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Inside This Issue

JRS Corner

Page 2

President's Message

Page 3

Board Meets

Page 3

Did You Know...

Page 4

Members in the News

Page 5

Website Updates

Page 6

COLA Update

Page 7

Book Review

Page 8

IJA Responds

Page 9

Bar Leaders meet IJA

Page 10

Criticism Response

Page 12

The Gavel

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CHIEF JUSTICE RETIRES

By Judge Daniel T. Gillespie

When Chief Justice Moses Harrison II received the Illinois State Bar association's Access to Justice Award on February 1, 2001, his remarks included this quotation from President John F. Kennedy, "If a free society cannot help the many who are poor, it cannot save the few who are rich." That sentiment personifies Chief Justice Harrison's life's work as a person for others. In his remarks that day Justice Harrison also had this to say:

"It has been 28 years now since I was first appointed to serve in the judiciary. Twenty-eight years. There are people in this room for whom that represents a lifetime. For me, it has passed in an instant. The courthouses where I sit have changed. Somewhere along the line I became a grandfather. I seem to recall that I used to have hair. But when I put on my robe and open court, I still feel as committed and as full of hope as I did that first day I took the oath of office in 1973."

"People often ask how I see my role as a judge. My answer today is the same as it was 28 years ago. It is to protect ordinary citizens against wrongdoing by the government, large corporations and powerful individuals. When court is in session, it is an affirmation to me that there is hope for the system. Each time the gavel raps, each time the clerk calls the courtroom to order, it means a new opportunity to find justice and to carry it out."

Chief Justice Harrison, who will retire on September 4, is a leader whose extraordinary

talents as a jurist have been widely hailed by leaders of the bench and bar. He has throughout his professional life displayed the knowledge and character to lead and serve. Justice Thomas Fitzgerald had this to say about the chief justice:

"Moses Harrison is a dear friend and a great leader. I will miss him on a personal and professional basis. He was extraordinarily helpful to me when I arrived on the court and I will always be grateful for his kindness. He has a passion for the law and an unyielding determination to fight for what is right. I will miss him."

Leonard Amari, former president of the Illinois State Bar Association and the Justinian Society of Lawyers, who has known Justice Harrison for more than ten years observed that Justice Harrison is truly a person for others, "Everything he does is for other

people," Amari observed. Amari notes that Justice Harrison is an avid sportsman, who has a gift for making other people feel comfortable when they are talking to him. Amari observed that Justice Harrison's grandfather and great-grandfather were coal miners and that Justice Harrison was the first justice of Italian-American descent to preside on the state's highest court. "He's my dear friend, and they don't make them any better than Moses," said Amari.

Timothy Eaton, immediate past-president of the Illinois State Bar Association, writing in the ISBA *Bar News*, declared, "The 'people' have had a friend on the court in Chief



HARRISON Continued on page 2

HARRISON Continued from page 1
Justice Harrison, and his determination 'to do right by them' was unyielding." Chief Justice Harrison's son, Madison County Judge Clarence W. Harrison II, recalls that when he was growing up his father passed on the lessons he learned from his parents: the importance of professionalism and community, the idea of service to the community. Judge Harrison says of his father, "I respect him greatly, and I love him a lot."

Chief Justice Harrison, who was born in Collinsville, attended the local public schools and is a graduate of Colorado College and the Washington University School of Law. While practicing law, Chief Justice Harrison was elected to the Illinois State Bar Association Board of Governors and President of the Madison County Bar Association. He also served on the City Council and as Finance

Commissioner of the City of Collinsville. He was appointed a Circuit Judge in 1973 and was elected to that position in 1974. In 1979 he was appointed to the Fifth District Appellate Court and was elected to that position the following year. He served two terms as Presiding Judge of the Fifth District. Chief Justice Harrison was elected to the Supreme Court in 1992 and began his term as Chief Justice in January 2000.

In 1998, dissenting in *People v. Bull*, Justice Harrison declared that "despite the Court's efforts to fashion a death penalty scheme that is just, fair and reliable, the system is not working. Innocent people are being sentenced to death." His words were prophetic. Chief Justice Harrison declared that he has always treasured his relations with his colleagues on the bench. Looking back on his professional career, the chief justice reports having no regrets,

observing, "I did the very best I could every day. I followed the law. I slept well at night."

