Cold Spring Harbor Lab Hosts Judicial Seminar on Science

by James G. Apple
Chief, Interjudicial Affairs Office
Federal Judicial Center

Cold Spring Harbor Laboratory, near Huntington, Long Island, N.Y., is not only a world famous laboratory and location for high level scientific conferences of often include Nobel Prize winners, it also has, for the past three years, been the site for a seminar for state and federal judges on basic issues of science.

The 1998 seminar, held October 27–30 at the Laboratory’s Conference Center, included presentations on “Cloning: the Biological and Social Implications of a New Science,” by Professor Lee Silver of the Molecular Biology Department of Princeton University; “DNA and the Human Genome Project,” by Dr. Jan A. Woteki, Director of the Banbury Center; “Statistics and Probability in Science,” by Professor Stephen Garfinkle of the Department of Statistics, Carnegie Mellon University; “Social Implications of Genetic Research,” by Dr. Philip Reilly, Executive Director of the Center for Mental Retardation; “Toxicology, the Environment and Risk Assessment,” by Dr. Michael Gallo of the Robert Wood Johnson Medical School; and “Origins of Life,” by Professor Robert Shapiro, Professor of Chemistry at New York University.

A special presentation at the 1998 seminar was made by John Horgan, science writer and author of The End of Science, who lectured to the judges about science in the next century.

The seminar is sponsored jointly by the Federal Judicial Center, the Judicial Leadership Development Council, a non-profit Washington, D.C.-based corporation dedicated to judicial education, and the Laboratory.

A total of 26 judges attended this year’s seminar. Sixteen state judges and 15 federal judges.

The total number of judges who have attended the Banbury Seminar on basic issues of science over the three-year period is 78 judges: 38 state judges and 40 federal judges.

The Banbury Center each year hosts 15–20 seminars and conferences, mostly for scientists. Prior to 1996 the Center hosted occasional seminars for lay participants—Congressional staff persons, corporate officers, and journalists—but had never hosted a meeting only for judges.

The first Banbury Seminar for judges was held from October 14–17, 1997, with a presentation by Dr. Leon M. Lederman of the Fermi Laboratory near Chicago. Dr. Lederman won the Nobel Prize in physics in 1988 for his discovery of the upsilon particle, or quark, a particle in the sub-atomic structure of the atom.

The focus of the seminars is not necessarily “science in the courtroom,” although several presentations have dealt with various issues that might arise in the course of a trial. Instead, the main focus tends to be basic science, so that judges can acquire an understanding of fundamental scientific precepts and general issues in the different areas of science. It also aims to give judges a basic understanding of the scientific process—how scientific research is conducted and how scientists go about their work in their respective fields.

Because Cold Spring Harbor Laboratory is primarily a genetics laboratory, many of the presentations at the seminar deal with genetics and molecular biology. But other presentations focus on developments in physics, statistics, toxicology, and viruses and plagues.

A feature of the seminars popular with the participating judges is a visit to the Laboratory’s DNA Learning Center. The judges are given a lecture about DNA and then, using DNA samples, are shown how DNA testing is accomplished.

A presentation on the history of biology was included in the seminar.

State and federal judges attending the 1998 seminar on Basic Issues for Judges at the Banbury Center of Cold Spring Spring Harbor Laboratory got a lesson in testing their own DNA at the Laboratory’s DNA Learning Center.

State and Federal Judges Meet for Mediation Training in Alaska

by James G. Apple
Chief, Interjudicial Affairs Office
Federal Judicial Center

The first joint state-federal judicial conference on alternative dispute resolution (ADR) was held in Anchorage, Alaska, on October 22–23, 1998. The conference was held during the annual state judicial conference of the Alaska court system.

The program had two purposes. The first was to train the judges in mediation techniques so that they could make better informed decisions on referrals to ADR and earn how mediation skills might be used in judicial settlement conferences.

The second purpose was to introduce the judges to some of the issues that arise in managing cases that include or might involve ADR. Topics ranged from selecting cases for ADR referral to handling ethical problems.

