

# CASE

THE NATIONAL JUDICIAL COLLEGE

# POINT

SPRING/SUMMER 2008

Water Judges  
and the NJC

Exploring the Impact of  
Neuroscience on Justice

## KEEPING THE BALANCE

*Judicial Stress and Wellness*

Trapped in the System

How the NJC  
Helped Me Become  
a Better Judge

THE



## EDITORIAL TEAM

*From left to right:*

Trace Robbers, Director of Communications  
Christina Nellemann, Graphic Designer/Web Manager  
Heather Singer, Communications Specialist

### Our 45th Year of Advancing Justice

Judicial wellness issues seem to be in the headlines a lot this year. Whether for personal or professional reasons, judges are finding new ways to focus on their health and wellness.

In this issue, we take a look at what some experts, including the Hon. Steve Leifman and Dr. Isaiah Zimmerman, recommend. The College's 2008 and 2009 course schedules provide an innovative menu of programs that target many of these issues, as well as topics to help boost judicial skills and productivity.

The NJC's course offerings, professional development opportunities and judicial certificate programs have been designed to improve judicial skills and competency. With a top-tier faculty and dedicated staff, it's clear that an NJC education will add value to your judicial career. We are committed to advancing justice through education, and we believe we do it better than anyone.

The NJC greatly appreciates the assistance of our sponsors, CourtCall®, Westlaw® and ExhibitOne®, for their generous support of our programs and services, and for their sponsorship of this issue of *Case In Point*. Thanks also to our guest columnists and to my dedicated staff, Christina Nellemann and Heather Singer, for their excellent research, writing and design skills. We all hope to see you at the NJC this summer and fall.

Thanks for reading.

Trace Robbers  
Director of Communications

*Cover: Hon. Janet J. Berry of the Second Judicial District Court, Washoe County, Nev., balances the many responsibilities of a judge.*

*Cover location provided by Circus Circus Reno Hotel and Casino. Call (800) 648-5010 or visit Circus Circus Reno online at [www.circusreno.com](http://www.circusreno.com).*

CASE IN POINT  
Vol. 7, No. 1, Spring/Summer 2008

CASE IN POINT is published two times a year by The National Judicial College. Articles and information that appear in CASE IN POINT do not necessarily reflect the official position of The National Judicial College. Published articles do not constitute an endorsement of views which may be expressed. Readers are invited to address comments and suggestions to the publisher/editor; however, we cannot guarantee the publication or return of unsolicited manuscripts. CASE IN POINT articles and content are copyright protected. The National Judicial College encourages republication and dissemination of articles it publishes with permission. To secure permission to reprint CASE IN POINT articles, please contact the publisher/editor.

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## Keeping the Balance

By Philip M. Stahl, Ph.D., ABPP

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In trying economic and political times, managing stress is important for everyone, especially judges.

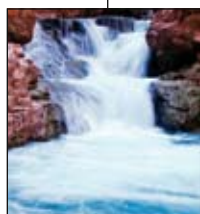


## Water Judges Make Link to the NJC

By Carolyn Brickey, Executive Director for Dividing the Waters

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The NJC has become a partner in Dividing the Waters, a project to discuss an important issue in the western United States: the adjudication of water rights.



## Exploring the Impact of Neuroscience on Justice

By Edward W. Lempinen, AAAS (American Association for the Advancement of Science)

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Advances in neuroscience – and their profound implications for the justice system – were the focus of presentations and dialogues at the Emerging Issues in Neuroscience conference, a program for judges.



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**S**tress is common in everyday life, but certain professions encounter higher professional stress levels than others. For example doctors, law enforcement officers and teachers can experience levels of stress at work and at home that can influence mental and physical health. Being a judge is no exception. According to Isaiah Zimmerman, a clinical psychologist who taught at the Washington School of Psychiatry and long-time member of the NJC's faculty, judicial wellness is as important to serving on the bench as knowing the law and making fair and just decisions.

In an article he wrote for the July-August 2006 edition of *Judicature* magazine, Dr. Zimmerman pointed out several stress factors that can occur in judges' lives: health issues, mental health problems, substance abuse and addiction, career and organizational stress, marital and family issues, aging and retirement. Coping with these problems can often be difficult for judges, who fear shame and loss of privacy should their problems become public,

## JUDGES AND JUDICIAL STRESS

according to Dr. Zimmerman's article, entitled *Helping Judges in Distress*. "As a result, many judges experiencing medical, emotional, family or career difficulties soldier on without help, turn to other judges for advice, or seek help totally outside the system," wrote Dr. Zimmerman.

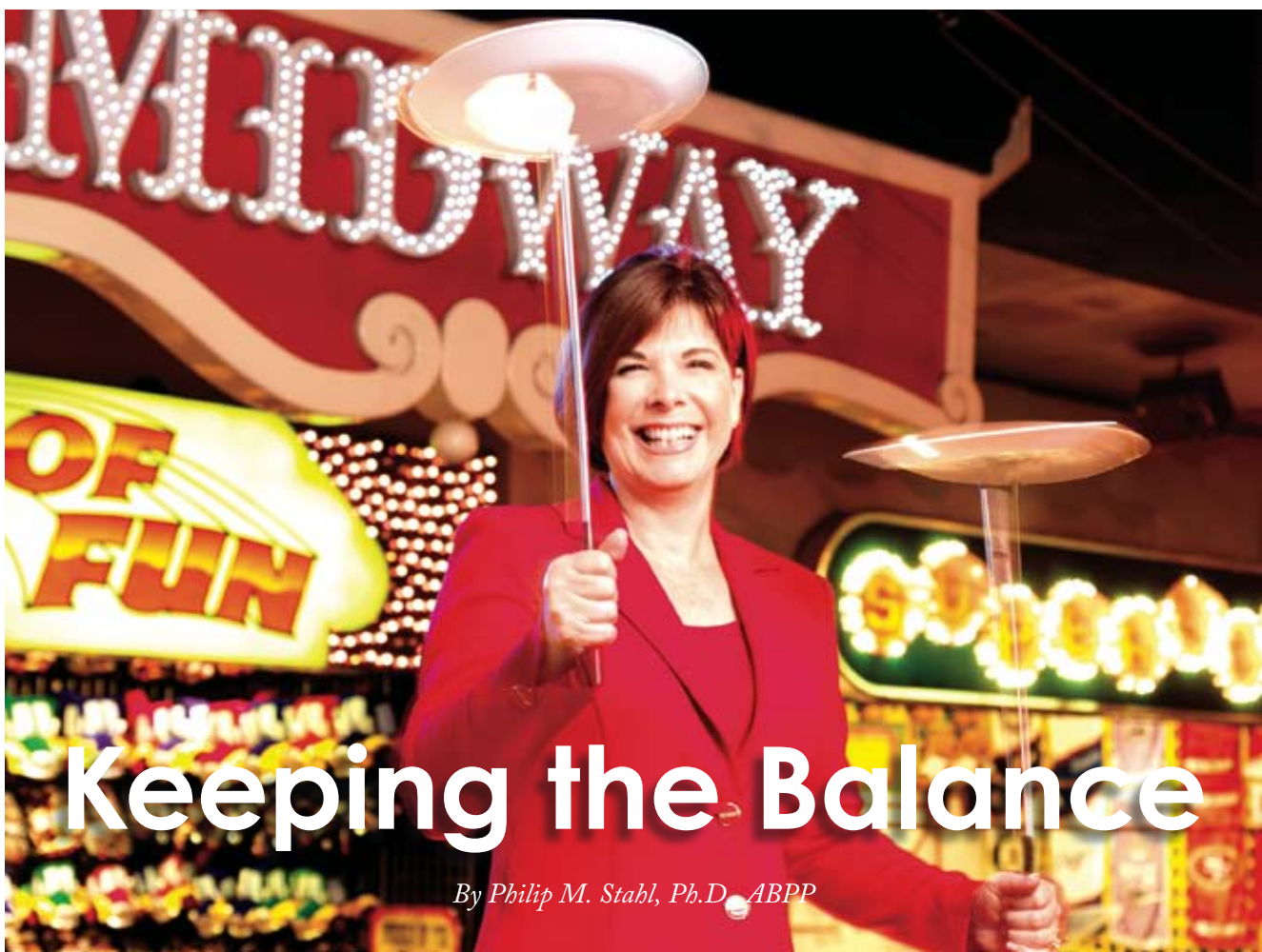
The National Judicial College has for a long time recognized that the quality of justice can be influenced by judicial officers' overall physical health and mental outlook. Judges whose lives are balanced in all areas are generally more effective. In keeping with nationwide trends of addressing judicial wellness, the NJC developed Judicial Wellness and Personal Security, being offered Sept. 24-25, 2008, at the College's Reno, Nevada, campus. This course, like many of the NJC's programs, is designed to help participants identify how job demands can stress relationships and negatively impact health.

Participants will examine strategies to manage job responsibilities that will help them achieve a balanced life on and off the bench and alleviate the anxiety and strain that can accompany the difficult decisions they make daily. According to the American Institute of Stress, working longer hours, workplace violence, and job insecurity are some of the main causes of increased stress levels in the workplace resulting in health problems. Judges, in particular, may suffer increased worry about personal security issues due to the increase in threats against judges nationwide. The NJC's Judicial

Wellness and Personal Security course addresses how judges can protect themselves in their courtrooms and at home.

Handling stress is a crucial aspect of being a judge because the job is isolating and it can be burdensome for judges who vicariously experience some of the worst acts of citizens against each other or vulnerable populations. Learning proper techniques for stress management is as important to judges as having knowledge of the law and the court system. Dr. Zimmerman's *Helping Judges in Distress* article reinforces the feelings of isolation judges can experience. "While the judicial career is deeply satisfying and rewarding, it also includes the accumulation of feelings of guardedness, isolation, and vulnerability, all of which are kept hidden behind the public persona," wrote Dr. Zimmerman.

Before I took the position as president of the NJC, I served as a trial judge in Colorado for 22 years. I experienced and saw the personal toll of judicial stress. Whether or not you are able to attend the NJC's course or other training on stress management, take the time to assess how stress is impacting your career and seek solutions to achieve a balanced personal and professional life. You deserve it, your family deserves it, as do the people you serve.



# Keeping the Balance

*By Philip M. Stahl, Ph.D., ABPP*

**B**eing a judge can have many perks, including prestige, self-satisfaction, and the opportunity to provide a community service in the judicial system. At the same time, being a judge can be lonely, stressful, and can carry a burden shared by few. To make matters worse, violence against judges has been on the increase in recent years, as noted by two high profile shootings. In February, 2005, the husband and mother of a Chicago-area U.S. district judge were killed. In June, 2006, a Reno family law judge was shot standing by the window in his courthouse. As word of these shootings has spread throughout the country, judges have had even more to be concerned about. Maintaining wellness in the face of one's fears, stressors, and challenges can be difficult, but at the same time, judges who practice wellness are rewarded with increasing self-satisfaction and positive regard.

In short, wellness means taking care of yourself. Wellness connotes an attitude of self-care, a practice of health maintenance, the management of stressors, and an enjoyment of life. The practice of wellness incorporates emotional, physical, and spiritual elements, all of which are designed to help you take care of yourself in healthier ways.

**Judges who practice wellness are rewarded with increasing self-satisfaction and positive regard.**

In recent years, there has been limited, but growing research into the areas of judicial stress and judicial wellness. Sources of stress for judicial officers include the weight and burden of the task, a sense of loneliness, fears regarding one's safety and the safety of one's family, a sense that there is not enough time to do what one is charged with doing, among

others. There has been growing research in the area of vicarious or secondary stress, as judges are regularly exposed to the traumatic experiences of individuals in their courtrooms. A related stressor, commonly known as compassion fatigue, can affect judges who regularly feel overwhelmed with the compassion toward others in their courtroom. Many judges suffer from burnout and have limited opportunities to deal with it because of the loneliness many judges experience.

Managing stress is the task of wellness. Understand your feelings, pay attention to your emotions, your physical and spiritual well-being, and the ways in which the stressors may be affecting you. Do you sleep enough? Are you drinking too much? Have you gained considerable weight over the past several months? Are you feeling tired most of the time, or do you find little joy in your life? Do you avoid close or intimate relationships? These are all potential signs





that stress is interfering with your well-being in an unhealthy way.

The first step in any wellness program is recognizing that you are having a problem. Consider the ways that stress manifests within you. Know that this can occur psychologically, emotionally, physically, or spiritually. Pay attention to how your crowded docket affects you

**Learn to manage  
your time at work  
productively so that  
you can enjoy your  
time away from work.**

and your family. Learn to find outlets that give you a sense of pleasure away from your work. Learn to manage your time at work productively so that you can enjoy your time away from work. Physical activity not only helps with your physical health but your mental health as well. Less

traditional wellness practices can include yoga, tai chi, etc. These and other wellness efforts, including adult networking, are all designed to help you manage your stressors and improve the quality of life for you and your family.

