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

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**Roles of State and Federal Courts Examined at Mass Tort Conference**

by James G. Apple

Critical questions about the role in society of both state and federal courts were raised at the first National Mass Tort Conference, which was held in Cincinnati from November 1–13. 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 framework.”

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 said that the relevances of court rules 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 courts?” he asked.

Zoe Baird, senior vice-president and general counsel of Aetna Insurance Company, sounded a similar theme in her remarks in the opening panel discussion of the conference. Baird expressed concern that courts need to be able to deal efficiently and justly with modern court phenomena as mass tort cases, she said, “will need the experts to deal efficiently and justly with such modern court phenomena.”

The conference considered the following banking questions and answers as supplemented by experts for the evaluation of documentary evidence; early resolution of scientific issues; sanctions of computer technology such as CD-ROM to keep track of documentary evidence and all counsel in specific cases and to keep track of the existence and status of cases in different state and federal courts; establishment and use of central documents; use of state–federal judges for communication between state and federal courts on specific issues and for education of state court judges on mass tort case issues and procedures; making jury trials more comprehensible to judges and juries by such innovations.

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**Administrative, Litigation Coordination Emphasized at Williamsburg S–F Meeting**

Over 80 state and federal judges and court administrators gathered in historic 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; and the future of the federal judicial system.

Discussions of coordination of administration and litigation in the two court systems centered on three areas: joint tort cases, bankruptcy stays, and state and 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. Star cher (W. Va. 17th C.) and Judge Matthew J. Perry, Jr. (U.S. D. S.C.). Richmond litigator Deborah M. Russell reviewed in detail class 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 of its viewpoints which bears to bring on legal problems. Under our system, the 50 state supreme courts, 13 United States Courts of appeals, and countless trial and intermidiate appellate courts may bring diverse experiences to bear on questions that, because of the Supremacy Clause (of the U.S. Constitution), 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 experiences to bear on questions that, because of the Supremacy Clause (of the U.S. Constitution), they must answer in common.”

What State Judges Need to Know About Bankruptcy Case

Bankruptcy cases create a major area of friction between state and federal courts—especially in the area of consumer court lawsuits. Much of the friction arises because state trial judges lack understanding of the bankruptcy code and some bankruptcy cases cannot be tried efficiently and justly with modern court phenomena. Judges must have a good understanding of the bankruptcy code and the rules of procedure to handle bankruptcy cases correctly.

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State–Federal Judicial Observer

Necessary in the Pursuit of Judicial Excellence

by Professor Ira P. Robbins
Washington College of Law
The American University

State and federal judges have a hazardous occupation. With large workloads and small staffs, they live a life of intensity, the result of the never-ceasing demand of difficult decisions that can affect the freedom or the lives of humans or dispose of millions of dollars.

Judges also live a life of contradiction. At once they must be action-oriented, person-oriented, deductive, instructive, authoritative, convincing, just, and compassionate. To add to this constant struggle over quality and thoroughness, the concern about living up to individual and institutional expectations, the loneliness transition from practice or teaching, the social isolation for financial purposes, 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 on the bench?” One good answer is: “Take a sabbatical.”

Virtually every article calling for judicial sabbaticals mentions stress or “burnout.” The late Judge Wade Maceo, Jr., who served on the federal trial and appellate bench as U.S. Solicitor General, termed it “the judicial blues.” Oregon Supreme Court Justice Ralph Holman referred to it as life in a “decisional squirrel cage.”

Judge Tim Murphy, conference chair, offered the best of what may become a model for the Supreme Court of the District of Columbia, wrote:

Time away from the constant stress of dealing with human conflict and misery, to reflect on what justice is all about, would surely make for an even stronger and better court. [It] is presently a matter of ‘quit or die’ to get a respite. I am opting for the former.

Judge Peter Wolf, of the same court, wrote of a “memory overload problem.” [Being a judge] is constant, never-ending, tiring, limiting (of one’s outlook and activities) and pervasive. Decisions, however important, must be made, should be made promptly, and the need for a decision will almost never go away. Time for thorough research is an infrequent luxury. [A judge] can never relax.

On the federal side, former U.S. Chief Judge Aubrey Robinson, Jr. (Dist. D.C.), when asked what would be the most important single change he would make in the way the federal judiciary operates, responded: “The establishment of a sabbatical leave for every judicial officer.”

