included Theodore B. Olson, Ken-



### The 2007 Brennan Lecture

The Thirteenth Annual Brennan Lecture will be delivered by The Honorable Leah Ward Sears, Chief Justice of the Supreme Court of Georgia, on February 22, 2007. All IJA members and alumni are invited to attend.



## Save the Date!

July 8–13, 2007

### New Appellate Judges Seminar

Judges with up to four years of experience on the appellate bench can apply to this Seminar. Please visit [www.law.nyu.edu/institutes/judicial/programs/2007/new](http://www.law.nyu.edu/institutes/judicial/programs/2007/new) to download the application materials.

neth W. Starr, and Walter E. Dellinger (all IJA Board members), Drew S. Days, and Seth P. Waxman.

The New Judges Seminar faculty includes a lineup of lawyers, academics, and distinguished judges, many of whom are themselves alumni of the Seminar and members of IJA.

The Seminar began on Monday with Gibson Dunn & Crutcher lawyers Matthew D. McGill and Julian W. Poon arguing *Cunningham v. California* (heard by the U.S. Supreme Court on October 11, 2006), to decide whether California's Determinate Sentencing Law, by permitting judges to impose enhanced sentences based on determination of facts not found by jury or admitted by the defendant, violates the Sixth and Fourteenth Amendments. The panel of judges, presided over by Chief Justice Shirley S. Abrahamson (Supreme Court of Wisconsin), included Judge Martha Craig Daughtrey (U.S. Court of Appeals for the Sixth Circuit), Justice Roderick Ireland (Supreme Judicial Court of Massachusetts), Judge Diar-

muid O'Scannlain (U.S. Court of Appeals for the Ninth Circuit), and Justice Bea Ann Smith (Court of Appeals of Texas for the Third District). The oral argument was followed by a discussion on appellate decision-making, moderated by Professor Oscar G. Chase, with Judge Rosemary Barkett (U.S. Court of Appeals for the Eleventh Circuit), Judge Marsha Berzon (U.S. Court of Appeals for the Ninth Circuit), Judge Harriet Lansing (Minnesota Court of Appeals), and Chief Justice Randall T. Shepard (Supreme Court of Indiana).

The rest of the program included a number of substantive sessions, including Criminal Law (District Judge John Gleeson of the Eastern District of New York and NYU School of Law Professor Rachel Barkow), Developments in State and Federal Administrative Law (Cardozo Law School and Visiting NYU School of Law Professor Michael Herz), and the Craft of Judging, with the entire judicial faculty. Professor Timothy Terrell (Emory University School of Law) returned for his popular sessions on Opinion Writing, with commentary provided by Judges Barkett and Berzon. Judge Berzon and Justice Ireland with Professor Chase and NYU School of Law Professors Burt Neuborne and Liam Murphy conducted a dialogue on Theories of Constitutional Interpretation. Judge Lansing, Chief Justice Shepard, and Professor Chase presented a number of hypos for a panel on Judicial Ethics. Judge Robert Katzmman of the U.S. Court of Appeals for the Second Circuit and Professor William Eskridge (Yale



Solicitor General Paul D. Clement

Law School) joined Judge O'Scannlain in a lively discussion of the judge's role in interpreting legislation.

This year the judges attended the Tony Award-winning production of *Sweeney Todd* on Broadway, including a talkback with cast members after the show, and a special lunchtime Q&A appearance by leading actor Michael Cerveris. On Thursday night they went to a festive dinner at the waterfront Water Club Restaurant.

Commenting on the week's events, Professor Estreicher said, "Every year we have a tremendous turnout of judges from around the country and beyond, and we're especially proud of those alumni who return to join us as Seminar faculty." Professor Chase added, "The Seminar's best advertising comes from word-of-mouth by former attendees, and we believe that this attests to the topicality and relevance of our program."

Attendees included judges from the appellate courts of Arizona, California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, New Jersey, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, and Vermont; the U.S. Court of Appeals for the Ninth Circuit; the U.S. Army Court of Criminal Appeals; the U.S. Navy and Marine Corps Court of Criminal Appeals; and the Court of Appeal for Ontario. ■



Moot Court Presiding Judges: Hon. Bea Ann Smith, Hon. Diarmuid O'Scannlain, Hon. Shirley S. Abrahamson, Hon. Martha Craig Daughtrey, and Hon. Roderick Ireland



## IJA Summer Fellow Update

Every year since 1996, IJA has selected top-notch 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 Fellows have obtained clerkships with judges on the U.S. Supreme Court, various U.S. Courts of Appeals, State Supreme Courts, and U.S. District Courts. We are proud to report on the latest news of our Fellows:

**Abigail Caplovitz**, a Legislative Advocate for the New Jersey Public Interest Research Group and the NJPIRG Law & Policy Center, has testified before the state legislature on identity theft, rent-to-own, health care, and other issues.

