

Conference Executive Committee
February 26, 2016
Minutes

Participants: Hon. Margaret M. Mann, *Bankruptcy Judge (SDCA), Conference Chair*, Hon. Sidney R. Thomas, *Chief Judge (by phone)*, Hon. Timothy M. Burgess, *Chief District Judge (AK), Program Chair*, Hon. Michael Daly Hawkins, *Senior Circuit Judge*, Hon. Edward J. Davila, *District Judge (NDCA)*, Hon. Dale A. Drozd, *District Judge (CAED)*, Hon. Thomas M. Renn, *Bankruptcy Judge (OR)*, Lance Wilson, *District Court Clerk Liaison (NV)*, Margaret Corrigan, Esq., *Ninth Circuit Mediator*, Margaret G. Foley, Esq., *LRCC Chair, (NV)*, Autumn D. Spaeth, Esq., *LRCC Chair Elect (CDCA)*, At Large Members: Sean E. Frink, Esq. *(CNMI) by phone*, Holly Lake, Esq., *(CDCA)*, James Patrick Shea, Esq., *(NV) by phone*, David M. Stern, Esq., *(CDCA)*, Kimberly S. Winick, Esq., *(CDCA)*, Angela Walker Woolridge, Esq. *(AZ)*
Advisory Board Liaison: Harvey I. Saferstein, Esq. *(CDCA) by phone*

Unable to Participate: Hon. John Owens, *Circuit Judge*, Hon. Andrew J. Guilford, *District Judge (CDCA)*, Hon. Rosemary Marquez, *District Judge, (AZ)*, Cathy Catterson, *Circuit and Court of Appeals Executive*, Phyllis Riddell, *Conference and Meetings Coordinator*, Tiffany Silva, *Conference and Education Assistant*

Staff: Renée Lorda, *Asst. Circuit Executive*

- I. Welcome and Approval of Minutes Hon. Margaret M. Mann,
Bankruptcy Judge (CASD), *Conference Chair*

Judge Mann welcomed everyone and expressed her appreciation for everyone's excellent work in meeting this week's deadline for confirming most of the speakers. She asked if the minutes should be approved as written. Hon. Edward J. Davila moved to have the minutes approved and Hon. Dale A. Drozd moved to second.

- II. Remarks from the Chief Judge Hon. Sidney R. Thomas, *Chief Judge*

Chief Judge Thomas acknowledged everyone's hard work and stated that he is willing to provide assistance to develop any aspect of the Conference.

- III. Subcommittee Reports Moderator: Hon. Timothy M. Burgess, Chief
District Judge (AK), *Program Chair*

Judge Burgess asked the subcommittee chairs for their progress reports on topic development.

A. **Economic Disparity:** LRCC Chair Margaret Foley (NV) explained that after trying for “rock star” speakers, they have drilled down to come up with a plan and a program format with speakers who could discuss economic disparity and its relation to access to civil justice. She stated that there would be some time spent on criminal justice but the goal is to emphasize civil justice issues. Although, they are still hoping for a “rock star” economist, Ms. Foley explained that they have spoken to professors at MIT and that Rebecca Sandefur was referred to them. Dr. Sandefur joined the American Bar Foundation in 2010 to found and lead a new access to justice research initiative. She continues to head up this initiative as Faculty Fellow at the Foundation and also services on the Sociology and Law Faculty of the University of Illinois in Urbana-Champaign. Professor Sandefur studies access to civil justice from every angle – from how legal services are delivered and consumed, to how civil legal aid is organized around the nation, to the role of pro bono, to the relative efficacy of lawyers and non-lawyers as advocates and representatives, to how ordinary people think about their justice problems and try to resolve them. If the economist doesn’t surface, she may be the alternate.

Professor Susan Sturm, law professor at Columbia, is a system change person. She thinks people need to talk to each other to effect change. She would be very interested to be on the panel. Ms. Foley has spoken to Russ Pearce, law professor at Fordham University, and she explained that he draws on economic forces and wrote an article about *Turner v. Rogers*. He is eager and very excited about participating.

Another possibility is Patty Roberts, clinical professor of law at William and Mary Law School. Ms. Roberts is a strong proponent of developing innovative programs for law schools whose students would work with disadvantaged populations and influence substantive change. Prof. Sandefur has identified a remedy gap that doesn’t necessarily have to use lawyers to be resolved. Another issue involves the fact that many faced with economic difficulties don’t think to use lawyers to resolve problems. Patty Roberts has legal clinic program with veterans that is very successful and has expanded to include medical and housing assistance. Patty Roberts has a compelling story to tell about access to justice with a working program.

