

Lawyer Representatives Coordinating Committee  
Conference Call: August 19, 2015  
Minutes

**Participants:** Autumn Spaeth (CACD), Chair-Elect, Carry Forrester (AZ), Anna Park (CACD), Mia Giacomuzzi (CAED), Charlene S. Shimada (CAND) on behalf of Angel Garganta & Quyen Ta, Andrew Schopler and Shireen Becker (CASD), Rodney J. Jacob (GU), Clare Connors & Colin Miwa (HI), Howard D. Burnett (ID), Jordan Crosby (MT), Susan Pitchford and Danielle Hunsaker (OR), Geana Van Dessel & John (Jay) McEntire (WAED) and Anne Voigts, Liaison, Appellate Lawyer Representatives

**Special Guests:** Hon. Margaret M. Mann, Bankruptcy Judge (CASD), Chair, Conference Executive Committee and Chair of the 2016 Ninth Circuit Judicial Conference, Rebecca Pennell, Esq. (WAED), Program Chair, 2016 Ninth Circuit Judicial Conference

**Unable to Participate:** Margaret G. Foley (NV), LRCC Chair, Craig Denney (NV), LRCC Vice Chair, Darrel Gardner (AK), Nevada LRCC Co-Chairs not yet appointed, Wayne C. Fricke & Christy Tobin-Presser (WAWD)

**Staff:** Renée Lorda, Asst. Circuit Executive for Conference and Education, Phyllis Riddell, Conference and Meetings Coordinator, and Tiffany Silva, Conference and Education Assistant

**I. Roll Call & Welcome**

**Autumn Spaeth, LRCC Chair Elect**

Ms. Spaeth called the roll and welcomed everyone to the first LRCC conference call of the 2015-2016 planning season. Before asking Judge Margaret Mann and Rebecca Pennell to speak, Ms. Spaeth explained that they would be speaking to the LRCC to provide an introduction to the brainstorming session that will take place in San Francisco on Friday, September 25. She explained that this is an annual event which involves LRCC members during the first meeting of the Conference Executive Committee's planning process. Renée Lorda explained that the joint meeting used to happen in mid-winter when the planning process was already underway and there wasn't much the LRCC could contribute. With participation in the first planning meeting, the LRCC has made a difference and many of the most successful programs have been developed during this initial brainstorming session. LRCC members are subsequently represented by the LRCC's officers who do double duty by representing and serving on the Conference Executive Committee as part of their service to the LRCC.

In addition to Ms. Spaeth, the other officers are LRCC Chair Margaret Foley and LRCC Vice Chair Craig Denney. Throughout the planning cycle, they represent the LRCC and the lawyer representatives throughout the Circuit. They also involve the lawyer representatives when their service is required.

## **II. Presentation by Hon. Margaret M. Mann and Rebecca Pennell, Esq.**

Ms. Spaeth welcomed Judge Mann and Ms. Pennell and invited them to speak. Judge Mann began her remarks with a brief description of her history with the Conference process, starting with her involvement as a lawyer representative, then LRCC co-chair, election to the Conference Executive Committee (CEC) and after going on the bench, rejoining the CEC as the bankruptcy judges' representative. Judge Mann explained that she has been so involved because the Ninth Circuit Judicial Conference attracts the thought leaders on key issues and these thinkers can provide new ideas to improve the administration of justice throughout the Ninth Circuit. She wanted to have this conversation with the LRCC to provide some insight on what the goals and plans are for the Conference.

Judge Mann reflected on this year's Conference programs and thinks they were stronger because of the emphasis that all the panels put on drilling down to what would apply directly to the Ninth Circuit. She also discussed the fact that over the years resolutions have been presented at the Conference. A committee on the CEC would vet the resolutions and if they were accepted, the resolutions would be presented and voted upon during the Conference. Resolutions might involve a change in procedures or result in improving the administration of justice. She explained that once resolutions have been passed at the circuit conference, the Ninth Circuit Judicial Conference becomes involved and reviews and determines if the resolution can be implemented. Recently, there have been no resolutions because circuit wide issues or problems do not seem to be coming forward. Bottom line, issues of substance need to be considered in the resolutions process.