Going beyond just the need to reduce stress on the bench, Judge Robinson argued for judges to have an opportunity “to get a three-dimensional perspective, to explore some areas of the law in depth, to think about what’s coming down the line, to determine whether we want to spend the rest of our life on the bench.”

He recommended a leave of from 6 to 12 months, with eligibility after 10 years of service for judges. It is desirable for them to be able to confront some of the problems of aging in practice or teaching, the social isolation for financial purposes, the lack of control over caseload, and the toll on the quality of judges’ lives becomes obvious.

Voluntary opportunities for judges to have an opportunity “to get a three-dimensional perspective, to explore some areas of the law in depth, to think about what’s coming down the line, to determine whether we want to spend the rest of our life on the bench.” He recommended a leave of from 6 to 12 months, with eligibility after 10 years of service for judges.

Other companies have gone further. McDonald’s, for example, gives eight weeks of paid leave to any employee for every ten years for all regular employees.

Apple Computer, Inc. offers “an all-time em- ployee to take six months off work every five years. And Time, Inc., has provided its employees with one year off with full pay after 15 years of work, with no restrictions.

Some law firms, large and small, believing that to be only a lawyer is to be only a lawyer, have offered similar opportunities. When Senior Judge Louis Oberdorfer (U.S. D.C.), it was a law firm with full pay, to share their legal with one another, and be on sabbatical leave for the Neighbor- hood Legal Services Program.

Another Wilmer, Cutler lawyer, who spent six months backpacking through Nepal, India, and other Asian countries, describes his time as “humble, humbling, and voking, and in some ways disturbing expe- rience.” He added, “I realized important questions about what I and my fellow lawyers, want to do with our lives and talents.”

Sabbatical leaves have permitted law- and self-discovery. Whether they read good books, learn about music, give time to retarded children, discover other cultures, or spend more time with their families, those who have taken sabbatical leaves have found themselves in a position to make more informed social, politi- cal, and professional decisions.

In light of these advantages, why are sabbatical leaves not provided for judges? Shouldn’t judges have the same right to a sabbatical leave in sight? Shouldn’t judges have the right to read something other than law books? Isn’t it desirable for them to be able to confront some of the problems of aging in practice or teaching, the social isolation for financial purposes, the lack of control over caseload, and the toll on the quality of judges’ lives becomes obvious.

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alimony, or attorney fees made in a divorce action?

(b) If so, to what extent?

(a) Yes. Support and alimony payments are generally nondischargeable, unless otherwise agreed to by the parties, and alimony payments are nondischargeable in chapter 11 cases.

(b) The bankruptcy court will likely resolve this issue, or is the dischargeability of these payments a matter of law?

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the court is presented with the issue of dischargeability of that judgment.

(b) Yes. Default judgments or issues not fully litigated in state court are subject to collateral attack in bankruptcy court, but collateral estoppel applies in bankruptcy proceedings to matters that have been fully litigated in state courts.

8. Question: If a debtor files a chapter 13 bankruptcy, can he or she discharge judgments for embezzlement, fraud, intentional torts, and driving under the influence of alcohol or drugs?

Answer: Money judgments based on driving while intoxicated are not dischargeable in chapter 13, but money judgments for embezzlement, fraud, and intentional torts are. In chapter 13 proceedings, debtors usually agree to pay creditors from future income over an extended period of time pursuant to a plan approved by the bankruptcy court. Such a debtor is not entitled to discharge until the successful completion of payments under the plan.

9. Question: Are there any circumstances where restoration or fines in a state criminal case are dischargeable?

Answer: Fines and restitution in state criminal cases are non-dischargeable in bankruptcy cases filed on or after October 22, 1994. Before that date, fines were dischargeable in chapter 13 cases filed before October 22, 1994. Restitution is non-dischargeable, but fines are dischargeable in chapter 13 cases filed before that date.

10. Question: The defendant in a collection suit in state court affirmatively alleges discharge in bankruptcy. Can the state court resolve this issue, or is the dischargeability issue only within the jurisdiction of the bankruptcy court?

Answer: Only bankruptcy courts can determine whether to grant or deny a discharge in bankruptcy court. State court judges can ascertain whether discharge has in fact been granted or denied through evidentiary methods of proof.

