Lex and Verum

The National Association of Workers' Compensation Judiciary

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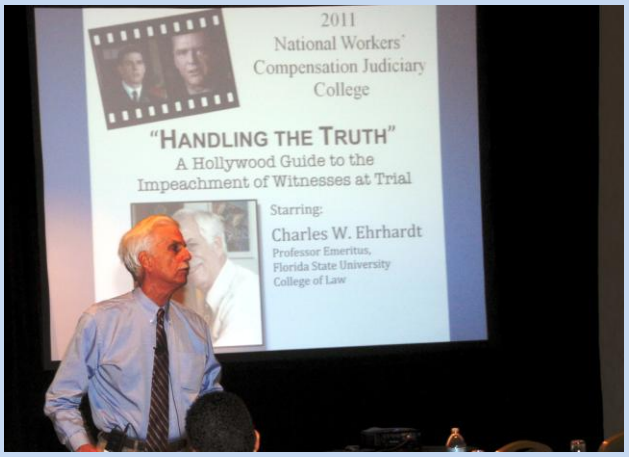
President's Message

By Hon. Ellen Lorenzen, President, NAWCJ

A few weeks ago, I was discussing an issue with one of my fellow judges in Tampa, Joe Murphy, and he gave me copies of some cases from his trial notebook that he thought might be helpful. I recognized them and, after I wrote the order in question, I said to myself, "I already know about these" and put them in the recycling bin. So this week, when I needed the citations again, I went to my trial notebook because I was certain I would find them there and, as you might have guessed by now, they were nowhere to be found, not with a word search, not with a topic search, not by scrolling through, nowhere. What were my options: actually research the issue myself or go back to Judge Murphy? Judge Murphy was kind enough to give them to me again without laughing or complaining. I want to publically thank Judge Murphy for his assistance.

The incident made me confront two of my ever-present anxieties: indexing and research.

Indexing: for years my trial notebook was a desk drawer. I do not mean I had a loose leaf binder in a desk drawer. I mean I had a big drawer in my desk that was full of cases I had photocopied for future reference. If I thought I needed a case citation, I thumbed through the drawer. When I was appointed to my current position, I decided that I would transform the drawer into a Word document and so I typed up three or four line summaries of the cases and organized them by topic. This was before I knew anything about scanning and creating PDF files which is the method I would use today to create my notebook with the important language from the cases, rather than my less useful summaries. I have continued to add new cases as they came out and as of today I have 121 pages, including a little over five pages of a table of contents without page numbers. Needless to say, I desperately need a usable index, so after being rescued by Judge Murphy, I turned to Google to see what I could do with my notebook and here's the repeated advice I got: hire a professional. That is not going to happen, so neither is my index. There are postings about how to create an index on your own, but most start with or end with language like this, "Next time I'll hire a professional." Maybe some of you have experience with this undertaking and can offer me suggestions.



Professor Ehrhardt led a discussion of evidence topics in 2011. He returns for a Command Performance in August 2012.

The annual judiciary college judiciary luncheon is a key opportunity to share experiences.

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"Second Fridays" Free Educational Programs from the NAWCJ

May 11, 2012 (12:00 p.m. Eastern)

Eduardo Ramos-Almeyda and Judge Gerrardo Castiello.

This presentation will address the mediation privilege and how far it extends. For example, if a participant threatens to injure or harm themselves, may that be disclosed? Is there an exception to the privilege if a crime or fraud is discussed?

Upcoming programs:

Second Fridays goes no hiatus for the summer following the May program. We will return in the fall with a new line-up for 2012-13. If you have suggestions for topics or speakers, email them to President Lorenzen.

September 14, 2012 (12:00 p.m. Eastern)

Mark Popolizio, Esq.
More on Medicare, MSAs and the Policies that Challenges Us All

October 12, 2012 (12:00 p.m. Eastern)

Dr. Sanford Silverman
Challenges of the Medicated Patient, for the Patient and the Litigation Process.

Make plans today to tune-in

Dial 888.808.6959, conference 889675

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Next anxiety: research. Once again, back to Google. There are some really good articles out there about researching that discuss how to approach the task, most of them aimed at law students and first year associates. But the information was good and relevant to judges and anyone who periodically needs to research case law. I found two articles particularly helpful: one was written by Ted Tjaden, "Strategic Thinking in Legal Research," www.Slaw.ca (7/20/11). The other was the Thurgood Marshall Law Library Guide to Legal Research, 2011-2012, at www.law.umaryland.edu. I pass along what I found helpful.

