United States District Court for the District of Rhode Island

2013 District Conference

Creativity and the Courts

Omni Providence Hotel
One West Exchange Street, Providence, Rhode Island
Thursday, October 10, 2013

2013 District Conference Committee

Steven Richard, Esq., Co-Chair
Raymond Ripple, Esq., Co-Chair
Timothy Bliss, Esq.
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Michael Fontaine, Esq.
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Professor Michael Yelnosky

United States District Court for the District of Rhode Island

Chief Judge Mary M. Lisi
District Judge William E. Smith
District Judge John J. McConnell, Jr.
David A. DiMarzio, Clerk of Court
Lisa Quartino, Administrative Specialist

Registration with Continental Breakfast

8:30 to 10:00 am
Outside Narragansett Ballroom A & B, 1st Floor

Opening Remarks by Chief Judge Mary M. Lisi

Narragansett Ballroom A & B, 1st Floor

Morning Plenary Session

10:00 to 10:50 am

Meet the Judges

Narragansett Ballroom A & B, 1st Floor

Hon. O. Rogeriee Thompson
United States Court of Appeals for the First Circuit

Hon. John J. McConnell, Jr.
United States District Court for the District of Rhode Island

Hon. Patricia A. Sullivan
United States District Court for the District of Rhode Island

Hon. Diane Finkle
United States Bankruptcy Court for the District of Rhode Island

Melissa M. Horne, Esq. (Moderator)
Law Offices of Melissa Horne

Raymond M. Ripple, Esq. (Moderator)
Edwards Wildman Palmer LLP

At this plenary session, Rhode Island's most recently appointed members of the federal judiciary will discuss their preferences and expectations for attorneys appearing before them. The Judges will also provide insight regarding their professional experiences and transitions to the federal bench.

Morning Breakout Sessions
11:00 to 11:50 am

How Do Federal Judges Decide Cases?
Narragansett Ballroom C, 1st Floor

Professor Lee Epstein
University of Southern California

The most popular answers to this question fall into two basic categories. The first focuses on the influence of legal rules (the judge as an umpire) and the second focuses on the influence of ideology (the judge as a politician in a robe). This session will present and explain recent research that shows how legal rules, ideology, and various other factors combine to influence judicial practices and how these influences vary from court to court and case to case.

Drones and Jones: The Fourth Amendment in the Digital Age
South County Room, 3rd Floor

Professor Christopher Slobogin
Vanderbilt Law School

Mark Eckenwiler, Esq.
Perkins Coie

Professor Emily J. Sack (Moderator)
Roger Williams University School of Law

In United States v. Jones, the Supreme Court held that the Government's installation of a GPS device on a target's vehicle and its use of that device to monitor a vehicle's movements constitute a search under the Fourth Amendment. The panel will explore the implications of Jones in a changing technological society, including a discussion of privacy interests and limits to the third party doctrine at a time when we entrust so much personal information to "the cloud," our internet providers and cellphone carriers.

Litigating the High Profile/Complex Case

Newport/Washington County Room, 3rd Floor

Hon. John E. Jones, III
United States District Court for the Middle District of Pennsylvania

Eric Rothschild, Esq.
Pepper Hamilton LLP

Professor Jorge O. Elorza (Moderator)
Roger Williams University School of Law

In 2005, the District Court for the Middle District of Pennsylvania heard and decided the matter of Kitzmiller v. Dover. In the case, a group of plaintiffs challenged the town's decision to introduce "Intelligent Design" into the public school curriculum. The case presented a number of challenges stemming from the media attention and the complexity of the underlying issue: is Intelligent Design "good" science. This panel will consider the ways in which federal courts manage and hear these high profile cases and the ways in which attorneys can employ creative litigation strategies within them.

Luncheon

12:00 to 1:45 pm
Narragansett Ballroom A & B, 1st Floor

Hon. Sandra Day O'Connor
Retired Associate Justice, Supreme Court of the United States

Hon. Bruce M. Selya
United States Court of Appeals for the First Circuit

Afternoon Breakout Sessions

2:00 to 2:50 pm

Mediating the High Profile/Complex Case

Narragansett Ballroom C, 1st Floor

Paul A. Finn, Esq.
President of Commonwealth Mediation and Conciliation, Inc.

