



**Conference Executive Committee and  
Lawyer Representatives Coordinating Committee (LRCC)  
Joint Brainstorming Session  
September 30, 2022  
Minutes**

**Conference Executive Committee Members:** Hon. Michael H. Simon, District Judge (OR), *Chair, Conference Executive Committee*, Hon. Madeleine C. Wanslee, Bankruptcy Judge (AZ), *Program Chair*, Hon. Danielle J. Forrest, Circuit Judge, Hon. Andrew D. Hurwitz, Senior Circuit Judge, Hon. Holly A. Thomas, Circuit Judge, Hon. Cathy A. Bencivengo, District Judge (CAS), Hon. Joshua Kindred, District Judge (AK), Hon. Michael Liburdi, District Judge (AZ), Hon. Jill Otake, District Judge (HI), Hon. Laurel D. Beeler, Magistrate Judge (CAN), John M. Boddien, Chief U.S. Probation Officer (OR), Misty Perry Isaacson (CAC), *Chair, Lawyer Representatives Coordinating Committee (LRCC)*, Roger M. Townsend (WAW), *Chair Elect (LRCC)*, and Cynthia Jones (WAW), *Vice Chair, LRCC*

**At Large Members:** Jody A. Corrales, AZ, Caroline R. Djang (CAC), Jonathan H. Eisenman (CAC), Gay Grunfeld (CAN), Thomas R. Phinney (CAE), and Elizabeth C. Pritzker (CAN)

**Liaison:** Brian P. Goldman, *Chair, Appellate Lawyer Representatives*

**Unable to Participate:** Hon. Mary H. Murguia, Chief Judge, U.S. Courts for the Ninth Circuit, Molly Dwyer, Clerk of Court, U.S. Courts for the Ninth Circuit and Tyler P. Gilman, District Court Clerk (MT)

**LRCC Participants:** Michelle Nesbett (AK), Amy Chang (AZ), Alexander W. Samuels (AZ), Robert S. Marticello (CAC), Jerome Price (CAE), Kathleen Hartnett (CAN), Janet A. Cabral and Gary Osborne (CAS), Cynthia V. Ecube (GU), Katie Ball (ID), Dominic Cossi (MT), Lydia Anderson Dana and Susan F. Wilk (OR), Bret Uhrich (WAE), Mohammed Ali Hamoudi (WAW)  
**Unable to Participate:** Maile S. Miller (HI), and Holly Parker (NV)

**I. Welcome and Introductions**

Hon. Michael H. Simon, *Chair*

After participants introduced themselves, Judge Simon welcomed everyone and expressed his enthusiasm about seeing everyone participating in this brainstorming session for the first time in three years.

Conference Executive Committee

## **II. Remarks from the Circuit Executive**

Susan Y. Soong, *Circuit Executive*

Sue Soong welcomed all meeting participants. She explained that she has been Circuit Executive for one year and previously was the Clerk of Court for the Northern District of California for six years. She emphasized the importance of the committee's work in developing the substance of the Conference programs. With regard to any security-related issues, she explained that she will be responsible for working with the Circuit's security officers, the hotel, and law enforcement entities in Portland to ensure coordination of security.

## **III. Purpose of the Ninth Circuit Judicial Conference** Hon. Michael H. Simon, *Chair*

Judge Simon told the committee that the talent and contributions of this group are integral to the success of the circuit conference. He discussed the purpose of the circuit conference and cited 28.U.S.C. Section 333 as the statute that explains circuit conferences. The purpose of the annual circuit conference is to consider the business of the courts and advise means of improving the administration of justice.

Judge Simon explained that the committee takes seriously the feedback received in the evaluations received from conference attendees. This year, 205 evaluations were received! The most submitted of any recent conference. One of the key takeaways includes providing more opportunity for give and take between the bench and bar. In past conferences, breakout sessions were presented with the specific goal of having thought provoking discussions between the bench and bar. This year, the breakouts grew into mini-plenary sessions. The programs were excellent but did not encourage an exchange of ideas. This is a lost opportunity to discuss ideas that might lead to new initiatives to improve the administration of justice. Judge Simon explained that the District of Oregon is very much looking forward to Portland being the host city for the Conference. Judge Simon explained that he has been in Portland since 1986. In addition to being a "foodie" city and having the best bookstore, Powell's Books, he gave examples of the great natural environment of the area. Mt. Hood which is always snow covered, the Columbia River Gorge, and the Oregon coast are among some of the many attractions. The last circuit conference in Portland took place August 18-19, 1997.

## **IV. Conference Attendance Comparisons**

Renée Lorda, Asst. Circuit Executive

Renée provided comparisons between attendance for the 2019 Ninth Circuit Judicial Conference in Spokane and the 2022 Ninth Circuit Judicial Conference in Big Sky. Total registered in Big Sky was 773 (including spouses and guests) and the total registered for Spokane in 2019 was 906 (including spouses and guests). Attendance was better than expected!

