

**CONFERENCE OF
CHIEF DISTRICT JUDGES
& LRCC**

AGENDA



February 26, 2015

**Renaissance II Room
Renaissance Las Vegas Hotel
3400 Paradise Road
Las Vegas, NV 89169**

**CONFERENCE OF
CHIEF DISTRICT JUDGES & LRCC**

Hon. Susan Oki Mollway, HI
Rebecca L. Pennell (WAE), LRCC Chair
Chairs

Chief District Judges

Hon. Ann L. Aiken, OR
Hon. Ralph R. Beistline, AK
Hon. Dana Christensen, MT
Hon. Raner C. Collins, AZ
Hon. Morrison England, Jr., CAE
Hon. Phyllis Hamilton, CAN
Hon. George H. King, CAC
Hon. Ramona Villagomez Manglona, NMI
Hon. Barry Ted Moskowitz, CAS
Hon. Gloria M. Navarro, NV
Hon. Marsha J. Pechman, WAW
Hon. Rosanna M. Peterson, WAE
Hon. Frances Marie Tydingco-Gatewood, GU
Hon. B. Lynn Winmill, ID

Speakers & Guests

Hon. Frank R. Alley, III, OR
Yuliya Barron, CAS
George Camp, Exec. Director, Association of State
Correction Administrators
James C. Duff, Director, AO (by video)
Hon. Joseph J. Farnan Jr., DE (Ret.)
Liesl Johnson, General Counsel, Las Vegas
Metropolitan Police Department
Hon. Robert S. Lasnik, WAW (by video)
Christy E. Lopez, Deputy Chief, Special
Litigation Section, Civil Rights Div, U.S.D.O.J.
Hon. Virginia A. Phillips, CAC
Asst. Sheriff Kirk Primus, Las Vegas
Metropolitan Police Department
Hon. Charles R. Pyle, AZ
Hon. James L. Robart, WAW
Hon. Deborah M. Smith, AK
Hon. Sidney R. Thomas, Chief Circuit Judge
Lance S. Wilson, District Court Clerk, NV

LRCC

Howard D. Burnett, ID
Craig S. Denney, NV
Nicole Duckett Fricke, CAC
Margaret G. Foley, NV, LRCC Chair Elect
Wayne C. Fricke, WAW
Darrel J. Gardner, AK
Mia Giacomazzi, CAE
Lori Jordan Isley, WAE
Rodney J. Jacob, GU
Joseph S. Leventhal, CAS
John B. (Jay) McEntire, WAE
Alex M. Medina, CAE
Rebecca L. Pennell, WAE
Susan D. Pitchford, OR
Tod Frederick Schleier, AZ
Autumn Spaeth, CAC, LRCC Vice Chair
Colin M. Thompson, NMI
Anne M. Voigts, Chair, Appellate Lawyer
Representatives
Sarah O. Wang, HI
Jennifer Wellman, WAW

Office of the Circuit Executive

Cathy A. Catterson, Circuit and
Court of Appeals Executive
Renée Lorda, Assistant Circuit
Executive, Conference & Education
David Madden, Assistant Circuit
Executive, Public Information
Robert Rucker, Assistant Circuit
Executive, Court Management & Research
Joan Gee, Secretary



Conference of Chief District Judges and Lawyer Representatives

Agenda
February 26, 2015

Renaissance Hotel
3400 Paradise Road
Las Vegas, NV 89169

Wednesday, February 25 – Travel day

6:00 p.m. ***Dinner with the lawyer reps at Piero's***
355 Convention Center Drive, Las Vegas, NV 89109
(702) 369-2305

Thursday, February 26 - Renaissance II Room

Breakfast on your own, coffee and tea at the meeting

- 8:30 a.m. **Welcome, Introductions, Transitions**
Chair, Chief District Judge Susan Oki Mollway (HI)
LRCC Chair Rebecca L. Pennell (WAE)
- 8:45 a.m. **Discussion of Best Practices for Facilitating Feedback
Between the Bench and Bar** **Tab 1**
Introduction: Autumn Spaeth, LRCC Vice Chair (CAC)
Speaker and Discussion Facilitator: Hon. Joseph J. Farnan Jr. (DE)(Ret.),
Ombudsman
- 10:00 a.m. **Media Relations: What the Bench Can Do and How the Bar
Can Assist** **Tab 2**
Introduction: LRCC Chair Rebecca L. Pennell (WAE)
Discussion Leader: Chief District Judge Susan Oki Mollway (HI)
Speaker: David Madden, Asst. Circuit Executive, Public Information
- 10:45 a.m. **The Electronic Storage of Trial Exhibits - Discussing the
Appellate Lawyer Representatives' Resolution**
Anne M. Voigts, Chair, Appellate Lawyer Representatives

11:00 a.m. Break

11:15 a.m. **The Federal Government and the Courts' Relationships with
Local Police Departments**

Tab 3

Introduction: LRCC Chair Elect Margaret G. Foley (NV)

Speakers: Hon. James L. Robart (WAW)

Liesl Johnson, General Counsel, Las Vegas Metropolitan Police Department

Asst. Sheriff Kirk Primus, Las Vegas Metropolitan Police Department

Christy E. Lopez, Deputy Chief, Special Litigation Section, Civil

Rights Division, U.S. Department of Justice

12:30 p.m. **Lunch in the meeting room. For those staying at the hotel a meal form
will be required.**

BIOGRAPHY

HONORABLE JOSEPH J. FARNAN, JR.

UNITED STATES DISTRICT JUDGE (RETIRED)

DISTRICT OF DELAWARE

Judge Farnan received his Bachelor of Arts degree in Political Science from King's College, Wilkes-Barre, Pennsylvania, in June 1967. Judge Farnan received his Juris Doctor degree from the University of Toledo College of Law in June 1970. While at Toledo, Judge Farnan was named an editor of the *Law Review* and awarded the Alumni Scholarship in recognition of academic achievement.

From September 1970 until June 1973, Judge Farnan was Dean of Students and Director of the Criminal Justice Program at Wilmington University. After leaving the University as an administrator and faculty member, he continued as an adjunct faculty member until 1981.

From December 1971 until December 1976, Judge Farnan was engaged in the private practice of law in Wilmington, Delaware. During this time he also served as a part-time Assistant Public Defender. In December 1976, he was appointed the County Attorney for New Castle County, Delaware. He served in this position until January 1979, when he was appointed Chief Deputy Attorney General for the State of Delaware. In August 1981, he was appointed the United States Attorney for the District of Delaware by President Ronald Regan. While serving in these capacities, Judge Farnan tried numerous jury and bench trials in both federal and state courts.