**Sarah Cebik** is an associate in the corporate group at Dorsey & Whitney LLP in London, focusing on cross-border corporate and securities matters, along with corporate governance investigations and advice. Sarah clerked for Judge Murray Schwartz of the District of Delaware and Judge H. Robert Mayer of the Court of Appeals for the Federal Circuit (an alum of the 1993 Advanced Appellate Judges Seminar).

**Melanie Hochberg Giger** is the Associate Director of Graduate Admissions for the Hauser Global Law School. This year, Melanie has been very involved with recruitment and admissions for the new NYU School of Law and National University of Singapore Dual Degree Program to be offered beginning in May 2007 in Singapore. Melanie clerked for Judge Loretta A. Preska (Southern District of New York), a long-time Member of the Institute.

Having worked at Debevoise & Plimpton, **Elliot Greenfield** has taken a clerkship with Judge Victor Marrero (Southern District of New York).

Since 2000, **Daniel J. Krause** has been working as an Estate Planning and Business Attorney at King Law Offices,

LLC. Daniel previously had his own firm and was an attorney for the Oneida and Menominee Tribes of Indians.

**Daniel H.R. Laguardia** is an associate in litigation at Sullivan & Cromwell in New York. After graduating from NYU School of Law, he clerked for Judge Anthony J. Scirica (Third Circuit) and Judge David G. Trager (Eastern District of New York).

**Maggie Lemos** is teaching constitutional law and civil procedure as an assistant professor at the Benjamin N. Cardozo School of Law. Prior to this appointment Maggie was a Furman Fellow at NYU School of Law, a Bristow Fellow at the Office of the U.S. Solicitor General, and law clerk for Judge Kermit V. Lipez (First Circuit) and U.S. Supreme Court Justice John Paul Stevens.

**Bill McGeeveran** is associate professor of law at the University of Minnesota Law School, specializing in information law, including intellectual property, data privacy, communications and technology, and free speech. Bill previously was a resident fellow at Harvard Law School's Berkman Center for Internet and Society and clerked for Judge Sandra Lynch (First Circuit).

We congratulate **Lee M. Pollack**, who is currently working as an associate at Jones Day and will be clerking next year for Judge Robert S. Smith of the Court of Appeals of the State of New York. Judge Smith was an attendee of the 2003 New Appellate Judges Seminar.

**Kieran Ringgenberg** is an associate in the Oakland office of Boies Schiller. His main practice area is complex commercial litigation, with an emphasis on antitrust and securities matters. Prior to joining the firm he clerked for Judge Pasco M. Bowman (Eighth Circuit).

Since finishing his clerkship with Judge Pauline Newman (Federal Circuit), **James Worth** has become a Gen-

eral Attorney in the Office of the General Counsel of the U.S. International Trade Commission in Washington, D.C., doing appellate litigation and administrative law. His work focuses on intellectual property disputes.