Professor Eric D. Green
Resolutions, LLC

The emotions and stakes in high profile, complex cases pose challenges to reach efficient and effective resolutions in alternative dispute resolution. The panelists will lead a free flowing, interactive Socratic discussion of sample cases, sharing their insights and experiences gained through more than 50 years of combined experience in alternative dispute resolution.

Creative Sentencing: Exploring Alternatives to Incarceration

South County Room, 3rd Floor

Hon. Patti B. Saris,
Chief Judge, United States District Court for the District of Massachusetts

Hon. John Gleeson
United States District Court for the Eastern District of New York

Alfred Siegel, Esq.
Center for Court Innovation

John Marshall
United States Probation Office for the District of Rhode Island

Adi Goldstein, Esq. (Moderator)
United States Attorney's Office

Professor Christopher Slobogin (Moderator)
Vanderbilt Law School

This panel will explore the emerging trends of drug courts, treatment alternatives, and a variety of re-entry programs as alternatives to lengthy terms of incarceration for drug offenders. The panel will also explore alternatives to incarceration in other contexts, such as white collar crime.

Restructuring Municipal Obligations and Agreements: The Chapter 9 Option

Newport/Washington County Room, 3rd Floor

Hon. Frank J. Bailey
Chief Judge, United States Bankruptcy Court for the District of Massachusetts

Hon. Diane Finkle
United States Bankruptcy Court for the District of Rhode Island

Theodore Orson, Esq.
Orson & Brusini Ltd.

Hon. Robert G. Flanders, Jr.
Retired Associate Justice, Rhode Island Supreme Court, Hinckley Allen

This panel will discuss the fiscal challenges faced by municipalities across the country, including in Rhode Island, and the legal framework available for restructuring municipal obligations that are causing insolvency using the Central Falls experience as a case in point.

Admiralty Arrests and Attachments

Kent County Room, 3rd Floor

Professor Jonathan M. Gutoff
Roger Williams University School of Law

Chief David Remington
United States Marshals Service

Michael J. Daly, Esq. (Moderator)
Pierce Atwood LLP

Although the admiralty arrest and attachment processes date back hundreds of years, many attorneys are unfamiliar with the concepts and procedures. This session will address the Supplemental Federal Rules of Civil Procedure and the recently enacted Local Admiralty Rules, with a focus on the legal requirements and practical considerations relevant to admiralty arrests and attachments.

Afternoon Plenary Session

3:00 to 4:15 pm

Making eDiscovery Work in Your Case – A Lawyer's Professional and Ethical Responsibilities

Narragansett Ballroom A & B, 1st Floor

Hon. Lisa Margaret Smith
United States District Court for the Southern District of New York

Jonathan M. Redgrave, Esq.
Redgrave LLP

Henry J. Kelston, Esq.
Milberg LLP

Steven M. Richard, Esq. (Moderator)
Nixon Peabody LLP

Increasingly, lawyers must understand and evaluate the vitally important role that electronically stored information plays in discovery and the evidentiary proof of a case. This panel will discuss the important concepts of preservation, proportionality, and practicality in the management of eDiscovery, as well as address evolving technological trends, such as predictive coding. Special focus will be given to a lawyer's ethical duties of competence and cooperation in the production and presentation of electronically stored information.

Closing Remarks by Chief Judge Mary M. Lisi

Reception in Lobby - 4:15 to 5:00 pm

Presenters' Biographies

The Honorable Frank J. Bailey is the Chief Judge of the United States Bankruptcy Court for the District of Massachusetts. He has presided over the Chapter 9 bankruptcy case filed by the Receiver of the City of Central Falls and confirmed the City's debt adjustment plan just thirteen months after the case was commenced. Judge Bailey earned a Bachelor of Foreign Service degree from Georgetown University and a J.D. degree from Suffolk University Law School.

