

IJA Report



Issue Number 7

Winter 2007-08

Trading Courtrooms for IJA Classrooms

On July 8-13 the Institute welcomed forty-six new judges, the largest class yet, to the New Appellate Judges Seminar, a program for state and federal judges with up to four years of experience on the appellate bench. Since the Seminar was first held in 1956, it has offered new appellate judges the opportunity to explore current issues of substantive law and the challenges unique to the appellate courts. Each year Professors Oscar G. Chase and Samuel Estreicher, IJA Executive Co-Directors, lead a resident faculty composed of academics and experienced jurists, most of whom are themselves alumni of the Seminar and members or Board members of the Institute. The Seminar is held in conjunction with the Federal Judicial Center's orientation for new federal judges and in recent years has been conducted with the generous support of West Group and Cravath, Swaine & Moore.

This year judges came from the appellate courts of Arkansas, California, Colorado, Connecticut, the District of Columbia, Florida, Hawaii, Iowa, Kentucky,



Deciding moot court case *Hall St. Associates v. Mattel*: Chief Justice Chase T. Rogers (Connecticut Supreme Court), Judge Cynthia Westcott Rice (Ohio Court of Appeals), Judge Margaret A. Ryan (U.S. Court of Appeals for the Armed Forces), and Judges Neil Gorsuch and Jerome A. Holmes (U.S. Court of Appeals for the Tenth Circuit)

Louisiana, Maine, Nevada, Ohio, South Carolina, Tennessee, Texas, Virginia, and Washington; the newly formed Supreme Court of the Virgin Islands; the Court of Appeals of the Commonwealth of Puerto Rico; the Cherokee Supreme Court, Eastern Band of Cherokee Indians; the U.S. Courts of Appeals for the Ninth and Tenth Circuits; the Navy-Marine Corps

Court of Criminal Appeals; the U.S. Court of Appeals for the Armed Forces; and the Nova Scotia Court of Appeal and Court of Appeal for Saskatchewan, Canada.

At the opening dinner, newly appointed New York University Professor Arthur R. Miller delivered the keynote address on the topic of judicial independence. He described past political assaults by



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Professor Arthur R. Miller

Congress and the White House, including the House of Representatives; the 1804 impeachment of Justice Samuel Chase, a Federalist, after his decision to hang John Fries for treason angered Jeffersonian Republicans; and Franklin Roosevelt's Judiciary Reorganization Bill of 1937, which sought to pack the Court with politically allied justices. "It's very easy for you to become paranoid about your independence," he said. "And just because you're paranoid doesn't mean they're not chasing you."

To date, however, the judicial branch has prevailed; Professor Miller cited the unanimous Supreme Court ruling in *U.S. v. Nixon*, which put limits on executive privilege, as evidence of the judiciary's fortitude. Professor Miller nonetheless urged vigilance: executive reaching in the War on Terror, as well as irresponsible media portrayals of judicial rulings as activist or anti-family, threaten judicial independence. According to Professor Miller, judges must be more visible and educate the public on their essential role as an independent authority on the rule of law. "You judges with independence properly employed represent the thin black robe that separates our civilization from the jungle."

Every year the sessions on judicial decision-making begin with a case from the U.S. Supreme Court's upcoming docket, which is argued in a moot court by two members of a firm represented on the IJA Board. This year, we were delighted to hear Board member Sheila L. Birnbaum, head of



Top: Oral Argument: Sheila L. Birnbaum and J. Russell Jackson; **Above:** Seminar faculty Judge Diarmuid O'Scannlain (U.S. Court of Appeals for the Ninth Circuit), Judge Harriet Lansing (Minnesota Court of Appeals), Chief Justice Randall T. Shepard (Indiana Supreme Court), Judge Rosemary Barkett (U.S. Court of Appeals for the Eleventh Circuit), Justice Bea Ann Smith (Third District Court of Appeals of Texas, retired), and Chief Justice Shirley S. Abrahamson (Wisconsin Supreme Court)

the Complex Mass Tort and Insurance Group at Skadden, Arps, Slate, Meagher & Flom LLP, argue *Hall St. Associates v. Mattel* with Skadden partner J. Russell Jackson. Following the argument the student judges divided into panels to discuss and decide the case. The faculty bench then went through the same process in front of the entire group. The panel of judges, presided by Judge Martha Craig Daughtrey (U.S. Court of Appeals for the Sixth Circuit), included IJA Board member Chief Justice Shirley S. Abrahamson (Supreme Court of Wisconsin), Justice Roderick L. Ireland (Supreme Judicial Court of Massachusetts), Judge Diarmuid O'Scannlain (U.S. Court of Appeals

for the Ninth Circuit), and Justice Bea Ann Smith (retired, Court of Appeals of Texas for the Third District).

After the oral argument and decision-making, Dr. Isaiah M. Zimmerman of the Washington School of Psychiatry, a noted speaker on judicial collegiality and group dynamics, led a discussion on appellate decision-making processes as seen from the perspective of group psychology. Discussion participants included Judge Rosemary Barkett (U.S. Court of Appeals for the Eleventh Circuit), Judge Harriet Lansing (Minnesota Court of Appeals), Chief Justice Randall T. Shepard (Supreme Court of Indiana), and IJA Board Member Judge John M.

Walker Jr. (senior judge and former Chief Judge, U.S. Court of Appeals for the Second Circuit).

Other substantive sessions included *Frontiers in Legal Research*, by Judge Barkett, Stacy Slattery Richards (West Group), and NYU Law Librarians Gretchen Feltes and Annmarie Zell; *Criminal Law* with Judge John Gleeson (U.S. District Court for the Eastern District of New York) and NYU Law Professor Rachel Barkow; and the *Craft of Judging*, with the whole judicial faculty.

Professor Timothy Terrell (Emory University School of Law) taught three engaging and popular sessions on *Opinion Writing*, ending with a dialogue with Judge Daughtrey and Justice Smith. Judge Lansing, Chief Justice Shepard, and Professor Bruce A. Green (Fordham Law School) presented and discussed several provocative hypos for *Issues in Judicial Ethics*. Judge O'Scannlain, Board member Judge Robert A. Katzmann (U.S. Court of Appeals for the Second Circuit), and Professor William Eskridge (Yale Law School) engaged in a lively discussion of *Statutory Interpretation*. Building on the keynote address, Chief Justice Abrahamson, Professor Chase, Justice Ireland, Judge Walker, and Deborah Goldberg (Director of the Democracy Program, Brennan Center for Justice) discussed pressing issues in judicial independence.

