

# AJEI

*Dallas, Texas*

## November 2010

The Appellate Judges Education Institute (AJEI) Summit, co-hosted by SMU Dedman School of Law and the ABA Judicial Conference, is the pre-eminent provider of appellate judicial education in the United States. Designed by appellate judges, lawyers, and staff attorneys, the annual AJEI summits are unique in their focus on the challenging issues that judges and lawyers confront in the appellate arena.



KEYNOTE PANEL (Left to Right): KATHLEEN M. SULLIVAN, *Quinn Emanuel*; DAVID D. COLE, *Professor, Georgetown University School of Law*; WALTER DELLINGER, *O'Melveny & Myers LLP*; JOHN C. YOO, *Professor, U.C. Berkeley School of Law*; KENNETH W. STARR, *President, Baylor University*



JOHN B. ATTANASIO, *Dean, SMU Dedman School of Law*



Left to Right: JUSTICE LIZ LANG-MIERS, *Texas Court of Appeals, Fifth District*; GERALD L. NEUMAN, *Professor, Harvard Law School*; ANTHONY COLANGELO, *Assistant Professor of Law, SMU Dedman School of Law*



LINDA EADS, *Associate Professor, SMU Dedman School of Law*

More than ninety-eight appellate judges, ninety-four appellate lawyers, and seventy-four appellate staff attorneys, including representatives from thirty-six different states and Guam, Puerto Rico, and the Virgin Islands, attended the 2010 AJEL Summit. The Summit faculty was comprised of notable scholars, distinguished appellate judges, accomplished appellate lawyers, and members of the press.

Presenters from the Federal Bench included Judge Thomas I. Vanaskie, U. S. Court of Appeals, 3rd Circuit; Chief Judge Edith Jones, Judge Catharina Haynes, and Judge Jennifer Walker Elrod, U.S. Court of Appeals, 5th Circuit; Judge Jeffrey Sutton and Judge Ronald Gilman, U.S. Court of Appeals, 6th Circuit; Judge Consuelo Callahan and Judge Margaret McKeown, U.S. Court of Appeals, 9th Circuit; Judge Rosemary Barkett, U.S. Court of Appeals, 11th Circuit; and Chief Justice Rebecca White Berch, Arizona Supreme Court.

C-SPAN recorded the opening session, "Executive Power: Does the President Have to Follow the Law?" Walter Dellinger, O'Melveny & Myers LLP, moderated the panel which included Judge Kenneth Starr, President of Baylor University; Professor David D. Cole, Georgetown School of Law; Professor John C. Yoo, U.C. Berkeley School of Law; and Kathleen M. Sullivan, Quinn Emmanuel, and former Dean of Stanford Law School.

In the keynote speech, author and constitutional lawyer David O. Stewart gave attendees a look into the attempted impeachment of former President Andrew Johnson. Mr. Stewart brought the narrative to life using vibrant adjectives and personal anecdotes. He described the time of impeachment as an "insane state of irritation" and portrayed Representative Thaddeus Stevens as both "ferocious" and "funny." The lecture focused on the importance of impeachment to constitutional law but the author kept it light, quoting Ben Franklin, "We need something like that, otherwise the only way to get rid

of a president is to kill them." Thus, impeachment is "something to be grateful for," concluded Mr. Stewart.

Adam Liptak, *The New York Times*; Dahlia Lithwick, *Slate*; and Stuart Taylor, Jr., contributing editor at *Newsweek* and *The National Journal*; participated on the panel "Front-Row Seat: Leading Media Members Share Their Insights Regarding the United States Supreme Court." The panelists addressed the impact of the confirmation hearings for Justice Sotomayor and Justice Kagan and the intense vetting process that has evolved in the current political climate. Taylor described the confirmation as an "undignified spectacle." Lithwick characterized the proceedings as "horrifying and boring" and expressed concern that the hearings "misinform the public on the job of the Court."

