

# JNASJE News

Vol. 8 No. 4

Winter 1993

## Defining Judicial Professionalism for Purposes of Continuing Education

*Richard Reaves*

### Introduction

Professional practice involves exercise of informed judgment in applying decisively a sophisticated body of knowledge to vital human affairs.

As society grows more complex, classroom instruction alone becomes less satisfactory for preparing professionals. In this respect, judging is no different from other professions. For American judges, moreover, a regimen of classroom preparatory instruction has never existed. Service at the bar has been the teacher.

The breadth of experience in law brought to judging by new judges seems less substantial today, as membership on the state court bench increases both in numbers and youthfulness. While use of courts grows more commonplace and the variety of court services expands, continuing judicial educational activities assume greater importance for judges charged with resolving an ever-expanding array of conflicts.

Professionals learn most of what they need to know directly from their own experience, from which they pick up both the good and the flawed of vocational practice.



Continuing education, therefore, often must counteract negative patterns of conduct acquired through daily work. Professionals learn best what they must retain through consultations, conversations, observations, and other interactions with carefully selected peers, who've logged some significantly different tenure in service. The more closely that formally tailored peer encounters approximate, mimic, represent, and reinforce actual practice, especially model methods, the better a professional learns high-quality techniques. Numerous adult-learning studies corroborate these assertions, which explains why reshaping professional practice primarily

through continuing education is so problematic.

Despite the difficulty in improving day-to-day professional practice through continuing education, this medium has been chosen repeatedly as a primary avenue for vocational advancement. Today, however, professionalism itself, especially in lawyering and judging, is a topic of concern and a target for change. Being clear on what professionalism means as well as how it must be improved, poses significant dilemmas for educators. This essay attempts to shed light on charting and resolving these questions. It asserts that profes-

*continued on page two*

*Richard Reaves, former NASJE president, is executive director of the Institute of Continuing Judicial Education, School of Law, The University of Georgia.—ED*

## PRESIDENT'S COLUMN

Larry Stone



The 1993 NASJE annual conference was the largest ever. Over 100 judicial educators from the United States, Canada, New Zealand, and Pakistan participated in the program. On behalf of the board of directors, I wish to thank Maureen Conner and the education committee for developing an outstanding program; the faculty for their excellent presentations; and Michael Runner and the CLE staff for handling the arrangements in San Francisco. Special thanks to Michael for hosting the preconference get-together at his home. It was a thoroughly enjoyable evening.

For those of you who were unable to attend the conference, I am pleased to report that the proposed amendments to the bylaws (discussed here in the last edition) passed without opposition (see article on page 11). This was an important step in our ongoing strategic planning process and enhances our efforts to maintain NASJE's professional image. I thank all of you for your support in this endeavor. I especially appreciate the efforts of Dan Schenk and the bylaws committee in making sense of the board's directives and incorporating them into the proposed amendments. This was a major

*continued on page five*

## Defining Judicial Professionalism, *continued*

sionalism encompasses more than behavior related to personal demeanor, disciplinary purity, institutional function, societal role, traditional virtues, or conventional wisdom.

### Personal Demeanor and Professionalism

The Georgia Supreme Court's "Aspirational Statement on Professionalism" cites commercialization and loss of community—venality and diminishing civility—as indicators of declining professionalism in the practice of law. All-too-frequent stories of rudeness between attorneys, along with similar accounts of preoccupation with the financial rewards of law practice, reinforce the court's conclusion that lawyer professionalism is steadily diminishing. However, this statement narrowly defines legal professionalism from a negative perspective of two specific unprofessional behaviors.

Extensive use of interrogatories, motions to produce documents or real evidence, depositions, and other costly discovery vehicles; reluctance to take part in pro bono legal services; employment of hourly billing rather than fixed fees; coercively timed filing of emergency petitions; redundant use of expensive expert and other opinion testimony; resistance to employing an expert capable of resolving a question, but instead throwing the matter to a jury for a decision based not on fact but on artful argument; litigation to acquire an out-of-court financial settlement rather than to vindicate a claim of legal right; procedural sleight-of-hand to sustain a client's position, without regard to the whole truth of representations made to the court; offers to engage in physical combat with opposing counsel or others; conduct tactically designed to aggravate unfriendly witnesses, attorneys, or other parties, rather than focusing on the merits of the legal issues or the facts in the case; seeking decisions that play on biases of the presiding judge rather than to the court's duties or obligations as directed by law; nonconstructive

criticism of collegial measures aimed at improving the image or the practice of the profession—every one of these complaints has been cited at one time or another as evidence of the decline in professionalism among today's lawyers. That judges, somehow, have permitted these things implies a corresponding decline in judicial professionalism. Many judges reply, however, that these lawyer shortcomings operate beyond any scope of proper judicial purview. This difference of viewpoints reveals the dilemma confronted by contemporary judicial educators.

Today, lawyers and judges are asked to critique *all* the circumstances that are taken for granted in their work with one another. Under the conventional wisdom, boorishness and greed justify no conduct claiming to be professional. But such wouls do not fully encompass all the accreted shortcomings in professionalism suffered by the justice system. Restoring common courtesy and some politically correct attitude toward compensation is not the only end of heightening legal professionalism.