This year the Institute was pleased to invite NYU School of Law Professor Norman Dorsen to give a lunch talk on U.S. Supreme Court Justices he has known. At a subsequent luncheon Professor Chase presented some of his original research on comparative decision-making practices from his book, *Law, Culture, and Ritual: Disputing Systems in Cross-Cultural Context* (see the article on the book in IJA Report Issue 4, available on the IJA Web site). Near the end of the Seminar the attendees and faculty attended a festive, relaxing dinner at the waterfront Water Club Restaurant.

We look forward to welcoming the attendees of next year's New Appellate Judges Seminar on July 13-18, 2008. ■

Reporting provided by the Law Magazine.



Employment Law Workshop participants

Federal Judges on the Cutting Edge of Employment Law

The tenth annual Workshop on Employment Law for Federal Judges took place on March 12-13, 2007. Sponsored jointly by the Institute, NYU's Center for Labor and Employment Law, and the Federal Judicial Center, this program provides the opportunity for federal judges to examine the labor and employment issues that increasingly dominate their dockets.

Since the program's inception in 1998, the Workshop has aimed to bring together experienced judges with practitioners and academics to frame the discussion around federal judges' needs, and to provide guidance and time for reframing issues, theories, and perceptions about employment law cases. Forty-five federal judges from around the country convened to discuss case management, evidence issues, use of experts, electronic discovery, labor law and ERISA preemption, court-based/-annexed mediation of employment disputes, class and collective actions, sex and racial discrimination and jury instruction.

Hon. Bernice B. Donald, a district court judge for the Western District of Tennessee, Joseph D. Garrison of Garrison, Levin-Epstein, Chimes & Richardson, and Kathleen McKenna of Proskauer Rose opened the Workshop with their discussion of case management issues, in particular pro se cases, summary judgment and technology. Acting as the panel's moderator, Garrison offered his thoughts on case management techniques and suggested models of interrogation, requests for production and protective orders.

The second panel, which included Hon. John G. Koeltl of the U.S. District Court for the Southern District of New York, Anne L. Clark of Vladeck, Waldman, Elias & Engelhard, and Kenneth A. Margolis of Kauff, McClain & McGuire, discussed evidence issues and the use of experts. The panel focused on stray remarks, comparators, statistics, direct evidence, prior bad acts, Rule 412, the use of mental health experts, economists and CPA's on damages, "social



Left: Electronic Discovery: Judge Denise L. Cote (U.S. District Court, S.D.N.Y.), Pearl Zuchlewski (Kraus & Zuchlewski), and Theodore O. Rogers Jr. (Sullivan & Cromwell); **Right:** Class and Collective Actions: Mark Dichter (Morgan Lewis & Bockius), Darnley Stewart (Bernstein Litowitz Berger & Grossman), and Judge Denny Chin (U.S. District Court, S.D.N.Y.)



framework” testimony and the use of statistical proof of discrimination.

Electronic discovery was the topic of the third panel. The Hon. Denise L. Cote, a district court judge for the Southern District of New York, Theodore O. Rogers Jr. of Sullivan & Cromwell and Pearl Zuchlewski of Kraus & Zuchlewski focused their presentations on the impact of new federal rules, the breadth of the problem of preservation duty, microdata, sanctions, and the inadvertent disclosure of privileged material. Following the third panel, Frederick D. Braid of Holland & Knight introduced the program’s luncheon speaker, the Honorable Stuart J. Ishimaru, commissioner of the U.S. Equal Employment Opportunity Commission.

Willis Goldsmith of Jones Day and Anton G. Hajjar of O’Donnell, Schwartz, & Anderson discussed NLRA and ERISA preemption issues in the fourth panel of the Workshop. Goldsmith and Hajjar focused their presentations on whether New York and California’s so-called “neutrality” laws are preempted by the federal labor law and whether ERISA preempts state laws requiring the provision of health care insurance.

Special issues in FLSA opt-in actions and EEOC representative suits, issues-

only classes, nationwide classes, supervising settlements, and class action waivers in arbitration agreements were discussed in the Workshop’s fifth panel, led by Southern District Judge Denny Chin, Mark Dichter from Morgan Lewis & Bockius, and Darnley Stewart of Bernstein Litowitz Berger & Grossman.

The last panel of the day covered court-based or -annexed mediation of employment disputes. U.S. Court of Appeals for the Southern District of New York Judge Loretta A. Preska, Donna Malin of Johnson & Johnson, and Wayne Outten of Outten & Golden led this panel and rounded off the first day of the Workshop.

The second day of the Workshop began with a discussion of recent developments in sex and racial discrimination cases. The Hon. Laura Taylor Swain, a district court judge for the Southern District of New York, Mindy G. Farber of Farber Legal, and Scott J. Wenner of Schnader Harrison Segal & Lewis considered stereotyping, adequacy of anti-harassment policies, “disparate impact” challenges to subjective promotion decision, family and medical leave, personal liability of corporate officers, the scope of §1981 actions, and third-party retaliation claims.

The Workshop’s final panel focused on jury instructions, with the Hon. Frederick Block of the U.S. District Court for the Eastern District of New York, Robert L. Herbst of Beldock Levine & Hoffman, and Zachary Fasman of Paul, Hastings, Janofsky & Walker leading the panel. ■

Save the Date!

August 2008—New York, NY

Annual IJA Alumni Reunion and Meeting of the Members

This meeting will be held at NYU School of Law in conjunction with the ABA Annual Meeting.

Invitations will be mailed to all alumni and members of IJA in early summer; we welcome additional members of the NYU School of Law and judicial communities to join us.

We look forward to seeing you in New York.

Hon. Albert Rosenblatt Visits as Judicial Fellow

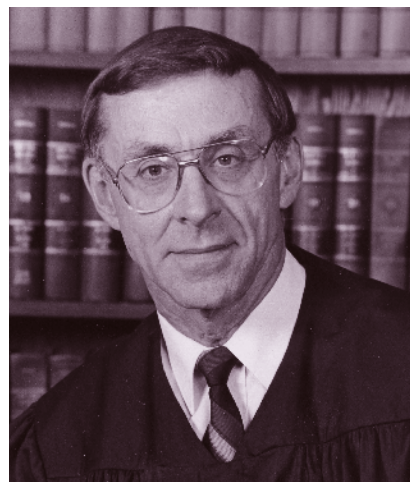
The Honorable Albert Rosenblatt is visiting NYU Law and the Dwight D. Opperman Institute of Judicial Administration as a Judicial Fellow for the 2007-08 academic year. He is teaching the State Courts and Appellate Advocacy Seminar and working with the Institute on its upcoming programs.

