



The Legacy of J.O. Sentell Continues

Laura Roy (MO)

The National Conference of Appellate Court Clerks presented the prestigious J.O. Sentell Award to Leslie D. Gradet, Clerk of the Maryland Court of Special Appeals, at its Annual Conference Banquet on August 7, 2008 in Pittsburgh, Pennsylvania.

A faithful and dedicated member of the National Conference of Appellate Court Clerks since 1989, Leslie D. Gradet has distinguished herself and her court in exemplary service to her profession and the principles of the Conference. Her service to the NCACC includes membership on the Long Range Planning Committee, the Program Committee, and the Executive Committee from 1993-1995. Leslie has also served as Program Chair for the 1995 Annual Conference, as Vice-President in 1997-1998, and as President in 1999-2000. Every NCACC member who nominated Leslie for the J.O. Sentell Award noted her generosity, her talent and her dedication to the Conference.



Leslie obtained her Juris Doctor degree from the University of Maryland in 1978. After working in private practice and as a legislative analyst with the Maryland Department of Legislative Reference, Leslie became the Chief Deputy Clerk at the Court of Special Appeals in 1986. In 1988, she became Clerk of the Maryland Court of Special Appeals.

The National Conference of Appellate Court Clerks was founded over thirty years ago. One of its founding members was J.O. Sentell, Clerk of the Supreme Court of Alabama. He also served as its first president and because of his leadership and inspiration, in 1979, an award was established in his honor as the Conference's most prestigious for a member. The J.O. Sentell Award is presented to those whose contributions and accomplishments have been an example for others to recognize and emulate. Leslie epitomizes all those qualities we honor as appellate court clerks, and it is fitting that Leslie's outstanding contributions be recognized by this award.

NCACC Selects Officers

Florida Supreme Court Clerk Elected President

Thomas D. Hall, Clerk of the Supreme Court of Florida, took the helm of the National Conference of Appellate Court Clerks (NCACC) at the organization's annual meeting August 7, 2008 in Pittsburgh.

A graduate of the University of Miami School of Law, Hall left private practice in 1990 to serve as chief staff attorney for Florida's 1st District Court of Appeal in Tallahassee. He was named Clerk of the Florida Supreme Court in May of 2000.

The NCACC is focused on education, providing appellate court clerks and administrators with training and knowledge to continually improve the appellate court system. Hall will serve as the organization's 36th president, and members are looking forward to his leadership.

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THE DOCKET

News of the National Conference of Appellate Court Clerks

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HELP KEEP US INFORMED!!



To Remit NCACC Membership Dues:

National Center of State Courts
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The President's Page

Tom Hall (FL)

In 2000 the Judicial Division of the American Bar Association terminated the yearly grant given our Conference, in the amount of \$10,000, to assist us in putting on our annual conference. Although I had just joined the Confer-

ence, I recall those with more experience than me were quite distressed at this development. It seemed a major blow had been dealt to our Conference's future. In hindsight, it may have the best thing that ever happened to us – a real blessing in disguise.

“Big Money Follows Big Ideas.” It is the time for big ideas. We need you.”

Almost immediately those with vision (Penny Miller, Christie Cameron and others) stepped forward and offered another solution. Their solution: create our own separate education fund and find some way to fund it ourselves. Hearing their vision we did what clerks do best, we started working. We set about turning the vision of a separate education fund into reality. We started small. We sold pins, hats, and shirts. We had silent auctions of items donated by our members and we held a “Your Change Can Change Our Direction” fund-raiser. We moved up a notch in Alaska to a rousing live auction. Conference hosts went to local sources, Bar groups, etc., and raised money for their individual conferences. We also had very generous donations from our friends such as West, a Thompson Reuters business, and most importantly from Mr. Dwight Opperman. The result has been dramatic. In 2002 we had \$200 in our Education Fund. As I write this we have more than \$96,000 in the Education Fund. Just as importantly, during the last eight years, the programs at the annual conferences have continued to be excellent. And that excellence has been achieved without the ABA money or spending the monies donated to the Education Fund. It certainly was not easy. Every Host, every Program Chair, every Vendor Chair has asked, “How much money do I have?” The answer was always “It depends.” Despite that uncertainty every Host, Program Chair and Vendor Chair has stepped forward to get the job done, and, in fact, did great jobs.

We're now entering the next phase of NCACC's very existence. We do so in very hard times. Our success over the years has undoubtedly depended in large part on the support of our courts. They have funded us attending the annual Conference but also generously supported us participating on committees including the Executive Committee. But many states find themselves with serious financial problems of their own and can no

longer pay for our participation in NCACC. Five people attending the fall Executive Committee Meeting needed assistance from the Conference to be able to attend. We have really reached the point where we can no longer be dependant on the vagaries of funding from our courts. Florida provides an

example. When I became Clerk of the Florida Supreme Court eight years ago, the Court had been for many years paying for two people to attend the Conference, the Chief Deputy Clerk and another deputy clerk in a management level position. We continued to send those two plus me. When the conference was in Key West the Court allowed four people to attend which continued the next year. But by the time the New Orleans conference rolled around things had changed. I was the only one allowed to attend. In Pittsburgh this year, Florida paid for no one to attend. I was there at Conference expense as President-Elect. Two other people from Florida attended, both on a scholarship.

The Conference has retained the service of Gadd/Guillot, a professional fundraising consulting firm, to assist us in addressing the critical funding needs we have. The fall Executive Committee meeting will also include a joint meeting with our Education Fund Committee, the Campaign Committee and our consultant. This will be an interesting year. As our consultant has advised us many times, “Big Money Follows Big Ideas.” It is the time for big ideas. We need you. Please assist us in any way you can as NCACC takes this next step.

“Our success over the years has undoubtedly depended in large part on the support of our courts.”



