

# AJA BENCHMARK

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## Blakely v. Washington: Implications for State Courts

Anne Skove, National Center for State Courts

**T**he immediate reaction to the recent U.S. Supreme Court decision in *Blakely v. Washington* is that the decision set sentencing on its ear. A quick reaction from federal courts indicated that *Blakely* likely made certain aspects of the U.S. Sentencing Guidelines unconstitutional. However, responses from the states have been less immediate. This is due in part to the different sentencing schemes in operation in each state, and in part to the confusion engendered by *Blakely*.

A recent memo by the Knowledge and Information Service (KIS) of the National Center for State Courts attempts to determine the possible effects of *Blakely* on state sentencing by analyzing the opinion and capturing state practices.

Which courts will likely be affected? Most states will not be affected. In general, the more similar a state's guidelines are to the federal guidelines, the greater the *Blakely* effect. A preliminary list of affected states includes:

- Alaska
- Arizona
- California
- Colorado
- Idaho
- Indiana
- Michigan
- Minnesota
- New Mexico
- North Carolina
- Ohio
- Oregon
- Tennessee
- Washington

However, an exact count is difficult, as some implications of the case are not yet clear. Many states anticipate that only a handful of cases will be affected.

*continued on page two*

## Annual Meeting Notice

**N**otice is hereby given pursuant to Article V, Section 1, of the bylaws of the American Judges Association that the annual meeting will be held October 25-29, 2004, at the Grand Hyatt on Union Square in San Francisco, California. The annual membership meeting will be held Thursday, October 28 at 8:00 a.m.

Notice is hereby given that the annual meeting of the American Judges Foundation will be held Tuesday, October 26, 2004, at noon at the Grand Hyatt on Union Square.



*Photo courtesy of the San Francisco Convention and Visitors Bureau*

# Proposed Bylaw Amendments for 2004 Annual Conference

**T**he Bylaws Committee, at the request of the Executive Committee, proposes the following amendments to the Bylaws of the American Judges Association (underlined text to be added).

## Article VII BOARD OF GOVERNORS

### Sec. 7. DISTRICTS

District XII: Washington, Oregon, Idaho, Montana, Alaska, British Columbia, Northwest Territories, Nunavut, Yukon Territory.

#### Rationale:

Nunavut was created April 1, 1999, as a follow-on to the Nunavut Land Claims Agreement, the largest Aboriginal land claims settlement in Canadian history. The newest Canadian Territory, Nunavut is nearly one-fifth the size of Canada. It comprises much of the Arctic area of Canada and has its own government for the approximately 29,000 Inuit and non-Inuit residents. As it is legally a territory of Canada, it should be included in a district. Based upon population and composition, it is appropriate to place it in District XII with the Northwest Territories and the Yukon Territory.

## Article VIII OFFICERS

### Sec. 5 DUTIES

(b) President-Elect. The President-Elect shall:

In the absence, incapacity or illness of the President, either as certified by a majority vote of the Executive Committee or upon the written

request of the President, preside at meetings of the General Assembly, Board of Governors, and/or Executive Committee. The duration of these duties shall be specified either in the President's written request or by the Executive Committee.

Perform such administrative functions as may be directed by the President and/or the Board of Governors.

Assist the President in facilitating and coordinating the activities of the Association committees.

Serve as Chairperson of the Conference Education Committee.

#### Rationale:

The Bylaws (Article VII, Section 5 (a)) currently state, "The President shall: Preside at all meetings of the membership of the General Assembly, Board of Governors and Executive Committee." No provision exists for any other officer of the Association to preside at any of these meetings in the absence of the president. While this was not a problem for many years, the issue arose a year ago at the midyear meeting when the president was unable to be present for one day of meetings. In retrospect, it is surprising the issue never arose previously, given potential serious illnesses, accidents, and travel delays. The proposed amendment clarifies who can preside in the absence of the president, and under what circumstances.

Respectfully submitted,  
James E. Heupel  
Chairman, Bylaws Committee

## Blakely v. Washington: Implications for State Courts, *continued*

Generally, *Blakely* appears to apply to upward departures/enhancements from presumptive sentencing schemes. The majority in the case noted that the test is whether the jury has found "all the facts 'which the law makes essential to the punishment.'"