Recently retired from the New York State Court of Appeals, Judge Rosenblatt has had a distinguished career as a New York State Supreme Court justice; an associate justice of the New York State Supreme Court's Appellate Division, Second Department; chief administrative judge of the New York State Courts; and both a county judge and district attorney in Dutchess County, New York. He was also a visiting judge at the Harvard Law School Trial Advocacy Workshop, a faculty member of the New York State Judicial Training Seminars, and a course presenter in the Newly Elected Judges

Education Program in New York City. Judge Rosenblatt is an IJA member and an alumnus of the 1993 Advanced Appellate Judges Seminar.

Judge Rosenblatt's books include *Historic Courthouses of the State of New York* (with Julia Rosenblatt, 2007), *The Judges of the New York Court of Appeals: A Biographical History* (2007), and *New York's New Drug Laws and Sentencing Statutes* (1973). He has been published in the *Albany Law Review*, *The New York Law Journal*, and the *Washington University Law Quarterly*, and has served five times as an issue coeditor of the *New York State Bar Journal* with New York State Chief Judge Judith S. Kaye, an IJA Board member.

Looking back on the many cases he has judged through the years, Judge Rosenblatt says, "The ones I most enjoyed writing up were those in which I had to uncover the historical underpinnings, in some instances back to common law or other historical origins



that helped explain things." These cases touched on issues as diverse as organ donation, worker safety, maternal rights, duty of innkeepers to guests, and termination of life support.

Judge Rosenblatt is currently counsel at McCabe & Mack in Poughkeepsie. He is also president and a charter trustee of the Historical Society of the Courts of the State of New York, as well as a fellow of the New York Bar Foundation. He has judged moot court competitions, served on various legal committees, and received numerous awards. Judge Rosenblatt earned a J.D. from Harvard Law School. ■

The U.S. Supreme Court's Term in Review

On August 13, 2007 in San Francisco, the Institute welcomed friends at its annual membership meeting and alumni reunion during the Annual Meeting of the American Bar Association. The breakfast meeting featured an exciting panel discussion, "A Review of the U.S. Supreme Court's 2006-07 Term," moderated by IJA Executive Co-Director, Professor Samuel Estreicher. Three distinguished Board members joined him on the panel: Donald B. Ayer of Jones Day; Peter Buscemi of Morgan Lewis & Bockius; and The Honorable Thomas R. Phillips of Baker Botts LLP, former Chief Justice of the Supreme Court of Texas. ■



Thomas R. Phillips, Peter Buscemi, Samuel Estreicher, and Donald B. Ayer



Judges, Faculty, Guests, and Staff of the program

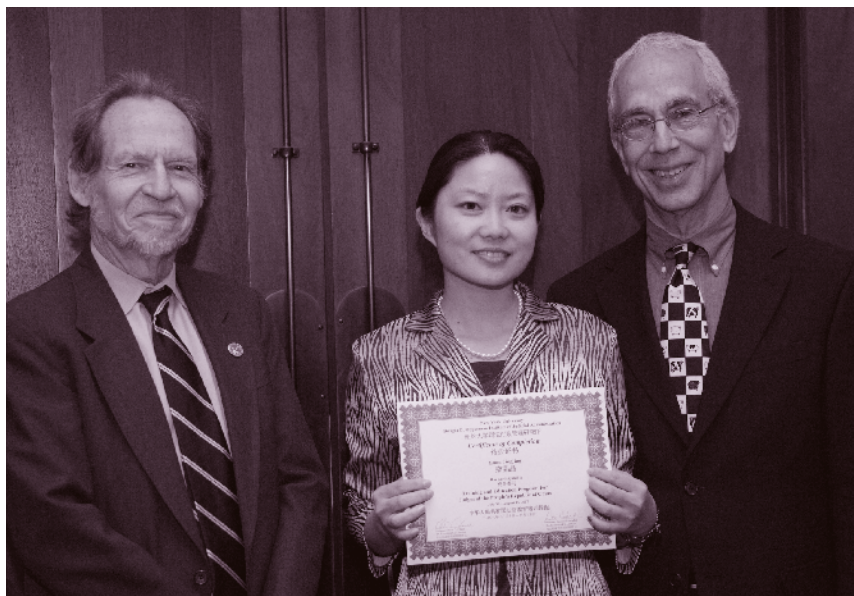
Chinese Judges Explore the American Legal System

On July 28, 2007, twenty-four judges and judicial officials from the People's Republic of China arrived in New York for the 2007 Training and Education Program for the Chinese Judiciary, hosted by the Institute and conducted in association with the Temple University Beasley School of Law and the National Judicial College of Beijing. The visiting judges completed a course of classroom seminars with judges and professors, plus site visits and meetings with New York jurists and lawyers. The program, the fifth of its kind sponsored by the Institute, is part of an education effort linked to reforms underway in the Chinese judicial system.

An unstated but implicit goal of the program was to provide the judges with ideas and experiences that they could think about and discuss among themselves and with their colleagues in China. As Torrey Whitman, director of the program, observed, "After spending a full two and a half weeks with the Chinese judges, I am confident they will share these thoughts when they get home." Realizing the limited applicability of black letter American law to the Chinese legal system, the program faculty emphasized concepts underlying the American legal system, and hosts of site visits were asked to explain the application of systems and procedures to the administration of their courts and agencies.

One visitor, an appellate judge, commented: "The [Second Circuit] Court of Appeals can finish four to five cases in one morning. I am really shocked by this efficiency. But I am also shocked that a case can easily take more than one year in the trial level. I guess it is because of the difference between the U.S. and Chinese legal systems. The case load on Chinese courts is also very heavy. As an appellate level judge, I learned a lot from the judges from the Second Circuit...on how to be more efficient in our own legal system."