CATO, the Conference of Appellate Technology Officials, would like to take this opportunity to thank the National Conference of Appellate Court Clerks for their support and encouragement of our organization. Although we have had some "up and down" moments during our first five years, we feel we are beginning to "get our stride." We are dedicated to accomplishing our main goal of bringing back to our managers important technological insights and improvements that will enable the work of the appellate courts to run more efficiently and economically.

Our 2008 conference was attended by technology officials from a variety of states, and two federal courts. As we have found in the past, the ability to brainstorm about the changing technologies available in the appellate courts was extremely beneficial. We all went back to our jobs with renewed vigor and the ability to look at some of our technology problems with some "out of the box" solutions.

At this conference, our business meeting also proved extremely helpful. We have detailed several goals that would improve the sharing of ideas to keep appellate courts nationwide on the cutting edge technologically and provide a forum for problem resolution and solution implementation. We have some future plans that will help with our membership while continuing to support and enhance the appellate courts, so stay tuned.

We are excited about our plans to make sure that our Conference grows and assists in the important work of the appellate courts. We are working to make sure that we communicate better within our conference and with yours.

We would appreciate your assistance in encouraging your technology staff to join our conference and our list serve, which has been much more heavily used over the last year. We welcome the opportunity to hear from and share some of our experiences with your technology staff. The ability to share only increases with the greater participation we have in our conference.

Thank you again for all the support you have given us over the last few years. We enjoy working with you, and we are extremely grateful for any assistance you can give us in helping us to serve you better. Please feel free to call me at (602) 542-0258 or e-mail me at jmatthews@appeals.az.gov with any suggestions, questions, or concerns you have over the next year.

Jeremiah Matthews
Arizona Court of Appeals, Division One
CATO President 2009

At its fall meeting, the NCACC Executive Committee approved the proposal submitted by CATO in Jerry Matthew's letter presented to me at the Pittsburgh conference. There will be more details in one of my President's columns later this year on exactly how this relationship will work. We think this will benefit both NCACC and CATO. The letter is reprinted below:

To : Tom Hall, NCACC President, and the NCACC Executive Board
From: Jerry Matthews, CATO President, and the CATO Executive Board

Dear Mr. Tom Hall,

The 2008 CATO conference has been a great success so far. The level of cooperative energy and exchange of ideas is at an all-time high and we are looking forward to an even more productive conference in 2009.

Our dilemma is how to grow CATO into the NCACC's original vision, while maintaining a strong relationship with the NCACC. There has been some talk at both conferences about the direction of CATO and we have discussed several ideas.

In even years, CATO could continue to have our conference in the same city as the NCACC. In odd years, CATO could be held at the same time as the annual CTC conference. The Board feels that this would give us the best of both worlds; exposure to a wider pool of vendors and techs as well as a continued, and hopefully, even more productive partnership with the NCACC. It would also benefit the courts because they would get two conferences for the price of one and their techs would have a wider range of exposure to innovative ideas.

Alternatively, CATO could continue to align our conference with the NCACC and grow the collaborative efforts between our two groups to create a truly integrated and cohesive tool, which would benefit appellate courts nationwide.

The board is leaning toward the alternating years but is hoping for some guidance from the NCACC as to how much support we might expect in the coming years. If CATO's membership has a better chance of attracting members who currently attend CTC, then it would only serve to make the even year conferences, aligned with the NCACC, more productive. If the NCACC prefers to help CATO's membership grow, then staying in the same city would lead to more productive conferences, which in turn would help our courts.

The good news is that our Board has voted to become an incorporated entity and get off of the NCACC accounting books. This will dissolve any liability issues for the NCACC for any CATO-related expenses. Our goal is to have this done by the end of 2008 but definitely by next year's conference.

As you know, the success of any event is incumbent upon the participation and support of all parties. In the interest of making next year's event as successful as it can be, we need to make some decisions fairly quickly. As we look toward the 2009 and 2010 conferences, and beyond, the CATO organization seeks and respects the guidance of the NCACC so that it may be shared with the CATO membership at the 2009 Conference planning meeting scheduled in early September 2008.

With respect and appreciation,



Jerry Matthews and the CATO Board

(Continued from page 1)

“Tom is intelligent, hardworking, and innovative. He is truly the go-to person when other clerks need advice,” said Bill Suter, Clerk of the Supreme Court of the United States and an active member of the conference. “His skills were tested when he shepherded the Presidential voting cases through his Court in 2000. I was in frequent contact with Tom during the processing of those cases and I can attest that Tom was a superb professional in every respect.”

“Tom is the quintessential professional,” said Barbara J. Pariente, Supreme Court of Florida Justice. “Having worked with him for many years, I can honestly report that there never has been a time when Tom has not worked to improve the functioning of the Clerk’s office. We are indeed fortunate to have Tom Hall as the Clerk of the Supreme Court of Florida and the NCACC is likewise fortunate to have Tom as President.”

Hall shares NCACC’s strong commitment to education and training. He has taught at the University of Miami School of Law, St. Thomas University Law School, the Florida College of Advanced Judicial Studies, the Florida Conference of Circuit Judges, the Justice Teaching Institute, the Florida Workers’ Compensation Institute, numerous Florida Bar Continuing Legal Education programs and in the Barry University Legal Assistant’s Program. Hall initiated the Appellate Practice Workshop while an officer in the Appellate Practice Section of The Florida Bar. He was also instrumental in developing the Section’s Pro Se Appellate Practice Handbook. He is a recipient of the James C. Adkins Award. The Section presents this award to a member of The Florida Bar who has significantly contributed to the field of appellate practice in Florida.

Since joining the NCACC in 2000, Tom has been very active in the NCACC and has served on the Executive Committee, as host of an annual meeting, chair of the vendor show committee, and chair of the program committee.

Hall will serve NCACC with full support from Florida’s current Chief Justice, the Honorable Peggy A. Quince.

