THE THIRD BRANCH

Newsletter of the Federal Courts

Vol. 40
Number 6
June 2008

INTERVIEW

Giving Advice on Ethics Seldom Simple

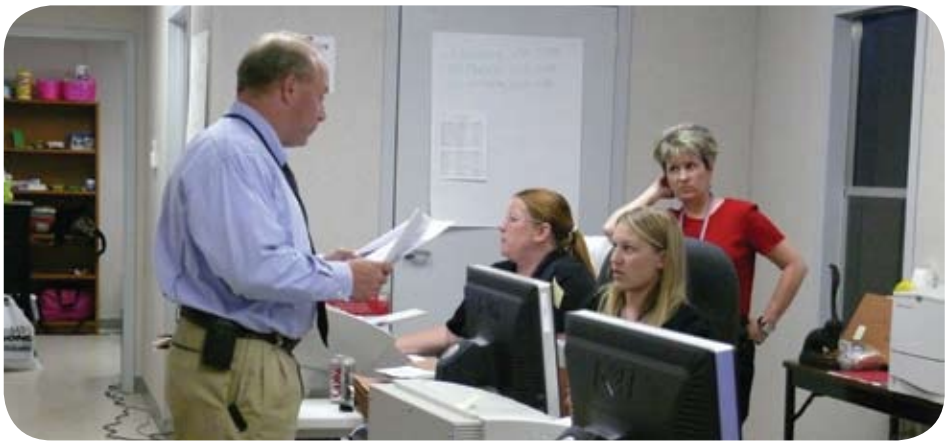
Judge Gordon J. Quist was appointed to the U.S. District Court for the Western District of Michigan in 1992. A member of the Judicial Conference Committee on Codes of Conduct since 2000, he became chair of the Committee in 2004.

Q: Both your Committee—the Committee on Codes of Conduct—and the Judicial Conference Committee on Judicial Conduct and Disability have been active revising the codes and rules. Some confusion may exist in the public's mind on the relative roles of both of these committees. How do you differentiate between their functions?

A: The Committee on Codes of Conduct helps judges and other employees of the Judicial Branch by advising them regarding the principles in the Codes of Conduct and how, in our judgment, to conform to the Canons within the Code. If we

*See **Interview** on page 10*

Largest Ever Criminal Worksite Enforcement Operation Stretches Court



Clerk's office and probation office staff from the Northern District of Iowa collaborate in the clerk's office trailer on the fairgrounds of the National Cattle Congress in Waterloo, Iowa. The court relocated to the grounds in response to a massive worksite enforcement operation by the Department of Justice in May.

Early morning on April 16, 2008, an assistant U.S. Attorney and an agent of the U.S. Immigration and Customs Enforcement (ICE) wheeled a cart down the halls of the U.S. Courthouse in the Northern District of Iowa in Cedar Rapids. At the chambers of Magistrate Judge Jon Scoles, they unloaded six file drawer-size cardboard boxes filled with nearly 700 arrest warrants. Scoles recalls, "The ICE Agent would sign the complaint and affidavit, hand it to me to be signed along with a warrant, and it would then be refiled. This went on for the better part of the day."

*See **Waterloo** on page 2*

Judges and Jury Duty

Federal judges have full-time jobs handling cases. Why would they want to sit as jurors in yet another courtroom and decide the fate of defendants and litigants in still more cases?

Because it's their civic duty and they're happy to serve.

"You try to have a cross-section of the community on a jury," says Magis-

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INSIDE

Waterloo *continued from page 1*

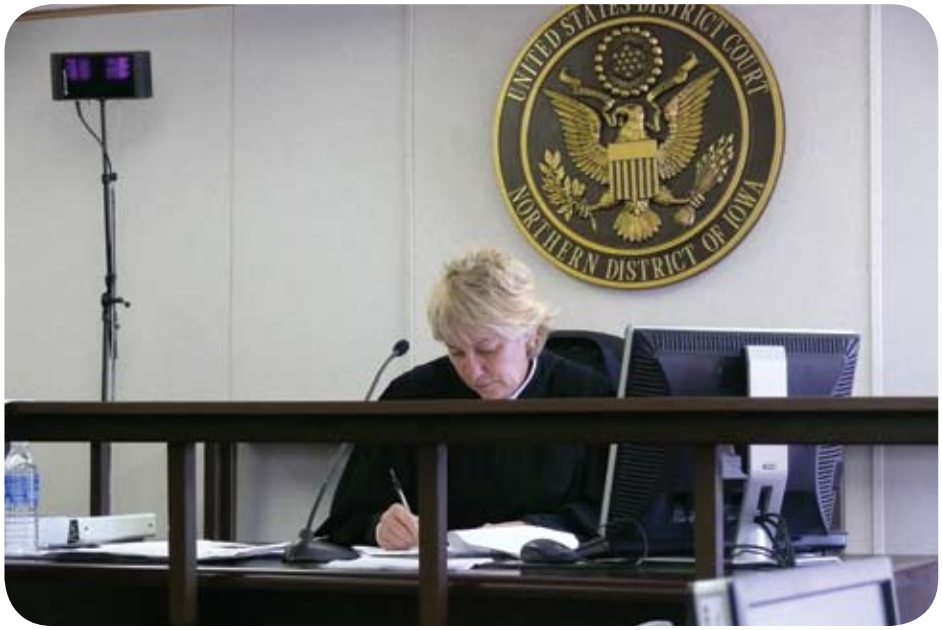
The warrants were to be executed in what ICE would call the largest single-site raid of its kind nationwide. On Monday, May 12, 2008, the Department of Justice reported that ICE had executed a criminal search warrant at a meat-packing company in Postville, Iowa, "for evidence relating to aggravated identity theft, fraudulent use of Social Security numbers and other crimes, as well as a civil search warrant for people illegally in the United States."

