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Volume 24 Issue 3

April - May 1996

DES MOINES EDUCATIONAL PROGRAM TAKING SHAPE

BY WILLIAM S. FULTON, JR., U. S. ARMY COURT OF CRIMINAL APPEALS

By all means come to Des Moines in August to partake of and participate in the interesting and varied educational programs planned by your Education Committee. Here is the lineup:

He Speaks, She Speaks: What Different Things They Say!

Dr. Audrey Nelson-Schneider of Boulder, Colorado will start us off with a communication theme on Monday morning, August 5th. Her interactive seminar will identify how sex roles and norms influence the way we communicate. We will explore how women and men communicate nonverbally as well as verbally, learn how to avoid common conflict traps between the sexes, and identify steps for improving communication between the sexes in the office and elsewhere.

Dealing With Difficult People

Dr. Nelson-Schneider's afternoon program will target six different types of difficult people. (You already know the types. You've met them at the counter or elsewhere in the courthouse.) The purpose is to understand how they get to us and how we can develop tactics for handling them.

The Americans With Disabilities Act: Recent Developments

Returning by popular demand in a plenary session format on Tuesday morning is Diana Pratt-Wyatt, Clerk/Administrator of Louisiana's Second Circuit Court of Appeals, with an expanded update on current interpretations of the Americans With Disabilities Act of especial concern to appellate courts.

Futures Planning, Part II

It has been said that "courts can deal with the implications of change in one of two ways: They can react to change as it happens, which risks reliance on ad hoc crisis management, or they can anticipate change and plan for it, which holds greater promise for effective problem solving" (*Judicature*, Jan-Feb 96, p. 168). Accordingly, also on Tuesday morning, Dr. Ramon de Arrigunaga of San Antonio's VIA Metropolitan Transit System, and Frans J. Labranche, Jr., recently retired Clerk of the Louisiana Supreme Court, will guide us as we continue the futures planning begun last year in San Antonio.

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THE PRESIDENT'S PAGE

DAVID B. BEACH, CLERK SUPREME COURT OF VIRGINIA

Change — The act, process or result of making radically different or of making different in some particular. Transformation.

As court managers, we pride ourselves on our ability to adapt to change or even to be catalysts for it. However, I suspect most of us have experienced the unsettling and disorienting feeling caused by rapid change over which we have little or no control. During the past eight or nine months as I have watched friends in NCACC retire or move on to other endeavors; seen some of our vendor representatives promoted to positions in which they will no longer have much direct contact with our organization; witnessed the sale of West Publishing to a Canadian company; prepared to move the Virginia Supreme Court clerk's office; and attended the Conference on the Future of the Judiciary, I have been struck by just how much change is occurring.

The Conference on the Future of the Judiciary, held March 23-25, 1996 in Williamsburg, Virginia, was one of the most remarkable events I have ever attended. Judges, court managers and academicians from all over the country gathered to celebrate the 25th anniversary of the National Center for State Courts and to attempt to reach a consensus on what aspects of the judicial system needed improvement and how to go about making those improvements.

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The Docket News of the National Conference of Appellate Court Clerks

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Please submit items of professional or personal news to your regional reporter. Articles, letters and other submissions may be sent or faxed to the editorial office.

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Phone (318) 227-3702 FAX (318) 227-3735

HELP KEEP US INFORMED!!

Tennis Everyone

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tennis racquet participate in

the

Bring your

and plan to

DES MOINES OPEN

Keith has designated **Emille Cox** (New Jersey) as the coordinator for our first tennis tournament. We are planning a singles open and mixed doubles.

Call Emille at (609) 292-6995

* * * * * *

Kenneth deBlanc, Chair Membership Committee

Announces that the new NCACC Membership Directory is at the publisher. Will keep you informed as publication nears completion.

MASSACHUSETTS COURT EMPLOYEE FOILS BOMB THREAT

SUBMITTED BY JEAN KENNETT CLERK, SUPREME JUDICIAL COURT FOR THE COMMONWEALTH (MA)

One day this winter an employee of a busy neighborhood district court answered the phone and was given warning that a bomb was hidden in the courthouse and shortly would go off. The quick-thinking court staffer dialed *69, got the caller's telephone number, gave it to police who quickly located the caller and arrested him.