## IJA Summer Fellows 1996–2006

**1996** Sarah R. Cebik, Jeffrey M. Hirsch, Daniel J. Krause, Daniel H. R. Laguardia

**1997** Melanie Hochberg Giger, Benet J. O'Reilly, Anjali Garg Pero, Kieran P. Ringgenberg, Douglas T. Tsoi

**1998** Christopher J. Garofalo, Lauryn Powers Gouldin, Ilizabeh Gonchar Hempstead, Derek Ludwin

**1999** Abigail Phillips Caplovitz, Margaret Hayes Lemos, Joel Lance Thollander, David Albert Yocis

**2000** Brian Hochleutner, William McGeeveran, Parvin D. Moyné, Shirley S. Park

**2001** Yohance C. Edwards, Jessica Kayle Fried, Jennifer G. Presto, Robert Alexander Schwartz

**2002** Matthew B. Larsen, Ajay Salhotra, Kimberly C. Spiering, James A. Worth

**2003** Kristina Daugirdas, Elliot Greenfield, Jonathan K. Regenstein, Lindsay (Traylor) Braunig

**2004** Jason W.H. Burge, Ari D. MacKinnon, Lee M. Pollack, Teddy Rave

**2005** Kara J. Ervin, David A. Herman, Joshua M. Kaplan, Kimberly Steefel

**2006** Tracy Jade Chin, Allegra Glashauser, Brian Johnston, Michael Petrocelli

# Remembering Friends of IJA

*The Honorable Edward R. Becker, widely regarded as a leader of the federal judiciary, was a dear friend of the Institute who served on the faculty of the New, Advanced, and Senior Judges' Seminars over the years. We will greatly miss him.*

## A Tribute to Judge Edward R. Becker

BY PROFESSOR MARCI A. HAMILTON  
*Benjamin N. Cardozo School of Law*

Judge Edward R. Becker, who served for over thirty-five years, first as a district court and then as an appellate judge on the U.S. Court of Appeals for the Third Circuit, passed away on Friday, May 19. We have lost a great man.

The funeral was a testimony to a life that made a monumental difference. There were so many people in attendance that the two hours set aside for the family to greet mourners was simply not enough. The line snaked through the Kenneseth Israel synagogue, and into the parking lot. Remarkable, personal eulogies were delivered by Senator Arlen Specter; by Chief Judge Anthony Scirica, Justice Samuel Alito, and Judge Midge Rendell, Judge Becker's colleagues on the Third Circuit; and by Stephen Harmelin, managing director of Dilworth Paxson. Supreme Court Justices Antonin Scalia and David Souter and Gov. Ed Rendell were also in attendance, as were many family members, and countless judges, law clerks, prominent lawyers, and admirers. I clerked for the Judge from 1988 to 1989, and was deeply honored to be one of the pallbearers.

During his life, those who knew Judge (or "Eddie," as his wife and friends fondly called him) Becker knew that he was a force beyond human proportion. This man never stopped working. Every former clerk can tell you that he read every brief in the assigned cases

each session, and that, more often than not, the pages were crinkled from water damage suffered while the Judge was bathing. Invariably, he had reading tucked somewhere in his jacket, and a folded piece of legal paper in his shirt pocket, on which he scribbled his "to do" list on a rolling basis.

At the same time, he was absolutely devoted to his family. More often than not, his wife, Flora—who is a legal force as well, most recently serving as a Philadelphia juvenile court judge—would come to chambers for lunch, and they were constantly in touch. One of the most moving moments during his funeral was when his son, Chip, said that his father had moved on from the study of philosophy at Penn, because, in the Judge's words, he had "found the meaning of life" in Flora.

**In an era when there is such an alarming increase in cheating, Judge Becker was a man of enormous integrity.**

During the years before I clerked, he was known to run up and down the field while one of his children played, with the ever-present briefs in hand, and clerks jogging alongside. My year, we took many a brisk walk from the courthouse to JFK Boulevard, where his mother lived, so that he could check on her. One case would be discussed in each direction.

Let there be no mistake, though; Judge Becker was no slave to his work. It was a passion for him. He was the judge who wrote lengthy, scholarly, and important opinions in major cases, which others, including the Supreme Court, treated with deep respect. Yet, he also always found the time to read all of the other judges' opinions in the circuit. His comments ranged from deeply substantive to careful matters of detail.

And Judge Becker's work for the public good hardly ended with his Article III duties. He took on so many causes—including making sense of the Sentencing Guidelines, improving the timing of law clerk hiring, getting the Magna Carta to Philadelphia, moving the Liberty Bell and then keeping it accessible, and reforming the asbestos litigation system—I'm certain that no one will ever know all that he did for the country. You always knew that a cause was being born when he would start talking about a new "goddamn outrage!"

Nor was he a bore. When I was clerking for Justice Sandra Day O'Connor, the piano player for Chief Justice William Rehnquist's annual all-Court sing-along was not available. I mentioned that Judge Becker was the best piano player I ever met, and he played

for the sing-along every year after that until his health failed him.

Judge Becker, though, was so much more than the sum of these sterling qualities. In an era when there is such an alarming increase in cheating, when industry titans are being convicted for criminal financial cover-ups, and when religious organizations have been found to harbor pedophile clergy, Judge Becker was a man of enormous integrity.