The primary compensations of lawyering, as affirmed by the Georgia Supreme Court, are "the internal reward of service, craft and character," rather than the "external reward of financial gain." Assuredly, these internal rewards could be made more meaningful through apt illustrations. Nevertheless, these rewards might be the same for judges—service, craft, character. While judicial service lacks the financial gain to which some attorneys have grown accustomed, it does afford the officeholder an income and retirement pension far in excess of what the average citizen enjoys. Yet, financial gain does not present judges with the same incentives for unprofessional conduct it affords lawyers.

Reminding people to "do well" or to "set a good example" is often seen as the sole message in teaching professionalism, for continuing legal and continuing judicial education

*continued on page seven*

# 1993 Annual Conference Is Largest Ever

The 1993 NASJE annual conference, which was held last October in San Francisco, involved the most participants yet—over 100 registrants, including four foreign guests, participated in the three-and-a-half-day event.

The NASJE Education Committee, chaired by Maureen Conner, planned another exceptional education program that won rave reviews from participants (see accompanying articles). CJER staff provided an outstanding venue for the program

as well as delightful recreational and culinary diversions for the nonlearning hours.

At the business meeting, several important bylaw changes, discussed on page 11 and in Larry Stone's President's Column on the facing page, were approved.

The annual NASJE banquet, held on Monday night, promised to be an eight-course dinner at a Chinatown restaurant; however, no one could be found who counted fewer than 12 separate "courses," thanks to

Virginia Chang's excellent negotiations." And no one complained that they were "still hungry" an hour later. Fortunately, the restaurant was a few blocks from the host hotel, which permitted all to claim participation in a "funwalk"—in this case doubling as therapy for extended educators' waistlines.

In all, it was an enjoyable and edifying conference that will be hard to beat when NASJE meets in Philadelphia in 1994. ■

## *Distinguished Guests Address NASJE Conference*

Between educational sessions three speakers discussed the actions of their organizations and the potential for increased interactions with NASJE. First, Hon. John F. Daffron, vice-chair of the State Justice Institute, reviewed the history and mission of SJI. Judge Daffron outlined how SJI allocated its FY93 funds and then turned to its plans for 1994. Following congressional allocation, Daffron expects the institute to have \$13.5 million available for grants next year. Highlights for 1994 would include

- \$350,000 for in-state curriculum implementation grants (whereby states can ask for up to \$20,000 to reproduce a preexisting SJI-funded model program). The figure represents a 40 percent increase from 1993 when 20 states received such funds. Furthermore, Daffron pledged that SJI would respond within 45 days of request for these funds with a "yes or no" answer.
- \$250,000 for scholarships for out-of-state programs.
- Continued encouragement of partnerships between education providers, national or otherwise.

Judge Daffron then donned his "ABA hat" and called for further collaboration between NASJE and ABA's Judicial Administration Division, particularly with the Conference of State Trial Judges.

During Monday's group lunch, Denis J. Hauptly, director, judicial education division, of the Federal Judicial Center, outlined the twin missions of FJC—research and education. With a budget of \$18 million and a staff of 145, FJC trains 1,600 judges, as well as some staff attorneys and court defenders. After describing some of FJC's special programming, Hauptly noted areas of potential cooperation between FJC and NASJE, including

- the ongoing state-federal judicial conferences;

- FJC publications being made available to NASJE through the SJI-funded JERITT project;
- the financing balance between national and state education programs.

Hauptly then noted that FJC is exploring the potential of cable TV as an education medium. He pointed to the life and medicine updates that are now produced for cable, noting that similar programming could provide law updates.

Judge Louis E. Condon spoke of past and continuing interactions of the ABA's Conference of Special Court Judges with NASJE. Judge Condon, who also addressed the NASJE conference in Charleston, expressed the desire to strengthen ties between the organizations. ■

## Membership Information

To receive NASJE membership information, contact Jane Tanner, chair, NASJE Membership Committee, Institute of Continuing Judicial Education, School of Law, University of Georgia, Athens, GA 30602, (706/542-7401). ■

# NASJE Committees Report on '93 Activities

The standing and special NASJE committees outlined activities and progress during the annual NASJE business meeting in San Francisco. Highlights from the committee reports follow.

The education committee, through JERITT, will undertake a needs assessment of state judicial educators during 1994. The findings from the needs assessment will form the basis for the education committee's planning for annual conference education programs. So, please participate.

Tony Fisser reported that the *Principles and Standards of Continuing Judicial Education*, published in 1992, continue to receive support. Besides endorsements from the Conference of Chief Justices and the Conference of State Trial Judges, Tony noted that several states, including New Hampshire, Georgia, and Indiana, have adopted the standards. The standards committee would like to revise and expand the standards as well as get more support for them from the states.

Richard Reaves is now directing the SJI-funded Judicial Education/Adult Education Project (JEAEP) and inquiries should be directed to him. JEAEP continues to offer judicial educators technical assistance targeting a special concern or project. Since its inception JEAEP has provided 58 consultations to 30 organizations in 25 states.

