Sabbaticals for State and Federal Judges: Necessary in the Pursuit of Judicial Excellence

Ira P. Robbins
Roles of State and Federal Courts Examined at Mass Tort Conference

by James G. Apple

Critical questions about the role of society in both state and federal courts were raised at the first National Mass Tort Conference, which was held in Cincinnati from November 10–13.

Participants at the conference included 130 state judges and 46 federal judges, as well as court administrators, lawyers, and legal scholars.

The conference opened with a video-taped address by Chief Justice of the United States William H. Rehnquist, who reminded the attendees of Alexander Hamilton’s description of the state and federal systems as “one and the same.

Judge Robert M. Parker (U.S. 5th Cir.) told the audience that “a fundamental issue raised by modern complex mass tort cases is: What role do we want our courts to play in our society?”

He noted the relevance of courts in modern times is in direct relationship to how well we meet the expectations of our citizens.

Are we “going to remain with an 1825 model for cases?” he asked.

Zie Baird, senior vice-president and general counsel of Atria Insurance Company, sounded a similar theme in her remarks in the opening panel discussion of the conference. Unlike courts of law, by design courts are meant to deal efficiently and justly with modern court phenomena as mass tort cases, she said, “citizens will get disillusioned with the judicial system and go elsewhere.”

What State Judges Need to Know About Bankruptcy Cases

Bankruptcy cases create a major area of friction between state and federal courts—especially in the area of state court tort law. What are judges at both levels doing to keep track of the existence and status of cases in different state and federal courts? What are the establishment of central document depositaries? What are the major jury trials more comprehensible to judges and juries by such innovations? Do the state–federal courts have a practical matter, however, only acts in accordance with the stay. The automatic stay can be tricky. When in doubt, the state court judge may act. See answer to Question 2.

3. Question: Could a state court judge order a defendant to pay a debt? Answer: Yes, while it is more likely that a party or counsel for a party would be acting contrary to the automatic stay, a state court judge could violate it in a myriad of ways, ranging from conducting a pretrial confer ence in a mortgage foreclosure action to a trial of a contract dispute. Essentially any act outside the bankruptcy court that moves a matter forward on a claim against a debtor owned property of the estate during the pendency of a bankruptcy violates the stay. As a practical matter, however, only acts in willful violation of the stay would result in sanctions, from which state courts judge would probably be immune.

There are several areas where the automatic stay doesn’t stop the stay. For example, even if a creditor obtains an order of relief from the automatic stay, the creditor still has actions against the debtor in state court, not in the bankruptcy court.

Administrative, Litigation Coordination Emphasized at Williamsburg S–F Meeting

Over 80 state and federal judges and court administrators gathered in Williamsburg, Va., on November 14 for a two-day convention on state–federal relationships in the Middle Atlantic states.

The conference focused on four central themes: administrative and litigation coordination between state and federal courts; (including the role of state–federal judicial councils); criminal case processing in state and federal courts; funding processes and legislative initiatives affecting the judiciary; the two systems and the future of the federal judicial system.

Discussions of coordination of administration and litigation in the two court systems centered on three areas: bankruptcy cases, bankruptcy stays, and state–federal judicial councils. Judge Johanna L. Fitzpatrick (Va. Ct. App.) moderated a panel discussion that included an analysis of approaches to the resolution of complex mass tort cases by Judge Larry V. Starcher (W. Va. 17th C.t) and Judge Matthew J. Perry, Jr. (U.S. D. S.C.). Richmond litigation Deborah M. Russell reviewed in detail classic actions and pretrial consolidation approaches to such cases.

U.S. Supreme Court Justice Sandra Day O’Connor gave the keynote address to open the conference. She said that “part of the beauty of our federalism is the diversity in viewpoint it brings to bear on legal problems. Under our system, the 50 state supreme courts, 13 United States courts of appeals, and countless trial and intermediate appellate courts may bring diverse experience to bear on questions that, because of the Supreme Clause [of the U.S. Constitution], they must answer in common.”

She reminded the audience that “mainenance of the federal–state balance is the responsibility of both the federal and state courts. It is not unlike a successful marriage. Reciprocal awareness of their

See WILLIAMSBURG, page 2

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Zobel Named FJC Director; Will Assume Duties in April

By Professor Ira P. Robbins
Washington College of Law

State and federal judges have a hazardous occupation. With large caseloads and small staffs, they live a life of intensity, the result of the never-ceasing round of difficult decisions that can affect the freedom or the lives of human beings or dispose of millions of dollars. Judges also live a life of contradiction. At once they must action oriented, person oriented, deductive, intuitive, authoritative, communicative, just and empathetic. To add to this constant struggle over quality and thoroughness, the concern about living up to individual and institutional expectations, the lonely transition from practice or teaching, the social isolation in financial pursuits, the lack of objective feedback, and the absence of control over caseload or clientele, and the toll on the quality of judges’ lives becomes obvious.