“Tom Hall has served the people of the State of Florida in an exemplary fashion and NCACC has chosen wisely in naming him President,” Quince said. “He brings to that position a wealth of knowledge about the appellate process, and he will work tirelessly on behalf of the organization.” Hall is a charter member of First District Appellate American Inn of Court.

Dwight D. Opperman Speaker Practical Responses to Attacks on the Judiciary Bert Brandenburg, Executive Director, Justice at Stake

Diana Pratt-Wyatt (LA)

The NCACC proudly premiered its first annual Dwight D. Opperman Speaker during the 2008 Educational Program in Pittsburgh, Pennsylvania. Dwight D. Opperman is chairman of Key Investments, Inc. and is the former chair and CEO of West Publishing Company. It was during his time with West Publishing that Mr. Opperman fostered close friendships with appellate court clerks and promoted his belief that support staffs are essential to successful court operations. A graduate of Drake University and Drake Law School, he serves or has served on the Boards of many institutions including the Board of Trustees for Drake Law School and New York University Law School, the American Judicature Society, The Brennan Center for Justice and the National Center for State Courts. He is a founding member and Chair Emeritus of the U.S. Supreme Court Historical Society. During his long and distinguished career, Dwight Opperman has made countless contributions to our nation’s judicial system and distinguishes himself as someone who believes in the value of continuing education and its role in the effective administration of justice. The National Conference of Appellate Court Clerks is honored to call him a friend and it is through his support and generosity this program was possible.

The NCACC Dwight Opperman speaker, Bert Brandenburg, is the Executive Director of Justice at Stake. Justice at Stake is a nationwide, nonpartisan partnership of judicial, legal and citizen organizations. It’s mission is to educate the public and work for reform to keep our nation’s courts fair and impartial. Mr. Brandenburg serves on the National Ad

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HAVE YOU CONSIDERED BEING ON THE EXECUTIVE COMMITTEE FOR THE NCACC?

Jon Wheeler (FL), Chairman of the Nominating Committee

In hopes of spiking the interest of our membership in running for a seat on the Executive Committee, Amy Reitz (OH) had a great idea to solicit the input of the three current board members, whose term expire in August of 2009, Cynthia Rapp, John Olivier, and Rory Perry, on what's involved in being an Executive Committee member. Each of them have graciously responded to Amy's inquiry and those responses are provided, with permission, below. The Nominating Committee hopes this information will peak your interest in running or nominating other members to run. In January we will include the nominating forms in *The Docket*. We hope to hear from all of you in this important process of selecting outstanding leaders for our organization.

What did you enjoy most about serving on the executive committee?

I most enjoyed the opportunity to interact with my colleagues on a regular level, and to engage interesting issues about the long-term goals of the NCACC. [Rory Perry](#)

The best part of serving on the executive committee is the chance to work closely with other members of our organization. [Cynthia Rapp](#)

I like being involved in the organization and getting to better know members of the executive committee. I thought that the travel would be fun but as it turned out, schedule conflicts prevented me from attending one meeting and limited my stay at another. [John Olivier](#)

What were the biggest challenges?

The biggest challenge has been finding the time to truly understand all of the issues – by the time you get a handle on everything, your tenure on the committee is over. [Rory Perry](#)

Time. It just depends on what is happening at your court. [John Olivier](#)

What is the time commitment?

The time commitment is significant, especially if you are also serving as a committee chair. I made sure before I was nominated that the Court would support my time commitment and would support the travel costs. [Rory Perry](#)



The biggest time commitment is attendance at the 2 executive committee meetings, one in Oct/Nov and the other in Mar/Apr. As an executive committee member you are a liaison to a couple of committees and will usually be in charge of another project. The time commitment varies, some weeks no time, others it could be 5-6 hours but that is rare. Usually it is 30 minutes a day or less. [Cynthia Rapp](#)

It depends on how involved you are and where the meeting takes place. We have been working on the fund raising campaign and had a great deal of reading to do and digest. Total time includes: Annual Conference (7 days), Fall meeting (4 days), Spring meeting (4 days), other communications (4 days). These are rough estimates but total about 19 days. [John Olivier](#)

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Facts, Fiction, & Foolishness

Leslie Steen (AR)

Another conference has passed and, with each passing one, I come to the realization that some of us have been around a long time. Several of the members I started with have

retired, a few are no longer with us. As most of you know, George Carlin passed away recently, and I wanted to share some of his views on aging - none of the "Seven Words You Can't Say on Television" will be used in this column.

Do you realize that the only time in our lives when we like to get old is when we're kids? If you are under the age of 10 years old, you're so excited about aging that you think in fractions. "How old are you?" "I'm four and a half!" You're never thirty-six and a half. You're four and a half and going on five! You get into your teens, now they can't hold you back. You jump to the next number, or even a few ahead. "How old are you?" "I'm gonna be 16." You could be 13, but hey, you're gonna be 16! And then the greatest day of your life . . . you become 21. Even the word sounds like a ceremony. You BECOME 21! YEEESSSSSSSS!!!

But, then you turn 30. Oooohhh, what happened there? Makes you sound like bad milk! He TURNED; we had to throw him out. There's no fun now, you're just a sour dumpling. What's wrong? What's changed?? You BECOME 21, TURN 30, then you are PUSHING 40. Whoa!! Put on the brakes, it's all slipping away. Before you know it, you REACH 50 and your dreams are gone. But

wait!! You MAKE it to 60. You didn't think you would! So you BECOME 21, TURN 30, PUSH 40, REACH 50, and MAKE IT to 60. You've built up so much speed that you HIT 70! After that it is a day to day thing; you HIT Wednesday!

You get into your 80's and every day is a complete cycle; you HIT lunch; you TURN 4:30; you REACH bedtime, and it doesn't end there. Into the 90's, you start going backwards; I was JUST 92. Then a strange thing happens. If you make it to 100, you become a little kid again. I'm a hundred and a half! May you all make it to 100 and a half!