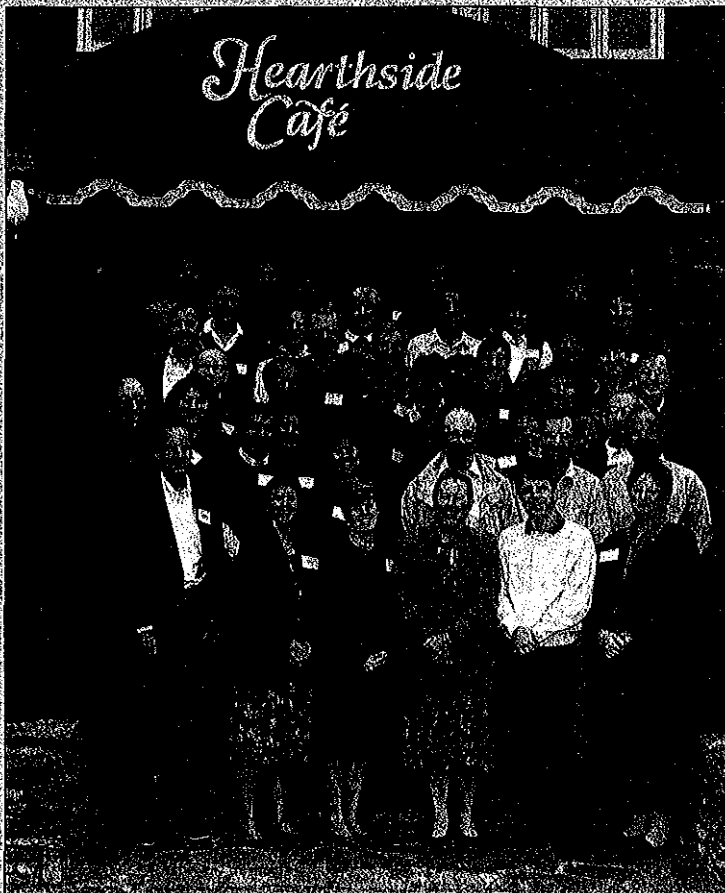
The nominating committee processed 15 new members' applications since October 1992. ■

## Conference Moved to Philadelphia

Although Cambridge, Massachusetts, was voted the site for the 1994 NASJE annual conference, logistical concerns prompted the NASJE board to relocate the conference to Philadelphia. Bunny Baum Cantor, Pennsylvania's judicial educator, will assist the education committee with on-site conference planning. So make your plans now to attend, and, as a bonus, see beautiful, historic Philadelphia. ■

## Newsletter Grant Extended Three More Years

The State Justice Institute has notified Larry Stone that it plans to continue funding the *NASJE News* subject to an enactment of an SJI appropriation of at least \$13 million. In his notification letter SJI's executive director, David Tevelin, stated that "the [SJI] Board was compelled to be even more selective than usual in making grant awards. It sought to support only those projects that would provide the greatest benefits to the State courts." ■



These 42 smiling faces took part in the April 1993 Leadership Institute at Appalachian State University in Boone, North Carolina. They are the faculty and representatives from California, Maine, Missouri, Ohio, Oregon, and Vermont. The six states invited to send teams to the 1994 Leadership Institute are Alaska, Hawaii, Kansas, Montana, Pennsylvania, and Tennessee.

## Stone Describes NASJE's Progress in 1993

During the annual conference business meeting, Larry Stone delivered the president's report in which he outlined the association's 1993 achievements and 1994 goals. Larry noted four broad areas in which NASJE sought progress during 1993.

First, NASJE worked to improve relations with other national organizations. NASJE has offered to help both the Conference of Chief Justices and the Conference of State Court Administrators plan their educational conferences. Besides the ongoing ties with the National Judicial College, the National Council of Juvenile and Family Court Judges, and the National

Center for State Courts, NASJE is exploring relations with the ABA's Conference of State Trial Judges (Larry Stone spoke at their summer meeting), Conference of Special Court Judges (Judge Louis Condon has spoken at the last two NASJE meetings), and Conference of Appellate Court Judges (Dee Beranek assisted their education program development).

Second, though SJI did not fund the NASJE grant application to develop education standards for court support personnel, NASJE plans to resubmit the proposed project.

Third, the association involved more of its members and more of its

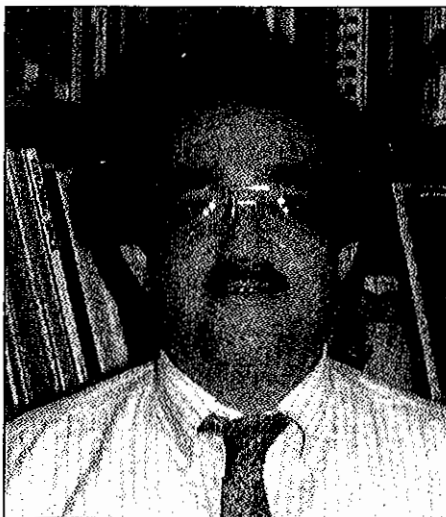
newer members with NASJE committees and projects during 1993.