A judge recently asked psychiatrist Walter Menninger, “What can I do on the bench that will reduce my stress to a manageable level?” One good answer is: “Take a sabbatical.” Virtually every article calling for judicial sabbaticals mentions stress or “burnout.” The late Judge Wade Mace Creek, Jr., who served on the federal trial and appellate bench as U.S. Solicitor General, former Federal court judge, said it the “judicial blues.” Oregon Supreme Court Justice Ralph Rolman referred to it as a life in a “dismalational cage." He told his late partner and colleague on the bench, Tim Murphy, a former federal judge, “The presentations were very helpful in demonstrating the need for more communication between judges and federal judges. I think we will see that happen in North Carolina.”

A summary of the conference proceedings will be prepared and distributed by Plato Cacheris, a criminal defense lawyer of the D.C. firm, Andrews & Cacheris, and will be posted on the Conference website. The late Judge Wade McCree, Jr., who attended the conference, said that the conference provided the means for effective communication between state and federal judges.”

For resolving problems arising from the federalization of crime and for increasing the cooperation between state and federal courts, Prof. Meador suggested the following ideas: the creation of state–federal prosecution councils; development of guidelines for state and federal prosecutors for cases with overlapping state–federal jurisdiction; interbranch seminars at the state and federal level, and state–federal pilot programs at U.S. circuit judicial conferences. Judge F. Gordon Battle (N.C. Super Ct.) said, “Without a sabbatical, without the time off, judges can’t maintain their current level of output.”

One good answer is: “Take a sabbatical.” Alternatively, a less acceptable answer might be: “Take a break.” But the proposal was never implemented.

In light of these advantages, why are sabbatical leaves not being used for community development or for educational purposes? One American Express employee used her six-month leave to work in a hospice. Other companies have gone further. Other companies have gone further. IBM, for example, provides many of its employees with a one-year sabatical, at full pay, to share their knowledge in a non-competing industry. The United States Office of Personnel Management grants sabbaticals for such “socially responsible” activities as helping the homeless, the aged or abused children. American Express began a sabbatical policy in 1991 that allows six months to leave for employees, but requires the time off to be used only for community development or for educational purposes. One American Express employee used her six-month leave to work in a hospice.

Other companies have gone further. McDonald’s Corp. for example, gives eight-week sabbaticals every ten years for all regular employees. Apple Computer Corp. uses full-time employees to work six weeks full-time every five years. And Time, Inc., has provided its employees with one year off with full pay for 15 years of work, with no restrictions.

One company that started a sabbatical program a few years ago is the Center for Public Leadership. It was founded by former U.S. Senator John Danforth, who was the chairman and chief executive officer of the Center. He recommended a leave of from 6 to 12 months for judges. The idea was never implemented.

William B. Goodwin, Proctor & Hoar.

Earlier this year she completed a four-year term as chair of the Judicial Conference’s Committee on Automation and Technology. She also had been a member of the Committee on the Operation of the Jury System and its Committee on Judicial Improvements. She is a former member of the Bivens Act Advisory Council of the National Conference of Federal Trial Judges in 1991–92. She will be the seventh director of the Federal Judicial Center, which was established in 1967.

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BANKRUPTCY, from page 1

Anna Tyrell Cochran, standing to right, claims administrator for the Silicon Breast Implant Settlement Fund, leads one of the small-group discussions at the mass tort conference in Cincinnati in November. Also present were Judge Edward Reddink (U.S.S.D.Ct.), left, and Justice Joan B. Lobis (N.Y.Sup.Ct.), seated to right.

MATH TAST, from page 1

ions as jury note taking and use of modern computer and communications technology; and
• recognition in appellate courts of differences between mass tort cases and "gar- den variety" cases to allow for more flexibility and uniformity.

Participants also visited the Potter Stewart U.S. Courthouse in Cincinnati for technology demonstrations in one of the courthouses.

Judge Carl B. Rubin (U.S.S.D.Ohio) left, and Justice Joan B. Lobis (N.Y.Sup.Ct.), seated to right.
The restoration project that transformed historic Union Station in Tacoma, Wash., into the home for the U.S. District Court for the Western District of Washington received a 1994 Honor Award from the National Trust for Historic Preservation. The award was presented at the Trust’s annual fall conference in Boston in October.

The project was cited for the “unique and creative reuse of [a] historic railroad depot by putting courts into the building and high quality rehabilitation.” It was one of 17 awards presented by Richard Moe, president of the National Trust.

Peter H. Brink, vice president for programs, services, and information at the National Trust, said he had visited the new court building and saw it as a model for state and federal courts throughout the country.