In July 1985, Judge Farnan was appointed to the United States District Court for the District of Delaware by President Reagan. Judge Farnan served as Chief Judge of the District Court from July 1997 until July 2000. During his 25 year tenure with the District Court, Judge Farnan presided over and decided numerous corporate disputes and patent infringement cases. Included among his cases were the Pantry Pride/Revlon securities case, the Diet Coke pricing case, the DaimlerChrysler merger case, the Lipitor and Crestor patent cases, and the Intel antitrust case.

Judge Farnan is admitted to practice in New Jersey (1970) and Delaware (1972) and is now engaged in the private practice of law with Farnan LLP, where his practice is focused on complex litigation, including patent, commercial and Chapter 11 bankruptcy matters, as well as appointments as an arbitrator, mediator and litigation consultant in patent and complex commercial cases.

Setting the Record Straight: A Bench-Bar Response to Media Controversy

Conference of Chief District Judges
Las Vegas, Nevada
February 26, 2015

Unfolding Events

Developing Protocols

Unfair Criticism/Misinformation

Organizing the Bench and Bar

Unfolding Events

The New York Times

U.S.

Judge Sent Hundreds of Emails Showing Bias

By THE ASSOCIATED PRESS JAN. 18, 2014

HELENA, Mont. — A former federal judge who forwarded a racist email involving President Obama's offensive messages from his federal email account to a judicial review panel.

KING5.com

Search

Crime

Police: Man who shot Spokane deputies had 15 felony convictions

ajc.com

Powered by The Atlanta Journal-Constitution

MYAJC.COM

Posted: 6:02 p.m. Tuesday, Aug. 12, 2014

Domestic violence arrest unlikely to remove federal judge from bench

Unfolding Events

The Seattle Times

Winner of Eight Pulitzer Prizes

Originally published June 20, 2005 at 12:00 AM | Page modified June 21, 2005 at 7:38 AM

Man fatally shot at federal courthouse in Seattle

A man who walked into the federal courthouse in downtown Seattle today carrying a hand grenade was shot and killed, police

LAS VEGAS REVIEW-JOURNAL



Posted January 4, 2010 - 8:30am

Court officer, suspect killed in federal courthouse shooting

**TUCSON SHOOTING: FEDERAL OFFICIAL SLAIN;
Judge had faced threats in the past;
But John Roll was just a bystander Saturday who**

Process and Protocols

- ✓ Notification
- ✓ Information gathering
- ✓ Assessment / consultation
- ✓ Preparation / distribution
- ✓ Follow up

Unfair Criticism / Misinformation

- ✓ Nature of the criticism/misinformation
- ✓ Who/what is the source
- ✓ How unfair, how inaccurate
- ✓ How widely disseminated
- ✓ Is immediate response warranted

Unfair Criticism / Misinformation

- ✓ Will a response resolve or revive a controversy
- ✓ Will further explanations be needed

If You Need Help

- ✓ Preparing responses
- ✓ Offer a reporter's perspective
- ✓ Handle distribution
- ✓ Act as intermediary or work behind scenes

Have Materials Available

[US Attorneys](#) > [USAM](#) > [Title 9](#) > Criminal Resource Manual 26
[prev](#) | [next](#) | [Criminal Resource Manual](#)

26 Release and Detention Pending Judicial Proceedings (18 U.S.C. §§ 3141 et seq.)

General Provisions Regarding Bail and Detention in Criminal Cases: The Eighth Amendment to the United States Constitution provides that "[e]xcessive bail shall not be required . . ." U.S. Const. Amend. VIII. The United States Supreme Court has interpreted this amendment to prohibit the imposition of excessive bail without creating a right to bail in criminal cases. *See United States v. Salerno*, 481 U.S. 739, 754-55 (1987) ("eighth amendment does not grant absolute right to bail"). The subject of bail and detention also implicates the Fourteenth Amendment's Due Process Clause, and requires that laws imposing pretrial

Media Outreach

- ✓ **Develop educational materials**
- ✓ **Provide online information**
- ✓ **Consider a bench-bar-press committee**
- ✓ **Conduct periodic workshops**

Rapid Response to Unfair and Unjust Criticism of Judges



Standing Committee on Judicial Independence



ABA
Defending Liberty
Pursuing Justice



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This pamphlet has been prepared for the American Bar Association Standing Committee on Judicial Independence.

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RAPID RESPONSE TO UNFAIR AND UNJUST CRITICISM OF JUDGES

The Bar has a special responsibility to ensure that judges remain highly respected leaders of our legal system and communities. Serious inaccurate or unjustified criticism should be answered through a public information program. We should coordinate activities recommended in this publication with the courts themselves, usually acting through their public information officers. Most importantly, and we cannot emphasize this enough, responses to attacks on the judiciary must be made promptly within the same news cycle to be effective.

While many of the references to Bar Associations in this publication refer to state and local Bars, national Bars and specialized Bar Associations can also provide effective responses. We hope that this publication will be used by all associations of lawyers to foster further understanding of the role of our judges, state or federal. This publication focuses on unjust criticism of judges which also encompasses situations in which a criticism may reflect a misunderstanding of a judge's legal role or the judicial system. We can use this "teachable moment" to explain fundamental concepts of the role of judges to the public. In making determinations with regard to what is a fair or an unjust criticism of a judge, we must always keep in mind that in a democratic society citizens and the media have the right to make reasonable and fair criticism of all public officials, including judges. But, as Justice Sandra Day O'Connor reminds us, "Criticism is fine, retaliation and intimidation are not."

This pamphlet builds upon the efforts of the original subcommittee on Unjust Criticism of the Bench that prepared the 1986 protocol, the 1997 protocol of the ABA Judicial Division and Lawyers Conference drafted through the encouragement of Judge Norma L. Shapiro and the protocols of many state and local bar associations that were received in preparation of the current document.

We drafted the recommendations in this pamphlet carefully, keeping in mind the ethical dilemmas judges face in deciding difficult and often unpopular cases. The protocols are consistent with the American Bar Association's various model provisions governing the conduct of lawyers and judges. Above all, we hope that "Rapid Response to Unjust and Unfair Criticism of Judges" assists you in responding rapidly and appropriately to unjust and unfair attacks on your judges.

April, 2008

Doreen D. Dodson, Chair
ABA Standing Committee on
Judicial Independence

As a matter of policy, a bar association, as well as members of other constituencies, should be empowered and have in place a mechanism to speak out in defense of judges and the judiciary when either is unjustly criticized, especially when exercising their professional, ethical and constitutional duties, or when such unjust criticism serves to erode the public's trust and confidence in the judicial system. The standard for review will be whether the criticism unjustly impugns the integrity of the judge or the judiciary, or where responses by the bar to criticism are warranted given a misunderstanding of the judge's legal role or the judicial system.

