

FEDERAL COURT WATCH

BY ANN PELHAM

Circuit Conference: At Work and Play

"What's the difference between an Article III judge and a terrorist? You can negotiate with a terrorist."

With that volley, L. Ralph Mecham broke up the audience of several hundred gathered May 20-22 for the D.C. Circuit's 51st annual Judicial Conference in Hershey, Pa. Mecham, director of the Administrative Office of the U.S. Courts, even got laughs from judges.

And Mecham wasn't finished. His next topic was the civil-litigation reform bill being pushed by Sen. Joseph Biden Jr. (D-Del.).

"About two percent of the judges supported it, while 98 percent opposed it—with varying degrees of violence," explained Mecham. The bill was so specific



L. Ralph Mecham

in describing new duties for judges that it included 45 *shalls*, he said.

"We sort of went into 'shall-shock,'" added Mecham, prompting groans in the audience.

But the best shot from Mecham, who was the most entertaining of numerous speakers, focused on the judgeships that Biden had included in his revised version of the civil-reform bill, introduced May 17.

When Biden allotted 77 new federal judgeships around the country, he put 10 in districts where the Judicial Conference had not identified a need. Instead, Biden put the new slots where they would do him the most political good.

"Virtually every Republican on the Senate Judiciary Committee received an extra judgeship for his state," noted Mecham. And, he added, Biden had "zapped" three judgeships the Judicial Conference had sought for Texas, which has been swamped because of drug arrests along the Mexican border.

"I suppose he's going to negotiate with Rep. Jack Brooks," said Mecham, referring to the Texas Democrat who chairs the House Judiciary Committee. "It should be fascinating to watch."

Insights into congressional deal-making, tips about mediating cases, worries over sealed documents, and concerns about subpoenas of defense lawyers were among the wide range of topics covered at the conference.

A similar gathering is held annually by each of the 11 judicial circuits—and federal judges are required to attend. A primary goal is to bring together bench and bar; while District Judge John Garrett Penn chaired the D.C. Circuit conference, Frederick Abramson of D.C.'s Sachs, Greenebaum & Taylor headed the program committee. Leading the staff was Circuit Executive Linda Finkelstein.

"I don't do weather," said Finkelstein with a smile, refusing to take heat for the dreary clouds shrouding the hilltop Hotel Hershey. The rain dashed plans to hold an evening reception in the hotel's elegant formal gardens, but the "fun run" and golf tournament went ahead as scheduled—and the tennis had always been planned for indoor courts.

Circuit Judge David Sentelle, taking over fun-run duties from their long-time organizer, District Judge Gerhard Gesell, said runners had grumbled that the 7 a.m. outing "never had weather like this when Gerry Gesell was running it." Sentelle then warned that times might be a little off because the course was longer. "We moved the finish line 30 yards in order to get under the airport," confessed Sentelle.

Winners in the four age groups were guest Mary Stein, who attended with her husband, trial lawyer Jacob Stein; Mellie Nelson of the Justice Department's Civil Rights Division; Stuart Gerson, assistant attorney general for the Civil Division; and, with the best overall time, John Carver, director of D.C.'s Pretrial Services Agency.

Although judges ostensibly had no special powers at the conference, that might have been a false impression. While the golf tournament at a nearby club was marked by a steady drizzle, not a single drop fell on the hotel's

nine-hole course that same afternoon when a round was played by Chief District Judge Aubrey Robinson Jr., Senior Circuit Judge George MacKinnon, and Leonard Greenebaum of Sachs, Greenebaum.

Winner of the golf tournament was John Vardaman Jr. of D.C.'s Williams & Connolly, a scratch golfer who sometimes plays with Vice President Dan Quayle.

Better-than-average skills also helped Superior Court Judge Henry Kennedy Jr. win the round-robin tennis tournament; he's ranked nationally as a seniors' player. Top woman player was Sari Horwitz, an interloper from *The Washington Post*. (While lawyers covet invitations to the conference, reporters can invite themselves.)

Along with games and cocktails, the conference had its serious moments. At the banquet, tributes were offered to Circuit Judge Spotswood Robinson III and District Judge John Pratt, who both took senior status last year, as well as to James Davey, clerk of the U.S. District Court, who is retiring in 1991 after 20 years on the job.

One of the panel subjects was mediation; programs now operate on a voluntary basis at both the appellate and district courts. Asked whether litigants should join their lawyers at mediation sessions, Deanne Seimer of D.C.'s Wilmer, Cutler & Pickering said it was often a good idea.

"Real people, as opposed to insurance carriers, get a lot out of being there," quipped Seimer, who has mediated numerous cases. A client at a mediation session "gets to see the opposing gladiator and absorb the fact that there is another side," Seimer said. "They may realize that the result is not a foregone conclusion, that a trial would be a horse race."

For lawyers, it can be an eye-opener to have a client in a negotiating session, where words are usually carefully measured. Deadpanned Seimer: "Many of our clients

will say what they think."

Probably the boldest statement at the conference came from a visiting jurist, U.S. District Judge Jose Cabranes of the District of Connecticut.

As a member of the Federal Courts Study Committee, Cabranes helped write the panel's draft report, which sharply attacked the federal sentencing guidelines. But that version was "much criticized by four people, all members of the U.S. Sentencing Commission," explained Cabranes. As a



Judge Jose Cabranes

result, he said, the final recommendation was toned down, basically calling for more study.

But judges, continued Cabranes, have been uniformly unhappy with the way the guidelines are working. In that opinion, there has been no division between conservatives and liberals, or Democrats and Republicans, or those "soft" and those "hard" on crime, Cabranes said.

"Anyone you talk to . . . will express the most serious misgivings about the sentencing structure," he noted. "I have come not to accept the basic premise that something terrible was happening" under the old system, which gave judges greater discretion in setting sentences.

Lamenting what he called the "fear of discretionary authority," Cabranes said the current approach is a "Rube Goldberg system where no one who participates [in the sentencing hearing] can reasonably be expected to know what is going on, particularly the criminal defendant."

Concluded Cabranes: "Nothing is more disturbing to a judge than to see the defendant and family members sitting in court at a sentencing hearing literally bewildered by talk of matrices, computing add-ons or deductions, and departures. This is not justice."

"Federal Court Watch" appears alternately in this space with "Superior Court Watch."