



FEDERAL CLAIMS BAR ASSOCIATION

Summer 2008 Newsletter



The Summer Season at the Court



For many of us, the summer season is measured by holidays: from Memorial Day to Labor Day with the Fourth of July in the middle.

At the Court, the hallmarks of summer are the arrival of law student interns in May and June, their departure in late July or early August, the

admission of law clerks to the Bar of the Court in June, the departure later in the summer of law clerks who have completed their one or two-year terms of service, and then a welcome breakfast in September for the new class of law clerks (some arriving brand-new, some continuing on for another year).

They are all part of the court family. Law student interns work on a volunteer basis, but we fervently hope and trust that their sacrifice is more than

matched by the value of their experience in the court environment. Studying law, of course, is hardly the same as practicing law or seeing it in practice up close. Thus, whether via their research and writing assignments in a judge's chambers, listening in or assisting in status conferences and other hearings, learning the sequence of events in a case by reviewing the case docket, observing the organizational practices of judges and full-time chambers staff, or observing the management of a court's operations, law students gain much more than a mere entry on their resumes. This summer,

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the Court is benefitting from nearly 40 interns working for various judges and court administrators, and it has been a scramble to find places for such an unprecedented number of interns to work and to provide them with computers and the other tools they need to work effectively and efficiently.

Law clerkships are even more valuable and, while full-time paid positions, the pay is commensurate with an apprenticeship at the start of one's legal career. Almost without exception, former law clerks have consistently advised us that their practical experience in legal research, writing, and case management, together with the development of a close relationship with a judge for one or two years, was an incomparable leg up at the beginning of their professional careers.

Each year, generally in June, the Court holds a ceremonial session in which eligible law clerks are admitted to the bar of the Court (that is, officially admitted to practice before the Court). Sponsoring judges move their admission, the presiding judges grants the motion, and the admittees are sworn in as a group. This year, in my absence, **Judge Lawrence Block** presided over the session on June 12. Nearly 30 law clerks were admitted to the Court's bar and a reception was held in their honor in the lower level of the historic Tayloe House in the court complex. In addition, this year, supported by a generous financial contribution of the Bar Association of the Court of Federal Claims, the Court unveiled the official photograph of the judges as a group, taken in December 2007. **Bar Association President Bradley Fagg** and **Secretary Steven Hollman** were on hand to unveil the photograph (which will hang in the foyer of the fifth floor of the National Courts Building).

The Bar Association, as we know, is a voluntary association of law practitioners. The Bar Association's support of the Court in innumerable ways is deeply appreciated. In particular, the Bar Association's sponsorship of lunchtime brown-bag seminars for the professional development of its members, to which law clerks and interns are also invited, and its publications, such as *Executive Summary* and its *Deskbook for Practitioners*, also contribute to the experience of summer interns and law clerks. President Brad Fagg's comments to the law clerks at the admission ceremony, emphasizing the value of their experience and encouraging their participation in the Bar Association, were most

welcome.

The interaction of the Court, practitioners, and law clerks and interns is symbiotic in an additional sense. Internships are often an apprenticeship for clerkships after law school graduation. Clerkships, as noted, are an invaluable entree to practice with a law firm or government agency (one measure of the value of clerking is the quantity of applications that judges receive each September through the federal judiciary's OSCAR ("Online System for Clerkship Application and Review")). Increasingly, however, many judges of the court are seeking to fill their clerkships with applicants who have had a year or two of practice rather than with fresh-out-of-school nascent lawyers. But, no matter the path, it is clear that the interaction is fertile and mutually beneficial.

In a few weeks, we will be closing the summer season. The Court's "Welcome Breakfast" for law clerks has been set for September 9, 2008, and we will begin a new term of law clerks and fall semester interns. I extend my wishes to all for a productive, successful, and relaxing summer.

President's message



They say the days are longer in summer. In a sense that is true – there's certainly more daylight – but there are not more hours in the day. I sometimes think, however, that we could use some more actual hours, given the level of activity that the season often brings.

As **Chief Judge Damich** describes in his accompanying note in this Newsletter, summer at the Court is a time marked by new faces, exciting events, and heightened energy all around. The Bar Association also benefits from that activity level, and we are fortunate to be able to support and participate in the many exciting activities of summer at the Court.