## **V. Brainstorming, Topic Suggestions, and General Conference Issues**

**Facilitator:** Hon. Madeleine C. Wanslee, *Program Chair*

Judge Wanslee explained that a selection of 8-10 programs comprise most of the circuit

conference programs. The Conference Executive Committee does not produce all the programs. There are some supplementary programs such as the Supreme Court Review which is produced by the Ninth Circuit Education Committee. Additionally, the Bankruptcy Judges Education Committee, the Magistrate Judges Education Committee and the Court Unit Executives each develop a 90-minute program that is usually presented on the Wednesday morning of the circuit conference and scheduled either from 8:30 AM to 10:00 AM or 9:00 AM to 10:30 AM. Judge Wanslee expressed her thanks and enthusiasm about the work the committee will be doing.

#### **A. Conference Format**

Before starting the discussion about topics, Judge Wanslee explained that the Conference structure had been changed in Big Sky to permit more down time and opportunities for people to spend more time connecting with each other. Tom Phinney thought the schedule worked well and LRCC Vice Chair Cynthia Jones agreed with having more free time between programs. The general consensus was that people approved of the schedule and program format.

Judge Wanslee discussed various program lengths: 60, 75, 90 minutes and thinking of new ways to present topics, she suggested that two related topics could be presented. There could be a program introduced as a solo presentation, using the concept of TED talks and another program could include a corresponding panel discussion that would expand on the topic. Misty Perry Isaacson thinks the time after the plenary session is too rushed. Perhaps, the plenary sessions could be shortened in order to provide more talk at the table following the presentations.

What kind of topics result in successful plenary sessions? Some participants observed that having a panel with fewer panelists was very important. Judge Simon agreed that less is more. He suggested that panels with two or three speakers and a moderator are optimal. Judge Wanslee suggested that the panel moderator selected has a key role in guiding the discussion and stimulating the panel to move in different directions. There is a key difference between an effective moderator and one who forgets about being a moderator and “becomes” a speaker. LRCC Chair Elect Roger Townsend explained his experiences as a panel moderator where members of his panel came and went and sometimes, there were competing issues over the 2.5 years of constructing his panel on artificial intelligence. He emphasized the need for back up in the event that there is attrition on the panel. Kathleen Hartnett suggested having polling software would be an effective tool to engage the audience. Conference staff confirmed that polling software will be available for 2023. Topics that affect individuals on a personal level also result in more questions. Overall, the Conference Executive Committee is focused on engaging diverse panels with balanced or different points of view on positions.

#### **B. Bench Bar Programs and Examples of Effective Programs**

Judge Wanslee asked how more Bench Bar programs could be encouraged. Ms. Ecube (Cubie) described a recent bench bar program that took place at the recent District Conference of Guam. The topic involved the do’s and don’ts of appellate practice with Judge Clifton and Judge McKeown participating. The discussion also focused on effective use of voir dire. The issue of

practice-related workshops came up. Some wondered if the circuit conference is the right venue for practicum sessions. Janet Cabral suggested having workshops that would be followed up with the opportunity to follow up with bench/bar discussions. Brian Goldman, chair of the Appellate Lawyer Representatives (ALR), explained that the ALRs do an annual survey of the circuit judges. The survey results are used to kick off the conversation with the appellate judges. Dominic Cossa suggested that practicum sessions may be more suitable to sponsorship by the Federal Bar Association or a local bar association.

Judge Simon asked meeting participants to share which plenary sessions are most valuable:

- Tom Phinney: Bankruptcy Judges Education Committee because of the mix of topic presentations and lively discussions between the bench and bar.
- Jodi Corrales: access to justice programs involving someone who appeals to a broader audience such as Bryan Stevenson.
- Judge Liburdi: a topic that helps him do his job better. Topics such as what will happen with qualified immunity? What is the policy of qualified immunity.
- Judge Bencivengo: sees the conference as thematic which doesn't always correspond with the purpose of the conference. She thinks they have been very educational and praised the climate litigation panel. She sees the purpose of the conference as involving broad topics that can turn into issues that the smaller courts encounter.
- Judge Beeler: programs that help you have a better understanding such as cryptocurrency which is interesting and more thematic than practical.
- Mo Hamoudi: programs that introduce and permit a conversation to begin and subsequently be taken back to the district.
- Judge Hurwitz: the program in San Francisco (2017) featuring Bryan Stevenson as a keynote speaker was the best session he attended. Judge Hurwitz added that broader topics are not inconsistent with the goals of the conference. He brought up the science and law of water in their courts.
- Judge Thomas: enjoyed the program presented by Judge Margaret McKeown about Supreme Court Justice William O'Douglas, whose biography she has just published. She enjoyed the Appellate Breakout Session and wished there had been more time to talk. She suggested limiting the number of general session topics.
- Misty Perry Isaacson: appreciated Judge McKeown's program about Justice William O'Douglas. Even though the program was only 30 minutes long, Ms. Perry Isaacson favors a "story telling" program. She brought back the movie night program that was done in Anaheim in 2018 where the movie RBG was shown and then followed by a discussion about RBG. She likes programs that are "story telling" because they are educational and enhance discussion opportunities.