First, before I begin my efforts, I need to talk to others about the problem I am going to research. Hooray, it is official; it is perfectly acceptable to use someone else's work as a starting place, rather than trying to reinvent the wheel and it is even okay to end my research at the point if the question is answered.

Next, I need to define the issue(s). Hopefully the parties have done that for me but if not, I may need to write down all the issues that occur to me and organize them so that I can figure out which I need to decide and which are "red herrings."

Then, I need to outline the facts. When I took high school journalism, I learned about the five "W"s:" Who, what, where, why and when. Mr. Tjaden added one "H:" how. I need to find the answers to the "W's" and the "H," and, if sufficiently complex, organize them to see if there are patterns relating to the issue(s) at hand.

Once I have defined the issue(s) and organized my facts, I can begin to research, looking for case law with similar fact patterns. The Marshall Law Library guide pointed out a couple of things about on-line research, particularly with reference to searching statutes. Sometimes, print versions of statutes are easier to use for research purposes than electronic versions but if I am going to search electronically, I will generally be better off using natural language search engines, than terms and connectors. The guide recommended I record all the necessary data to retrieve a citation as soon as I find something that I might want to use, rather than try to locate the citation again later on. I have found, for instance, that when I place the same terms in a search engine, I do not necessarily get the same results and I have wasted a lot of time trying to track something down because I did not copy the link the first time I went there. The guide also suggested that if the on-line source I have located offers a choice of views, I should select the "print" format view because that will be the easiest way to read the material on line. The guide suggested a 15 minute limit to searching a source or using a search time; if I have not been able to locate something useful in that time period, I need to change my search terms or look to another source. I left the guide with a quote: "Framing online requests that retrieve all the relevant cases while at the same time screening out a lot of irrelevant ones is an art..." I have next to no artistic sensibility so maybe that is why I am so anxious when it comes to research.

While writing this article, I recalled a discussion I had with one of my brothers who is admitted to the practice of law in California about Bluebook citations and how hopeless we both are when it comes to remembering the ins and outs of proper citations. So while I was busy Googling, I checked out Bluebook and learned you can buy programming that will correct your citations. I also found, however, www.law.cornell.edu/citation which provided me with access to "Introduction to Basic Legal Citation (online ed.2011)" by Peter W. Martin. I am confident if I ever actually read the article, I will learn the proper way to cite web sites and web site articles but for now, I trust you will forgive any errors I have made because I have reached the limit of my research tolerance. As always, contact me at Ellen_Lorenzen@DOAH.state.fl.us and don't forget to start making your plans to attend our August college.

CUE THE LIGHTS: A CALL TO THE SUPREME COURT AND CONGRESS TO SHED LIGHT ON THE CONFUSING LAW IN THE DBA/LONGSHORE ACT CIRCUIT SPLIT.

By Shelby Skeabeck*

I. INTRODUCTION

Jackie Stillwell and his wife, Barbara, thought they stumbled upon the chance of a lifetime. Jackie's employer contracted with the United States government to install an electrical-power system at the naval base in Guantanamo Bay, Cuba. Knowing the job overseas would yield higher earnings,[1] Jackie agreed to go abroad and work. Their hope for a brighter future was dashed, however, when Jackie received a high voltage shock and died.

The silver lining to this horrific event was that before Jackie traveled abroad, a federal statute, the Defense Base Act (DBA),[2] mandated that his employer provide workers' compensation coverage for him. Now a widow, Barbara applied for death benefits pursuant to the DBA.[3] Barbara's claim passed onto an Administrative Law Judge (ALJ) for a hearing pursuant to another statute, the Longshore and Harbor Workers' Compensation Act[4] (Longshore Act). The employer's insurance company claimed it did not owe death benefits to Jackie's wife; however, the ALJ found the company liable and awarded benefits. The insurance company appealed the award to the Benefits Review Board (Board), an administrative board designed to review the ALJ's findings. The Board affirmed the ALJ's judgment. Still unsatisfied, the insurance company appealed to the circuit court of appeals pursuant to the Longshore Act's language.[5] The Sixth Circuit found that it did not possess jurisdiction because of the interplay between the DBA and Longshore Act and refused to rule on the merits.[6]

Currently, the language of the DBA, is directly in contradiction with older, yet still controlling, legislation, the Longshore Act. The contradiction has led to a circuit split concerning the proper forum for appeals of administrative judgments of workers' compensation claims for civilians injured while working overseas.[7] Two petitions for certiorari were filed, but the Supreme Court denied both petitions. Additionally, Congress declines to amend either statute. This paper analyzes both branches' refusal to clarify the law and proposes resolutions for future claimants and practitioners.