That support is truly a team effort, and I thought it might be useful here to offer some observations and information regarding the Bar Association, for

those of you who may not have given recent thought to what we are, or how we do what we do. As stated on the website, www.cfcbar.org, the Bar Association is a voluntary organization of practitioners from both private practice and from the government, representing all of the substantive practice areas before the Court. The Bar Association is dedicated to the improvement of practice for all members of the Court community, and the promotion and celebration of the important institutional interests embodied by the Court and its functions. We interpret that mission broadly.

The Bar Association acts through its officers and a twelve member Board of Governors. Beyond the officers and Board, however, a number of additional Bar Association members, including the substantive committee heads identified on the website, make important and selfless contributions, such as preparation of case notes for the Executive Summary and participation in Brown Bag luncheons. The current officers, in addition to myself, include President Elect **Melonie McCall** of the Department of Justice, Immediate Past President **Marc Smith** of the Department of Justice, Secretary **Steve Hollman** of Hogan & Hartson, and Treasurer **Lew Wiener** of Sutherland, (who, as a Past President himself and a multiple-term Treasurer, is also an invaluable institutional resource for the organization). The Board's twelve members, who served staggered three year terms, are **Mary M. Abate, Alexis B. Babcock, Thomas A. Cullinan, James Gette, Steven J. Gillingham, Donald Grove, Luke Levasseur, Scott M. McCaleb, Bryant Snee, Rob Stewart, Franklin E. White, and John H. Williamson**. The Board also includes honorary members, namely the **Chief Judge**, Acting Clerk **John Buckley**, and Past Presidents **Nancie Marzulla** and **Steve Frahm**. And, no mention of the Bar Association would be complete without identifying **Carole Bailey** of the Court, who serves as liaison and in a thousand other roles.

The Board of Governors meets in person (or by phone for out-of-town members) once a month, typically on the second Tuesday of the month, and it is at these meetings that much of the "business" of the Bar Association is conducted. The meetings are substantive, thoughtful, and often spirited. Initiatives, priorities, and direction for the organization are mapped out by the Board, but with significant input from Bar Association members and

other sources.

And, it is with this last point that I wanted to conclude, namely with an entreaty for all to take advantage of the representative capacity of the Board of Governors. With approximately 500 members, full-membership meetings would be unwieldy. The Governors, however, are more than capable of presenting and advocating ideas and initiatives, and they are an extraordinarily talented group. As we continue to grow and mature as an organization, it will be increasingly important to remain responsive to the concerns of practitioners, and I can think of no better way than by encouraging direct interaction between the membership at large and our Board. The Governors' contact information is on the website – drop them a note, and get to know them. I, and all of us with an interest in the Court and Bar Association, owe them a debt and our thanks for their commitment. I know, however, that they would welcome additional thoughts and input from the larger Court community.

Best regards for the summer season,

Brad Fagg
President, Court of Federal Claims Bar Association

Chief Judge Will Speak At Court Of Federal Claims Practice Brown Bag For Young Attorneys And Summer Interns To Be Held On July 25

The Court of Federal Claims Bar Association will host a free, "brown bag" luncheon program on practice at the Court of Federal Claims. The program, which is aimed at law clerks, summer associates, and young lawyers interested in the court's diverse practice areas (*i.e.*, government contracts, Constitutional claims, tax refunds, Indian claims, civilian and military pay claims, patent and copyright matters, vaccine injury claims, federal compensation matters, and private relief bills), will

take place from 12:00-1:30 p.m. on **Friday, July 25th**, in the Tayloe House, which is adjacent to the National Courts Building, 717 Madison Place, Washington, D.C.

Chief Judge Edward Damich will lead a panel comprised of other judges of the Court as well as private and government practitioners who routinely appear before the Court. The panelists will discuss: the court's mission and varied jurisdictional grants; the court's structure, docket, and procedures; practical tips for young attorneys practicing before the court; and professional opportunities in the court's practice areas. The event will conclude with a brief "Ask the Judges" session on practice before the Court.

Firms and government offices are encouraged to send their summer interns and associates along with one or more young lawyers to the event. Please RSVP with the number of attendees to james.gette@usdoj.gov.

