FEDERAL BAR ASSOCIATION
of the Western District of Washington

NEWS NEWS NEWS NEWS

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A VICTORY FOR IMMIGRANTSí RIGHTS

PRESIDENTíS MESSAGE

I write as our country faces tragedy, grief, and anger over the events that occurred on September 11. Against that background, it is difficult to imagine that any news about local federal bar activities could be noteworthy in comparison with our nationís losses in New York, Pennsylvania, and Washington, D.C. I will nevertheless give it a try as our lives need to proceed, although forever changed.

The FBA leadership has been working hard over the past months on a variety of projects of interest to the bar. I am pleased to report that a Criminal Law Committee has been formed to insure that the ideas and interests of federal criminal practitioners are well represented in our organization and before the courts. Dan Dubitsky is the committee chair; anyone interested in joining the committee should contact him at (206) 467-6709. Dan will be holding a committee meeting this fall to discuss the committeeís focus and programs.

The Federal Rules Taskforce, chaired by Carolyn Cairns, was created earlier this year to study and report to the bench and the bar on the impact of the changes in the Federal Rules of Civil Procedure on local practice in this district. In early July, the Taskforce sent out a survey to all FBA members requesting their input and perspective on practice under the amended rules. The survey seeks information about counselís experience with disagreements on the scope of permissible discovery, the filing of discovery motions before the Court, deposition limitations, and discovery plans. I encourage you respond to the survey as it will allow us to assess whether there are local rules or practices that could be implemented to permit more efficient and productive litigation of cases.

On September 21, 2001, the judges in our district published for comment amended local civil rules. These proposed rules include fairly significant changes relating to procedures for motions to shorten time, motions to compel, and discovery. You can find the proposed rules at the Courtís website at http://www.wawd.uscourts.gov/; a summary of the key changes is also posted there. The public comment period ended on October 31, and the court will shortly be considering the comments received and promulgating final rules. The new rules are expected to take effect on January 1, 2002, and to apply to all pending cases.

Our annual CLE, dinner, and meeting are coming up on December 18. We have an exciting CLE program planned. We are very fortunate to have as our special dinner guest the Honorable Mary M. Schroeder, Chief Judge of the Ninth Circuit Court of Appeals, who will be share her thoughts with us. I hope to see you there!

Michele A. Gammer

IN MEMORIAM

The Federal Bar Association mourns the loss of **Thomas C. Wales**, 49, who died of gunshot wounds on October 12, 2001, after being attacked in his home by an unknown assailant in the Queen Anne neighborhood of Seattle.

A graduate of Harvard College and Hofstra University School of Law, Mr. Wales began his career with Sullivan & Cromwell in Manhattan. He turned to public service in 1983, when he became an Assistant United States Attorney for the Western District of Washington in Seattle. He was assigned to the Fraud Unit, where he prosecuted major business crimes and complex fraud cases. From 1997 to 1999, he served as the Executive Assistant U.S. Attorney and press spokesperson for the U.S. Attorneyís Office.

Mr. Wales was also a civic leader, having served as chair of the Seattle Planning Commission, president of the Queen Anne Community Counsel, and president of Washington Ceasefire, a gun control advocacy organization. He was a Federal Bar Association board member and committee chair, and took on numerous special projects for the FBA, most recently a rewriting of the Associationís by-laws.

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On the cover (l to r): Michelle Sweet, Jennifer Wellman, Tom Hillier, Natalie Harmon, Theo Mace, Jay Stansell, Dan Klein, _____. Not shown: Rosa Menendez, Paul Hartley.

The Federal Bar Association News is a semi-annual publication of the Federal Bar Association of the Western District of Washington. Comments and proposed articles should be addressed to:

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THE DUTIES OF U.S. MAGISTRATE JUDGES IN THIS DISTRICT AND ELSEWHERE

By the Hon. John L. Weinberg, U.S. Magistrate Judge

If you have practiced in federal court in other districts, you might have observed that U.S. Magistrate Judges have some different responsibilities in other districts–or at least different emphases on portions of their workload. Your editors have asked me to identify some of those differences, and to discuss some of the considerations which bear upon whether we should change our practices here.

The system in place in a given district is determined by many variables. The bottom line, of course, is that the Magistrate Judges perform the functions that their District Judges assign to them, within the applicable jurisdictional limits. But other important factors include:

The nature of the caseload mix in the district. We, for example, have a heavy load of misdemeanor and petty offense cases arising from Fort Lewis, McChord Air Force Base, the Puget Sound Naval Shipyard at Bremerton, and other federal facilities.

The workloads of the District Judges and Magistrate Judges. The greater the burden on the District Judge, the more he or she needs and welcomes the assistance of the Magistrate Judge. The relative workloads at each level impact the time savings that can be effected by referral to a Magistrate Judge.

