

In this Issue:

CJI Joins Justice at Stake Brief
—Page 2

International Legal Professionals
Visit Colorado
—Page 2

6th Annual Judicial Excellence Dinner
—Page 3

Thank you to 2008 Judicial
Excellence Dinner Sponsors
—Page 4

2008 Judicial Excellence Award
Winners Honored
—Page 5

DeMuth Receives Minoru Yasui
Award —Page 8

Upcoming CJI Events:

Judicial Independence
Membership Breakfast—April 16

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Judiciary Must be Protected from Political Pressures Says Justice at Stake Director

By Bob Ewegen
Special to the Colorado Judicial Institute

The American system of ordered liberty ultimately depends upon fair and impartial courts to enforce our laws and uphold the safeguards established by the U.S. Constitution and its state counterparts. But it also depends upon public understanding and acceptance of the judiciary's proper role.

Unfortunately, the "political levee that separates the courts from low and medium grade floods of political pressure is not a high one," Bert Brandenburg, executive director of the national Justice at Stake Campaign, warned the audience at this year's sixth annual Colorado Judicial Institute Judicial Excellence dinner Nov. 18 at the

Denver Marriott City Center Hotel. In many states and even at the national level, public confidence in our courts is being undermined by special interests waging negative campaigns of the type made infamous by the "Willie Horton" ads.

"More than two centuries ago, our country's founders created a system of government that thoroughly mixed judicial independence with outright dependence. People here know the first part of that formulation very well. But don't forget that our founders made courts dependent on Congress for their budget, their jurisdiction, their structure, size and administrative and rule making authority," Brandenburg told his audience of jurists, attorneys and concerned citizens interested in Colorado's legal system.

"They made courts dependent on the executive branch for their security and enforcement of court orders. They gave the other branches the power to refuse to appoint nominees, to impeach judges, and to prosecute them and imprison them for crimes.

"These checks were no flukes," Brandenburg, whose credentials include a stint as press secretary for former Attorney General Janet Reno, argued. "They are rooted in our political heritage as Americans. Indeed, for more than two centuries, the judiciary has come under cycles of attack on its legitimacy.



Justice at Stake Campaign Director Bert Brandenburg spoke at the 2008 Judicial Excellence for Colorado Dinner

CJI Joins 27 Co-Signers on Justice at Stake Brief in “Justice for Sale” Case

West Virginia Judge Refuses to Recuse Despite \$3 Million Campaign Contribution

By Dana Nelson
CJI Executive Director

The CJI board of directors voted to co-sign a Justice at Stake brief filed in *Caperton v. Massey* – a case which has drawn national attention to the exponential growth and impact of special-interest spending in judicial elections. The U.S. Supreme Court has agreed to hear the case.

The case concerns Justice Brent Benjamin of the Supreme Court of Appeals of West Virginia. Justice Benjamin refused to recuse himself from the appeal of a \$50 million jury verdict in *Caperton v. Massey* even though Don Blankenship, CEO of Massey Energy Corp., had contributed \$3 million in support of his campaign for a seat on the court. The \$3 million contribution by Blankenship represented more than 60% of the total amount spent by Justice Benjamin’s election campaign. After winning election to the court, Justice Benjamin cast the deciding vote in a 3-2 decision overturning the verdict and favoring Massey Energy Corp. *Caperton* contends that Justice Benjamin’s refusal to recuse himself from this case violated the Due Process Clause of the Fourteenth Amendment.

Representing the petitioner is Theodore B. Olson, former solicitor general of the United States. Olsen stated “The improper appearance created by money in judicial elections is one of the most important issues facing our

judicial system today. A line needs to be drawn somewhere to prevent a judge from hearing cases involving a person who has made massive campaign contributions to benefit the judge. We certainly believe that, in this case, acting Chief Justice Benjamin crossed that line.”