Speaking at the 48th annual Illinois Judicial Conference, held earlier this year in Chicago, the Chief Justice defined the role of today's judges:

"At a time when terrorists seek to destabilize our country through brutal acts of mass murder, we, as judges, must do everything in our power to insure that our system of justice is as strong and efficient and fair as we can possibly make it. We may be a vehicle for punishment, but we must not become an instrument of revenge. Among all branches of government, it is ultimately the court's responsibility to preserve reason and wisdom among civil unrest. We must be mindful of how civil liberties can be compromised during times of upheaval. We must be vigilant against persecution. We must be a bulwark against panic and prejudice."

JRS CORNER

MOST FREQUENTLY ASKED QUESTIONS

by Rudy Kink

Q. How does the State of Illinois early retirement incentive help me?

A. Although Judges are considered state employees, the ERI is for state employees that pay into the State Employees Retirement System (SERS). You must be an active member of SERS with eight years of service to qualify for the ERI.

Q. Are health benefits changing for this coming fiscal year?

A. The state is changing administrators of the health plan. Unicare has been handling the claims for the last several years and that will change to CIGNA effective July 1. You

will probably remember that CIGNA was the administrator several years ago. Also the prescription drug has been changed from NPA to Caremark effective the same time. You should be receiving new cards for each shortly if you have not already received them.

Q. I would like to attend a pre-retirement seminar, could you tell me when the next one will be held?

A. We usually hold one pre-retirement seminar in the spring and one in the fall in Chicago. We will be more than happy to arrange for one in your location if we can have at least twelve Judges or more attending. The seminars are designed for anyone who is an active Judge no matter if they have been a Judge for a long time or just was appointed and the seminar is still FREE.

Former judges honored

Judge **Harold W. Sullivan** received the *ISBA General Practice Tradition of Excellence Award* at a luncheon in Lake Geneva on Friday, June 21.

Judge **S. Louis Rathje** will receive the *Award of Excellence* by the National Conference of State Trial Judges during the ABA annual meeting in Washington, D.C. on Friday, August 9 for his efforts in saving the tax deferred status of prior and present judicial pension plan contributions.

PRESIDENT'S MESSAGE

Judge Stuart A. Nudelman

2002 has been an interesting year for the Illinois Judges Association as well as all judges across the state of Illinois. Membership in the IJA is approaching the 1,000 mark as more and more judges realize the benefits that are derived from membership.

Certainly the events in 2002 have tested the mettle of the leadership of the IJA. We are so fortunate to have an outstanding Executive Committee, as well as President's Task Force. These committees are composed of judges from across our state who have an interest in the welfare of their brothers and sisters on the bench. They have been active regarding judicial criticism, COLA issues and outreach to bar associations from Cairo to Rockford.

There are many projects underway that have brought the Illinois Judges Association into the forefront to be recognized as the premiere judges' organization in the country. Student outreach programs, *You Drink & Drive*, *You Lose*, drug awareness partnerships

have brought well-deserved kudos to our organization.

Relations with the ISBA, the CBA and regional and ethnic bar associations have never been better. We continue to work with the Conference of Chief Judges, as well as the Justices of our Supreme Court. We hope to form new relationships with the



Judicial Inquiry Board, the Courts Commission and the Attorney Registration and Disciplinary

Commission for the benefit of lawyers and judges statewide.

We, as an association, have made great progress in many areas. Thanks to our Executive Assistant, Maureen McClelland, we have left the era of a *Ma and Pa Operation* and are now running smoothly and efficiently.

This year may also bring a total restructuring of the IJA so that we may revamp our organization to be more in sync with other bar associations across the state. Our committees have been doing yeomen service in their assigned tasks with special kudos going to David Youck and the Electronic Media Committee enabling us to have almost instant communication with the 400+ judges currently on line. We have set up a Benefits Committee which will soon give you information on trips and the like for all members.

Thank you for your calls, e-mails and letters encouraging the IJA to keep moving forward. I hope to see many of you in December at our annual meeting.

BOARD MEETS

by Judge Grace G. Dickler

The Board of Directors of the IJA met for their mid-year meeting on June 28, 2002. IJA President, Stuart Nudelman, informed the Board of various successful projects undertaken by the IJA in the past year. These include: Publication of *Judicial News and Views*, a monthly newsletter; activities by the Speakers Bureau, a coordinated public relations effort with the Supreme Court; and, *Judicial Perspectives*, a monthly Cable TV show which currently airs in Cook and DuPage Counties and eleven additional cities throughout the state. In addition, the *You Drink & Drive*, *You Lose* Program has been very well received with five presentations having been made to area schools so far this year. Judge Patrick McGann noted that his goal is to conduct three programs per

month in the coming school year. Any assistance by the membership would be appreciated, including help in the presentations as well as contacts with schools that may be interested in hosting the program. Please call Maureen McClelland if you would like to be of assistance.