The local legal culture. What kinds of matters are attorneys accustomed to litigating before the Magistrate Judges? To what extent will they counsel their clients to consent to Magistrate Judge jurisdiction in civil cases?

Number of Magistrate Judges. This of course has a major impact upon the volume of work that the Magistrate Judges as a group can handle. The Judicial Conference of the United States passes upon requests for the creation of new positions. The number of full-time magistrate judges has grown dramatically in the 30+ years since the system began. In this district, we have grown from one position in 1973 to four positions now.

What differences are there in the duties of Magistrate Judges, from district to district?

CRIMINAL CASES

In virtually every district, the Magistrate Judges handle the preliminary stages in all felony cases. This includes complaints and arrest warrants, search warrants, initial appearances, appointment of counsel, setting of release conditions or ordering detention, and preliminary examinations. In most districts, the Magistrate Judges also take grand jury returns, and take not-guilty pleas and set trial dates in felony cases.

Here and elsewhere, misdemeanors and petty offenses are also generally handled before the Magistrate Judges–from initial appearance through the conclusion of the case. The law requires consent of the defendant before a Magistrate Judge can hear a full misdemeanor case, but here, as elsewhere, such consent is almost always given. Because of Fort Lewis and the other federal enclaves, these cases are a significant component of the workload of our Magistrate Judges. Rotating the ìmilitary travelî duty, each of our four Magistrate Judges spends about nine court days during the duty month hearing these cases in the U.S. Courthouse in Tacoma. Literally dozens of jury trials are set before the Magistrate Judges each month, although almost all are resolved by plea prior to the trial date.

There is more variation between districts in the other duties performed by Magistrate Judges in criminal cases. In the past few years, there has been a growing trend toward the entry of felony guilty pleas before Magistrate Judges. Our district was a pioneer in that respect. Our Magistrate Judges frequently take over 50 felony guilty pleas in a month. We also play a major role in cases where defendants are charged with violations of probation or supervised release. There is a high volume of those cases. In the vast majority, the charges are ultimately admitted without the need for an evidentiary hearing, sometimes with the agreed dismissal of some of the charges. The Seattle Magistrate Judges handle all of these cases, and submit written reports for the District Judge to use in determining the casesí disposition. In the few cases where the defendant contests the charges, the Magistrate Judge can conduct the evidentiary hearing with the defendantís consent. In some districts, by contrast, the District Judge who imposed the sentence handles all proceedings relating to alleged violations.

Pretrial motions in felony cases (e.g., motions to suppress, discovery-related motions, motions to sever, motions for continuances, etc.) is an area of substantial variation among districts. In some districts, all such motions go to a Magistrate Judge. In this district, however, such motions are generally handled by the District Judge, although the Magistrate Judge will handle motions relating to detention or conditions of release.

Occasionally, with consent of the parties, a District Judge will ask a Magistrate Judge to select the jury in a felony case. This is done more frequently in some other districts.

Civil Cases

Magistrate Judges also have substantial and varied responsibilities in civil cases. There is much variation between the districts in these cases.

Consent Jurisdiction. A Magistrate Judge may preside in *any* civil case if all parties consent, and if the District Judge refers the case. I regard this as the most valuable duty we can perform for the court and the parties in civil cases.

There is wide variation between districts as to the extent the court and parties utilize this procedure. Oregon, for example, has always been a national leader in the referral of civil cases by consent to their Magistrate Judges. District-wide, we are about average in this respect. One important reason why our referral numbers are not higher is that our District Judges are very current with their calendars. While referral to a Magistrate Judge generally assures an early and firm trial date, the parties in this district generally already have that before the District Judges. For the same reason, there is little calendar pressure on the District Judge to refer cases.

Some districts have adopted fairly aggressive procedures to foster consent referrals to the Magistrate Judges. One technique is to ìput the Magistrate Judges on the wheel,î along with the District Judges, for civil cases. Under one variant of this procedure, some civil cases are assigned, at the time of filing, to a Magistrate Judge instead of a District Judge; and consent of the parties to Magistrate Judge jurisdiction is presumed unless and until a party files a document ìopting out.î Not surprisingly, the Ninth Circuit Court of Appeals has invalidated this procedure. But other variants remain. In one, the Magistrate Judges receive a share of the cases from the wheel, and the parties are asked to consent to Magistrate Judge jurisdiction–i.e., to opt in. If one or more parties fails to consent, the case is reassigned to a District Judge, randomly selected at that time. Another variant is that every case is assigned, at the time of filing, to a District Judge and to a Magistrate Judge. Under that procedure, the parties know which judge will hear their case if they consent to Magistrate Judge jurisdiction, and which will hear it if they do not.