CJI joined the brief filed by Justice at Stake believing that this case is a stark example of the dangers posed by judicial elections. Coloradans have not had to question the impartiality of their judges due to judicial campaign contributions for over 41 years thanks to a judicial selection system that is non-partisan and based upon merit. Even the appearance of impropriety due to financial dealings between parties to a case and a judicial campaign must be avoided in defense of the public confidence in an impartial judiciary. Those states that do rely upon judicial elections, both partisan and non-partisan, should have clear standards for recusal.

Arguments in this case have been scheduled for March 9, 2009.

More information on this case and the text of the briefs filed by many organizations can be found at www.BrennanCenter.org and www.JusticeatStake.org.

CJI Host International Legal Professionals

In October, CJI had the privilege of hosting twenty international legal professionals for an afternoon as part of the International Visitor Leadership Program (IVLP) of the U.S. Department of State. The visitors, selected by American foreign service officers overseas, included legal personnel from: Albania, Armenia, Bosnia-Herzegovina, Brazil, Republic of Congo, Ghana, Greece, Honduras, Hungary, India, Macedonia, Malawi, Mongolia, Nigeria, Peru, Philippines, Rwanda, Tanzania, Thailand and Zimbabwe.

CJI Chair Robert Miller welcomed the visitors and explained the role of the non-partisan, citizen-based organization in ensuring an independent judiciary and promoting excellence by supporting judicial education.

The Colorado portion of the IVLP program was coordinated by the Institute of International Education (IIE), Rocky Mountain Regional Center.

Colorado Court of Appeals Judge Richard L. Gabriel gave an *Our Courts* presentation, combining information on both the Colorado state and federal courts. A question and answer session helped to clarify issues of judicial appointment, length of terms, training and education, and how “equal justice under law” is achieved in the U.S.

The participants also heard from CJI Vice Chair Ellie Greenberg, Young Lawyers Division of the Colorado Bar Association Chair Leia Ursery and State Court Administrator Gerald Marroney.

6th Annual Judicial Excellence for Colorado Dinner Celebrates Judicial Excellence and Work of CJI

By Dana Nelson
CJI Executive Director

The Colorado Judicial Institute hosted 585 judges, lawyers and community members at the 6th Annual Judicial Excellence for Colorado Dinner on Tuesday, November 18th. Through the efforts of the entire board guided by the CJI events committee, there were a record number of sponsors for the 2008 dinner. Events Committee Chair Constance C. Talmage stated that “The CJI dinner is unique in that it specifically honors the work of the judiciary in improving the lives of Colorado citizens. Our sponsors recognize the value of an excellent and independent judiciary.”

With many judges and judicial department staff in attendance, CJI presented the 2008 Judicial Excellence Awards. CJI Board Members Constance Talmage and Ralph Torres recognized Judge M. Jon Kolomitz of the 16th Judicial District, Judge Robert H. Russell, II of the 18th Judicial District, Judge Alfred C. Harrell of the Denver County Court, and Magistrate Jane Westbrook of the 21st Judicial District, Mesa County.

Keynote speaker Bert Brandenburg, Executive Director of Justice at Stake, based in Washington DC, congratulated CJI for “being a unique organization conducting important work” that guarantees that Colorado has the best possible judicial system.

In addition to celebrating the many contributions made by the judiciary to improving life in Colorado, CJI

Board Chair Robert N. Miller of Perkins Coie LLP and CJI Vice-Chair Sheila Gutterman of Gutterman Griffiths PC took the chance to highlight some of CJI’s accomplish-

ments 2008. Miller specifically recognized the recently announced partnership with the National Judicial College in Reno, Nevada that will provide at least \$125,000 in scholarship funds for Colorado judges over the next three years and the work of the CJI Public Policy Committee to secure the reauthorization of the Colorado Judicial Performance Evaluation program. The new statute includes interim evaluations for judges and an independent evaluation office.

Gutterman noted the success of the *Our Courts* public education program, a joint activity

of the Colorado Bar Association and CJI in partnership with eleven other statewide organizations, that has made presentations about the state and federal courts to over 4,400 Colorado citizens in one year and is expanding to make available presentations to groups statewide. She also noted the work of the CJI Family Law Committee on the second of three reports about the experiences of children, respondent parents, and foster parents in Colorado family courts. The first report, *Youth Voices*, is available on the CJI website.