II. Legislative Histories of The DBA and the Longshore Act

Created in 1941, Congress modeled the DBA after the Longshore Act.8 Initially, both statutes called for review of administrative judgments to arise in the district courts.[9] In 1972, however, Congress amended the procedural structure of the Longshore Act to allow for direct review by the courts of appeals.[10] Congress failed to amend the DBA concurrently.[11] The current circuit split arose because Congress remained silent on whether the 1972 Amendments extended to the DBA, which currently mandates initial review of administrative judgments to pass through the federal district courts.[12] As Home Indemnity Company v. Stillwell (Stillwell I)[13] highlights: "whether through legislative oversight or intent, [Congress did not] amend the judicial review provisions of the Defense Base Act."[14]

III: Analysis of the Current Circuit Split

The Circuit split hinges upon whether the language in the DBA, commonly referred to as § 3(b)—which designates the United States District Courts as the proper venue—is ambiguous or not.[15] The Fourth, Fifth, Sixth, and Eleventh circuits have found that the DBA is unambiguous.[16] The First, Second, Seventh, and Ninth Circuits find that § 3(b) is ambiguous and that the Longshore Act repealed the district court provision of the DBA.[17] For the purposes of this paper, some of the cases within the split offer insight as to why Congress and the Court refuse to address the jurisdictional dilemma. The Sixth and Fifth Circuit cases offer clues as to why the Court denied petitions for certiorari to the two cases within the split.[18]

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Professor Terrell RETURNS!

We are privileged to have Timothy P. Terrell, a former Fulbright Scholar, and Professor of Law at Emory University as a key speaker at the NAWCJ Judiciary College 2012. Professor Terrell presented at the inaugural College to rave reviews. He brings the topic of effective judicial writing and drafting to life! He will lecture on writing and editing effectively, with particular emphasis on the trial order. He is a dynamic speaker and dedicated scholar of the law. His works include "Rethinking Professionalism" and "When Duty Calls" both published in the Emory Law Journal (1992); Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing (Clark Boardman Company, 1992); "Transsovereignty: Separating Human Rights from Traditional Sovereignty and the Implications for the Ethics of International Law Practice," Fordham International Law Journal (1994); "A Tour of the Whine Country: The Challenge of Extending the Tenets of Lawyer Professionalism to Law Professors and Law Students," Washburn Law Journal (1994); "Ethics with an Attitude," Law and Contemporary Problems (1996); "Professionalism as Trust: The Unique Internal Legal Role of the Corporate General Counsel," Emory Law Journal (1997) and several articles on legal writing and editing for West Publishing Company's Perspective periodical.

More Information At:

www.NAWCJ.org

www.FWCIweb.org

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"Cue the lights," from P.3

The language of the Fourth, Fifth, and Eleventh Circuit cases send signals to Congress, calling on it to fix the disparity between the DBA and Longshore Act.[19]

In Stillwell I, the Sixth Circuit, which was the first circuit to take up this issue, held that it lacked jurisdiction to hear the appeal.[20] The respondents in the case included attorneys from the Board and the Department of Labor. The Sixth Circuit decided Stillwell I in the beginning of May 1979,[21] and by the end of that summer, two circuits released contradictory opinions.[22] Later that summer, in Pearce v. Director, Office of Workers' Compensation Programs (Pearce I),[23] the Ninth Circuit held that that the courts of appeals possessed jurisdiction to hear appeals from the Board.[24] The Ninth Circuit established that the Seventh Circuit was the proper circuit to hear the case and transferred it.[25] The Seventh Circuit accepted the transfer from the Ninth Circuit and proceeded to hear the case on its merits.[26]