The variant just discussed is in essence the procedure that applies to our Tacoma cases. Because there is only one Magistrate Judge, the parties know he would receive referral of all Tacoma consent cases. In Seattle, however, there are three Magistrate Judges. Under the current procedure, the parties do not know, at the time they make the consent decision, which Magistrate Judge would be assigned the case. That assignment is made randomly after the consents are filed. We have selected this procedure as a means of equalizing the consent caseload among the three Seattle Magistrate Judges. But the procedure, like any other, is subject to review at any time.

Social Security Cases. These are appeals from the denial of benefits based upon alleged disability. They are determined upon a review of the administrative record. In this district, as in most, these cases are routinely referred to the Magistrate Judges, who prepare a Report and Recommendation unless the parties have consented to Magistrate Judge jurisdiction, in which instance the Magistrate Judge decides the case. The volume of these cases has grown substantially in the last two years, and they constitute a major portion of the Magistrate Judgesí civil workload. Not all districts refer all Social Security cases to the Magistrate Judges. In Oregon, for example, Social Security cases are distributed among the Magistrate Judges and the District Judges.

Prisoner Cases. Another category of cases routinely referred to Magistrate Judges is prisoner litigation. This includes habeas corpus petitions, motions under 18 U.S.C. ß2255, Civil Rights Act claims under 42 U.S.C. ß1983, and other matters. These cases are a significant part of the workload in every U.S. District Court. Here, as elsewhere, these cases are routinely referred to a Magistrate Judge. Most of these cases are resolved without an evidentiary hearing, but when such a hearing is required, it is generally conducted before the Magistrate Judge. In this district, our normal load of prisoner cases has been augmented in the past three years by the filing of over 275 habeas petitions on behalf of aliens being held in indefinite detention by the Immigration and Naturalization Service.

Pretrial Proceedings–Absence of Consent. The District Judge may refer to the Magistrate Judge many or all of the pretrial proceedings in a civil case, even if the parties have not consented. The Magistrate Judge can be asked, for example, to supervise discovery; to rule on specific pending motions; to handle all nondispositive motions as they arise; or to handle all pretrial matters and manage the preparation of the case for trial. This is an area where there is a substantial variation among districts. In some districts, *all* civil cases are referred to the Magistrate Judges for all pretrial supervision. Or sometimes one or more District Judges will do so, while others will not. The District Judges in Western Washington make such referrals on a case-by-case basis, but retain pretrial supervision in the majority of cases (except Social Security and prisoner cases).

Magistrate Judges have also occasionally selected juries or have received verdicts for District Judges in civil cases, but this generally is with the consent of the parties.

Settlement Conferences. The judges in this district conduct many settlement con-

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PROFILE OF U.S. MAGISTRATE JUDGE MONICA J. BENTON

By Erin Joyce

The FBA News is privileged to introduce to the members of the Federal Bar Association U.S. Magistrate Judge Monica J. Benton, the first woman appointed as a U.S. Magistrate Judge of the U.S. District Court for the Western District of Washington.

Judge Benton was born in Augsberg, Germany to Lt. Colonel Benjamin Benton, an Army officer for nineteen years, and Velma Benton, a teacher. The Bentons moved back to the United States when Judge Benton was 2Ω, and eventually settled in California when Lt. Colonel Benton retired from the Army after 25 years of service. Judge Bentonís success, she says, is largely attributable to the love, support and encouragement she received from her family while growing up.

Judge Benton graduated from UCLA in 1975 with a degree in political science. After working for a year in the insurance industry, she enrolled in the evening division at Southwestern University School of Law in Los Angeles. She had thought about becoming an attorney for some time, inspired by prominent attorney and former U.S. Congresswoman Yvonne Braithwaite Burke.

During her second year at Southwestern, while serving as the student commissioner on minority affairs, Judge Benton organized a conference at the law school that featured U.S. District Court Judge Jack E. Tanner from Tacoma as a speaker. Impressed with her poise, enthusiasm and assertiveness, Judge Tanner offered Judge Benton a two-year clerkship after graduation.

After her clerkship with Judge Tanner, Judge Benton joined the criminal division of the Office of the King County Prosecuting Attorney as a deputy prosecuting attorney handling cases involving domestic abuse, sexual assault and child abuse. In 1987, she moved to Washington, D.C. to serve as the Director of Government Relations for the National Association of District Attorneys and as a Senior Attorney at the American Prosecutorsí Research Institute. She also spent a year prosecuting mail fraud cases for the Department of Justice.