And, finally, much progress has been made toward realizing NASJE's strategic planning goals and processes, including passing the 1993 bylaw revisions. To further the strategic goals, Larry looks forward to surveying members' interests and desires about which association committees or officer posts may interest them; to facilitating the JERITT project's needs assessment of state judicial educators; and to exploring secretariat services for the organization. ■

## Saks to Finish Term as the Northeastern Region's Director

At the NASJE annual conference, Larry Stone asked the attendees from the northeast to meet during Tuesday's lunch and to recommend someone to serve the balance of the Northeastern Regional Director's term of office. Richard Saks, New Jersey's judicial educator, was ultimately appointed to the post.

Ellen Marshall's departure as Maryland's judicial educator prompted this action. The NASJE Board of Directors adopted a resolution acknowledging that Ellen "has given ably and selflessly of her time and energy for the advancement of judicial education programs in other states [and that she] has served with particular distinction as the Northeastern Regional Director of the National Association of State Judicial Educators." ■



Richard Saks

---

### President's Column, *continued*

---

undertaking, and I am pleased that it went so well.

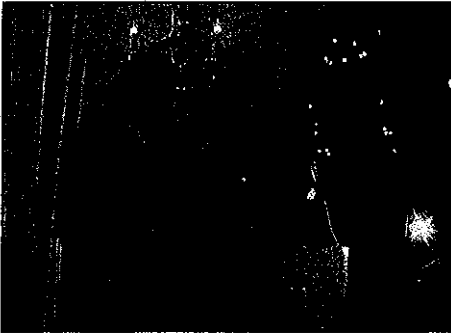
Pursuant to the amended bylaws, all members have been asked to complete an interest survey, which will identify persons who want to be officers or serve on NASJE committees. Upon compiling the results, committee assignments will be made. Once that is accomplished, we can implement the nominating process prescribed by article VII of the bylaws.

Congratulations to V.K.-Wetzel, who was elected president-elect at the conference. I look forward to working closely with V.K. over the next year.

Richard Saks, of New Jersey, has been appointed regional director for the northeastern region for the balance of Ellen Marshall's term. Ellen's contributions to NASJE and her long-time service on the board of directors will be greatly missed.

The NASJE board of directors will hold its midyear meeting in February. An important agenda item will be the discussion of the results of the needs assessment being conducted by Maureen Conner of JERITT. Please be sure to make your needs known by timely completing any inquiries you receive from JERITT. ■

# Paul Li Named First Judicial Educator Emeritus



Paul Li, former executive director of the California Center for Judicial Education and Research, was honored by the NASJE Board of Directors with the title "Judicial Educator Emeritus." The board adopted the following resolution last February, and Larry presented Paul with a beautiful plaque during last October's annual conference.

ing judicial educator and pre-eminent force behind the growth of judicial education throughout the United States, as well as numerous countries in Asia and South America;

NOW, THEREFORE, BE IT RESOLVED that the National Association of State Judicial Educators:

1. confers on Paul Li the title of Judicial Educator Emeritus, the first so recognized.
2. congratulates Paul on more than twenty years of outstanding achievements.

3. thanks Paul for his unstinting dedication and service to the Association as a founding member of the Board of Directors and as President, and to all state judicial educators seeking assistance and guidance.

4. wishes Paul good health and happiness in future years and success in future endeavors.

ADOPTED BY THE BOARD OF DIRECTORS for the National Association of State Judicial Educators, on the 20th day of February, nineteen hundred ninety-three. ■

## Resolution

WHEREAS, the state and federal judiciaries are essential contributors to the quality of justice in the nation's courts; and

WHEREAS, continuing education of the judiciary provides the necessary opportunities to acquire the knowledge, skills, and values that permit the fair and effective administration of justice; and

WHEREAS, continuing education of the judiciary is an activity that has evolved into a recognized profession of judicial educators, dedicated to high standards of quality in all educational endeavors; and

WHEREAS, the Honorable Paul M. Li, Executive Director of the California Center for Judicial Education and Research, has been the pioneer-



*The annual conference is not the only time that NASJE members entertain foreign guests. Five Russian lawmakers visited the Michigan Supreme Court last July to learn how an elected judiciary operates in a democratic form of government. Dennis Catlin, executive director of the Michigan Judicial Institute, discussed the structure and programming of Michigan's judicial education. (Pictured from left to right are Deputy Aleksandr Boissovich Surkov, Chief Justice Michael F. Cavanagh, Dr. Dennis W. Catlin, Deputy Ivan Nikolaevich Smirnov, Deputy Aleksandr Nikolaevich Lugovoi, Circuit Judge Carolyn Stell, and Interpreter Leonard Krivitski. Not pictured is Deputy Mikhail Egonovich Dmitriev.)*

## Defining Judicial Professionalism, *continued*

alike. Such lack of substance is not greeted enthusiastically by CLE and CJE teachers or students. For both judges and lawyers, charting the subject matter scope of professionalism is a much-needed undertaking.

### Individual Role and Professionalism

The judge embodies adjudicative and administrative leadership in the justice system's institutions and procedures. Therefore, the judge must exemplify the highest attributes of professionalism for justice and society to be credibly served. Presumably, this is the very reason for judicial education. Consequently, it is wrong to treat professionalism as a knowledge or skill separate from any other area of practice. Professionalism embraces a style or orientation to the substantive and procedural requirements of lawyering or judicial practice.