It was not until the 1990s that the courts addressed the jurisdictional issue again. For the three courts that did, their biggest priority was to signal to Congress the need for clarification in the law. The Fifth, Fourth, and Eleventh circuits held that appeals arising from the Board lie within the jurisdiction of the district court.[27] Interestingly, however, all three circuits acknowledged the pure absurdity of their holdings by highlighting that requiring appeals to continue on through the district court is duplicative, repetitive, and "out of synch" with the original meaning and intention of the statutes.[28] Most importantly, all three circuit courts left glaring signals in their opinions regarding the complication in the law and the need for Congress to address the jurisdictional issue.[29] For instance, in Felkner I, the court stated that "it is not our function to correct Congressional oversight . . . [u]ntil Congress so acts, we are bound to interpret the DBA according to its plain, unambiguous language."[30] In Lee, the court stated "it is for Congress to eliminate any redundant steps insinuated by the 1972 Amendments to the [Longshore Act]."[31] Finally, in Hickson, the court stressed that "the problem must be addressed by Congress, not by this Court through judicial legislation."[32]

Of the cases just mentioned, only one, AFIA/CIGNA Worldwide v. Felkner (Felkner II),[33] petitioned for certiorari. Originally, the employer, American Express Company, and its insurer, AFIA/CIGNA Worldwide, appealed to the Fifth Circuit from the district court's dismissal of its suit against Deputy Commissioner, Marilyn C. Felkner, for awarding benefits to the workers' compensation claimant.[34] As this was early on in the history of the jurisdictional issue, the plaintiff in the suit filed multiple appeals in an effort to satisfy the confusing statutory language.[35] The petitioner stressed the need for the Supreme Court to grant certiorari and illuminate the proper jurisdictional path for Board appeals in its certiorari petition.

In early 2010, the Second Circuit, in Service Employees International, Inc. v. Director, Office of Workers' Compensation Programs,[36] came out with the latest case to analyze the jurisdictional debate and found the circuit courts possessed jurisdiction.[37] Despite deciding differently on the jurisdictional issue than the Fifth, Fourth, and Eleventh Circuits, the Second Circuit sent the same signals to Congress regarding the need to clarify the confusing statutory law as its sister courts had.[38] The court stressed that Congress has not modified the DBA since its inception and hinted towards the need for revision of the statute.[39]

IV. How a Constructive Pattern Approach Solved Other Longshore Act Extension Jurisdictional Issues

There is an easy solution to the current conflict. If Congress took notice of the circuit courts' signals regarding the confusing law, and used a "constructive pattern" approach to scrutinize the problem, federal courts and Congress could work together to quickly resolve this jurisdictional dilemma.[40]

Continued, Page 6.

"Cue the lights," from P.5

In fact, Congress and the courts have employed this tactic previously when interpreting whether the 1972 Amendments applied to other Longshore Act extensions and could use the same ingenuity exercised there to illuminate the darkened jurisdictional path for claimants under the DBA/Longshore Act split.

A prime example of the constructive pattern approach includes the Black Lung Benefits Act (BLBA).[41] The BLBA, another extension of the Longshore Act, amended the Federal Coal Mine Health and Safety Act of 1969.[42] Like the DBA, the BLBA incorporated several provisions of the Longshore Act.[43] Similar to the problem found in the DBA/Longshore Act split, the Seventh Circuit was presented with a case, questioning whether the BLBA adopted the 1972 Amendments and whether it had jurisdiction to hear a case that was on appeal from the Board.[44] Congress did not specify in the original BLBA whether the 1972 Longshore Amendments were automatically incorporated.[45] The Seventh, Sixth, and the Fourth Circuits found "express intent" to automatically incorporate the 1972 Amendments.[46] As evidence of this intent, in 1977, Congress passed the Black Lung Benefits Reform Act, which explicitly stated that the 1972 Amendments applied to the BLBA.[47]

V. The Meaning of Certiorari Denials

To begin to understand why the Supreme Court has not actively addressed the current circuit split in the past thirty years, it is important to analyze how scholars interpret a denial of certiorari. Considerable amounts of scholarship attempt to discern the true reasoning behind why judges rule the way they do. Of the highest intrigue is the Supreme Court and its denials of writs of certiorari. Scholars theorize every possible explanation for a denial, varying from those embedded in the judicial code to those of a lack of judicial independence. While, some scholarship finds that a denial of certiorari imparts no meaning, other scholars argue that certain cues within petitions influence the Court's decision regarding certiorari. This paper addresses two cues that are present in the certiorari petitions in the DBA/Longshore Act split: (1) the influence the Solicitor General over the Court, and (2) the impact amicus curiae briefs have over the Court.

