

American Bar Association
Section of Administrative Law and Regulatory Practice

2006 Annual Meeting

August 3-6, 2006

Waikiki Beach Marriott

Honolulu, Hawaii

Welcome to the 2006 Annual Meeting



On behalf of the Ad Law Section, I cordially invite you to join us in Hawaii for the 2006 Annual Meeting. As you peruse the information in this brochure, I think you will agree that we've arranged some very topical and exciting programs ourselves, and we have partnered with other Sections and Divisions of the ABA to offer others.

I encourage you to make plans now to attend this meeting. The Section will be based at the Marriott Waikiki Beach Resort. And consider this my personal invitation for you to join fellow administrative and regulatory law colleagues each evening in the Section's hospitality suite after dinner.

I look forward to seeing you in Hawaii.

Sincerely,

Eleanor D. Kinney
Section Chair

THURSDAY, AUGUST 3, 2006

9:30 am – 11:00 am

Military Tribunals Begin: Military Tribunals Begin: Must Fairness Give Way to National Security

A three judge panel has ruled that plans to try detainees through military tribunals did not violate international law, military law or the U. S. Constitution. This ruling energized the debate over the fairness of such proceedings. This session will explore the issue from several perspectives including the need for national security, the enhancements of the U.S. proceedings over similar trials such as the international tribunals in Rwanda and Yugoslavia where the prosecution could appeal "not guilty" verdicts. Discussion will address restrictions on the ability of counsel to communicate with clients, the possible exclusion of defendants from portions of a trial, and the evidence rules adopted for use in the tribunals. The session will examine alternative ways to prosecute those who violate the laws of war and concerns raised by foreign officials as to certain Commission procedures.

Requires CLE Ticket or CLE Passport

Panelists:

Jeff Bravin, Washington, DC

Thomas Hemmingway, Washington, DC

Neal R. Sonnett, Miami, FL

Suzanne Spaulding, Washington, DC

Moderator: **Stephen A. Saltzburg**, Washington, DC

Primary Sponsor: Criminal Justice Section



Diamond Head State Monument, Honolulu

FRIDAY, AUGUST 4, 2006

7:30 am – 9:00 am

Administrative and Regulatory Practice and Procedures in the People's Republic of China

This program will review administrative and regulatory practices and procedures in the People's Republic of China and their role in the adjudication of disputes involving international trade and intellectual property issues.

Requires CLE Ticket or CLE Passport

Panelists:

Xixin Wang, Peking China

Greg Slater, Chandler, AZ

Paul Lalonde Toronto, Canada

Moderator: Leslie Alan Glick, Washington, DC

7:30 am – 9:00 am

Federal Land Use and the Environment Under the Roberts Court

This seminar will review recent Supreme Court jurisprudence on federal oversight of land use and federalist approaches to environmental regulation, with a particular focus on the new Roberts Court.

Requires CLE Ticket or CLE Passport

Panelists:

Robert H. Freilich, Los Angeles, California

M. Reed Hopper, Sacramento, California

Steven J. Eagle, Arlington, Virginia

Moderator: David L. Callies, Honolulu, Hawaii

Primary Sponsor: Section of State and Local Government

11:30 am – 1:00 pm

Gonzales v. Oregon – Lessons for States, Terminally Ill, and Schiavo Patients

Not too many years ago, the U.S.S. Ct. told us that as Americans we do not have a federally protected Constitutional right to be assisted in our demise if we are terminally ill. Embedded within that decision was an observation that, "Americans are engaged in an earnest and profound debate about the morality, legality, and practicality of physician-assisted suicide", as well as a directive that the "laboratory of the states" should be where efforts and analysis to assist such individuals in their last days should be undertaken. The state of Oregon took up this "gauntlet" and passed its Death With Dignity Act which has now withstood all legal challenges through the January 17, 2006 decision by the United States Supreme Court in **Gonzales v. State of Oregon**. The Court has now declared that the Attorney General was not given any statutory authority under the federal Controlled Substances Act to declare it is not a legitimate medical purpose to prescribe drugs to assist a person who is terminally ill.

The case clears the path for states to enter this legislative arena, as Oregon did. Is this appropriate? Should it be appropriate? Is this a benefit for the "Baby Boomer" generation? Is this a harbinger of a slippery slope for patients such as Terri Schiavo? What are the legal, medical, ethical, religious and social implications of the court's ruling? These questions, and others, will be addressed in a 90 minute "roundtable" discussion by esteemed panel members from medicine, law, ethics and patient advocacy. This is anticipated to be a fascinating and captivating dialogue and discussion.