PUBLIC RELATIONS COMMITTEE CONTINUES TO SEEK PRESS RELEASE INFORMATION FROM NCACC MEMBERS

PLEASE COMPLETE THE ENCLOSED INSERT AND MAIL TO

JEAN KENNETT, CLERK SUPREME JUDICIAL COURT 1412 COURT HOUSE BOSTON, MA 02108

More Foolishness - Submitted by Ron (CA)

*".. I was exposed to formaldehyde used in treating the bulbs that at one time when I got close it made everything in my brain die except a little area in the middle of the head. A worker who was doing the process told me he worked with that area 1 year before they told him what it was."

Was the worker noted above working I year in some specific agricultural area, or the little area in the petitioner's head that did not die?

Perhaps it's better we not know.

Bits and pieces from letters, briefs, motions and other documents from the humorless world of the law.

* * * * *

From and inmate in state prison:

Dear Ms. Steen,

I Robert Reynolds have no arguments for my case. I have no counsel and I myself know nothing about the so called Justice Process. All I can say is that in my case the Father of All Lies prevailed. But I will however give you a warning. If I am not released from Cummins Prison by September 29, 1996, space aliens from the planet zargon will destroy Little Rock, Arkansas at approximately 2:30 p.m. May God have mercy on your soul.

(The court denied this request and then recessed until September 30, 1996)

* * * * *

From several briefs:

*The witnesses were available. The attorney did not have the opportunity to dispose them.

*The man was naked from the waste down.

*That's when her manager come up. Her

manager abreast me of the rules.

And, from a motion:

*The only pleadings which have been filed in this matter since the **copulation** of the transcript . . .

* * * * *

You only think you are confused:

Witness: "Using the time clock as due north, the dining room would be east. If the time clock were at 12 o'clock, the dining room would probably be 3 o'clock. It would be directly to your right. You turn right from the clock and then walk out the door. Basically the hall and the dining room would be to your right. When I walk out that door, I would be standing at 6 o'clock. You walk through the dining room and then turn right again and you are standing at 9 o'clock. My car is to the right. In other words, 12 o'clock I guess. I am not sure.

(And neither am I)



Des Moines Educational Program Continued

Ethics and the Appellate Court Staff

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The subject of ethics, or standards of conduct, will engage our attention Wednesday morning in an interesting program being planned by Ed Smith, Clerk of the Montana Supreme Court, with the assistance of Cecil Crowson, Jr., Clerk of the Tennessee Supreme Court and Courts of Appeal.

Technology for Court Leaders

Wednesday morning's session will conclude with a presentation on the impact of technology on the courts and what we, as court leaders, should know and do about it by Lawrence P Webster, Executive Director of Court Technology Programs for the National Center for State Courts in Williamsburg, Virginia.

Breakout Sessions

Wednesday afternoon's program features three electives conducted concurrently and repeated once following a break. The three electives, of which two may be selected, are:

Pro Se Litigants, being prepared by Martin Brownstein, Clerk of the New York Supreme Court, Appellate Division, Second Department;

Automated Case Management, presented by Christie Speir Cameron, Clerk of the North Carolina Supreme Court, with Diana Pratt-Wyatt, and

A new program based on the popular What's Buggin' Me and Sharing Our Successes being prepared by Sandra Roos of the ABA Appellate Judges Conference staff assisted by Frankie Lewis, Chief Deputy Clerk of the Tennessee Appellate

Courts, Eastern District, and Joseph A. Lane, Clerk of California's Second District Court of Appeal.

Managing People Through Change

Thursday morning's opening session returns to our communication theme featuring Heidi Kolbe, of The Kolbe Company, Sacramento, California. What are some of the changes that are or may be facing your court? How do these changes effect you and the people you work with? At the conclusion of Heidi's interactive seminar, we will know how to communicate effectively with our employees through the transitions from "Endings" to "the Wilderness" and to "New Beginnings."

Election of Officers and New Business

Although not a formal part of the educational program, the one-hour concluding session of our business meeting begun Sunday afternoon should afford us insight into Ms. Kolbe's transitions as we elect new NCACC officers and executive committee members for the coming year and undertake any new business.

Managing Total Quality-Continuous Improvement for Court Systems

The capstone of our educational program will. be conducted by a team consisting of Timothy Fautsco of the National Center for State Courts' Court Services Division, Steven J. Taylor of 3M Quality Management Services, with Scott Crampton, Director of Management Services in the Office of the Oregon State Court Administrator, whose Appellate Court Records Section has applied TQM to the appellate filings process.