HOW TO STAY YOUNG. (1) Throw out the nonessential numbers. This includes age, weight, and height. Let the doctors worry about them. This is why you pay them. (2) Keep only cheerful friends. The grouches will pull you down. (3) Enjoy the simple things. (4) Laugh often, long, and loud. Laugh until you gasp for breath. (5) Tears happen. Endure, grieve, and move on. The only person with us through our entire lives is ourselves. Be ALIVE while you are alive. (6) Surround yourselves with what you love. Your home is your refuge. (7) Don't take guilt trips. Take a trip but NOT to where the guilt is. (8) Tell the people you love that you love them, at every opportunity. AND ALWAYS REMEMBER, life is not measured by the number of breaths we take, but by the moments that take our breath away.

Thank you George Carlin.

Membership,

Please let Christie Cameron, Membership Chair, (csc@sc.state.nc.us) know if there are any contacts you would suggest that she or her committee make to new or retiring Clerks or appellate court staff in your state or federal appellate court. We are always looking to include new members and retain the wisdom of our retiring members in our organization.

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Is there anything else you would like to share that may be helpful?

Serving on the executive committee has been a privilege, and I am proud to be a part of this organization. [Rory Perry](#)

By serving on the committee you really have a chance to understand what the organization is all about and how it works. [Cynthia Rapp](#)

It is a great organization and being involved only adds to the value you get from being a member.

[John Olivier](#)

FROM THE NOMINATING COMMITTEE

Jon Wheeler (FL)

The positions for nomination at the 2009 Annual Conference in Sacramento, California are:

1. Vice President, currently held by William A. Decicco (who automatically becomes President-Elect next year) (DC)
2. Treasurer, currently held by Marilyn May (AK)
3. Three Executive Committee positions, currently held by John Oliver (LA), Rory Perry (WV) and Cynthia Rapp (DC)

Nomination forms will be included in the January 2009 edition of *The Docket*. However, now is the time to begin thinking about potential nominees you believe should lead this outstanding organization in the future, including the possibility of self-nomination.

The Nominating Committee relies heavily on names suggested by NCACC members. Now is the time to start talking, encouraging, persuading and arm twisting those who you believe show leadership attributes that will contribute to this organization. Don't be shy – there is nothing wrong with self-nomination because no one knows your desires and abilities better than you.

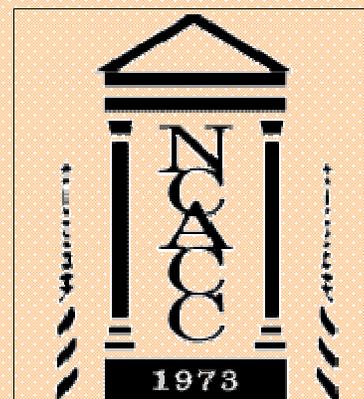
If you have questions or suggestions, please contact Nominating Committee Chair , Jon Wheeler, at 850-488-6151 ext. 111 or by e-mail at wheelerj@ldca.org. You may also contact other members of the Nominating Committee who are: Les Steen, Mike Yerly, Tia Milton, Amy Reitz and Trish Harrington.

Need Information?

<http://www.appellatecourtclerks.org/>

- * Committee Assignments
- * Executive Committee
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Contact Rory Perry at rory.perry@courtsvw.gov for membership login.



Stress and Wellness Session with Dr. Isaiah Zimmerman

Rex Renk (MT)

The foremost authority on appellate collegial relations in the United States, Dr. Isaiah Zimmerman, combined his vast expertise with direct research culled from interviews with over thirty appellate court clerks from across the country to present a tailored, insightful, entertaining, and educational session on stress and wellness at the 35th annual meeting of the National Conference of Appellate Court Clerks in Pittsburgh.

In assessing stress and its impact on our daily lives, Dr. Zimmerman emphasized the inter-connectedness of both the psychological and physiological, when attempting to understand stress. Zimmerman explained that in human beings (like in most animals) both mind and body react in concert to stressors we encounter. In humans, the brain experiences a surge in levels of adrenaline and testosterone for example, while the heart increases blood flow and our sensory levels heighten. This “hard-wired” physiological response is meant to be a short lived, natural and healthy reaction to a given stressor. Where stress begins to be problematic for humans, Dr. Zimmerman pointed out, is the point where the natural reactions to stressors are not allowed to return to normal levels. The key to dealing with stress is therefore, to identify ways to get the mind/body reactions to return to normal.

From the psychological side, issues with anger control also result from failed attempts to deal with stress, Dr. Zimmerman explained. Since the anger process most often results from a perceived loss of control and dignity, it is very important to recognize when this hard-wired anger response is beginning within yourself, stated Dr. Zimmerman. Anger, he offered, can have both short and long term impacts on health, especially in the area of heart function, where anger can ultimately lead to heart attack and heart failure. Add to this the emotional and psychological toll that stress and anger can have on oneself and those around us, and one can see the obvious necessity of personal stress and anger management.

Dr. Zimmerman observed that, as a group, appellate court clerks are in a position to experience stress on a

regular basis. For instance, appellate clerks carry a high-level responsibility for others and their work environments exhibit significant demand for production and timeliness in combination with moderate to little control over workloads. Add to this recipe for stress, the adversarial nature and societal importance of contested legal cases, and the need for personal stress management in these environments becomes paramount.

To that end, Dr. Zimmerman offered several practical stress management tools to combat chronic stress which allows the body to return to a normal healthy state after experiencing stress. For example, Dr. Zimmerman emphasized taking arbitrary, short breaks throughout the day, stating that seven minutes is all that is required to receive a benefit. While “stressed out” people often eat lunch at work or never leave the building or delay vacations, a person managing their stress successfully would build breaks into their daily routines and stick to vacation schedules even if work circumstances change. Dr. Zimmerman also promoted using fantasy and sharing of your stressful experiences with a “buddy” clerk as means to effectively relieve stress.