- Judge Simon described Ayad Akhtar as an amazing storyteller that he heard recently. He described Akhtar as a great teacher and a great communicator because he is so inspiring.

Besides Bryan Stevenson, speakers who convey not only information, but the realization of why judges and lawyers do their jobs can be inspiring and profound. Judge Wanslee stressed the importance of the committee's role in researching the speakers, developing the framework or content for the takeaways and, finally, a successful executive of the program on the conference stage.

### **C. Brainstorming and Suggested Program Ideas**

Judge Wanslee explained that it is helpful to have a theme but that often, the theme evolves from the programs or specific situations that may be described in the program selection. She emphasized the importance of making sure there is diversity, balance, and objectivity in vetting the panelists.

- Judge Hurwitz: The Future of Water—The Science and The Law
- Judge Simon: Possible Monday night movie, "Who We Are: A Chronicle of Racism in America (2021), a documentary by Jeffery Robinson, who would be engaged in a discussion after the movie is over.
- Judge Simon: Ayad Akhtar  
How did we get involved in literature? What he became because of literature and how he became a Pulitzer prize winning playwright. During a recent presentation Judge Simon heard, he showed how literature and history can be brought together. Even going so far as to describing anti-trust solutions, Judge Simon thinks he is an incredible speaker and would be an excellent lunch keynote speaker.
- Judge Simon: a debate between Erwin Chemerinsky and Michael McConnell with Prof. Akil Reed Amar, constitutional scholar, as moderator. Such a program would have diverse points of view. Pamela Karlan also was suggested.
- Susan Wick: A program or discussion dealing with Dobbs issues. Ms. Wick stressed that it will be very difficult to sequester ourselves from recent Supreme Court decisions. She was surprised that the Supreme Court Review did not further develop the Dobbs decision at the circuit conference.
- Judge Wanslee and Judge Simon encouraged participants to let them know about which Supreme Court cases they want to discuss.
- What are the proper criteria for Supreme Court legitimacy? Cynthia Jones suggested a number of panelists including Melissa Murray at NYU and Dahlia Lithwick, who has recently published a book.

- Caroline Djang: Eugene Volokh who writes a blog, The Volokh Conspiracy, and would provide differing perspectives. Getting back to the possibility of a debate, John Yoo, Prof. Bill Bond, and Prof. Randy Barnett were suggested.
- Dominic Cossa: a discussion about what Dobbs has done for Stare Decisis. Judge Simon agreed this would be interesting but right now, as the appellate and district courts are bound by precedent, the Supreme Court also will be bound by precedent. There will not be much interest to discuss the topic.
- Judge Bencivengo: Bias, recognizing it, and using it in jury selection and argument.
- Cynthia Jones: With regard to historical storytelling, issues dealing with the right to travel that are brought up by the Dobbs case.
- Judge Beeler put on a program in June 21, 2021 for the Northern District Practice Program: How to Identify and Address Racial Bias in Jury Selection and she also was the organizer for a program presented October 14-15, 2020: Addressing Racial Bias Issues in Federal Court: (1) Diversity, Equity, and Inclusion in the Workplace; (2) Race and Sentencing; (3) Access to Justice; (4) Addressing Racial Bias in Jury Selection; and (5) A Conversation with the Honorable Thelton E. Henderson. Judge Beeler thinks that bias is an issue in every trial and that this topic will have cross-over appeal.
- Judge Beeler: a point/counterpoint panel on doing away with peremptory challenges.
- Gay Grunfeld: reorganizing the proposed panel on Homelessness. She believes it needs to be handled very carefully because all of us are affected by this. Gay thinks that this was most obvious during COVID. Where did people on supervised release who were unhoused go? Judge Liburdi and others agreed this would be an interesting topic. Judge Liburdi wondered about inviting Michael D. Shellenberger who has written about homelessness.
- Cryptocurrency: Robert Marticello and Misty Perry Isaacson discussed this as a prospective topic they have researched. Cubie Ecube explained that the District of Guam also did a cryptocurrency program on Demystifying Cryptocurrency and another segment involving Hot Topics in Cryptocurrency in addition to programs on Bitcoin. The programs were developed by Arizona Bankruptcy Judge Daniel Collins and Paul Hemesath. Lydia Anderson Dana explained that cryptocurrency issues are a huge aspect of security fraud class actions. Robbie Marticello thinks it may be difficult to decide on the angle. Roger Townsend commented that he was responsible for the Bitcoin program in 2018 and the scope of the topic is challenging. Elizabeth Pritzker thinks it would be an exciting topic.
- Judge Jill Otake: The topic would be whether Batson is outdated in a world where more people are of mixed backgrounds and where gender is a less concrete concept than it once was. Batson seems inherently premised on a notion that