Requires CLE Ticket or CLE Passport

Panelists:

Barbara Coombs Lee, Portland, OR
Kathryn Tucker, Seattle, WA
William Colby, Prairie Village, KS.
Brian F. Issell, M.D., Honolulu, HI
James Pietsch, Honolulu, HI
Ah Quon McElrath, Honolulu, HI
Kenneth Kipnis, Honolulu, HI
Moderator: Miles J. Zaremski, Lincolnwood, IL

Primary Sponsor: Tort Trial and Insurance Practice Section

11:30 am – 1:00 pm

Birthright Citizenship and the Fourteenth Amendment

The American people are frustrated with the lack of enforcement of law at the border, and are increasingly open to new policies, including policies to eliminate the incentives for illegal entry. No one disputes that superior economic opportunity in the United States is a strong magnet. But some policy activists have also begun to contend that birthright citizenship for children born in the United States is another important attraction. Accordingly, numerous proposals have been introduced in Congress to repeal birthright citizenship for the children of undocumented persons, as well as for the children of persons other than U.S. citizens and aliens lawfully admitted for permanent residence. Section 1 of the Fourteenth Amendment, however, provides that "[a]ll persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside." In light of this provision, are these proposals to repeal birthright citizenship by statute constitutional? And in light of this nation's traditions, customs, and values, are these proposals good policy?

Requires CLE Ticket or CLE Passport

Co-Sponsors: Section of Individual Rights and Responsibilities and the Commission on Immigration

Panelists:

John Eastman, Orange, CA
James C. Ho, Dallas, TX
Hon. Dan Lungren (Invited), Gold River, CA
Margaret Stock, West Point, NY
Moderator: Anna Shavers, Lincoln, Nebraska



Hawaii State Capitol Building Oahu

1:30 pm – 3:30 pm

Outsourcing, Vendor Management and the Federal Banking Regulators

As more and more financial institutions outsource various functions, the federal regulators look closely at the arrangements with the third parties - whether the companies are domestic or foreign. Issues relating to risk management, data security, privacy, compliance management and legal liability are just a few of the topics addressed by the regulators in examinations and by consultants and other experts in drafting contracts. This session looks at what is required and how banks and their affiliated companies can comply and protect themselves.

Requires CLE Ticket or CLE Passport

Panelists:

Colleen Martin, Seattle, WA
Marlene Roberts, San Francisco, CA
Trude Tsujimoto, Brea, California
Stanley Chong, Honolulu, Hawaii - (Invited)
Charlotte Bahin, Washington DC, Moderator

Requires CLE Ticket or CLE Passport

6:00 pm - 8:00 pm

“Beyond Borders” Joint Reception at the U.S. Army Museum of Hawaii

Joint Reception hosted by the Sections of International Law, Administrative Law, Tax Law, Dispute Resolution, and Individual Rights and Responsibilities

Tickets \$50 per person.



U.S. Army Museum of Hawaii

9:30 pm

Chair's Hospitality Reception [Chair's Suite]

SATURDAY, AUGUST 5, 2006

8:30 am – 10:00 am

Section Annual Meeting and Elections

Members of the Administrative Law and Regulatory Practice Section are welcome to this open meeting of the section membership. Enjoy continental breakfast with the officers and council, and hear an update on current and future initiatives of the Section. Per the Section bylaws, the election of officers and council will occur at this meeting. The slate of candidates for the open positions is as follows: Section Chair: Daniel Troy, Washington, D.C.; Chair-Elect: Michael Asimow, Los Angeles, CA; Vice-Chair: H. Russell Frisby, Jr., Washington, D.C.; Section Delegate: Thomas Susman, Washington, D.C.; Budget Officer: William Morrow, Washington, D.C.; Secretary: James W. Conrad, Jr., Arlington, VA; Council Members – Three Year Term: Lisl Dunlop, New York, NY; Kenneth Hurwitz, Washington, D.C.; William Jordan, Akron, OH; Richard W. Parker, Hartford, CT.

11:15 am – 1:15 pm

Hot Technology Projects Argued to Judges.

Two mock court hearings will explore different areas where technology intersects with law and judging:

1. Ex Parte Fact Investigation over the Internet. Judge James A. Wynn, Jr., North Carolina Court of Appeals, will hear and rule on a motion that he recuse himself from a case on grounds that his research of certain questions related to the case over the Internet constituted impermissible ex parte fact investigation.

Arguing the motion for recusal will be Donald R. Lunberg, Executive Director of the Indiana Supreme Court Disciplinary Commission; arguing against the motion will be Judge Martha C. Warner, Florida Court of Appeal.

