

**2018 Conference Executive Committee and
Lawyer Representatives Coordinating Committee
Brainstorming Session
September 21, 2018**

Cathy A. Catterson, Courtroom and Conference Center
James R. Browning United States Courthouse
San Francisco, California

Minutes

Conference Executive Committee Participants: Hon. Autumn D. Spaeth, Magistrate Judge, CAC, Conference Chair, Hon. John B. Owens, Circuit Judge, Program Chair, Hon. Morgan Christen, Circuit Judge, Hon. Rosanna Malouf Peterson, District Judge, WAE, Hon. Miranda M. Du, District Judge, NV, Hon. Kimberly J. Mueller, District Judge, CAE, Hon. Michael H. Simon, District Judge, OR, Hon. Brian A. Tsuchida, Chief Magistrate Judge, WAW, Michelle Carey, CAC, Chief Probation Officer (*by phone*), John B. “Jay” McEntire, WAE, LRCC Chair, Doreen Spears Hartwell NV, LRCC Chair Elect, Misty Perry Isaacson, CAC, LRCC Vice Chair, At-Large Members: Magdalena Reyes Bordeaux, CAC, Peter Borkon, CAN, Jody A. Corrales, AZ, Caroline R. Djang, CAC, Gay Grunfeld, CAN, Michelle M. Pettit, CAS, (by phone)

Unable to Participate: Hon. Madeleine C. Wanslee, Bankruptcy Judge, AZ, Susan Soong, CAN, District Court Clerk, Harvey Saferstein, CAC, Liaison, Ninth Circuit Advisory Board and James Stephen Azadian, CAC, Chair, Appellate Lawyer Representatives

LRCC Participants: John B. “Jay” McEntire, WAE, LRCC Chair, Doreen Spears Hartwell NV, LRCC Chair Elect, Misty Perry Isaacson, CAC, LRCC Vice Chair, Rosaleen O’Gara and Dale C. Schian, AZ, Nina Marino, CAC, Elizabeth Tipton, CAN, Carol Moses and Thomas R. Phinney, CAE, Janet Dean Gertz, CAS, Cynthia Ecube, GU, Alike Piper, HI, Robert A. Faucher and April Linscott, ID, Mark M. Kovacich, MT, Brenda Weksler, NV, Amy Potter and Samantha D. Malloy, (phone) OR, Erika N. Hartliep, WAE, Cynthia Jones and Robert Townsend, WAW

Unable to Participate: Andrea Hattan, AK, Robert S. Marticello, CAC, Miriam Kim, CAN, Gail Cosgrove, HI, and Vincent Seman, CNMI

Staff: Elizabeth A. “Libby” Smith, Circuit Executive, Renée Lorda, Asst. Circuit Executive, and Reyanna Untalan, Conference and Training Assistant

I. Introductions & Welcoming Remarks Hon. Autumn D. Spaeth, Magistrate Judge, CAC, Chair, Conference Executive Committee

After introductions, Conference Chair Judge Autumn D. Spaeth welcomed participants to the annual brainstorming session with the Conference Executive and Lawyer Representatives Coordinating Committees. She described Judge John Owens' role as the program chair and emphasized that this meeting is important because the Conference Executive Committee hears directly from members of the bar about which topics are important. She explained that Michelle Carey, the Central District's Chief of Probation and Pretrial, is a member of the committee and that every attempt is made to provide information to a broad spectrum of the judiciary and legal community. Judge Spaeth thanked everyone for making the investment of time to attend and Judge Owens, aware of the job ahead, said that he is excited about planning next year's program.

II. Remarks

Elizabeth A. "Libby" Smith, Circuit Executive

Ms. Smith expressed her appreciation for the committee members' work and commitment to offering their knowledge and expertise by working on program development for the circuit conference. It is a rewarding endeavor for all who are involved.