Lastly, Dr. Zimmerman further explained the importance of decompressing and transitioning from work to home life each day and getting proper sleep. He offered techniques such as establishing symbolic closures on your work day by giving yourself an “atta boy” at the end of the day for example, and leaving your office with dignity. He further encouraged pursuing non-work-related hobbies and religious and/or spiritual endeavors as well as making sufficient time for adequate sleep.

As clearly set forth by Dr. Zimmerman, the application of all of these steps, routines, recognitions, and practices will help us manage our professional and personal lives, and allow us to function better as healthy, balanced, productive managers in our respective courts and judicial systems. The conference thanks Dr. Zimmerman for his outstanding presentation.

Ethics and Technology

Judy Pacheco (WY)

The Honorable Daniel J. Crothers of the North Dakota Supreme Court presented the session on Ethics and Technology. We all understand the necessity for confidentiality regarding court decisions prior to publication, but we may not be aware of the possible inadvertent breaches of confidentiality of court business through the use of technology. The use of email may not be unethical, but precautions should be taken to ensure confidentiality of email since it is susceptible to interception if sent through a commercial server, could be saved and read by system administrators, and is easily forwarded by recipients. IT staff should be trained on confidentiality issues. Justice Crothers gave good tips on best practices when sending email, including filling out the "To" line last, beware of, or don't use, "auto complete," and open any attachment to verify it is the correct one before sending. He also suggested not using hotel or other public computers for business unless you absolutely must because they are not secure. If you must use one, be sure to close out all programs and use tools to clear your history, then reboot the computer.

Wireless devices, including Blackberries, also pose security and confidentiality risks. Home wireless computers can be wide open to hackers who could expose your entire computer network to unauthorized users. Metadata, or data that provides information about other data, may include confidential information such as an author, changes, comments by staff attorneys, and other information created in the processing of documents, including different versions of court opinions. You should turn off "track changes" and "undo" history. You should not transmit opinions to publishers, or anyone else, that have not been put in PDF format, which removes the metadata.

Email communication may create ex parte communications problems for judges and staff, and they should be aware that the same considerations should be given to electronic information as to paper or telephone communications. If a party emails a judge, the judge should stop reading immediately, print the email and place in the court record under seal, notify all other parties with a copy, and then determine whether it requires recusal, admonition to the sender, or other remedy.

We should all become better informed about the potential hazards and weak spots in our technological systems and communications to ensure confidentiality and avoid any ethical questions regarding our court business.

Record Retention in the Electronic Age

Judy Pacheco (WY)

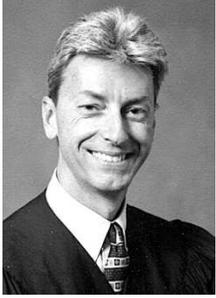
James E. McMillan from the National Center for State Courts presented this break out session on record retention, beginning with the definition of a record as "recorded information that has value." The three basic formats for archival or permanent retention are paper, microform, and digital. There are pros and cons to each format.

Paper allows for permanent retention, is generally still considered the official record, and is eye readable. Paper may also present dangers, especially in moving to a new facility, in that it may infect a building with mold. It may also be costly for storage. Microforms, or micrographics, including film and fiche, also have the benefit of being potentially permanent, have international standards, and there is no need to migrate further. However, indexing, quality control, and speed of retrieval can be problematic. Digital formats enjoy speed of retrieval, multimedia content, and take less space. However, one of the biggest drawbacks to electronic record retention is the need for migration, changing technology, and quality control.

The realities of the electronic age and record keeping are that the amount of data in all formats is growing, and in some courts the electronic documents are the originals and the paper format is not. Sealing and expunging documents is a problem and privacy and security concerns are growing. It is difficult to mark information so that it isn't available to the public through Google, etc. The most troublesome aspect is the "obsolescence factor." Digital formats have finite life spans, most software becomes obsolete, changes to formats corrupt files, and it is unreasonable to presume that we could continually move and update the data to new and constantly changing formats and machines.

This is a subject that we are all facing, but there wasn't enough time in a 30 minute break-out session to really discuss the issues in depth. My deputy recently attended a seminar put on by the National Archives and Records Administration and gained a great deal of useful information there. That presenter stated, as has my own State Historical Records Advisory Board, that paper and microfilm are still the only truly reliable archival records. Perhaps we could invite a presenter from the National Archives to a future conference for more comprehensive discussion and training regarding what is one of our primary duties – record keeping in the electronic age.





Dealing Effectively with Angry and Emotional People

was an appropriate and fitting subject for the conference that was presented by the Honorable Scott Brownell of Brandenton, FL. As court employees and public servants, we deal with these types of people all the time, and Judge Brownell gave us some expert guidance and suggestions on how to deal with these uncomfortable situations that are a very real part of our jobs.

First he built a foundation by explaining anger and the effects it has on people and told us some things to avoid which he called “roadblocks.” The judge explained the bigger the anger, the smaller the brain, and the trick to overcoming anger is to make the brain shrink. This is done when the angry person’s feeling are validated.

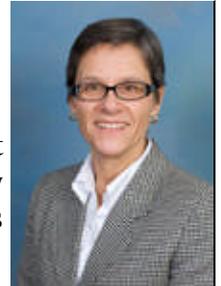
After the foundation was laid, Judge Brownell began role-playing sessions with our own members, who showed off the skills that led them to become clerks rather than actors. This was an active session that demonstrated how to deal with angry and emotional people in difficult situations. It not only allowed us to learn how to do it, but how not to do it. In all, Judge Brownell was a knowledgeable and entertaining presenter of a significant problem we face as clerks

Leslie Steen (AR)

ADA & Accessibility Breakout Session

Rex Renk (MT)

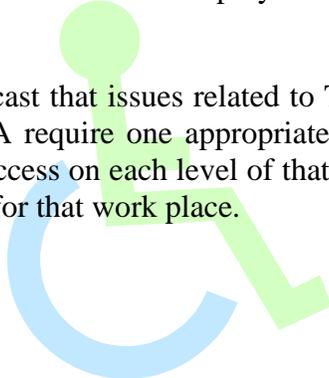
During this thirty-minute breakout session, Maria Greco Danaher, an ADA specialist with the Pittsburgh, PA, firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., primarily used a question and answer format to explore some of the current topics and identify trends related to the American with Disabilities Act since it was passed into law in 1990.