Regarding topic development, the concept is to have Patty Roberts and Susan Sturm be part of the panel to highlight programs and individuals who are identifying solutions. Judge Mann stated that the issue is timely because Congress has created a bipartisan commission to address this, the White House is looking at it and the U.S. Department of Justice has written report to identify the issues and solutions. Ms. Foley added that Patty Roberts has a list of solutions based on the *Turner v. Rogers* case. One example is that her program has useful forms and sometimes, the task of

completing forms and inability to do so often prevents people from applying for assistance to resolve a problem. They do not want the program to focus only on economic problems and politics. Ms. Foley explained that there also had been discussions with Magistrate Judge Charles Pyle about some of the initiatives that the Circuit is working on to address such economic disparity issues throughout the Circuit. Judge Mann was very pleased with the progress that has been made and she complimented the committee on successfully identifying the disparate views.

B. The Art of Judging

Hon. Edward J. Davila (CAND), District Judge

Judge Davila reported on behalf of Judge Hawkins who had to catch an early morning flight. He explained that Judge Jeremy Fogel, FJC Director, and Prof. Terry A. Maroney previously have made presentations together for a variety of judges' programs. Judge Hawkins will be the program moderator and discuss his appellate court perspectives. They want this to be an open and interactive program. Judge Hawkins also plans to provide statistical information. Judge Davila ended his remarks by saying that this will be an interesting and exciting program.

C. Management of Litigation for the Client and the Public: Whose case is this anyway?

Kimberly Winick (CACD), *At-Large Representative*

Kimberly Winick explained that some of the concepts of the program are based on Chief Justice John Roberts' year-end report that was made public on January 1. The report calls for better ways to discuss and resolve problems. Ms. Winick explained that the goal of this program will be to come up with solutions among all parties to manage cases more effectively. For judges, the case is on their calendar which they control; lawyers are officers of the court and making a living. She reported that with the help of a number of LRCC Chairs and Co-Chairs, the panel includes: Hon. B. Lynn Winmill, Chief District Judge (ID) who has been involved in development of the revised Federal Rules of Civil Procedures, Hon. Maureen Tighe (CACD), a bankruptcy judge who is the head of the Ninth Circuit's Pro Se Committee. Judge Tighe (pronounced "Tigh") has a background as a federal prosecutor and acting US Trustee for the region. She also is deeply involved in the practice of assertive non-defensive communication and is learning how to communicate in a way that does not result in conflict. Ms. Winick explained that they also are trying to get MCLE credit for the program in the area of ethics. To that end, the panel will include Mark Bassingwaithe, who is a risk manager with ALPS that deals with a malpractice insurance practice. A lot of his writing is about systems and his participation will provide an avenue to provide ethics credit. Finally, Prof. Myles Lynk, a professor at ASU Law School, will be on the panel. Prof. Lynk

teaches ethics and gave a presentation last March, “Ethical Challenges and Ethical Success.” Ms. Winick went on to say that the reference materials for this program will include the Chief Justice’s Year End Report in addition to some materials about the Rules that Chief Judge Winmill will discuss. The goal is to have a conversation. The planning group is looking for ideas about the rules that they care about. Rule 1 is the most important. She needs input about the rules they think are important. She will convene the speakers soon. Judge Mann encouraged committee members to jump in or send an email if they have ideas on content.

D. Breakout Sessions

- 1. Appellate Session:** Ms. Lorda reported that the Appellate Lawyer Representatives will be managing the program. They are meeting in San Francisco in March and will begin discussing topics at that time.
- 2. Bankruptcy Session:** David Stern (CACD) reported that they will have 3 separate panels consisting of 2 lawyers and 2 judges each. The topics are economic disparity, getting practical: dealing with the difference between what makes sense and what is required, and student loans.
- 3. Civil Breakout Session:** Holly Lake (CACD) said that there is nothing new to report at this time but that a call with the LRCC volunteers will be planned.
- 4. Criminal Breakout Session:** Angela W. Woolridge said that she has recruited three volunteers from the LRCC. They are: Darrel Gardner (AK), Jay McEntire (WAED), and Andrew Schopler (CASD). She explained that they would like to develop a program that will follow up on the economic disparity program and tie in to overall access to justice theme. They want to focus on how to overcome barriers to criminal justice despite economic inequalities. How do we address inequality? The panel will be divided into pretrial, trial and sentencing and post-conviction with an emphasis on how post-conviction folks can get back on their feet. They plan on follow up discussions at the tables.