Ms. Smith described the latest efforts to split the Ninth Circuit and explained that Chief Judge Thomas was on his way to a special meeting with a legislator in San Jose regarding the efforts to split the Circuit. She and Chief Judge Thomas were in Washington, D.C. attending meetings of the Judicial Council of the United States while the House of Representatives Judiciary Committee was super busy trying to pass legislation that would have a drastic impact on the federal judiciary's operations and the Ninth Circuit in particular. Representative Darrel Issa (R) had developed split legislation that would create four adjudicatory divisions of the Circuit without creating a formal split. There would be a Northern Division including Alaska, Washington, Montana, Oregon, and Idaho; a Middle Division including Northern and Eastern Districts of California, Hawaii, Guam and CNMI; and a Southern Division including Central and Southern Districts of California and Arizona. The fourth would be an appellate division that would be responsible for en bancs and other court administrative functions.

In addition to all the structural changes recommended by Issa's legislation, additional judgeships were included: 7 additional judgeships for CAC, 5 for CAE, 2 for CAN and 1 for ID. The efforts underway are to dissuade the Senate from even considering the legislation. To date, the ABA, Dean Erwin Chemerinsky and others have written against the split. Ms. Smith concluded her remarks by saying that information will be made available as it develops.

III. Brainstorming Session

Hon. John B. Owens, Circuit Judge, U.S. Court of Appeals for the Ninth Circuit, Program Chair

Judge Owens began the discussion by asking for feedback from attendees on the following issues:

- A. Conference Format: How many programs should be presented?
 1. Workshops or breakouts should be repeated (Judge Peterson)

2. Workshops should be longer (Judge Du)
3. Might be helpful to focus the Conference on specific subjects that bring together one or two related themes (Judge Peterson)
4. Presented 21 programs in Anaheim!
5. Consensus: scale back in 2019 so attendees can have down time.
6. An important part of the Conference involves time to interact informally with members of the bench and bar. All this points to more downtime.

B. Quality of Programs

1. Judge Owens reported that Chief Judge Thomas was very pleased with the Anaheim Conference. There was consensus that the Conference was great!
2. Judge Owens reminded everyone that of the importance to keep in mind the purpose of the conference: to improve the administration of justice. Since the Ninth Circuit is under more scrutiny these days, fun or frivolous topics may not be suitable for this Conference.

Before starting to review the topics proposed by members of both committees, Judge Owens said that every topic on the revised chart distributed that morning was discussed with Chief Judge Thomas.

C. Discussion: Suggested Topics

1. Chief Magistrate Judge Brian Tsuchida stated that he is a fan of unifying topics and themes and that is why he proposed the Census, which is constitutional, as a general theme that would include conducting the Census, counting everyone v. excluding others and making the Census available to everyone living in the U.S.; the changing face of the population influenced by immigration and movement of people. Are we more diverse now than ever? Income inequality and the shrinking middle class; the homeless and maybe a bankruptcy tie-in. Millennials and aging judges? Also, constitutional issues involving the incarcerated and Bureau of Prison Issues. Who are we as Americans?

2. District Judge Rosanna Malouf Peterson commented that Judge Tsuchida has a good point. She suggested an overall theme of Who are we as Americans? She thinks that would pull in tribal law, Bureau of Prisons, the census, and immigration.

3. Circuit Judge Morgan Christen said that we are coming upon the 100th anniversary of the 19th amendment (1920) to the Constitution of the United States that provides men and women with equal voting rights. The amendment states that the right of citizens to vote "shall not be denied or abridged by the United States or by any State on account of sex." She said that the topic involves the longer arc of the Voting Rights Act. This also leads to what we now know about Russian hacks in election system.

4. Thomas Phinney, CAE, brought up the use of state courthouses for immigration related arrests. Judge Owens stated that this has not been the situation in federal courthouses. Mr. Phinney added that though these are very political issues, the federalism issues regarding enforcement of immigration and sanctuary cities are fascinating

issues about jurisprudence. Perhaps, there should be a panel on affirmative action. He believed that *Brown v. Board of Education* could be a starting point to explore social policy. Caroline Djang, CAC, agreed about having a program on affirmative action.

5. Maggie Bordeaux, CAC, and Dale Schian, AZ, discussed taking a broad view of the best ideas to get to equality for all parties.

6. Mr. Schian suggested combining the ideas suggested by Judge Christen and Judge Peterson and Judge Tsuchida.

7. District Judge Miranda Du said that she likes the theme of who we are as Americans. She suggested the topic of the institutionalization of social inequity and inviting Mathew Desmond, author of *Evicted: Poverty and Profit in the American City*. She also thinks that the topic could be developed into the concept of leadership and the providing our judges to be leaders in our communities.