The Honorable John M. Walker Jr., former Chief Judge, now senior judge on the Second Circuit and an IJA Board member, welcomed the judges at the opening lunch, as he has done



IJA Executive Co-Director Oscar G. Chase, Assistant Judge Luan Jingjing of the Liaoning Shenyang Intermediate People's Court, and Program Director Torrey L. Whitman

for previous groups. IJA Executive Co-Director Professor Samuel Estreicher lectured on Administrative Law and Specialty Courts, and with Michael Gray of Jones Day on Labor Law and the Role of Courts in Application and Enforcement. Additional lecturers included NYU School of Law Professors Rachel Barkow (Sentencing and Incarceration), Frank Upham (Property Law), Geoffrey Miller (Judicial Ethics), Holly Maguigan (Evidence), Jim Jacobs (Criminal Procedure), Helen Scott (Corporate and Securities Law and Enforcement), and Jerome Cohen (Comparative Criminal Procedure); NYU School of Law Librarian Liz Evans (Information Technology); James Sample of the Brennan Center for Justice (Judicial Training, Election, Selection, and Qualifications); JAMS mediators Hon. Kathleen A. Roberts and Dina Jansenson (ADR); and Temple Law School's Jeffrey Dunoff (World Trade Organization Law). IJA Executive Co-Director Oscar G. Chase and Mr. Whitman worked with the judges to prepare and discuss evaluative essays at the end of the program. During their visit the judges were accompanied by Mr. Whitman and three interpreters chosen from among NYU School of Law's LL.M. graduates.

Many of the faculty taught their sessions in ways not dissimilar to graduate seminars in U.S. law schools, giving hypos and asking the participants for their reactions. Despite the pedagogical differences with their own legal training, the judges were enthusiastic about the give-and-take; one judge commented, "I'm grateful for the chance of communication in class. After these two weeks' experience, I had a deeper understanding of the U.S. legal system and its real practice. I believe that what I learned here will increase my competence as a judge, and will help the reform of our Chinese legal system."

The site visits gave the Chinese judges the opportunity to speak with Judge Denny Chin (Southern District of New York), Chief Judge Raymond J. Dearie (Eastern District of New York), and Justice Doris Ling-Cohan (New York State Supreme Court), with the clerks of the courts, and with senior officials and representatives of the New York County District Attorney's Office, the New York State Advisory Committee on Judicial Ethics, the New York State Office of Court Administration, the New York State Commission on Judicial Conduct, and the Jones Day law firm. The U.S. Court of Appeals for the Second Circuit welcomed the judges to attend an oral

argument. The New York City Bar Association, together with the Asian-American Bar Association of New York and the NYCBA Committee on Foreign and Comparative Law, hosted a reception for the judges.

The participants were very favorably impressed both with the judicial officials they met during the site visits and with the willingness of those officials to devote so much time and to answer candidly and fully the participants' questions. At the Red Hook Community Justice Center in Brooklyn, the nation's first multi-jurisdictional community court, Presiding Judge Alex M. Calabrese, a justice of the New York Supreme Court, not only addressed the participants as a group but also joined them for lunch, so that he could personally meet and talk with all of the participants. One judge remarked that this visit, a highlight of the program, "totally connected with Chinese practice and situation." ■

The 2008 Brennan Lecture



We are delighted to announce that the next distinguished jurist to deliver the Brennan Lecture will be The Honorable Michael A. Wolff,

Judge of the Supreme Court of Missouri, on February 20, 2008.

Judge Wolff was appointed to the Supreme Court in 1998 and retained in office at the 2000 general election; he was elected as Chief Justice for the term of July 2005 through June 2007. Prior to his appointment, Judge Wolff was Professor of Law at Saint Louis University School of Law, Chief Counsel to Governor Mel Carnahan, and a law clerk to U.S. District Judge Miles W. Lord in Minneapolis.

We invite all IJA members and alumni to attend.

New Appellate Judges Seminar

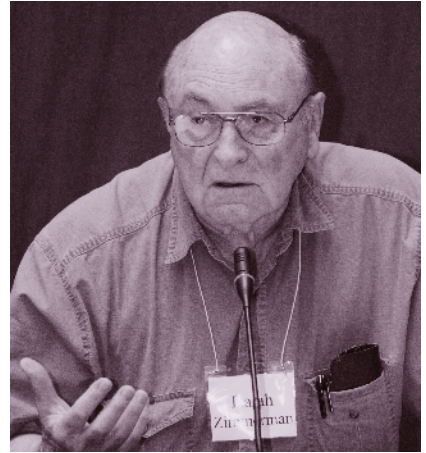
We are delighted to share these additional moments from this summer's program.

Right: Seminar faculty member Dr. Isaiah M. Zimmerman

Below: Seminar attendees, faculty and staff, and IJA Summer Fellows

Bottom, left: Seminar faculty members Judges John M. Walker Jr. and Robert A. Katzmann, first and third from left (both U.S. Court of Appeals for the Second Circuit) talk with Chief Justice Michael MacDonald (Nova Scotia Court of Appeal), second from left, and Judge Craig H. Nakamura (Court of Appeals of Hawaii), right.

Bottom, right: Seminar faculty member Judge Martha Craig Daughtrey (U.S. Court of Appeals for the Sixth Circuit), center, chats with Justice Diane M. Henson (Third District Court of Appeals of Texas) and Judge Phyllis D. Thompson (District of Columbia Court of Appeals).



Judicial Independence in New York

On June 14 the Institute hosted “Protecting Judicial Independence: What Judges and the Bar Association Can Do,” a day-long conference co-sponsored by the New York County Lawyers’ Association (NYCLA) Task Force on Judicial Independence. The Task Force is chaired by Hon. Betty Weinberg Ellerin (former Deputy Chief Administrative Judge of the New York City Courts and former presiding Judge of the New York Supreme Court, Appellate Division, First Department) and Norman L. Reimer Esq. (President of the National Association of Criminal Defense Lawyers).

The conference convened judges, practitioners, and media figures to discuss the increasing pressures on, and attacks against, the independence of the judiciary. After the welcome from the Task Force co-chairs, Professor Oscar G. Chase, IJA Executive Co-Director, introduced a special video presentation by Justice Sandra Day O’Connor. Justice O’Connor recorded this presentation to welcome the conference participants and to highlight the urgency of the topic. She gave an overview of the history of attacks on judicial independence and urged the conference participants to seek solutions.