Members of a bar association, as well as members of other constituencies, should have access to a process through which such criticism can be considered in a timely manner to maximize an effective response. Set forth below are suggested procedures for such a response.

RAPID RESPONSE MECHANISM

PURPOSE:

To provide a mechanism through which a bar association and members of other constituencies can provide timely responses to the serious, unjust criticisms of judges and the judiciary or to misunderstandings about the role of a judge or the judicial system. The focus of these responses is to provide the public with information to help them better understand the legal issues related to a specific situation, including the role of judges, the application of the law, and the restrictions and responsibilities placed on judges in the canons and rules.

PROCESS:

Prep Work (Have a system in place before attacks are launched.)

1. A state and/or local bar should identify and form a rapid response team of knowledgeable and accessible individuals who are authorized to determine whether a response is appropriate and, if so, determine the extent of the response. These individuals should be media savvy and committed to the fairness and impartiality of the judiciary. A logical group is the bar president, bar public relations staff, and/or other bar leadership. The members of this group will depend on a number of factors in your state. Therefore, you should tailor this group to your particular state. Ideally, there will be one rapid response team in the state, with other constituents as partners, but, where there is more than one team in a state, every effort should be made to coordinate the response(s) prior to public dissemination. The bar president, with the team, should make the ultimate determination as to whether to respond. Periodic meetings of this group are helpful to keep everyone on message. This group will be responsible for "spotting" attacks on judges in their various forms and, together with the executive director, receive information of attacks. Therefore, the local judges and members of the bar should have the names of each team.

2. Develop a media kit for use by local bar leaders to include sample Op-Ed pieces, speeches and letters to the editor. The American Bar Association has developed resource kits that you can adapt or use as templates: <http://www.abanet.org/judind/toolkit/impartialcourts/home.html>

Once an Attack is Launched or a Complaint is Filed

1. Consult the judge who is the subject of the attack before releasing any comment/response. The judge may prefer that there be no response. It is important to consider his/her opinion.
2. Respond to the media attacks in the same news cycle. Care needs to be given to make sure that the adversary's message is not being reinforced in efforts to respond to attacks. (See the ABA's Countering the Critics pamphlet at www.abanet.org/judind/toolkit/impartialcourts/home.html.) Thus, when the judge is attacked, the response, with rare exceptions, MUST if at all possible be in the same news cycle and should not repeat the negative message of the attacker. We cannot stress enough the importance of a prompt response. Of course thoughtfulness, accuracy, and good communication with involved parties are not to be sacrificed for speed. A careful assessment, using the guidelines of whether a response is warranted or appropriate, must be made.
3. Develop a coherent message using such tactics as speaking in sound bites. Time must be devoted to developing a clear and concise message that is simple to understand and persuasive, not defensive and is written in lay terms. Once the message is established, priority needs to be given to make sure those delivering the message stay on message. Where appropriate, advice and counsel also may be solicited from the state court's public information officer.
4. Develop the form and manner of the response so that it will receive prompt appropriate exposure commensurate with the criticism. This is usually achieved by using the same media outlet as the attack. The following are possible options for response to attacks:

No response. The matter presented may contain justified criticism. The matter may be beyond the scope of the Association policy, or be criticism of the merits of the case. The matter may be too political and outside the interests of the Association. After consulting with the judge who is the subject of the unjust criticism as suggested above, you might find that the judge prefers not to have the matter debated in a public forum.

Letter. In cases where the criticism is determined to be unjust, a letter can be sent to the party disseminating the unjust criticism explaining why the Association believes the criticism is unjust.

Letter to the Editor. In cases where the criticism is determined to be unjust, a letter to the editor briefly explaining the unjust criticism, the reasons why it was determined to be unjust, and any additional explanation that would help the public better understand the particular situation may be sent to the appropriate media outlets. A phone call to the reporter or editor who initiated or encouraged an attack may also be appropriate.

OpEd or Editorial. In some cases where the criticism is determined to be unjust, a longer, more in-depth explanation might be in order. An OpEd piece or editorial may be prepared and distributed to the appropriate media outlets to help the public better understand the particular situation and how that criticism impugns the integrity of an individual and/or the legal system.

News Conference. In more extreme cases where the criticism is determined to be unjust, a news conference can be scheduled during which the unjust criticism can be explained in an effort to assist the public in better understanding the reasons why the criticism is unjust and how that criticism impugns the integrity of an individual and/or system.

Guidelines To Determine Whether to Respond:

1. Except in unusual circumstances, the following are the kinds of cases in which responding to criticism is appropriate:
 - a. When the criticism is materially inaccurate; the inaccuracy should be a substantial part of the criticism so that the response does not appear to be “nitpicking;”
 - b. When the criticism displays a lack of understanding of the legal system or the role of the judge in the judicial process; and /or
 - c. When the criticism is serious and will most likely have more than a passing or *de minimis* negative effect in the community.
2. The following factors should be considered in determining whether a response should be made in a close case and considered in every case in determining the type of response:
 - a. Whether a response would serve a public information purpose and not appear “nitpicking;”
 - b. Whether the criticism adequately will be met by a response from some other appropriate source;

- c. Whether the criticism substantially and negatively affects the judiciary or other parts of the legal system, or whether continuing discussion of the controversy would serve to lower public perceptions as to the dignity of the court, the judiciary or the judicial system;
 - d. Whether the criticism is directed at a particular judge but unjustly reflects on the judiciary generally, the court, or another element of the judicial system (e.g., grand jury, lawyers, probation, bail);
 - e. Whether a response provides the opportunity to inform the public about an important aspect of the administration of justice (e.g., sentencing, bail, evidence rules, due process, fundamental rights);
 - f. Whether a response would appear defensive or self-serving;
 - g. Whether the critic is so obviously uninformed about the judicial system that a response can be made on a factual basis;
 - h. Whether the criticism or report, although generally accurate, does not contain all or enough of the facts of the event or procedure reported to be fair to the judge or matter being criticized;
 - i. Whether the overall criticism is not justified or fair;
 - j. Whether the criticism, while not appearing in the local press, pertains to a local judge or a local matter;
 - k. Whether the timing of the response is especially important and can be best met by the rapid response team.
3. Except in unusual circumstances, the following are the kinds of cases in which response to criticism MAY NOT be appropriate:
- a. When the criticism is a fair comment or opinion;
 - b. When the criticism reflects animosity or a feud between the critic and the judge on a personal level;
 - c. When the criticism is vague or the product of innuendo;
 - d. Where criticism raises issues of judicial ethics appropriate for presentation to the judicial disciplinary body;
 - e. When a lengthy investigation to develop the true facts is necessary;

- f. When the response would reasonably be expected to affect or prejudice a matter at issue in a pending proceeding;
- g. When the criticism is insignificant;
- h. When the criticism arises during a political campaign and the bar's response may be construed as an endorsement of a particular candidate for judicial office;
- i. When the response would defend the indefensible.