The realist theory of the law, where judges' opinions are determined by what the judge had for breakfast or his political bent, cannot explain Judge Becker, who toiled to "get it right," regardless of how he felt personally about the outcome of a case. At the beginning of each clerkship, he told his clerks there would be "zero deference" to him. On every case, he charged us to

come up with our best theory, whether the case was primarily assigned to us or not, and the chambers battled over every major opinion. It was the best training a young lawyer could receive, and it meant that he heard (and debated) every side before he reached his final decision. Litigators arguing cases before him were also treated to his zero tolerance for the red light at oral argument, which he treated like a malfunctioning stop light that required an override in the interest of greater knowledge and better justice.

The trappings of success meant absolutely nothing to Judge Becker. He lived in the house in the Frankford section of Philadelphia where he was born, took the Frankford El to work every day, and, with Flora, raised his children to be the responsible, kind, and good people that they are today. He loved Philadelphia with a civic passion, and especially the Sixers. When he wanted a clerk to come into his office, he would yell, “Yo!,” right out of “Rocky.” The first time I heard it, I froze at my desk, thinking that he could not have just yelled, “Yo, Marci,” from his office, through the secretaries’ offices, and into ours. Of course, by the time it dawned on me I’d better get up and go in there, he had made two calls in the meantime.

I took my children to his funeral, not only because he played such an important role in my life, but also because I wanted them to hear what is said publicly about a great man at the end of his life. There has never been an overabundant supply of those who changed the world for the better. This generation was blessed with Judge Becker. There will never be a replacement, but it is up to future generations to strive to live up to the Becker standard. ■

*Marci A. Hamilton is the Paul R. Verkuil Chair in Public Law at Benjamin N. Cardozo School of Law, Yeshiva University. Professor Hamilton’s most recent work is God vs. the Gavel: Religion and the Rule of Law (Cambridge University Press 2005). This essay first appeared as Professor Hamilton’s biweekly column on [www.findlaw.com](http://www.findlaw.com).*

## Chinese Judges Explore the U.S. Court System



Judges Huang Lihua, left, Zhang Min, center, and Wang Jianping, standing right, take the A train.

A delegation of 27 Chinese judges visiting New York for a three-week crash course in the United States’ justice system left with a better understanding of how our system operates. “The visiting judges were interested in the ways American courts function, how they relate to the executive branch and how they deal with administrative problems,” said Professor Oscar G. Chase, Opperman Institute Executive Co-Director. The Training and Educational Program for Chinese Judges, hosted by IJA, the Temple University Beasley School of Law, and the National Judicial College of Beijing, is in its fourth year. The program, administered by NYU School of Law Research Scholar Mary Holland, combines a series of lectures by judges and professors with extensive field trips and meetings.

At the New York State Supreme Court the visiting judges—representing China’s trial, appeals and high courts—had the opportunity to meet with Justice Doris Ling-Cohan and hear about her administrative initiatives to benefit

the largely Asian community in Lower Manhattan. One such initiative that impressed the judges was the free book available at the court, cowritten in English and Mandarin by Justice Ling-Cohan, which explains New York State court procedures. The Justice said she was pleased to share an overview of the court’s community education effort with the guests.

“It’s great to have this type of cultural exchange and exchange of ideas about different systems of justice in our global society,” said Judge Dora L. Irizarry, of the Eastern District of New York, during a reception at the federal courthouse in Brooklyn. “It’s interesting to learn how Chinese judges are working to set up a more professional court system.”

“It is our honor to make this a tradition,” said Lai Sun Yee, president of the Asian American Bar Association of New York, which sponsored the reception.

In his welcoming remarks to the group of approximately 100 people attending the reception, Eastern District

Chief Judge Edward R. Korman spoke of the enthusiasm and diversity injected into the United States every year by new Chinese immigrants. “Four times per week in our courthouse, we hold swearing-in ceremonies, and 40,000 people every year become citizens,” Judge Korman said. “When you look in the room of 300-400 people, a large number of them are from China, and I’ve always felt that this constant infusion of immigrants is really responsible for the strength of our country.”

The Chinese judges’ visit is part of an education effort linked to current reforms underway in the Chinese judicial system, according to Xiao Fang Wang of China’s National Judicial College. “Before, there was not a concept of professionalism associated with judges and lawyers,” Wang said. “It was possible to go into judicial practice without extensive training. Now, judges and attorneys are required to pass a professional judicial exam every three years.”