8. Roger Townsend brought up the significance of Tribal Law issues involved in the practice of law in the State of Washington. He explained that there are no reservations in Washington. He thinks that there might be a connection in the overall possible theme of who we are as Americans. He explained that there are gaps between tribal law and federal law. He described situations that have made prosecutions difficult.

9. Judge Du brought up the Pro Bono Act passed by Congress to enable a chief judge to develop pro bono services for the tribe to present domestic abuse issues. Rosaleen O’Gara explained that Arizona is an example in Arizona. She indicated there are some excellent speakers who prosecute major crimes on reservations. Mr. Townsend thought this would be a rich topic.

10. Nina Marino thinks that space law would be an interesting topic. The government has created space force.

11. Misty Perry Isaacson has suggested a panel on the student loan issue because it crosses over into the civil and bankruptcy context. If we are looking at who we are as Americans, she described the situation where older Americans who have cosigned student loan obligations for kids, are having their Social Security garnished. She explained how difficult it is to get out of student loan debt in the bankruptcy context.

12. District Judge Michael Simon likes the direction the discussion is going in terms of who we are as Americans. He thinks that it is important to bring back civility and examine what goes on that divides the courts from the public, the media, and bloggers. He suggested that it would be beneficial to figure out how we can best communicate with the media to deal with these issues. A related idea may be who we are as human beings and how we think, and how judges think and misunderstand things.

13. Homelessness and judicial intervention. Are homeless people counted in the Census? Judge Spaeth reported that the homeless issue being litigated in the Central District (Santa Ana) will not be decided until close to the Conference. The topic of homelessness probably cannot be addressed until the case is decided later in 2019.

14. Elizabeth Tipton thinks that the topic of covering the courts in the digital age plays into the meaning of the rule of law because you may be competing against actors who want to undermine the rule of law. She suggested that this topic would provide education for lawyers and judges about how to communicate the importance of the survival of the judiciary to the public.

15. Judge Tsuchida continued with the idea of weaving topics together and said that he agrees with the thinking errors, understanding the data, and who we are as Americans.

16. Brenda Wexler agrees with Judge Miranda Du's recommendation about inviting Mathew Desmond who wrote *Evicted: Poverty and Profit in the American City*.

17. Jay McEntire, who suggested the topic, Bringing Back a Civil Society, explained that Jonathan Haidt, suggested last year, again will be unable to participate because he will be on sabbatical in Australia. Jonathan Haidt suggested another speaker, David Blankenhorn, President of the Institute for American Values. Mr. Blankenhorn's life mission is to study and strengthen civil society and end culture wars. Ending culture wars does not mean putting an end to disagreements. What it means is putting an end to the paradigm of polarization that so completely distorts today's public conversation.

18. Erika Harliep thinks that Jay's theme could also include leadership issues. The topic would enable lawyers and judges to have a civil discussion about how leadership can contribute to bringing back a civil society.

19. Gay Grunfeld: Solitary confinement described below, I hope it will still be considered--with a couple of caveats. First, the Coleman case mentioned below is still in active litigation before Judge Mueller and appeals are pending in the Circuit. The issues that are currently being litigated do not relate to solitary. If Coleman is mentioned in the panel, it will only be regarding orders from four or five years ago that were never appealed. But it may be that Judge Mueller prefers the entire topic not be considered or that Coleman and/or my partners not be part of the topic. In addition, if the topic moves forward, a correctional official should be included in the panel to discuss the penological hurdles to eliminating solitary. Other topics I particularly support are 1) the Bureau of Prisons topic proposed by Judge Peterson (which could briefly address solitary and the right to medication topics), 2) the right to vote as granted to women 100 years ago and the perils it faces today; 3) understanding millennials; and 4) social inequality, especially in housing featuring Mathew Desmond and his book *Evicted*.

Magistrate Judge Tsuchida suggests organizing the topics under one theme. Economic vulnerability, voting rights, and social media: there is a lot of potential there. He loves the idea of who we are as Americans.