The contemporary movement to enhance lawyer professionalism in America seeks not only a clear definition but a counterpart in judicial education. The motive can sometimes be small—"if the lawyers have to take professionalism classes, then the judges need it too." With equal frequency, the justification may be thoughtfully advanced. For example: the judicial role in adjudication often combines divergent aspects of lawyer advocacy—such as decision based upon application of legal rights versus acquiescence to remedial best interests. Competing interests of individuals and of society routinely must be reconciled through judicial decisions; similarly, short-term and long-term outcomes have to be weighed, and the consequences flowing from one or the other selected. Growing interest in judicial professionalism is impelled by appreciation for the complexity of judges' decisional power in individual cases. It is also compelled by the need to preserve easy public access to courts.

Traditional notions suggest that judicial professionalism is reflected

*The judge  
must exemplify  
the highest  
attributes of  
professionalism  
for justice  
and society  
to be credibly  
served.*

by an individual judge's decisional integrity, legal analytical ability, communications skill, authoritative trial supervision, docket control, dispositional punctuality, and sanctioning effectiveness. These qualities are routinely assessed by lawyers' bar polls that evaluate judges. Moreover, they often inform the contents and objectives of continuing judicial education programs. But such qualities still seem unsettlingly subjective or functionally pedestrian for defining the full breadth of judicial professionalism, especially in the current era of general unease regarding the effectiveness of the nation's civil and criminal justice systems.

Much is at stake when we dignify criticism by outsiders or nonprofessionals about poor quality in legal system practices. Nevertheless, increasing debate is emerging over the lawyer's neutrality toward all values and moral claims other than the client's interests or rights, and whether this neutrality should continue to be embraced by society. A narrow definition of *hired gun* may furnish comfort to lawyer and client. But it's a growing source of frustration to the citizenry, which should concern attorneys as well. The lawyering priesthood is not

only disliked by the wider society, it is frequently misunderstood. Many people do not embrace the methods and outcomes of the adversary process. Ongoing public education, therefore, about the essential value of this process would be a noteworthy aspect of lawyer and judicial professionalism.

### Disciplinary Sanctions and Professionalism

Judges' receptivity to continuing education about professionalism stems from the widespread purview over judicial behavior embraced by the ABA's Model Code of Judicial Conduct. Judicial disciplinary boards as well as individual judges affirm this reality. Unfortunately, a corresponding attitude has not flourished among lawyers regarding their Model Code of Professional Responsibility or their Model Rules of Professional Conduct.

As with many other vocational callings in America, practical emphasis on professional malpractice and discipline has resulted in focusing lawyers' conduct codes only on sanctionable behavior. Professional ethics as a comprehensive framework encompassing aspirational conduct together with acts subject to discipline has lost its meaning. This is clearly the case with Georgia lawyers. The state bar disciplinary counsel only investigates complaints that trigger one or more of Georgia's 70 Standards of Conduct for lawyers, which incorporate sanctions. The aspirational character of the ethical considerations in the State Bar of Georgia's Canons of Ethics and its Code of Professional Responsibility play virtually no role in professional discipline. They play equally little, correspondingly, in the attitudes of most legal practitioners.

The Georgia high court suggests that avoiding peer disciplinary sanctions is but one sign of the legal professional. Yet such a minimal level of competence does not eliminate a practitioner's susceptibility to numerous failings experienced by collegial peers. Indeed, to the Georgia Supreme Court, avoid-

ing disciplinary sanctions is the lowest threshold of acceptable professional practice.

Laudable professionalism embodies practice at a much higher level. A certain amount of idealism inheres in such a vision of professionalism for the practice of law. Furthermore, the Georgia court acknowledges that articulating a meaningful and complementary analog for judges is not easy. But, in both instances, articulating new norms of lawyer and judicial professionalism is affirmed worthy of conscientious support.

Cynics trivialize any CLE or CJE professionalism effort to highlight aspirational matters as focusing on inconsequential niceties. They say that it teaches what ought to have already been learned through experience in the crucible of daily law practice. They see it as possessing procedural flaws akin to "legislating morality" or "trying to teach honesty." Purportedly, such training can consist only of platitudes. The conventional wisdom, therefore, is that professionalism in the legal system is not subject to meaningful discussion among mature lawyers or judges. The modern view is that recognizing unprofessional conduct is rather easy, but defining the opposite, what is truly professional, is quite difficult.

#### **Institutional Needs and Professionalism**

Five characteristics are commonly listed as hallmarks of any profession. First, mastery of a sophisticated body of information is required. For judges and lawyers, this is the law.

Second, the knowledge is routinely applied in a complex social institution. It is a place or a process easily recognized by the society it serves, often because of both architecture and ritual. This institution features a mix of diverse practitioners carrying out varied yet well-understood roles. Adjudication and the courts aptly fit this concept.

Third, services delivered by professionals directly affect the personal well-being of clients in a

*Cynics trivialize  
any CLE or CJE  
professionalism  
effort to highlight  
aspirational matters  
as focusing on  
inconsequential  
niceties. They say  
that it teaches what  
ought to have  
already been  
learned through  
experience. . .*

vital and immediate way. Deprivation of life, liberty, or property, an array of powers legitimately regulated by the law and exercised by the courts, would seem to qualify.