From the plant, more than 320 men and women were taken to detention on the fairgrounds of the National Cattle Congress in nearby Waterloo, Iowa. The same day, the U.S. District Court for the Northern District of Iowa announced they had temporarily relocated a number of judges and other court personnel and services to Waterloo in response to the anticipated arrest and prosecution of numerous illegal aliens.

The decision to relocate was made by Chief Judge Linda R. Reade—but only after months of planning.

"I was advised informally last December that a major law enforcement initiative was being contemplated—although at that time I was not given any details," said Reade. "As I received more information—including that there might be over 700 arrests—I talked with my fellow judges about how best to handle the cases. We developed checklists on initial appearances, status conferences, pleas and sentencings. We worded statements and instructions so they would interpret well. The court definitely couldn't accommodate that number without planning."

At the Waterloo facility, the district court set up on the east side of the fairgrounds with two separate double-wide trailers, each with a courtroom. The on-site Electric Park Ballroom housed a third courtroom. "The courtrooms were outfitted very professionally, with a slightly raised judge's bench, a well, and seating for family members," said Reade.



Chief Judge Linda R. Reade held court in Courtroom Trailer #1. Advance planning prepared the court for the 297 people who pled guilty and were sentenced by the court in Waterloo.

A week earlier, Clerk of Court Robert Phelps had prepared the infrastructure.

"In addition to the courtroom trailers, complete with IT, sound systems and recording equipment, we had two single-wide trailers for the clerk's office and two single-wide trailers for the probation office," Phelps said. "The Administrative Office sent out an engineer, who worked with us to set up and configure a temporary secure data communications connection from the fairgrounds to the court. We had our electronic court schedules and dockets just like back home in Cedar Rapids."

The court was so well prepared that when one unexpected Ukrainian national requested a Russian interpreter, within 20 minutes a suitable interpreter was located in Illinois and a Telephone Interpreter Program phone line was set up.

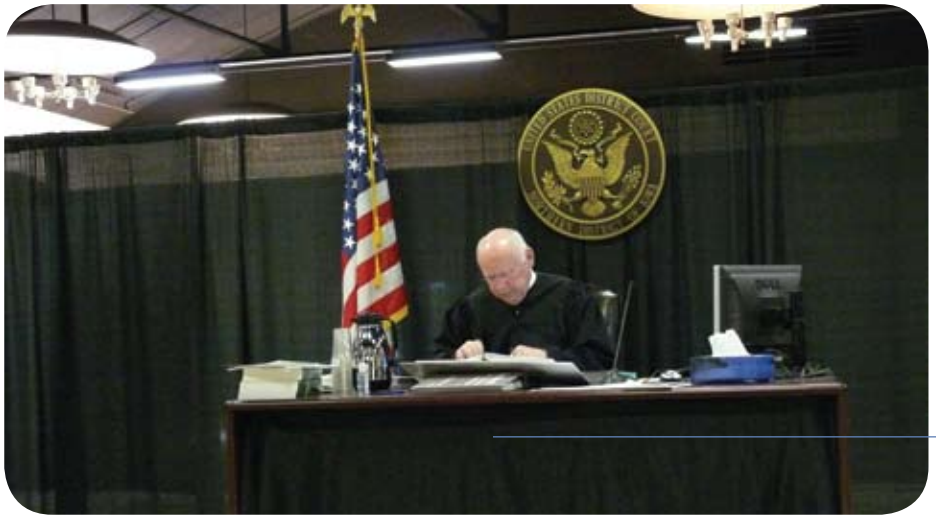
All of this was done at a very high level of security.

"Our IT people weren't given all the details," said Reade. "They were told it was to be a Continuity of Operations Exercise and to plan to move the court technologically to an offsite location. We asked our clerk's office and our probation office to plan for what they needed to do their jobs offsite."

"We brought in 26 Spanish language interpreters from all over the country," said Phelps. "When we contacted them, we couldn't tell them why they were coming, so we told them it was a Continuity of Operations Exercise. 'Show up in Waterloo prepared to stay two weeks and we'll brief you then.'"

The court's two active Article III judges, Chief Judge Reade and Judge Mark W. Bennett, were assisted by Judge Ralph Erickson from the District of North Dakota, who helped with cases for two days. They handled the sentencings. Initial appearances were handled by Reade, Chief Magistrate Judge Paul A. Zoss, and Magistrate Judge Scoles.

Defendants were processed by ICE within a day or two, and the warrants were executed by the U.S. Marshals Service, after which the detainees were brought in groups of 10 for their initial appearances. Three judges rotated through, handling initial appearances and later, plea changes. Many days for judges and



Magistrate Judge Jon S. Scoles in the Electric Park Ballroom Courtroom. Workdays for judges and court staff often stretched past midnight.

court staff stretched from 8 a.m. to midnight. Scoles left the bench one night at 11:45 p.m. only to be called at 4 a.m. to sign 65 new warrants. (The U.S. Attorney had earlier roused Phelps with new requests for warrants.) "It made for a few very long days," Scoles remembers.

Despite the daunting numbers and long hours, the process was the same as though each defendant were standing in the federal courthouse in Cedar Rapids or Sioux City.

"We were sensitive to the fact that we saw 10 detainees at a time. We went through the same process as we would with one defendant in the courtroom," said Scoles. "We took special care to explain the right to a trial and gave them the opportunity to ask questions. We took pains to make sure they understood the consequences of a guilty plea, a sentencing, and a judicial removal order."