Ideas for speakers:

- Doris Kearns Goodwin, historian and author of recent book, *Leadership in Turbulent Times*
- Stephen Leavitt, author of *Freakonomics*. Malcolm Gladwell, author of *The Tipping Point: How Little Things Can Make a Big Difference*.

D. Comments/Discussion:

Maggie Bordeaux discussed the importance of engaging dynamic and charismatic speakers. She also stressed that many desirable speakers are booked months ahead of time. Invitations should not be delayed once a decision is made.

Judge Owens reminded everyone that another important “success” factor for a panel involves engaging the best moderator available. He gave the example of Professor Mary-Rose Papandrea, moderator of The Law of Leaks program. Judge Owens explained that once he secured the other panelists, Professor Papandrea took over and organized the content of the discussion. Judge Peterson supported Judge Owens’ comments about the importance of an excellent moderator and gave the example of her experience where Kathleen Sullivan participated in a program and was the best panel moderator. Cynthia Ecube agreed with Judge Peterson and described a similar experience with Kathleen Sullivan in Guam. Cynthia Jones agreed that a strong moderator was key to the success of a recent Western District of Washington program, Power, Sex, and Race. Their moderator was willing to push back on judges and ask pointed questions. She agreed that Mary-Rose Papandrea was outstanding.

District Judge Kimberly Mueller likes the theme that is emerging. She suggested that the work of the Kennedy Learning Center could be integrated. She also thinks that there should be a review of cameras in the courtroom to demystify the courtroom and court procedures.

District Judge Michael Simon said that the AO is experimenting with cameras in the courtroom. He asked if anyone knew when the report would be finished. Judge Simon thinks that cameras in the courtroom would be a terrific topic and that we could illustrate ways that other courts use cameras in the courtroom.

Judge Owens thinks that there is a lot that can be done with the concept Who we are as Americans and that the topics need to be tied back to the administration of justice.

E. Additional Speaker Suggestions

- Brenda Wexler: Michele Alexander
- Judge Du and Maggie Bordeaux: Bryan Stevenson

Mark Kovacich observed that the Conference is interesting and provides high level information but that it isn’t relevant to a civil practitioner. He suggested a topic involving jury bias and how to deal with those issues in the courtroom. For those on the phone, Samantha Molloy suggested that the breakout sessions could relate to a plenary session. Michelle Pettit said that her topic on leadership has been covered.

F. Summary

Judge Owens suggested that if members of the LRCC have connections to Speakers, please convey the information to the LRCC leadership on the Conference Executive Committee or write to him, Judge Spaeth or Renee (rlorda@ce9.uscourts.gov). He encouraged the LRCC not to be shy about referring personal contacts because there is nothing more effective when engaging a speaker.

Judge Spaeth continued the discussion by asking if anyone knows someone who could be. Who knows who? On the topic of leadership, Samantha Molloy has a

connection, Deborah Borda, her cousin, just named to the Academy of Motion Picture Arts and Sciences. She could address the issues of leadership

IV. Next Steps

Judge Spaeth explained that the next step involves a meeting with her and Judge Owens to process comments and whittle down the topics that will be decided. After the topics are whittled down, they will meet with the Chief Judge regarding program. After the Chief Judge reviews and approves the topics, Judge Owens and Judge Spaeth will reach out to the Conference Executive Committee to find out which program is of interest to them. Subcommittees and a chair for each topic will be named. It will be the responsibility of the entire committee to further develop the program.

With regard to inviting speakers, Judge Spaeth clarified that the Chief Judge must approve the speakers. She explained that speakers are not paid honoraria. They are provided travel, lodging, ground transportation, and a \$40 per diem. Travel cannot be paid for spouses or guests, but they will receive complimentary tickets to group social events.

V. 2018 Conference: Budget Report Renée Lorda, *Asst. Circuit Executive* The budget report was moved to the next meeting.

Overview: Attendance and Program Evaluations

Registration and attendance in Anaheim were reduced by over 100 people from the 2017 Ninth Circuit Judicial Conference.

Program evaluations were very positive with the programs described as outstanding. Recommendations for 2019: fewer general sessions; more down time; workshops offered twice and given more time.