Judge Mann continued by saying that the goal is to present a Conference that leaves people excited and enthusiastic about what they do as members of the judicial branch of government. She encouraged LRCC members to get their delegates involved in the planning process by emailing them for topic ideas. She encouraged everyone to work on developing some well thought out topic ideas that can be discussed during the meeting in San Francisco. She added that Chief Judge Sidney R. Thomas will make the final decision on which topics will be presented.

Conference Program Chair Rebecca Pennell discussed the process of brainstorming topic ideas. Over the next two weeks, they would like to request proposals, one per district, on a topic and also present ideas regarding prospective speakers. Get some strong ideas about what can be pursued at next year's Conference. She suggested that they review the evaluations which provided suggestions such as topics related to corrections. Ms. Pennell expressed some interest in developing a topic in relation to corrections and sentencing. Other suggestions included:

Indian law and perhaps a historical aspect involving Indian law, water law and since it is an election year, perhaps a topic related to the election process or current issues dealing with voting rights might apply.

Judge Mann added that they select topics by consensus on what is the most important. She also explained that the Conference cannot pay speakers' fees for high profile speakers. Judge Mann described some topics related to the question of whether or not America is a post-racial society. Do racial disparities tie into economic disparities? She encouraged LRCC members not to limit themselves.

She encouraged the LRCC not to limit themselves and to work to get additional ideas in time for the next conference call, scheduled for **September 1**. During that call, all the topics that have been developed will be reviewed and LRCC members will recommend what should be sent to Judge Mann and Rebecca Pennell.

Both Judge Mann and Ms. Pennell encouraged the LRCC to start the brainstorming process during this call and continue it throughout the Circuit by soliciting ideas from all the districts' lawyer reps. They thanked everyone for their assistance and logged off the call.

### **III. LRCC Brainstorming Session**

Before starting the brainstorming session, Autumn Spaeth explained how the LRCC operates and the distinction between the CEC and the LRCC. She emphasized what an important opportunity it is participate in this "launch" meeting of the Conference Executive Committee (CEC). She encouraged everyone to attend the dinner which happens on Thursday, September 24. Ms. Spaeth explained that the next morning will be an opportunity for the LRCC to have one of its rare meetings. The LRCC meeting most likely will address how districts plan their district conferences. She thinks it will be helpful to have conversations about funding and other conference procedures right from the beginning.

After the LRCC "in person" meeting on September 25 from 7:45 a.m. to 8:45 a.m., the meeting will adjourn and go directly into the Conference Executive Committee meeting which begins at 9:00 a.m. in Courtroom Five. She added that there will be a photograph of the members of the LRCC.

Renée Lorda said that a schedule of events, locations and additional meeting information will be provided next week.

#### **Topics Suggested during the Brainstorming Session:**

##### **A. Indian Law**

Jordan Crosby (MT) began the discussion by stating that some of the most significant decisions related to Indian law have come from Montana. She stated that this also

affects issues dealing with incarceration since all women and children have to be driven out of Montana in pretrial. She added that the highest rate of incarceration in Montana is among Native Americans.

Rodney Jacobs (Guam) commented that similar to Indian law, there are the laws of the territories such as CNMI, Hawaii and Alaska. They also have to ship felons off island. It would be interesting to examine how the U.S. has imposed sovereignty issues, water law, who owns part of the land and who can impose sovereignty on it. Perhaps a number of these subtopics could all be brought together under the umbrella of sovereignty. Carry Forrester added that similar issues have resulted in a lot of friction in Arizona.

#### **B. Montana and WW II Japanese Internment Camps**

Anna Park (CACD) thinks that Montana, a location of some of the WW II Japanese Internment Camps, would be another link to history during the Conference in Montana. She suggested that there could be a historical link with Montana, Guantanamo, and the Korematsu Case. She thought that these topics could be regarded from issues dealing with civil rights, criminal and Indian rights/laws.