Judge Ann Jorgensen reported that the Executive Committee met with the ISBA at their Annual Meeting in Lake Geneva. Many topics were discussed, including the ISBA's agreement to help the IJA's Criticism Response Team when judges are the subject of unfair criticism related to decision-making rather than conduct.

Judge Nudelman noted that there are numerous issues that require consideration by the Board and the membership. First, the ISBA will not be

holding its mid-year meeting in 2003 in an effort to save money. As this is the meeting wherein the ISBA and IJA join forces for their joint conventions, the IJA must determine whether it will hold a convention in 2003. As noted by Judge Slavin, the convention is one of the most expensive line items on the IJA budget. Second, the IJA must determine whether it should amend the by-laws to allow for the installation of officers to take place in May or June. Judge Nudelman opined that this change would be beneficial in that the term of office for IJA officers would then be concurrent with the terms of other Bar officials. A committee will be formed to investigate these issues and will

BOARD Continued on page 6

Each night, I faithfully skim the Law Bulletin seeking out gossip for this column. The best gossip is usually deleted by the editors - - - you know the type of gossip I'm talking about - - - who has been reassigned to administrative duties due to a faux pas (or roving paw as the case may be); who is being skinned alive by the press or public (at the risk of causing an uproar, let me just say that I was truly envious that **Judge Clayton "Jay" Crane** was quoted in *Newsweek's* "Perspectives" column); what novice judge is moving at light speed up the ranks; alas, as my freedom of speech has been thwarted for the good of the organization (and my own hide), I am left to tell you about some judges who obviously are workaholics.

Let's start with a guy who definitely needs therapy for his obsession with doing good works. I mean, there's not a hedonistic bone in his body. It's not enough that he still works after retiring from the appellate court when he could be lazing around the beach over the summer; no, not only does he donate time to this organization defending those like me who at times suffer from loose lips, he has also found the time to become **President of the Appellate Lawyers Association**. And he does it all with a smile. That **Gino DiVito** - he makes us all feel slovenly by comparison.

Then there are **Judges Diane Winter, Richard Schoenstedt** and **Milton S. Wharton**, new Presidents of the Lake, Will and St. Clair County Bar Associations. Word is that their judicial status gave them an excuse to avoid the time, aggravation, expense and huge amount of work involved in running a bar association, yet they persevered and accepted their respective roles. Workaholics and do-gooders, they are.

Speaking of workaholics, "retired" Chief Judge **Donald O'Connell** was appointed to mediate the \$780 million attorney fee dispute between the lawyers and the state. Personally, I'm

hoping O'Connell gives the money back to the state for the specific purpose of funding our COLA. Am I dreaming?

Last but not least, you'll be interested to know your former editors decided a vacation was necessary after retiring from editing this publication. So, **Judge Rita Novak** and I took two weeks and traveled to Prague and Budapest; highlights of our trip included lunch with Justice Cepl of the Constitutional Court (also an author of the Czech Constitution), running into First Lady Laura Bush both at the opera and at breakfast, and sampling a liquor, Becharovka. Five bucks to the reader who guesses which of us preferred the Becharovka to the opera!

If you have news, please mail me at 1502 Richard J. Daley Center, Chicago, Illinois 60602 or e-mail me at my **new e-mail: lainiejet@aol.com**. Please note the new chambers address. And if you don't tell me what happened, don't whine if I don't know.

Supreme Stats

I came home from vacation to find change afoot in the Illinois Supreme Court. It made my day to find out that **Justice Mary Ann McMorrow** had been tapped for Chief Justice. On the court 10 years, she'll soon be the first woman to hold that position.

Chief Justice Moses Harrison II will be stepping down September 5th for "personal reasons". I hope it's nothing serious because I would like to be able to keep you apprised as to whether he truly does "retire". Justice **Harrison** announced that 5th District Appellate Justice **Philip Rarick** would take his place on the court. **Justice Rarick** is from Collinsville.

Cook County's Corner

In February, the Presiding Judge of the 4th Municipal District, **Themis Karnezis**, was assigned to a seat on the

First District Appellate Court. **Karnezis**, who sat in the criminal division for many years 14 years, had a reputation for moving cases. He was the choice of Justice **McMorrow**.