The President's Page Continued:

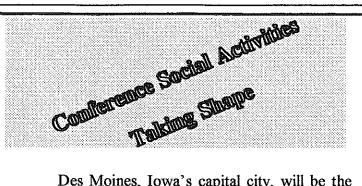
Both in plenary sessions and in small groups, change was apparent at every turn. While I refused to let go of "scarcity of resources" as a key issue, to a large number of judges and managers open access to the justice system and building relationships with our customers were of greater importance. I marvelled at the deep concern expressed on these issues and the commitment to do something about them. It was an exhilarating experience to discuss and debate with so many talented leaders what each of us considered the important issues to be. It was also a privilege to represent our Conference. I regret that there was not an opportunity for more of our members to attend.

Two of the many excellent programs scheduled for our annual meeting in Des Moines should prepare us to deal with change more effective. Heide Kolbe will be presenting a program entitled "Managing People Through Change." Ray de Arrigunaga and Frans Labranche will continue our education in the area of futures planning as they present Part II of that subject. Elsewhere in this issue of The Docket, Bill Fulton outlines these and the other topics he and his committee have put together for Des Moines. The educational program is top notch, as are the many social activities planned by Keith Richardson. Please don't miss this opportunity to hear some wonderful speakers, renew friendships, and experience the hospitality of the heart of the of midwest.

DEADLINE FOR SUBMISSION OF ARTICLES FOR THE JULY ISSUE OF "THE DOCKET"

JUNE 14, 1996

REMEMBER THIS IS THE LAST ISSUE BEFORE THE ANNUAL CONFERENCE IN DES MOINES



Des Moines, Iowa's capital city, will be the host city of the twenty-third annual conference scheduled for August 4 through 9, 1996. You and your guests are invited to come and enjoy the hospitality of the heart of the heartland. Iowa's capital city enjoys the sophistication and amenities of big-city living while retaining the charm and friendliness of a small town.

The conference will be held at the Embassy Suites on The River, which is located in downtown Des Moines on the bank of the Des Moines River. You will enjoy a spacious two-room suite. The hotel is central to many activities and offers a health spa, complete with indoor pool, whirlpool, sauna, and exercise facility. A walking or biking path runs next to the hotel and along the river. The room rate will be \$84.00 per night. This cost includes a free cooked-to-order breakfast. In the evenings from 5 to 7 p.m. the hotel hosts a complimentary cocktail reception. Parking is available in both an underground garage and a lot located next to the hotel. The rate for parking in the lot is \$3.00 per day.

For those arriving early, the Iowa Cubs, a AAA minor league team for the Chicago Cubs, will be playing at home in Des Moines on August 1 through 6. Sec Taylor stadium, home of the Iowa Cubs, is a new facility with skyboxes which is unmatched by most minor league fields. On Saturday morning you may walk just a few blocks from the hotel to experience the Downtown Farmers market, which is located on historic Court Avenue. The market offers an array of outstanding Iowa produce, baked goods, fresh-cut flowers, wide variety of hand-crafted items, roving minstrels, and other entertainment.

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and contract cases are most likely to be selected. Personal injury cases are selected depending upon the reputation of the insurance companies and the attorneys involved. Medical malpractice cases are rarely selected. Scheduling orders are issued by the staff attorney. Participation in the conference is mandatory, and objections to the conference are not accepted. About half of the conferences are held by telephone, the others by personal appearance.

Participation of clients is often ordered in domestic cases, but rarely in others. Conference attorney George Geoghegan reports that issues are discussed but not "argued" as experience has shown that the latter tends to harden the attitudes of the parties to the conference. Some conferences are adjourned, with follow-up discussions over the next few days. A few may continue for several months but most are concluded at the first conference, and within a month of the original screening. If settled, the parties file a joint motion to dismiss the case. The staff attorney enters and order (in his own name as "conference attorney") which may cite the parties agreement to limit the issues on appeal and which may shorten or lengthen the normal briefing schedule. Roughly 35% of the conferences produce a settlement, and those represent about 7 or 8 percent of the courts total filings. The success rates are roughly the same for telephone and "in-person" conferences.