RECOMMENDED EDUCATIONAL PROGRAMS:

Consider educating not only members of the bar but also members of the public about such fundamental concepts as:

- (a) The rule of law;
- (b) The need to preserve fair and impartial courts;
- (c) The organization and responsibilities of the judicial system; and
- (d) The role of the judge in society.



WSAB

Washington State Association of Broadcasters

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Bench Bar Press Committee of Washington

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Committee Description

The Bench-Bar-Press Committee of Washington (BBP) was formed in 1963 to foster better understanding and working relationships between judges, lawyers and journalists who cover legal issues and courtroom stories. The mission of the Committee is to seek to accommodate, as much as possible, the tensions between the constitutional values of "free press" and "fair trial" through educational events and relationship building.

The BBP Committee is chaired by the Chief Justice of the Washington State Supreme Court and includes representatives from the legal profession, judiciary, law enforcement and the news media. The committee meets as a whole once or twice each year to review the state of relations between the various interested groups and to plan educational and other activities. Subcommittees of volunteers are organized on an ad hoc basis to plan and execute the educational and other events.

Since its creation in 1963, the BBP Committee has undertaken several important projects. It was the catalyst in opening up courtrooms to broadcast and still camera coverage in 1976.

The Committee conducted a lengthy study and camera coverage of an actual criminal trial that was produced as though it were a television news story. The Washington State Supreme Court was so impressed with the result that it unanimously adopted a rule allowing cameras in all Washington state courtrooms on a permanent basis. At the time, Washington was only the second state in the nation to allow cameras in the courtroom.

The Committee has developed a "Bench-Bar-Press Statement of Principles" which are not binding, but provide practical guidance on the relationships between judges, lawyers and the press, and are intended to promote a better working relationship between the bench, bar and news media.

A special subcommittee of the Bench-Bar-Press Committee, the Liaison Committee ("Fire Brigade"), has been created to help sort out conflicts of courtroom coverage. The Fire Brigade can speak with, or mediate on behalf of, any lawyer, judge or journalist facing a "free press/fair trial" issue. The Fire Brigade has a strong record of successfully suggesting ways that fair trial concerns can be resolved while preserving free press rights and public access to the judicial process.

The Committee also has presented educational seminars and open discussion sessions from time to time, focusing on court coverage issues, which give judges, lawyers and journalists the opportunity to share views and develop open communication with each other.

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Fire Brigade ("Liaison Committee")

Carrying Water to an Undying Blaze ***by Robert M. Henderson, APR***

The Liaison Committee shall exist to provide assistance in the resolution of disputes which may, in the course of a legal proceeding, arise from conflicts between a litigant's right to a fair trial and the news media's right to observe and report that proceeding. It shall be commonly known as the "Fire Brigade." [By-laws of the Bench-Bar-Press Committee of Washington]

It is said that media types were behind the bench-bar-press "movement of the early 1960's. Never a wholly popular institution in the United States, The Fourth Estate had, by post-WW II days, pretty much worn out its welcome in American halls of justice. Media behavior in major, high profile cases such as Sacco and Vanzetti, the Tennessee Scopes "Monkey" Trial, and the infamous Lindbergh baby murder, had led many to seriously question the right of news organizations to cover court proceedings.

Anti-media sentiment was building. New technology did not help. There was an electronic marvel called "radio" with its attendant wires, microphones and amplifiers. TV cameras began to come on the scene. Print photographers carried large, heavy still cameras with dishpan-sized flash reflectors that shot flashbulbs the size of pullet eggs. After the Lindbergh case, it would be 50 years before New York's total stricture on cameras in courts would be relaxed.

Then came the Sheppard case. A focal point of local, Cleveland society, Dr. Samuel Sheppard - "Dr. Sam" to the press - was young, good-looking and accused of murdering his wife. Convicted by an Ohio trial court, his case worked its way to the U.S. Supreme Court during the early 60's until, in 1966, the high court overturned the conviction, calling news coverage of the original proceeding a major threat to the doctor's right to a fair trial. "Legal rights," the court said in Sheppard v. Maxwell, "are not like elections, to be won through the use of the meeting hall, the radio and the newspaper."

In January of 1964, two years before the final word on Sheppard, a couple of carloads of Seattle-area judges, lawyers and news media people made a Saturday trip to Portland. Their purpose: To witness a meeting of Oregon's "bench-bar-press" committee.

Oregon was one of a number of states to organize groups of attorneys, judges, editors and reporters to work out First versus Sixth Amendment problems during the late 1950's and early 60's. Some feel much of the impetus for these committees came from media leaders who, in the wake of Sheppard and other "circus" cases, feared the legal establishment would shut news organizations out of the courtrooms, thus denying them a major source of grist for their editorial mills.

In Washington's case, there seems to have been no single event or case that led to the organization of the Bench-Bar-Press Committee of Washington. Early committee minutes credit the state "Judicial Conference" (probably the group that is known today as the Washington State Judicial Council) as urging then-Chief Justice Richard Ott (who probably chaired the committee) to develop a bench-bar-press group in 1964.

At the time, "Those...who have the privilege of representing the daily newspapers approach the work of this committee with enthusiasm," apparently had no negative briefs to file regarding relations with the bench and bar. At the start of a long career as Executive Director of the Allied Daily Newspaper Association, newsman/lawyer Paul Conrad noted in the same February '64 statement, "From the viewpoint of our Association and its member newspapers, our relations with Washington's courts and with the legal profession in general have been excellent. We take some pride, and hope our friends on the bench and within the bar do too, in the atmosphere of mutual respect that sustains this relationship."

Its first secretary-treasurer, Conrad's minutes of the organization's annual Fall meetings detail the progress of the completely unofficial, ad hoc, parlor discussion group: development of bylaws, including Rotarian-like criteria for membership (anybody can show up and be heard, but only a specified number from each of the organization's 19 member groups can vote) and, in 1966, promulgation of "guidelines" for press behavior during trials.

A decade-and-a-half later, those guidelines threatened the very existence of the committee after a trial court judge attempted to use them as a contract with news reporters who were covering a high-visibility trial in his court. In an appeal by a reporter's newspaper, the judge's position was affirmed 5-4 by the Washington Supreme Court. Later, the U.S. Supreme Court refused to hear the case.

At an unprecedented two meetings in one year, Robert F. Brachtenbach, committee chair and then-Chief Justice, hoped the case wouldn't "rent the fabric" of the organization. It was reported that similar committees in other states had disbanded in protest of the Washington situation. But judicial calm prevailed. Under Brachtenbach's leadership, the committee rewrote its guidelines, tabbing them "principles and considerations." Now with decades of history behind it, Washington's bench-bar-press committee -- probably the nation's oldest -- lives on.