In addition to attending many lectures by law professors and judges, the judges took various field trips while in New York. The group toured the U.S. Court of Appeals for the Second Circuit and the Sing-Sing Correctional Facility in upstate New York. They also visited the Jones Day law firm in Manhattan, which has several offices in China, and observed a New York State court trial. According to Professor Holland, the educational tour has been steadily improving, and this year’s delegation includes higher-level judges than in previous years.

Judge Lin Zhen Hua of the southern Guang Dong province’s High People’s Court, whose jurisdiction covers approximately 80 million people, says the most interesting thing he has observed is how the federal and state judicial systems coexist in harmony. In China, there is only one court system.

The Honorable John M. Walker Jr., then Chief Judge, now a senior judge on the U.S. Court of Appeals for the Second Circuit and long-term IJA Board member, welcomed the judges with a luncheon talk and Q&A session on his role as Chief Judge of a U.S. federal court.

Professor Chase lectured on Alternative Dispute Resolution with District Judge Rob Levy of the E.D.N.Y. Lecturers in the program included Judge Billie Colombaro (Judicial Training, Election, and Selection and Qualifications), IJA Executive Co-Director Professor Samuel Estreicher (U.S. Civil Justice System, Labor Law), Professor Steve Gillers (Judicial Ethics), Professor Stephen Choi (Corporate Law, Securities Law), Professor Frank Upham (Property Law in the U.S.), Professor Jim Jacobs (Key Criminal Law Issues in the U.S.), Professor Jerome Cohen (Comparative Criminal Procedure, Comparative Judicial Independence), Temple Law School’s Jeffrey Dunoff (trade

law); and Cardozo Law School’s Toni Fine (The Federal Judicial System and the Role of the Supreme Court).

Current events also made for lively discussion. “On the last day of the program, we discussed the *Hamdan* case in which the Supreme Court held that the president’s powers over the Guantánamo detainees were limited by the Geneva Conventions and Congressional action,” said Professor Chase. “I found that the Chinese judges were as divided about the outcome as the justices of the Supreme Court.” ■

*Reporting provided by the The Law School Magazine and the Brooklyn Daily Eagle.*

## Ninth Annual Employment Law Workshop for Federal Judges

The ninth annual Workshop on Employment Law for Federal Judges took place on March 16-17, 2006. This program is sponsored jointly by IJA, the Center for Labor and Employment Law at NYU School of Law, and the Federal Judicial Center. It provides a large, select group of federal judges—court of appeals, district court, and magistrate judges—with the opportunity to examine the labor and employment issues which increasingly dominate their dockets, called “the bread and butter cases of the civil caseload” by one attendee.

The event is chaired by IJA Executive Co-Director, and Executive Director of the Labor Law Center, Professor Samuel Estreicher. Forty-five federal judges from around the country convened to discuss such topics as case management, wage hour litigation, evidence and experts, mediation, sex and age discrimination, and jury instructions.

Since its inception, the Workshop has aimed to bring together experienced judges with practitioners and academics to tailor the discussion to federal judges’ needs, and to provide guidance and time for reframing is-



Hon. Bernice B. Donald

sues, theories, and perceptions about employment law cases. To ensure balance, each session’s faculty is typically comprised of a judge, a lawyer representing plaintiffs, and a lawyer representing management. Judge Bernice B. Donald, from the Western District of Tennessee, opened the workshop with a presentation on “Using Technology in the Courtroom,” a topic identified in previous years as one of concern to

federal judges in managing their dockets. Judge Donald, who had previously been a bankruptcy judge, has served as President of the National Association of Women Judges and the Association of Women Attorneys; on the Board of Editors of the *American Bar Association Journal*; and on the Board of Directors of the Federal Judicial Center.

Judge Donald also appeared on the panel on Electronic Discovery with Labor Center Board Members Theodore O. Rogers Jr. (Sullivan & Cromwell) and Pearl Zuchlewski (Kraus & Zuchlewski). In a time when as many as twelve million undocumented worker claims appear on the horizon, electronic discovery is an important, evolving area that cries out for continuing updates on law and case management techniques.

The session on Case Management Issues offered practical tips for case management and an especially pertinent discussion of *pro se* plaintiffs, as well as summary judgment and class actions. Two judges from the Eastern District of New York, District Judge John Gleeson and Magistrate Judge Steven M. Gold, joined Joseph D. Garrison (Garrison, Levin-Eptstein, Chimes & Richardson, P.C.) and Kathleen McKenna (Proskauer Rose, LLP) in a lively and balanced discussion.