Catherine A. Christian, NYCLA President, introduced the Hon. George Bundy Smith (former judge, New York State Court of Appeals, now a partner at Chadbourne & Park LLP, and an alumnus of the 1987, 1993, and 1998 IJA Appellate Judges Seminars), who delivered the keynote address.

Following Judge Smith’s address were plenary panels on media and administrative pressures and pressures from institutional players on judicial independence, bringing together reporters from *The New York Times* and the Associated Press; judges of the New York State courts and the U.S. District Court for the Southern District of New York; and leaders of state agencies and judicial associations.

In the afternoon, after an address by Hon. Francis T. Murphy (former Presiding Justice of the New York Supreme Court, Appellate Division, First Department), the attendees divided into breakout groups on “The Commission on Judicial Conduct: Ensuring Judicial Integrity or Intruding on Judicial Independence,” and “Responding to Attacks on Judicial Independence,” moderated by Judge Shira Ann Scheindlin (U.S. District Court for the Southern District of New York) and featuring Hon. Joette Katz (Supreme Court of Connecticut, alumna

of the 1993 New Judges Seminar), and Hon. Robert D. Sack (U.S. Court of Appeals for the Second Circuit, alumnus of the 1998 New Judges Seminar).

The conference concluded by reconvening the participants, recapping the breakout discussions, and making recommendations to the NYCLA.

Since then, Professor Chase, with the support of the Institute, has been collaborating with NYCLA on a comprehensive study of judicial independence in New York. We look forward to seeing the results in 2008. ■

Calendar of Events



For more information on upcoming events, please visit our Web site at www.law.nyu.edu/institutes/judicial.

February 20, 2008

Fourteenth Annual Justice William J. Brennan Jr. Lecture on State Courts and Social Justice

The Honorable Michael A. Wolff, Supreme Court of Missouri

This lecture series honors the state judiciary as the bedrock of justice under law in the United States. We invite all alumni and members to attend.

March 18-19, 2008

Eleventh Annual 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. Interested applicants should contact the FJC.

April 10-11, 2008

Access to Justice Working Group Meeting

July 13-18, 2008

New Appellate Judges Seminar

Co-sponsored by the FJC. For state and federal judges with up to four years of experience on the appellate bench can apply to the Seminar.

Summer 2008

Sixth Annual Training and Education Program for Judges of the PRC

August 2008 in New York

“A Review of the U.S. Supreme Court’s 2007-08 Term”

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

2008-2009

Research Conferences on Domestic and International Access to Justice



IJA Community News

We welcome news updates from our Board, members, program alumni, and Fellows. Please mail or fax us your news for inclusion in the next newsletter.

We congratulate **Hon. Don Beatty** on his elevation from Judge of the South Carolina Court of Appeals to Justice of the Supreme Court of South Carolina. He was sworn in this September, soon after his attendance at this year's New Appellate Judges Seminar.

The recipients of the 2007 Margaret Brent Women Lawyers of Achievement Awards included **Hon. Marsha S. Berzon** of the U.S. Court of Appeals for the Ninth Circuit and **Hon. Irma S. Raker** of the Court of Appeals of Maryland. The award, established in 1991 by the ABA Commission on Women in the Profession, celebrates the accomplishments of women lawyers who have excelled in their field and have paved the way to success for other women lawyers. Both judges have been participants in the Institute's Appellate Judges Seminars, Judge Berzon as a member of the faculty in 2006, and Judge Raker as an attendee in 1994 and 2005.

Former president of the American Academy of Appellate Lawyers and IJA member **Charles E. Carpenter Jr.** announces that he has started a niche firm doing appellate work, Carpenter Appeals & Trial Support LLC in Columbia, South Carolina. Congratulations, Mr. Carpenter!

We are pleased to announce the publication by Thomson West of *Civil Litigation in Comparative Context*, by IJA Executive Co-Director and NYU Law **Professor Oscar G. Chase**, IJA Board member and NYU Law **Professor Linda Silberman**, and Professors Helen Hershkoff (NYU Law), Yasuhei Taniguchi (Kyoto University

Faculty of Law and Senshu University), Vincenzo Varano (University of Florence), and Adrian Zuckerman (University of Oxford). Professors Chase and Hershkoff are also the General Editors of this volume, which presents materials that expose students, scholars, lawyers, and judges to the varieties of process encountered in the world's procedural systems.

Evan R. Chesler, IJA President and Presiding Partner of Cravath, Swaine & Moore LLP, was honored by the Anti-Defamation League (ADL) with the 2007 ADL Human Relations Award. The award honors individuals who have helped turn justice, equality, and humanity into meaningful realities. Said David Hershberg, Chair of the ADL's New York Regional Board, "Evan is an outstanding individual, and his efforts to promote better human relations are a model for others to emulate. I have known Evan for years, and I congratulate him for his exemplary achievements in promoting a more tolerant and diverse workplace."

IJA Member **Hon. Gordon L. Doerfer** was elected President-Elect of the American Judicature Society in August. A former judge of the Massachusetts Appeals Court, Judge Doerfer is pursuing a post-judicial career as a private mediator and arbitrator. Said Appeals Court Chief Justice Phillip Rapoza, "The election of Justice Doerfer to this important position is the capstone of an impressive judicial career. He is an exceptional judge, and I know that he will be instrumental in helping the American Judicature Society to advance its important mission."

We congratulate IJA Executive Co-Director and NYU Law **Professor Samuel Estreicher** on his book *Global Issues in Labor Law*, published by Thomson West as part of the Global Issues Series. The book focuses on the

issues and developments in labor law of which U.S. labor lawyers need to keep abreast in today's increasingly integrated world economy. Professor Estreicher has also edited, with U.C. Berkeley School of Law Professor Gillian Lester, *Employment Law Stories* (Thomson West, 2007), a collection of nine stories that capture a critical moment in employment law, the late-20th century period of ferment in the organization of production and the nature of workplace relations.

Congratulations to **Hon. Harry T. Edwards**, an IJA Board member and judge of the U.S. Court of Appeals for the D.C. Circuit, on the publication of *Federal Standards of Review: Review of District Court Decisions and Agency Actions*, a comprehensive explanation of the standards (2007, Thomson West). Judge Edwards, who is also a Visiting Professor of Law at NYU Law, co-authored the book with Linda A. Elliot, Special Counsel to Judge Edwards and adjunct professor at NYU Law.