Fourth, lapses in professional performance are usually subject to investigation, evaluation, and sanction by peer practitioners. Both lawyer and judicial disciplinary processes include significant procedures for collegial review.

Fifth, professionals help neophytes emerge in the practice. Summer clerkships, inns of court, CLE, CJE, mock trial competitions, and professional association activities reveal this side of modern judging and lawyering.

These five institutional features of professional life routinely impact CLE and CJE. Intriguingly, lacking among these typically cited institutional characteristics is any claim to asserting moral wisdom. Yet every professional brings to practice a value-laden base of experience, and sometimes belief, which informs

perspective and judgment. Typically, the law affirms a fiction that procedural adjudication, using the adversary model, averts the taint of personal or community morality from the legal decisions, substituting objective law for such morality. How frequently this occurs is an important question.

#### **Moral Wisdom and Professionalism**

Common moral values define the scope of community, and they govern the meaning of civility in interpersonal relationships. Contemporary concern for professionalism may be, at its core, simply about improving relationships or restoring moral norms between judges and lawyers. If so, substantial room may be left for education about professionalism as a complement to regular CLE and CJE. However, the arenas of effective communications, human psychology, values education, moral philosophy, and even theology might have more to lend the subject of interpersonal regard *qua* legal professionalism than the traditional fields of law, legal procedure, or court administration.

From these arcane arenas of intellectual discourse, the following insights might be discerned about professionalism. Humility in personal interactions, rather than self-focused pride or insistent certitude of personal viewpoint, would bespeak professional behavior. Generosity of spirit would reveal the professional, in place of envy over the good fortune or achievement of others. Tolerance and compassion in response to rude behavior by another, rather than anger and revenge, would clothe the professional. Zeal in preparation and thoroughness of service, rather than sloth, would distinguish the professional. Liberality with resources, including time as well as money, rather than self-centered avarice with these things, would characterize the professional. Temperance or moderation in consuming the treasure and goodwill of others, rather than gluttony, would indicate professionalism. Chastened respect for the unique



integrity of others, rather than lustful satisfaction of personal desires at others' expense, would inform professional conduct.

If such attitudes, dispositions, and predilections were the core elements of true professionalism, then legal professionals would benefit from having them thoroughly explored in CLE and CJE activities. It's no secret that some of these values, on their surface, contradict several roles or styles that have become customarily identified with modern legal advocacy, as well as effective adjudication. It's also apparent that most of these virtues were promulgated in prior eras through religious teaching and practice. Such influences have been banished by secular culture from contemporary professional life. This reality encumbers easy handling of these values in continuing professional education, but the presence of such a difficulty should not result in avoiding their treatment.

#### **Rights/Rules v. Interests/ Compassion and Professionalism**

Zealous representation of a client's interests or legal rights is often cited as the main obligation of lawyering. Therefore, it's frequently the justification for numerous abuses of interpersonal regard or lapses of vocational courtesy. In other words, to serve one high obligation, it becomes necessary and excusable to curtail another. Some might say that this system of values is one in which the urgently expedient too often drives out the truly important. Compulsion to "move the docket" may be a judicial analog enfolding similar flaws of practice.

Indeed, to function professionally, zealous client representation is legitimate, but it must be within the bounds of the law. Lawyers and judges often conveniently forget this ethical stricture. The ABA's model codes on lawyer ethics require the client's interests to be tempered by obligations to the tribunal. Yet, perhaps modern professionalism demands consideration for other collegial and societal interests as well. It may no longer be quite so easy to excuse all lawyerly abuses

*Indeed, to  
function  
professionally,  
zealous client  
representation is  
legitimate, but it  
must be within the  
bounds of the law.*

*Lawyers and  
judges often  
conveniently  
forget this ethical  
stricture.*

simply to satisfy the narrow end of client self-interest. Today, the primacy of adversarial adjudication as society's preferred dispute resolution tool is receding. Operation of adjudicatory and dispositional fiefdoms is similarly disfavored.

Finding a place for human compassion, moral conviction, and personal orientation in lawyering and judging is no doubt key to many peoples' concern for improving legal professionalism. If so, it defies the conventional wisdom of the current profession, not to mention typical practice in the adversary trial system. If the new concern encompasses a need to reflect universal moral wisdom, it probably demands more of lawyers and judges than traditional notions about professionalism. It invites questions about basic assumptions concerning adversarial adjudication, which are difficult for the case-specific, precedent-oriented, principle-conserving mind-sets of

judges and lawyers to comprehend. But any modern focus on legal professionalism that does not push these threshold beliefs will have only limited prospects for improving professional practice. The continuing judicial or legal educator must continually critique old paradigms of practice as part of designing and delivering new professionalism programs.

#### **Conclusion**

This essay has introduced a list of possible topics under the heading of lawyer and judicial professionalism. Among these topics are professional practices of lawyers and judges as they relate to awareness of community, civility, service, decisional integrity, legal accuracy, effective communications, authoritative supervision, docket control, dispositional punctuality, sanctioning effectiveness, public education, legal craft, aspirational conduct, mastery of sophisticated information, application in a complex social setting, vital and immediate personal impact, peer review and sanction, generative impulse, improving human relationships, humility, generosity of spirit, liberality with resources, tolerance or moderation, zeal for thoroughness, chastened respect for others' integrity, human compassion, moral conviction, and personal orientation.