The panel on Age and Disability Discrimination Law and Theory featured Ethan A. Brecher (Liddle & Robinson LLP) and Zachary Fasman (Paul Hastings) who surveyed recent developments on disparate impact challenges under age discrimination laws and issues concerning reasonable accommodation of individuals with disabling physical or mental conditions.

Adam Klein (Outten & Golden) joined Matthew W. Lampe (Jones Day) in a discussion from the plaintiff's and defendant's perspectives on Wage Hour Litigation. Unlike class action suits, where eligible plaintiffs are automatically included, individuals in a collective action must opt-in to participate and benefit. In employment law, such cases typically involve unpaid overtime under the Fair Labor Standards Act. Klein and Lampe highlighted points of



Hon. Rosemary Barkett and Professor Samuel Estreicher

dispute in this infrequently addressed area, especially where conflicting and fractured caselaw comes into play.

District Judge John G. Koeltl of the Southern District of New York led the panel on Evidence Issues and Use of Experts, with Kenneth A. Margolis (Kauff, McClain & McGuire LLP) and Gary Trachten (Kudman Trachten LLP). Employment litigation is becoming increasingly complex, as expert witnesses are often used to dealing with statistics, emotional stress recovery, and claims of unconscious discrimination.

The last session on Thursday explored techniques used in court-based or -annexed mediation of employment disputes. Panelists included District Judge Denise L. Cote of the Southern District of New York, Daniel J. Kaiser (Kaiser Saurborn & Mair, P.C.), and Donna Malin (Johnson & Johnson). Mediation conducted by judges can help to mediate the disproportion between cost and benefit in employment law cases, which often drag on for years and are hard to win. The panelists solicited audience input to discuss settlement motivations, experiences with mediation, and techniques.

Friday opened with an animated session on issues of sex discrimination and sexual harassment law. Hon. Rosemary

Barkett of the U.S. Court of Appeals for the Eleventh Circuit, Mindy G. Farber (Farber Rubin) and Robert Whitman (Orrick, Herrington) began the discussion with an analysis and categorization of sexual discrimination claims. The attendees identified the topic as an extremely important, but difficult, area in their caseloads and responded enthusiastically to the practical overview of the relevant law, including sex stereotyping, the adequacy of anti-harassment policies, disparate impact challenges to subjective promotion decisions, family and medical leave, and the personal liability of corporate officers.

The final session addressed jury instructions. Speakers Frederick D. Braid (Holland & Knight), John W. Green (Green & Savits), and Jeffrey Kohn (O'Melveny & Myers) provided an overview of a topic generally considered important and yet confusing. They highlighted problems, contrasted experiences, and discussed a useful set of model instructions.

Says Professor Estreicher, "There is no other program like this in the country, where we can attract the best federal judges in the nation and have them explore with experienced lawyers and academics cutting-edge developments in the law of employment relationship." ■





## 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. E. Riley Anderson**, an alum of the 1999 Advanced Judges Seminar, retired from the Tennessee Supreme Court in August, ending a judicial career that included four terms as Chief Justice. During his tenure, the court took a number of steps to improve efficiency in the administration of justice and increase public confidence in the judiciary.

**Hon. Billy G. Bridges**, an alum of the 1995 New Judges Seminar, retired from the Court of Appeals of Mississippi, where, with eleven years of service, he was one of the longest-serving members of the Court. He has joined the pool of judges who hear cases by special appointment when trial judges recuse themselves, and plans to travel, hunt, and fish.

The University of Iowa College of Law recognized **Hon. James H. Carter** and **Hon. Louis Lavorato** for their service to the Supreme Court of Iowa; both judges retired from the Court in October and are on call as senior judges. Justice Carter is a current IJA member and an alum of the New Judges Seminar Class of 1977. Chief Justice Lavorato attended the 1986 Advanced Judges Seminar.

On October 3 **Evan R. Chesler**, IJA Board President and Presiding Partner (as of Jan. 2007) at Cravath, received the Gould Award for Outstanding Oral Advocacy. The award, which is named for Milton S. Gould and honors contributions to the law and the art of oral advocacy, is awarded by the Office of the Appellate Defender, a nonprofit law firm devoted to providing high-quality legal representation to the poor in criminal cases.