If you are interested in learning more about judicial stress and wellness, and in particular about how you and your colleagues become stressed, the typical effects of such stress on individuals and their families, and ways to manage stress from a wellness perspective, you may want to consider enrolling in the NJC course, *Judicial Wellness and Personal Security* in September, 2008. Call (800) 25-JUDGE for more information.

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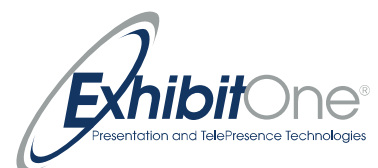
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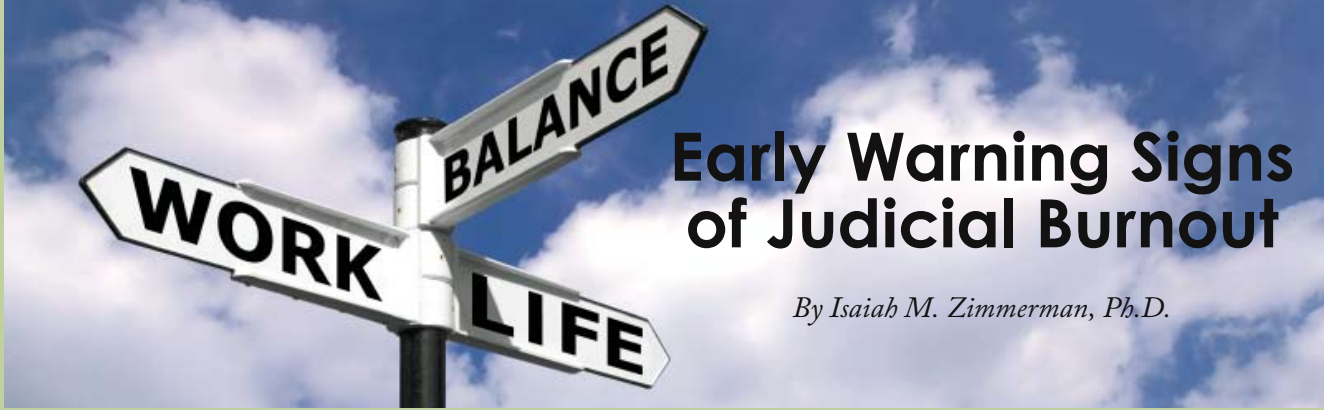


HEAR.



SPEAK.





# Early Warning Signs of Judicial Burnout

By Isaiah M. Zimmerman, Ph.D.

*Editor's Note: This self-test includes excerpts from Dr. Zimmerman's work on Judicial Wellness and is provided as an introduction to help promote health and wellness within the judiciary.*

## True False

- |                          |                          |     |  |
|--------------------------|--------------------------|-----|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 1.  | I feel tired after hearing three or four cases in a row.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 2.  | I am easily irritated and generally feel impatient.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 3.  | I delay in picking up the ringing telephone or in asking my assistant for messages.                          |
| <input type="checkbox"/> | <input type="checkbox"/> | 4.  | I feel isolated from the mainstream of current legal thought and administrative innovation in the judiciary. |
| <input type="checkbox"/> | <input type="checkbox"/> | 5.  | I care little about the outcome of most trials.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 6.  | I allow myself to tolerate boredom without trying to initiate some relevant/stimulating dialogue.            |
| <input type="checkbox"/> | <input type="checkbox"/> | 7.  | I cannot wait for the day's work to end. I terminate proceedings a little early.                             |
| <input type="checkbox"/> | <input type="checkbox"/> | 8.  | I am reluctant to be socially identified as a judge.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 9.  | I feel impotent when colleagues are procrastinators.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 10. | I have largely given up explaining or speaking up about the nature of my work.                               |
| <input type="checkbox"/> | <input type="checkbox"/> | 11. | I feel cynical about the motives of my brethren.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 12. | I increasingly feel supremely confident about my own motives and reasoning.                                  |
| <input type="checkbox"/> | <input type="checkbox"/> | 13. | I never ask a respected colleague to critique my work.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 14. | I have an answer or approach for most questions.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 15. | I find that 15 minutes is generally more than enough time for a 30-minute hearing.                           |
| <input type="checkbox"/> | <input type="checkbox"/> | 16. | I seem to glance at my watch a lot.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 17. | I feel basically, that people do not change and the human condition is rather hopeless.                      |
| <input type="checkbox"/> | <input type="checkbox"/> | 18. | I have no desire to write anything about my work as a judge.   |
| <input type="checkbox"/> | <input type="checkbox"/> | 19. | My daydreams are increasingly concerned with money/security/sex and peace.                                   |
| <input type="checkbox"/> | <input type="checkbox"/> | 20. | After verbally making an appointment, I often forget to write it down.                                       |
| <input type="checkbox"/> | <input type="checkbox"/> | 21. | I often feel physically exhausted or "wiped-out."  |
| <input type="checkbox"/> | <input type="checkbox"/> | 22. | Holiday greetings and cards have become a nuisance.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 23. | I have stopped fighting administrative battles – It's not worth the struggle.                                |
| <input type="checkbox"/> | <input type="checkbox"/> | 24. | My reaction to pleas of urgency is increasingly numb.  |
| <input type="checkbox"/> | <input type="checkbox"/> | 25. | Only cases involving the wealthy, the powerful, or big corporations command my full attention.               |

## How did you rate? Suggested Self-Scoring Guide

If the total number of T (True) answers is:

- Above 12:** I am probably experiencing burnout.  
**Between 8-12:** I am on the borderline.  
**Below 8:** I am coping with stress reasonably well.

# STAYING PREPARED

## Judge Richard Jones Says the NJC Prepared Him for Major Courtroom Roles

By Heather Singer, NJC Communications Specialist



**IT'S BEEN FIVE YEARS** since Judge Richard Jones presided over one of the most horrific serial killing trials in United States history – the trial of Gary Leon Ridgway, known as the “Green River Killer,” who eventually pleaded guilty to 48 counts of murder.

“The National Judicial College helped prepare me when I was assigned to this trial,” recalled Judge Jones, who served on the King County Superior Court, Wash., from 1994 to 2007. “At the beginning of the case, I knew extraordinary demands would be placed on me and the court by the media. One of the first things I did was to attend the NJC’s Courts and Media course (formerly Basic Skills for Disseminating Court Public Information).”

During that course, Judge Jones received training that would prove critical in handling the case efficiently. Nationwide media reports surfaced touting Judge Jones’ professional courtroom conduct during the contentious Seattle trial. He now returns year

after year to the NJC to pass his knowledge and wisdom along to others at the same place where he first learned the skills he utilized in overseeing that historic case. “The NJC does an excellent job of choosing a diverse, talented faculty from across the United States – people who are at the top of their game who are able to provide quality education and training in a limited amount of time,” he said.

Even though Ridgway, who was arrested in 2001, pleaded guilty in 2003 to 48 murders, there has been speculation he may have been involved in the deaths of more than 70 women. As a result of what Judge Jones learned, he was able to efficiently balance media inquiry with Ridgway’s right to a fair trial.

The trial was especially difficult to conduct because of the number of victims as well as the overall number of people throughout the community whose lives had been negatively impacted, said Judge Jones. “I had a healthy and wholesome relationship with the media throughout the trial,” explained Judge Jones. “The public had full access through the media which made the whole process much more transparent and helped the community to be able to heal by having a better understanding of the court proceedings.”

One aspect Judge Jones was especially commended for was treating the victims’ families with dignity and respect. Many of the victims had histories of prostitution and were classified as “throw-aways” of society, but Judge Jones said he would not allow that sort of attitude to prevail in his courtroom. “My goal with this approach was to restore dignity to those victims and their families,” he recalled.

Judge Jones first attended the NJC’s courses in 1996, completing nine courses and workshops since then. Since becoming a member of the NJC faculty in 2000, he returns twice a year to share the knowledge he learned with other judges who come to the NJC. He said he learned from the best and now feels a responsibility to pass along that knowledge. He has taught more than 20 courses and volunteers his teaching time because the NJC is a not-for-profit institution.

Judge Jones teaches subjects such as roles of the



judge, jury management, contempt and trial disruption. "Part of teaching is having experience," he said. "The judges who come to the NJC deeply appreciate someone who has experienced numerous challenges and can draw upon those experiences to better educate others. Judicial education is so important because there is a tendency for judges to be isolated and feel compelled to figure out everything on their own. When they come to the College, they realize there is a whole big family of judges from across the country to learn from and exchange ideas."

Judge Jones now faces a new and exciting challenge. On Oct. 30, 2007, he was sworn in as a federal judge for the United States District Court of the Western District of Washington, an experience he describes thus far as being "absolutely fantastic." He filled the vacancy created when U.S. District Judge John Coughenour became a senior judge in July of 2006. Prior to being sworn in on the federal bench, Judge Jones served on the King County Superior Court for 13 years.

Judge Jones, who received his bachelor's degree from Seattle University and his Juris Doctor degree from the University of Washington, also served as a Deputy King County prosecutor, staff counsel to the Port of Seattle, an associate for one of Seattle's biggest law firms, Bogle & Gates, and as an assistant U.S. attorney. During the 19 years he practiced law, Judge Jones specialized in criminal law and commercial litigation. Among other awards, in 2004, he


was named as Judge of the Year by the King County Bar Association, the Washington State Trial Lawyers Association and the Washington State Bar Association.

The federal cases Judge Jones will handle might be more complex but thanks to his experience on the bench and what he has learned at the NJC, Judge

Jones feels confident in tackling his new role. "As a federal judge, there are so many difficult and complex areas of the law," expressed Judge Jones. "The large number of trials I have presided over as a trial judge has well prepared me to deal with the challenges of federal case management and litigation."

Serving on the bench gives Judge Jones the chance to make a positive impact in other peoples' lives, which he described as the most rewarding aspect of his career. He stressed the importance of judicial outreach and giving back to the community. He

also takes pride in serving as a mentor and a role model for less privileged, inner city youths who are struggling against the odds. "As a judge, you have a responsibility to be connected to your community," emphasized Judge Jones, who has been extensively involved in working with the YMCA of Greater Seattle to help youths throughout the community.

"There are so many kids who grow up poor and perceive they can't break out of the cycle of poverty," said Judge Jones. "I do my best to share my experiences and lay the groundwork for others to follow." 

**"The public had full access through the media which made the whole process much more transparent and helped the community to be able to heal by having a better understanding of the court proceedings."**

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# GENERAL JURISDICTION

## Enhancing Judicial Skills & Confidence on the Bench

8



**In 2008** judges will have one more opportunity to participate in The National Judicial College's flagship course, General Jurisdiction. The two-week program is scheduled to be held October 19-30 at the NJC.

"The NJC's General Jurisdiction class was great," expressed Judge Clark Hall, a general jurisdiction judge from Gadsden, Ala. Judge Hall attended the General Jurisdiction class in October of 2007. He added, "I learned a lot of new law and brushed up on other legal issues that I was familiar with. The discussion groups we had really allowed me to understand the methods and procedures practiced by judges in other state jurisdictions."

Judge Hall's positive review of the class is common among course participants. The interaction and exchange of diverse ideas that take place during the two-week course provide lifelong skills for the participants. Some of the topics covered include decision-making, developments in criminal law and procedure, family law, judicial discretion, ethics, sentencing, controlling the courtroom, handling juries and dealing with the media. There are also sessions regarding evidence, sentencing, self-represented litigants and problem solving courts, including drug courts, domestic violence courts and mental health courts.

"This course allows judges from different states to share knowledge and learn from each other," explained NJC Program Attorney Verdene Johnson. "That is how positive changes are made in our judicial system. By helping bring about those changes, The National Judicial College is fulfilling its mission of advancing justice."

Although many states offer judicial education, course feedback suggests that the NJC's General Jurisdiction course is the only nationwide course to give judges a national perspective on issues. According to Judge Hall, Alabama has semi-annual judicial conferences where judges are updated on the current law.

"However, what we are offered at the state conferences does not compare to the classes offered at the NJC," expressed Judge Hall. "The approach and application by the other judges I met and worked with was greatly beneficial."

Judge Hall said that upon returning from the General Jurisdiction course, he implemented newly-learned strategies. In presiding over civil jury trials, he now asks lawyers if they would object if the jurors had a copy of the jury instructions. This technique was learned at the NJC. He said the lawyers were receptive to the idea. In polling the jurors after the trial, Judge Hall discovered that jurors found this to be extremely helpful.