Taking over the Presiding Judge position in the 4th was **Edmund Ponce de Leon**. "**Ponce**" (as he is known) served with me in Domestic Relations, then took a Commercial Calendar and now this lofty position. Given his gentle nature, he'll be a wonderful representative to the community.

It gives me great pleasure to report that **Edward Washington II** was appointed to the bench by the Illinois Supreme Court. Ed and I were both law students at Washington University in St. Louis; afterward, he went on to many big jobs in telecommunications law. Before being sworn in by Justice **Freeman**, Ed was lauded by many including Judge **Sharon Johnson Coleman** who served as master of ceremonies.

Cook gladly welcomes early swearing in and help of two judges who won primaries and are unopposed in the general: **Eileen M. Brewer and Noreen Valerie Love**. **Judge Brewer** graduated from Harvard Law and has a Ph.D. in religion from U of C (need I say more) while **Judge Love** was a supervisor at the Cook County Public Defenders' Office and had served in the U.S. Army where she trained soldiers. Clip this column and hand it out to the next person who says the bench lacks talent.

Speaking of retired judges being do-gooders, **Julian Frazin**, directed the Christmas Spirits gang and entertained all at the annual meeting of the Legal Aid Society/Legal Aid Bureau; during the awards, **Benjamin Mackoff** was named as a volunteer extraordinaire.

Laudable in Lake

Kudos to my old pal **Theodore (Ted) Potkonjak** on becoming the new Associate Judge in Lake.

Around the State

Judge Dennis Huber, of 4th Circuit, Montgomery County, **Robert B. Cochonour** of the 5th Circuit and **Jay M. Hanson** of the 14th Circuit all decided to put their feet up for a while. In the meantime, **Dennis Schwartz** of the 7th Circuit, **Steven Evans** of the 9th Circuit, and **Lewis Morgan, Jr.** of the 18th Circuit were all recalled.

Robert B. Spence received another appointment to the Kane County bench (16th Circuit) after being defeated in the March primary. Justice **Robert Thomas** reappointed the former Assistant Attorney General.

In McClean County, **Paul Lawrence**, of Bloomington became the new Associate Judge.

IN MEMORIAM

We will miss these judges who died recently . . . **Judge Michael Kelly** died



suddenly age 58. Many of his colleagues attended his funeral where they heard about his days as a seminarian as well as his famous singing engagements including singing for the Pope.

We note the passing of Retired Circuit Judge **Anthony Kogut**. Retired Judge **James Mejda**, age 89, passed

away. He spent 22 years on the bench, retiring in 1986. I know his friends at the Bohemian Bar Association will miss him. We lost another long-time member of the IJA, Judge **Lucia Theodsia Thomas** (1917-2002). We also lost former Associate Judge **Martin Gerard Luken** who died at age 90. Best I can figure, he retired in 1984.



Judges who attended a recent LAP training were, from l to r: Stuart Nudelman, Michael Caldwell, Rodney Lechwar, Susan Fox Gillis, Martha Mills, Sheila Murphy and Joyce Murphy Gorman. Not pictured: Michael Murphy and Warren Wolfson.

MEMBERS IN THE NEWS: JUDGE RONALD D. SPEARS

By Judge Alexander P. White

Judge Ronald D. Spears of Taylorville, Illinois, was recently appointed chair of a new Illinois State Bar Association Committee on Military Affairs that is composed primarily of retired and reserve military legal officers. The Committee will mobilize resources of the organized bar to provide legal help for members and dependents of the Illinois National Guard and military reserve units who are called to active duty.

ISBA President Tim Eaton, who appointed the committee, said "It is

important that our service people, who are being asked to make personal sacrifices on behalf of their country, know their legal rights and have access to all the legal help they need in order to receive protection under the law. They must be able to focus on their missions and not be distracted by unmet legal needs back home. Issues include employment status, credit obligations, taxes and other financial matters. They will work in tandem with military attorneys and cooperatively with others in the organized bar. Many

of the laws that exist to protect members of the military and their families don't automatically apply and must be requested directly or in court."

In addition to Spears, who is judge advocate general in the Illinois National Guard, the committee also includes: Judge Joseph M. Claps, a Colonel in the Army Reserves, Ronald C. Riley, a Lt. Colonel in the Army Reserve and Alexander P. White, a retired Colonel in the U.S. Marine Corps reserve.