In responding to questions, Ms. Danaher explained that much of the case law developed since 1990 deals with Title I, and more specifically, with employment and eligibility for ADA. She went on to state the Title II and III are now being revised, and at the time of the our meeting, the U.S. Senate was working on a “compromise bill” where burden of proof would fall to the claimant. As to the revisions, she put forth there was no strong indication whether or not the bill would be completed and passed in this term.

In the brief time remaining, Ms. Danaher gave an overview of a case involving Wal-Mart Corporation from which she concluded that an employer will need to engage a disabled employee to determine if the employer can aid in accommodating the employee’s disability. She gave as an example, a scenario whereby an employer could give a list of duties and ask the employee if there is any task on this list that would be a problem for the employee to perform.

Finally, Ms. Danaher forecast that issues related to Title III should be surfacing in the next years. As an example, not only would ADA require one appropriately accessible entrance and exit to a building, but would require adequate and like access on each level of that building, or perhaps extends accessibility requirements to a nearby parking garage for that work place.





Lawyer Ethics and Technology: Telephone Confidentiality

By Justice Daniel J. Crothers, North Dakota Supreme Court
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This is the second in a series of articles about the lawyer's ethical use of technology. The first article discussed using email while preserving the lawyer's duty of confidentiality and preserving the attorney-client privilege. This piece covers confidentiality issues arising with the use of telephones such as cellular and wireless a/k/a portable. The scope does not include waiver of privilege due to conduct of the communication in the presence of a third party.¹

Telephones

Nearly all lawyers use telephones in their representation of clients. Not all are the same telephones used by our professional forefathers 50—or even 15—years ago. That means today's lawyers are using traditional hardwired landlines, wireless portable phones connected to a landline, cellular telephones, and perhaps even voice over internet protocol (VoIP). Use of these technologies gives rise to a host of ethical concerns.

Lawyers have an affirmative duty to protect their current and former clients' confidential information.² "A fundamental principle in the client-lawyer relationship is that the lawyer must not reveal information relating to the representation without the client's consent."³ The lawyer's duty of confidentiality extends to confidential information transmitted to, from, and about their client while using a telephone.

Absent unusual circumstances, lawyers can use traditional hardwired telephones to discuss confidential client information and not waive the attorney-client privilege.⁴ However, questions come to life about whether lawyers can use the various types of wireless technology and not risk waiving privileges or risk violating Rule 1.6.

The State Bar Association of North Dakota ("SBAND") Ethics Committee has not been called upon to answer whether lawyers can ethically use portable wireless, cellular, VoIP or other types of non-traditional telecommunications device. Therefore, instruction must be taken from other jurisdictions.

The Minnesota Lawyer's Professional Responsibility Board concluded lawyers may ethically use wireless and cellular telephones under some circumstances.⁵ The

Board noted, "All communication carries with it some such risk, for example by eavesdropping, wiretapping, or theft of mail."⁶ "The committee believes absolute security is not required, and that the use of new technology is subject to the same analysis as the use of more traditional methods of communication."⁷

The Minnesota Board determined "[d]igital cordless and cellular telephones may be used by a lawyer to transmit and receive confidential client information when used within a digital service area."⁸ The Minnesota Board also decided, "Communications by analog cordless or cellular phones generally are considered insecure; they may be intercepted intentionally or inadvertently with unsophisticated and readily available equipment, such as other similar phones or scanners."⁹

The Minnesota Board also cautioned that "[a]nalog cordless and cellular telephones may be used by a lawyer to transmit and receive confidential client information only if the lawyer obtains client consent after consultation with the client about the confidentiality risks associated with inadvertent interception."¹⁰

Lawyers should note that analog cordless or portable telephones like those used in homes and in some offices are still widely available today. Therefore, the Board's warning in 1991 continue to apply today. However, by midnight on February 18, 2008 telecommunications companies were to have ceased transmitting analog cellular calls. As a result, all cellular communications after that date should be all digital and should fall outside the 'danger zone' described by the Board.¹¹

The Minnesota Board said "When the lawyer knows, or reasonably should know, that a client or other person is using an insecure means, such as an analog cordless or cellular telephone, to communicate with the lawyer about confidential client information, the lawyer shall consult with the client about the confidentiality risks associated with inadvertent interception and obtain the client's consent."¹²

The Minnesota Board concluded by reminding us that "[t]he precautions to be taken by a lawyer depend on the circumstances, including the sensitivity of the information, the manner of communication, the apparent risks of interception or unintended disclosure, and the client's wishes."¹³

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A majority of jurisdictions agree with Minnesota's conclusions.¹⁴ However, the approved use of mobile telephones is not uniform. Iowa, for instance, takes a more conservative approach.

While allowing the use of portable and cellular phones, Iowa cautioned, "Communication by cellular, mobile or portable telephones is transmitted by radio and is open to public reception."¹⁵ Because of the danger of public reception, "[i]t is the opinion of the committee that [a] lawyer using cellular, mobile or portable telephone shall inform the other party thereof and that any matter communicated in this manner is not confidential and also may result in the loss of the attorney-client privilege."¹⁶ The Iowa Board also requires that "[i]f the lawyer is aware that the other party is using such means of communication the same caveat shall be given by the lawyer."¹⁷

The Iowa opinion was issued when few digital cellular or portable telephones were in use. The advent of digital-only cellular communications and the widespread availability of portable phones likely mean digital transmission is on par with traditional landline telephones. If so, following the precautions contained in Minnesota's Opinion No. 19 should satisfy Ethics Rule 1.6 and should preserve the attorney-client privilege in normal circumstances.