"The participants on the sentencing panel really validated the methods that our jurisdiction uses at this time in dealing with drug offenders," added Judge Hall. "My jurisdiction has various programs to address drug offenders, and understanding better which programs to apply in different situations was helpful."

Judge Hall's favorite aspect of the course was meeting the other judges and hearing how they conducted their respective courtrooms. The breakout sessions really proved to be instrumental because they allowed for one-on-one time with other judges, he added. "The facilitator was very, very beneficial in directing the group's attention on the matters of interest," recalled Judge Hall. "My facilitator, Judge Slaby (Judge Lynn Slaby, Court of Appeals, Akron, Ohio), was very personable and gave our group a lot of insight."

Judge Hall enjoyed the course so much he said he would like the opportunity to serve as a group facilitator for the General Jurisdiction course in the future. In addition, he was inspired to enter the NJC's Master of Judicial Studies program. "I would recommend this course to any judge," he said. "There is something for every judge in the program, even the most learned judge would benefit from the General Jurisdiction course."

The discussion groups we had really allowed me to understand the methods and procedures practiced by judges in other state jurisdictions.

# LIVE, LOVE, LAUGH

Judge Ilona Holmes Shares Her Love  
of Law and Laughter at the NJC

**JUDGE ILONA HOLMES**, of Ft. Lauderdale, Fla., enjoys sharing her unique humor and love of the law with other judges at The National Judicial College. In the past decade, she made her way from being a course participant in courses such as General Jurisdiction and Ethics for Judges to serving as a group facilitator.

"When I became a judge in 1995, I heard about The National Judicial College's General Jurisdiction course," recalled Judge Holmes. "I heard it was a great course so I took it, and it was the best three weeks. I met wonderful people and learned so much. I loved being a group facilitator too. Outside of class, I got to lead in-depth discussions in which I became familiar with the true feelings and challenges faced by other judges."

March of 2008 was her first faculty teaching experience for the NJC's Enhancing Judicial Bench Skills course in which judges learn to oversee their courtrooms more effectively.

"Serving as faculty for the College was something I loved," expressed Judge Holmes, who is also a licensed minister. "It was so fulfilling. I would do it again. Judicial education is so important for maintaining the standards to which judges should strive for in knowing and applying the law."

Teaching is not new to Judge Holmes who has shared her love of justice and her expertise on the bench at the University of Fort Lauderdale, Nova Southeastern University, St. Thomas School of Law, Florida's New Judges' College and Florida International University.

"I have been teaching my entire judicial career," she said. "In order to teach, you have to be taught."

Though, Judge Holmes has taught and mentored many people for nearly a decade, the experiences she has had at the NJC stand out because they enabled her to network and exchange ideas with other judges from across the nation.

"It is amazing to share our common experiences,"



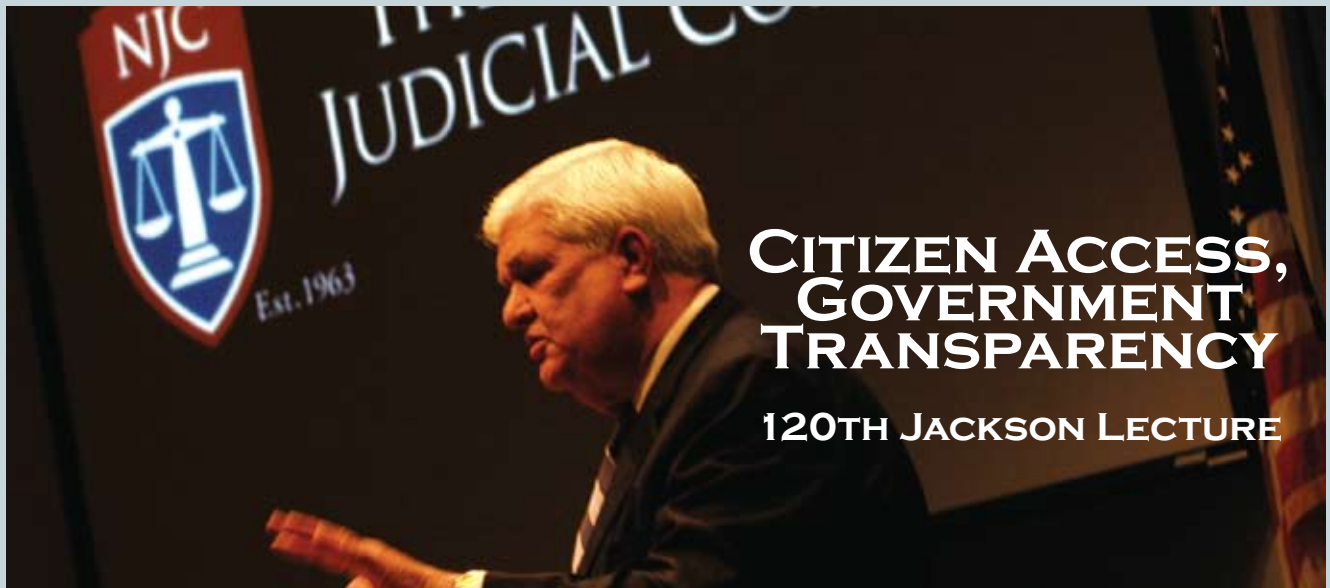
she expressed. "I love The National Judicial College."

The participants in Judge Holmes' course were imparted with more than two decades of judicial expertise. But expertise was not all. Humor and laughter are as much a part of her life in keeping her well-rounded and grounded, said the judge, who is a stand-up comedienne outside the courtroom.

"I don't take myself too seriously," she said. "And I don't hold grudges. If you do it right and are not offensive, laughter can relieve tension in a courtroom," and, in a classroom as Judge Holmes proved at the NJC with entertaining and uplifting class sessions. A former county court judge and assistant United States attorney, Judge Holmes stays busy by being involved in many community organizations. She is the chair of the Board of Directors for the University of Ft. Lauderdale and former vice-chair of the Publication Review Committee of the 17th Judicial Circuit Chief Judge's Committee. She is a former member of the Florida Bar Judicial Evaluation Committee and a member of the Board of Directors of Family Central, Inc., an organization which provides education and social preparation for children. Judge Holmes received the 2003 Stephen R. Booher Memorial Award from the Broward County Bar Association in recognition of her dedication to the bench, bar and community.

For new judges, she offered the following advice: "Learn all you can in your chosen field and be passionate. The law is not only my profession, it is my passion." NJC





**B**ruce R. James, the 24th Public Printer of the United States, spoke to an audience of 75 general jurisdiction judges, invited guests, university personnel and the general public on April 9, 2008, as part of The National Judicial College's Robert H. Jackson Lecture Series. James is credited with the transformation of the Government Printing Office (GPO) from a print-centric factory operation into a modern, 21st century digital information provider. From 2002 to 2007, he served as the public printer, a position first held by Benjamin Franklin. The GPO is charged with the production, distribution and preservation of both electronic and printed publications for all three branches of the federal government.

In his lecture, James noted the importance of citizen access to government information and the need for government to be transparent in that endeavor.

"Digital technology has transformed, and is continuing to transform the way our government sends, receives and archives official documents," said James. "For our court system, this will be a huge undertaking, but it must happen and will happen."


James noted that virtually all published federal government information is available on the Internet and the GPO is moving to make all past documents back to the Federalist Papers also available to the general public. During the process of converting the GPO into a digital clearinghouse, James focused on six key points that he says are essential for government entities, such as court systems, to employ to realize full citizen access and government transparency:

1. Preservation of documents
2. Standards for preparing documents
3. Authenticity of documents
4. Version control of documents
5. Legacy and historical documents
6. Capturing of electronic information as documents

He continued, noting that more than half of government documents today are born digital and will never be printed by the federal government. And, the challenges of authenticating and preserving electronic documents are being met in a variety of ways by the GPO that can also be used by local government.

"Federal courts in the U.S. are far behind federal courts of other countries in terms of adopting and utilizing digital solutions for court documents," James said. "Digital change is coming rapidly, and judges in the very near future will have to adapt to make certain that what happens in their court is 'transparent' and available to all."

Looking to the future, James ended his lecture by predicting that printed documents will not exist in 50 years and that we will need to find ways to save and archive these new digital documents in perpetuity.

The NJC's lecture series was named after Justice Robert H. Jackson by his friend and Supreme Court colleague, Justice Tom C. Clark, one of the College's founders. The Jackson Lecture Series is presented by the NJC to heighten awareness of leading judicial issues and topics, and is provided free of charge to the College's participants, university community, and general public. 

"DIGITAL CHANGE IS COMING RAPIDLY AND JUDGES IN THE VERY NEAR FUTURE WILL HAVE TO ADAPT TO MAKE CERTAIN THAT WHAT HAPPENS IN THEIR COURT IS 'TRANSPARENT' AND AVAILABLE TO ALL."

# A BLESSING & A BURDEN

## The Impact of *Oliphant* on Indian Country Justice

By Christine Folsom Smith, Program Attorney, The National Tribal Judicial Center

This year marks the 30 anniversary of the Supreme Court's ruling in *Oliphant v. Suquamish Indian Tribe*. *Oliphant*<sup>1</sup> dealt a grave blow to tribal sovereignty, simply erasing tribal criminal jurisdiction over non-Indians who committed crimes within tribal territory. As a result, crimes committed by non-Indians in Indian Country, which cannot be prosecuted by the state, may fall into a void unless the crime is prosecuted by the federal government.<sup>2</sup> Tribal victims of crime are often denied justice by a system born of the *Oliphant* decision. I sat down with Vincent Knight, executive director of the National Tribal Justice Resource Center, Boulder, Colo., and a member of The National Tribal Judicial Center Council, and Gary LaRance, chief judge of the Colorado River Tribes and a member of The National Tribal Judicial Center Council, to get their impressions of how this ruling has affected Indian country and what they thought the result would be if the *Oliphant* decision were fixed legislatively by Congress, and criminal jurisdiction over non-Indians was returned to the tribes.

**Knight:** *The holding in Oliphant was based on a specific treaty<sup>3</sup> language interpretation but applied across the nation to all tribes that exercised criminal jurisdiction over non-Indians. The decision created a jurisdictional vacuum which many states refused to fill.*

*In turn, this refusal to enforce state criminal laws created "lawless areas" that are currently being used by organized drug rings selling methamphetamine in Indian country.*

Tribes have long looked to Congress to provide a legislative fix that would return criminal jurisdic-



tion to the tribes. If this were to occur, it would likely be accompanied by an increased need for law enforcement resources including officers, jail space, probation officers and rehabilitation alternatives as well as funding for public defenders for all criminal defendants in Indian country. While a legislative fix would restore jurisdiction to

tribes and help stem the slow leaking of tribal sovereignty, there are obstacles to ponder.

**LaRance:** *A legislative reversal of Oliphant would be both a blessing and a burden to the tribes. On one hand, it would be an overdue acknowledgement of tribal sovereignty. By returning the inherent power of tribes to regulate and protect tribal people and communities from the crimes of all people, all people in the community, Indian and non-Indian, benefit. Conversely, this return of jurisdiction would be a financial burden on the tribes as well as an imposition of great responsibility to develop and expand tribal judicial systems. Tribes will need to prepare to provide not only law enforcement but also a full range of social services to all those falling under tribal jurisdiction.*

There is no doubt that the debate surrounding *Oliphant* and its devastating impact on Indian country will continue unless and until Congress chooses to act. A legislative fix, while recognizing the inherent power of a sovereign nation to police itself, will also impose substantial economic duties on tribal governments. Many in Indian country are adamant that Congress return jurisdiction to tribes as well as provide affirmative funding to ameliorate the challenges tribes will face. Equally important is the need for tribes to prepare to take on the mantle of true sovereigns for the good of Indians and non-Indians alike in Indian country.

1 *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

2 *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 208 ("...Indians do not have criminal jurisdiction over non-Indians absent affirmative delegation of such power by Congress.")

3 The treaty the Court looked at was the 1855 Treaty of Point Elliott, 12 Stat. 927, which was between the Duwamish, Suquamish, and other allied and subordinate tribes of Indians in Washington Territory.




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# WATER JUDGES

## Make Link to the NJC



*By Carolyn Brickey, Executive Director for Dividing the Waters*

In 1993, a couple of water judges started talking about the adjudication of water rights, a big issue in the western United States. They felt isolated and suspected that others did too. With the help of the Ford Foundation and the Arizona Supreme Court, they started a project called Dividing the Waters. Since that time, judges from 13 western states have discussed their mutual experiences and given or received advice many times.

"We decided that the issues we were struggling with were fairly unique, and that we needed to form a network of our colleagues to work together," says founder John Thorson, then a special master for water adjudications in Arizona.