Jay McIntyre (WAED) suggested those are two issues relevant in the Eastern District of Washington and Idaho. He explained that questions always come up regarding where does the line end on tribal sovereignty where something was pled and resolved in tribal court and meanwhile, the case gets picked up by the U.S. Attorney Office and ultimately a new charge is made against the offender. Why does full tribal jurisdiction end up moving to federal jurisdiction after everything was resolved in tribal court? He explained that those charged with the exact same offense they were charged with in tribal court, end up with a much tougher sentence in federal court.

**Speakers:** Jordan Crosby suggested that sovereignty issues can apply to both the civil and criminal side in matters dealing with sovereignty issues. She suggested that the Conference may want to consider Denise Juneau, Montana's Superintendent of Public Instruction, who happens to be a lawyer. She was described as an incredible speaker. New district court judge in Arizona is Native American.

**Opening Ceremony:** Ms. Crosby explained that there are also many drum groups that could be involved in developing an opening ceremony. This would be another example of the Ninth Circuit's diversity.

**Income Disparities:** Rod Jacobs added that Native American communities, in addition to the island communities, suffer from disparate levels of poverty. He thinks this is being driven by federal sovereignty issues.

Carry Forrester thinks these would be great topics.

### **C. Environmental Issues**

Jordan Crosby: The Conference will be 120 miles away from the nation's largest superfund site in Butte, MT. Rod Jacobs added that Saipan was devastated by a typhoon last week. He thought it would be interesting to look at combining the Butte/superfund issues with environmental issues. He also added that Pope Francis issued the Encyclical, *Laudato si* (May 24, 2015) and that issues dealing with the environment are not only taking on national and legal import but perhaps moral importance as well. Other environmental issues relate to climate control, water and pollution and what we are doing to our land.

What will we will look like in the future? A suggestion was made that having a scientist who could provide graphic depictions of what future environments would look like might be very interesting.

### **D. Settling Civil Cases**

Howard Burnett (ID) suggested that since there will be a critical mass of people at the Conference, it might be the right forum to have a program on the best practices of settling civil cases. He added that this may be more appropriate for a breakout session but perhaps some there could be some enthusiasm that sparks some new ideas to resolve this problem.

**Speaker suggestion:** Philip Howard, a lawyer and writer, will be the keynote speaker in the upcoming District of Idaho District Conference. He is a partner in the Washington, D.C. office of Covington & Burling and is the author of "The Rule of Nobody" (2014) and "The Collapse of the Common Good." (2002). Mr. Burnett explained that he consults with governmental and judicial folks throughout the country.

### **E. 50<sup>th</sup> Anniversary of the Miranda Decision—another historical aspect**

Mia Giacomazzi (EDCA) stated that 2016 is the 50<sup>th</sup> anniversary of the Miranda decision. Some suggested that a historical piece could be done that would juxtapose Miranda with current issues. Examples such as the Huey Newton trial (CAND) could be tied in. What was going on could create a conversation around the race issue.

### **F. 100<sup>th</sup> Anniversary of Justice Louis Brandeis' appointment to the U.S. Supreme Court** was discussed by Danielle Hansaker (OR).

### **G. 50<sup>th</sup> Anniversary of Title VII** discussed by Anna Park (CACD)

## **IV. Next Steps: Topic Development, Email Lawyer Reps for more suggestions**

Ms. Spaeth brought the brainstorming session to a close and thanked everyone for their contributions and ideas by saying that this had been one of the best brainstorms she had participated in! She added that on September 1, the goal will be to develop these topics.

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Between now and September 1, Ms. Spaeth asked LRCC members to send an email to their lawyer reps. Try to get recommendations from other conferences where people have heard an interesting speaker. The only request: Please hold off on any communications with prospective speakers.

**V. Adjournment & Next Meeting**

The conference call was adjourned at 5:10 p.m. PDT.

The next meeting will be on Tuesday, September 1, 2015 at 4:00 p.m. PDT.