Any discussion of telephones would not be complete without some mention of the frontier—in this case VoIP technology. VoIP is described as "[a] protocol for transmitting the human voice in digital form over the Internet or other networks as an audio stream, instead of using traditional telephone lines. VoIP uses the Internet Protocol (IP), but is not limited to communication by computer—even phone-to-phone communication can be conducted using this technology."¹⁸

The ubiquitous Wikipedia explains "VoIP is often used abstractly to refer to the actual transmission of voice (rather than the protocol implementing it). This latter concept is also referred to as IP telephony, Internet telephony, voice over broadband, broadband telephony, and broadband phone."¹⁹ Wikipedia editors caution that "[m]any consumer VoIP solutions do not support encryption yet, although having a secure phone is much easier to implement with VoIP than traditional phone lines. As a result, it is relatively easy to eavesdrop on VoIP calls and even change their content."²⁰

Assuming without confirming that VoIP calls are difficult to encrypt and easy to intercept, lawyers are cautioned to not presume this type of client communications will be privileged. Therefore, lawyers or clients using VoIP should heed the warnings of states like Iowa and Minnesota

and should either forego using such telephones with clients or, at a minimum, should warn clients that use of VoIP communications risks waiver of the privilege and obtain their consent before discussing confidential matters.

I close this article like the last, emphasizing that all lawyers utilizing technology in their representation of clients have an obligation to sufficiently understand technology so they may comply with their ethical obligations. In this case, different modes of telecommunications present different risks of inadvertently exposing confidential client information to third parties. Lawyers therefore must exercise caution and use their informed professional judgment when using telephones to conduct their client's business.

¹See Thompson v. First State Bank of Fertile, 709 N.W.2d 307, 313 (Minn. App. 2006) (privilege waived when third party was present while client conferred by telephone with attorney).

² N.D.R. Prof. Conduct 1.6 ("A lawyer shall not reveal information relating to the representation of the client unless the client consents.").

³N.D.R. Prof. Conduct 1.6 cmt.

⁴See Charles Woods Television Corp. v. Capital Cities/ABC, Inc., 869 F.2d 1155, 1161 (8th Cir. 1989) (client did not waive privilege by using telephone to consult with outside counsel).

⁵ Minnesota Lawyer Prof. Resp. Bd. Opinion No. 19, (January 22, 1999) available at <http://www.mncourts.gov/lprb/opinions.html#o19> [hereinafter Minn. Op. No. 19].

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id. See also McNeil and Henry, Arizona Attorney "Confidential Communications", (October, 1997), available at <http://www.myazbar.org/azattorney/archives/oct97/10-97a3.htm> (accessed July 8, 2008), where the authors provide an explanation of the technology behind portable and cellular telephones, and explain that, before 1994, these telephones received different treatment under the Federal Electronic Communications Privacy Act.

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¹⁰Minn. Op. No. 19.

¹¹ See FCC Consumer Advisory “Analog-to-Digital Transition for Wireless Telephone Service” available at <http://www.fcc.gov/cgb/consumerfacts/analogcellphone.html>

¹² Id.

¹³ Id.

¹⁴ Id. (“This opinion reflects the prevalent view of other states and technology experts, that communications by facsimile, e-mail, and digital cordless or cellular phones, like those by mail and conventional corded telephone, generally are considered secure; their interception involves intent, expertise, and violation of federal law.”).

¹⁵ Iowa Supreme Court Board of Professional Ethics and Conduct, Opinion No. 90-44, May 24, 1991 [hereinafter Iowa Op. No. 90-44].

¹⁶ Id. Other jurisdictions agree with this approach. See e.g. New Hampshire Ethics Advisory Op. 1991-92/6.

¹⁷ Iowa Op. No. 90-44.

¹⁸ The American Heritage Abbreviations Dictionary (3rd ed. 2005), available at <http://dictionary.reference.com/browse/voip> (accessed: July 8, 2008).

¹⁹ Wikipedia <http://en.wikipedia.org/wiki/VoIP> (accessed: July 8, 2008).

²⁰ Id. (citing Examining Two Well-Known Attacks on VoIP, available at http://www.circleid.com/posts/examining_two_well_known_attacks_on_voip1/ (accessed: July 8, 2008).

(Continued from page 6)

Hoc Advisory Committee on Judicial Campaign Conduct and on the Board of Directors of the National Institute on Money in State Politics. He holds a J.D. and B.A. from the University of Virginia.

There is no doubt that some partisans and special interests are attacking the courts that protect our most basic rights. Newspapers across the country are full of such reports. The courts are a vital part of our democracy and provide essential balance in our government. To protect access to justice for all and our rights under the Constitution, we must defend fair and impartial courts from political interference and attack. Politicians cannot be allowed to limit access to justice by restricting or deciding what cases the courts can and cannot hear. Courts exist to protect the rights of all Americans and to uphold our Constitution ensuring everyone their case will be heard. We cannot allow political intimidation of judges to undermine our system of fair and impartial courts. The courts are accountable to the Constitution and Bill of Rights and not to politicians or special interest groups

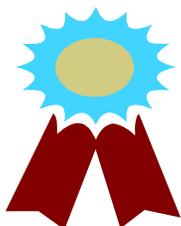
Mr. Brandenburg noted that Justice at Stake studies show that core American values underlie opinions of the judiciary across the nation: fairness, responsibility, and preservation of one’s rights. These values manifest themselves in a number of ways in the opinion research which was published by Justice at Stake in “*Speak to American Values, A Handbook for Winning the Debate for Fair and Impartial Courts*”:

- A strong belief in the courts’ role in protecting individual rights by upholding the Constitution;
- The priority of guaranteeing access to justice for all Americans;
- Desire for the courts to be fair and impartial, which means free from political influence or pressure once on the bench; and
- The need for transparency and accountability to ensure judges follow the law and Constitution and not their own personal beliefs.