Local federal defenders were augmented with 16 Criminal Justice Act attorneys. Normally, panel attorneys would meet their clients at the initial appearance, but in these cases attorneys were assigned to, and most met, their clients one or two hours before the initial appearances. After detainees were remanded to the custody of the U.S. Marshals Service, attorneys went to local facilities with assigned interpreters to meet with their clients and appeared with them at their status conferences or plea changes and sentencing hearings as well.

According to Bob Teig, representative for the U.S. Attorney's office, 302 individuals were charged. The majority of offenders were offered plea deals in which they will spend five months in jail, followed by supervised release and removal from the country. Offenders will face additional charges as well as violation of their supervised release if they return to the U.S. illegally.

In every one of the hundreds of cases, Chief Probation Officer Bob Askelson and probation officers and staff ran criminal histories, checked identification records, and then provided oral reports to the court. When detainees moved from pretrial to their sentencing, Askelson's group was there to prepare modified presentence reports with sentencing guideline analysis and judgments.

"We planned for 700 and prepared for that number," Askelson said. "I'm proud of our staff. We brought the same integrity to the process here that we would in the Cedar Rapids courthouse."

The court finished its work at 6 p.m. Thursday, May 22. In the end, 297 people pled guilty and were sentenced by the court in Waterloo. Only five cases were left to be resolved later in Cedar Rapids.

"We treated this relocation exercise like a large COOP exercise," said Phelps. "We'll be following up with counsel, interpreters, and others who participated in the operation to fine-tune our COOP planning."

"Everything was so well thought through," said Reade. "Clerk of Court Phelps, Probation Chief Askelson, our IT people, and all our court staff made this a successful off-site court experience. When problems arose, they got together and improvised. I'm proud of every one of them."

Clerk of Court Robert Phelps and Assistant U.S. Attorney Stephanie Wright coordinated casework in the predawn hours. The courtroom trailers are in the background with the judges' chambers to the left in the RV.

Duty *continued from page 1*
trate Judge Aaron Goodstein in the Eastern District of Wisconsin, "and I'm part of that cross-section." He has been called a number of times for jury duty in both federal and state court. Goodstein admits to a professional interest in knowing what goes on in the jury room. "It's a unique opportunity to see the dynamics of jury service. My experience has given me a better awareness," he said. "Jury duty has made me more sympathetic and understanding of the people who serve."

Judge Eugene E. Siler, Jr., now a senior judge on the Sixth Circuit, served for several years as a district court judge in the Eastern District of Kentucky. He has had the opportunity to report for jury duty on two occasions. "They offered to excuse me," he recounts, "but I said no. As a trial judge, jury duty made me aware of the problems jurors might have. Sitting around for a while, waiting to be called, I could hear the viewpoints of the other jurors. That's why when my trials were cancelled, I always told jurors well in advance so I didn't waste their time."

The majority of district and bankruptcy judges in the Central District of California have been summoned for jury service in state court. Several have been on call for a week, and some have made it as far as voir dire, although very few have been empanelled. Judge Margaret M. Morrow (C.D. Cal.) was juror # 11 in a gang murder trial.

"The timing was dreadful," Morrow said. "In the middle of presiding over a criminal trial, I was called to the state court down the street. But we worked it out." The jurors were asked to work through an alibi defense with emotional testimony from the victim's mother and uncle. The jury was deadlocked for a substantial period of time.

"It was interesting to me how the hold-outs were treated," she recounts. "The foreperson was a psychologist who dealt very well with that. She went around the room to give everyone an opportunity to speak. Finally, it was suggested the testimony be read back." Morrow said the experience taught her the value of read back.

"It was an extremely emotional trial. Re-reading the testimony took the emotion out," she said. "We listened to the words. It was an incredible assistance in bringing us all to the same conclusion."

Chief Judge James F. Holderman in the Northern District of Illinois had just sworn in a trial jury when he received his own summons for jury duty.

"The jury had just been picked," Holderman recounts, "and I had explained to them that jury duty, while a possible inconvenience, is the highest calling. I told them that jurors are finders of fact, the ones who decide the fate of people in cases. Anyone who is called has a duty to report. Then my secretary brought me a note telling me I had to report for jury duty in Illinois state court the next day. The jury members laughed about it."

He'd been called twice before to serve in Illinois state court, but was excused by the judge presiding over each of the trials. This time Holderman's panel never made it out of the jury assembly room and he spent the day working on opinions and his own annual state of the court message.

"I was hoping to be drawn, but I wasn't," he said with regret. "When I got back to my own trial, I told the jurors they were lucky to be involved in the jury process."

Holderman, who likes to set a date certain for trials to begin, said his civic duty didn't interfere with the administration of justice. "The trial resumed when I got back, and was done within the jurors' reporting time period," he said.

It was in 2005 that Justice Stephen Breyer reported for jury duty in the District of Massachusetts, prepared to serve, although ultimately he wasn't selected for a jury. However, Chief Judge Mark L. Wolf in the District of Massachusetts was not only called, he served on a state court civil trial.

"Massachusetts doesn't exempt judges from service," said Wolf, "but I also believe deeply that juries should be a cross-section of the community. Am I too busy to serve? I excuse doctors and teachers, but I often decline the excuse that a potential juror is too busy. The fact that you're too busy doesn't generally exempt you from service. Besides, jury duty is interesting."

Wolf served on a civil case in which jurors were asked to decide if the defendant had violated a restraining order. And while the judge and the attorneys in the case knew he was a federal judge, his fellow jurors didn't. As it turned out, Wolf and the lone woman on the jury were the only ones who felt the case was not proven; and the other jurors freely challenged their understanding of the facts.