Judge Daniel Hurlbutt, in charge of the Snake River Basin adjudication in Idaho, agreed. Now a senior judge, Hurlbutt was concerned that adjudications lacked efficiency and finality. "We needed to be creative and find better ways to move ahead," he said.

General stream adjudications decide the water rights for hundreds of thousands of individuals as well as for communities and institutions. These decisions will have enormous policy, political and cultural implications for communities and natural resources for decades to come. Some judges also preside over complex environmental litigation and are in need of policy expertise. Yet, judges often have little substantive support in the areas of science and policy and few opportunities to interact and learn from each other.

The results of these adjudications dwarf the impact of land acquisitions or water right purchases by conservation and environmental groups. Dividing the Waters represents an opportunity to ensure that the judiciary receives solid information about natural resource policy and science issues with a balanced approach.

Since its founding, the project has developed into a community of more than 170 judges and other decision-makers involved in general stream adjudications and other complex water cases and provides them with ongoing, tailored, educational and information-sharing opportunities. State trial judges have been most directly served by this project, although state appellate judges, federal trial and appellate judges, and U.S. Supreme Court special masters, who hear interstate river disputes, continue to be involved in project activities.

Hon. William F. Dressel, president of the NJC, urges those judges who are involved in water rights or any kind of water litigation to contact Dividing the Waters and attend a program. "We offer judges the same kind of high quality services through Dividing the Waters that they receive from us through our other education programs," he said.

The central purpose of the project remains the improvement of the management and outcomes of stream adjudications and other water-related litigation that so directly touch Western people and the

environment of the region. Dividing the Waters now features three more advisors besides Judge Thorson and Judge Hurlbutt. Colorado Supreme Court Justice Gregory Hobbs and California Appellate Judge Ron Robie help direct the group, as well as Ramsey Kropf, a lawyer specializing in water law in Colorado and a special master in the Big Horn adjudication in Wyoming.

Justice Hobbs was a well-known water expert before taking the bench. Judge Robie served as a major player in much of California water law and policy.

Why affiliate the project with the College? "It is simply a natural fit and a logical next step for us," says Carolyn Brickey, execu-

tive director, who has staffed the project since the beginning. "The constituency is similar, the goals are the same. We see this merger as a great opportunity for us to grow and develop."

"This is a work in progress with 'progress' being the operative word," according to Justice Hobbs.

*Contact the project through Ms. Brickey at [cwbrickey@aol.com](mailto:cwbrickey@aol.com). Visit the website at [www.dividingthewaters.org](http://www.dividingthewaters.org). The William and Flora Hewlett Foundation sponsors much of the program with assistance from the Compton Foundation, the Water for CA Foundation and the Resources Legacy Fund. The General Service Foundation also provided significant support.*

**"We needed to form a network of our colleagues to work together."**

**John Thorson**

## JUDGES IN J-SCHOOL PROGRAM SEARCHING FOR PARTNERS

Print and broadcast journalists gather information, prepare stories and publicize those stories to the general public. The majority of the public learns about courts through the media. Unfortunately, in this declining market for shares in newspaper stock and other like media companies, the vast majority of newspapers and television stations rely on general assignment reporters in their quests to remain profitable. "The general assignment reporter has become the rule, not the exception," states Gary Hengstler, director of the Donald W. Reynolds National Center for Courts and Media.

Writing and speaking about the courts and the work of the courts, however, requires an understanding of the U.S. and state constitutions, statutes, case law, ethical codes and other legal information in which most journalists have only a basic knowledge level. Columbia University's Journalism School, often considered one of the best in the country, offers only one program on the law entitled "Journalism, Law and Society," a required program in the Masters of Science program. Surprisingly, the school's Masters of Arts curriculum doesn't include a similar program.

To help combat this lack of education for journalists, the Donald W. Reynolds National Center for Courts and Media established the Rollan Melton

Judges in J-School Program. This program allows journalists to explore court-related subjects such as gag orders, access to court files, reporters' sources, covering high-profile cases, the First and Sixth Amendments, among others. "What I like about this program is that it allows the journalism schools to customize the program for its own needs. It gives judges a rare opportunity to interact with journalism students who will someday likely report on the work of the courts. It is imperative that they get the information right," states Hon. William F. Dressel, president of the NJC. "If there is one thing that judges and journalists agree on, it is the need to uncover the truth."

Pilot programs have been held at the University of Minnesota, Indiana University, Brigham Young University and Loyola University New Orleans. Based upon those positive experiences, the Reynolds Center is now offering the program to journalism schools nationwide, honoring the esteemed journalist Rollan Melton.

If you have an interest in serving as faculty or know of a journalism school that would benefit from the program, contact the Donald W. Reynolds National Center for Courts and Media at (775) 327-8271. The Reynolds Center will work with the NJC in selecting a judge who is right for the journalism program. As Hengstler states, "This complimentary program should ease some of the frustrations felt on both sides of the story. Journalists will get an inside view of how the courts work, and participating judges will learn about the process of reporting. Everyone wins."





# Memories of the NJC

Recently Retired Scholarship Officer, Nancy Copfer, Reminisces Over Her 26.5 Years at the NJC

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In November of 1981, an ad ran in the local newspaper for an assistant to the dean and associate dean of the NJC. I had been a legal secretary for a few years (in Florida, California and Nevada). I had a long-term relationship with the legal profession. Family members included a judge in Broward County Florida, a Florida State Senator and the many professionals I had met during my father-in-law's campaigns. I was fascinated with trials, verdicts and justice/injustice. But more importantly when thinking about the position, I thought about how the judges received training after leaving law school. Did it just appear in their dreams? Was this "NJC" the place for every judge to come to learn how to be an effective and efficient judge?

I was hired that week and now I would find out the answers. Exciting things were happening at the NJC. The halls were noisy with judges. There was an air of urgency. Judges were discussing their sessions. Most all of the states were sending judges to the College.

The most exciting thing happened in November of 1983 when the NJC, the National Conference of Special Court Judges (ABA-JAD) and the National Institute of Justice (NIJ) held the National Conference of the Judiciary on the Rights of Victims of Crime. Judicial leaders were selected from courts of general and special jurisdiction from all 50 states, the District of Columbia, and Puerto Rico. President Ronald Reagan and Chief Justice Warren Burger urged careful consideration of the best way to protect the rights of victims. This was an important event. At the plenary session, the conference adopted the Statement of Recommended Judicial Practices. It followed that many states then adopted the Statement. It was an event that sealed my 26+ year fate with the NJC. Things could only get better – this would be a great place to work, learn and serve the judiciary.


Over the years, our visitors were national leaders. I was often awestruck with our speakers. George Herbert Walker Bush, then Vice President of the United States, was a guest speaker at a Jackson Lec-

ture. The staging by FBI agents, who were swarming over the building with sniffing dogs and checking all corners, became an event in itself. The staff was instructed to stay in their respective areas. I was still in the Dean's Office. There was much to be prepared and from time to time I would get up from my desk to try to go to another area. After about three or four times of asking me to please leave the hall and go back to my desk, one of the agents who knew my tendencies just gave up and said "just let her go, she obviously can't be trained." Meeting these important visitors was genuinely intimidating – but what fun, and Mom was proud.

I have been fortunate to work directly for five presidents/deans. I've really been lucky to have respected and enjoyed them all. I remember the old "Dictaphones" as a secretary. They were our lifeblood at that time – both for Board of Directors/Trustees' meetings minutes and day-to-day duties. One dean, in particular, was dictating and he indicated that he was

most pleased to be invited to their state and to have so many "organs" at their table. I listened to it over and over and realized it was "Oregonians." That was a good laugh for a couple of days.

In 1991, the NJC gave out its first "scholarship." The dean provided me with the opportunity to create an award process and to monitor the awards. While in the first year (1991) the NJC only offered four scholarships, in 1992 we awarded 79 scholarships (\$84,081). This was the first year of the federal grant award. The endowments, private giving, federal, and other awards have grown each year since then. My proudest accomplishment is that through 2007, we had given close to half a million dollars in scholarship assistance since the inception of the program.

What I have observed from the many important visitors to the NJC is that they are often humble and treat everyone with respect. I try to do the same and feel that this has made me many new friends over the years. The judges we train are thankful for everything we do for them – the excellent faculty we provide, the materials, and the courtesy makes the NJC a special, one-of-a-kind institution. I will miss it greatly. 



*From Left: William F. Dressel, NJC president, Nancy Copfer, and Thomas M. Susman, Esq., former chair of the NJC Board of Trustees.*





# TRAPPED IN THE SYSTEM

## FLORIDA'S RESPONSE TO THE CRIMINALIZATION OF MENTAL ILLNESS

*By Hon. Steve Leifman, Associate Administrative Judge, Miami-Dade County Court,  
11th Judicial Circuit of Florida, and Special Advisor on Criminal Justice and Mental Health, Supreme Court of Florida*

**W**hen I became a judge, I had no idea I would become the gatekeeper to the largest psychiatric facility in the State of Florida ... the Miami-Dade County Jail.

As a member of the judiciary, I see firsthand the consequences of untreated mental illnesses both on our citizens and our communities. A former surgeon general, Dr. David Satcher once called mental illness the silent epidemic of our time. However, for those who work in the justice system, nothing could be further from the truth. Every day our courts, correctional facilities, and law enforcement agencies are witness to a parade of misery brought on by untreated mental illnesses.

Part of the reason is that, over time and as the result of unintended consequences of efforts to provide more compassionate alternatives to institutional confinement, public mental health systems across the United States have been funded and organized in such a way as to all but ensure that the most expensive services are provided in the least effective manner to the fewest number of individuals – those in acute crisis in inpatient settings.

In 1955, nearly 560,000 state psychiatric hospital beds were in operation across the United States, serv-

ing a total population of roughly 165 million people. By 2000, the number of state hospital beds had decreased by 90 percent to 56,000, while the total population increased by 70 percent to more than 281 million. As a result, the number of beds per 100,000 population decreased from a high of 339 in 1955 to just 20 in 2000. By some estimates this figure may be as low as 40,000 beds, or 13 per 100,000 population today.

During this same period of time, the incarceration rates for both jails and prisons of individuals experiencing serious mental illnesses, such as schizophrenia, bipolar disorder, and major depression, has grown by more than 400 percent. Today there are more than five times as many people with mental illnesses in jails and prisons in the United States than in all state hospitals combined. According to the National GAINS Center, more than 1.1 million people with mental illnesses are arrested and booked into jails annually. As of 1998, the Department of Justice estimated that almost 300,000 people with mental illnesses were incarcerated in jails and prisons nationwide and more than 500,000 people with mental illnesses were on probation in the community. Today, these numbers are likely to be significantly higher.

To understand how this unfortunate and tragic state of affairs came about, it is useful to consider the historical context in which institutional mental health care in the United States developed.

Two-hundred years ago, people with severe mental illnesses were often confined under cruel and inhumane conditions in jails. This was due to the fact that no alternative system of care existed. In the early 1800s, a movement known as moral treatment began which sought to hospitalize and treat these individuals rather than incarcerating and warehousing them. By 1900, every state had a psychiatric hospital. Unfortunately, overcrowding, inadequate staff, and lack of effective treatments eventually resulted in facilities providing little more than custodial care. Physical and mental abuses became common and the widespread use of restraints such as straight-jackets and chains deprived patients of their dignity and freedom. Asylums intended to be humane refuges for the suffering had instead turned into houses of horrors.

By the mid-1900s, more than a half million people were housed in state hospitals across the country. The system was stretched beyond its limits, and states desperately needed alternatives to address this costly and ever-expanding crisis. Around this time, the first effective psychotropic medications were developed lending support to the idea that people with mental illnesses could be treated effectively and safely in their communities.

In 1963, Congress passed the Community Mental Health Centers Act intended to create a comprehensive network of community-based mental health providers that would replace failing state hospitals. In what would be his last public bill signing, President Kennedy signed a \$3 billion authorization to support this movement from institutional to community-based treatment. Tragically, following President Kennedy's assassination and the escalation of the Vietnam War, not one penny of this authorization was ever appropriated.

As more light was shed on the horrific treatment provided in state hospitals, a flurry of federal lawsuits were filed which ultimately resulted in the deinstitutionalization of public mental health care. Unfortunately, there was no organized network of community mental health centers to absorb these newly displaced individuals. The fact that a comprehensive network of community-based services was never established has resulted in a fragmented system with enormous gaps in treatment and disparities in access to care.

Two ironies emerge from this chronology: 1) Despite scientific advances, treatment of mental illnesses was not deinstitutionalized, but rather was transinstitutionalized from hospitals to jails and pris-

ons; and 2) Because no comprehensive community-based system was developed, jails and prisons once again function as *de facto* mental health hospitals. In two centuries, we have come full circle, and today jails are once again psychiatric warehouses.