This hearing will explore the implications for judges, lawyers, and litigants of Proposed Model Rule of Judicial Conduct 2.10(B) which prohibits judges from independently investigating facts in a case and Comment 7 to that Rule which provides, "The prohibition against a judge investigating the facts in a case independently or through a member of the judge's staff extends to information available in all mediums, including electronic ones."

2. Discovery of Electronic Data. Judge Herbert B. Dixon, Jr., Superior Court of District of Columbia, will hear and rule on a motion to compel and for sanctions for violation of a preservation order. The hearing will include expert testimony concerning altered data on the defendant's computer system, a request for production of electronic data in native file format (including meta data), and an argument that certain of the requested data is privileged. This hearing will examine some of the unique considerations applicable to discovery of digital data, and sanctions for failure to comply with orders relating to the production of digital data.

Speakers: Hon. Herbert B. Dixon, Jr., Washington D.C, Donald R. Lunberg, Indianapolis, Indiana, Greg McPolin, New York, New York, Tom O'Connor, Bellevue, Washington, Richik Sarkar, Cleveland, Ohio, Hon. Frank Sullivan, Jr., Indianapolis, Indiana, Hon. Martha C. Warner, West Palm Beach, Florida, Hon. James A. Wynn, Jr., Raleigh, North Carolina.

Primary Sponsor: Judicial Division

11:30 am – 1:00 pm

Convergence of Wireless and Wire Line Telecommunications, Internet and Cable

This program will look at legal, regulatory and consumer aspects of wireless and wireline telecommunications, Internet, and cable services; the extent of convergence; barriers to convergence; and prospects for the future.

Moderator: T. Michael Payne, Senior Vice President & General Counsel, AT&T Communications Group, Bedminster, NJ

Speakers: Carlito P. Caliboso, Chairman, Public Utilities Commission, Honolulu, HI, John Donovan, President and CEO, in Code Telecom, La Jolla, CA, Harvey Plummer, Senior Vice President, Engineering and Operations, Hawaiian Telecom,

Honolulu, HI, Randall Stephenson, COO, AT&T Inc., San Antonio, TX

Primary Sponsor: Section of Public Utilities, Communications, and Transportation Law

Requires CLE Ticket or CLE Passport

Noon – 2:00 pm

The International Rule of Law Luncheon

The International Rule of Law Luncheon — a successor to the CEELI Awards Ceremony and Luncheon — will take place at the ABA Annual Meeting in Honolulu, Hawaii, on Saturday, August 5, 2006, in the Kalakaua Ballroom of the Hawaii Convention Center from 12:00 noon to 2:00 p.m.

Given the Pacific Rim location of the meeting, the Luncheon program will focus on rule of law reform in Asia. ABA-Asia is taking the lead on organizing this event and will present the ABA-Asia Rule of Law Award to U.S. Supreme Court Justice Anthony Kennedy and to Hilario G. Davide, Jr., recently retired Chief Justice of the Supreme Court of the Philippines.

Ticketed Event

1:00 pm – 4:00 pm

What do Judges Do? Being a Judge in America

Exploration of the difference between judicial decisions and decisions by the executive or legislative branch of government. Discussion will include explanation of how judicial branch is not only separate, but also is the guardian of separate values that form a large component of a system of rule of law. There will be an interactive discussion of the powers and limitations of judges at each level, separation of powers and how that impacts what judges can do, what is rightly expected of judges and ethical constraints on their authority, what behavior is unacceptable for judges, and is there an "ideal" American judge. The judges on this program represent a broad spectrum of the American judiciary at every level, from a tribal judge to Supreme Court justices. The moderator/interlocutor, Dean Kenneth Starr, was formerly a judge on the United States Court of Appeals for the District of Columbia Circuit, and also served as the Solicitor General of the United States. He was also a clerk for United States Chief Justice Warren Burger, bringing to this program his perspective as

a federal appellate judge, and his knowledge of the U.S. Supreme Court as both the Solicitor General and as a clerk to a Chief Justice of the Court. This program includes ethics credit.