According to the Supreme Court's own rules, "[a] review on writ of certiorari is not a matter of right, but of sound judicial discretion, and that will be granted only where there are special and important reasons therefore."[48] So what constitutes a legal issue significant enough to draw the attention of the Supreme Court? "Neutral factors," such as circuit splits, are one of the sources in which the Supreme Court itself deems necessary to grant certiorari, as it is important to clarify confusing law.[49] Other issues, such as political factors, can contribute to a petition for certiorari being granted or denied also.[50] However, because the Court denied the petitions for certiorari from the cases in the DBA/Longshore Act split – ignoring the neutral factor present – questions arise as to the meaning of a denial and why the Court denied certiorari.

A. The Orthodox View: A Denial is Nothing More than a Denial

According to the "orthodox view," a denial of certiorari is not an indication of the case upon its merits.[51] As Justice Holmes explained, a denial from the Court "imports no expression of opinion upon the merits of the case . . . ."[52] In Maryland v. Baltimore Radio Show,[53] Justice Frankfurter noted that a denial simply means that fewer than four members of the bench found the lower court's decision to be a matter "of sound judicial discretion."[54] On the other hand, a case may raise an important legal question, but the record may be too "cloudy," or the Court may prefer that lower courts grapple with the legal question further.[55] Additionally, the Supreme Court generally will not grant certiorari where factual correctness is the sole issue because such a decision would lack general impact.[56]

B. The Cue Theory: How Cues in Certiorari Petitions Can Influence the Court

The cue theory is one of the best predictors as to why a petition for certiorari was granted or denied. The cue theory hypothesizes that, because of the numerous amounts of petitions the Court receives in each term, it is impossible for every petition to be thoroughly investigated.[57] Therefore, clerks and justices look for certain cues to weed out petitions they deem to be frivolous.[58] Several studies have analyzed the cue theory in action.[59] While there has been some scholarship criticizing the cue theory,[60] it is hard to believe that considering the massive amount of petitions that flood the Supreme Court every year,[61] and the limited personnel resources of the Court, there is not some sort of screening mechanism to spot worthy petitions.

One of the cues that most scholars agree is crucial is whether the government is a party to the suit.[62] Gerald Rosenberg theorizes that the federal judiciary is overly deferential to the Executive Branch and describes the Solicitor General's close relationship with the Court.[63] The Solicitor General not only has special access to the court,

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"Cue the lights," *from P.6*

but the Court may request the Solicitor General to intervene in cases and present the government's position, even when the government is not a party to the suit.[64] Historically, the Solicitor General wins approximately 70 percent of the cases it is either appearing on behalf of or supporting through amicus briefs.[65] Furthermore, during the early 1990s, Rosenberg reported that out of the only seven or eight percent of petitions the Supreme Court heard, three-quarters of those petitions were on behalf of the Solicitor General.[66] During the period in which the Stillwell II petition was pending, 1969-1983, the Supreme Court only accepted a mere four percent of the cases when the Solicitor General opposed the appeal.[67] The close-knit relationship between the Court and the Solicitor General prompts one of Rosenberg's theories that the judiciary "lacks the necessary independence from the other branches of government to produce significant social reform."[68]

C. Influencing the Grant of Certiorari through Amicus Briefs

According to Caldeira and Wright, amicus briefs are vital to the decision-making process because they "provide the justices with an indication of the array of social forces at play in litigation."[69] As such, they argue that the Supreme Court justices are motivated by ideological preferences just like officials in other branches of government and that they "pursue their policy goals by deciding cases with maximum potential impact on political, social, or economic policy."[70] According to this theory, justices are so motivated by ideological preferences that they devote their resources to cases that will have the most impact on policies relative to their ideologies.[71] Caldeira and Wright further argue that justices, just like other public officials, feel pressure to accomplish a lot in a little amount of time.[72] Therefore, the justices have developed shortcuts to handle the large docket and allow certain cues, such as the presence or absence of amicus briefs, to influence their decisions regarding certiorari.[73]