“I hope the Honor Award will inspire state and federal courts in every state not only to preserve historic courthouses but to consider other historic buildings in the community for adaptive reuse for courthouse replacement or expansion projects,” Brink said.

Chief Justice Randall T. Shepard (Ind. Sup. Ct.), a trustee of the National Trust, said that “the Tacoma project suggests that adaptive reuse for court facilities, such as train stations, that make them appropriate for adaptation as court facilities and creative reuse of a historic railroad depot by putting courts into the building and saw it as a model for state and federal courts throughout the country.”

The restored building contains eight courtrooms. The courtrooms are located in the former dining and “ladies retiring smoking rooms.” Court support staff offices are quartered in the lower working floors of the old depot, with the law library installed in the old freight rooms and the court clerk’s office established in the former telegraph office.

The train station, built in the Beaux Arts style in 1914, was designated in 1984. The city of Tacoma purchased the site from the railroad, paid for the restoration costs of the building and adjacent structures, and entered into a long-term lease with the General Services Administration to house the federal court operations in the city.

Tacoma’s restored Union Station, which now houses courtrooms and offices of the U.S. District Court for the Western District of Washington, received an Honor Award from the National Trust for Historic Preservation in Boston in October.

• Improving judges' contact with the communities whose interests they serve;

• Reducing stress.

As for caseload coverage, if judicial sabbaticals prove to be productive, as I believe they will, creative case management will be essential. This may include, for example, the use of temporary judges, visiting judges, and senior judges (who in the federal system already contribute the equivalent of the work of about 70 full-time judges each year).

Lake lawyers and teachers, judges have enormous influence in our society. For our collective good as well as their individual benefit, judges need the precious gifts of time and perspective to sustain their pursuit of judicial excellence.

OBITER DICTUM, from page 2

Any concrete plan for paid leave must address such difficult questions as eligibility, frequency, duration, compensation, benefits, seniority, procedures, restrictions, and conditions. Questions of case and cost coverage will be paramount.

Yet the direct cost—the payment of the salary of an individual who may not be directly contributing to the judiciary during the sabbatical—is misleading; for it must be balanced against the direct and indirect benefits and savings. These include:

• Improving efficiency, productivity, and morale;

• Enhancing judges' creativity and reflective powers;

• Providing the opportunity for educational development and professional and personal growth;

• Attracting more highly qualified individuals to the bench;

• Decreasing attrition and its attendant costs;

• Improving judges' contact with the communities whose interests they serve; and

• Reducing stress.

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Bankruptcy Education Seminar Planned for State Judges from Midwest

The National Center for State Courts (NCSC) will conduct a two-day bankruptcy education seminar for state judges on January 13–14 in St. Louis.

Seventy judges from Missouri, Iowa, Minnesota, Nebraska, Wisconsin, North Dakota, and South Dakota will attend sessions at the John M. Olin School of Business at Washington University.

The seminar will familiarize participants with general bankruptcy laws and procedures and assist them in understanding the effects of bankruptcy stays and other bankruptcy procedures on state court proceedings.

One session will feature methods of replicating the bankruptcy seminar in individual states.

Guest speaker for the conference will be Judge David R. Hansen (U.S. 8th Cir.).

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ABJ has conducted education programs to acquaint state judges with bankruptcy issues in 27 states since 1992. It received a $25,000 grant from the National Conference of Bankruptcy Judges Endowment Fund for Education to conduct the program.

State and federal judges interested in future bankruptcy education programs should contact the American Bankruptcy Institute, 510 C Street, N.E., Washington, DC 20002, phone: (202) 543-1234.

The National Center for State Courts’ (NCSC) board of directors has chosen Keith O. Boyum, the John Brown Mason Professor of political science at California State University, Fullerton, to receive the 1994 Warren E. Burger Award. The award is presented annually by NCSC’s Institute for Court Management (ICM) to honor outstanding achievement in the field of court administration.

Boyum was editor-in-chief of ICM’s Justice System Journal from 1989 to 1994.

The Justice System Journal is a refereed journal focusing on judicial administration and processes. According to Ingo Keilitz, vice president in charge of ICM, “Boyum successfully and admirably steered the Justice System Journal through an ever-changing landscape of justice system scholar-ship and praxis. In doing so, he helped define and shape that landscape.”

The NCSC is seeking nominations for the 1995 Warren E. Burger Award. The recipient will be chosen by NCSC’s board of directors at its April 1995 meeting.

Nominations should have made significant contributions to court management in one or more of the following areas: management and administration; education and training; research and consulting.

Nominations and supporting information must be received by January 15, 1995.

Please send nominations to the Warren E. Burger Award Committee, Institute for Court Management, P.O. Box 8798, Williamsburg, VA 23187-8798; phone: (804) 259-1815; fax: (804) 220-0449.