Judge Mann described CARE, a program that she has done in a diversion program about managing money. The program emphasizes financial management topics such as the smart use of credit and avoiding payday loans from predatory lenders. She will send the email with the information on where to obtain the program materials. Jim Shea volunteered to email the program materials for the CARE IN A BOX program. Autumn Spaeth (CACD), *LRCC Chair Elect*, discussed the CASA program for housing. Lance Wilson suggested a speaker who is with the Southern Poverty Law Center. Judge Drozd discussed a diversion program in the Eastern District of California. He also described a presentation by Judge Andre Birotte about an aggressive diversion program.

Judge Drozd said that Judge Birotte may have presented this program before he went on the bench and suggested that Angela contact him.

E. Police Practices and Racial Disparities

Hon. Edward J. Davila (CAND)

Judge Davila explained that they set out to recruit panelists who different ethnic and racial groups to discuss the topic racial disparity and police practices. He was pleased to report that all the following invited speakers agreed to participate. They include: John Burris, Esq., well known African American attorney in the Bay Area, George Gascón, District Attorney for the City and County of San Francisco (also the former Police Chief of SFPD), Roberto Villaseñor, who will bring some interesting perspectives from his time as Chief of Police for the City of Tucson and Prof. Laurie O. Robinson, co-chair of the President's Commission on Police Practice who will be the program moderator. Judge Davila confirmed that Ronald Wakabayashi, the Western Regional Director of the Community Relations Service of the U.S. Department of Justice, received clearance to participate in the Conference program. Judge Davila will arrange to speak with Prof. Laurie Robinson to develop an agenda and talking points for the program.

Judge Davila thinks that the reference materials will include the President's Commission on Police Practice report, and perhaps some short videos.

Judge Burgess thanked Judge Davila for all the work and emphasized to everyone that it was very important to follow through with the panels. In addition, Renée Lorda explained that it will be very important to have one on-site panel meeting before the program in Montana. She will arrange these meetings and notify all speakers and their assistants to participate in these meetings.

Before moving on to the next topic report, Judge Mann emphasized the importance of good, crisp introductions. She advised that the person who will be responsible for introducing the panel should not spent too much time on bio-related introductions. Rather, it is more effective to make a program introduction that is content-related.

F. Tribes and Territories

Sean Frink (CNMI), *At-Large Representative*

Sean Frink said that the program speakers all have been confirmed. They are: Hon. William C. Canby, Jr., Senior Circuit Judge who will be the moderator, Hon. Raymond D. Austin, former Supreme Court Justice, Navajo Nation, Hilary Tompkins, Solicitor for the U.S. Department of the Interior, and Hon. Juan R. Torruella, Circuit Judge for the First Circuit who sits in Puerto Rico. Mr. Frink reported that he and Judge Owens are still developing topics and that by this summer, there will be seven Supreme Court cases involving insular affairs and Native Americans that will be decided. They are planning to have a speakers' meeting in the next few weeks to develop content for the presentation. He explained that Guam and CNMI are very different because of the

way the territories were formed. Judge Burgess asked if they would be discussing Alaska which has a corporate model.

There is no information about the status of Native American author Louise Erdrich's invitation to attend the Conference. If she were to attend, Judge Mann thinks the book discussion should be about "The Roundhouse." Ms. Lorda explained that Chief Judge Thomas and his contacts are working on this invitation.

G. Supplemental Programs

- A. Supreme Court Review:** Renée Lorda reported that the Ninth Circuit Education Committee is meeting and will try to confirm speakers before the end of March.
- B. Bankruptcy Judges Education Committee:** Hon. Thomas M. Renn said that the 2016 Bankruptcy Judges Education Program has been organized with an overall theme of focusing on areas where there might be district splits in terms of process and/or procedures. The title of the program is **Splits within the Circuit -- Issues Without Controlling Ninth Circuit Authority**. One of the Bankruptcy Judges Education Committee members, Hon. Martin R. Barash (CACB), will be the moderator. Three BAP judges have agreed to participate in a moderated panel discussion including judges and lawyers in the audience. The plan is to find out how people deal with differences in practice. Kimberly Winick described the situation of dealing with fee applications in the Ninth Circuit. She said that attorneys cannot get paid to defend their fee applications. The Delaware Bankruptcy Court, where many cases are heard, have said that attorneys cannot defend their fee applications.
- C. Unit Executives Program:** Lance Wilson (NV), District Court Clerk Liaison, said that he is trying to confirm Dr. Craig E.L. Stark as a speaker. He will also be at the Conference as a speaker for the "Neuroscience and Decision Making by Judges and Juries" program to be presented on Thursday, July 14. Dr. Stark has spoken at Mr. Wilson's district meetings before. He also wondered if Judge Tighe might be willing to discuss (or recommend a speaker) the practice of assertive non-defensive communication.
- D. Magistrate Judges Education Program:** Renée Lorda reported that the program will be about implicit bias and involve two non-attorney experts on diversity and implicit bias issues. FJC Director Jeremy Fogel is assisting with the program organization and will also be program moderator.
- E. IT Awareness Program:** Judge Burgess explained the Ninth Circuit IT Committee is doing something different this year. They are expanding the program to include both