WEBSITE UPDATES

Judge David Youck, Chair of the Electronic Media Committee, regularly updates the IJA website with items of interest to Illinois judges. One recent addition to the website is the *Judges Guide to Soldiers' and Sailors' Civil Relief Act*. The *Judges Guide to the Soldiers' and Sailors' Civil Relief Act*, a joint project of the Military Committee of the American Bar Association's Family Law Section and the North Carolina State Bar's Standing Committee on Legal Assistance for Military Personnel, highlights some of the issues related to the impact of military service on civil litigation, financial obligations, mortgages, leaves, and other matters.

Another item of interest on the website of interest to judges hearing criminal cases, written by Judge Stanley Sacks, is *Ten Is Enough, Or Is It?* which is an examination of ten recent Supreme Court opinions dealing with Criminal Law.

These and many other useful tools can be found on the IJA's website, ija.org. A *Bench book for Judges* is under construction. Click on (<http://ija.org/bb/benchbok.htm>). It is anticipated that this will be a regular feature enabling all judges to contribute entries to the page and encouraging all judges to go to it regularly for information they can incorporate into their own bench books.

In an effort to reduce paper and postage and to respond to the ever-changing needs of our judges, we would like to ask you if you would prefer receiving *The Gavel* via e-mail.

E-mail us your pertinent information (name, address, phone, and e-mail address) to info@ija.org.

BOARD Continued from page 3

report to the Board at the December meeting.

The Board voted to open dialogue with the Supreme Court regarding various issues. The first is to discuss existing Rule 66A which proscribes a judge's teaching activities. The IJA wishes to discuss both the earning limit of \$5000 per six-month period and the ban of teaching before 5 pm. The board deemed that limiting the amount of \$5000 per six-month period sometimes conflicts with the semester schedule. Some judges noted that it is possible to teach an 8 am, class and still be at the Courthouse before the morning call commences. Judge Nudelman also wants to discuss the continuation of the Judicial Performance Evaluation Project, which the Supreme Court announced will be discontinued the next fiscal year. The Board

unanimously voted to endorse the continuation of the Project, as it is beneficial to judges in that it points out weaknesses before they become problematic.



IJA President Stuart Nudelman, Secretary Jesse Reyes, 1st V.P. Ann Jorgensen along with former Presidents Mary Jane Theis, Robert Carter and Timothy Slavin

Along the same vein, Judge Nudelman has been in contact with the JIB and discussions have commenced relative to the viability of a mentoring program for judges in lieu of the filing of formal

charges. In light of the existing mentoring program already in place through the auspices of the Chief Judges and concerns about confidentiality, Judge Nudelman will request to speak to the Chief Judges Conference in September prior to continuing communications with the JIB.

Finally, at the time of the meeting, the Governor had not yet signed the COLA bill, however, as you all know, he has now in fact signed the bill. At this junction, the IJA is considering what action to take and is presently continuing to discuss the passage of SB 2313 with attorneys Richard Prendergast, Kevin Forde and Larry Pusateri, as well as the ISBA and CBA. Judge

Nudelman stated: "We intend to go to Springfield for the upcoming veto session to determine what options we will take in November."

COLA UPDATE

by Judge Daniel T. Gillespie

The 2002 process regarding judicial compensation began on March 19th with testimony by Judges Stuart Nudelman and Ann Jorgensen before the Compensation Review Board. The Compensation Review Board accepted the IJA recommendation to propose a decrease in contribution by judges to their pension plan, as well as a salary adjustment for associate judges. Richard Prendergast and Lawrence Pusateri were excellent advocates for judicial raises to reflect current spending power. Efforts thereafter focused on approval of the Compensation Review Board's recommendations. All that changed when the Senate passed, by a 57-0 vote, Senate Bill 2313, which provided for a freezing of COLAs for the executive, legislative and judicial branches of government. The bill then went to the House of Representatives. Because of the many phone calls and personal contacts from judges, the House did consider the constitutional question involved in diminishing a judge's compensation during the course of his or her term. Some legislators specifically noted that judges' compensation is different from that of the executive or legislative branch of government. Notwithstanding this recognition, a vote was taken and the COLA freeze still passed overwhelmingly: 109-5, with one voting present. Governor Ryan signed the bill on June 28th.