Kentucky had previously had a "fast-track" program for accelerated scheduling of one and two issue cases, but that has been discontinued. No comparison of the relative rates of early disposition is available.

From the perspective of this reporter, it appears that the involvement of sitting judges in appellate settlement conferences is a dead issue after nearly 20 years of experience. The use of retired judges with carefully selected cases appears to be working well and is recommended to courts with a pool of such judges available. An awareness of the kinds of cases most prone to settlement has evolved

and perhaps an outline of the most effective approaches and techniques of the person conducting the conference could be outlined by a trained observer. In my telephone surveys, I've avoided the subject of technique, but perhaps the National Center could provide the kind of careful analysis the subject deserves. It is only speculation on my part, but the early intervention of the court, prior to briefing of the cases is probably provoking a more precise definition of the issues in the cases scheduled even when settlement fails.

Also of interest, is the slowly expanding role of experienced staff attorneys working on cases that do not appear to be raising new issues of law. The Ohio and Kentucky programs are limited to settlement efforts, while in New Mexico and Washington state staff attorneys have been authorized to issue legal memoranda, on the merits of the appeal, directly to the parties. Michigan has not yet taken that step, but is close behind with a summary disposition panel releasing orders and opinions prepared and scheduled by senior staff attorneys. In all four of these states, as in Michigan, there seems to be evolving what I think should be called an "Office of Appellate Magistrates." The use of staff magistrates is widely accepted in the trial courts, but not yet openly accepted in the appellate courts? Why not?

Having scheduled retirement for the end of January, 1996, this will be my last submission as a regional reporter. Chris and I will be in Nebraska in April for her presentation on some early childhood studies she has been doing, and we will probably not return to the Missouri river valley for the Des Moines conference. It has been a pleasure to meet and conference with all of you. The Courts are in good hands (yours). Cheers!!



SETTLEMENT CONFERENCE REVIEW - FINAL INSTALLMENT

THREE PROGRAMS WITH SIGNIFICANT NUMBERS

BY: HANK HENSON, (MI) RETIRED

New York

The 2nd department in Brooklyn and Long Island reports that the CAMP program (Civil Appeal Management Program) is working well after many years. The notice of appeal includes information which allows the program manager (Robert Katz a member of the legal staff) to select cases which are prone to settlement. He looks for domestic cases without custody issues and other cases where there are money judgments and limited issues. Cases are scheduled for personal conferences with retired judges and, in the summer time, with selected sitting judges. Attorneys are requested to bring their clients with them. He had no statistics available (at the time we spoke) as to the percentage of cases referred for conference or the percentage that were successful as a result of the conference. The judges do not have authority to order early briefs on selected issues or to limit the issues on appeal. Robert suggests that success is dependent upon careful selection of cases for the conference and then upon the skills of the judge who conducts the conference. He wasn't concerned about the statistics because the process eliminates cases with less effort for the court than if they had proceeded to decision. The program has settled "thousands" of cases.

Manhattan also has a program fashioned after the 2nd departments. You may contact Ann Borman, Clerk at (212) 340-0425.

The Ohio and Kentucky programs outlined below are using staff attorneys exclusively. Both have been operating for several years without interruption and both are modelled after the program conducted by the US 6th Circuit Court of Appeals in Cincinnati. Neither of the two courts report experience with fast-track programs using staff

attorneys. Controlled studies of success rates compared to voluntary dismissals of similar cases are not available but both are confident they are disposing of cases with less expense to the court than if they were allowed to proceed to a full decision on the merits.

Ohio

Jack Kullman, Court Administrator in Columbus reports they have had a program since 1989. A staff attorney reviews the docketing statements filed with the notice of appeal and after excluding criminal and administrative agency cases, prepares an order referring the case for settlement. Conferences are conducted by Dave Doyle (a staff attorney) and many are done by telephone (but less than half). The settlement effort may be dropped if counsel calls with serious objections but objections are not requested and most conferences are held. Dave may recommend an extension of time for filing the briefs but most are settled or returned to the regular calendar within the 40 days allowed for transmittal of the record from the trial court. Roughly 40% of the civil cases are conferenced and of 1570 cases conferenced to date, 951 have settled, about 150 per year. (Columbus appellate judges are assigned 119 cases per year, per judge for argument and opinion.) Estimates of the settlement rate prior to the program ran at about 12% of civil cases which is roughly half of what Dave is achieving now. Dave Doyle may be reached at (614) 462-3580. Similar programs are running in five of Ohio's other eleven appellate districts. You may contact Mercedes Spotts at (216) 443-6350 in Cleveland.