While the broken promises of deinstitutionalization have resulted in disastrous consequences throughout the United States, the impact of these failings have become particularly severe in Florida. This is due, in part, to the fact that Florida is home to a disproportionate number of individuals with mental illnesses, many of whom are homeless and come to the state from other parts of the country because of the mild climate. It is also due to the fact that in recent years the state has been forced to invest increasing amounts of its limited mental health resources in costly services in the criminal justice and forensic mental health systems, at the expense of investing in prevention and treatment in the community.

On any given day in Florida, there are roughly 16,000 prison inmates, 15,000 jail detainees, and 40,000 individuals under community control who experience serious mental illnesses. As many as 125,000 people with mental illnesses are arrested and booked into Florida jails annually, the vast majority of whom are charged with misdemeanor and low level felony offenses that are a direct result of their psychiatric illnesses.

Over the past nine years, the population of inmates with mental illnesses in Florida prisons grew from 8,000 to 17,000 individuals. At this rate, the number of inmates with mental illnesses will nearly double in the next nine years to more than 32,000 individuals, with an average increase of 1,700 inmates per year. A population this size would be enough to fill more than 20 of the states largest correctional institutions, with the equivalent of one prison added every year.

Between 1999 and 2007, forensic mental health commitments in Florida increased by 72 percent, making forensic treatment the fastest growing segment of the mental health marketplace. Currently, the state spends roughly a quarter of a billion dollars annually to fund 1,700 treatment beds and ranks near the top of the list nationally in forensic expenditures. If nothing changes, forensic commitments are projected to double by 2015.


By contrast, Florida ranks 48th nationally in per capita community mental health spending. Last year alone, more than half of all adults and a third of all children in need of mental health treatment had no access to care. With slightly less than 1,000 non-forensic state hospital beds remaining to serve a total state population of more than 18 million residents,

or roughly five beds per 100,000 population, many individuals experiencing chronic and severe mental illnesses predictably and repeatedly find their way into the criminal justice system.

Communities throughout Florida have responded to increases in numbers of individuals with mental illnesses entering the justice system by employing a variety of innovative, problem-solving techniques. Among these initiatives are specialized Crisis Intervention Team (CIT) training for law enforcement officers, mental health jail diversion programs, and the creation of mental health courts, including the nation's first mental health court established in Broward County in 1997. Although many of these efforts represent state-of-the-art community policing and judicial problem-solving strategies, it remains that without adequate services in the community the effectiveness of these efforts been limited.

For the past year, I have been privileged to chair the Supreme Court of Florida's Mental Health Subcommittee, which has been charged with making recommendations to improve the way in which the justice and mental health systems interact and respond to individuals with mental illnesses. The subcommittee consists of representatives from all three branches of government as well as top experts from the criminal justice, juvenile justice, mental health, and substance abuse treatment fields. Last November, this body released a report entitled, "Transforming Florida's Mental Health System,"<sup>1</sup> which target planning, leadership, financing, and service delivery strategies for individuals involved in, or at risk of becoming involved in, the justice system.

Key elements of the proposed plan include financing strategies that leverage federal resources to create incentives to prevent individuals from inappropriately entering the justice systems, establishment of a service delivery model based on treatment needs and risk of justice system involvement, development of local and statewide partnerships that foster cross-system collaboration, and phased-in implementation to ensure adequate infrastructure development and sustainability.

The justice system was never intended to serve as the safety net for the public mental health system and is ill-equipped to do so. By designing an appropriate and responsive system of care for individuals with serious mental illnesses, people who otherwise would continue to recycle through the justice system will be served more effectively and efficiently. Public safety will be improved and the rate of individuals accessing more costly services in forensic mental health and criminal justice systems will be reduced. 

<sup>1</sup> [www.floridasupremecourt.org/pub\\_info/documents/11-14-2007\\_Mental\\_Health\\_Report.pdf](http://www.floridasupremecourt.org/pub_info/documents/11-14-2007_Mental_Health_Report.pdf)

## Endowment Being Sought For The National Tribal Judicial Center



The National Tribal Judicial Center (NTJC) at the NJC has had tremendous success in support of advancing justice in tribal communities. The NTJC provides tribal judges with the unique skills and knowledge they need to preside over hearings, effectively decide cases, enhance tribal members' access to justice, and provide due process and culturally appropriate justice to those who come before tribal courts. Since 2002, more than 1,000 tribal judges, court administrators, clerks, court planners, peacemakers, and members of multidisciplinary teams have taken the NTJC's courses that have provided them with the knowledge, techniques and tools necessary to meet the challenges facing today's existing and emerging tribal justice systems.

Judges such as Saunie Wilson, an Oglala Sioux tribal family and youth court judge from South Dakota, have received valuable information from tribal courses. Judge Wilson recently said, "The NJC experience has provided me the opportunity to perform as a professional in the courtroom. I have always felt that our culture is crucial to who we are as a nation and should be incorporated into all aspects of reservation life. The training has reinforced that concept and offered ways not only to incorporate the culture but also the law in trying to make our families stronger."

Since its inception, the NTJC has been dependent on federal funding to operate. In order to ensure its long-term sustainability, the Center is seeking additional sources of funding. The NTJC is currently creating an endowment that will provide income to support the director's position at the NTJC along with financial assistance for participants. "We have formed an Endowed Chair Advisory Committee and are beginning the process of reaching out to potential donors for support," said Christine Folsom-Smith, who heads the NTJC. The goal is to raise \$1.5 million in support of the Endowed Chair, which will benefit the Center in perpetuity.

*For more information about the NTJC and how you can support the NTJC endowment fund, please contact Gretchen Alt Sawyer, the NJC's development director, at (800) 25-JUDGE or [alt@judges.org](mailto:alt@judges.org).*





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# Exploring the Impact of NEUROSCIENCE ON JUSTICE

*By Edward W. Lempinen*

*Reprinted with permission from AAAS  
(American Association for the Advancement of Science)*

It was the sort of case that makes news headlines: A man was arrested for soliciting child sex online, and the case was slated for trial. But in the pre-trial investigation, a scan of the suspect's brain using positron emission tomography revealed serious damage to the frontal lobe of his brain, apparently the result of a stroke.

## ADVANCES IN NEUROSCIENCE

**T**he discovery raised a host of difficult questions: In a judicial system based on the assumption that individuals function by free will, how could responsibility be assigned for the crime? Could a man properly be considered guilty if his free will was undermined by a malfunctioning brain? And did the scan suggest a predilection for future criminal behavior?

"You could argue that the brain injury was an extenuating circumstance and that the person should receive some kind of treatment," Dr. Monte S. Buchsbaum, a brain-imaging pioneer, said at Emerging Issues in Neuroscience, a program held at the NJC and sponsored by the Dana Foundation, the NJC and the Association for the Advancement of Science (AAAS). "Or you could argue that this was an aggravating circumstance [that requires a heavier sentence]. This is a decision for society."



Advances in neuroscience—and the profound implications for the justice system—were the focus presentations and dialogues at a two-day conference that brought top researchers to Reno from November 14-15, 2007, to meet with 19 judges from throughout the western United States.

For the judges, the case cited by Buchsbaum—and the questions it raised—struck a resonant chord. “I work daily with people who suffer from impaired cognitive functioning, as well as with the frustrated families of those individuals,” said Judge Linda G. Morrissey, chief judge of the Probate and Guardianship Division in the Tulsa County District Court in Oklahoma. “The genesis of impairment may stem from an organic condition, brain injury, substance abuse or a myriad of other causes. Many of these people appear normal in all observable ways but engage in inexplicable conduct that poses a risk of harm to themselves and others.”

Almost routinely now, brain scanning and other advances in neuroscience are giving courts and juries new insights into those and other behaviors – how addiction and injury compromise functions of the frontal lobes, how lies can be more reliably detected, how faulty our memories are, how easily they can be manipulated, and how it is increasingly possible to discern the subtle but significant differences in patients who are in a minimally conscious state or a permanent vegetative state.

“It is amazing what has happened just over the past few years, or in the past decade” in neuroscience research, said seminar organizer Mark S. Frankel, director of the AAAS Scientific Freedom, Responsibility and Law Program. “Enough progress has been made to believe that the courts will have to deal with these issues sooner than anyone would have anticipated just a few years ago, and in some cases the scientific findings and their meaning will not be clear.”

The insights arising from the young but flourishing fields of neuroscience are creating new questions and new quandaries across the U.S. legal system, from local juvenile and criminal courts to the highest courts in the land. Certainly courts have considered subtle issues of behavior, motivation and sanity for decades. What’s changing rapidly, however, is that advances in brain imaging—magnetic resonance imaging (MRI), positron emission topography (PET), magnetoencephalography (MEG), and electroencephalography (EEG)—are offering

increasingly clear and reliable views of the brain as its neurons fire and misfire.

The average adult brain weighs just three pounds, and yet routinely does computations that are beyond all but the most powerful computers. It features 100 billion neurons, or 50,000 neurons per square centimeter; a typical brain cell receives input from 1,000 other cells. Given such power and complexity, whole realms of human brain function and human behavior remain a mystery.

Much research in the past two decades has focused on the frontal lobes and their relationship to the amygdala and hippocampus. The prefrontal cortex is a center of impulse control, social cooperation and moral understanding. But it is vulnerable to damage by tumors and strokes and in falls, car collisions, or other traumatic incidents; damage to the frontal lobes has been linked to compromised decision-making and to anti-social behaviors ranging from dishonesty to violence and sexual predation. In children under two years old, such damage can impede moral development or block it altogether. For this reason, experts said at the seminar, the frontal lobes are a center of interest in the justice system.

## THE BRAIN IN COURT

But the courts have long been cautious in admitting knowledge obtained from new technology, said Joe S. Cecil, who directs the Program on Scientific and Technical Evidence at the Federal Judicial Center and serves as principal editor of the Center’s Reference Manual on Scientific Evidence.

“In the late 19th century,” he said, “Courts struggled with how to use photographic evidence. They are similarly struggling now with how to interpret and use brain scans, but with thousands of peer-reviewed papers on such research being published every year, the courts more frequently recognize the tools’ credibility.”

Cecil and other seminar speakers cited a high-profile Illinois case for a view of how the courts view the new neuroscience. When Illinois approved a new law to ban the sale of violent and sexually explicit video games to children, trade associations representing the video games industry sued. While the court held that the video games are protected under the First Amendment, an extensive passage in its opinion discussed functional magnetic resonance imaging (fMRI) research that assessed whether children become more aggressive after viewing violent video



games. The court concluded that the research was not yet conclusive.

“But”, said Cecil, “the very fact that a judge is talking about the front lobes of the brain is breath-taking ... I think this is the kind of case that will be coming before the courts more and more.”

Buchsbaum, director of the Neuroscience PET Laboratory at Mt. Sinai Hospital in New York City, said that means that judges and jurors will increasingly need to understand complex medicine and science in order to make solid decisions. “For example,” he said, “if a person loses a hand in an accident, the jury can see that and assess the damage. But if the person suffers permanent damage to the frontal lobes, that’s not visible, and proof of the impact on the victim’s behavior might be more elusive.”

Buchsbaum frequently serves as an expert witness in trials requiring insight on brain function, and he said he’s been impressed by the positive impact created when a judge allows attorneys to present a courtroom primer to jurors about the workings of the frontal lobe.

Throughout the two-day seminar, the scientists and judges explored a range of other topics where the law and neuroscience intersect.

### LIE-DETECTION

The use of fMRI to help separate truth from lies in suspects, witnesses and others has provoked extensive debate and news media coverage, and the controversy continued to play out during an extended dialogue at the seminar.

### DETECTING DECEPTION

Steven J. Laken, a pioneer in new-generation lie detection and founder of Cephos Corp., explained how his company has conducted tests on subjects’ brains to catch them in acts of deception. Research has shown that lying activates different areas of the brain – and more areas overall – than telling the truth. Today, Laken says, the technology has advanced far enough to permit “careful and controlled” use in courts.

Laken cited one Cephos experiment in which 30 subjects were asked, individually, to go into a room, open a drawer, and then take either a ring or a watch from the drawer; they were then to keep their choice secret. Each subject was put into an MRI tube and asked 160 questions in 16 minutes, including questions about what they took from the drawer. Based on which areas of the subjects brains lit up, the test was

able to correctly identify the ring- and watch-takers in 28 cases, a 93% percent success rate. The experiment was repeated with a different set of subjects, with results that were almost exactly the same.

Laken acknowledged that not everything is known about the technology, but that doesn’t mean that it can’t be useful in real legal settings. “I think it’s been proven the fMRI can be effective in detecting deception supported by numerous publications by different groups,” he said.