Amicus briefs not only play an instrumental role for the justices, they are vital tools for interest groups and practitioners as well. Caldiera and Wright's study included amicus briefs from a wide variety of groups: corporations, labor unions, professional and trade associations, ideological and single-issue membership groups, religious organizations, racial and ethnic groups, individuals, and units of local, state, and federal government.[74] The amicus brief gives interest groups, who have a vested interest in seeing a particular policy issue addressed by the Supreme Court, an opportunity to highlight the pending policy ramifications of the case. For practitioners, amicus briefs also help to highlight the need for the Court to explain a confusing part of the law.[75]

VI. Analysis

For more than thirty years, the intercircuit conflict surrounding the DBA/Longshore Act jurisdictional issue has percolated within the circuit courts. During that time, two petitions for certiorari came before the Supreme Court, but the Court denied certiorari in both cases. To add insult to injury, Congress has failed to clarify the law. With both branches of government refusing to take up the split, questions remain as to why the branches do not act. The orthodox view and the cue theory explain why the Court refuses to grant certiorari in the two cases. The orthodox view and the cue theory explain why the Court refuses to grant certiorari in the two cases. However, congressional silence is harder to explain away considering Congress has at its disposal the BLBA model, which would help it resolve the DBA/Longshore Act split.

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"Cue the lights," *from P.7*

A. The Orthodox View and Cue Theory Account for the Supreme Court's Denial of Certiorari in Stillwell II and Felkner II

Despite the presence of a neutral factor—the existence of an intercircuit conflict—the Supreme Court has not addressed the legal issue.[76] The Supreme Court denied certiorari in two cases, Home Indemnity Company v. Stillwell[77] (Stillwell II) and AFIA/CIGNA Worldwide v. Felkner[78] (Felkner II), within the split, and in both these cases, the Supreme Court denied certiorari without an opinion.[79] Considering the context of the denials, it is possible that certain cues may have persuaded the Court to deny certiorari.

1. The Orthodox View Explains the Denial of Certiorari for the Stillwell II Case

The Stillwell II denial fits well within the orthodox view paradigm, considering that the circuit split, a neutral factor, was not present when the petition came before the Court.[80] Stillwell II was the first case to address the issue, and it was probably nearly impossible for the Supreme Court to predict that this legal issue would produce a circuit split. While the Ninth Circuit's Pearce I decision came down approximately one month before the Supreme Court decided to deny certiorari in Stillwell II,[81] it is hard to conceive that the Supreme Court would find that essentially two circuits in conflict with one another rose to the level of an intercircuit conflict calling for resolution.[82] It is also possible that the Supreme Court denied certiorari because it felt that the intercircuit split was premature and wanted the lower courts to grapple with the legal issue at hand further.[83] Perhaps, because the denial of certiorari in Stillwell II was so early on in the issue's history, the Supreme Court found that it lacked "general impact," rendering it inappropriate for the Court to hear the case at that time.[84] While the orthodox view accounts for the Court's denial in Stillwell II, it does not sufficiently explain the denial in Felkner II.

2. The Cue Theory Accounts for The Supreme Court's Denial of Certiorari in Both Cases

The cue theory offers a viable explanation as to why the Court denied certiorari in both Stillwell II and Felkner II. Two prominent cues were likely contributing factors to the certiorari denials because the government: (1) was a party in both cases[85] and (2) opposed the petition for certiorari in Felkner II.[86]

First, because the government was a party in both cases, its close-knit relationship with the Supreme Court was probably a contributing factor to both cases' subsequent certiorari denials. While the significance of certain cues are in contention among scholars,[87] most scholarship finds that the presence of the Solicitor General, is an important factor in the decision to grant or deny certiorari.[88] In Stillwell II and Felkner II, attorneys for either the Department of Labor or the Office of the Solicitor represented the government in the suits.[89] The cue theory finds that the Supreme Court is extremely deferential to the Executive Branch.[90] So deferential in fact, that the Supreme Court is essentially paralyzed from instituting essential social reform and clarifying the confusing law in the DBA/Longshore Act split.[91]

The second cue, that the government opposed the petition for certiorari, was likely an exceptionally strong signal to the Supreme Court to deny certiorari in Felkner II.[92] This cue maintains a stronger persuasion over the Court because of the government's outright request that the court reject the pending petition.[93] While this second cue pertains to the Felkner II case quite clearly, it is unclear whether it directly pertains to the Stillwell II case.[94]