The program was especially timely because of the passage by Congress in October of the Alternative Dispute Resolution Act of 1998. The Act requires every federal district court to use ADR, but how and where to use at least one form of ADR, and to implement an ADR program. Types of ADR authorized by the law are mediation, early neutral evaluation, mini-trials, and voluntary arbitration.

The conference, consisting of seven sessions over a day and a half, covered the following subjects:

• introduction to ADR and demonstration of the mediation process;

• analyzing the underlying interests in the dispute;

• generating options and breaking impasse;

• mediating emotionally charged cases;

• managing cases in ADR; and

• ethical issues in ADR.

The participants also had an opportunity to “role play” in hypothetical situations, acting as mediators, attorneys, and clients.

J. Michael Keating, Jr., a lawyer/mediator from Providence, R.I., was the faculty coordinator for the part of the program. He was assisted by Jack Esher of Boston, Mass.; Sam Imperati of Portland, Ore.; Bob Niemic and Donna Siemers of the Federal Judicial Center in Washington, D.C.; and Charles B. Wiggins of the University of San Diego School of Law.

For the managing cases portion of the program, Judge Wayne D. Brazil, U.S. Magistrate Judge from the Northern District of California, and Professor Stephanie E. Smith of Stanford Law School and Hastings College of Law discussed issues arising in cases considered for ADR.

Seventy-three judges attended, including 62 state judges and 11 federal judges.

The idea for the conference was developed in January 1998, by Jamilia A. George, Chief, Interjudicial Affairs Office, U.S. District Court for Alaska. The conference is sponsored jointly by the Federal Judicial Center and the U.S. District Court for Alaska. The Alaska legislature matched a grant from the State Justice Institute, which provided the remaining funds for the conference.

The FJC funds covered faculty honoraria and certain travel expenses. The Alaska trial courts provided space and lodging for the faculty. Legis­lative funds and the SJI grant covered part of the expenses.

The program, which attending judges heralded as a great success, was the first of its kind to include nearly equal emphasis on mediation skills and the management of cases referred to ADR.

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State Federal Judges Attend Science and Humanities Seminars

Princeton University in New Jersey and Lewis & Clark College in Portland, Ore., were the sites this past year of science and humanities seminars on the humanities and sciences this past year. The ninth annual Harold R. Medina Seminar, sponsored by the Federal Judicial Center, was held at Princeton University on October 4-6, 1998. A similar seminar for state judges and U.S. bankruptcy judges was held at Lewis & Clark College, Portland, Ore. In addition, Washington, D.C.-based nonprofit corporation dedicated to judicial education activities.

Each seminar featured lectures and discussions on subjects from the humanities, as well as several lectures on scientific issues. The seminars commented that this type of reading materials on each of the topics covered included a five-and-one-half day period. Sessions lasted one hour and fifteen minutes, and included a presentation by a lecturer and a period for discussion and questions. The 1999 Medina Seminar at Princeton will be held June 10-15. No dates have yet been set for another seminar at Lewis & Clark College.


The opinions, conclusions, and points of view expressed in the State Federal Judges Attend Science and Humanities Seminars by Chief Justice William H. Rehnquist, U.S. Supreme Court are the personal views of the author and do not represent the official position of the Federal Judicial Center or the courts of the United States.

OBITER DICTUM

Criteria for Federal Jurisdiction in the Law of Federal-State Relations

by Chief Justice William H. Rehnquist, U.S. Supreme Court

(Note: This essay is adapted from the remarks of Justice Rehnquist before the American Law Institute in May 1998 in Washington, D.C.)

In my annual report for 1997, I critici
zed the Senate for moving too slowly in passing the juvenile justice reform bill. This criticism received considerable public attention.

The criticisms of Congress and the President for not exercising due diligence to advance legislation which brings more cases into the federal court system. This criticism received widespread attention.

Yet the two are closely related: we need vaccines filled to deal with cases arising under existing laws, and with the enactment of the President's new proposals, new laws allowing more cases to be brought into the federal courts, just filling the courts with case work that is not enough. We will need additional judgeships.