IJA Member and Seminar alumnus (1994) and faculty member (1998-2000) **Hon. Craig T. Enoch** received Southern Methodist University's 2006 Distinguished Alumni Award. Justice Enoch's judicial career spanned all three levels of the Texas court system: eleven years on the Supreme Court of Texas, Chief Justice of the Fifth District Court of Appeals, and Presiding Judge of the 101st District Court. Justice Enoch retired from the Supreme Court in 2003 and is now chair of the Appellate Practice Group at Winstead PC.

Hon. Ronald M. George, Chief Justice of the Supreme Court of California, was selected as the winner of the 2007 John Marshall Award by the American
(continued on the next page)



IJA Community News

Bar Association Justice Center. The award recognizes individuals who are dedicated to the improvement of the administration of justice. Chief Justice George delivered the Eleventh Annual Brennan Lecture on State Courts and Social Justice at NYU Law, titled *Challenges Facing an Independent Judiciary*; the Lecture is available on the Web site of the *NYU Law Review*.

1987 New Appellate Judges Seminar participant **Hon. Bert Goolsby** is serving as an active retired judge following his retirement from the South Carolina Court of Appeals. Judge Goolsby was among the original members of the Court when it was first created twenty-three years ago.

Hon. Elizabeth B. Lacy has retired from active service on the Supreme Court of Virginia. Justice Lacy, who was appointed in 1989, was the Court's longest serving member as well as the first woman on the court. In her letter to Governor Timothy M. Kaine, she wrote, "Serving as a member of the Supreme Court for the past 19 years has been a particular honor, and, although retired, I hope to continue to contribute to the work of the court as a senior justice." Justice Lacy participated in the Institute's Senior and New Appellate Judges Seminars in 1989, 1992, and 1993, first as an attendee and then as a member of the program faculty.

Congratulations to **Hon. Douglas S. Lang** of the Texas Fifth District Court of Appeals, who was selected to receive the 2007 Lola Wright Foundation Award from the Texas Bar Foundation. The award is presented in recognition for outstanding public service in advancing and enhancing legal ethics in Texas. Justice Lang, a member of the Institute and alumnus of the 2004 New Appellate Judges Seminar, serves on the Texas Supreme Court

Task Force on the Code of Judicial Conduct and is currently writing a book on professionalism.

1967 Appellate Judges Seminar attendee **Hon. Robert Lavender**, the longest serving justice in the history of the Oklahoma Supreme Court, retired in August after forty-two years of service. Said current Chief Justice James Winchester, "Justice Lavender has served the state well, devoting more than half of his life to the Supreme Court. As the senior member of the court, his wisdom and experience have provided leadership for many years. He will be missed by all."

We congratulate **Hon. Kathleen E. O'Leary**, an alumna of the 2000 New Appellate Judges Seminar and justice of the Court of Appeal of California, Fourth Appellate District, Division Three, who was selected as a winner of the 2007 Benjamin Aranda III Access to Justice Award. The award, co-sponsored by the California Commission on Access to Justice, the Judicial Council, the state bar, and the California Judges Association, honors a trial judge or appellate justice whose activities demonstrate a long-term commitment to improving access to justice.

1989 Advanced Judges Seminar participant **Hon. Robert E. Rose**, former Chief Justice of the Supreme Court of Nevada, has retired and assumed the status of Senior Justice. **Hon. A. William Maupin**, the new Chief Justice and alumnus of the 1998 New Judges Seminar, said of Justice Rose, a reformer who worked with colleagues to create a uniform court system in Nevada, "Our bar is as good as it's ever been, largely because of him. And the bench in this state is as good as it's ever been because of his vision."

Hon. Patrick Sullivan, an alumnus of the 1970 Seminar, has retired from the Indiana Court of Appeals. Judge Sullivan was the longest-serving judge in the Court's history. During his tenure there he also taught as an Adjunct Professor at the Indiana University School of Law at Indianapolis, as a Lecturer on law and social policy at Indiana University Purdue University at Indianapolis, and on American diplomatic history at Indiana University. Judge Sullivan is continuing to serve the Court as a senior judge.

IJA Member and participant in the 2002 New Judges Seminar **Hon. James R. Zazzali** has completed his term as Chief Justice of the Supreme Court of New Jersey and stepped down in mandatory retirement. Chief Justice Zazzali has now rejoined the firm his father founded, Zazzali, Fagella, Nowak, Kleinbaum & Friedman, and also joined Gibbons P.C. as of Counsel.

Departures

We extend our deepest gratitude for the many years of service by **Hon. Rya W. Zobel**, judge of the U.S. District Court for the District of Massachusetts, whose service on the Institute's Board of Directors ended this fall. Judge Zobel was among the most senior members of the Board, and the Institute will greatly miss her leadership.

Program Coordinator **Alison Kinney** will leave the Institute on January 31 with wonderful memories of colleagues and of the judges she has met over the past eight years, not to mention the judicial assistants who have helped her along the way. Alison is taking time off to write her second novel. Professors Chase and Estreicher thank her profusely for her service to the Institute.

Remembering Friends of IJA



The Honorable James L. Oakes was a Judge of the U.S. Court of Appeals for the Second Circuit for 35 years and Chief Judge from 1988-1992, assuming senior status in 1992. He was a long-time member of the Institute. We are honored to share this tribute from Professor Norman Dorsen.

I HAVE ALWAYS THOUGHT OF JAMES Oakes as the complete judge, the perfect model for new judges to emulate.

I first saw Jim during the oral argument before the Second Circuit in the Pentagon Papers case, which I argued *amicus curiae*. When he eventually voted to uphold the First Amendment rights of the *New York Times*, I was a little surprised that a Nixon appointee

would reject the position of the Nixon Justice Department. But when I later got to know him I learned that Jim's deepest commitment was to "individualism and individual rights" as a reflection of what he called our "common humanity."

Accordingly, his opinions, on a wide range of issues, including sex discrimination, due process in criminal cases, the rights of immigrants,

and legislative reapportionment, reflected his view of common humanity. He was especially devoted to protecting the environment.

