

AJA Benchmark

A Publication of the American Judges Association



AJA President-elect Toni Higginbotham and Richard Kayne

The American Judges Association: Making Better Judges

At its May meeting in Nashville, the AJA Executive Committee discussed several AJA research projects-- past, present, and future--aimed at helping all judges do a better job:

- The AJA's 2007 white paper on procedural fairness continues to drive discussions about improving judicial performance on the bench.
- Work is currently in progress on a State Justice Institute grant AJA received to explore judicial decision-making factors that help or detract from effective decision making.
- Other potential research projects were discussed, including one project in which the AJA has joined in a research grant application with a major university and another that might be done in the future.

The Executive Committee wants to focus on helping AJA members answer the question, "What's in it for me?" when considering AJA membership and meeting attendance. We are committed to making you the best judge you can be.

You Can Give a Fellow Judge a Valuable Gift

AJA has a new one-time program, effective only through **October 1, 2012**, under which each dues-paying AJA member can give a one-year AJA membership to any one judge who has never been an AJA member, a \$150 value.

AJA membership includes your subscription to *Court Review* and *Benchmark*, as well as reduced fees for attending the AJA's outstanding annual educational [conferences](#). This year's annual conference is September 30-October 5 in New Orleans; next year's conference takes place September 22-27 in Hawaii.

We want to expand our reach, and we know that AJA members know best which of their colleagues who haven't been AJA members in the past would be interested. AJA members have a wealth of materials at their disposal to help make them better judges:

- The [AJA Blog](#), which provides updates and timely commentary about topics of interest to judges.
- AJA's white papers, including its [2007 white paper on procedural fairness](#), its [2011 white paper on judicial selection](#), and its upcoming white paper on judicial decision making.
- AJA's top journal, *Court Review*, with articles you can use in your daily work (issues from 1998 to date [online](#)), like [annual reviews](#) of the U.S. Supreme Court's criminal cases by Berkeley Law Professor Charles Weisselberg; how to [wrap up a settlement](#)

[conference](#) to make sure the settlement doesn't unravel; [ten tips](#) on dealing with the media; and a [special issue](#) on better writing for judges.

Offering a colleague a free AJA membership requires three easy steps:

1. Offer the judge the free membership. Tell your colleague why you appreciate your membership in the AJA and how it makes you a better judge.
2. Complete the gift application form once you receive your colleague's consent to join the AJA. E-mail our Executive Director, [Shelley Rockwell](#), for a copy of the form.
3. Save the completed application as a Word document and e-mail it to [Shelley Rockwell](#) (or print and fax it to 757-259-1520).

AJA will send your colleague a letter welcoming the judge to the AJA and acknowledging your gift. Please award the free membership to someone you believe can contribute to our organization.

New Orleans: The 2012 AJA Annual Conference

AJA's [2012 annual educational conference](#) will again be one of the best educational programs a judge could attend anywhere. The conference takes place at the [Sheraton New Orleans](#) from September 30-October 5; the educational programs are October 1-3.

Among the presentations:

- Dean Erwin Chemerinsky's annual review of the past year's decisions of the United States Supreme Court.
- Separate sessions on courts and the media: "Courts and Media: A Primer" and "What Journalists Want: How the Courts Can Help."
- Seventeen different educational sessions to choose from, including what judges can ask to assess risk in pro se, protection-order proceedings; community justice--an international innovation in Canada and the United States; the threat of drugged driving; and judicial ethics in the Internet age.

For more information or to register, check the [AJA website](#).

Future AJA Annual Educational Conferences

2012 Annual Conference
New Orleans, Louisiana
Sheraton New Orleans
September 30-October 5

2013 Annual Conference
Kohala Coast, Hawaii
The Fairmont Orchid
September 22-27

2014 Annual Conference
Las Vegas, Nevada

2015 Annual Conference
Seattle, Washington



Midyear Meeting Attendees Learn About Judicial Elections

Attendees at the AJA Midyear Meeting in Nashville heard six speakers talk about judicial campaigns from a variety of perspectives. The full-day conference was the best we've seen at providing information, perspective, and a chance for discussion to a judicial audience. Two of the speakers--Alaska Supreme Court Justice Dana Fabe and former Iowa Supreme Court Justice Michael Streit--had been through contested retention elections in 2010. Fabe won, Streit lost.

The other speakers offered expertise in multiple areas:

- Political scientist James L. Gibson, perhaps the leading academic expert on politics and judging, presented the results of new research on the effects of judicial campaigns on overall public satisfaction with the courts.
- Two consultants on judicial campaigns--Philip Nichols and Mark Grebner--shared lessons learned over the years through many campaigns and campaign cycles.
- K.O. Myers, director of research and programs at the American Judicature Society, talked about how judicial outreach can help improve the public's understanding of judges and courts, whatever the system for judicial selection and retention.

The retention campaigns of Fabe and Streit (pictured at right) presented contrasts far beyond the result; Fabe won with 54% favoring retention, while Streit lost with 54% opposing retention. Organized opposition to Fabe emerged less than three weeks before the election when a "No on Fabe" website went up, along with signs, flyers, and op-ed pieces. Meanwhile, in Iowa, organized opposition to the retention of three justices had surfaced months before the election, galvanized by the court's unanimous 2009 ruling in favor of same-sex marriage.