attorneys and judges can discern a potential juror's race and gender. How do we, as trial judges and attorneys, deal with the topic when we want people to be able to self-identify, and how can a proper Batson challenge be raised if there is a question (or even disagreement) between the parties regarding a juror's race or gender?

- Brain biology? A number of participants asked about the topic of processing trauma and the possibility of engaging Dr. Bruce Perry.

#### **D. Social Media Issues**

Judge Simon explained that Mary Rose Papandrea, moderator of the Big Sky program on social media, is willing to return. These issues are not going away. Increasingly, social media companies are being held liable for deleting content. This also will have a major impact on anti-trust issues. Is there the potential for a digital civil war with battle lines being drawn against the states? States will be able to get data from tech companies to track people. There are multiple ways we can pivot these issues.

#### **E. Additional Topic Ideas**

- What are states collecting from social media companies? Will there be fallout from the mid-term elections?
- Kathleen Hartnett: what are people projecting for the future, in the next 10 months?
- Right to travel as regards the Dobbs decision: how will the right to travel and other rights be affected that would be constrained from state to state?
- Susan Wick: what should we ask FBI Director Wray about social media? What is the back door into apps? Can we get clarification?
- Lydia Anderson-Dana: talks about racial bias—suggested Eliza Kaplan
- Judge Thomas: discussed a newly produced play by a friend of hers, Reginald Duwayne Betts. The play is an hour long and Judge Thomas suggested the production in the event that Jeffery Robinson is unable to participate. Judge Simon added that if Mr. Robinson could participate but would Mr. Betts present the production the following year? A consideration for 2024 if Mr. Robinson cannot participate.
- Judge Beeler suggested a session on alternative courts. What is working and what is not working?
- Cynthia Jones: She suggested a speaker, Sherrilyn Ifill, who presented at the World Justice Project and spoke about creating the rule of law and solving access to justice problems. Judge McKeown introduced the Ruth Bader Ginsburg lecture at the World Justice Project conference this past May.

- Roger Townsend: a great combination would involve the water topic with Daubert. He likes adding the structure of Daubert to the discussion.
- Judge Simon: suggestion of a breakout on Daubert issues.

## **VI. Next Steps**

Judge Simon explained that he and Judge Wanslee will review all the suggestions and discuss them with Chief Judge Mary H. Murguia. Once the topics have been reviewed, Conference Executive Committee members will be asked to select the two topics that they prefer to work on. You will be asked for two topics in case your first choice is taken. More information will be sent before the next Zoom meeting scheduled for Friday, October 21, from 10:00 AM to 12:00 PM.

## **VII. 2023 Ninth Circuit Conference Hotel**      Pamela Lynn O'Neill, Conference Planner

Pam O'Neill provided a short Power Point describing the conference hotel. The 2023 Ninth Circuit Judicial Conference is scheduled for July 31-August 3, with check-in on Sunday, July 30. The Conference hotel will be the Hyatt Regency Portland at the Oregon Convention Center, located adjacent to the convention center. We will have meeting space on 3 floors of the hotel, which is a brand new, single contained building. Another advantage will be the professional and consistent audiovisual resources with PSAV. Judge Simon asked Pam and Renée to be ask for references on the effectiveness of the audiovisual department to be sure that the sound quality will be excellent and that speakers can be heard throughout the program sessions.

## **VIII. Committee Reports**

### **A. Lawyer Representatives Coordinating Committee (LRCC)**

Misty Perry Isaacson, chair of the LRCC, provided an update on lawyer representative activities. The Ninth Circuit's Bankruptcy Lawyer Representatives are preparing a program for the Conference of Chief Bankruptcy Judges taking place November 13-14 in Tucson at the El Conquistador Hotel. This will be the first "live" meeting in three years. Amy Chang is organizing the presentations.

### **B. Appellate Lawyer Representatives (ALR)**

Brian Goldman, chair of the ALRs, announced that after four years, selections are being made for new appellate lawyer representatives.

## **IX. Next Meeting and Adjournment**

The next meeting for the Conference Executive Committee will be on Friday, October 21, on Zoom from 10:00 AM to 12:00 PM. The meeting was adjourned at 12:30 p.m.