11. Question: A lawyer for a party calls and says that a creditor claims that a client has filed bankruptcy. How can this be verified?

Answer: The state judge or his/her clerk may call the bankruptcy court clerk's office, or seek access to the docket electronically if such technology is available.

12. Question: Under United States Government Courts, District Court, District of Columbia, Clerk's Office. An alternative is for the state judge to require the debtor's lawyer to file with the state court a date-stamped copy of the debtor's filed bankruptcy petition, and/or the Official Bankruptcy Form 9, "Notice of Filing Under the Bankruptcy Code, Meeting of Creditors and Fixing of Dates," after such form has been issued by the court.

Maggie H. Cobb, standing to right, claims administrator for the Silicon Breast and Uterus Cancer Trust, monitors the proceedings.

Ann Tyrell Cochran, standing to right, claims administrator for the Silicon Breast and Uterus Cancer Trust, monitors the proceedings. court officials was the first to deal with the issue of mass tort cases in the courts.

Participants in the Technology Conference in Indianapolis in February, and their computer software systems to provide a basis for the computer programs.

Note: A state court judgment that is based on specific and appropriate findings of fact and conclusions of law is more likely to be adopted by, or otherwise served to, the parties than one that is not.

The conference, sponsored by the State Justice Institute, the Federal Judicial Center, the Judicial Conference of the United States, the Massachusetts Supreme Judicial Court, the Conference of Chief Justices, the National Center for State Courts, and the National Judicial College.
Court Building Wins National Trust Honor Award; Project Seen as Model for Other State, Federal Courts

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 the elegance usually associated with court houses can be found in other types of structures, such as train stations, that make them appropriate for adaptation as court facilities.”

The Honor Award is the first given to a courthouse project since 1976, when the restoration of the Old Federal Court Building in St. Paul, Minn., was recognized. In 1992, the restoration in Philadelphia of the Wannamaker Department Store, which includes a center for complex litigation for the Philadelphia court system, won an Honor Award. The Honor Awards, begun in 1971, “recognize individuals, corporations, and organizations that demonstrate exceptional achievement in the preservation, rehabilitation, restoration, and interpretation of America’s architectural and cultural heritage.”

Judge Robert J. Bryan (U.S. W.D. Wash.), a tenant of the building, wrote in support of the nomination of the project for the award that “not only has the restoration of Union Station been accomplished in terms of being faithful to historic features, but it is also successful in its transformation into a modern United States courthouse.”

“The architectural design is a marvelous combination of historic preservation and modern usage.”

The restored building contains eight courtrooms. The courtrooms are located in the former dining and “ladies retiring rooms.” Judges’ chambers are placed adjacent to the former baggage and “men’s 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 condemned 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.

Bankruptcy Education Seminar Planned for State Judges from Midwest

The American Bankruptcy Institute (ABI) 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.). Faculty for the seminar include U.S. bankruptcy judges James J. Barta (E.D. Mo.), Charles N. Clever (E.D. Wis.), Lee M. Jackwig (S.D. Iowa), Timothy J. Mahoney (D. Neb.), George C. Paine II (M.D. Tenn.), Barry S. Schermer (E.D. Mo.), and Mary D. Scott (E.D. and W.D. Ark.).

ABI 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.

Boyum Receives 1994 Warren E. Burger Award; Nominations Being Solicited for 1995 Award

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 scholarship 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.

Nominees should have made significant contributions to court management in one or more of the following areas: management and administration; education and training; and 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) 220-6049. OBITER DICTUM, from page 2

Any concrete plan for paid leave must address such difficult questions as eligibil- ity, frequency, duration, compensation, ben- efits, seniority, procedures, restrictions, and conditions. Questions of cost and case cov- erage 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 re- flective powers;
• providing the opportunity for educa- tional development and professional and personal growth;
• attracting more highly qualified indi- viduals to the bench;
• decreasing attrition and its attendant costs;
• improving judges’ contact with the communities whose interests they serve; and
• reducing stress.

As for caseload coverage, if judicial sabbaticals prove to be productive, as I believe they will, creative case manage- ment 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).

Lakelawyers 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 opportunity to sustain their pursuit of judicial excellence.