Streit said that more than \$1 million was spent on the campaign to oust the Iowa justices, while the individual justices spent no money and a group supporting them spent between \$250,000 and \$350,000.

Streit said that the judges' opponents were very successful in labeling the judges as activists, and that the judges were not good at defining themselves to the voters.

"Our core instincts were, as justices, not to engage--let the work speak for itself," he said. "The opinion speaks for itself did very poorly."

He also said that one of the leaders of the Iowa bar urged the justices not to form their own campaign committees, saying that the bar would protect them. Streit cautioned others not to take that approach: "Don't depend upon other people to do your work."

Fabe said that she had no inkling a campaign was about to be launched against her. In fact, when the "No on Fabe" website launched, Fabe was presiding over the annual conference of the National Association of Women Judges. She said someone told her to check her e-mail, which led to her discovery of the late-breaking campaign.

Fabe's low-budget response defended her record and her qualifications. The response emphasized that she was a good judge who deserved to be retained and that the last-minute attack was unfair.

Gibson said that he had done detailed surveys in Kentucky, which has nonpartisan elections for its judges. That study and others suggest that judicial elections increase the public's sense that the courts are legitimate.

Based on polling in seven different states, consultant Nichols said that the public wants judges who are trustworthy. He said that judges convey this message by things like showing the judge as a family person or as a person in a baseball cap and sunglasses, "a regular guy, a guy you could trust."

Nichols advised that "having a commonsense, plain-spoken introduction might be a good idea" for judges writing opinions in controversial cases.

Grebner said that election defeats are rare in retention states and dependent mainly upon whether the judge became embroiled in a high-profile controversy.

Myers urged judges to invest time in public education and outreach. He noted the voters' retention of the Iowa trial judge whose ruling in favor of same-sex marriage had been affirmed by the Iowa Supreme Court. Myers said this judge had a very active judicial-outreach program.

Gibson (pictured at right with AJA President Kevin Burke) noted that public institutions often benefit from a reservoir of goodwill that lets the public stick with that institution even when it has some temporary disagreement with it.



Legitimacy is furthered when judges act in accordance with public expectations. Thus, Gibson said it's important to understand those expectations. He has tested whether the public favors what he calls the "mechanical style" of judging (the umpire model) or an empathetic style where judges have the empathy to understand various types of people. Gibson said that there is strong public support for the empathetic view of judging, with less support for the legalistic view.

Gibson also talked about whether judicial campaigns undermine legitimacy. Despite some drawbacks, mainly tied to perceptions of the influence of money on campaigns, Gibson concluded that campaigns increase legitimacy.

"Elections, ipso facto, raise legitimacy," he said. "That's not really so surprising--the Soviet Union had elections throughout its history, [and] so did Saddam Hussein, all in an attempt to gain legitimacy."

In Memoriam

Dominic Carra Greishaber

AJA member Dominic Carra Greishaber died on March 26, 2012, in Covington, Louisiana at the age of 87. He served on the New Orleans First City Court for 35 years (1964-99) and was the longest serving judge in the state when retired as chief judge. He was known as the "Marrying Judge" and performed thousands of weddings, including those of singer Marvin Gaye and actor Stacy Keach.



AJA extends condolences to the Greishaber family.

AJA Delegation to Cuba

AJA is excited to announce plans for a delegation of judges to visit Cuba to research the country's legal system. This [special invitation](#) from AJA President Kevin Burke provides details. We hope you will consider joining AJA on this educational and exciting opportunity. As noted in the invitation, for more information, contact Professionals Abroad at 1-877-298-9677; by e-mail at professionalsabroad@academic-travel.com; or on their website, www.professionalsabroad.org.

New AJA Affinity Credit Card Program

AJA is pleased to announce a new affinity credit card program. You can support AJA while earning rewards for yourself by applying for and using a custom Visa® Platinum Card. We encourage you to go to <http://www.cardpartner.com/affinity/app/aja> to learn more and to apply for your new card.

AJA Officer Nominations

Information about [vacancies](#) in AJA's Executive Committee (officers), Board of Governors, and Court of Appeals is available on the [AJA website](#) under "Latest News." There also is a link to a Declaration of Candidacy [form](#). Please take a look and consider becoming more active in your association.

AJA Accepting Nominations for Annual Awards

AJA strongly encourages its members to consider submitting nominations for one or more of the association's awards. The [nominations form](#) should be submitted no later than **July 1, 2012** and may be used for any of the awards. Please use a separate form for each nomination.

Judge Libby Hines Award for Domestic Violence

During the Nashville midyear meeting, the Board of Governors approved a new award named in honor of AJA member Libby Hines, who has worked tirelessly to educate other judges in dealing with domestic violence issues and has been instrumental in the development of AJA's upcoming Web-based DV training. The award will be given to a judge who has made significant contributions to effective judicial responses to domestic violence. As with AJA's other awards, nominations should be submitted by **July 1** to aja@ncsc.org, or AJA, 300 Newport Avenue, Williamsburg, VA 23185.

American Judges Association

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