Night Watchman Theory

If we look at the way this sort of legislation is developed in the course of American history, we see that for the first century of our nation, the federal government epitomized what one of my college political science professors called the "night watchman" theory of the state. The government provided for the common defense in a limited, minimal way because they expected revenues, delivered the mail, and left pretty much everything else to the states. So far as the federal government was concerned, Congress did not even grant them federal jurisdiction until 1875. Before that, the states were able to provide the services only with cases based on diversity of citizenship or admiralty.

The Industrial Revolution changed all that, and with the enactment of the Interstate Commerce Act in 1887 and the Sherman Act in 1890, Congress began regulating the federal government's existing state regulation-the Lindbergh case. And if Congress has a substantial federal interest involved in the case. Congress did not even grant them federal jurisdiction until 1875. Before that, the states were able to provide the services only with cases based on diversity of citizenship or admiralty.

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Filings Increase

Several years ago, the Judicial Conference of the United States, after much study, adopted the Long Range Plan for the Federal Courts for the next century. Recommendation one of the Plan reads as follows: "Congress should commit itself to conserving the federal courts as a distinctive judicial forum of limited jurisdiction in the business of federalism. Civil and criminal jurisdiction should be assigned to the federal courts only to further clearly defined and justified national interests, leaving to the state courts responsibility for adjudicating all other matters." In accordance with this principle, the Long Range Plan recommends that the federal courts conserve the federal courts only have criminal jurisdiction in five types of cases: "offenses against the federal government or its inherent interests; criminal activity with substantial multistate or inter-

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A note to our readers

The State-Federal Judicial Observer welcomes comments on articles appearing in it and ideas for topics for future issues. The Observer will consider publication short articles and manuscripts on subjects of interest to state and federal judges. Letters, comments, and articles should be submitted to Interjudicial Affairs Office, Federal Judicial Center, Thompson MetBall Federal Judiciary Building, One Columbus Circle, N.W., Washington, D.C. 20002-8001.
A Maine Journey in State–Federal Judicial Outreach

by Frank M. Coffin, Senior Judge, U.S. Court of Appeals (1st Cir.)

This is a story of the efforts of two judges from Maine—one federal, one state—to solve a problem over time. They have tried to develop more effective state–federal cooperation, increasing the opportunities for knowledgeable lawyers and laymen, can increase the opportunities for people in need of legal assistance to gain, and the ability of the judiciary to provide, access to the courts.

Funding Decline

In 1995 it had become clear that over what had happened to recent state appropriations for the Maine courts. The decline in funding for the courts had prompted the National Center for State Courts to describe Maine as “the most hard-hit of any court system in the United States.” Its caseload had doubled in the last five years while the budget had not increased, and one-half the national average. I had been a founding director of the Governor’s Commission on Court Reform, a Washington, D.C.-based organization devoted to research and education about problems of governance. The Institute, formed in 1991, sought to coordinate the activities, increase the expenditure per capita on courts about one-half the national average. The grant was approved in December 1995. Chief Justice Wathen borrowed the state motto, a Latin word meaning “Head,” and captioned our enterprise “Dirigo.”

In late 1995, Congress drastically cut the budget of the national Legal Services Corporation, the principal source of funds for Maine’s private legal aid providers, Pine Tree Legal Assistance, Inc. Not only was Pine Tree’s funding cut by a third, or over $1 million, but the kinds of cases it could handle were sharply curtailed. The Chief Justice appointed a committee to implement alternative dispute resolution and a task force to make “the system lay persons the forms used in divorce and other court proceedings. In late 1996 “Fall Forum II” was held to focus the batteries of all the participants in providing legal services to the poor, and to break new ground. This time, the emphasis was on the volunteers in the community. Nearly 30 court-related volunteer organizations, including Dirigo, preformed accounts of the services they were doing—to the surprise and edification of the participants. One of them confessed he had no idea that the others existed.

In early 1997, the Maine legislature was in session. Our Second Initiative Task Force was introduced and supported a Civil Legal Services Funding bill—aproposal that filing fees would be doubled. In all cases, the money for the New England, be increased in the district, supreme, and superior courts, to be used to fund legal services through the District Action Group. At the same time, the Chief Justice had the even more difficult task of persuading the legislature to accept the concept of a Family Division of the District Court, in which a cadre of trained case manager officers would relieve overworked district judges by shepherding along with delay and divorce and child custody matters. This legislation was aimed at making court processes more user friendly for the same low income elderly people that for filing fee legislation was targeted to help. Happily, with bipartisan backing and the support of the governor, both proposals became law.