### THE RELIABILITY OF fMRI

Craig Stark, a neuroscientist at the University of California – Irvine, answered that fMRI currently remains too unreliable to use in court cases where someone’s life or freedom are at stake. He offered a broad critique of fMRI and its limitations. The threshold for saying an area of the brain is activated is “arbitrary,” he said. Further, he added, while the technology might be relatively reliable with a group of experimental subjects, it would be much less reliable for use on a single criminal suspect who might be trying to game the test.

Stark said such subjects could try various tactics to throw off the results. They could practice lies so that it appeared as true in the tests. They could think of lies during truth trials. They could practice thought patterns that would activate the brain in ways that would cloud the results. Another scholar at the meeting suggested that if a man simply thought of murdering his wife, it would activate the same brain areas as if he had done the murder. So if a man had contemplated the crime but never committed it, he said, the test might see him as guilty.

“Nobody has investigated these efforts to beat the test,” Stark said. “... I’m not saying it doesn’t have a future. I’m not saying its day won’t come. I’m just saying that today is not that day.”

Laken acknowledged the shortcoming cited by Stark. But, he said, further development and improvement of the technology – including research involving drug abusers, the mentally ill and criminal suspects, for example – could eventually make the tests more accurate and reliable.

“I don’t think this technology will ever be 100 percent accurate,” Laken said. “There will be mistakes. We will misclassify people.” In any event, he added, fMRI would never be more than one among many pieces of evidence in any criminal proceeding. “You don’t put away people based just on this evidence,” he said.

“The judicial system puts people away based on ambiguous evidence all the time,” he added, citing imperfect forensic evidence such as bite marks and tool marks. “The system is able to deal with ambiguity.”

Stark acknowledged that DNA evidence was once regarded as too esoteric and unreliable for use in the courts. But, he said, analyzing genetic evidence is “more do-able” than trying to plumb the workings of a brain, “where 10 billion neurons have 1,000 connections apiece.”

## ADDICTION

George F. Koob, an influential global authority on addiction, described the case of a rat that was given unlimited access to cocaine for 12 hours. The rat’s brain rewarded the drug use by releasing sharply elevated levels of dopamine and serotonin—positive hedonistic neuropeptides. But when the high wore off, the levels of dopamine and serotonin fell below sober levels. That sets up a “neuron-adaptive response,” Koob explained. The rat’s hunger for more drugs is, in effect, an effort to re-establish more normal brain chemistry.

Given the epidemic of methamphetamine use in some parts of the West, the judges said their dockets are often crowded with meth-related cases. Koob, chair of the Committee on the Neurobiology of Addictive Disorders at The Scripps Research Institute and editor-in-chief for the *Journal of Addiction Medicine*, acknowledged the challenge confronting them. “Anything I tell you about cocaine,” he said, “meth does it worse.”

Whether they’re hooked on meth or booze, addicts take drugs to avoid withdrawal, he explained. When they can’t access drugs, the hypothalamus pumps out the stress hormone corticotropin release factor (CRF). Pharmacological research is now exploring drugs that can block the stress-inducing effect CRF to mitigate the severe discomfort of withdrawal. Drugs may be discovered that can block both the highs and the lows associated with street drugs and alcohol.

“I’m very excited about the potential of CRF antagonists to be effective in alcohol addiction, but we still have a long way to go,” Koob said. He added that the effects of heavy, long-term methamphetamine use may be so devastating that recovery is all but impossible.

## MEMORY

The human memory is a pillar of the judicial system—and the system is structured to allow for its foibles and imperfections. But imaging and other tools of neuroscience are offering new insights into the reliability of witnesses, investigators, and suspects.

Stark, whose lab focuses on the cognitive neuroscience of learning and memory, told the judges of a study related to eyewitnesses. The test subjects were asked to watch a film of an auto collision. Later, they were asked about what they’d seen.

Some subjects were asked: How fast was the white car going when it hit the black car? The average answer: 34 miles per hour. Other subjects were asked: How fast was the white car going when it smashed into the black car? The average answer: 41 mph. The two questions differed only slightly, but if the study had been a court case and the speed limit had been 35 mph, the variation might have been enough to change the verdict from not guilty to guilty. The point, Stark told the judges, is that memory is malleable.

Time passes and recollections fade; studies have shown that more than 40 percent of subjects experience “major distortion” in memory 32 months after an event, he said. The mind often tries to compensate by reconstructing events from the bits and pieces that are left in memory, and that creates opportunity for those who wish to manipulate memory. “Misinformation after the fact can distort memories,” he said. “You’ll remember what you’re told to remember.”

Some humans are so suggestible that even traumatic memories can be planted in their brains, Stark said. But imaging allows researchers to see that “true” memories light up visual centers located at the back of the brain and “false” memories tend to light up auditory regions.

## BRAIN DEATH, PERSISTENT VEGETATIVE STATE, AND MINIMALLY CONSCIOUS STATE

Terry Schiavo collapsed suddenly in 1990, and for the next 15 years, she was in a persistent vegetative state, kept alive by nutrition provided through a feeding tube. In 2005, the nation watched transfixed as her husband and parents fought in legal and government venues over whether her feeding

tube should be removed and other efforts to keep her alive withdrawn. In effect, it was a fight over the nature of her consciousness.

## BRAIN DAMAGE

**D**r. Michael A. Williams, who chairs the American Academy of Neurology's Ethics, Law, and Humanities Committee, told judges at the seminar that science has made great advances in keeping patients alive after profound brain trauma—and in determining substantive differences between minimally conscious state, persistent vegetative state and brain death. But the differences are often not clear to the public, or to journalists and court personnel, and that raises the risk of agonizing confusion. Indeed, he said that scans alone aren't always sufficient to make the distinction, and that observation over time by trained professionals is crucial.

"There are tremendous emotional responses to cases like [Schiavo's]," said Williams, who serves also as medical director of LifeBridge Health Brain & Spine Institute in Baltimore. "You have to understand the science to make good decisions. If our science isn't good, our legal reasoning and our ethical reasoning isn't going to be good."

The case of a patient who suffers a brain injury and falls into a coma may evolve in three principal directions, Williams said.

Brain death often results suddenly after a severe injury. The patient's eyes do not open, and the pupils show no response to light, and no responses or reflexes at all. The patient cannot breathe, except with aid of a ventilator. Electroencephalography—an EEG—shows a flat line, with no brain activity. Patients in persistent vegetative state (PVS) show no signs whatever of self- or environmental awareness, Williams said. They may move, but the movements are meaningless. They may smile or cry or moan, but these are random or reflexive. They show no consistent sign of attention or intention. The condition may be temporary, as the patient recovers from severe brain damage, or permanent if the patient does not recover.

Minimally conscious state (MCS), first described in 1995, is characterized by irregular awareness in the patient, including evidence of self- or environmental awareness. Some MCS patients can follow simple commands or signal answers to simple yes/no questions. Some can make intelligible verbalization. The

state can last months, even years.


"If I could teach judges," Williams said, "I would teach them to use goals of care." In other words, first assess what the patient wants, or would want, and then build a treatment plan aimed at that goal.

Williams added, "If the goal of treating patients is to allow as many of them to improve as possible, while simultaneously respecting their autonomy by way of surrogates or living wills, then it is short short-sighted to condemn decisions like Michael Schiavo's or the decision of the judge who found his decision [to remove the feeding tube] consistent with Florida law."

During the conference and afterward, judges made clear that issues with links to neuroscience already are emerging in their courtrooms. Judge Brian Boatright, who handles juvenile court duties in Jefferson County, Colorado, said he recently saw a case in which some young men allegedly committed a bank robbery, and the defense, citing deficits in brain development related to their youth, argued that they were not guilty by reason of insanity.

"Emerging issues in neuroscience are emerging issues in the courtroom," Boatright said. "The basic understanding provided at the seminar was tremendously helpful in raising the baseline of our knowledge. ... It gave us a heads-up on what's coming down the line."

District Court Judge Deborah E. Schumacher, of Nevada's 2nd Judicial District in Reno, offered a similar assessment.

"In a couple of generations, we're going to have a much different jurisprudence than we have now," she said. "... I don't know what it is going to look like, but it's going to look different than what we have now." 

*For more information on the neuroscience program, please contact William Brunson at (800) 25-JUDGE (800-255-8343) or (775) 327-8211.*



# Judges From Jordan Enhance Judicial Skills



*Seven Jordanian judges recently visited The National Judicial College. From left, are Judge Abdallah Husein Al Mahamid, Judge Mamdouh Yousef Al Najada, Judge Baza' Sahem Al Majaly, Judge Muntaha Hasan Al Qudah, Chief Judge Jarwad Ali Al Shawa, Judge Ayoub Salem Al Swaeer and Judge Mohannad Mohammad Ali Al Khawaldeh.*

**S**even Jordanian judges spent six weeks at the NJC to gain new knowledge on judicial issues in the United States. The experience was part of 10 weeks they spent in the United States, visiting four cities in the Spring of 2008. The program, made possible by the NJC, DPK Consulting and MASAQ, a USAID rule of law project, was designed to provide a unique and enriching experience combining coursework in numerous technical areas. The judges also visited courts and other judicial institutions that allowed them to view practical applications of the planned coursework in a variety of settings.

"I think the NJC is a unique place for improving the rule of law," expressed Judge Mamdouh Yousef Al Najada, one of the seven judges. "I admire the way

of teaching here and how the laws differ among different states across the nation."

The goals of the project were to establish formal relationships between the Judicial Institute of Jordan (JIJ) and United States judicial training providers, including the NJC, for an on-going exchange of ideas. By experiencing judicial education in the United States, the Jordanian judges will be able to form protocols for the IJJ to implement and initiate future training opportunities for judges in Jordan.

"We enjoy the teaching and education system at The National Judicial College, especially the model courtroom and all of its technology," said Chief Judge Jarwad Ali Al Shawa. Judge Baza' Sahem Al Majaly added, "We learned new teaching techniques and ways to organize course materials that we can use back in Jordan."

The training the judges received at the NJC consisted of judicial training courses, working with senior technical experts to develop new curricula using interactive adult learning methodologies and engaging in critical discussions with substantive experts. Courses taken at the NJC included Enhancing Judicial Bench Skills, General Jurisdiction, Faculty Curriculum and Development and Media Issues for Judges.

"The NJC has been wonderful," said Judge Al Majaly. "We feel like we are at home. The staff is giving us all of the information we need." "It really helps us to have a lot of knowledge about the United States legal system," added Judge Muntaha Hasan Al Qudah.

In addition to taking courses and programs at the NJC, the judges also participated in judicial meetings in Charleston, S.C., San Francisco, Calif., and Portland, Ore. The judges will use their new skills to conduct judicial training in Jordan as well as to enhance their overall courtroom performance.

## CREATE A LEGACY THROUGH THE NJC



Providing a bequest in your estate will invest in the future of The National Judicial College and will create a lasting legacy. A gift made by will or living trust can be simple to arrange. A provision or amendment prepared by your attorney at the time you make or update your will or trust is all that is necessary. Not only does a bequest strengthen the NJC's future, it also provides substantial benefits to donors.

*To learn more about leaving a legacy, please contact Gretchen Alt Sawyer at (800) 25-JUDGE or [alt@judges.org](mailto:alt@judges.org).*

# How the NJC Helped Me BECOME A BETTER JUDGE

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*By Hon. Karen Arnold-Burger, Municipal Court,  
Overland Park, Kansas*

When I was appointed to the municipal court bench more than 17 years ago, the presiding judge in my court immediately recommended that I attend the Special Courts Jurisdiction: Advanced course at The National Judicial College in Reno. I had been a former prosecutor at both the city and federal level and felt I knew my way around the courtroom well. I was convinced that this was totally unnecessary. I had three very small children that I couldn't imagine leaving for two whole weeks. Besides that, I had never heard of The National Judicial College. My first evening presiding over "night court" changed my mind.

That fateful night, I found myself faced with a courtroom of more than 100 people and more arriving with each passing hour. I had no court security at the time, merely one unarmed, 70-year-old, overweight ex-police officer bailiff with a drinking problem who was often caught snoring during trials.

The defendant exploded into the courtroom and stumbled drunk up the center aisle shouting for her attorney "Harlan Long, Harlan Long are you in here?" All eyes turned to me. How should a judge handle such behavior? I started experiencing something I would equate today with a hot flash. I had no idea what to do. The people in the audience expected me to do something. You could have heard a pin drop. I called the defendant forward. I told her that her attorney was not present and that she was disrupting the proceedings. I told the bailiff to put her in one of the adjacent holding cells, which fortunately he was able to accomplish. I figured I would decide

what to do with her once I had cleared the courtroom and had more time to think. The docket lasted more than three hours. The holding cell shared a wall with the courtroom. For three hours this woman banged on the wall shouting, "Let me out of here, I want my attorney," as well as several other colorful and unprintable expressions of her disdain for me and the court. That night I decided maybe I could learn something at that judges' school in Reno.