Upon returning to the Seattle area in 1990, Judge Benton rejoined the King County Prosecutorís Office. A year later she became the officeís first African-American Senior Deputy Prosecuting Attorney, supervising twenty-one attorneys assigned to the district courts.

In 1995, by unanimous vote, the King County Council appointed Judge Benton to be a King County District Court Judge. In 2000, Judge Benton was sworn in as the first female U.S. Magistrate Judge of the U.S. District Court for the Western District of Washington. Judge Benton now hears habeas corpus petitions and presides over settlements, immigration cases, a variety of pre-trial matters, and civil cases through trial (both jury and non-jury).

Judge Benton enjoys serving as a mentor to her law clerks and judicial externs almost as much as she enjoys sitting on the bench. Mentoring and teaching the next generation of attorneys and leaders is clearly a passion of Judge Bentonís, and she encourages young attorneys that appear before her in court to receive debriefings and feedback after a long case or a complicated hearing.

Judge Bentonís history of community involvement is no less distinguished than her professional history. The conference she organized as a student at Southwestern University School of Law became the Tom Bradley Scholarship Dinner, an event that has raised over $600,000 for minority student scholarships. She has served as the President of the Loren Miller Bar Association, a board member of the National Bar Association, and a Board Liaison for the Washington State Women Lawyers.

Currently, Judge Benton is a Commissioner of the State of Washington Minority and Justice Commission, and the Historian of the Loren Miller Bar Association. She recently co-chaired the Loren Miller Bar Associationís History Project, which commemorated the associationís 32 years of service to the community and celebrated the lives of its founders. Under Judge Bentonís leadership, ten founding members of the association were profiled. These men, pioneers in Washingtonís civil rights movement, serve as an inspiration to Judge Benton and all members of the bar.

Judge Benton is also actively involved with the Womenís Ministries at Mt. Zion

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FEDERAL PUBLIC DEFENDER ACHIEVES HISTORIC VICTORY FOR IMMIGRANTSí RIGHTS

ByThomas W. Hillier II, Federal Public Defender

Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door!

– Emma Lazarus, The New Colossus: Inscription for the Statue of Liberty, New York Harbor

Running nearly the entire ten foot length of Michelle Sweetís door in the Federal Public Defenderís Office is a sheet of paper with a list of more than 300 names. Each individual name on the ever-growing list is a client of the Federal Defender who is free as the result of litigation culminating with the landmark United States Supreme Court decision in *Ashcroft v. Ma*, 121 S.Ct. 2491 (2001).

The *Ma* case, as we call it locally, involved a challenge brought by the Seattle FPD against the Immigration and Naturalization Service and its practice of detaining indefinitely non-citizens who had been convicted in this country and were ordered removed because of that conviction, but who could not be removed because our government does not have repatriation agreements with their countries of origin. In *Ma*, the Supreme Court ruled that the INS cannot hold people indefinitely while repatriation agreements are being negotiated. In addition to the more than 300 individuals in this district are more than 3000 people nationally who have or will regain their freedom as a result of the *Ma* decision and its companion case, *Zadvydas v. Davis*.

The List

The enormity of the liberty impact of the *Ma* decision produced a major buzz in the Federal Defenderís Office where the occasional two word verdict (and I donít mean ìdefinitely guiltyî) is cause for celebration. Witnessing the reunion of our clients–all poor, convicted non-citizens–with their families after years of detention has been a buoying experience. A review of the course of the *Ma* litigation suggests a powerful commitment to the principal of equal access to justice throughout the various components of the United States District Court for the Western District of Washington.

Litigation in this district began in the early months of 1999. It was then that we learned that the INS was indefinitely detaining in this district individuals who had been ordered deported but could not be repatriated. Kim Ho Maís case is typical. He and his family fled Cambodia in 1979 when Mr. Ma was two years old. They spent five years in refugee camps before Mr. Maís family lawfully entered the United States in 1985 as refugees. Mr. Ma became a lawful permanent resident in 1987 and grew up in the Seattle area. At age 17 he was involved in a gang-related shooting and was convicted of manslaughter. After completing his prison sentence some two years later, he was taken into INS custody and ordered removed because of that conviction. However, the INS has been unable to remove him, and many others like him, because Cambodia does not have a repatriation agreement with the United States and will not allow him to return. As a result, Mr. Ma remained in INS detention until he filed a petition in our District Court. He spent nearly three years in INS custody before his petition was granted and he was ordered released.

The number of detained individuals in this district portended a litigation nightmare for the court should each petitioner be required to proceed pro se. We volunteered to coordinate litigation. The court agreed to appoint us and a series of roundtable discussions followed.