The IJA Executive Committee met and canvassed as many judges as possible to discuss what, if any, action the IJA should take. Members of the executive committee met with and spoke to almost all of the chief judges from around the state. Chief Judge Tim Evans and retired Justice Michael Galasso convened a 30-member Government Affairs Committee to address the issue and review the association's options. Judge Nudelman met with the steering committee of the 65-member retention class of Cook County. He contacted as many members as possible via e-mail and the publication of *Judicial News*

and *Views* to obtain input from as many judges as possible. There are several phrases that were offered in suggesting what action the IJA should take. "Damned if you do. Damned if you don't." "Win the battle. Lose the war." "Is this the time to fight this battle in the court of public opinion?" The general consensus from all these groups seems to be that the Illinois Judges Association would be ill advised to litigate the issue at this time. The reasons were varied based upon the geographic location of the judges, the election process in November concerning retention of judges, and the negative public relations such an action might cause. It must be acknowledged that there is a vocal minority who understandably feel that the Illinois Judges Association should be in the forefront and file a lawsuit immediately.

In a letter to the judges, Judge Nudelman outlined the IJA position that there is a strong legal basis to challenge the bill, with both case law and statutory authority supporting our position. At the same time, he noted, judges must be mindful of the current economic crisis that has enveloped our state and that nothing would be achieved by attempting to place blame as to why this crisis has occurred. Judge Nudelman emphasized that while we will never concede that the action in Springfield passes constitutional muster, we must understand that we are elected and appointed state officials and, as such, are under scrutiny by the public with respect to any actions we take during this budget crisis. There are no guarantees that the legislature will reinstate our lost compensation next year. In fact, there are no guarantees they may not attempt to reduce our compensation again, an action we would vigorously challenge. It is important, however, Judge Nudelman noted, that we posture ourselves in a favorable position to discuss and negotiate the recommendations of the Compensation

Review Board with the legislature both this year and next year. Certainly a reduction in pension contribution can be discussed next year, a year when the Compensation Review Board does not meet. This same scenario may also apply to associate judge salary adjustment. Judge Nudelman observed that we may be aided in future dealings with our elected representatives by demonstrating an understanding of the present budgetary crisis.

Of course, any judge has the ability and the right to file suit in regard to the action by the Senate and House. Judges who retire this year may not ever recapture what they lose as a consequence of this freeze. Judge Nudelman stated that he can fully understand and appreciate any course of action any judge feels obligated to pursue. In the event that a person should file a lawsuit attacking the constitutionality of the measure, it is generally believed that there is no statute of limitations involved, since it is a constitutional issue, and that the successful result of any suit would be retroactive and affect all judges. Judges from the IJA and leaders of the bar associations plan to travel to Springfield for the veto session for further discussion. If we are successful, no further action may be required.

As Judge Nudelman observed, the budget difficulties in Springfield now affect all of us. It will never affect how we comport ourselves on the bench or how we make our decisions. We, as the third branch of government, are sworn to uphold the rule of law. We can be proud of who we are and the tasks that we perform and will, as a group, work with the executive and legislative branches for the benefit of all the citizens of our state. IJA leaders are presently discussing the matter with the leadership of the major bar associations. Any judge seeking input or more information should contact Judge Nudelman, e-mail (stunudel@msn.com), address (2010 Daley Center, Chicago, Illinois 60602), phone (312/603-5110) or Richard J. Prendergast (312/641-0881).

TWO TITANS TANGLE

Reviewed by Judge Dan Gillespie

What Kind of Nation: Thomas Jefferson, John Marshall and the Epic Struggle to Create a United States, James F. Simon, Simon & Schuster, New York, 2002, 348 pages.

The presidential election of 1800 was as vigorously contentious as any in modern history. John Adams, the Federalist sitting president was opposed by the Republican party candidate, Thomas Jefferson, his vice president. Because Thomas Jefferson and Aaron Burr each had 73 electoral votes to Adams' 65, the election had to be decided in the House of Representatives. Ultimately, Burr came in second in the voting to Adams and became vice president under the procedures then in effect. That procedure for the election of the president and vice president almost guaranteed a hostile, or at least cool relation between the president and vice president, because they generally ran on opposing platforms and had conflicting views on major issues. Accordingly, it is not surprising that Jefferson and Burr were not particularly close. Jefferson seldom, if ever, sought Burr's advice on matters of importance during his first term and unceremoniously dumped him in favor of James Madison for vice president during his second term. Having been dropped from the ticket, Burr ran for governor of New York. Alexander Hamilton campaigned vigorously against Burr, causing him to lose a close race. Stung by Hamilton's accusations against him during his failed gubernatorial campaign, Burr challenged Hamilton to a duel by pistols. At the appointed hour, on the bluffs of Weehawken, New Jersey on July 11, 1804, Hamilton fired high and Burr responded by shooting Hamilton dead. Burr soon became *persona non grata* and was indicted for murder in New York and New Jersey. This was decidedly awkward for Burr, who was still vice president.