IJA Board Member **Michael V. Ciresi** reports that his firm, Robins, Kaplan, Miller & Ciresi LLP, its Private Foundation, and its Foundation for Education, Public Health, and Social Justice have carried out a number of recent pro-bono projects, including involvement with Ready 4 K, increasing the number of children entering kindergarten prepared for learning success; the National Child Protection Training Center, training approximately 10,000 child protection professionals every year; and the Center for Victims of Torture (CVT)-New Neighbors/Hidden Scars, developing a new service delivery system that allows the CVT to reach broad communities of refugees.

**Hon. Mario P. Goderich**, an alum of the 1990 New Judges Seminar and the 1999 and 2000 Advanced Judges Seminars, retired from the Third District Court of Appeal of Florida and joined the firm of Gunster, Yoakley & Stewart. Judge Goderich served as a judge for thirty years, fifteen on the Court of Appeal, and was the first Cuban-American appointed to the court.

We congratulate **Hon. Dennis Jacobs**, who became Chief Judge of the U.S. Court of Appeals for the Second Circuit on October 1, 2006. Judge Jacobs, a long-time friend of IJA, attended the New Judges Seminar in 1993 upon his appointment to the Court.

**Hon. Nathaniel R. Jones** has retired from the U.S. Court of Appeals for the Sixth Circuit. Judge Jones, who attended the 1981 and 1998 Advanced Judges Seminars, remains involved with the American Bar Association, where he serves as special advisor to the Council on Racial and Ethnic Justice; Chairman of the Board of Trustees for the Cincinnati Youth Collaborative; the Board of Visitors at the University of Cincinnati College of Law; and the Board of Directors of the KnowledgeWorks Foundation.

We were delighted to receive the news, shortly after the 2006 New Appellate Judges Seminar, that Seminar attendee and new IJA member **Hon. John D. Minton Jr.** was elevated from the Kentucky Court of Appeals to the Supreme Court of Kentucky. Said Kentucky Chief Justice **Joseph E. Lambert**, himself an alum of IJA programs in 1987, 1992, and 1994, "John Minton is one of Kentucky's finest judges. He will be a welcome addition to the Supreme Court."

**Hon. Allen M. Linden**, a judge on the Federal Court of Appeal of Canada, and an alum, former faculty member, and coordinator for the participation of Canadian judges every year in IJA programs, was the third recipient of the John G. Fleming Award in Torts. The prize, named for one of the world's most outstanding comparative law torts scholars, is awarded every two years. Judge Linden received the prize at Pepperdine School of Law, where he has taught as an adjunct professor of law for seven years. In his acceptance speech, he said, "Although tort law is certainly no panacea for all the ills of society, it is a worthy endeavor for a society that places a supreme value on each of our citizens, for it continually underscores our sincere belief in the dignity of the individual and our commitment to right wrongs peacefully and fairly, no matter what the financial cost."

**Hon. Julia K. Tackett**, who attended the 2000 New Judges Seminar, retired from the Kentucky Court of Appeals after a 28-year judicial career. Tackett was one of three women to be elected in Kentucky's first crop of district judges in 1977. About her retirement plans, Judge Tackett said, "I am going to set off fireworks, then figure out what I am going to do."

Congratulations to **Hon. Marsha K. Ternus**, alum of the 1994 New Judges

*continued on page 15*

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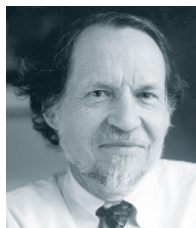
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## Calendar of Events

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### February 22, 2007

#### **Thirteenth Annual Justice William J. Brennan Jr. Lecture on State Courts and Social Justice**

Hon. Leah Ward Sears, Chief Justice of the Supreme Court of Georgia

*This lecture series honors the state judiciary as the bedrock of justice under law in the United States. All alumni and members are invited to attend.*

### March 12–13, 2007

#### **Workshop on Employment Law for Federal Judges**

*Co-sponsored by the Federal Judicial Center and the NYU School of Law Center for Labor and Employment Law. The tenth in a series of workshops for federal trial and appellate judges. Interested applicants should contact the FJC to register.*

### July 8–13, 2007

#### **New Appellate Judges Seminar**

*Co-sponsored by the Federal Judicial Center. Judges with up to four years of experience on the appellate bench can apply to the Seminar.*