Sometime in the 1970's, Conrad's carefully typed minutes began to mention something called a "fire brigade."

Annual, state-level ventings of frustrations about fair trial/free press problems apparently were not getting the job done at the local level. Committee members decided local fair trial/free press disputes should be resolved as each arose, before they had a chance to burgeon, delay proceedings, and become a "trial within a trial."

After some discussion, but without formal vote, the committee of the whole appears to have blessed the creation of a volunteer "Liaison Committee." Its job: to assist in the resolution (but only if asked) of conflicts between a defendant's Sixth Amendment right to a fair trial and the press' First Amendment right to unfettered reporting.

Composed more or less equally of representatives of bench, bar and press, the half-dozen member committee began to take requests for help. If a reporter got shut out of a pretrial hearing, the group got a call. A judge who was worried that media reportage would poison his jury pool might also call for advice. Because it usually responded to last-minute, emergency pleas for help, the group was quickly nicknamed, "The Fire Brigade."

For many years, that term was synonymous with the name of the late Frank Roberts, a long-time judge of the King County Superior Court. In annual, verbal reports delivered to the parent committee, the judge would describe the half-dozen or more incidents handled during the year.

A few years ago, the Fire Brigade was given a more official status, and a stated purpose, when it was included in the by-laws of the parent committee.

Liaison Committee assistance may be provided to any lawyer, judge or media professional requesting it. Assistance shall be limited to those involved in disputes resulting from conflicts between rights of fair trial and free press. Assistance may consist of consultation, mediation and/or the provision of information to requesting parties. [ART. IV, Sec. 3, of the Bylaws of the Bench-Bar-Press Committee of Washington]

For several years, the Liaison Committee was chaired by the Honorable Gerry Alexander, then a Judge of the Washington State Court of Appeals, Division Two. Using a somewhat different style than his predecessor, Judge Alexander polled his small delegation by phone or held committee brainstorm sessions via conference calls when asked to consult on a problem.

The latter method was employed when the judge in the trial of accused child molester and murderer Westley Allan Dodd, saw a potential free press/fair trial problem. The judge had learned that Dodd had volunteered to meet in his cell with a reporter and give her his own special, artistic creation: a "coloring book" designed to warn kids away from child molesters, like himself. Worried that this apparent public admission of guilt would taint the jury pool, the trial judge contacted Judge Alexander for advice.

By conference call, Alexander called a meeting of most of his eight brigadiers, tracking down at least one participant at an out-of-state location. Together, group members came up with options that could be presented to the newspaper editor, options that would give the defendant the fair trial he was due, while maintaining the paper's right to publish the material it had received from Dodd.

None of the Fire Brigade's options were accepted by the editor and the story ran, with illustrations from Dodd's coloring book, as scheduled. But in an interesting acquiescence to accountability, the editor took space in his own column to tell readers his reasons for running the piece, the options offered to him by the Fire Brigade, and his reasons for not accepting them. Later, Quill, the journal of the Society of Professional Journalists, also printed a commentary on the situation.

In the years since its first informal start, the Fire Brigade has never been asked to handle a great number of problems, a half-dozen a year at most. But there will probably always be a need for its help. The constitutionally built-in friction between the rights of a free press and a litigant's right to a fair trial will, at least occasionally, kindle a blaze that requires the volunteer services of the "Fire Brigade."

[Bob Henderson retired in 2000 as the public information officer for the state Office of the Administrator for the Courts. An accredited public relations professional, he served as the secretary-treasurer of the Bench-Bar-Press Committee of Washington for many years.]

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Broadcast Journalist Contact on Fire Brigade

Liaison Committee ("Fire Brigade")

If you have a problem with courtroom access that you cannot resolve with the judge or the judge's staff, contact the chair of the Fire Brigade, Judge William Downing of the King County Superior Court at (206) 296-9362 who will conduct the Fire Brigade's informal mediation of the situation. The Fire Brigade handles inquiries from all areas of Washington state.

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Broadcast Journalists on Committee

Broadcast Members

WSAB (Member of BBP Steering Committee)

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Ed White
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Bench Bar Press Statement of Principles

The Bench-Bar-Press Committee of Washington Statement of Principles & Considerations

PREAMBLE

The Bench, Bar and Press (comprising all media of mass communication) of Washington:

- (a) Recognize that the reporting by the news media of governmental action, including the administration of justice, is vital to our form of government and protected by the Constitutions of the United States and the State of Washington.
- (b) Seek to preserve the constitutionally protected presumption of innocence for those accused of a crime until there has been a finding of guilt in the appropriate court of justice.
- (c) Believe both constitutional rights can be accommodated without conflict by careful judicial craftsmanship and careful exercise of discretion by the bench, the bar and the news media.

PRINCIPLES

To promote a better working relationship between the bench, bar and news media of Washington, particularly in their efforts to protect both the constitutional guarantees of freedom of the press and of the right to a fair and impartial trial, the following statement of principles is

suggested for voluntary consideration to all members of these professions in Washington. Any attempt to impose these Principles and Considerations as mandatory is contrary to the intent of the Bench-Bar-Press Committee and contrary to the stated goals of these Principles and Considerations.

1) Accurate and responsible reporting of the news media about crime, law enforcement, and the criminal justice system enhances the administration of justice. Members of the bench and bar should make available information concerning that process to the fullest extent possible under their codes of conduct and professional responsibility.

2) Parties to litigation have the right to have their causes tried by an impartial tribunal. Defendants in criminal cases are guaranteed this right by the Constitutions of the United States and the State of Washington.

3) Lawyers and journalists should fulfill their functions in such a manner that cases are tried on the merits, free from undue influence by the pressures of news media reports. To that end, the timing and nature of media news reports should be carefully considered. It is recognized that the existence of news coverage cannot be equated with prejudice to a fair trial.

4) The news media recognize the responsibility of the judge to preserve courtroom decorum and to seek to ensure both the open administration of justice and a fair trial through careful management.

5) A free press requires that journalists decide the content of news. Journalists in the exercise of their discretion should remember that readers, listeners and viewers are potential jurors.

6) The public is entitled to know how justice is being administered. However, lawyers should be aware that the timing and nature of publicity they create may affect the right to a fair trial. The public prosecutor should avoid taking unfair advantage of his position as an important source of news, even though he should release information about the administration of justice at the earliest appropriate times.

7) Proper judicial, journalistic and legal training should include instruction in the meaning of constitutional rights to a fair trial, open justice and freedom of the press, and the role of judge, journalist and lawyer in guarding these rights. The bench, the bar and the press will endeavor to provide for continuing education to members of each respective profession concerning these rights.