judges and lawyers. The session will deal with protecting personal information and a discussion about the type or extent of privacy that can be expected. Judge Thomas Hardiman, Circuit Judge and the Chair of the JCUS IT Committee, has been invited to participate as a panelist. An attorney specializing in privacy issues and Prof. Calo from the University of Washington also have been confirmed as speakers on the panel. With regards to privacy, Judge Burgess described a fascinating incident on a recent flight where one of the passengers described how he had hacked a passenger's emails and other documents. Following this, a few minutes were spent by committee members describing that in a smaller sized firms, all employees have cloud based access.

F. Neuroscience and Decision Making by Judges and Juries

Autumn Spaeth (CACD),
LRCC Chair-Elect

Autumn Spaeth explained that Craig Stark will discuss memory and perception. Although the other speakers do not know him, he is said to be a very entertaining speaker who could carry the entire program on his own. Other panelists include: Jeff Rachlinski from Cornell School of Law who has done a lot of research and writing on judicial decision making. Ms. Spaeth said she had spoken with Dean Mnookin the previous day. Dean Mnookin will be the moderator and her goal is for this program to be as cutting edge as possible. They will be having a conference call in March.

G. Contemplative Judging and Lawyering and Its Advantages for Justice, Civility, And Professionalism

Hon. Dale A. Drozd (CAED), District Judge

Judge Drozd said that the panel is set. Judge Fogel will also be the panel moderator and panelists will include: Hon. Allan Gold, Sr., So. District of FL, who has written and spoken throughout the country about mindfulness issues; Dr. Anishi Ja, University of Miami, who has a mindfulness program for law school students and who has worked with the military before deployment to Iraq and Afghanistan; and Timothy Tosta, a commercial real estate attorney in the San Francisco Bay Area who was confronted by serious health issues that resulted in his beginning to practice meditation. He has written books and spoken about the topic to many legal groups in addition to other professions.

IV. Opening Program: Some Changes Hon. Margaret M. Mann, *Chair*

Judge Mann announced several changes to the program. First, Justice Kennedy would like to make his presentation during the opening session. That request will be accommodated. The first part of the opening will be the welcomes, speeches and civics contest-related

programs. There will be a 10 minute break after which Justice Kennedy will make his presentation. (See the schedule for the change.)

The IT Awareness Program has been moved to Tuesday, July 11, from 1:45 p.m. to 3:15 p.m.

Judge Mann reminded everyone that the next deadline is March 25 for final program titles. She encouraged everyone to have “snappy but descriptive” titles.

V. Civics Contest

David Madden, Asst. Circuit Executive

David Madden described the civics contest which will be a circuit-wide essay and writing competition (500-570 words), and also a contest for the best video production. He said that the Courts and the Community Committee have worked with districts throughout the Circuit who are involved in extensive promotional activities. The local winners will be announced in May. This contest has generated various prizes which, in the case of some districts, are very generous and those funds are from district and circuit attorney admission fees.

Some districts are paying the travel expenses of two days’ lodging and a per diem. Mr. Madden said that the District of Montana has been very generous and that Montana contest winners would all be invited along with their parents.

VI. Attorney Reports

Margaret G. Foley (NV), *LRCC Chair*

Ms. Foley reported on recent activities for the LRCC. During the first week of February, the LRCC attended the Chief District Judges Meeting in Tucson. In addition to presenting a program that touched on immigration and managing court business in disaster situations (CNMI & the typhoon), everyone who was able went on a specially arranged border tour down to Nogales, one of the busiest crossings in Arizona.

Ms. Foley also indicated that there seemed to be strong interest among the LRCC to encourage some type of group activity for the lawyer representatives. This will be discussed further before any definite plans are suggested.

VII. Adjournment

Judge Mann reminded everyone about the conference call on Friday, March 18. There will also be another conference call on Thursday, April 28 and the last in person meeting will be on Friday, May 6, with dinner on Thursday, May 5 in San Francisco.

The meeting was adjourned at 12:10 p.m.