I was not disappointed. For two weeks, I had the opportunity to meet judges with similar dockets from all over the country. I had the opportunity to learn about what powers I had when it came to contempt and how other judges had handled similar situations. They even tipped me off to some situations they were sure I would have to deal with in the future (and they were right!). Although I had a pretty firm grasp of search and seizure law and the rules of evidence, to discuss these topics from a judge's perspective was very eye opening. I was taught by a faculty that was incredibly enthusiastic about sharing information. I also learned about caseload management, judicial ethics, the role of the judge, small claims court processes, domestic violence, administrative hearings, and much more. The instructors even encouraged us to call them when we got back home if we had questions or needed help. I returned to Kansas with so many ideas of changes to make to improve the operation of the court that the presiding judge was now questioning his own judgment in sending me.

A few years later, NJC Program Attorney Verdene Johnson called and asked if I would like to return to the College as a facilitator. I wasn't sure about leaving for another two weeks, but she convinced me it would be very rewarding. She was right. Even though I was sitting through the same classes, I learned something new from each one. The faculty was just as enthusiastic, although I know they had taught the same topic dozens of times since I saw them last. And again, the interaction with judges from around the country was invaluable.

# LIBERIAN JUDGES VISIT THE NJC



*Above from left, Hon. J. Boima Kontoe, circuit court, Republic of Liberia; Hon. William F. Dressel, president of the NJC; Hon. Kabineh M. Ja'neh, associate justice, Supreme Court of Liberia, and chair of the Judicial Training Institute Steering Committee; Hon. Mike Enwall (ret.), ILAC Liberia representative; William Brunson, NJC director of special projects; and Cllr. N. Oswald Tweh, president of the Liberian National Bar Association, and vice chair of the Judicial Training Institute Steering Committee.*

**T**wo Liberian judges and the president of the National Bar Association visited The National Judicial College March 4-5, 2008, to receive guidance on rebuilding Liberia's judicial institute including ideas for the proper governance, staffing and organization of the institute. The NJC also shared information on curriculum development and the role of staff members in building programs.

"Institutional training is an indispensable element for promoting the rule of law, especially in post conflict situations," said Associate Justice Kabineh M. Ja'neh, Supreme Court of Liberia, and chair of the Judicial Training Institute Steering Committee. "The NJC has a beautiful system. The various administrative mechanisms in place, such as the program attorney, make the training much more effective."

During their two-day visit, the judges toured the College, received leadership pointers from the NJC's president, Hon. William F. Dressel, and examined curriculum development. They also studied decision making, distance learning and the role of the program attorney.

"The concept of having a staff member who is responsible only for helping experts become teachers and trainers is wonderful," expressed Justice Ja'neh. "It was also very helpful to see that there is a difference between resource materials and teaching materials."


The Liberian judges said they are hoping to visit the NJC in the future to receive more training.

Eight years ago, I began teaching at the College, primarily the traffic court section of the Special Courts Jurisdiction course. I now understand why faculty members come back year after year. (Trust me, it is not for the pay, which is zero). First, you always learn something from the other judges in attendance. The ability to share the ups and downs of being in the judiciary with both lawyer and non-lawyer judges is very rewarding. Second, I have met a wonderful and expanding group of limited jurisdiction judges whom I now consider friends and call on frequently for advice or ideas. And finally, it certainly makes me a better judge. Based on the improvements that have been made to my court since I first attended the College, the city that employs me has more than received its money's worth out of my attendance and teaching over the years.

It is undisputed that trial courts of limited jurisdiction handle the bulk of litigation in the United States each year. When you consider traffic courts, juvenile courts, criminal ordinance and misdemeanor courts, small claims courts, domestic relations courts, landlord-tenant courts, tribal courts, probate courts, and workers' compensation courts, among others, many estimate that as many as 90 percent of all cases in this country are heard in special jurisdiction courts.

Many of these courts suffer from a lack of resources. Often, they have no permanent courtroom, meeting instead in city offices, community meeting space or even restaurants. Municipal court judge, Hon. Hugo Black's courtroom was described by one reporter of his day as a "dingy, dank, dark, and dirty back room in the city hall that was mis-termed a courtroom ... the docket consisted mainly of persons arrested for drinking, using dope ... shooting craps, thievery, vagrancy, fighting or marital disturbances ... the caseload on Mondays was especially heavy and the odor stifling."

In larger communities, the caseload volume is high. Thousands of new cases are filed each month. Many litigants appear *pro se*. For many people, represented or not, this is their first experience with a court.

By training judges to handle these difficult caseloads, the College is serving a vital role in improving the image of the judiciary and the legal system to all citizens. It has allowed the professionalism to rise in local courthouses all over the country. I am sure Justice Black would be proud. 

*If you are a limited jurisdiction judge and believe you would benefit from two weeks of learning from and sharing with judges from all over the country, call (800) 25-JUDGE to enroll in the Special Court Jurisdiction and Special Court Jurisdiction: Advanced courses.*



# Plenty of Idea-Sharing at the NJC's Caseflow Management Summit

*By Heather Singer, NJC Communications Specialist*

**T**he National Judicial College's Best Practices in Caseflow Management: A Working Summit held, Jan. 22-23, 2008, brought together 42 individuals from across the nation to examine caseflow management. The summit was sponsored through a grant from the Bureau of Justice Assistance. Participants included judges, court executives, lawyers, and experts in caseflow and court management. They worked in large and small groups to examine ways to educate judges and how courts can effectively manage their caseloads.

"The sharing of ideas with practitioners and experts was great," expressed Court Administrator Marcus Reinkensmeyer, of Phoenix, Ariz. "We learned a lot from each other. Much of the information validated the earlier caseflow management research. We won't have to start from scratch."

One of the focus points of the summit was to determine the core elements of caseflow management. Some of the sessions covered the consequences of poor caseflow management, factors impacting effective caseflow management, caseflow management trends, key issues, designing effective caseflow management systems and implementing or enhancing caseflow systems.

Many summit attendees said they were eager to contribute to this reexamination of caseflow management. "There is an amazing amount of information here," expressed Hon. Lori Walkley, of Norman, Okla. "My state is at the beginning of this process. We are looking for tools to implement in caseflow management."

Longtime NJC faculty member, Hon. Judith Kreeger of Dade County, Florida, said the two-day

event was extremely productive. "What I am hoping will come out of this is for the courts to be more efficient in caseflow management, and my court, as well," explained Judge Kreeger. "I am hoping the summit will enable judges to do a better job of handling the public's business."



*From left: Joe Trotter, Terry Ruckriegle, Joy Lyngar*




*From left: Judith Kreeger, Gordon Griller, Hon. William Caprathe*

Hon. Terry Ruckriegle, of Breckenridge, Colo., said examining caseflow management practices is crucial in serving the public in a timely manner. "The challenge is going to be how to assimilate the information generated during the summit into a final product from which action can be taken. I think it is important to look at caseflow management, ultimately because it is a way of evaluating and identifying more effective ways of conducting your business and providing justice to participants, and by justice, I mean, fair and impartial decisions without unnecessary delay," said Judge Ruckriegle.

Caseflow challenges exist in courts nationwide facing overburdened dockets and limited budgets. According to several participants, caseflow issues need to be examined on an ongoing basis by judges and courts to maintain an efficient system that provides the quality of justice all citizens expect from courts.

The information and ideas gathered at the summit will be compiled by The National Judicial College into publications to assist state trial judges, trial court administrators, and state judicial branch educators in implementing quality caseflow management.

"So much information came out of this event," said NJC Program Attorney Laurie Ginn, who coordinated the summit. "The publications will be an incredible tool in implementing strategies that enhance the productivity and efficiency of courts nationwide. I am very pleased with the outcome and the positive feedback from those who attended." 

# VOICE TO THE MUTE, STRENGTH TO THE WEAK



## The NJC and Reynolds Center Workshops Help Judges and Journalists Work Together

**W**hen I. Lewis “Scooter” Libby, chief of staff to Vice President Dick Cheney, was tried for perjury in the CIA identity leak known as the Plame Affair, U.S. District Judge Reggie Walton had a collateral issue to decide: Should Internet blogger journalists receive credentials to cover the trial just as the traditional mainstream print and electronic journalists?

When Warren Jeffs, the leader of a controversial Mormon fundamentalist sect known as the Fundamentalist Church of Jesus Christ of Latter Day Saints, stood trial on charges related to arrangement of extralegal “marriages” between his adult male followers and underage girls, Judge James Shumate faced an unusual circumstance when Jeffs stood up in court and attempted to give the judge a private handwritten note. The newspaper photographer present took pictures of Jeffs with the note and those photos were digitally enhanced and enlarged back in the newsroom to permit a partial reading of the note. In virtually every courthouse across America, the judiciary is having to deal with advancing technology that poses new challenges in the administration of justice. For the most part, courts had the drill down pretty well, with established routines. Now, bloggers, technology and other developments have disturbed the status quo.

That is the very reason the NJC and the Reynolds National Center for Courts and Media are using a two-pronged approach to address both the challenges posed to the courts and those posed to the reporters who cover them.

With grants secured by the NJC, the Reynolds Center is currently conducting five regional one-day workshops for representatives of both judicial and journalism communities to foster dialogue between the two. The workshops’ morning sessions concentrate on technology that affects how both do their respective jobs and the afternoon sessions focus on what states and communities can do to initiate and maintain the communication between courts and media to minimize potential conflicts.

The first workshops were held in Texas and Ohio, with teams from surrounding states included in the discussions. In 2008, the Reynolds Center will present workshops at the NJC in Reno, Nevada; in Atlanta, Georgia; and in Portsmouth, New Hampshire. In all, the workshops will involve 30 states.

The funding for the workshops came from a grant of \$125,000 from the State Justice Institute, which was matched with grants from the Donald W. Reynolds Foundation, the McCormick-Tribune Foundation and the Hearst Foundation.

“The workshops’ primary purpose goes beyond initiating discussions between judges and journal-

ists,” said Reynolds Center Director Gary Hengstler. “Our aim is to help states and communities create the means by which these discussions are maintained and become a regular part of the relationship between two professions.”

He said the changes occurring in both journalism and the judiciary are better addressed if each side knows what the other is coping with. Such discussions will help each craft solutions to problems and minimize tensions in this era of change, he added.

To address the concerns about technology’s impacts more fully, the Reynolds Center will hold a national conference in the fall that will bring together experts in the judicial, legal, journalism and technology fields to examine how the changes are affecting the public’s perception of justice. The conference is funded by the Donald W. Reynolds Foundation.

Hengstler said one aspect will be to look at whether traditional journalism values can be retained by nontraditional journalists. From the court’s perspective, another focus will be what, if anything, courts can do with the increasing emphasis by the media on trials as entertainment.


“Particularly as we see most newspaper circulations declining and the proliferation of specialty cable TV shows cutting into the traditional networks’ markets, courts are re-examining the media’s role on the

public’s trust and confidence in the judicial system,” Hon. William F. Dressel, president of the NJC said. “To the extent we can craft new responses or initiatives to tell the court’s story in this new environment, the judiciary can take an active role in helping to maintain the public’s trust.”

Both projects are the latest from the Reynolds Center in keeping with its mission: “The Reynolds National Center for the Courts and Media dedicates itself to strengthening an independent judiciary and a free press, the safeguards without which there would be no American democracy.

“Through its educational work, the Center ensures that judges and journalists develop insight into their respective roles.

“Critical as they are to our system of government, neither institution can fully flourish without the other. The courts breathe life into the constitutional guarantee of a free press. And the free press validates the power of an independent judiciary. Together they give voice to the mute, strength to the weak.

“Absent a strong mutual understanding between the courts and media, public confidence in the entire system erodes, and democracy, as we understand it, is imperiled. The Center’s sole purpose is to promote that understanding. No other institution in America has that charge.” 