In a cooperative effort, magistrate judges, their law clerks, and lawyers from the Federal Defender and U.S. Attorney Offices had a series of meetings to discuss logis-

tics and efficiencies. The level of enthusiasm and cooperation at these meetings was palpable and produced a ìgame plan.î

What happened next remains a highlight of the litigation. On June 17, 1999, for the first time in the history of the district, the five active Seattle district court judges sat *en banc* to hear argument on the common issues raised in the petitions. Argument before the district court occurred in the ceremonial eighth floor courtroom. The courtroom was packed to overflowing, and the attention of those in attendance suggested that all present understood the historic significance of the occasion and the issue. The government was represented by AUSA Christopher Pickrell and Quynh Vu of the Office of Immigration Litigation in Washington, D.C. Jay Stansell from the Federal Defenderís Office argued for the petitioners. He was joined by Jayashri Srikantiah, representing the ACLU Immigrantsí Rights Project as *amicus curiae*.

Questioning from the district court judges was smart and to the point. Equally clear were the positions of the parties. Jay Stansell argued that it was unconstitutional to detain an individual indefinitely, possibly for life, when the purpose of that detention-deportation-was not reasonably foreseeable. Judge Zilly asked, ìSo the dangerousness of the person or the nature of the crime would make no difference under your scenario?î Mr. Stansell unapologetically answered, ìThatís correct.î

On behalf of the government, Mr. Pickrell too was firm. Judge Dwyer asked, ìIf removal becomes undoable and simply canít be achieved, how could the power to detain survive that circumstance? What if nothing happens for 20 years?î Mr. Pickrell argued that the question before the court was a political issue properly left to the Department of State and the INS ìwhich historically has been . . . virtually unfettered, virtually immune from judicial oversight.î He urged the court not to intervene, regardless of the length of detention, because these affairs of the Department of State were not the proper subject of judicial oversight.

Jennifer Wellman and Jay Stansell

The five district court judges issued a joint order establishing a legal framework to apply in each individual case. Each judge then ruled that the INS detention scheme violated substantive due process rights under the Fifth Amendment. The government promptly appealed to the Ninth Circuit. The Ninth Circuit also found for the petitioners. While recognizing the significant constitutional problems presented by the case, the Court of Appeals chose to resolve the matter through the doctrine of constitutional avoidance. A unanimous panel held that the statute authorizing detention requires release when, after a reasonable period of time, deportation remains unforeseeable. Jennifer Wellman from the Federal Defenderís Office successfully argued the case before the Ninth Circuit.

The government sought review in the United States Supreme Court. While *Ma* was being decided in the Ninth Circuit, conflicting authority developed in the Fifth Circuit. The Supreme Court accepted review to resolve the circuit split and decide this important constitutional question.

On February 21, 2001, the matter was argued before the Supreme Court. It was Jay Stansellís turn at the podium. Jennifer Wellman sat at counsel table together with lawyers representing Kestutis Zadvydas, the petitioner from the Fifth Circuit. As was the case in Seattle, questions from the bench were clear and pointed. Perhaps clearest of all was Justice Scalia, who left no doubt to those in attendance that he wanted no part of the ìhuddled massesî of Emma Lazarus and our office. Having been convicted of a crime, said Justice Scalia, the petitioners had no right ìto be at largeî in the United States.

But a majority of the court disagreed. Writing for that majority, Justice Breyer sided with judges from Seattle and the Ninth Circuit. He wrote that ìa statute permitting indefinite detention of an alien would raise a serious constitutional prob-

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2001 NINTH CIRCUIT CONFERENCE FOCUSES ON IMMIGRATION, THE ENVIRONMENT, AND PRIVACY

By Anthony L. Rafel

Once a year, the Ninth Circuit Judicial Conference meets ìfor the purpose of considering the business of the courts and advising means of improving the administration of justice within [the] circuit.î 28 U.S.C. ß 333. The attendees include all active circuit, district, bankruptcy, and magistrate judges in the Ninth Circuit, clerks of court, United States Attorneys, Federal Public Defenders, lawyer representatives from each district, invited speakers, and often one or more U.S. Supreme Court justices. I have been privileged to attend the conference the last three years as one of nine lawyer representatives from the Western District of Washington.

This year, the conference was held from July 15-18 in stunning Big Sky, Montana, located at an elevation of over 6,000 feet in the Bitterroot Range just north of Yellowstone National Park. The conferenceís first day began with the annual business meetings of each of the judicial groups and of the lawyer representatives. Circuit Judge (and Conference Executive Committee Chair) Margaret McKeown then welcomed the attendees and presided over the first general session. After a rousing Presentation of the Colors by the Big Sky Girl Scout Council, Chief Circuit Judge Mary Schroeder introduced new judicial officers and reported on the state of the circuit. Judge Schroeder was followed by Assistant Attorney General Viet Dinh, who spoke about the Bush Administrationís commitment to fill judicial vacancies.