Improve Legal Assistance

Other task forces were also active. An Assessment Committee was working with the private bar, legal service providers, and court personnel to simplify and improve legal assistance to Volunteers Task Force and Bar Rules Task Force called for clarification of ethical standards governing volunteers and “lawyers for the day” and the boundaries of unauthorized practice of law.

The University of Maine Law School agreed to adopt a program, along with law firms, to follow three summers to inter under the tutelage of a law firm and also work part time with a legal services provider.

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tion of the federal courts. Some of the more notable examples of this trend are the Anti-Car Theft Act of 1992, the Violence Against Women Act, the Racketeer Influenced and Corrupt Organizations Act of 1994, the Federal Judges Act of 1994,

Lessons Learned Along the Way

by Maine Chief Justice Daniel E. Watten

As a partner in the three-year journey described in this article, I offer a few observations:

1. It is part of every judge’s and lawyer’s job to keep the courthouse door wide open for all. Everyone’s voice must be heard in court.

2. The change in the legal community is most easily accomplished with the joint involvement of state and federal judges. Only this coalitions can bring together the resources of the entire spectrum of the bar.

3. Judges and lawyers should speak plainly, truthfully, and publicly, and often about the cost in terms of undermining the legal system.

4. People are open to change in tough times. Adversity really does equal opportunity.

5. Big problems lend themselves to small solutions. Know what you want and ask for it.

6. Many pieces can solve the big puzzle. A coordinated plan for improving access to legal information, and, through a Maine Bar Foundation grant, upgraded the program's ability to intercommunicate.

The bar is still a vibrant, growing organization. A good example is the most recent Supreme Court decision in the area of Oregon’s death penalty cases, in which the Court held that appeals of all death penalty cases be reviewed by a federal judge. The decision was 7-2 and was issued on June 25, 1999.

A major achievement of the Justice Action Group in 1996 was the creation of a coordinated plan for improving access to legal information, and, through a Maine Bar Foundation grant, upgraded the program’s ability to intercommunicate.

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Chief Justice Theophilus Parsons: A Model of Judicial Statesmanship

by John Furniss, Legal Intern, Federal Judicial Center

Even U.S. Supreme Court Justice Joseph Story may have understated the accomplishments of Theophilus Parsons when, paying tribute in 1834 to the late Massachusetts Chief Justice, he asserted: "Parsons commands a man whom we shall turn to, from generation, but to a century. The class of men of which he was a member is an extremely small one."

Indeed, Chief Justice Parsons' extraordinary and varied achievements in the formation of the law of Massachusetts extended beyond a mere century's time and transcended state borders. His judicial statesmanship during the seven years (1806-1813) he served as chief justice of the Supreme Judicial Court of Massachusetts has had both practical and profound effects on the law of the nation and has secured his place among the great jurists of American legal history.

State of Chaos

The Massachusetts judiciary was in a state of relative chaos in the first decades following the American Revolution. Much of the problem surrounded the crowded docket of the Supreme Judicial Court, which suffered from a three-year backlog of cases.

In many ways, the judicial system encountered delays in litigation. For instance, a person appealing a decision of the Supreme Judicial Court for a jury trial de novo. Further, the jurisdiction of the court was for the most part undefined. A dearth of good lawyers contributed to the docket's burden. Also, there was incentive to delay—lawyers for the prevailing party were entitled to thirty-three cents for each day the case was pending, and continuances were routinely granted. The uncommon, undisciplined from a lack of eschewed court procedures, was in many ways dominated by these unprofessional garrulous attorneys.

After the resignation of Chief Justice Francis Dana in 1806, certain members of the bar, bench, and legislature recognized the court's need for a strong-minded and well-respected outsider.

Parsons, the most respected lawyer in New England, emerged as the obvious choice.