If he could not be a leader in his own country, it seems Burr considered becoming the leader of a new nation by leading the western territories in an insurrection. It appears he was, at least initially, aided in these endeavors by the army chief of staff, one Brigadier General James Wilkinson, not the most loyal officer to ever hold that position. As the effort started to unravel, General Wilkinson saw the error of his ways and turned in Burr, too modest to mention any role he himself might have played in the aborted effort.

President Jefferson, in his January, 1807 address to Congress, had suggested prior to trial that Burr was guilty of treason. By an anomaly of federal procedure in effect at that time, John Marshall presided over Burr's treason trial. This unusual circumstance is due to the custom of the day of Supreme Court justices also riding the circuit, trying cases in the districts from which they came. According to that procedure, John Marshall rode the circuit in Virginia and therefore presided over this trial. The trial proceedings highlighted the tension that existed between Marshall and Jefferson. Marshall made several key rulings favorable to Burr, who was ultimately acquitted by the jury. For example, Burr asked at trial to see General Wilkinson's letter to Jefferson detailing Burr's alleged treasonous acts. Jefferson had mentioned receiving such a letter in his address to Congress. Burr asked that Marshall issue a *subpoena duces tecum* for the president to deliver the letter and other subpoenaed documents. Marshall held that an accused had the right under the Constitution to subpoena documents necessary for his defense, and added that a president was not above the law. This ruling left enough room for Jefferson to argue that there was executive privilege in the letter and other subpoenaed material. Jefferson, in effect, conceded the point and avoided a clash between the president

and the chief justice by tendering the letter and other documents through the prosecutor, George Hay, without arguing executive privilege. Marshall held further that the government must, under the constitutional provision for treason trials, produce two witnesses to the alleged treasonous acts. This the government was unable to do. Accordingly, the jury returned a verdict of not guilty. President Jefferson, who had been determined that Burr should go to the gallows, was greatly displeased. The treason trial of Aaron Burr was only one example of the tension that existed between Jefferson and Marshall, two titans of their day.

In this eminently readable and interesting study, James Simon demonstrates how several of Marshall's other decisions, grounded in a strong Federalist philosophy, rankled Jefferson. With the passage of time, Jefferson became increasingly frustrated as he realized how expansive a decision *Marbury v. Madison*, which established judicial review, really was. James F. Simon narrates Thomas Jefferson's frustration in reading one Marshall opinion after another in which the chief justice carefully weighed each argument and usually concluded by ruling against the position Jefferson supported. Jefferson, as a leader of the Republican Party, preferred a more limited role for the federal government and a more expansive view of states' rights. For example, in his first term Jefferson reduced the size of the federal government, slashed the military budget and eliminated internal taxes. Although these titans were second cousins, both being descendants of the prominent Randolph family in Virginia, they were not particularly close. Both had served as secretary of state, Jefferson in Washington's cabinet and Marshall in John Adams'. Advancing in their respective careers as president and chief justice, however, they drifted

TITANS Continued on page 9

TITANS Continued from page 8

farther apart. John Marshall, a staunch Federalist, believed in a strong role for the federal government.

In later years Jefferson mended his earlier rift with John Adams by initiating a correspondence between the two founding fathers that spanned the last fourteen years of their lives. An excellent discussion of the relationship between John Adams and Thomas

Jefferson can be found in the best seller, *John Adams*, by David McCullough. Jefferson and Adams both died on July 4, 1826, fifty years to the day after signing Jefferson's Declaration of Independence. Jefferson had reason to be proud of his achievements, to include founding the University of Virginia, drafting Virginia's Statute for Religious Freedom

and the Louisiana Purchase. However, the author demonstrates, whenever he tangled with John Marshall, he came off second-best. James F. Simon suggests that it is easy to see how John Marshall, our nation's fourth chief justice, is always ranked first. This study of two titans of their day is well worth reading.

IJA RESPONDS

by Stuart A. Nudelman

Prior to publication of *The Gavel*, there was a rash of editorials in many newspapers across the state. These editorials, for the most part, were negative towards judges and, in some instances, the Illinois Judges Association. The issues, of course, centered around the suspension of the COLA for 2002. I have written many letters to editorial boards, as well as having been interviewed on radio talk shows, to try to make clear the position of the IJA. The following is a sample of one of the letters sent to an Illinois newspaper.

Dear Editor:

Your editorial, could be interpreted as a misrepresentation of the position of the Illinois Judges Association regarding the suspension of the state's cost-of-living (C.O.L.A.).