# PILLARS OF JUSTICE FUND

A FUND FOR THE FUTURE OF JUSTICE

The National Judicial College extends a special thank you to the supporters of the **Pillars of Justice Fund – A Fund for the Future of Justice**. This initiative was undertaken to reach out to law firms and corporations in support of a Research, Education and Service Fund, scholarships, and expansion of the NJC’s endowment. Support will ensure that democracy and the rule of law are upheld through the work of a well-educated and dedicated judiciary. **For more information about how you can support the Pillars of Justice Fund, please contact Gretchen Alt Sawyer at (800) 25-JUDGE or alt@judges.org.**

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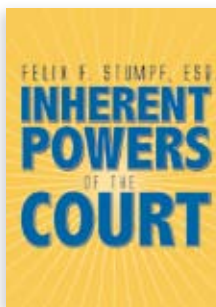
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## 2009 COURSES

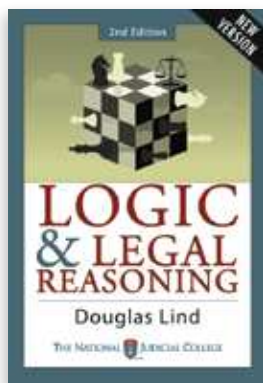
DATE	COURSE	LOCATION
<b>FEBRUARY</b>		
2/12/2009 - 2/13/2009	The Fourth Amendment: Contemporary Issues for Appellate Judges	Oxford, MS
2/15/2009 - 2/19/2009	Today's Justice: The Historic Bases (JS 642)	Washington, D.C.
2/15/2009 - 2/19/2009	Advanced Evidence (JS 617)	Orlando, FL
2/16/2009 - 4/3/2009	Selected Criminal Evidence Issues: A Web-Based Course	Web
<b>MARCH</b>		
3/9/2009 - 3/19/2009	Administrative Law: Fair Hearing	Reno, NV
3/9/2009 - 4/24/2009	Evidence Challenges for Administrative Law Judges: A Web-Based Course	Web
3/16/2009 - 3/19/2009	Fundamentals of Evidence	Reno, NV
3/30/2009 - 4/2/2009	Commercial Driver's Licensing Laws: A Faculty Development Workshop	Reno, NV
3/30/2009 - 4/3/2009	Mediation for Administrative Law Judges	Reno, NV
<b>APRIL</b>		
4/6/2009 - 5/15/2009	Essential Skills for the Unemployment Adjudicator: A Web-Based Course	Web
4/13/2009 - 5/29/2009	Handling Small Claims Cases Effectively: A Web-Based Course	Web
4/19/2009 - 4/30/2009	General Jurisdiction (JS 610)	Reno, NV
4/20/2009 - 4/23/2009	Dispute Resolution Techniques for Tribal Justice Systems	Reno, NV
4/26/2009 - 4/30/2009	Judicial Philosophy and American Law	Newport, RI
4/27/2009 - 4/30/2009	Logic and Opinion Writing	Reno, NV
<b>MAY</b>		
5/4/2009 - 5/7/2009	Court Management for Tribal Court Judges and Personnel	Reno, NV
5/4/2009 - 5/7/2009	Advanced Judicial Writing (JS 626)	Reno, NV
5/15/2009 - 6/26/2009	Ethics and Judging: Reaching Higher Ground: A Web-Based Course	Web
5/18/2009 - 5/21/2009	The Fourth Amendment: Comprehensive Search and Seizure Training for Trial Judges (JS 645)	Reno, NV
5/18/2009 - 5/21/2009	Practical Approaches to Substance Abuse Issues (JS 628)	Reno, NV
5/24/2009 - 5/28/2009	Conducting the Trial (JS 632)	San Francisco
<b>JUNE</b>		
6/1/2009 - 6/4/2009	Essential Skills for Tribal Court Judges	Reno, NV
6/1/2009 - 6/5/2009	Civil Mediation	Reno, NV
6/8/2009 - 6/11/2009	Administrative Law: Advanced	Reno, NV
6/8/2009 - 6/18/2009	Special Court Jurisdiction	Reno, NV
6/8/2009 - 6/18/2009	Special Court Jurisdiction: Advanced (JS 612)	Reno, NV
6/14/2009 - 6/18/2009	Dispute Resolution Skills (JS 625)	Philadelphia, PA
6/15/2009 - 6/18/2009	Traffic Issues in the 21st Century	Reno, NV
6/21/2009 - 6/25/2009	Current Issues in the Law	W. Yellowstone, MT
<b>JULY</b>		
7/5/2009 - 7/9/2009	Enhancing Judicial Bench Skills	Seattle, WA
7/13/2009 - 7/16/2009	Scientific Evidence and Expert Testimony (JS 622)	Reno, NV
7/20/2009 - 7/23/2009	Judicial Writing (JS 615)	Reno, NV
7/20/2009 - 7/23/2009	Decision Making (JS 618)	Reno, NV
<b>AUGUST</b>		
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8/17/2009 - 8/20/2009	Impaired Driving Case Essentials	Reno, NV
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9/28/2009 - 10/1/2009	Advanced Tribal Bench Skills	Reno, NV
<b>OCTOBER</b>		
10/4/2009 - 10/8/2009	Effective Team Court Management	San Antonio, TX
10/4/2009 - 10/15/2009	General Jurisdiction (JS 610)	Reno, NV
10/5/2009 - 11/9/2009	Evidence Challenges for Administrative Law Judges: A Web-Based Course	Web
10/5/2009 - 10/6/2009	The Fourth Amendment: Contemporary Issues for Appellate Judges	Reno, NV
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11/2/2009 - 12/18/2009	Ethics for the Administrative Law Judge: A Web-Based Course	Reno, NV
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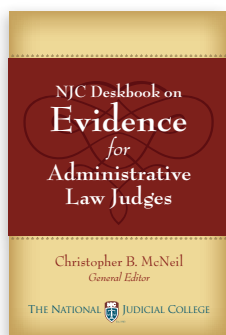
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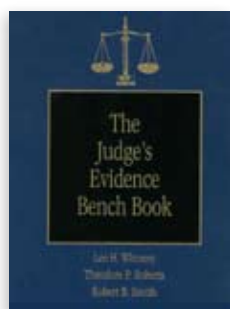
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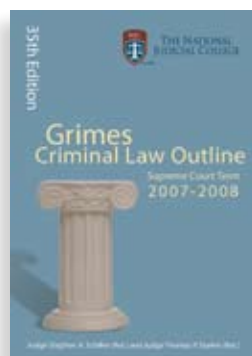
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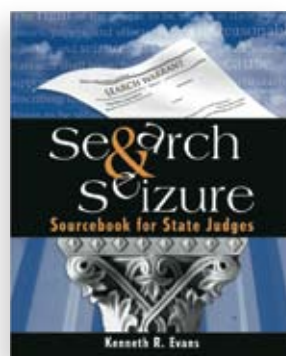
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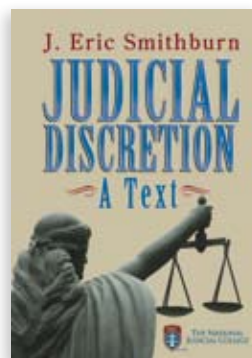
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## NJC WELCOMES NEW CHAIR AND CHAIR-ELECT TO THE BOARD OF TRUSTEES

The National Judicial College (NJC) is pleased to announce that **Saul A. Wolfe, Esq.**, founding member of Skoloff & Wolfe, P.C., Livingston, N.J., has become chair of the Board of Trustees of the NJC and the Honorable **Frederic B. Rodgers** was elected to chair-elect. The new positions were official at the June 6, 2008, board meeting in Reno.

"Leading the board of The National Judicial College is an honor in that it gives one the opportunity to make a profound mark on the direction of judicial education in our nation," expressed Wolfe. "I am looking forward to the challenge of leading the board in its endeavors in maintaining the NJC's pre-eminent role in providing excellence in judicial education nationwide."

Wolfe is the former president of the New Jersey State Bar Association, the New Jersey State Bar Foundation, Harvard Law School Association of New Jersey and Brandeis University Alumni Association. He was a member of the American Bar Association Board of Governors from 2000 to 2003, during which time he served on the Executive Committee and as chair of the Operations and Communication Committee. He served as New Jersey State Delegate from 1993 to 2000 and in the House of Delegates from 1989 to the present time. Wolfe is a Life Fellow of the American Bar Foundation, a former trustee of the New Jersey Institute of Continuing Legal Education and has been



*Saul A. Wolfe, Skoloff & Wolfe, P.C.*

an instructor on property valuation litigation in this country and Canada for more than 35 years. He was also the recipient of the New Jersey State Bar Foundation's Medal of Honor for service to the justice system.

Judge Rodgers will become chair in June of 2009. He was appointed a judge in Colorado's First Judicial District by the Governor in 1986. He is presently assigned to the Gilpin County and district courts in Black Hawk, Colo. He previously served as probate judge for Jefferson County in Golden, Colo., from 2005 to 2007.

"Teaching judges from around the country has been a terrific supplement to my work on the bench – a refreshing change of pace," Judge Rodgers said. "Since appointment to the board of trustees, I have a heightened respect for the contribution of our volunteer faculty to the mission of The National Judicial College. It is an honor to be asked to chair this hard-working board."

Judge Rodgers, who first attended the NJC's courses in the early 1980s, served on the College's Faculty Council. A faculty



*Hon. Frederic B. Rodgers, Golden, Colo.*

member since 1990, he will be the first NJC Faculty Council chair to be elected as chair of the Board of Trustees. Judge Rodgers, now in his fifth decade as a judge, first took the bench in 1969 as one of the first U.S. Army military judges in Vietnam. He is a member of the Board of Governors and past-senior vice president of the Colorado Bar Association. He is also an 11-year member of the American Bar Association (ABA) House of Delegates and past-chair of the ABA Judicial Division. He is a Colorado State Chair and Life Fellow for the American Bar Foundation. Judge Rodgers provided judicial training and law drafting assistance to the Vietnam Supreme People's Court and Ministry of Justice from 2002 to 2004.



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Hon. Peggy Hora teaching at the NJC

## HONORS FOR HORA

**Hon. Peggy Hora** was inducted into the Alameda County Women's Hall of Fame in the category Justice on March 29, 2008.

## ANDERSON WINS GETTLER AWARD

**Dr. William Anderson**, chief toxicologist of the Washoe County Sheriff's Office Forensics Science Division and NJC faculty member, was awarded the Alexander O. Gettler Award from the Toxicology Section of the American Academy of Forensic Sciences in Washington, D.C., on Feb. 20, 2008. Dr. Anderson received the award for his contributions to forensic toxicology. He has been an NJC faculty member for the Scientific Evidence course for 15 years.

## PROFESSIONAL ACHIEVEMENTS

Former academic director, **Joy Lyngar**, was recently appointed as chief academic officer for the NJC. Lyngar will oversee the College's academic programs which include tuition-based Reno campus courses, Seminar Series courses, distance learning, extension programs, grant-funded programs, and special and innovative initiatives. Lyngar replaces **Robin Wosje**, who was recently

appointed as the director of grant projects and special initiatives. Wosje, who has worked for the NJC for more than seven years, will be working out of the College's office in Virginia and will oversee state and federal judicial education projects as well as special projects involving the NJC's academic partners.

## IN MEMORIAM

**Hon. Darrell Stevens**, retired Butte County superior court judge and NJC faculty member, passed away in Chico, Calif., on March 18, 2008. Judge Stevens retired in 2005 after serving 16 years on the bench. He is best known for pioneering Butte County's first drug court in 1995.

## NJC CERTIFICATE PROGRAM GRADUATES

**Hon. John L. Ward, II**, District Court, Pago Pago, American Samoa, graduated from the Certificate of Judicial Development General Jurisdiction Trial Skills and Special Court Trial Skills programs. Judge Ward has been coming to the NJC since 1995 and has taken more than 20 courses.

**Circuit Judge Bruce W. Mackenzie**, U.S. Navy Marine Corps Trial Judiciary, Hawaii, graduated from the Certificate of Judicial Development General Jurisdiction Trial Skills program.

**Hon. Joe W. Washington**, mediator with the Yavapai-Apache Nation, graduated from the Certificate of Judicial Development Tribal Judicial Skills and Dispute Resolution Skills programs.

**Hon. Carl B. Ingram**, chief justice of the High Court, Republic of the Marshall Islands, graduated from the Certificate of Judicial Development General Jurisdiction Trial Skills program.

**Hon. Lindsay A. Tise**, Superior Court, Georgia, graduated from the Certificate of Judicial Development Special Court Trial Skills program.

## NEW NJC STAFF

The Academic Department welcomes **Daphne Burns** and **Susan Witt-Conyers** as program attorneys, **Anna Crew** as the new assistant to the chief academic officer and **Brenda Pardini** as a new course administrator.

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In 2007, we embarked on a few new fundraising initiatives, including the Pillars of Justice Fund – A Fund for the Future of Justice. This Fund was created to enhance existing curricula, develop new courses, provide scholarships and increase the College's endowment. We have received support from many law firms and corporations, and we continue to reach out to partner with others. To learn more about the Pillars Fund, please visit our website at [www.judges.org](http://www.judges.org) and click on the Support NJC link.

As a non-profit organization, the NJC relies on private support for programs, scholarships and general support of the College. Donors invest in the College and give through various vehicles including cash gifts, stock gifts, and bequest gifts. They also have the option to stretch their investment through a pledge to make a gift over time. These opportunities allow us to continue our excellent work and grow in the future.

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