Taught by Trowbridge

Born in Byfield, Mass., in 1750, Parsons had begun his legal training in Falmouth, Mass., following his graduation from Harvard. The British destruction of Falmouth forced Parsons to return to his home in Byfield. This move proved fortuitous; he became friends with a leading New England lawyer, Edmund Trowbridge. He regarded as "the oracle of the common law of New England." Trowbridge provided Parsons with access to his library, considered the finest in New England at the time, and introduced him to the intricacies of law practice. Thus, Parsons received one of the finest legal educations New England could offer.

In the formative years of state and national government, Parsons emerged as one of New England's most renowned minds. He distinguished himself during the state constitutional convention, where his sophisticated work, The Essex Result, proved especially influential. His influence was again strong during the state convention to ratify the federal constitution, where his anonymous essay Conciliatory Resolutions was a key factor in the convention's ratifying the proposed constitution.

Legal Skills Superior

Meanwhile, his legal practice, which specialized in maritime law, thrived throughout New England. His legal skills were superior, and his practice earned him a handsome income.

Nevertheless, when the lower-paying appointment to the Superior Court of Massachusetts was presented in 1806, Parsons eventually agreed. Through his firm control over the courtroom, he cleared the docket within his first three years on the bench. Parsons eliminated the routine granting of continuances and restricted witness testimony and coun­el arguments.

He required that jury arguments in the trials de novo before the Court be based on evidence instead of serving as a mere exercise in oration, and would often demand summaries of the lawyers' arguments. Parsons' ready command of the legal and technical issues in his cases allowed him to make decisions without hesitation and most often without error.

One anecdote that illustrates Parsons' conception of the judge's relationship to lawyers concerns a lawyer's complaining to the Chief Justice, "Your Honor did not argue your own case in the way you required us to." "Certainly not," Parsons replied, "but that was the judge's fault, not mine."

Reformist Behavior "Tyrannical"

While the bar viewed The Chief Justice's reformist behavior as tyrannical and overbearing, his effect on the profession was critical to his program of reform. The few lawyers who constituted the bar in the aftermath of the American Revolution were poorly trained, as they lacked access to law books and were unfamiliar with proper court procedures. Parsons helped remedy the problem by transforming his courtroom into a law school, patiently concerning himself with the education of individual members of the bar who appeared before him about both law and court procedures.

Parsons established procedures and created forms that promoted efficiency and fairness. He promoted the recording of judicial opinions in the Massachusetts Reports, using this publication as an opportunity to establish procedural rules and to define the jurisdiction of the courts.

Established Forms

He also established pleading forms that not only enabled lawyers to clarify the legal issues of a case but also allowed for judicial determination of the scope of evidence that was appropriate for the case. These forms were subsequently published and served for many years as the standard for pleading in the Massachusetts courts.

One of Parsons' lasting contributions was his efforts at "Americanizing" the common law by merging the English version with colonial laws to meet the distinct needs of New England.

The common law occupied a precarious position in the American states following the Revolution. At that time there was a general hostility towards all things English, particularly in the realm of law. Not only had many lawyers been Tories, but lawyers were seen as insensitive to an English system of law. The ambiguities of the common law were considered a means of oppression and a threat to the order established through written constitutions and bills of rights.

However, this misgiving was countered by the growing nation's need for a living legal order, and the English law emerged as the necessary device. Indeed, the English law had been taught, it was linguistically accessible, and it was widely known and understood.

Knowledge of Common Law

Nevertheless, the common law very much needed to adjust to the unique needs of the states, and Parsons was well suited to this end. Parsons had an unusual knowledge of the English common law as well as of colonial civil law, and he possessed a high degree of discipline, a partial result of his life-long pursuits of mathematics, astronomy, and Greek. His mind was uniquely capable of deriving order from chaos.

Moreover, Parsons had a broad and profound understanding of his community. He not only possessed insight into the political structure and ideals of the new government, but he also understood commercial usages and popular customs of New England. He therefore had a keen appreciation both of the law and of the community's needs.

Parsons was among the select group of jurists judges who established the nature and character of the common law in America. That great achievement, together with his other contributions to court administration, the bar, and the substantive law, earn Parsons a prominent spot among the great jurists of his period, the legacy being not just to Massachusetts but more broadly to American law.

Theophilus Parsons