CJI Chair Miller stated that “the past year has been one of the most productive in CJI’s 29-year history.”



Judicial Excellence Award winner Judge Harrell and CJI Event Chair Connie Talmage

Thank You to our CJI Dinner Volunteers

The Colorado Judicial Institute staff wishes to thank the members of the CJI Awards Committee and the CJI Events Committee with special appreciation to Committee Chairs Bob Miller and Connie Talmage. Without the time our volunteers give to these projects the Judicial Excellence for Colorado Dinner and the Judicial Excellence Awards simply wouldn’t exist.

CJI Thanks the Generous Sponsors of the 2008 Judicial Excellence for Colorado Dinner

CJI thanks the many sponsors and individuals who attended the dinner for their financial contribution to support the CJI mission. During times of economic uncertainty all non-profit organizations face challenges. The 2008 dinner would not have been possible without our generous sponsors, many of whom have supported this event since inception. It is our pleasure to recognize them.

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Mountain States Employers Council, Inc. – For providing meeting space

CJI Honors Four Outstanding Judges with Judicial Excellence Awards

By Dana Nelson
CJI Executive Director

The selection of the 2008 Judicial Excellence Award honorees was made even more difficult than usual by the record number of nominations received by CJI. This year CJI recognized Judge M. Jon Kolomitz of the 16th

Judicial District, Judge Robert H. Russell, II of the 18th Judicial District, Judge Alfred C. Harrell of the Denver County Court, and Magistrate Jane Westbrook of the 21st Judicial District, Mesa County.

Judge Kolomitz, a La Junta, Colorado native, received his law degree from the University of Colo-

rado and immediately joined the FBI. Prior to being appointed to the District Court Bench, Judge Kolomitz was in private practice and served as a municipal court judge in La Junta. Judge Kolomitz was appointed to the District Court bench in February 1985 and became Chief Judge of the 16th Judicial District in 1987. The Sixteenth Judicial District includes Bent, Crowley and Otero counties. As a multi-county district, the District Judges must hold court in each of the three counties in the district. Judge Kolomitz sits for at least a portion of one day per week in Bent and Crowley Counties. Throughout his distinguished career he has been described as showing “tenacity with difficult cases to see them through

conclusion, and is particularly patient with dependency and neglect cases”.

He is dedicated to improving judicial processes in Colorado. Jon Asher of Colorado Legal Services described



2008 Judicial Excellence Award Honoree Magistrate Jane Westbrook, CJI Board Chair Robert Miller and 2008 Judicial Excellence Award Honoree Judge Jon Kolomitz

Judge Kolomitz as “one of the leaders on the bench in support of access to justice in Colorado throughout his career. Through his efforts on behalf of the Lend-a-Lawyer program and his desire that pro se litigants be given equal voice, Judge Kolomitz has supported and expanded access to justice throughout his district.” In

addition to his service as a Lend-A-Lawyer liaison he has served as an instructor for Continuing Legal Education programs, as chair and liaison for the Chief Judges’ Council, a co-chair of the Protected Proceedings Probate Taskforce Committee, a member of the Federal-State Coordinating Council, chairman of the state prison judges group, and a mentor judge and instructor at new judge orientation.

Judge Russell received his law degree from the University of Puget Sound School of Law in 1975 while serving in the U.S. Air Force. After a 20-year Air Force career, including stations in locations such as Clark AFB in the Philippines, Bitburgh AFB in Germany, and Aviano AFB in Italy, Judge Russell retired as a Lieutenant Colonel

Award Honorees Continued on Page 6

in 1984. He was in private practice and with the Arapahoe County District Attorney's office prior to his appointment as an Arapahoe County Magistrate in October 1985. In June 1989 Judge Russell was appointed to the Arapahoe County Court where he served until his appointment to the 18th Judicial District Court in August 1998.

Judge Russell has been described as having "dedicated his life to the justice system and this is evident by the way he continues to preside in his courtroom with enthusiasm and remarkable discipline." He frequently "suggests that parties seek a less adversarial option to resolve their family disputes and is a particularly knowledgeable member of the judiciary when it comes to out-of-court options."