After a short break, Meriwether Lewis (a/k/a Dr. Clay Jenkinson of the University of Nevada) graciously dropped by to discuss his adventures during the famed Lewis and Clark expedition of 1804-06. Dressed in period garb and looking remarkably vigorous for a man with over two centuries under his belt, Mr. Lewis regaled us with tales of bravery and fortitude under enormously challenging conditions. He also described day-to-day life in the Corps of Discovery, including the surprising fact that each member of the Corps ate about nine pounds of meat a day during the Corpsí months on the plains, where game was plentiful. At least for the carnivores in attendance, Mr. Lewisís visit was one of the highlights of the conference.

The conferenceís second day began with a fascinating program sponsored by the Ninth Circuit Historical Society. Rennard Strickland, Dean of the University of Oregon School of Law, presented a history of ìThe Cinematic Indian,î using images culled from film to illustrate the motion picture industryís portrayal of Native Americans. Patricia Limerick, Professor of American Studies at the University of Colorado at Boulder, humorously challenged our assumptions about Western History in her discussion of memorable battles for Western lands. And Charles Wilkinson, Professor of Law at the University of Colorado School of Law, discussed the impact and historical significance of key judicial decisions affecting the fishing rights of Native and non-Native fishermen in the Northwest. After the morning break, the program continued with an examination of the tremendous effect that immigration has had on the social, political, economic, and religious makeup of the Western states, and a discussion of the demographic changes we can expect to see in the years ahead.

During lunch, lawyers Robert Fairbank and Harvey Saferstein treated us to a tongue-in-cheek video presentation on the case of *Bush v. Gore*, and lawyer Robert S. Bennett gave a provocative talk on how external factors influence independent judicial decision-making.

The day ended with the annual District Dinners, a conference tradition. As has been the custom for many years, the judges and other guests from the Western and Eastern Districts of Washington held a joint function, in this case an outstanding social hour and dinner at the Gallatin Gateway Inn. The function was expertly organized by former FBA President Merrilee MacLean, chair of the Western District lawyer representatives and event-planner extraordinaire.

The third dayís program featured a distinguished panel of lawyers and scholars discussing the topic of ìBalance and Conflict–Environmental Challenges Facing the Western United States.î Moderating the panel was James Fallows, National Correspondent for *The Industry Standard*. The panel examined, from the sometimes-divergent perspectives of science, economics, and law, the interrelationship of issues arising from the Endangered Species Act, energy shortages, land use restrictions, and National Park expansion. The conference participants then separated into break-out groups on alternatives

to litigation, environmental enforcement, and environmental science. The discussion I attended on ìEnvironmental Science–Management and Preservation of Resourcesî was first-rate, with a number of the judge-attendees asking the panel difficult questions demonstrating a real mastery of the issues.

The final day of the conference featured a general session on ìPrivacy Issues in the Internet Era.î This eye-opening program focused on the tracking of Internet usage by e-commerce entities and business groups, exploitation of information regarding Internet usage, legal issues raised by the foregoing practices, and possible legislative, regulatory, and free-market approaches to maintaining Internet privacy. Given the then-heated controversy at the Ninth Circuit over the monitoring of federal court employeesí Internet usage by the Administrative Office of the Courts (*see* ìRebels in Black Robes Challenge Government Computer Monitors,î The New York Times, August 8, 2001, page A1), this topic resonated with the conference attendees.

The next session–ìThe Supreme Court in Fact and Fictionî–explored the way in which journalistic and literary works influence both public perceptions of the judicial branch and the courtsí view of their own work. The session posed the question whether those who write about our courts and those who provide source materials to them (former judicial clerks, for example) have a special responsibility to avoid actions that would undermine the courtsí authority.

The conference ended with the annual Conversation with the Justices. This year, Circuit Justice Sandra Day OíConnor and Justice Stephen G. Breyer briefly shared their views on a variety of topics. The Justices acknowledged that *Bush v. Gore* had been a difficult case, but otherwise declined to discuss the decision.

Every year, the Ninth Circuit Judicial Conference offers sophisticated and enlightening educational programs, and this yearís programs were no exception. But the conference also serves other important functions. Attendees are given ample time to mingle and converse between programs, to play tennis and golf, and to enjoy casual evening get-togethers. Much of the informal discussion that occurs during the course of these activities focuses on the administration of justice and the measures that are needed to ensure the continuing vitality of our judicial system. Non-judicial attendees also have the opportunity to get to know a large number of Western District, Ninth Circuit, and other federal judges. From this lawyerís perspective, we are fortunate indeed to have such a talented and caring group of people serving as judges in our district and in the Ninth Circuit.