Dean John B. Attanasio moderated a panel titled "Supreme Court Preview," with Judge Kenneth Starr, President of Baylor University, and Professor Pamela Karlan, Stanford Law School. Dean Attanasio gave a brief introduction to twelve of the sixty-five cases on the Supreme Court docket, covering issues including immigration, First Amendment protections, violent video games, the confrontation clause, and more. The panel shared their thoughts on why the Court granted cert and the potential legal ramifications of these specific cases. The panelists also discussed the role that the newest addition to the Supreme Court, Justice Elena Kagan, is likely to play in the cases decided during the current term. Dean Attanasio noted, "These cases will create openings for the new Justices to make a difference." To close, the panel opined on the number of cases accepted by the Court and the quality of opinions being issued today. Referencing the substantive quality of the opinions, Professor Karlan stated, "You can get unanimity but only by issuing opinions that aren't very helpful." Judge Starr expressed concern that the Court has become too academic, noting that "the Court needs to work harder and take more cases."



BRYAN GARNER, Editor in Chief of "Black's Law Dictionary," and Distinguished Research Professor, SMU Dedman School of Law



JEFFREY BELLIN, Assistant Professor, SMU Dedman School of Law

Multiple SMU Dedman School of Law faculty members presided as panel members during the Summit. Professor Eads put her Professional Responsibility expertise to work, participating on a panel titled, "Why Do Bad Things Happen to Good Judges? How Ethical Judges Find Themselves in Difficult Situations and How to Avoid This from Happening to You and Your Colleagues." Professor Colangelo presented with Professor Gerald Neuman, Harvard Law School, on "U.S. Extraterritorial Jurisdiction in an Era of Globalization." Additionally, Professor Bellin spoke on the "Privacy in the Age of Technology" panel, which included Associate Justice Joan K. Irion, California Court of Appeals, and Professor Paul Ohm, University of Colorado Law School. Bryan Garner, Distinguished Research Professor at SMU Dedman School of Law, also presented a discussion on "Brief Writing." ■



## APPELLATE JUDGES CERTIFICATE PROGRAM

### *Five Days of Judicial Legal Education in Santa Fe*

For five days in June, more than two dozen state appellate court judges from eleven states and Puerto Rico gathered in Santa Fe, New Mexico to attend classes taught by SMU Dedman School of Law professors.

The inaugural Appellate Judges Certificate Program was hosted by SMU Dedman School of Law and supported by the Appellate Judges Education Institute (AJEI), the professional development arm of the Appellate Judges Conference (AJC) of the American Bar Association. The effort brought together jurists from Florida to New York and North Carolina to Nebraska for a week of intense and stimulating discourse on the most important legal issues of the day.

Four of SMU's premier law school faculty members – Professors Lackland H. Bloom, William Dorsaneo, Anthony Colangelo, and Meghan J. Ryan – gave the appellate judges a time to step away from the daily pressures of the bench in order to examine developing issues on Constitutional interpretation, personal jurisdiction, extraterritorial jurisdiction, and the increasingly complex crossroads of science and law.

“Judges need time to rejuvenate their

intellectual batteries in a setting where we can think deeply about jurisprudential issues and also develop increased understanding of legal issues we face on a daily basis,” said Judge Martha C. Warner of Florida’s Fourth District Court of Appeals. “The Certificate Program offers judges the opportunity for both.”

“The week-long format allowed judges to be exposed to topics in greater depth than the normal judicial education programs, yet the program was short enough to fit into judges’ busy schedules,” said Judge Warner. “There is a hunger out there for this type of experience, and I applaud SMU and its faculty for producing this program.”

Indiana Supreme Court Justice Frank Sullivan said there were four reasons he chose to attend. First, to “engage with first-rate legal thinkers who serve on the faculty of one of the country’s finest law schools. Second, to gain new insights on traditional subjects that require the regular attention of appellate judges. Third, to learn about new and evolving subjects that will prepare appellate judges for changes in their work.”

Last, but not least, Justice Sullivan said, was the opportunity to “enjoy the

companionship of other appellate judges from throughout the country in a relaxed and picturesque setting.”

All attendees agreed that having the program at the Inn and Spa at Loretto in Santa Fe was a major draw.

“I had never been to New Mexico and I have wanted to visit for a long time,” said Ohio Administrative Judge Mary Eileen Kilbane of the state’s Eighth District Court of Appeals. “Santa Fe was great and the hotel was wonderful.

“The educational programs were excellent from both a practical and intellectual curiosity standpoint,” said Judge Kilbane. “In fact, when I got back to Ohio, my court had a case with the exact personal jurisdictional issues that Professor Dorsaneo discussed.”

The Certificate Program included twenty hours of class time, in four one-hour educational sessions each day.