8) Open and timely communications can help avoid confrontations. Toward that end all parties are urged to employ the Bench-Bar-Press Committee's Liaison Subcommittee when conflicts or potential conflicts arise.

CONSIDERATIONS IN THE REPORTING OF CRIMINAL PROCEEDINGS

The Bench-Bar-Press Committee offers the following recommendations for voluntary consideration of all parties. They may be of assistance in educating law enforcement, the press, bar and bench concerning the exercise of rights, duties and obligations outlined in the Statement of Principles.

The bench, bar, press and law enforcement officials share in the responsibility for the administration of an open and fair system of justice. Each has a special role which the others should respect and none should try to regulate the judgment of the others.

Public interest in the administration of justice may be particularly great at times prior to trial. Pretrial proceedings often are as important to the open administration of justice as the actual trial. The bench should help ensure both openness and fairness through commonly accepted judicial procedures consistent with these Principles. The bar should carefully consider the timing and nature of the publicity it creates. The media should contribute to openness and fairness by careful evaluation of information that may be kept from the jury at trial and by exercise of restraint in reporting that information.

All parties should be aware that the jury system has the capacity to provide unprejudiced panels even in cases of great public interest and substantial media coverage.

1) It is appropriate to make public the following information concerning the defendant:

- a) The defendant's name, age, residence, employment, marital status, and similar background information. There should be no restraint on biological facts other than accuracy, good taste, and judgment.
- b) The substance or text of the charge, such as complaint, indictment, information and where appropriate, the identity of the complaining party.
- c) The identity of the investigating and arresting agency and the length of the investigation.
- d) The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of items seized at the time of arrest.

2) The release of certain types of information by law enforcement personnel, the bench and the bar and the publication thereof by news media generally tends to create dangers of prejudice without serving a significant law enforcement or public interest function. Therefore, all concerned should be aware of the dangers of prejudice in making pretrial disclosures of the following:

- a) Opinions about a defendant's character, his guilt or innocence.
- b) Admissions, confessions or the contents of a statement or alibis attributable to a defendant.
- c) References to the results of investigative procedures, such as fingerprints, polygraph examinations, ballistic tests or laboratory tests..
- d) Statements concerning the credibility or anticipated testimony of prospective witnesses.
- e) Opinions concerning evidence or arguments in the case, whether or not it is anticipated that such evidence or argument will be used at trial.

Exceptions may be in order if information to the public is essential to the apprehension of a suspect or where other public interests will be served.

3) Prior criminal convictions are matters of public record and are available to the news media through police agencies or court clerks; law enforcement agencies should, if requested make such information available to the news media. The public disclosure of this information by the news media may be highly prejudicial without any significant addition to the public's need to be informed. The publication of such information should be carefully considered.

4) Law enforcement and court personnel should not prevent the photographing of defendants when they are in public places outside the courtroom. They should not encourage pictures or televising, nor should they pose the defendant. The media should recognize that broadcasting, televising, recording and taking photographs in the courtroom is governed by GR 16.

Artist's renditions sketched in the courtroom are not covered by GR 16 and should not be curtailed unless such actions distract participants or impair the dignity of the proceedings.

5) Photographs of a suspect may be released by law enforcement personnel provided a valid law enforcement function is served thereby. It is proper to disclose such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

6) The media are free to report what occurs in the course of judicial proceedings. All participants in the administration of justice should work to keep the entire course of judicial proceedings, including pretrial hearings, open to public scrutiny. The bench should consider

using all means available to ensure protection of a defendant's constitutional rights without interference with the public's scrutiny of the criminal justice system. The closure of a judicial proceeding should be used only as a last resort.

7) The bar and law enforcement officials should expect that their statements about a case will be reported in the media. Such statements should be made in a time and manner contributing to public understanding of law enforcement and the criminal justice system, rather than influencing the outcome of a criminal trial.

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Idaho State Bar

PROGRAM FOR THE APPROPRIATE RESPONSE TO CRITICISM OF JUDGES AND COURTS

1. POLICY STATEMENT (Approved by ISB membership 11/00)

A. WHY A PLAN IS NEEDED

The effectiveness of the administration of justice depends in a large measure on public confidence. The reporting of inaccurate or unjust criticism of judges, courts, or our system of justice by the news media erodes public confidence and weakens the administration of justice. It is vital that nonlitigants as well as litigants believe that the courts, their procedures and decisions are fair and impartial.

It generally is undesirable for a judge to respond to criticism of her or his own actions by appearing in the news media. This policy has been developed to insure the dignity of the administration of justice, to prevent interference with pending litigation, and to reaffirm the commitment to an independent judiciary dedicated to making decisions based on facts and law as presented in court. These considerations underlie the ethical restrictions relating to a judge's ability to engage in public comment. These ethical restrictions often prevent a judge from responding to criticism, even when the criticism is misinformed or unjust,

B. WHEN ACTION IN RESPONSE TO CRITICISM SHOULD BE TAKEN BY THE BAR

Implementation of this plan is selective. It in no way infringes on the freedom of the press. This plan is designed to effect a response to criticism that is serious as well as inaccurate or unjustified. There will be no attempt to prevent criticism, but inaccurate or unjust criticism may be answered through an organized public information program.

The bar may respond publicly to attacks upon a judge only in the following two instances:

A public utterance that is unwarranted or an unjust attack on a judge in relation to specific cases, regardless of the source of the attack, or,

Any "unwarranted" or "unjust" attack or series of attacks on a judge or court which may adversely affect the administration of justice.

POLICY IMPLEMENTATION

A. REFERRAL AND INVESTIGATION PROCEDURES

All referrals of criticism of judges and courts should be forwarded to the executive director of the Idaho State Bar. The referral may be oral or written, but in all cases the referring person must be available to assist in gathering background and factual information and must present written material when requested. All referrals should be undertaken with the specific permission of the judge or court criticized with the understanding that the judge or court also will assist in gathering necessary information for the bar association to evaluate.

The executive director will at once begin to gather all pertinent background and factual information including a copy of the text (whether in broadcast or print media) of the criticism.

The executive director will quickly notify the Idaho State Bar commissioners of the criticism complained of and the relevant background and facts known.

The commissioners will promptly investigate the underlying facts, discussing them to the extent possible with the Source of the criticism and with the judge involved. If a response is appropriate, it will be quickly prepared and released in such a way as to be effective.

B. GUIDELINES TO DETERMINE WHEN THE BAR SHOULD RESPOND

1. The following are the kinds of cases in which responding to criticism is appropriate, except in unusual circumstances:

- (a) When the criticism is serious and will most likely have more than a passing or de minimis negative effect in the community;
- (b) When the criticism displays a lack of understanding of the legal system or the role of the judge and is based at least partially on such misunderstanding; and
- (c) When the criticism is materially inaccurate the inaccuracy should be a substantial part of the criticism so that the response does not appear to be "nit-picking."