Michael J. Daly, Esq. is a partner at Pierce Atwood LLP where he focuses his practice on the litigation of commercial, maritime and insurance disputes. He has represented several clients in cases involving vessel arrests or attachments under admiralty law. Mr. Daly also served on the sub-committee of the Rhode Island Federal Court Local Rules Committee that drafted Rhode Island's Local Admiralty Rules.

Mark Eckenwiler, Esq. is senior counsel at Perkins Coie in Washington, D.C. Mr. Eckenwiler focuses on electronic privacy law, civil and criminal liability for online conduct, investigations, computer intrusions, and service provider interactions with law enforcement. For 16 years before joining Perkins Coie, Mr. Eckenwiler served as the Justice Department's primary authority on federal electronic surveillance law, including the Wiretap Act (Title III), the pen register/trap and trace statute, the Electronic Communications Privacy Act of 1986, and the Communications Assistance for Law Enforcement Act.

Professor Lee Epstein is a Provost Professor of Law and Political Science and the Rader Family Trustee Chair in Law at the University of Southern California. She is also a Fellow of the American Academy of Arts and Sciences and the American Academy of Political and Social Science. She has authored or co-authored over 100 articles and essays, as well as 15 books, including "The Choices Justices Make," "Constitutional Law for a Changing America" and "The Behavior of Federal Judges."

Presenters' Biographies

The Honorable Diane Finkle is a Bankruptcy Judge appointed to the United States Bankruptcy Court for the District of Rhode Island on September 6, 2012. Judge Finkle attended Colorado University at Boulder and the University of Rhode Island. She received her law degree from George Washington National Law Center at George Washington University in 1981. Prior to her appointment, Judge Finkle practiced for 30 years in the field of bankruptcy and state receivership law with the firm of Winograd Shine and & Finkle, P.C

Paul A. Finn, Esq. is the founder of Commonwealth Mediation and Conciliation, Inc. (CMCI) and has served as its President and CEO since 1992. He holds a J.D. from the New England School of Law, a master's degree in government from Harvard University and a bachelor's degree from Stonehill College. Mr. Finn is the original author of Massachusetts Practice Series, Volume 47, Mediation & Arbitration.

The Honorable Robert G. Flanders, Jr. served as Associate Justice of the Rhode Island Supreme Court from 1996 to 2004. Thereafter, Justice Flanders returned to the practice of law at Hinckley Allen where he chairs the Municipal Restructuring/Chapter 9 Bankruptcy and Litigation Law practice groups. In February 2011, Governor Lincoln Chafee appointed him the State Receiver for the financially troubled City of Central Falls, Rhode Island. As Receiver, Justice Flanders led Central Falls through a Chapter 9 bankruptcy reorganization that eliminated a $6 million annual operating deficit and saved the City $36 million over the next six years. Justice Flanders graduated from Brown University and earned a J.D. degree from Harvard University.

The Honorable John Gleeson is a District Judge in the United States District Court for the Eastern District of New York. Prior to his appointment to the federal court in 1994, he was a litigation associate at Cravath, Swaine & Moore from 1981 to 1985. In 1985, Judge Gleeson became an Assistant United States Attorney in the Eastern District of New York. He also served as Chief of Appeals, Chief of Special Prosecutions, Chief of Organized Crime, and Chief of the Criminal Division. Judge Gleeson has been an adjunct professor of Law at New York University School of Law since 1995.

Presenters' Biographies

Professor Eric D. Green is the co-founder of two prominent ADR/ Mediation firms: Endispute (now part of JAMS) and Resolutions, LLC in Boston. Professor Green graduated from Brown University and Harvard Law School and also attended Cambridge University in Cambridge, England where he was a Knox Fellow. He has co-authored leading law school textbooks in evidence and dispute resolution, and numerous articles in each of these fields.

Professor Jonathan M. Gutoff of Roger Williams University School of Law is one of the nation's top experts on piracy and maritime law issues. In addition to his courses on Administrative Law, Admiralty, Civil Procedure, and Remedies, Professor Gutoff is a former acting director (and present faculty member) of Roger Williams University School of Law's Marine Affairs Institute. Professor Gutoff also served on the sub-committee of the Rhode Island Federal Court Local Rules Committee that drafted Rhode Island's Local Admiralty Rules.