Judge Russell has served as president of both the Arapahoe County Bar Association and the Sam Cary Bar Association as well as regional vice-president of the Colorado Bar Association.

He is dedicated to mentoring new judges, young attorneys, and students through his work with many local and specialty bar associations, the Minoru Yasui American Inn of Court and as a leader of the Delta Eta Boulé chapter of the Sigma Pi Phi fraternity. Judge Russell has served on numerous Supreme Court committees including those on jury reform, judicial department leadership development, and the Ad Hoc Committee on Gender and Justice.

Judge Harrell received a B.A. from the University of Colorado in 1966. He commenced the study of law at the University of Denver in 1968. Judge Harrell worked for the United States Veteran's Administration, IBM and Honeywell Information Systems while in law school. He graduated from that school's night division in 1971 and promptly joined his father, Irving P. Andrews, Esq., in the

practice of law. He was appointed to the Denver County Court in 1985.

Judge Harrell's commitment to excellence includes taking the broadest possible view of the legal profession. Commencing in 1994, Judge Harrell has helped to promote the American Inns of Court system in Colorado. He has served two terms on the Board of Trustees of The American Inns of Court. He is a past president of the William Doyle Inn of Court. His community activities are devoted to the betterment of society and his commitment has been given public

recognition by the Denver Bar Association's Judicial Excellence award in 1993 and the Award of Merit in 1999; the Colorado Bar Association's Professionalism award in 1995; the Colorado Women's Bar Association's Judicial Mentoring award in 2000; the Asian American Bar Association's Minoru Yasui Community Service award in 1998; the University of Colorado's George Norlin award for



2008 Judicial Excellence Award Honoree Judge Robert Russell and CJ Membership Chair Sheila Gutterman

lifetime achievement in his chosen profession in 1997. In 2003 The American Board of Trial Advocates awarded Judge Harrell its Judicial Excellence award.

Judge Harrell is a frequent public speaker and guest lecturer. He is a faculty member of the National Institute of Trial Advocacy (NITA) and a current member of the Rhone-Brackett American Inn of Court. He is a current member of the following bar associations and serves on several committees within those bar associations: the Sam Cary Bar Association, the Denver and Colorado Bar Associations, the Colorado Hispanic Bar Association, the Asian American Bar Association of Colorado and the Colorado GLBT Bar Association. Judge Harrell currently serves on the Board of Directors of The Denver Dumb Friends League; the Board of Governors of the Colorado

Bar Association; and, he is a member of the President's Blue Ribbon Commission on Diversity at the University of Colorado. He recently completed eight years of service on the Board of Trustees of the Colorado Supreme Court's Attorney's Fund for Client Protection.

Magistrate Westbrook received her law degree from the University of California-Davis School of Law in May 1980. Prior to her selection as Magistrate in 1992, she served in the 21st Judicial District D.A.'s office, worked as a staff attorney for the Central Bancorporation, and worked for the 9th Judicial District D.A.'s office.

Magistrate Westbrook is described as "a brilliant jurist who is able to effectively manage her docket with firmness but more importantly with a purpose to improve and empower the lives of every family who enters her courtroom." She has consistently taken the lead to ensure that court proceedings are conducted in a manner and at a time during the day that allows children to have meaningful participation and voice. Magistrate Westbrook has devoted significant time to effective court reform and improvement, frequently being asked to serve on court improvement committees and projects.

Magistrate Westbrook is a member of the Court Improvement Program Technology Subcommittee and Collaborative Court Subcommittee for rural courts. She is the technology assistant for the Civil Jury Instructions Committee. She has been a presenter in trainings on child support enforcement, for attorneys and social workers attending Colorado Child Welfare conferences, for the Office of Child Representative, at the Interdisciplinary Council conference, and for CASA-MC volunteers.