The following factors should be considered in determining whether a response should be made in a close case and considered in every case in determining the type of response:

- (a) Whether a response would serve a public information purpose and not appear "nit-picking."
- (b) Whether the criticism adequately will be met by a response from some other appropriate source;
- (c) Whether the criticism substantially and negatively affects the judiciary or other parts of the legal system, or whether continuing discussion of the controversy would serve to lower public perceptions as to the dignity of the court, the judiciary or the judicial system;
- (d) Whether the criticism is directed at a particular judge but unjustly reflects on the judiciary generally, the court, or another element of the judicial system (e.g., grand jury, lawyers, probation, bail, etc.);
- (e) Whether a response provides the opportunity to inform the public about an important aspect of the administration of justice (e.g., sentencing, bail, evidence rules, due process, fundamental rights, etc.)
- (f) Whether a response would appear defensive or self-serving;
- (g) Whether the critic is so obviously uninformed about the judicial system that a response can be made on a factual basis

- (h) Whether the criticism or report, although generally accurate, does not contain all or enough of the facts of the event or procedure reported to be fair to the judge or matter being criticized;
- (i) Whether the overall criticism is not justified or fair
- (j) Whether the criticism, while not appearing in the local press, pertains to a local judge or local matter;
- (k) Whether the timing of the response is especially important and can be best met by the committee.

The following are the kinds of cases in which response to criticism IS NOT appropriate, except in unusual circumstances:

- (a) When the criticism is a fair comment or opinion
- (b) When the feud is between the critic and the judge on a personal level;
- (c) When the criticism is vague or the product of innuendo, except when the innuendo is clear
- (d) Where criticism raises issues of judicial ethics appropriate for presentation to the Judicial Inquiry or Disciplinary body;
- (e) When a lengthy investigation to develop the true facts is necessary;
- (f) When the response would prejudice a matter at issue in a pending proceeding;
- (g) When the controversy is insignificant;
- (h) When the criticism arises during a political campaign and the bar's response may be construed as an endorsement of a particular candidate for judicial office

C. THE RESPONSE

To be effective, the response must be prompt, but accurate. If at all possible, the response should be made within 4 to 5 days of publication of the criticism or report, especially keeping in mind the deadline(s) of the news media that reported the original criticism. Ideally a response can be more immediate and occur even before publication, for example, through direct communication with a reporter or editor which may clarify the facts and serve to defuse the situation.

The form and manner of the response should be such that it will receive the same exposure and notoriety as the criticism. A letter to the editor is an effective form of response, because it is the most likely to be printed fully and accurately. Press releases are usually more subject to editing and are frequently viewed as less credible, and pamphlets are too elaborate. Television or radio talk shows may be effective forms of response but should be used more cautiously and sparingly. In some circumstances, press conferences provide effective means to disseminate a response. Direct communication with reporters and editors intended to clarify facts and present another position is encouraged.

The following drafting considerations should be included in a response:

- (a) The response should be a concise, accurate, "to the point" statement, devoid of emotional, inflammatory or subjective language
- (b) The statement should be informative and not argumentative or condescending;
- (c) The statement should include a correction of the inaccuracies, citing facts and relevant authorities

where appropriate;

- (d) The statement should be written in lay terms suitable for inclusion in a newspaper story;
- (e) Where appropriate, the statement should include the point that the judge had no control or discretion (e.g., decision required by state law)
- (f) Where appropriate, the statement should include an explanation of the process involved (e.g., sentencing, bail, temporary restraining order, etc.);
- (g) The statement should not attempt to discredit the critic, that is, attack the competence, good faith motives or associates of the critic,
- (h) The statement should not provide evidence that the critic has hit a nerve, causing overreactions
- (i) The statement should not defend the indefensible;
- (j) The committee should consider the cause of the criticism or controversy, which might not be immediately apparent

The following points may be included in a typical response:

- (a) Identify the criticism and its source.
- (b) We may frequently disagree with the decisions and actions of public officials, including judges. The federal and state constitutions protect our right to express that disagreement.
- (c) We must remember that judges have no control over what cases come before them, but they must decide each and all of those cases. Judges must follow the law as established by higher courts. One side always loses in every lawsuit.
- (d) Because of their position, judges are not wholly free to defend themselves and it is ordinarily not appropriate for them to personally answer charges made against them or their decisions.
- (e) Lawyers, under the Code of Professional Responsibility and the Model Rules of Professional Conduct have a duty to defend judges against unjust criticism.
- (f) Avoid taking a position on the merits of the controversy, since to do so will probably eliminate any educational benefit the = balance of the points might have for those who agree with the criticism.
- (g) The need for independent judges, who will not be influenced by criticism of them or their decisions, requires that the organized bar remind both lawyers and the public of these facts. The law has established appellate courts so that decisions of judges may be reviewed and, if appropriate, corrected. Our present judicial system provides for change in the law through legislative action or by constitutional revision.

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Protocol for Responding to Unfair Criticism of Judges

Presented by the American Board of Trial Advocates

I. GOAL

Maintain and support public confidence in the judiciary by providing timely assistance to members of the bench in responding to adverse publicity, misinformation, or unwarranted criticism of an individual judge or the judiciary.

II. SUMMARY OF PROPOSAL

Establish guidelines for each chapter of ABOTA to use to develop analytical and response teams to formulate and provide responses to misinformation or unwarranted criticism of an individual judge or the judiciary.

III. WHY A PROGRAM IS NEEDED

The effectiveness of the administration of justice depends in large measure on public confidence. The reporting of inaccurate or unjust criticism of judges, courts, or our system of justice by the news media erodes public confidence and weakens the administration of justice. It is vital that nonlitigants as well as litigants know and believe that the courts, their procedures, and their decisions are fair and impartial.

It is unethical for a judge to answer criticism of her or his actions appearing in the news media regarding pending or impending matters. This policy has been developed to ensure the dignity of the administration of justice, to prevent interference with pending litigation, and to reaffirm the commitment to an independent judiciary, a judiciary dedicated to decision making based on facts and law as presented. Therefore, cooperation of attorneys is necessary to respond accurately, quickly, and fairly to unwarranted criticism of judges and courts.

IV. PROGRAM PURPOSES AND FUNCTIONS

To deal with errors and misinformation in reporting criticism of judges, courts, and/or the administration of justice, as further provided in this outline.

To be available to the news media to provide information concerning judicial activities, court process, or other information about the administration of justice.

To provide means by which judges and lawyers can improve the public image of the legal system and seek a better understanding by the community of the legal system and the role of lawyers and judges.