"They took their deliberations seriously," said Wolf. "They were honest in drawing on their own experiences and they took the time necessary to figure it out. They followed the law as instructed."

The experience heightened his own understanding of the challenge it is to serve as a juror. "It magnified my great respect for the jury process," he says. "I believe deeply that trial by jury is a fundamental aspect of our democracy."

Participating as jurors also has underscored for many judges the importance of explaining to their own juries what is going on in the trial—and the importance of not wasting jurors' time.

"But most of all," said Judge Morrow with a laugh, "when I get someone during jury selection who wants to be excused from duty because they have a very important job, it's great to be able to say, 'Let me tell you about my jury service.'"

2255 Project Offers Help

The federal judge was looking at a familiar case. Nearly a year before, he'd presided over the criminal case of a man who had been found guilty and received a death sentence. Now the case was before the judge again, as a 28 U.S.C. § 2255 case, essentially asking the judge to find any errors or mistakes in the way the case was handled that would lead to a new trial or penalty phase hearing.

Such capital § 2255 litigation is a relatively new field. According to Ruth Friedman, Director of the Federal Capital Habeas Project, informally known as the "2255 Project," fewer than a dozen such matters have been litigated to completion since the re-emergence of federal death penalty cases in 1988. However, an increasing number of federal capital cases have entered the post-conviction state.

"The number of federal death row cases is growing," said Friedman. "In 1998, there were 20 individuals on federal death row, five of whom were in § 2255 proceedings. As of 2008, there are 53 individuals on federal death row, and 25 inmates who are in post-conviction proceedings."

A § 2255 case is shorthand for cases in which a prisoner under the U.S. Criminal Code claims the right to be released on the ground that the sentence "was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack . . ." Uniquely in federal proceedings, the same judge who determined the sentence also considers the § 2255 motion.

"In the typical § 2255 case, a federal judge is called upon to review proceedings that occurred in his or her own courtroom," said Judge John Gleeson, chair of the

*See **2255 Project** on page 6*

Tacha Wins Devitt Award

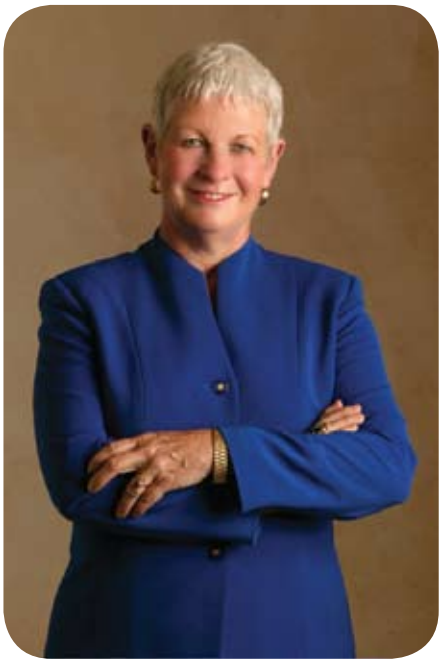
Judge Deanell Reece Tacha (10th Cir.) has been selected to receive the 26th Annual Edward J. Devitt Distinguished Service to Justice Award. The award, administered by the American Judicature Society, honors Article III judges whose careers have been exemplary, measured by their contributions to the administration of justice, the advancement of the rule of law, and the improvement of society as a whole. Tacha was chosen by a three-member panel chaired by Supreme Court Justice Samuel A. Alito, Jr. with panel members Chief Judge Anthony J. Scirica (3rd Cir.) and Judge Mark R. Kravitz (D. Conn.)

Tacha's nomination drew over 70 letters of support. In his nomination letter, Judge John W. Lungstrum (D. Kan.) said, "there is no criterion by which a nominee could be evaluated concerning which Judge Tacha does not excel: 'Sparkling intellect,' 'excellent juris,' 'spectacular' chief judge, 'wise' decision-maker, 'go-to' public servant, inspirational mentor, and role model. It is fair to say few other judges have ever served in such a wide range of leadership positions in our profession. If there has been a call to service, Judge Tacha has always answered it."

From 2001 to 2005, Tacha served as chair of the Judicial Conference Committee on the Judicial Branch. She was a member of the U.S. Sentencing Commission from 1994 to 1998. She chaired the Judicial Division of the American Bar Association from 1995 to 1996 and has been a national Trustee of the American Inns of Court Foundation since 2000. Tacha served as chief judge of the Tenth Circuit from 2001 to 2007.

Prior to joining the federal bench in 1985, she was in private practice in Kansas, served on the faculty at the University of Kansas School of Law, and also was Vice Chancellor for Academic Affairs at the University.

"Judge Tacha, through her many contributions to the federal Judiciary and the bar, not only meets but exceeds the standards established by this Award," said Alito in announcing the award winner. "These invaluable contributions have brought, and continue to bring, great honor to our profession. Judge Tacha is a most exceptional woman whose selection brings heightened esteem to this Award."



Judge Deanell Reece Tacha (10th Cir.)

The Devitt Award is named for the late Edward J. Devitt, long-time chief judge of the U.S. District Court for the District of Minnesota.

2255 Project *continued from page 5*

Judicial Conference Committee on Defender Services. "It's human nature to think we don't make errors, and so the evaluation of claimed trial errors, and the inclination to appoint counsel or experts to develop ways to attack the conviction or sentence, might not be the same as it is when we're handling a challenge to a state court conviction. But this is the last proceeding available before a death sentence is executed. It is very important that our handling of the representation reflect that and also reflect the unique nature of capital post-conviction litigation."