This effort to present legal professionalism in affirmative terms, rather than by what is unprofessional, may direct program planners and consumers into fresh topics. Exploring these concepts in the daily context of lawyer and judicial practice allows for significant creativity in the design and delivery of relevant continuing educational products. Such potential enriches the prospect for more-meaningful handling of the timely issues and important questions regarding professionalism among lawyers and judges. ■

# Education Program Reflects Diversity of the Educator Profession

As usual Maureen Conner and the education committee crafted a rewarding education program that not only catered to educators' immediate and practical needs (e.g., Conference/Seminar Management), but also to ongoing professional and personal enrichment (e.g., Literature and the Work of Judicial Educators). Several short reviews of some of the sessions follow—space considerations do not allow for a complete recap.

**Communicating with Power.** Arkansas's Kay Boothman introduced the basic principles of effective communication in this skills development session. Kay addressed both familiar theoretical constructs and practical applications, revealing how communication in the training forum and the interpersonal setting follows similar rules. Communication is a loop comprising sender, message, receiver, and feedback. A critical element to understanding communication is the notion that "we do not *not* communicate." Consequently, significant meaning is constructed from nonverbal elements. Communication is a transactional, irreversible, and complex process that both conveys information and defines relationships. Kay concluded her remarks by giving participants 13 tips for integrating and applying communications behaviors, noting that ultimately, meaning is inside people and that much care needs to be taken in the presentation to ensure that the intended meaning is accurately transmitted and received.

**Teaching for Development: Implications for Judicial Education.** Dr. Charles S. Claxton, director of the Leadership Institute in Judicial Education, led this discussion that ultimately determined that education program objectives should be written in terms of learning outcomes. Dr.



Maureen Conner

Claxton maintained that three traits are essential to effective education—the big idea, resistance to the allure of "technique," and effective integration of theory and practice. Dr. Claxton's candidate for the big idea in judicial education is that "as adults move through their lives and careers, they have an innate tendency to think in qualitatively different ways." Consequently, "the purpose of judicial education is to support the ongoing development of persons so they are able to carry out their responsibilities more effectively." Dr. Claxton noted that judges are highly developed, integrated learners who can deal with paradox, are tolerant of ambiguity, can make choices or commitments in the absence of clear or complete information, and continually seek and process information.

**Humanities and the Professions: Literature and the Work of Judicial Educators.** Professor Sanford Lottor, of Brandeis University and long considered the god father of humanities experiences with judges and other professionals, conducted this one-day workshop. Prior to the sessions participants had read Melville's *Billy Budd*, Tolstoy's *The Death of Ivan Ilyich*, and Orwell's *Shooting an Elephant*.

"Would you hire this man?" Professor Lottor asked, referring to the young George Orwell who described shooting an elephant. Why was Ivan Ilyich's life "most horrifying"? Is there a "higher

moral code"? "What does one do with private feeling versus public responsibility"? "Does compassion vie against justice"? In this interactive and provocative discussion, Professor Lottor prompted participants to reflect on their own life experiences, sense of values, and their work as judicial educators by focusing on such themes as decision making, public versus private interests, actions and consequences, appearance and reality, human choice, power, leadership, and cultural diversity. For many years Professor Lottor has conducted similar deliberations for judges, who have revealed that his work has contributed to a renewal of professional purpose and to a strong response to stress, as well as provided an opportunity to reflect upon the values discussed in the literature.

**Conference/Seminar Management: From Faculty to Security.** John Meeks and Blan Teagle, staff attorneys for the Florida Office of the State Courts Administrator, and Judge Leslie Johnson, director of the Mississippi Judicial College, facilitated this one-day session, which was divided into six topics—faculty contracts, faculty selection, topic selection, A/V support, ethical issues, and site security.

Using Florida's standard contract as the basis for discussion, participants noted standard elements in a contract, such as identification of the parties and detailed description of obligations. Especially enlightening was the differing ways that participants' organizations handle faculty travel. As part of the group's contract discussions, Blan Teagle sequed to copyright law and how it impacts program planning; e.g., planners should presume that the fair use exception does *not* apply to seminar notebooks and handouts.

After determining a need for a program, the educator must identify

*continued on page twelve*

# Thoughts on Judicial Mentoring

Betty Ann Johnson

*Mentor: A wise, loyal advisor, a teacher or coach. (Webster)*

Judicial mentoring is an unstructured, flexible relationship that pairs a newly elected (appointed) judge with a more-experienced judge. Mentoring varies according to the individual needs and experiences of the judges involved, and the differences in judicial district practices and procedures. Mentors may be appointed or may volunteer; it is then up to the judges to work out the details of their mentoring relationship.

Judicial mentoring may include

- Being a friend;
- Assisting the new judge to make the transition to the bench, talking about the new judge's changed relationships and feelings and the judge's role in the community;
- Giving support and reassurance to help the new judge gain confidence in the judicial role, and providing constructive criticism as needed;
- Being kind (remember you made mistakes too);
- Being readily available to the new judge (by phone or other means);

---

*Betty Ann Johnson formerly worked in the Minnesota Supreme Court Continuing Education office.*

- Initiating discussion on problems a new judge may experience, initiating contact more often at first, gradually decreasing as the new judge develops confidence and experience;
- Helping the new judge integrate into the judicial community by attending meetings and education programs together.