VI. Highlights: Spokane & the Conference Hotel Reyanna Untalan, *Conference Assistant*

Ms. Untalan gave an overview of the Davenport Hotels and the city of Spokane. Renée added that the Spokane Visitors Bureau were given an extra \$5000 to pay for shuttles to transport people from one of the hotels to the convention center where the Conference will take place. She added that the Eastern District of Washington is very enthusiastic about the Conference taking place in Spokane and that they are creating “things to do” lists and looking into other special activities for attendees.

VII. LRCC Report

LRCC Chair John B. “Jay” McEntire reported that the LRCC met earlier that morning and listened to Chief Judge Sidney R. Thomas discuss the state of the Circuit and the recent efforts to split the Circuit. After Chief Judge Thomas completed his remarks, the LRCC continued discussing the meetings that the LRCC will work on throughout the year. This

involves the Conference of Chief District Judges and the Conference of Chief Bankruptcy Judges.

No Ninth Circuit Advisory Board and Ninth Circuit Appellate Lawyer Representatives reports were presented.

VIII. Conference Executive Committee: Future Meetings & Adjournment

10/26/2018, 3:00 p.m. PDT: Conference Executive Committee Conference Call
LRCC does not have to participate and will be represented on the CEC by the LRCC Officers and other At-Large members.

11/29/2018, 6:30 p.m., PST: Conference Executive Committee Dinner, San Francisco
Location TBD, 7:00 p.m. Dinner

11/30/2018 In Person Conference Executive Committee Meeting, San Francisco

IX. Adjournment

Before adjourning the meeting, Judge Spaeth thanked everyone for their time and involvement in this very stimulating meeting. We look forward to sharing the ideas once they've been reviewed.

The meeting was adjourned at 12:30 p.m.

Additional Ideas contributed by Hon. Kim Mueller, District Judge, CAE
Judge Mueller transmitted more ideas by email on 9/26/18.

Speaker Possibilities

- Gary Pruitt, President and CEO of Associated Press (a lawyer who rose through the ranks of McClatchy; re prospects for media coverage of courts in digital era) –
- Someone from The Marshall Project
- Paul Grewal
- Nate Persily, Stanford Law (law and politics of democracy, as related to voting issues)

- McGregor Scott, US Attorney, E.D. Cal. (once and current, serving under GW Bush and Trump; Orrick partner in interim; engaging presenter and would well represent a counterpoint on current hot button issues; lead Attorney in US v. California lawsuit challenging sanctuary city laws, etc.)

Re Chief Justice Tani Cantil-Sakauye: Judge Callahan is well positioned to extend an invitation to her if desired. As you no doubt know, the Chief can weigh in on leadership, including in the areas of preserving the dignity of California courts as Tom Phinney mentioned, but also in civics education given her Power of Democracy project.

Clara Altman, Director, FJC History Office: as I mentioned to Judge Christen, Clara is a marvelous resource and could serve on a panel and help, for instance, pull together primary resources and other speakers on the history of suffrage, including in the Tacoma area.

Jeremy Fogel - Jeremy helped shape and lead the Justice Kennedy Center's first program on civil discourse last year and in his new position at Berkeley Law continues to be a resource

- AUSA Chi Soo Kim, an impressive organizer of this year's Kennedy Center civil discourse programming is;
- A panel also could include a key educator to address the classroom as laboratory and learning ground
- Claire Pomeroy, President of the Lasker Foundation - An MD/MBA, Claire is incredibly dynamic and could contribute to a discussion of leadership on a few levels

Thoughts on Theme/Breakout Topics

Thinking more about Who We Are as Americans, assuming that is the umbrella theme, I wonder if it should be something more like Who Counts as Americans, tying the theme more closely to the Census as the inspiration? I know there was reference during our discussion to whether the theme is too political; I do think we want to avoid sounding like a Democratic Party Convention. Perhaps the Counting focus is what Judge Tsuchida suggested originally. Also, obviously, we need to think strategically about how to frame plenary topics, so they are not just about gender, race or ethnicity, etc.

Breakouts: Could Student Loans be a bankruptcy breakout, and an Update/debate on cameras in the courtrooms a civil breakout?