The Committee on Defender Services saw that judges presiding over the cases needed help. "The federal system is relatively new to collateral attacks on federal death sentences under § 2255 cases. They are different from direct appeals and require different skills," said Gleeson.

In December 2007, the Committee funded the 2255 Project initiative. It provides consultation and assistance to courts adjudicating, and defense counsel litigating, capital cases pursuant to § 2255.

"The prompt appointment of qualified counsel to represent defendants in these cases has become critical," Gleeson wrote to all federal district and magistrate judges, introducing the Federal Capital Habeas Project. "In addition to death penalty law, counsel must have expertise in the substantive and procedural habeas jurisprudence developed through § 2254 cases, as well as the law governing § 2255 proceedings. Even the most experienced and learned trial advocates may not have the knowledge and skills necessary for capital post-conviction litigation." Gleeson recommends that courts consult with the 2255 Project early in a death penalty case to identify attorneys for appointment who have the appropriate experience.

"Death penalty cases are very specialized and there is recognition that quality counsel is needed," said Friedman. "We can recommend to the courts counsel with the required expertise and then offer those lawyers support in the development of the case. Counsel in these cases will need to be familiar with both procedural and substantive law and with years of death penalty and habeas jurisprudence. As these cases can be very expensive, there are also funding issues with which we can assist both the courts and counsel. Invariably, there are very long records, often with many witnesses, and there are sometimes multiple trials with which the lawyers must become familiar. And there's an additional pressure, in that the minute certiorari is denied by the Supreme Court, the clock starts running for the filing of the § 2255. With only a year to bring the case, qualified counsel should be ready to go as soon as certiorari is denied."

Friedman draws on 20 years of experience in the field and is a nationally recognized expert in habeas corpus and death penalty litigation. She is well suited not only to identify counsel with the necessary skills but to help train lawyers to handle these cases.

"There are not a lot of attorneys qualified to take capital habeas cases," she said, "and many of those who are, have their plates full." That's why the 2255 Project also offers training for lawyers through a series of seminars.

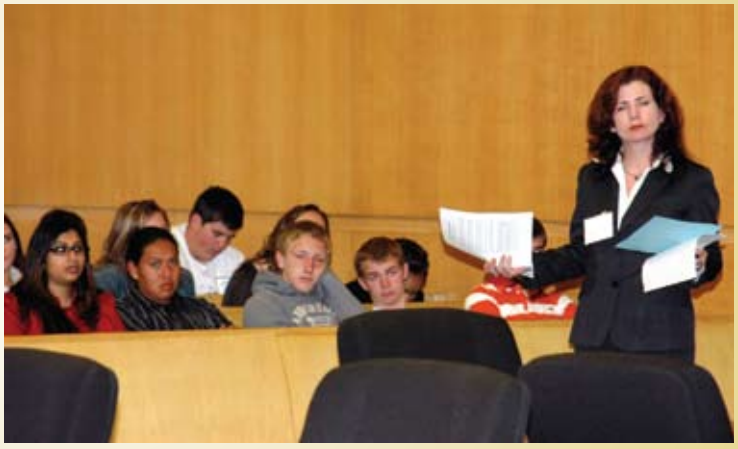
The Project hopes to monitor the status of all death penalty cases.

"We hope to get in touch with the attorneys to offer assistance," said Friedman. "Our help is free. Run your ideas by me. Let us take a look at the pleading. We'll even help with case budgeting. We'll respond to every request for help."

"We want to encourage judges to understand the gravity of the § 2255 situation," adds Gleeson. "Speak to the defender, speak to the 2255 Project, and get an attorney who is up to the task. If the system is to retain its integrity, we need to make sure people get the representation they deserve."

Students Participate in Grand Jury Simulation

Supreme Court Fellow Karyn Kenny leads high school students in a true-to-life grand jury simulation at the U.S. District Court for the District of Columbia. The students, who came from high schools across the nation, were participating in the Close Up Foundation's Week in Washington program. For more on the federal courts' educational outreach visit http://www.uscourts.gov/outreach/index.html.



Pilot Project Update: Digital Audio Recordings Online

Making digital audio recordings of courtroom proceedings publicly available online "has become an operational way of doing business" for the U.S. Bankruptcy Court in the Eastern District of North Carolina, said Judge J. Rich Leonard.

"It's gone from a novel tool to an anticipated product, with fairly high usage," he said. "I consider it a great advance in making our federal courts transparent."

Providing digital audio recordings online has proved "extremely easy" for the U.S. District Court in Nebraska, reported Judge Richard Kopf. "Many lawyers think this is the best thing since sliced bread," he said.

In a pilot project that began last August, five federal courts are docketing some digital audio recordings to Case Management/Electronic Case Files (CM/ECF) systems to make the audio files available in the same way written files have long been available on the Internet. The three other courts are the Eastern District of Pennsylvania, the U.S. Bankruptcy Court in Maine, and the U.S. Bankruptcy Court for the Northern District of Alabama.

In each court, the extent of accessibility is determined by individual judges, and not every judge in the five pilot courts is participating. "This is a judge-driven experiment," said Mary Stickney of the Administrative Office's Electronic Public Access Program Office. "Because providing digital audio recordings online is done as a convenience for lawyers and the public, each judge has total discretion to decide which proceedings get posted."

The audio files are accessible through the Public Access to Court Electronic Records (PACER) system. Some 840,000 subscribers use PACER to access docket and case information from federal appellate, district, and bankruptcy courts.

Access to the recorded proceeding is through a one-page PDF document on the court's docket. During the life of the pilot project—expected to last through 2008—the cost, regardless of the proceeding's duration, is eight cents to download the entire audio file.