Magistrate Judges

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ferences, typically after the parties have completed Rule 39.1 mediation. The Magistrate Judges are full participants in this program of settlement conferences. Most of the cases in which settlement conferences are conducted are pending for trial before a District Judge, but occasionally a Magistrate Judge will conduct a conference in a case pending before another Magistrate Judge. Around the country, Magistrate Judges are doing the same thing. In fact, in some districts, settlement conferences constitute the bulk of the workload for the Magistrate Judges.

We would welcome your comments and suggestions regarding the duties and functions of Magistrate Judges in this district.

GRAMMAR GREMLINS

WHICH ñ THAT

A professor said recently that one of the biggest problems his students have in writing is knowing when to use *which* and *that.*

A clause starting with *that* generally introduces essential information. It identifies. Example: We gave the food to the dog that lives next door. (Which dog? The one that lives next door.)

Which can be used for both essential and nonessential clauses. Example with an essential clause: The dog ate the food which was placed before him. An example with a nonessential clause: The food, which consisted of table scraps, was given to the dog.

Surveys have shown that in three-fourths of the instances in which *which* is used in a clause, the clause is an essential one.

ìIt was the book on the manners *that* provided the correct information.î

SEATTLEíS NEW FEDERAL COURTHOUSE: DIGNIFIED, ACCESSIBLE, CONTEMPORARY

By Duncan Manville

On July 2, 2001, about 200 people gathered for the groundbreaking ceremony that marked the commencement of work on Seattleís new federal courthouse. This article is the second of two on the new courthouse. The first, published in the Spring 2001 edition of the FBA News, focused on the pioneering federal program through which the courthouse was conceived, and explored some of the institutional and aesthetic considerations that contributed to the buildingís design. This article concentrates on the courthouseís functional attributes and innovations.

The new courthouse will occupy a Denny Triangle block bounded by Stewart Street to the south (which the courthouse will face), Virginia Street to the north, and 7th and 8th Streets to the west and east. The site was made attractive by the fact that the Denny Triangle area is undergoing an architectural and civic revival to which the 616,000-square-foot courthouse and its 600 federal employees are expected to contribute.

The courthouse will be surrounded on all sides by trees. Visitors approaching from Stewart Street will pass through a birch grove populating a spacious street-level plaza that will also contain a lawn, a lily pool, sculpture, and outdoor dining areas; then ascend a narrow ramp or a series of broad steps to a raised plaza and the main entrance. The plaza will draw visitors into the courthouse through the use of various devices including differently cut and spaced pavers set in alternating bands running north from Stewart Street toward the main entrance. The courthouseís cafeteria will be accessible by a separate entrance, and located outside the buildingís internal security perimeter to encourage its public use.

ìSITE PLANî

The courthouse complex will comprise a 23-story, glass-curtain-walled courtroom tower; judicial chambers; and an office bar. At the base of the dramatic tower will be a three-story portico sheltering the entrance to the courthouseís main lobby. The lobby will also be three stories high, with column-free, clear-span floors continuing the paving pattern of the exterior plaza; unbroken sight-lines; and extensive day-lighting. Architect NBBJ deleted traditional physical security barriers in the lobby to emphasize the importance of accessibility and transparency in our judicial system. Thus, the lobbyís secure and non-secure spaces will be separated only by a reflecting pool stretching eastward from its west wall, an infrared curtain, and a security checkpoint extending from the end of the pool to the lobbyís east wall. Behind the elevators, and at least partly visible from virtually everywhere in the lobby, will be a three-story, 25-meter-wide mural by Michael Fajans celebrating the institution of the jury.

Unlike the current William Kenzo Nakamura United States Courthouse at 1010 5th Avenue, the new federal courthouse will have separate elevators and circulation systems for members of the general public, court personnel, and prisoners. On each upper floor of the courtroom tower, a south-facing public lobby will provide access to two courtrooms. Louvered shades will control daylight levels in the lobbies. There will be eighteen courtrooms in all (twelve District Courtrooms, one Special Proceedings Courtroom and five Bankruptcy Courtrooms), with space for seven more. The courtrooms will be ìuniversalî─that is, uniformly-sized to maximize flexibility and reduce the total number that must be built. They will be cabled to permit video conferencing and electronic evidence presentations, and will have raised-access flooring to facilitate future technology upgrades.

ìLEVEL 14î (PLAN)

The new courthouse will offer amenities that are not currently available in the Nakamura building. Governmental and non-governmental attorneys alike will have access to an extensive law library (to be located in the towerís upper floors), a lounge, conference rooms, and a variety of other spaces. Certain conference rooms will be available for extended periods to attorneys in trial, who will be issued programmable key cards that will allow them to lock the rooms for storage of sensitive materials.