The challenge for court advocates is to consistently communicate relevant examples of the courts honoring these positive values listed above and at the same time show how opponents would undermine those core beliefs. Americans need to be reminded that judicial independence matters and there are political threats to independent courts. Mr. Brandenburg closed by stating it is the responsibility of all of us to rebut attacks on judicial independence by reminding people why it is important to care about strong courts that protect their individual rights and quoted the late Chief Justice William Rehnquist who referred to our independent judiciary as one of the “crown jewels” of our system of government.

YOUR NOMINATIONS ARE REQUESTED BY THE AWARDS COMMITTEE

The 2008-2009 Awards Committee asks to begin considering and submitting your nominations for the 2009 **J. O. Sentell Award** and the **Morgan Thomas Award**. The deadline for submission for the nominations is February 13, 2009. The awards will be presented at the 2009 NCACC Annual Conference to be held in Sacramento, California.



The **J. O. Sentell Award** is given to a member of the NCACC who has contributed substantially to the objectives of the conference, including improving skill and knowledge through conferences, seminars or other educational programs; promoting and improving the contribution of appellate court clerk offices within the area of effective court administration; and collecting and dissemination of information and ideas concerning the operation and improvement of the offices of appellate court clerks. (See Article II of the Bylaws.)

This award not only honors the recipient, it also pays homage to a founding member, James Oscar Sentell, Jr. He was born in Alabama in 1909 and practiced law there until 1967, when he was appointed deputy clerk of the Alabama Supreme Court. A year later he became clerk of that court, serving until 1982. He was first president of the NCACC.

Past recipients of the J. O. Sentell Award:

<u>RECIPIENT</u>	<u>COURT</u>	<u>CITY</u>	<u>CONFERENCE YEAR</u>
J. O. Sentell	Alabama Supreme Court	Monterey, CA	1979
Ronald L. Dzierbicki	Michigan Court of Appeals	Orlando, FL	1980
Wilfried J. Kramer	California Court of Appeals Third District	Jackson Hole, WY	1981
Morgan Thomas	Georgia Court of Appeals	Boston, MA	1982
Lewis Carter	Kansas Supreme Court and Court of Appeals	New Orleans, LA	1983
Mary Ann Hopkins- Young	Arizona Supreme Court	Seattle, WA	1984
Alexander L. Stevas	Supreme Court of United States	Lexington, KY	1985

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Luella Dunn	North Dakota Supreme Court and Court of Appeals	Austin, TX	1986
Jean Kennett	Supreme Judicial Court Commonwealth of Massachusetts	Hartford, CT	1987
John Scott	Kentucky Supreme Court and Court of Appeals	Helena, MT	1988
Joline Williams	Georgia Supreme Court	Charleston, SC	1989
Frans LaBranche	Louisiana Supreme Court	Tucson, AZ	1990
Jill Engel	South Dakota Supreme Court	St Louis, MO	1991
Rema Mims	South Carolina Court Appeals	Washington, D.C.	1992
Steve Townsend	New Jersey Supreme Court	Nashville, TN	1993
Peggy Stevens McGraw	Missouri Court of Appeals	San Diego, CA	1994
Kevin Swanson	California Court of Appeal Fifth District	San Antonio, TX	1995
Glen D. Clark	Arizona Court of Appeals, Division One	Des Moines, IA	1996
William S. Fulton, Jr.	U.S. Army Court of Criminal Appeals, Retired	Point Clear, AL	1997
Ella Williams	Michigan Court of Appeals, Retired	Skamania, WA	1998
Joyce A. Goldsmith	Arizona Court of Appeals, Division Two	Portsmouth, NH	1999
John H. Wilkerson, Jr.	Alabama Court of Appeals	Savannah, GA	2000
R. Keith Richardson	Iowa Supreme Court and Court of Appeals	Newport Beach, CA	2001
Marilyn L. Graves	Wisconsin Supreme Court and Court of Appeals	Minneapolis, MN	2002
David B. Beach	Supreme Court of Virginia	Asheville, NC	2003
Penny L. Miller	North Dakota Supreme Court	Anchorage, AK	2004

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Kenneth J. DeBlanc	Louisiana Court of Appeals, Third Circuit (Retired)	Key West, FL	2005
Joseph Lane	California Court of Appeal Second Appellate District	Ft. Worth, TX	2006
Sherie Welch	Georgia Supreme Court	New Orleans, LA	2007
Leslie D. Gradet	Maryland Court of Special Appeals	Pittsburgh, PA	2008



The **Morgan Thomas Award** is for recognition of an individual who is not a member of the NCACC and who has made distinguished contributions to enhancing professionalism and supporting the goals of the NCACC as a body and of its members individually. Morgan Thomas was the Clerk of the Supreme Court of Georgia and was one of the early Presidents of the conference. He was known for his wit and dedication to the conference.

Past recipients of the **Morgan Thomas Award**:

1991	Charles Nelson	West Publishing Co.
1992	Justice James Duke Cameron Justice Harry A. Spencer Justice William A. Grimes	(AZ) Retired, (NE) Retired, and (NH) Retired
1995	Sandra M. Roos	American Bar Association
1996	Jane Sanchez Lew Tippett	Bureau of National Affairs Lexis/Nexis
1997	Michael J. Whetstone	West Publishing Co.
2003	Dwight D. Opperman	Former Chief Executive Officer West Publishing Co.
2005	Brenda Stephens	Administrative Assistant Louisiana Court of Appeals, 2 nd Cir.
2007	Linda Watson	Legal Administrative Specialist Louisiana Court of Appeals, 3 rd Cir.

Please complete and return the Awards Committee Nomination Form by February 13, 2009.

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