"Going live" with the pilot project was delayed for the Pennsylvania and Maine courts because the digital audio recording program they use creates and stores files differently. Administrative Office developers and court systems staff had to create computer programs to separate the audio files by each proceeding and convert the files into MP3 format.

The bankruptcy court in the Northern District of Alabama had its first audio files available through PACER last October; the Eastern District of Pennsylvania in January of this year; and the bankruptcy court in Maine in April.

In each court, audio files generally are posted online within 24 hours. "If it doesn't get up there quickly, we hear about it," said Alec Leddy, clerk of the bankruptcy court in Maine. "All the feedback has been positive."

A major concern is assuring that personal information—including Social Security and financial account numbers, dates of birth, and names of minor children—not be available on any online digital audio recording. The Judiciary's privacy policy restricts publication of such information. Each of the pilot courts warns lawyers and litigants in a variety of ways that they can, and should, request that recorded proceedings that include information covered by the privacy policy, or other sensitive matters, not be posted.

"If any such issue exists, the judge should not upload that audio file," Leonard said.

In the Eastern District of Pennsylvania, recordings to date have been posted in civil cases only. "We held back on criminal cases to be sure there are ways of protecting cooperators, and otherwise ensuring that confidential information is not disclosed," said Clerk of Court Michael Kunz. He added, however, that the court continues to study the issue of offering digital audio recordings of criminal case proceedings as well.

One goal of the pilot project is to determine the level of public interest. Early indications suggest there is substantial interest. A second goal is to determine an appropriate charge, based on demands on court staff and technological investments to provide adequate bandwidth. (An audio CD of digitally recorded court proceedings, long available at a court clerk's office, currently costs $26.)

Audio files from hearings that last four hours or longer can be quite large, and it became clear early in the pilot that the existing PACER infrastructure could be adversely affected if there were a substantial demand for such large files. The pilot courts adopted procedures to break those audio files from all-day hearings into morning and afternoon files.

The pilot was approved by the Judicial Conference last year on the recommendation of its Court Administration and Case Management Committee. That committee subsequently asked the Federal Judicial Center to evaluate the project.

"This has been an exceptional pilot, a model of teamwork between the AO and the courts," Stickney said.

Denise Lucks, clerk of court for the District of Nebraska, agreed. "Working with the AO staff has been terrific—the best pilot we've participated in," she said.

JUDICIAL MILESTONES

Appointed: Stanley Thomas Anderson, as U.S. District Judge, U.S. District Court for the Western District of Tennessee, May 21.

Appointed: Brian Tsuchida, as U.S. Magistrate Judge, U.S. District Court for the Western District of Washington, May 13.

Senior Status: U.S. District Judge Thomas F. Hogan, U.S. District Court for the District of Columbia, May 1.

Senior Status: U.S. District Judge Fred Van Sickle, U.S. District Court for the Eastern District of Washington, May 1.

Senior Status: U.S. District Judge James Dale Todd, U.S. District Court for the Western District of Tennessee, May 20.

Elevated: U.S. District Judge Royce C. Lamberth, to Chief Judge, U.S. District Court for the District of Columbia, succeeding U.S. District Judge Thomas F. Hogan, May 1.

Elevated: U.S. Bankruptcy Judge Charles M. Caldwell, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of Ohio, succeeding U.S. Bankruptcy Judge Vincent J. Aug, Jr., May 16.

Retired: U.S. Bankruptcy Judge Diane Weiss Sigmund, U.S. Bankruptcy Court for the Eastern District of Pennsylvania, April 25.

Retired: U.S. Magistrate Judge John Forster, Jr., U.S. District Court for the Eastern District of Arizona, May 9.

Resigned: U.S. District Judge Walter D. Kelley, Jr., U.S. District Court for the Eastern District of Virginia, May 16.

Resigned: U.S. Magistrate Judge Myles J. Devine, U.S. District Court for the District of South Dakota, April 30.

Resigned: U.S. Magistrate Judge Mary E. Guss, U.S. District Court for the District of Arkansas, May 21.

THE THIRD BRANCH

Published monthly by the
Administrative Office of the U.S. Courts
Office of Public Affairs
One Columbus Circle, N.E.
Washington, D.C. 20544
(202) 502-2600

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DIRECTOR
James C. Duff

EDITOR-IN-CHIEF
David A. Sellers

MANAGING EDITOR
Karen E. Redmond

PRODUCTION
Linda Stanton

CONTRIBUTORS
Dick Carelli, AO

Please direct all inquiries and address changes to *The Third Branch* at the above address or to Karen_Redmond@ao.uscourts.gov.

JUDICIAL BOXSCORE

As of June 1, 2008

Courts of Appeals	
Vacancies	11
Nominees	10
District Courts	
Vacancies	36
Nominees	21
Courts with "Judicial Emergencies"	16

For more information on vacancies in the federal Judiciary, visit our website at www.uscourts.gov under Newsroom.

Judgeship Bill Moves

The Senate Judiciary Committee reported a bill in mid-May that would create 12 permanent court of appeals judgeships and 38 permanent district court judgeships, in addition to several temporary judgeships. If enacted, the Federal Judgeship Act of 2008, S. 2774, would be the first comprehensive judgeship bill in 18 years. The bill reflects the judgeship recommendation of the Judicial Conference for existing Article III courts.

With a strong 15-4 committee vote in favor of the legislation, chair Senator Patrick Leahy (D-VT) agreed to accommodate the desire for a hearing on the part of some Senators who raised concerns about the method for Article III judgeship recommendations. Leahy is not expected to ask the full Senate to move the legislation until a hearing is held in the Subcommittee on Administrative Oversight and the Courts.