### August 13, 2007

#### **“A Review of the U.S. Supreme Court’s 2006–2007 Term”**

*A panel discussion and reception at the IJA Alumni Reunion and Meeting of the Members, in conjunction with the ABA Annual Meeting.*

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*For information about our upcoming programs,  
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**Program Coordinator**  
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## IJA Community News

*continued from page 9*

Seminar, who has been elected Chief Justice of the Iowa Supreme Court. Chief Justice Ternus, the first woman to serve as chief justice of Iowa's highest court, said, "My paramount goal as chief justice will be to support all of our judges and court staff, for whom I have great respect and in whose work I take enormous pride, as we work together to advance the important mission of Iowa's state courts."

We are proud to report that Hon. **Gary R. Wade**, who attended IJA Seminars in 1989 and 1993, during his time on the Tennessee Court of Criminal Appeals, has been appointed to the Tennessee Supreme Court. Wade was named Appellate Judge of the Year by the American Board of Trial Advocates in 2004 and received the Judicial Excellence Award from the Knoxville Bar Association in 2005.

We extend our congratulations and most grateful thanks for the leadership of **Hon. Kimba M. Wood**, now Chief Judge of the U.S. District Court for the Southern District of New York, who retired from the IJA Board this year. IJA will miss the enthusiasm and hard work she put into our ongoing projects.

## In Memoriam

*We regret to report the passing of the following friends of the Institute:*

**Glenn W. Bailey** was a former Board Member and major donor to IJA. Mr. Bailey was founder and former Chairman of Bairnco Corporation. His substantial endowment gift has helped to fund an ongoing series of research conferences sponsored by the Institute, as well as annual workshops focusing on employment law.

**Hon. Robert L. Shevin**, an alum of the 2002 Advanced Judges Seminar and an IJA member, passed away in July. Judge Shevin was appointed in 1996 to the Third District Court of Appeal of Florida. Shevin was known as a champion of consumer rights and open government and, as a member of the Supreme Court Workload Commission during his tenure as Florida Attorney General, urged the Florida Legislature to require unanimous or at least "super-majority" (9-3) votes before a death sentence could be imposed.

**Hon. Max Rosenn**, an alum of two Advanced Judges Seminars, in 1972 and 2001, passed away this year at the age of 96. Said Dr. Tim Gilmour, president of Wilkes University, which has administered the Max Rosenn Lecture in Law and Humanities since 1980, "Judge Max Rosenn was a giant among us, whose magnificent and generous contributions to society over several generations transcended time, place, discipline, and culture....It may simply be enough to say that in his time here on earth, he provided us an extraordinary example of a compassionate life well lived."

Please also see the *Tribute to Edward R. Becker* on page 5.

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## IJA Membership

The Dwight D. Opperman Institute of Judicial Administration (IJA) thanks its members for their contributions, which help us to advance the quality of justice in our legal system. Because of IJA members' support, IJA has offered an unrivaled opportunity for ongoing dialogue between the federal and state judiciary, policy makers, practitioners, academics, and students.

IJA is a non-partisan, non-profit organization founded in 1952 at NYU School of Law by Chief Justice Arthur Vanderbilt, who outlined the following goals:

- To promote coherence and predictability in the law and its administration
- To develop high-quality continuing education programs for state and federal judges
- To engage in sustained dialogue among the various sectors of the legal profession
- To foster research on important public policy issues affecting the administration of justice

The work of the Institute has become ever more critical with the proliferation of federal and state laws, the increasing tendency to resort to the courts to resolve wide-ranging private disputes and social problems, and the concomitant growth in the number of lawyers, courts, and adjudicative bureaucracies.

In 2005, the Institute was renamed the Dwight D. Opperman Institute of Judicial Administration in recognition of Mr. Opperman, a long-time member of the Board of Directors. Mr. Opperman's outstanding generosity and support have secured the Institute's future as one of the nation's leading nonpartisan institutions for the education of the judiciary.

IJA relies on the energy and assistance of its friends to maintain its high standards of service and outreach. A large part of our resources is devoted to subsidizing the involvement of judges whose court budgets can no longer allow participation in continuing education programs. In order to meet the needs of our constituencies, we seek your interest, your involvement, and your support.

## IJA Report

**The Dwight D. Opperman Institute of Judicial Administration**

New York University School of Law

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