The first class, “Current Issues in Constitutional Interpretation,” was taught by SMU Dedman Professor Lackland H. Bloom, Jr., who authored *Methods of Interpretation: How the Supreme Court Reads the Constitution*, which was published by the Oxford University

Press in 2009. His interest as a scholar is devoted to analyzing the different ways in which the Supreme Court interprets the Constitution or, as he frequently noted he prefers to say, “how the Supreme Court explains the Constitution.”

The class for hour two was “Personal Jurisdiction over Non-Residents,” taught by Professor William V. Dorsaneo, III, who is the Chief Justice John and Lena Hickman Distinguished Faculty Fellow at SMU Dedman Law. In addition to his teaching, Dorsaneo is an active appellate practitioner and the author of two treatises and three casebooks. He provided the judges with the evolution of the law of personal jurisdiction doctrine and a detailed examination of the Supreme Court’s 2011 *Nicastro* decision. In doing so, Professor Dorsaneo sent the appellate judges back to their courts as up-to-date as possible on the law of personal jurisdiction, even though the current state of the law continues to be highly ambiguous.

Professor Dorsaneo said the time required to prepare the presentations, which were compacted into one hour a day for one week, was a challenge.

“Normally, I spend two hours preparing for every classroom hour of teaching, but for the appellate judges certificate program, it was about five hours for every hour in the classroom,” he said. “The judges are much more interested in discussing how the specific legal issues were resolved and how that impacts the cases they handle, while students want to know how the courts came to certain conclusions.”

Professor Dorsaneo also said that the pre-classroom workload for the judges was heavier and that the interaction in the classroom was more significant. In fact, he said the classroom interaction was more similar to an appellate argument than a first year civil procedure or torts class.

“The judges had handled cases similar to those we were discussing, and they were not shy about speaking up,” he says. “Normal law students are reluctant to speak up if they are not absolutely

sure of something for fear of failure. The tendency is not to say anything, which is the wrong approach. The appellate judges had no such reluctance and it was a more sophisticated discussion of the subjects.”

The final two courses went beyond the nuts-and-bolts of daily law. They were taught by Assistant Professors Anthony J. Colangelo and Meghan J. Ryan, who were described by the judges as “highly talented and impressive young scholars.”

Professor Colangelo taught “Extraterritorial Jurisdiction,” which examined cutting-edge efforts to assert jurisdiction in U.S. courts against defendants outside the country. By introducing the judges to the rapidly emerging field of extraterritorial jurisdiction that raises perplexing questions for both law and public policy, Professor Colangelo broadened their jurisprudential horizons to include exciting and challenging subjects that, while not part of the daily fare in state court, require analytical techniques readily transferable to an appellate judge’s work.

Professor Ryan ended the class day with a session on “Law and Science,” which explored the interactions of law and science in both civil and criminal law contexts. She began with a discussion of culpability, examining the extent to which neuroscience in general and certain brain imaging techniques in particular can and should be used to establish the *mens rea* element in civil and criminal cases. Professor Ryan then turned to the issue of causation, using tort litigation in which plaintiffs sought damages for injuries allegedly caused by their silicone breast implants to introduce the various probability calculations used to establish causation. As the class progressed, Professor Ryan noted with regularity the interplay of politics with the themes of law and science, using as an illustration



the lawsuit of several states against the five largest emitters of carbon dioxide in the U.S. for their contributions to global warming and alleged attendant damages.

“I found that teaching judges is quite different from teaching law students, especially in the area of law and science,” said Professor Ryan. “The judges have significant experience with the law and can therefore quickly absorb new legal ideas. But unlike many of my law students, most judges have not grown up in the age of the DNA revolution and the Internet.”

Professor Ryan said that the judges were quick to speak up to ask for clarification or to challenge what either she or their colleagues said. “This made for a lively debate on the merits of particular fields dealing with both law and science,” she said.

“The SMU Dedman School of Law Appellate Judges Certificate Program was taught by first-rate, engaging faculty members who provided us with a rich introduction to new and emerging topics that will be extremely helpful to us in our work, as well as a valuable set of insights on traditional subjects that require regular attention by appellate judges,” said Justice Sullivan.

“In addition to the great course work, the program provides an opportunity for judges from across the country to meet, work, and socialize together,” said Judge Warner. “These interactions result in a fertile exchange of ideas about judicial issues facing all courts.” ■