In a statement released after the bill was reported, Leahy said S. 2774 would help reduce judicial backlogs in districts across the country.

"Since the last comprehensive judgeship bill became law 18 years ago, filings in the courts of appeals have grown by 55 percent, and district court case filings have risen by 29 percent," said Leahy. "The Federal Judgeship Act responds to the needs of districts based on weighted case filings and assistance from senior and magistrate judges, caseload complexity and temporary caseload increases or decreases."

The Judicial Conference judgeship recommendations are based upon the federal Judiciary's biannual survey of judgeship needs. In March 2007, when making its current recommendation, the Conference noted that since 1990 the number of court of appeals judgeships has remained at 179, even though federal appellate court case filings have risen over the same 17-year time period. In various appropriations measures, Congress has increased the number of district court judgeships by 4 percent, from 645 to 674, since 1990.

"Caseloads for federal judges are nearing record highs," Leahy said following the May committee meeting. "In 2006, district court judges faced an average of 464 cases, while three-judge panels at the circuit court level averaged 1,197 cases. These numbers are well above the appropriate standard set by the Judicial Conference."

Even if S. 2774 is enacted into law this Congress, a provision in the bill ensures that the new judgeships would not take effect until the day after the inauguration of the next President.

Judiciary Tests Emergency Preparedness

In May, the three federal branches of government participated in Eagle Horizon 2008, a scenario-based exercise to test continuity of operations plans. The U.S. Court of Appeals, the U.S. District Court, and the U.S. Bankruptcy Court for the District of Columbia (photo right top) and the Eastern District of Virginia, Alexandria Division, conducted table top exercises. COOP personnel from the Administrative Office relocated to the AO's primary alternate site (photo right bottom).

During the exercise, participants were asked to follow COOP procedures and respond to court and public requests for assistance under a scenario in which a Category 4 hurricane made landfall in Washington, DC, the National Capital Region faced a credible terrorist threat, and a series of terrorist attacks occurred on the West Coast.

receive an inquiry from a judge, for example, we treat the inquiry with the same degree of confidence as an attorney would treat a communication with a client. We do not engage in, or assist in, disciplinary proceedings. That is the responsibility of the chief judges of the circuits and the Committee on Judicial Conduct and Disability. Discipline in the federal Judiciary is governed by federal statute, 28 U.S.C. §§ 351-364.

We also make recommendations to the Judicial Conference regarding the Code and the regulations regarding gifts, outside employment, and honorariums. We are also proactive in that we publish advisory opinions on a broad range of judicial and employee issues.

Q: Over the last year, the Committee conducted a comprehensive review of the Code of Conduct. What prompted the review?

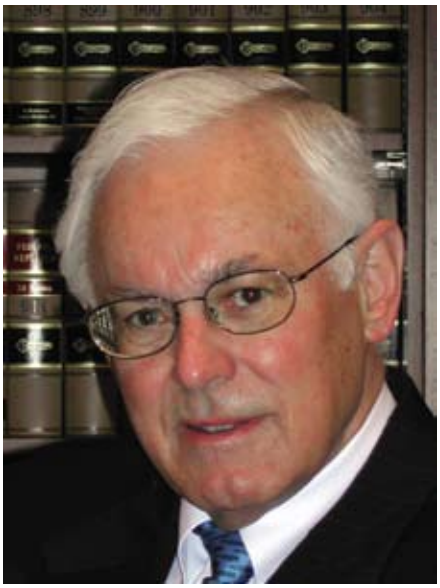
A: As a matter of history, the Committee has always reviewed its Code after the American Bar Association adopts and recommends its Model Code. So we simply decided to take another look at our Code in light of changes made by the ABA. Now there seems to be some concern among judges that we simply follow the ABA in developing our own Code. This is not the case.

The ABA has developed a more detailed regulatory approach in its Model Code. Regulations tend to be black and white. Our Canons are guiding principles by which judges should abide. We will help judges do that by rendering formal and advisory opinions as specific situations arise. In other words, we try to get the whole Judiciary to adhere to and aspire to achieve these principles, recognizing that there are vast areas of judgment. The ethical principles can be complex in their application, and we cannot foretell and give advice regarding the ethics of every possible situation that judges might confront in the future and make regulations regarding situations of which we are ignorant.

As to complexity, for example, let's say that my spouse is a certified public accountant with an accounting firm; the firm is not a party to a securities fraud case before me, but an accountant from her firm is going to testify as an expert. Can I sit on the case? Would it make a difference if she were an employee as distinguished from a partner in the firm? What if she were a partner but agreed not to share in any income received by the firm for its work on the case? Must I recuse if my spouse acts as a headhunter for law firms that appear before me and is paid fees that are in the tens of thousands of dollars, and which fees are consistent with fees for similar work by others? Can a federal judge accept an appointment by a governor to sit on the board of a state university? Can a judge attend a primary caucus to help determine a party's nominee for president? I could go on and on.

Q: Is the Committee proposing a wholesale overhaul of the Codes of Conduct, or some tweaking?

A: Our Committee engaged in an extensive comparison of the proposed ABA Model Code and our current Code, and examined oral and written suggestions that we have received from time to time from judges and others. Our proposed Code includes many valuable clarifications, expansions, updates, and improvements. Although the Committee does not propose to adopt the three-part format, organization, and numbering of the revised ABA Model Code, the Committee does propose to combine our current



Judge Gordon J. Quist (W.D. Mich.)

Canons 4, 5, and 6 into a new Canon, along the lines of the ABA Model Code's organization. We think that our proposal will improve and update the ethical guidance contained in the *Code of Conduct for United States Judges*.