Kentucky

A prehearing statement is required of all appellants after the notice of appeal. Appellees file a "supplemental statement." The statements include issues to be raised and citations of authority supporting the issues. Cases are screened by one of two staff conference attorneys who select those most likely to settle. Domestic cases with minor children

(Continued on page 9)

Conference Social Activities Continued:

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On Sunday there will opportunities to golf, sightsee, and visit with old friends. Registration will begin at 2 p.m. and conclude at 4. New members will meet at 3:30 p.m. for an orientation program. A business meeting is scheduled for 4:00 p.m. A reception will be hosted by BNA from 6 to 8 p.m. at the hotel. The Morgan Thomas slide show presentation will follow.

Activities planned for our guests on Monday include a tour of Salisbury House and the Better Homes & Gardens test kitchens. The Salisbury House is a replica of a noble's house of the Tudor era in Salisbury, England. Those guests interested may tour Salisbury House and the test kitchens in the afternoon. An evening at Terrace Hill, the Iowa governor's mansion, has been planned. Terrace Hill, the Iowa Governor's official residence, is one of the finest examples of Second Empire architecture west of the Hudson River. The mansion, completed in 1869, is located on a high bluff above the Raccoon River Valley and is filled with authentic furniture of the era. You will enjoy a variety of hors d'oeuvres and entertainment hosted by Lexis-Nexis.

On Tuesday we will spend part of the afternoon and evening at Living History Farms, located just west of Des Moines. Living History Farms is a 600-acre open-air museum that tells the story of Midwestern agriculture and lifestyles. You will have the opportunity to explore an authentic 1700 Indian village, 1850s homestead, 1875 village, 1900 farm and a Farm of Today and Tomorrow. You should bring a hearty appetite because the dinner will be catered by the award-winning Iowa Machine Shed, which features a family-style fare. The event will be hosted by West Publishing Company.

A fun walk/run is scheduled for Wednesday

morning. In the afternoon, guests may venture on a tour of the famous Bridges of Madison County, featured in the movie "Bridges of Madison County," starring Clint Eastwood and Meryl Streep.

Although no activities have been scheduled for Wednesday evening, you should be tempted to take in the sites, sounds, and fun of our state fair parade. You will not want to miss seeing our President David Beach and his family in the parade. The parade will take place in the early evening and will pass directly in front of the hotel.

A golf tournament has been scheduled for Thursday afternoon. An alternative activity involving a trip to the state fair is planned for anyone not interested in the golf tournament. Our evening highlight will be our closing banquet at the hotel which will include exciting entertainment.

On Friday we will conclude our conference with the morning critique and a breakfast buffet.

The greater Des Moines area provides a variety of entertainment. The historic Court Avenue district, just blocks from the hotel, offers great food and entertainment. The Valley Junction area opens doors to several antique and speciality shops and restaurants. You may also enjoy any one of several shopping malls. Prairie Meadows racetrack and casino offers an array of gambling options. Adventureland Theme Park, located fifteen minutes from the hotel in Altoona, features the Outlaw Woodcoaster, Dragon double-loop and famous Tornado roller coaster rides, live entertainment, and shops. Des Moines also has a zoo featuring over 800 animals in a 22-acre facility. This year marks our Sesquicentennial Anniversary (150 years of Statehood) and numerous activities have been planned throughout our state to celebrate.

The twenty-third annual conference promises to be another memorable experience. You and your guests are encouraged to join us.

State

Maryland



State & Federal Appellate Courts on the Internet

by Bob Northrup Director of Information Systems for the North Carolina Appellate Courts

During the past couple of years, the Internet has gone from being a good way of sharing files and electronic mail for the techno-crowd within Universities to becoming a mainstream everybody-can-use-it tool. I dare say that we are close to the edge of the everybody-needs-it stage.

There was a time in our State's Supreme Court when the research assistants (law clerks) were without telephones. Justices needing their law clerks, would push a button, activating a buzzer. The urgency of the request was indicated by the frequency and duration of each buzz. Later, telephones, computers, and voice mail were added. With each of these technological advancements, there was discussion as to their merit. Hindsight offers us the knowledge that each of these changes enhanced the ability of the law clerks and all of the Court's Justices and staff to work more effectively and efficiently.