In September 2008, Magistrate Westbrook and the Twenty-first Judicial District (Mesa County) Dependency and Neglect Case Processing Team was recognized by the Colorado Judicial Branch as the *Outstanding Team* within the department. "For years this small group of dedicated employees has been instrumental in completely revamping how this district handles dependency and neglect cases," said District Judge Thomas M. Deister.

The Judicial Excellence Awards would not be possible without the effort put forth by judges, judicial department staff, and attorneys to nominate outstanding judges. Each nominee is a worthy candidate. The 2009 excellence award nomination period will open in March.

"The Jeffersonians repealed judgeships. President Jackson defied Supreme Court rulings. During the Civil War, Congress reduced the size of the Supreme Court and stripped its jurisdiction to rule on the power of Congress to impose military rule in Southern states."

"Now, fast forward to our day. Not long ago, the hottest trend in Congress was to try to reverse or forestall decisions in hot-button cases by eliminating jurisdiction over important constitutional matters, by shuffling selected lawsuits between state and federal courts and by choking off the discretion of judges to weigh evidence and law. This frenzy culminated in the Terri Schiavo episode, when Congress convened on Palm Sunday to tamper with a single court case—just to cater to special interest pressure."

At the state level, special interests have been eroding the prestige and impartiality of the courts by a flood of attack ads that may distort the reasoning behind a judicial ruling.

"Almost 90 percent of America's judges must stand before the voters, either in contested races or retention contests (such as are used in Colorado). Fortunately, judges historically haven't had to raise huge

war chests, cater to interest groups, make sound-bite promises or respond to hard-ball attacks.

"But this is changing. In recent years, judicial elections have faced the kind of bitter political pressure once reserved for presidential campaigns, electoral recounts and condominium board meetings," Brandenburg said.

Repelling assaults on the courts such as the radical 2008 JAIL 4 Judges initiative in South Dakota ultimately relies on civic groups such as the Colorado Judicial Institute and counterparts in other states, Brandenburg said.

"If a permanent campaign against the courts is going to be defeated, I think it will take more boots on the ground – or, more properly, more robes in the classroom, in the media, on-line and out in front of civic groups," he said.

Noting the success of CJI in defeating a radical term-limits initiative in 2006, Brandenburg said "Your decades of work paid off. You didn't win that contest in 2006, you won it in 1979, and 1980 and every painstaking year after that."

"This challenge is nothing less than the building of a political cathedral, the kind that can only be built one brick at a time," Brandenburg concluded.



Judicial Independence Membership Breakfast

Thursday, April 16, 2009
7:30 a.m.

The University Club, 1673 Sherman Street, Denver

Please join the Colorado Judicial Institute at this complimentary breakfast for members of the legal, civic and business communities.



**COLORADO
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Speakers

The Honorable Rebecca Love Kourlis, Executive Director of the Institute for the Advancement of the American Legal System and Former Justice of the Colorado Supreme Court

The Honorable William F. Dressel, President of the National Judicial College

For more information or to register for the breakfast please contact:

Cynthia Ophaug-Johansen
303-766-7501

Cynthia@ColoradoJudicialInstitute.org

The Art and Science of Persuasion in the Courtroom

Date and Time:

February 6, 2009
8:30 AM - 12:20 PM

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For More Information and to Register:

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Laurence DeMuth, Jr. Recipient of January 2009 Minoru Yasui Community Volunteer Award

Throughout his career and since his retirement, Larry DeMuth has committed himself to community service. Through these efforts, DeMuth has helped more lives than can be counted.



He joined the board of the Colorado Judicial Institute in 1992. At that time, CJI was relatively unknown. In large part due to DeMuth's efforts, CJI is now well-known and respected throughout the state.

DeMuth has served as the board chair for CJI three times and is currently the chair of the Judicial Education Committee. He also serves on several other CJI committees, including the development and family law committees. DeMuth's contagious enthusiasm for CJI's mission has helped recruit many others to become dedicated to improving the delivery of legal services and to increasing public awareness of the workings of the judiciary. DeMuth has generously chosen to give his cash award to CJI.

The entire CJI board and staff congratulate Larry DeMuth on this well deserved award.