I think that when all is said and done, however, after an enormous amount of work by our Committee, and especially the subcommittee assigned the task, there are no startling substantive changes.

Q: The public was asked to comment on the proposed revisions. What was the general public reaction?

A: On the whole, I think that the public reaction, including that of the ABA (www.uscourts.gov/library/codeOfConduct/comments.cfm), was quite favorable. All criticisms and suggestions were carefully considered, and some are being proposed to the entire Committee for adoption at our June meeting. We cannot, however, please everyone.

Q: What is being done to educate judges and employees about ethics? I understand you've been particularly active in this area.

A: An important goal is to better educate the Judiciary regarding the Codes of Conduct and gift regulations and to let them know the help that this Committee can offer. I think that we have been very successful in doing that. The Federal Judicial Center now puts us on its programs regularly, and we are well received. This is quite different from the situation during my first years as a Committee member. So I am really grateful to FJC Director Judge Rothstein, Bruce Clarke, Mary Kelley, and others at the FJC.

Our success can be shown in numbers. When I became chair, the Committee was issuing about 35 formal written opinions per year; now we are issuing about 100 formal opinions per year. In addition, we answer about 500 oral inquiries per year.

We also have published several booklets. For example, our booklet "Ethics Essentials," (www.uscourts.gov/library/ethicsessentials.pdf) provides guidance on the most common ethics questions that new judges tend to ask, and provides examples of common ethics situations facing judges.

There is no doubt that the Judiciary is much more aware of, and concerned about, its ethical responsibilities. Of course, some of this awareness and concern comes from publicity in the media. Judges want to see their names in the news only if it is positive news.

Q: As chair, you've seen several new ethics initiatives. Can you tell us about some of these initiatives and how they are progressing?

A: From my first meeting as a member of the Committee many years ago, the issue of expense-paid attendance at a privately funded seminar has been an issue. Some judges feel that judges should be able to attend; some judges feel that judges should not attend; and some judges feel that the issue is not worth the fight. I think that the combination of Advisory Opinion 67 with a new disclosure rule should relieve parties who believe that a judge may have been prejudiced by attending such a seminar.

Our Canons are guiding principles by which judges should abide.

The new disclosure rule, which was proposed to the Judicial Conference by the Judicial Branch Committee, prohibits a judge from going to a privately funded seminar unless full disclosure regarding the seminar is placed on the Judiciary's website. Then, Advisory Opinion 67 tells a judge what to consider before deciding whether to go to the seminar. Then, if the judge does go to the seminar, the judge must report the attendance on the local court's website. With all of this information, any party can inform a judge that it thinks the judge might have been prejudiced by attendance and move for the judge's recusal.

Upon recommendation of our Committee, the Judicial Conference has instituted a mandatory financial conflict screening policy which is progressing very well. It was our responsibility to make sure that the circuits had proper plans, and every one does. I met with the circuit executives, and they have all implemented the policy and plans.

Also, upon our recommendation, Congress has amended the Internal Revenue Code to allow a judge to postpone the capital gains on the sale of property that when otherwise the judge would either have to recuse or pay the capital gains tax. Now the judge can sell the disqualifying property, usually stock, and reinvest the proceeds without immediately paying the tax. We have adopted regulations implementing this law.

Q: You've said the Committee is neither a police force nor an adjudicator of a person's ethics. Does that mean the Code of Conduct is simply advisory in nature for federal judges?

A: I wish that you hadn't used the word "simply." It is not always simple, and our advice is almost always followed. Essentially, the answer is, "Yes." However, the Code, in many important respects, tracks the recusal statute, 28 U.S.C. § 455, which is not advisory. The statute is mandatory.

Q: Your committee responds to formal and informal requests for advice about whether particular behavior is ethically appropriate. The formal requests usually generate an advisory opinion. What do you see as some of the Committee's most significant recent published advisory opinions?

*See **Interview** on page 12*

Interview *continued from page 11*

A: Well, the formal requests for advice from judges do not generally lead to advisory opinions issued to the Judiciary as a whole. We distinguish between "formal opinions" and "advisory opinions." Formal opinions are personal, confidential, written opinions that we render to individuals. We reserve advisory opinions for those matters that we see often or which in the Committee's judgment are important enough to merit an advisory opinion. Advisory opinions are published on the J-Net and on the Judiciary's public website at www.uscourts.gov/guide/advisoryopinions.htm. Advisory opinions are not confidential; they are available to the public. While we can issue a formal letter to an inquirer in about 17 days, it often takes years to settle on an advisory opinion. Good examples of the recent advisory opinions regard teaching at government or privately sponsored programs [Adv. Op. No. 105 and No. 108] (www.uscourts.gov/guide/vol2/105.html) (www.uscourts.gov/guide/vol2/108.html) and when recusal should be considered because of a spouse's employment or business [Adv. Op. No. 107] (www.uscourts.gov/guide/vol2/107.html). Of course, the revision of Advisory Opinion 67, regarding privately funded seminars, is also very important.

We also give what we call "informal advice," which is usually a confidential response by a staff member or individual member of the Committee to a telephone or email inquiry.

Q: You're nearly at the end of your current term as Committee chair. Any unfinished business or projects you wished you'd had time for?

A: Not really. We have accomplished a lot in these past eight years, and I have had a great time. There is still a lot to be done, but I truly believe that these Committees regularly need new blood and new ideas. I will leave the Committee with the satisfying knowledge that judges really do want to get it right.

THE THIRD BRANCH
Administrative Office of the U.S. Courts
Office of Public Affairs
One Columbus Circle, N.E.
Washington, D.C. 20544