The sources of a judge's philosophy are always a little mysterious, but among the influences on Jim were his clerkship with Harrie Brigham Chase, Vermont's first judge on the Second Circuit, and some of his cases in

In Memoriam

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

Hon. Paul Boland, a justice of the Court of Appeal of California for the Second Appellate District, Division Eight, passed away in September. Justice Boland was an enthusiastic IJA member and an alumnus of the 2003 New Appellate Judges Seminar. Justice Boland served as a judge for twenty-six years on the appellate and Superior Court benches. Chief Justice Ronald M. George honored his memory with a special presentation of the Stanley Mosk Defender of Justice Award for his many contributions to the California court system.

Hon. Donald P. Lay, judge of the U.S. Court of Appeals for the Eighth Circuit (Chief Judge from 1980-82), passed away in April. Judge Lay was an alumnus of the Institute's Seminars in 1967, one year after his appointment to the Court, and again in 2001. 2007 Federal Judges Workshop participant Hon. Robert W. Pratt, Chief Judge of the U.S. District Court for the Southern District of Iowa, spoke of Judge Lay as being "among the last of the unapologetic liberals who believed deeply in the Warren Court revolution and saw the federal courts as the protector of civil and equal rights."

In June **Hon. John S. W. Lim**, judge of the Intermediate Court of Appeals of Hawaii, passed away. Hawaii Chief Justice Ronald T.Y. Moon said of Judge Lim, who participated in the 2000 New Judges Seminar, "We are devastated by the loss of such a young, intelligent, hard-working, and dedicated jurist."

This past September flags were flown at half-staff in honor of **Hon. Pamela B. Minzner**, senior justice and former Chief Justice of the Supreme Court of New Mexico. Justice Minzner, an attendee of the 1985 and 1998 New and Advanced Appellate Judges Seminars, was the first woman elected by her colleagues to the position of Chief Justice on the Supreme Court.

private practice, including his successful defense of a local postmistress against McCarthy-type charges.

Despite deep commitment to his values, Jim was always willing to rethink an issue, and he valued Justice Holmes's comment that "To...doubt one's own principles is the mark of a civilized man."

Another such mark for a judge is the opinion of his law clerks. They, in the words of Dean Geoffrey Shields of

Vermont Law School, one of his clerks, unanimously "found the experience... to be one of the highlights of our lives." This devotion stemmed not only from Jim's intellectual prowess, but from his warmth and exhilaration, which energized everyone around him.

These qualities were also evident in his personal life, where his interests were broad—among others, gardening, thoroughbred racing and art, to which Mara introduced him in later

life, and his friendships, which were deep and many.

The larger community as well as the law has lost an exemplary figure in James Oakes. ■

Norman Dorsen is Frederick I. and Grace A. Stokes Professor of Law and Counselor to the President of New York University. From 1976-1991 he was president of the American Civil Liberties Union. He is the author or editor of nine books.

The Institute cherishes the memory of its friendship with **The Honorable Thomas J. Meskill** with a tribute by his colleague on the U.S. Court of Appeals for the Second Circuit, the Honorable John M. Walker Jr.

WITH THE PASSING OF JUDGE THOMAS J. Meskill at age 79, the Second Circuit Court of Appeals has lost an exceptional judge and his colleagues have lost a dear friend.

Tom was a judicial craftsman. His straightforward, balanced opinions said what was needed to be said and no more. He had a deep understanding of the law's mission: he saw the law not as a set of problem-solving exercises, but as the calibrated means for ordering disparate and competing interests in the complexities of the real world. His jurisprudence was shaped by his strong belief in the limited, but critical, role a judge plays in our constitutional and federalized system. He was a quintessential judicial conservative.

At the time Tom Meskill was confirmed as a federal appellate judge in 1975, the conventional wisdom held that, because he had spent much of his life in Connecticut politics, as Mayor of New Britain (1962-1964), Congressman (1967-1971) and Governor (1971-1975), he was unsuited to the bench. Major bar groups publicly opposed his nomination, as did the then-Chief Judge of the

Second Circuit (with whom he would later sit on panels). Tom took it all in stride and, after joining the court at age 47 and without bearing the slightest grudge, he simply proved his former critics wrong. A first-rate lawyer and a highly intelligent, careful, analytical thinker, he was very much at home on the bench. At oral argument he was unflinchingly courteous. And he never asked questions to prove a point or to show off, but only to gain a deeper understanding of the case. Very soon the very bar groups that had opposed him were praising him.

As fine a judge as Tom was, he was an even finer man. His rock-solid integrity had its roots in New Britain, Connecticut, where, even after he had been Governor of the State and appointed to the Second Circuit, he was still referred to as "Mayor." Tom and Mary, his beloved wife of 52 years, raised a large family of five children and numerous grandchildren. Tom was a selfless man of deep religious convictions without an ego, who had an easy, friendly manner with people, whether they were leaders in business or government or the staff at the Yale Club where



he stayed when he was sitting in New York. He found amusement in the vicissitudes of life and the foibles of people, remained interested in politics and loved golf. After serving as the Court's Chief Judge in 1992 and 1993, Tom took senior status. He continued working at a high level, however, while finding more time for his family. Although afflicted with a serious blood disease in his later years, Tom labored steadily until he died on October 29.

Every judge on our Court loved and respected Tom. All of us are very proud to have served with him. ■

Hon. John M. Walker Jr. is a Senior Judge on the U.S. Court of Appeals for the Second Circuit. He served as Chief Judge from 2000-2006. Judge Walker is an adjunct professor at NYU School of Law, a visiting lecturer at Yale Law School, and an IJA Board member and member of the New Appellate Judges Seminar teaching faculty.



IJA Summer Fellows Update

Every year since 1996, the Institute 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 and administrative responsibilities for the New Appellate Judges Seminar. We are proud to report the latest news from our former Fellows:

Next year 2006 Fellow **Tracy J. Chin** will be clerking for Judge Eric N. Vitaliano of the U.S. District Court for the Eastern District of New York.

Kara J. Ervin, a 2005 Fellow, is currently clerking for Justice Robert D. Rucker of the Supreme Court of Indiana. Justice Rucker was a participant in the 1994 New Appellate Judges Seminar.

2006 Fellow **Allegra Glashausser** will be clerking for Judge Rosemary S. Pooler of the U.S. Court of Appeals for the Second Circuit in 2009. Judge Pooler is an IJA member, an alumna of the 1998 New Appellate Judges Seminar and 2001 Advanced Judges Seminar, and a former faculty member of the New Judges Seminar.