The Honorable John E. Jones, III is a District Judge appointed to the United States District Court for the Middle District of Pennsylvania in 2002. Judge Jones has presided over several landmark cases adjudicating novel and high profile constitutional issues including Kitzmiller v. Dover Area School District, the first case in the nation to test whether "intelligent design" can be introduced into the curriculum of public high school science classes.

Henry J. Kelston, Esq., is Senior Counsel at the New York office of Milberg LLP, concentrates in the areas of complex litigation and electronic discovery. Mr. Kelston is a regular speaker and CLE presenter on diverse electronic discovery topics and serves as a member of The Sedona Conference Working Group 1 on Electronic Retention and Production. Mr. Kelston's electronic discovery publications have addressed cutting edge topics such as developments in technology assisted review of electronically stored information.

Presenters' Biographies

The Honorable Mary M. Lisi is the Chief Judge of the United States District Court for the District of Rhode Island. She was appointed to the federal court as a District Judge in 1994. Judge Lisi graduated from the University of Rhode Island in 1972 and Temple University School of Law in 1977. Prior to her appointment to the federal court, she worked in private practice and served as an assistant public defender.

The Honorable John J. McConnell, Jr. is a District Judge appointed to the United States District Court for the District of Rhode Island on May 6, 2011. He is a graduate of Brown University and Case Western Reserve University School of Law and is a recipient of the Dr. Martin Luther King, Jr., Award. Prior to his appointment to the federal court, Judge McConnell was with Motley Rice LLC in Providence, Rhode Island.

John Marshall is a Supervisory Probation Officer with the United States Probation Office in the District of Rhode Island. Officer Marshall graduated from Springfield College and joined the United States Probation Office in 2000. He has worked in the District of Massachusetts where became involved in the re-entry courts and in the District of Colorado where he served as a mental health and sex offender specialist. Officer Marshall is on the National Work Group for Sex Offender Management.

The Honorable Sandra Day O'Connor was appointed as an Associate Justice of the Supreme Court of the United States in 1981 and retired in 2006. She received her B.A. and LL.B. from Stanford University. She served as Deputy County Attorney of San Mateo County, California from 1952–1953 and as a civilian attorney for Quartermaster Market Center, Frankfurt, Germany from 1954–1957. From 1958–1960, she practiced law in Maryvale, Arizona, and served as Assistant Attorney General of Arizona from 1965–1969. She was appointed to the Arizona State Senate in 1969 and was subsequently reelected to two two-year terms. In 1975, she was elected Judge of the Maricopa County Superior Court and served until 1979, when she was appointed to the Arizona Court of Appeals.

Presenters' Biographies

Theodore Orson, Esq. is a co-founder of the Providence, Rhode Island law firm Orson and Brusini Ltd. where he concentrates his practice in the areas of insolvency and commercial litigation. Mr. Orson served as lead counsel to the Receiver of the City of Central Falls and the State of Rhode Island in the Chapter 9 bankruptcy case filed by the Receiver of the City of Central Falls. Mr. Orson is a graduate of Hampshire College and Northeastern University School of Law.

Jonathan M. Redgrave, Esq. is a partner in the Washington D.C. law firm of Redgrave LLP. He is recognized as one of the nation's leading authorities on electronic discovery, including his role as a founding co-chair of the Georgetown University Law School eDiscovery Institute. He has served as Editor in Chief of The Sedona Principles and speaks frequently on topics including cross-border discovery, information governance, privacy, data security, and emerging technologies. Mr. Redgrave helped found, was the first Chair of, and is currently Chair Emeritus of The Sedona Conference Working Group 1 on Electronic Document Retention and Production.

Chief David Remington joined the United States Marshals Service in January 1991 and serves as the Chief Deputy United States Marshal for the District of Rhode Island. He also served in the Southern District of New York and the District of Connecticut. Chief Remington has conducted and supervised the execution of dozens of writs and attachments under the admiralty laws.