The Illinois Judges Association is not aware of any legal action presently pending with regard to the elimination this year of the C.O.L.A. We are not involved in any lawsuit, nor are we advising any members to file one. While the members of I.J.A. and a number of lawyers have expressed concern about the constitutionality of the suspension, we are mindful of the state's current fiscal crisis and its impact on many people and organizations.

The Illinois Judges Association is an organization of approximately 1,000 retired and active state court judges. Our membership is diverse and represents all parts of our state. We serve in every court and hear tens of thousands of cases that are brought before us every day. We are active in our communities and are involved in all aspects and areas of life in Illinois.

As members of the third co-equal branch of government, we understand our duty to interpret the law and rule accordingly. We cannot shy away from issues because they are unpopular or inconvenient. The responsibility of the executive and legislative branches of government is to make laws and budgets; however, a judge's role is different. If called upon, we must interpret and rule on the legality of laws enacted by the General Assembly.

As an association, we respect and encourage any and all opinions from our membership, and on occasion, report these opinions in our newsletter and on our Web site. Individual judges have the right to pursue any course of action they may choose, but it should be remembered that these are the actions of individuals and not the association itself.

Judge Stuart Nudelman

President, Illinois Judges Association

BAR LEADERS MEET IJA LEADERS

Judge Stuart Nudelman convened a lunch meeting on July 19th with leaders of more than twenty bar associations from Cook and the collar counties. Judge Nudelman introduced IJA leaders to the bar leaders and pointed out that Illinois judges are as diverse as the leaders from the associations represented at the meeting. They included the Illinois Women's Bar Association, the Black Women's Lawyers' Association of Chicago, the Asian American Bar Association, the Cook County Bar Association, the Puerto Rican Bar Association,

as well as many other ethnic and regional bar groups, including the West Suburban Bar Association. Second Vice President John O. Steele and Secretary Jesse G. Reyes were also present, along with several other past presidents and IJA members. There was a wide-ranging discussion of common interests, such as judicial evaluations, educational seminars and community projects. Antonio Romanucci, of the Justinian Society of Lawyers, complimented several of the other bar association leaders on their commitment to service to needy people in their

communities. Judge Nudelman invited bar leaders to contact the IJA if they needed a judicial input for mock trials, moot court competitions, educational and or community programs. He also invited bar leaders for input into the IJA *Judicial Perspectives* Cable TV show. Three representatives from Chicago Safe Start explained that their program was geared at young children who are exposed to violence in their homes and/or their communities, which often causes significant psychological and behavioral challenges as a result of their exposure to violence. Eight associations present at the meeting volunteered their assistance. Bar leaders expressed an eagerness to continue dialogue with the IJA and each other. Several bar leaders in attendance complimented IJA leadership for such an innovative approach to address common issues.





Save the Date:
Catholic Lawyers Guild of Chicago Annual Red Mass
Sunday, October 6, 2002
Holy Name Cathedral, 9:30 a.m. Mass
Family Brunch and Award Presentation honoring
Justice Mary Jane Theis
"Outstanding Catholic Lawyer of the Year"
immediately following Mass

Brunch tickets - \$35
contact Jim Convery
312/467-9800
jconvery@lmdblt.com



PROTOCOL

ILLINOIS JUDGES ASSOCIATION CRITICISM RESPONSE TEAM (CRT)

1. Any judge who believes s/he has been targeted for unfair criticism in the media or by other public means, or who is aware of such alleged unfair criticism of another judge, may contact the IJA for assistance.
2. The IJA Executive Director or any officer or staff person so contacted shall refer such judge to either Co-Chair of the CRT, and if neither Co-Chair is readily available, to any member of the CRT or to the President or any officer of the IJA.
3. Such Co-Chair, CRT member or IJA officer so contacted shall ascertain as quickly as possible the facts and nature of the criticism and when practicable consult promptly with such other Co-Chair, CRT member or IJA officer as may be available to discuss the matter and to consider possible resolutions.
4. The CRT Co-Chair, member or IJA officer contacted shall act quickly so that if a response is deemed warranted it may be made promptly, preferably within 48 hours of the time contacted.
5. The CRT Co-Chair, member or IJA officer contacted shall advise the judge targeted (or the one reporting criticism) of resources available to judges in such cases, such as ABOTA and other bar related organizations offering assistance in responding, and shall seek to counsel, advise and assist such judge in finding an appropriate remedy.

**Illinois Judges Association
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