We are currently adding the Internet (also known as the Word Wide Web) to the technologies available to personnel both in the State Supreme Court and also the State Court of Appeals. The Appellate Courts have seen fit not only to provide access to the Internet, but also to supply on the Internet copies of their opinions, historical information of both courts, information about the Supreme Court Library, and personal biographies of each Justice and Judge. Will the future see these changes as timely and appropriate? I hope so.

State Appellate Courts with some presence on the Internet:

Internet Address

http://www.alaska.net/~akctlib/homepage.htm
http://www.state.az.us/pages/judicial.htm
http://www.state.ar.us/supremecourt/home.html
http://www.callaw.com/welcome.html
http://www.rmii.com/slv/courts/supct.htm
http://neal.ctstateu.edu:2001/statenet/judicial/index.html
http://www.ncsc.dni.us/court/delaware/supreme.htm
http://justice.courts.state.fl.us/
http://www.state.id.us/judicial/judicial.html
http://www.kentlaw.edu/isc {coming soon}
http://www.law.indiana.edu/law/incourts/incourts.html
http://ialaw.giant.net/ {to apply for password}
http://lark.cc.ukans.edu/~kulawlib/ksupreme.html &
http://lark.cc.ukans.edu/~kulawlib/ksapps.html
http://www.gnofn.org/~lasc/

http://www.mdarchives.state.md.us/msa/

mm95 96/judbran/html/judic.html

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(On the Internet - Continued from page 6)

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Michigan	http://www.umich.edu/~icle/misupct/index.htm
Missouri	http://www.state.mo.us/sca/mosupct.htm
New Hampshire	http://www.state.nh.us/courts/supreme.htm
	1 44 44 4 4 15 15 4

New Jersey http://www.state.nj.us/judiciary/

New York http://www.law.cornell.edu/ny/ctap/overview.html

North Carolina http://www.aoc.state.nc.us/

Ohio http://www.sconet.ohio.gov/ {under construction}

Pennsylvania http://www.cerf.net/penna-courts/

Tennesee http://www.tsc.state.tn.us/ Utah http://courtlink.utcourts.gov/

Vermont gopher://dol.state.vt.us/11GOPHER_ROOT3%3A%5BSUPCT%5D

Washington http://www.wa.gov/courts/

Wisconsin http://www.wisbar.org/Wis/index.html &

http://www.wisbar.org/WisCtApp/index.html

Federal Appellate Courts with some presence on the Internet:

Court	Address
U.S. Supreme	http://www.law.cornell.edu/supct/supct.table.html
1st Circuit	http://www.law.emory.edu/1circuit/
2nd Circuit	http://www.law.pace.edu/legal/us-legal/judiciary/second-circuit.html">
3rd Circuit	http://www.law.vill.edu/Fed-Ct/ca03.html
4th Circuit	http://www.law.emory.edu/4circuit/
5th Circuit	http://www.law.utexas.edu/us5th/us5th.html
6th Circuit	http://www.law.emory.edu/6circuit/
7th Circuit	http://www.kentlaw.edu/7circuit/
8th Circuit	http://www.wulaw.wustl.edu/8th.cir/
9th Circuit	http://www.law.vill.edu/Fed-Ct/ca09.html
10th Circuit	http://www.law.emory.edu/10circuit/
11th Circuit	http://www.law.emory.edu/11circuit/
Federal Circuit	http://www.ll.georgetown.edu/Fed-Ct/cafed.html

DC Circuit http://www.ll.georgetown.edu/Fed-Ct/cadc.html

A great site for finding Judicial Information is located at The Villanova Center for Information Law and Policy.

The Internet address for State Courts is: http://ming.law.vill.edu/State-Ct/index.html. The address for Federal Courts is: http://ming.law.vill.edu/Fed-Ct/fedcourt.html.

Bob Northrup is the Director of Information Systems for the North Carolina Appellate Courts. Please contact him with comments or story ideas for this newsletter. He may be reached the following ways: Voice-919-715-5106, Fax-919-733-0105, E-Mail-bobn%ncaocisd@aoc.state.nc.us, Mail (snail mail)-Supreme Court Clerk's Office, P.O. Box 2170, Raleigh, NC 27602.