Eric Rothschild, Esq. is a partner in the Litigation and Dispute Resolution Department of Pepper Hamilton LLP. He is a member of the firm's Health Effects Litigation and Commercial Litigation practice groups, focusing on complex product liability litigation in federal and state courts. Among his several high profile matters, Mr. Rothschild was lead co-counsel for the plaintiffs in the Kitzmiller v. Dover Area School District case and represented plaintiffs in a challenge to an anti-evolution policy adopted in Cobb County, Georgia.

Presenters' Biographies

The Honorable Patti B. Saris was appointed District Judge in 1993 and became Chief Judge of the United States District Court for the District of Massachusetts in 2013. Prior to her appointment to the federal court, she served as Staff Counsel for the U.S. Senate Judiciary Committee from 1979 to 1981, Assistant United States Attorney for the District of Massachusetts from 1982 to 1986, and an Associate Justice for the Superior Court of Massachusetts from 1989 to 1993. In addition to serving as Chief Judge of the District of Massachusetts, Judge Saris is the Chair of the United States Sentencing Commission.

The Honorable Bruce M. Selya is a Circuit Judge for the First Circuit Court of Appeals. He graduated from Harvard University in 1955 and Harvard Law School in 1958. He served as a District Judge for the United States District Court for the District of Rhode Island from 1982 to 1986 before he was appointed to the First Circuit Court of Appeals. Prior to his appointment to the federal court, he worked in private practice in Providence, Rhode Island.

Alfred Siegel, Esq. is the deputy director of the Center for Court Innovation. Mr. Siegel oversees the Center's community-based and juvenile justice projects as well as its planning and fund-raising activities. He has directed the design and implementation of many of the Center's problem-solving court projects including the Red Hook and Harlem Community Justice Centers, Bronx Community Solutions, the largest effort at "going to scale" with "problem-solving" by applying the approach to all misdemeanor cases in the Bronx Criminal Court Division, and alternatives to juvenile detention and placement in both Queens and Staten Island. Mr. Siegel was a member of Governor David Paterson's Task Force on Transforming New York State's Juvenile Justice System, serving as the chair of the Task Force's sub-committee on Reentry and Alternatives to Placement.

Presenters' Biographies

Professor Christopher Slobogin is the director of the Criminal Justice Program at Vanderbilt Law School. He has authored more than 100 articles, books and chapters on topics relating to criminal procedure, mental health law and evidence. Professor Slobogin has served as a reporter for the American Bar Association's Task Force on Law Enforcement and Technology and its Task Force on the Insanity Defense, chair of the Florida Assessment Team for the ABA's Death Penalty Moratorium Implementation Project, and co-reporter for standards dealing with mental disability and the death penalty that have been adopted by the ABA, the American Psychiatric Association and the American Psychological Association.

The Honorable Lisa Margaret Smith is a Magistrate Judge in the United States District Court for the Southern District of New York and has served on the federal court since 1995. Prior to her appointment to the federal court, Judge Smith was an Assistant United States Attorney in the Criminal Division of the United States Attorney's Office for the Southern District of New York. Judge Smith is active in the Federal Magistrate Judges Association and the Federal Bar Council. She is also an adjunct professor of Evidence and Civil Procedure at Pace University School of Law.

The Honorable Patricia A. Sullivan is a Magistrate Judge appointed to the United States District Court for the District of Rhode Island on October 1, 2012. She is a graduate of Wellesley College and Georgetown University Law Center. Prior to her appointment to the federal court, Magistrate Judge Sullivan was a partner at Edwards Wildman Palmer LLP and an adjunct faculty member at Roger Williams University School of Law.

The Honorable O. Rogeriee Thompson is a Circuit Court Judge appointed to the First Circuit Court of Appeals in March 2010. She graduated from Brown University in 1973 and Boston University School of Law in 1976. Prior to her appointment to the federal court, she was in private practice and later served as an Associate Judge for the State of Rhode Island District Court from 1988 to 1997, and as an Associate Justice for the State of Rhode Island Superior Court from 1997 to 2010.

2013 DISTRICT CONFERENCE