V. IMPLEMENTATION

Each chapter of ABOTA is to form a team of three or more members responsible for carrying out the function of this program according to the policies and guidelines contained in this outline. A public response should be made to criticism only if a majority of the members agree to the type of response, the timing and content of the response, and how the response is to be presented.

VI. GUIDELINES TO DETERMINE WHEN ABOTA SHOULD RESPOND TO CRITICISM OF JUDGES

A public response should be made to criticism or attacks on judges only in the following two instances:

- A public utterance that is unwarranted or an unjust attack on a judge in relation to specific cases, regardless of the source of the attack, or

- Any "unwarranted" or "unjust" attack or series of attacks on a judge or court that may adversely affect the administration of justice.

The following are the kinds of cases in which responding to criticism is appropriate, except in unusual circumstances:

- When the criticism is serious and will most likely have more than a passing or de minimis negative effect in the community;
- When the criticism displays a lack of understanding of the legal system or the role of the judge and is based at least partially on such misunderstanding; and
- When the criticism is materially inaccurate; the inaccuracy should be a substantial part of the criticism so that the response does not appear to be "nitpicking."

Factors for consideration in determining whether to respond to criticism:

- Whether a response would serve a public information service and not appear to be petty;
- Whether the criticism will be adequately met by a response from some other appropriate source;
- Whether the criticism substantially and negatively affects the judiciary or other parts of the legal system, or whether continuing discussion of the controversy would serve to lower public perceptions as to the dignity of the court, the judiciary, or the judicial system;
- Whether the criticism is directed at a particular judge but unjustly reflects generally on the judiciary or the court or lawyers;
- Whether a response provides the opportunity to inform the public about an important aspect of the administration of justice (e.g., evidence rules, due process, fundamental rights, etc.);
- Whether the critic is so obviously uninformed about the judicial system that a response can be made on a factual basis;
- Whether the criticism or report, although generally accurate, does not contain all or enough facts about the reported event or procedure to be fair to the judge or matter being criticized;
- Whether the overall criticism is not justified or fair;
- Whether the judge or court, which is the subject of the criticism, authorizes the making of a response.

The following are the kinds of cases in which response to criticism IS NOT appropriate, except in unusual circumstances:

- When the judge or the court which is the subject of the criticism declines the offer of the team to respond;
- When the criticism is a fair comment or opinion;
- When the feud is between the critic and the judge on a personal level;
- When the criticism is vague or the product of innuendo, except when the innuendo is clear;
- Where the criticism raises issues of judicial ethics appropriate for presentation to the Judicial Inquiry or Disciplinary body;
- When a lengthy investigation is necessary to develop the facts;
- When the response would prejudice a matter at issue in a pending proceeding;
- When the controversy is insignificant;
- When the criticism arises during a political campaign and the response may be construed as an endorsement of a particular candidate for judicial office.

VII. THE TIMING, FORM, DRAFTING CONSIDERATION AND CONTENT OF THE RESPONSE

Timing

- To be effective, the response must be prompt and accurate and, if at all possible, should be made within 24-48 hours or as soon as practicable.
- When aware that unwarranted criticism will be made or reported, direct communication with a reporter or editor may clarify the facts and serve to defuse the situation.

Form of Response

- The form and manner of the response should be such that it will receive the same exposure and notoriety as the criticism.
- A letter to the editor is an effective form of response because it is the most likely to be printed fully and accurately.
- Press releases are usually more subject to editing and are frequently viewed as less credible, and pamphlets are too elaborate.
- Television or radio talk shows by on-air appearance or through facsimile or e-mail may be effective forms of response, but should be used carefully.
- In some circumstance, press conferences provide effective means to disseminate a response.
- Direct communication with reporters and editors intended to clarify facts and present another position is encouraged.
- Whenever possible, any response should be coordinated with the court's public information officer, if one exists.
- Whether a response would appear defensive or self-serving.

Drafting Considerations

- The response should be a concise, accurate, "to-the-point" statement, devoid of emotional, inflammatory, or subjective language;
- The statement should be informative and not argumentative or condescending;
- The statement should include a correction of the inaccuracies, citing facts and relevant authorities where appropriate;
- The statement should be written in plain language, suitable for inclusion in a newspaper story;
- Where appropriate, the statement should include the point that the judge had no control or discretion (e.g., decision required by state law);
- Where appropriate, the statement should include an explanation of the process involved;
- The statement should NOT attempt to discredit the critic; that is, attack the competence, good faith, motives, or associates of the critic;
- The statement should not provide evidence that the critic has hit a g| nerve, causing overreaction
- The statement should not defend the indefensible;
- The team should consider the cause of the criticism or controversy, which might not be immediately apparent.

Content of Response:

The following points may be included in a typical response:

- Identify the criticism and its source.
- We may frequently disagree with the decisions and actions of public officials, including judges. The federal and state constitutions protect our right to express our disagreement.
- We must remember that judges have no control over which cases come before them, but they must decide each and all of those cases. Judges must follow the law as established by higher courts. One side loses in every lawsuit.
- Because of their position, judges are not wholly free to defend themselves and it is ordinarily not appropriate for them to personally answer charges made against them or their decisions.
- Lawyers, under the Code of Professional Responsibility and the Model Rules of Professional Conduct, have a duty to defend judges against unjust criticism.
- Avoid taking a position on the merits of the controversy, since to do so will probably eliminate any educational benefit that the balance of the points might have for those who agree with the criticism.

Procedure for evaluating whether to respond to public criticism of a judge or the courts:

- Each local chapter team should establish procedures for notification of unwarranted or unjust criticism, gathering factual and background information, conducting the necessary investigation, evaluating whether a response is warranted, and contacting the judge or court to secure permission to respond;
- All responses to unfair public criticism of judges or the courts should be made in the name of the team member or the president of the local chapter, or his or her designee.

Judge Robart became a United States District Court Judge for the Western District of Washington in June 2004. He maintains his chambers in Seattle, Washington. Prior to his appointment, he was with Lane Powell in Seattle for 32 years, where he served as Chair of the Litigation Department and Managing Partner. He graduated from Whitman College (B.A. 1969) and Georgetown University Law Center (J.D. 1973).

Judge Robart has handled a variety of civil and criminal cases. He was affirmed by the Supreme Court in an 8-0 opinion in a case construing the statute of limitations for Section 16(b) of the Securities and Exchange Act of 1934. He authored the first opinion setting reasonable and nondiscriminatory (“RAND”) rates for standard essential patents. He is also currently overseeing the consent decree between the United States Department of Justice and the City of Seattle concerning the Seattle Police Department.

Judge Robart served on the Organizing Committee and the Board of Governors for the Federal Circuit Bar Association and is a Fellow of the American College of Trial Lawyers. He has served on Ninth Circuit IT Committee and the Courts and Community Committee.