In Felkner II, the government seemingly brushed off the glaring jurisdictional issue as unimportant.[95] The government acknowledged outright in its response to the petition for certiorari that, even though there was a circuit split, it "did not merit the Court's review at this time."[96] The government's petition failed to address why there was no need to take up the circuit split, and the Supreme Court did not seem compelled to scrutinize the government's argument. The Court, by following the Executive Branch's request to ignore the obvious circuit split, illustrates how close the relationship between the two branches is.[97] Whatever its source, the Supreme Court's refusal to address the circuit split creates confusion in the law and drives the jurisdictional wedge in the DBA/Longshore Act split deeper.

B. Congress Should Apply the BLBA Model to the DBA/Longshore Split

Congressional inaction curtails the DBA's needed reform and hinders the potential for a clear designation as to the proper avenue for appeals. Congress's silence on the issue is unwarranted considering it has a previous model at its disposal. Regarding the jurisdictional issue previously associated with the BLBA, Congress clearly picked up on the cues the judiciary sent it regarding the need for clarification in the law and, accordingly, passed the Black Lung Benefits Reform Act.[98]

Continued, Page.9.

"Cue the lights," *from P. 8,*

While there are not any congressional hearings[99] or statements issued by the Department of Labor[100] as to why Congress reformed the Act, the inference can easily be drawn that Congress reacted directly to the Seventh, Sixth and Fourth Circuits' signals that the proper jurisdictional path was not so obvious.[101] Courts have recognized Congress's intent for uniformity of workers' compensation law by retaining parallel review procedures when interpreting other Longshore Act extensions and should employ that mechanism in conjunction with the DBA/Longshore Act split.[102]

The Fourth and Sixth Circuits, however, refuse to employ the same "express intent" analysis they used when they interpreted the BLBA for the DBA/Longshore Act split.[103] The lack of congruency between the Fourth and Sixth Circuits' decisions regarding adoption of the 1972 Amendments to both Acts is impractical and creates inconsistency between Longshore Act extensions. The DBA should be interpreted the same as the BLBA because it is overly confusing for litigants to have certain statutory extensions incorporate the 1972 Amendments, while others do not. Without an eye towards judicial practicality and efficiency, the judicial dockets will likely overflow with unnecessary litigation requiring an independent analysis of all Longshore Act extensions and whether the 1972 Amendments apply.

C. The Court and Congress Inexplicably Refuse to Clarify the Law

Congress repeatedly fails to reform the DBA or Longshore Act in any way that would ease the burden of the confusing statutory language. There have been no amendments to the DBA passed since the 1990s. However, since the 1990s, Senator Jonny Isakson sponsored four bills in the Senate in 2006,[104] 2007,[105] 2009,[106] and 2011[107] that proposed amendments to the Longshore Act. All four bills contain the same language and claim "to amend the [Longshore Act] to improve the compensation system . . . ."[108] However, all four bills fail to address the jurisdictional dilemma.[109] All four bills were referred to the Committee on Health, Education, Labor, and Pensions, which remained their final resting place, as none were referred to other committees.[110] Currently, the latest bill was referred to committee on March 29th of this year.[111] However, considering the bill's history in committee, and the fact that it does not highlight or correct the jurisdictional issue, it is unlikely that it will pass—let alone make it out of committee. This paper argues that if the bill highlighted the jurisdictional issue and proposed amendments to fix the disparity between the statutes, it would pass. Interestingly, none of the bills had co-sponsors.[112] Perhaps, if Senator Isakson paired with other senators it would increase the chances of reforming the Longshore Act. While it is not unusual to have a sole sponsor, co-sponsors would highlight the bill's importance and garner more support for its passage. Interest groups or scholars need to draw attention to the problem because it seems from the text of Senator Isakson's bills that he is unaware of the jurisdictional dilemma.[113]

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Upcoming Conferences:

The 19th annual California Division of Workers' Compensation educational conference**,** February 23-24, 2012, Los Angeles CA and March 5-6, 2012 Oakland, CA.
http://www.dir.ca.gov/DWC/educonf18/DWC_EducationalConference.html