Areas of court management and the legal process that might feel the effects most strongly are plea and charge bargaining, juries, and court budgets. Potential solutions for states faced with *Blakely* issues include bifurcation, waiver, voluntary (as opposed to mandato-

ry) guidelines, and amending of guidelines to be less calibrated and with wider ranges.

The U.S. Supreme Court has already added two *Blakely*-related cases to its docket for October 4, 2004: *United States v. Booker*, No. 04-104, and *United States v. Fanfan*, No. 04-105.

The KIS memo includes state activity, lists of tables and other resources, and state-by-state information about various factors that could be affected under *Blakely*. Find the memo online at [http://www.ncsconline.org/WC/Publications/KIS\\_SentenBlakely.pdf](http://www.ncsconline.org/WC/Publications/KIS_SentenBlakely.pdf). 

# AJA National Forum on Judicial Independence—Monday, October 25 at the American Judges Association 44th Annual Educational Conference

October 24-29, 2004

San Francisco • Grand Hyatt on Union Square

**J**udicial independence is fundamental to justice but increasingly under threat. The public must believe that judges are making decisions free of external political pressure and influence, if they are to believe that justice is being done. Come together with your peers and see what you can do to ensure *your* independence as a judge at the American Judges Association's *National Forum on Judicial Independence* at AJA's 44th Annual Educational Conference in San Francisco, October 25, 2004.

Invited experts and AJA members will discuss these and other topics related to the situations faced by trial court judges:

- Is Judicial Independence a Casualty in State and Local Budget Battles?
- Problem-Solving Courts: Do They Create Judicial Independence Problems or Opportunities or Both?
- Balancing Act: Can Judicial Independence Coexist with Court Accountability?

Forum participants will include judicial elections expert Prof. Roy Schotland (Georgetown University Law Center); public opinion pollster John Russonello; distinguished legal scholar Prof. Malcolm Feeley (University of California at Berkeley); Chief Justice Ronnie White of Missouri; President of the National Center for State Courts Mary Campbell McQueen; and AJA members Kevin Burke, Bobby DeLaughter, and Jeff Rosinek.

This in addition to AJA's outstanding educational program and the beauty of San Francisco. If you



Photo courtesy of the San Francisco Convention and Visitors Bureau

haven't received a conference registration brochure, log on to <http://aja.ncsc.dni.us> and click on the "Members Only" section. 

# Join the President's Circle!



## Win a Free Trip and Registration for the 2005 Conference in Alaska! *AJA's Member-Get-a-Member Campaign!*

The American Judges Association kicks off a new membership drive on September 1, 2004. Share the same important membership benefits and opportunities you enjoy by sponsoring new AJA members.

The person who sponsors the most new members will be eligible for a free registration at the 2005 AJA Annual Conference in Alaska. Rules are as follows:

- Sponsoring members must be current active members of AJA who have paid, in full, all dues for the current year.
- It is the sponsoring member's responsibility to ensure that new recruits identify him or her as their sponsor on their signed applications for membership.
- Paid staff from the National Center for State Courts; AJA's president, president-elect, vice president, and immediate past president, and their immediate families; and any paid contractors for AJA are not eligible to win prizes.
- Winners will be announced at the AJA midyear meeting in 2005 and will be acknowledged on the AJA Web site and in other media. All contest participants consent to all AJA publicity to the general public of their participation in this campaign.

**Grand Prize:** Free conference registration and hotel stay at the AJA 2005 Annual Conference in Anchorage, Alaska—plus AJA merchandise (minimum of 10 new members)

**President's Prize:** Free conference registration and AJA merchandise

Prizes not transferable. If unable or unwilling to attend the 2005 Annual Conference, the *Grand Prize* winner may

- Defer prize to the 2006 conference
- Forfeit the prize to the member who recruited the next highest number (minimum of 10)

All participating members who sponsor one or more new members will be recognized as members of the *AJA President's Circle*.