The judgesí chambers─three per floor─will be located in an architecturally-distinct wing integrated with the courtroom tower. Public access to chambers will be via corridors extending past the courtrooms along the east and west sides of the tower. The exterior of these corridors will be glazed from floor to ceiling, and thus fully day-lit. The top third of the corridorsí interior walls will be glazed and louvered, and light shelves and arc-shaped courtroom ceilings will bounce daylight deep into the courtrooms. Each cluster of

chambers will share a library and workspaces.

ìTYPICAL COURTROOMî (SECTION)

The third major component of the new courthouse will be the office bar, a low curving structure that will be located to the east of the courtroom tower. The office bar will accommodate the Clerk of the U.S. District Court, the U.S. Bankruptcy Clerk, and other building tenants. The office barís height will tie the courthouse to other buildings in the area, and its narrow width will allow a maximum number of offices to be day-lit. Visitors will enter the office barís seven-story atrium through the courthouseís main lobby. The atrium will contain a large steel sculpture by Ed Carpenter depicting an alder leaf. The transactional windows of the District Court Clerk will be ranged along the atriumís east side. Most of the District Court Clerkís interior offices will be open, a design strategy adopted with input from the employees who will be working there.

The courthouse will be a ìgreenî building. It will be constructed of regional and recycled materials where feasible. It will feature bicycle racks, showers, and changing facilities; an underground garage designed to accommodate electric cars; and an ingenious system for cooling lobby spaces involving the introduction, at floor level, of air chilled through the evaporation of water. The chilled air will displace warmer air toward the ceiling, where it will be removed. The system will provide only about a seven-foot ìconditioned zone,î thereby minimizing energy consumption for air conditioning.

A number of innovative security measures will be discretely integrated into the new courthouse. The building will be set off from the street and positioned on a plinth to isolate it from vehicular traffic. Trees and other landscape buffers, reinforced tree guards, and low bollards doubling as seats will provide additional site perimeter security. Incorporated into the fabric of the building itself will be a novel system designed to prevent earthquake- or explosive-induced progressive structural collapse.

The new federal courthouse promises to provide a smart, sophisticated, and efficient environment both for its occupants and for the attorneys who will be practicing before the U.S. District Court for the Western District of Washington. The courthouseís mid-2004 opening is eagerly anticipated.

References

Elaine Porterfield, *Safer, more-open, bigger courthouse unveiled*, The Seattle Post-Intelligencer, October 15, 1999

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Judge Monica J. Benton

Continued from page 6

Baptist Church. She spends the remainder of her time at her ìsecond full-time jobîóas a wife and the dedicated mother of a vivacious 3Ω year-old.

The Seattle legal community is truly fortunate to count among its ranks such an exceptional and accomplished attorney, judge, and public servant as U.S. Magistrate Judge Monica J. Benton.

Federal Public Defender

Continued from page 8

lem. The Fifth Amendmentís due process clause forbids the government to deprive any person of liberty without due process of law.î Following the approach of the Ninth Circuit, Justice Breyer and the majority concluded that release was required after six months if deportation remained unforeseeable. The Court rejected the governmentís claim of plenary power and, instead, found that the ìhistoric purpose of the writ, namely to relieve detention by executive authorities without judicial trial,î allowed judicial intervention.

A core function of the Federal Defenderís Office is to promote equal access to justice for our indigent clients. This litigation, involving hundreds of poor, disconnected people, epitomizes that function and, on a large scale, our work. The *Ma* decision rewards a remarkable collective effort of the office. While Jennifer Wellman and Jay Stansell led the litigation, five additional staff members–research lawyers, paralegals, and secretaries - - worked full time coordinating cases on behalf of our 300 clients. Law students and volunteers assisted those assigned to the *Ma* litigation, as did the entire staff which handled our traditional case load, in order to free up those dedicated to the immigration project. Credit goes beyond the Federal Defenderís Office to all in the court family. The combined inspiration and effort of the judges, the magistrate judges, law clerks, and government counsel promoted the orderly and efficient progress of this historic case.

The *Ma* decision is a beacon that glows with added intensity in the wake of the World Trade Towers tragedy. Immigrant citizens and non-citizens alike are experiencing abuse and backlash in the tragedyís aftermath. Calls to remove these law-abiding people from our country and to close our borders are loud and recurring. In 1759, Benjamin Franklin wrote, ìthey that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.î Franklinís words resonate today. Our democracy survives because of decisions like *Ma* and the courage of judges like ours who recognize that by assuring the rights of Kim Ho Ma and others more unpopular, we maintain liberty for ourselves and our country.

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