For further information on the program, summer program coordinators or individuals should contact **Jim Gette**, Chair of the Law & Practice Education Committee of the CFC Bar Association, at 202-305-1461 or at the e-mail address above.

***E-Discovery Brown Bag Lunch
A Big Success***

This past November, the Court of Federal Claims amended its Rules to incorporate revisions to the Federal Rules of Civil Procedure regarding the discovery of Electronically Stored Information; otherwise known as the dreaded "E-Discovery." In addition to provisions defining the scope and methods of electronic discovery, the new Rules underscore the government's and other litigants' substantive responsibility to preserve electronic evidence before litigation commences.

In June, the Court of Federal Claims Bar Association jointly sponsored a brown bag luncheon on E-Discovery issues with the ABA Contract Claims and Disputes Resolution

Committee, and the Federal Circuit Bar Association. The panel included **Judge Christine Odell Cook Miller**, of the Court of Federal Claims, who spoke on the importance of seeking early resolution of e-discovery issues in litigation, with the assistance of the Court if necessary. Judge Miller was joined on the panel by **Judge Reba Page** of the Armed Services Board of Contract Appeals and **Judge Jeri K. Somers** of the Civilian Board of Contract Appeals, as well as several practitioners from the Department of Justice and private practice. The panelists provided a wealth of detailed information on the changes to the CFC's Rules, as well as practical advice regarding the roadblocks and pitfalls that practitioners may face in dealing with e-discovery issues. The session, hosted by Dickstein Shapiro, was tremendously well received by the more than eighty practitioners who attended the event.

***To Join the Court of
Federal Claims Bar
Association, Click on
"Membership
Services" at
www.cfcbar.org***

***Past Bar Association
President David Gustafson To
Be U.S. Tax Court Judge***

The nomination of **David Gustafson** to be a Judge of the United States Tax Court was confirmed by the Senate on July 7, 2008. David, a past president of the Court of Federal Claims Bar

Association, is the Chief of the Court of Federal Claims Section of the Justice Department's Tax Division, and has been active over the years in many Court and Bar Association projects.

Court Implements New Procedures Regarding Electronic Posting Of Transcripts

On May 15, 2008, the Court began implementation of several new mandates from the Administrative Office of the U.S. Judiciary (AO) regarding electronic posting of transcripts on case dockets. The new procedures now provide that electronic transcripts will be posted on the CM/ECF (Case Management/Electronic Case Filing) case docket (in ECF cases) as soon as provided by the court reporter and will be available to judges and court staff immediately. Otherwise, for the first 90 days from the filing of the transcript, access to the electronic transcript will be made available only to parties and their counsel who have purchased a paper copy of the official transcript.

The case file (unless it is a sealed case) will remain open to public inspection at the Court; the transcript therein may be viewed, but may not be copied. After 90 days from the filing of the transcript, the electronic transcript will be available to the public via the PACER system or in the files at the Court. For more information, see the Court's website, under "Electronic Filing, New Procedures re Electronic Transcripts and Redactions."

Fall Brown Bag Series: Save The Dates!

The Court of Federal Claims Bar Association's Brown Bag lunch series will resume this fall. Specific topics and speakers are being selected over the summer, but dates have been selected for

the events. The fall series will begin on **September 18, 2008**. Despite the "Brown Bag" title, lunch will be provided free of charge at the inaugural fall event. The series will continue on **October 22, 2008** and will include a final session for the year on **December 11, 2008**. All three of the events will be held in Tayloe House, which is adjacent to the National Courts Building, 717 Madison Place, Washington, D.C. Watch the Bar Association's web site for further announcements and to RSVP for these events.

Membership Has Its Benefits

Join today and start receiving all of the benefits of membership now. In addition to discounted member rates for the November 19 Judicial Conference and other Court events, members also will receive a copy of the entirely new edition of the acclaimed *Deskbook for Practitioners* when it is published later this year. Members also receive the Court of Federal Claims Bar Association's monthly *Executive Summary*, which highlights the month's Court of Federal Claims decisions of interest, and may participate in the Bar Association's substantive committees (takings, government contracts, tax, vaccine) or standing committees (CLE, Communications, Judicial Conference, Membership, Publications, Rules). To start enjoying your benefits of membership, visit www.cfcbbar.org and join today.

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