**Contest runs through January 31, 2005!**

## Of Interest . . .

### AJA Member Sworn in as Administrative Law Judge



*Congratulations to James Faison (Camden, N.J.), who was sworn in as an administrative law judge on July 22, 2004. He served on AJA's Board of Governors, representing District III, from 1998 to 2002. Pictured left to right: Superior Court Judge Ronald Freeman (who administered the oath to James), Hon. Gwendolyn Faison (the mayor of Camden and James's mother), James Faison, and Judges Teofilo Montanez and James Vogdes (who served with James on the Camden Municipal Court).*

### Latest from the Survey of Judicial Salaries

Judges of all levels and state court administrators saw their salaries rise around 3 percent annually from 1992 to 2003, according to the semiannual *Survey of Judicial Salaries* compiled by the Knowledge and Information Services (KIS) of the National Center for State Courts (NCSC). The current *Survey* (vol. 28, no. 2) reports salaries as of October 1, 2003.

Salary ranges were as follows:

- Chief justices/judges, highest courts: \$95,000-\$191,483 (mean \$130,221, median \$125,485)
- Associate justices, courts of last resort: \$95,000-\$175,575 (mean \$125,292, median \$122,418)
- Judges, intermediate appellate courts: \$91,469-\$164,604 (mean \$121,697, median \$117,000)
- Judges, general jurisdiction trial courts: \$86,896-\$154,700 (mean \$112,724, median \$109,810)
- State court administrators: \$83,748-\$175,728 (mean \$112,306; median \$108,288)

The *Survey* also breaks down salaries by state and region and features a special section on the use of senior and retired judges.

The *Survey of Judicial Salaries* is available on the Web at [www.ncsconline.org](http://www.ncsconline.org). Hard copies can be obtained by calling KIS at (800) 616-6164.

### High-Profile Case Transcripts Available Online

Courts, litigants, attorneys, and other interested parties can now search and purchase online copies of transcripts from numerous notorious trials via

Exemplaris, a Web-hosted transcript repository from RealLegal LLC. The repository currently includes transcripts from *United States of America v. Martha Stewart*, *People of the State of California v. Scott Lee Peterson*, and *People of the State of Colorado v. Kobe Bean Bryant*.

Transcripts to these and other trials are available 24 hours a day, 7 days a week. Users can receive electronic transcripts without the wait times associated with paper transcripts. All that is necessary is an e-mail address and a credit card. The database is located at [www.exemplaris.com](http://www.exemplaris.com).

### New Database Focuses on Genetic Policy and Laws

The National Human Genome Research Institute (NHGRI) in Bethesda, Md., has unveiled a new Web-based resource that provides free access to information on laws and policies related to a wide variety of genetic issues. The NHGRI Policy and Legislation Database is located on the Web at <http://www.genome.gov/LegislativeDatabase>.

This new resource focuses on the following subject areas: genetic testing and counseling, insurance and employment discrimination, newborn screening, privacy of genetic information and confidentiality, informed consent, and commercialization and patenting. This database will be updated regularly and contains links to full-text copies of federal and state laws/statutes; federal legislative materials; and federal administrative and executive materials, including regulations, institutional policies, and executive orders.

NGHRI is part of the National Institutes of Health, an agency of the Department of Health and Human Services. 

# AMERICAN JUDGES ASSOCIATION Future Conferences

## 2004 Annual Conference

San Francisco, California  
*October 24-29, 2004*  
Grand Hyatt  
\$159 single or double

## 2005 Midyear Meeting

Sanibel Island, Florida  
*May 12-14, 2005*  
Sundial Beach Resort  
\$125 single or double

## 2005 Annual Conference

Anchorage, Alaska  
*September 18-23, 2005*  
Hotel Captain Cook  
\$135 single or double

## 2006 Midyear Meeting

Coeur d'Alene, Idaho  
*May 18-20, 2006*  
Coeur d'Alene Resort  
\$130 deluxe room  
\$160 premier room

## 2006 Annual Meeting

New Orleans, Louisiana  
Hotel Monteleone  
\$169 single or double

## 2007 Midyear Meeting

Newport, Rhode Island

## 2007 Annual Conference

Vancouver, British Columbia

# BENCHMARK

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