Requires CLE Ticket or CLE Passport

Moderator: Dean Kenneth Starr, Washington, DC

Speakers: Hon. Louraine Arkfeld, Tempe, Arizona, Hon. Samuel Bufford, Los Angeles, California, Hon. Louis Condon, Charleston, South Carolina, Hon. Mary Ellen Coster-Williams, Washington, D.C., Hon. Bernice B. Donald, Memphis, Tennessee, Hon. Gregory Holiday, Bloomfield, Michigan, Hon. J. Matthew Martin, Cherokee, North Carolina, Hon. Carol Park-Conroy, Alexandria, Virginia, Hon. Rosemary Sackett, Okoboji, Iowa, Hon. Ramona G. See, Los Angeles, California, Hon. Norma L. Shapiro, Philadelphia, Pennsylvania, Hon. Linda K. Strite Murnane, Louisville, Kentucky, Hon. Frank Sullivan, Indianapolis, Indiana, Hon. John Vittone, Washington, D.C., Hon. Martha C. Warner, West Palm Beach, Florida, Hon. Harris Hartz, Albuquerque, New Mexico, Hon. Ronald Gilman, Memphis, Tennessee, Hon. Patricia Timmons-Goodson, Fayetteville, North Carolina.

Primary Sponsor: Judicial Division

4:00 pm – 6:00 pm

ABA Annual Meeting Opening Assembly – Sheraton Waikiki



Honolulu Convention Center

6:00 pm – 9:00 pm

ABA Presidential Reception

The President's Reception will be held, immediately following the Opening Assembly at the beautiful outdoor pool areas of the Sheraton and Royal Hawaiian hotels. The event will feature hors d'oeuvres and an open bar, as well as entertainment reflective of local Hawaiian traditions.

Tickets: Registrants and guests age 18 and over are \$40. Tickets for registrants under age 18 are \$20.

9:30 pm

Chair's Hospitality Reception

SUNDAY, AUGUST 6, 2006

11:30 am – 1:00 pm

It's Not Elementary My Dear Watson: Undercover Investigations, Attorney/Client Privilege, and Other Legal Ethical Issues

Are undercover investigations by lawyers ethically permissible? How does attorney/client privilege apply to fact investigations? Can ex parte communications be used in investigations? Our expert panelists, including a regulatory litigator, Assistant U.S. Attorney, former government regulator and a trial lawyer, will tackle these questions and delve into recent developments in the law and the legal ethics that shape how government, regulatory, and trial lawyers conduct fact investigations. Learn how to effectively respond to investigations from panelists that conduct investigations for their clients and those that represent parties responding to investigations.

Requires CLE Ticket or CLE Passport

Panelists:

Charles Baker, New York, NY

Jeff Thomas, Little Rock, AR

Susan Stead, Columbus, OH

Greg Brooker, Minneapolis, MN

Moderator: John Knapp, Minneapolis, MN

Primary Sponsor: Tort Trial and Insurance Practice Section

11:30 am – 1:00 pm

Silencing the Court: Judicial Impartiality v. Free Speech – A Mock Supreme Court Argument

Primary Sponsor: Tort Trial and Insurance Practice Section

With the current political climate, the right to free speech for judges and judicial candidates and the crafting of judicial ethics codes has become a critical topic of concern. The U.S. Supreme Court's recent denial of certiorari in *Dimick v. Republican Party of Minnesota* leaves the constitutionality of judicial ethics laws limiting the speech and association rights of judges and judicial candidates uncertain.

In *Dimick*, the Supreme Court declined to review the Eighth Circuit *en banc* decision that struck down two provisions of the Minnesota Supreme Court's Canons of Judicial Conduct as unconstitutional. The decision invalidated restrictions on judicial campaigns that have been adopted by approximately 30 states and that remain part of the ABA Model Code. As a result, judicial candidates are left in a state of uncertainty with regard to permissible campaign behavior, and attorneys charged with crafting ethics codes are left with conflicting guidance. The mock Supreme Court argument will focus on this conflict between the need for judicial ethics codes that protect public confidence in the impartiality of the courts and the rights of judicial candidates to free speech and association.

More than just an oral argument, advocates representing both the plaintiff and the defense will share their goals and tactics with the audience and the selected judges will explain what was effective and what was not. The mock conference of judges will give you an inside look at their decision-making process and explain how they will vote and their feelings on what the opinion should express. A panel of psychologists and communication specialists will then analyze the behavior and comments of the participants and note how the demeanor and comments of the judges and advocates affected the case, particularly in light of the direct interest that those judging and arguing potentially have in the outcome of the case. The argument will be followed by a question and answer session.