Next fall **David A. Herman** (2005 Fellow) will be clerking for Judge Carol Bagley Amon of the U.S. District Court for the Eastern District of New York. David is currently working as a litigation associate at Cravath, Swaine & Moore LLP. Judge Amon has participated as a faculty member in the Institute's New Appellate Judges Seminars.

2006 Fellow **Brian D. Johnston** has accepted a 2009 clerkship with Judge Nicholas G. Garaufis of the U.S. District Court for the Eastern District of New York, an alumnus of the 2003 Advanced Judges Seminar. Following graduation and until the clerkship begins Brian will work at Sullivan & Cromwell.

Joshua Kaplan (2005 Fellow) is now working at Davis, Polk & Wardwell.

Having completed his clerkship for Senior Judge Shirley Wohl Kram on the U.S. District Court for the Southern District of

New York, 2004 Fellow **Ari MacKinnon** has now begun another clerkship with Judge Bruce M. Selya of the U.S. Court of Appeals for the First Circuit.

2006 Fellow **Michael Petrocelli** will be clerking for Senior Judge Wilfred Feinberg of the U.S. Court of Appeals for the Second Circuit during 2008-2009. Judge Feinberg is a long-time and current member of the Institute.

2005 Fellow **Kimberly L. Steefel** is now working at Paul, Weiss, Rifkind, Wharton & Garrison LLP.

IJA Summer Fellow Clerkship Update

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Sarah R. Cebik: Hon. Murray Schwartz, U.S. District Court for the District of Delaware

Jeffrey M. Hirsch: Hon. Robert Beezer, U.S. Court of Appeals for the Ninth Circuit; Hon. H. Robert Mayer, U.S. Court of Appeals for the Federal Circuit

1997 Fellows

Melanie Hochberg Giger: Hon. Loretta Preska, U.S. District Court for the Southern District of New York

Anjli Garg Pero: Hon. Theodore McKee, U.S. Court of Appeals for the Third Circuit

Kieran P. Ringgenberg: Hon. Pasco Bowman, U.S. Court of Appeals for the Eighth Circuit

1998 Fellows

Christopher J. Garofalo: Hon. Leonard Sand, U.S. District Court for the Southern District of New York; Hon. Diarmuid O'Scannlain, U.S. Court of Appeals for the Ninth Circuit

Lauryn Powers Gouldin: Hon. Chester Straub, U.S. Court of Appeals for the Second Circuit

1999 Fellows

Margaret Hayes Lemos: Hon. Kenneth Lipez, U.S. Court of Appeals for the First Circuit; Hon. John Paul Stevens, Supreme Court of the United States

Joel Lance Thollander: Hon. Craig Enoch, Supreme Court of Texas

2000 Fellows

Brian Hochleutner: Hon. Dennis Jacobs, U.S. Court of Appeals for the Second Circuit

William McGeeveran: Hon. Sandra Lynch, U.S. Court of Appeals for the First Circuit

Parvin D. Moyne: Hon. Dennis Jacobs, U.S. Court of Appeals for the Second Circuit

Shirley S. Park: Hon. Arthur Gajarsa, U.S. Court of Appeals for the Federal Circuit

2001 Fellows

Yohance C. Edwards: Hon. Margaret McKeown, U.S. Court of Appeals for the Ninth Circuit

(continued on the next page)



IJA Summer Fellows Update

Jessica Kayle Fried: Hon. Carol Bagley Amon, U.S. District Court for the Eastern District of New York

Jennifer G. Presto: Hon. Lawrence McKenna, U.S. District Court for the Southern District of New York

Robert Alexander Schwartz: Hon. Amalya Kears, U.S. Court of Appeals for the Second Circuit

2002 Fellows

Matthew B. Larsen: Hon. Wilfred Feinberg, U.S. Court of Appeals for the Second Circuit

Kimberly C. Spiering: Hon. Mary Mullarkey, Supreme Court of Colorado

James A. Worth: Hon. Pauline Newman, U.S. Court of Appeals for the Federal Circuit

2003 Fellows

Kristina Daugirdas: Hon. Stephen Williams, U.S. Court of Appeals for the D.C. Circuit

Elliot Greenfield: Hon. Victor Marrero, U.S. District Court for the Southern District of New York

Lindsay (Traylor) Braunig: Hon. Stephen Wilson, U.S. District Court for the Central District of California

2004 Fellows

Jason W.H. Burge: Hon. Jerry E. Smith, U.S. Court of Appeals for the Fifth Circuit

Ari D. MacKinnon: Hon. Shirley Wohl Kram, U.S. District Court for the Southern District of New York; Hon. Bruce M. Selya of the U.S. Court of Appeals for the First Circuit

Lee M. Pollack: Hon. Robert S. Smith, Court of Appeals of the State of New York

Teddy Rave: Hon. Leonard B. Sand, U.S. District Court for the Southern District of New York; Hon. Robert A. Katzmann, U.S. Court of Appeals for the Second Circuit

2005 Fellows

David A. Herman: Hon. Carol Bagley Amon, U.S. District Court for the Eastern District of New York

Kara J. Ervin: Hon. Robert D. Rucker, Supreme Court of Indiana

2006 Fellows

Tracy J. Chin: Hon. Eric N. Vitaliano, U.S. District Court for the Eastern District of New York

Allegra Glashauser: Hon. Rosemary S. Pooler, U.S. Court of Appeals for the Second Circuit

Brian D. Johnston: Hon. Nicholas G. Garaufis, U.S. District Court for the Eastern District of New York

Michael Petrocelli: Hon. Wilfred Feinberg, U.S. Court of Appeals for the Second Circuit



Professor Samuel Estreicher with 2007 IJA Summer Fellows Amanda Bakale and Miriam Gedwiser at the New Appellate Judges Seminar opening reception.

Save the Date!

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Thank you.

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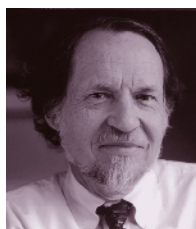
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New York, NY 10012

Professor Oscar G. Chase**Executive Co-Director**

(212) 998-6217
Oscar.Chase@nyu.edu

Professor Samuel Estreicher**Executive Co-Director**

(212) 998-6226
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Dwight D. Opperman Institute of Judicial Administration

Attn: Torrey L. Whitman

New York University School of Law

40 Washington Square South, Room B-09B

New York, NY 10012

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.



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