(NOTE: Mentors are not expected to attend orientation courses, but are encouraged to discuss the orientation program and any questions or concerns the new judge may bring from the orientation.)

Mentors can also help new judges schedule on-the-job learning activities through assignments and activities, which may vary depending upon the time and judges available in the district. Coordination through the chief judge, district

administrator, or court administrator is essential. On-the-job training currently offered in some districts includes

- *Shadowing.* An experienced judge observes and discusses trial management concerns, such as traffic cases, arraignments, guilty pleas, omnibus hearings, plea bargaining.
- *Rotating.* The new judge rotates through different court assignments to observe and discuss court procedures regarding criminal, civil, juvenile, family, and probate matters.
- *Second Chair.* The new judge shares the bench with the mentor for the morning, reversing roles in the afternoon, allowing the new judge to preside while the mentor is in the second chair. ■

## Bylaw Revisions Passed in San Francisco

As part of the NASJE strategic planning process, the bylaws committee recommended several important changes to the bylaws affecting the association's officers' terms. Briefly, the adopted emendations provide for one-year terms with an automatic rise to the next higher position within the organization. The changes will allow more interested members to serve NASJE as officers. ■



*V.K. Wetzel, director of judicial education, Supreme Court of Wisconsin, was elected NASJE president-elect in San Francisco. V.K. will assume the presidency at the annual conference next October in Philadelphia.*

## Education Program, *continued*

an effective person to be faculty. Several means to identify prospective faculty are

- other judicial educators
- national conferences and meetings
- national providers, such as NJC, NCSC, JERITT
- publications, both written by and about prospective faculty
- SJI-sponsored databases

The final speaker at this session was Terry Keenan, deputy marshal, of the Los Angeles County Marshal's Office. After describing some harrowing scenarios, Keenan acknowledged that today's fiscal atmosphere requires planners to "do more with less," on the security front, but he cautioned against falling into the mind-set of "I don't see the need." ■

# NCSC Awards Its 1993 Distinguished Service Award to Rita Culbertson

**D**r. Ingo Keilitz, vice-president, Institute for Court Management of the National Center for State Courts, presented Rita Culbertson with the NCSC's Distinguished Service Award during the NASJE annual conference. Each year, the National Center presents the award to individuals who have made substantial contributions to the improvement of judicial administration.

Keilitz noted that Rita has been manager of education services for the Kentucky Administrative Office of the Courts since 1981 and that she served as NASJE president from

1988 to 1990. During Rita's presidency NASJE became involved in three large, SJI-funded projects—the Leadership Institute, JERITT, and JEAEP. Keilitz said that "through these projects and other activities, Rita has helped make NASJE a recognized player in efforts to improve judicial administration across the country."

In accepting the award, Rita deferred credit explaining that many of the cited achievements reflected the work of many people, especially her predecessors in the NASJE presidency. ■



## National Association of State Judicial Educators

### NASJE Editorial Committee

#### President

Larry Stone  
Columbus, Ohio

#### President-elect

V. K. - Wetzel  
Madison, Wisconsin

#### Secretary

Karen Waldrop  
Phoenix, Arizona

#### Treasurer

Kay S. Boothman  
Little Rock, Arkansas

Michael W. Runner, *Chair*  
Emeryville, California

Maureen Lally  
Olympia, Washington

Frannie M. Maguire  
Wilmington, Delaware

Richard Reaves  
Athens, Georgia

Blan Teagle  
Florida

M. James Toner  
Reno, Nevada

Larry Stone  
*ex officio*  
Columbus, Ohio

Bill Fishback  
*Managing Editor*  
National Center for  
State Courts



The editorial committee encourages contributions to NASJE *News* from judicial educators and other interested parties. Not every contribution will receive a byline. Articles will receive a byline under the following guidelines:

The writing is intended to reflect the opinion of the author; the editorial committee finds it appropriate to give a byline to make clear that the writing does not reflect the opinion of the editorial committee; or the writing reflects a substantial piece of work that occupies a prominent place in the newsletter and is at least one newsletter page in length.

In applying these guidelines the committee will resolve close issues against giving bylines to committee members and in favor of giving bylines to noncommittee members. When noncommittee members make contributions not otherwise credited, their names will be listed as contributing to that newsletter.

This newsletter, published quarterly by NASJE through the National Center for State Courts, is made possible by a grant from the State Justice Institute. Opinions expressed herein, however, do not necessarily reflect the views of the State Justice Institute. Address all correspondence and inquiries to NASJE *News*, National Center for State Courts, 300 Newport Avenue, Williamsburg, Virginia 23187-8798; (804) 253-2000.

NonProfit Org.  
U.S. Postage  
PAID  
RICHMOND, VA  
PERMIT NO. 750

FEB 1 0 28 AM '93  
ADMINISTRATIVE OFFICE  
OF THE COURTS

Ms. Frannie M. Maguire  
Training Administrator  
Administrative Office of the Courts  
Carvel State Office Bldg., 11th Floor  
820 North French Street  
Wilmington DE 19801