Moderator: Dan Polsenberg, Las Vegas, Nevada

Panelists

The Advocates: *For the plaintiff:*

Alan B. Morrison, Stanford, CA
Charles G. Cole, Washington, DC

For the government:

David Axelrad, Encino, CA
Hon. Danny J. Boggs, Louisville, KY
Hon. Harris L. Hartz, Albuquerque, NM
Hon. Ronald T.Y. Moon, Honolulu, HI
Hon. Steven Levinson, Honolulu, HI
Hon. John Irwin, Omaha, NE
Hon. Rosemary Sackett, Okoboji, IA
Prof. Steven C. Combs, Honolulu, HI
Prof. John Hart, Honolulu, HI
Richard P. Hogan, Jr., Houston, TX
Jennifer Bruch Hogan, Houston, TX
Julianna McCabe, Miami, FL



Ali'iolani Hale, Hawai'i State Supreme Court

11:30 am – 1:00 pm

16th Annual Margaret Brent Women Lawyers of Achievement Awards Luncheon

Honoring:

- **Ellen Godbey Carson**, Director, Alston Hunt Floyd & Ing and community activist; in Honolulu, Hawaii.
- **Constance Slaughter-Harvey**, Civil rights attorney and activist, former Assistant Secretary of State of Mississippi, and champion of education of youth; in Forest, Mississippi.
- **Peggy A. Quince**, Justice, Supreme Court of Florida and first African-American woman to serve on the Florida Supreme Court; in Tallahassee, Florida.

- **Betty Roberts**, Former Oregon Supreme Court Justice and first woman on the Oregon Supreme Court; in Salem, Oregon.
- **Joan C. Williams**, Distinguished Professor, Hastings College of the Law, University of California and author of groundbreaking scholarly contributions to the field of work/life studies; in San Francisco, California.

Ticketed Event

6:00 pm – 7:30 pm

ABA Award for Distinguished Achievement in Environmental Law and Policy Ceremony and Reception

Primary Sponsor: Section of Environment, Energy and Natural Resources

Free Event

ABA MEETING REGISTRATION

NOTE: Attendance at all programs and events require registration to the 2006 ABA Annual Meeting. All Section program and event tickets are sold through the ABA. For more details on the 2006 ABA Annual Meeting, and to register visit <http://www.abanet.org/annual/2006>.

The deadline for ABA Annual Meeting advanced registration is **Thursday, June 29, 2006**. Participants must register by this date in order to be included in the list of attendees available at the Annual Meeting. Thereafter, registration will be accepted on-site at the Hyatt Regency. Registration fees are as follows:

ABA All-Access CLE Badge - \$570

- This badge can be used for admittance to governance meetings, non-CLE programs and ALL CLE programs at the Annual Meeting, including those at the Presidential CLE Center and all satellite hotels. Purchase this badge through ABA Annual Meeting registration.

“Governance Meetings Only” Badge - \$295

- This badge is intended for those attendees whose primary focus are governance meetings (committee and/or Council), and s. This badge will include admittance to all governance meetings. Attendees can then purchase individual CLE tickets for \$75.00 each. Purchase this badge through ABA Annual Meeting registration.

Individual Ticket Options

- If you are registered for “Governance Meetings Only” you may also purchase individual CLE tickets

for \$75.00 per program for those being held at the Presidential CLE Center. Administrative Law CLE Programs being held at the Waikiki Marriott are a separate ticketed item. Please see the Section Registration Form for cost.

- Discounted ABA CLE program tickets will be available to registered government lawyers and judges for \$35.00, purchasable through the ABA Annual Meeting Registration. Law Student registrants will be admitted to all CLE programs at no additional charge.
- Admittance to each CLE program will require one individual program ticket OR the All-Access CLE Badge.

Non-Member Registration

- Registration for non-ABA Members is \$775.00

HOTEL RESERVATIONS

The Administrative Law Section will be housed at the Waikiki Beach Marriott Resort & Spa. Located directly across from the world famous Waikiki Beach, it enchants guests with more than five acres of tropical beauty. The resort offers 1,310 guestrooms in two magnificent towers. Rooms provide views of the ocean, mountains and Diamond Head. All rooms are air conditioned and offer two double or king-sized beds and offer high-speed wired/wireless internet access.

The deadline for housing is **Thursday, June 29, 2006 at 5:00 pm**. I.T.S. is the only source of official ABA Housing. I.T.S. can be reached at (800) 421-0450. I.T.S will acknowledge your reservation request in writing within one week of receipt of your ABA registration form. **You must complete your registration for the ABA Annual Meeting in order to receive official housing.** Please note that the rate at the Waikiki Marriott is \$195 Partial Ocean View, \$233 for Ocean View, and \$265 for Deluxe Ocean View.

To make your lodging arrangements, visit ABA online registration at: <http://www.abanet.org/annual/2006>.

CONTINUING LEGAL EDUCATION CREDITS

Accreditation for all educational programs has been requested from all the states with mandatory continuing legal education requirements. For more specific information about MCLE credit contact Regina Ashmon, Administrative Law Section CLE coordinator, 202-662-1528. In order to earn CLE credit for programs attended at the 2006 Annual Meeting, you must be registered for the meeting.