Workers' Compensation Committee 2012 Midwinter Seminar and Conference, March 8-10, 2012, Westin Riverwalk, San Antonio, Texas.
http://apps.americanbar.org/dch/committee.cfm?com=LL122000

31st Annual New Mexico Workers' Compensation Association Conference, , Albuquerque, NM, May 16-18, 2012, $tba.
http://www.wcaofnm.com/Annual_Events-2012_Annual_Conference/c23_28/p40/2012_Annual_Conference_MEMBER_Registration/product_info.html?osCsid=84fd829fdcb45d5cfd52c1e93cdc9ad0

64th Annual SAWCA Convention, Homestead, Hot Springs, Virginia, July 9-13, 2012, $tba.
http://store.sawca.com/

These programs are not sponsored or endorsed by the NAWCJ, but are noted here for information.

Some Thoughts:

"There are no failures – just experiences and your reactions to them"

Tom Krause

"In matters of truth and justice, there is no difference between large and small problems, for issues concerning the treatment of people are all the same."

Albert Einstein

"Cue the lights," *from page 9.*

In addition, there is no clear reason as to why the Court denied certiorari in Stillwell II or Felkner II.[114] During the time the Felkner II petition was pending, there was no proposed legislation in Congress, or even any Congressional committee hearings, that addressed the need for clarification in the law. Further, neither legal nor non-legal literature of the time addresses the confusing jurisdictional path or the need for the Court to take up the case.

VII. Possible Resolution of the Jurisdictional Dilemma for Future Practitioners and Workers' Compensations Claimants.

For practitioners who have a client who is interested in appealing a compensation award, which has already undergone Board review, it is important to consider the circuit in which the appeal will take place. Depending on the circuit, some courts of appeals may accept an appeal directly from the Board,[115] while other circuits will dismiss any appeal filed directly from the Board, unless a United States District Court reviews the case first.[116] While the Department of Labor's website states that appeals belong in the court of appeals,[117] there is still a possibility that a claimant's petition will be thrown out for lack of jurisdiction.

If a client seeks further redress of her award compensation after the court of appeals has reviewed her case, it is possible to appeal up to the Supreme Court; however, as Stillwell II and Felkner II illustrate there is a slim chance that a petition involving this issue will be granted certiorari.[118] Therefore, the practitioner interested in appealing up to the Supreme Court would need to set his case apart from previous cases by submitting amicus briefs. As discussed above, one of the cues the Supreme Court looks to when reviewing a petition for certiorari includes the presence of amicus briefs stressing the importance of granting certiorari.[119] By submitting amicus briefs from labor advocacy group or workers' compensation interest groups, such as Workers' Injury Law & Advocacy Group,[120] emphasizing the need to grant certiorari and clarify the law, the practitioner would set up the Supreme Court to grant certiorari.[121]

Considering that the Supreme Court has refused to take up the jurisdictional issue surrounding the DBA/Longshore Act split twice,[122] and no further petitions for certiorari have been filed as of the date of this paper, it seems that a judicial avenue may not be the best option for clarification in the confusing statutes. Perhaps, the best avenue to achieve change would be through a legislative means. Workers' rights groups or even claimants themselves ought to lobby Congress—specifically, Senator Isakson—for revisions to the DBA or Longshore Act to clarify the proper jurisdictional path for Board appeals. Just as Congress passed the Black Lung Benefits Reform Act, which explicitly stated that the 1972 Amendments applied to the BLBA,[123] Congress needs to shed light on whether the 1972 Amendments apply to the DBA. Several circuits have sent cues in their opinions calling on Congress to fix this oversight in workers' compensation coverage.[124] Hence, a legislative action plan to draw attention to the current confusion in statutory language could achieve the necessary reform faster than through traditional judicial avenues.

VIII. Conclusion

The DBA/Longshore Act circuit split has existed for over thirty years, and the Supreme Court is unresponsive to the need to clarify the law. Once referred to as the "least dangerous" branch by founding father, Alexander Hamilton,[125] the Supreme Court, in the context of the DBA/Longshore Act split, is living up to its designation as the deadbeat branch within the family tree of government.

While the orthodox view attempts to justify the Stillwell II certiorari denial, it seems that the cue theory more accurately accounts for judicial dependence and deference. The cue theory pinpoints a reason why the Supreme Court refused to take up the legal issue in both cases. In both Stillwell II and Felkner II, the government was a party to the suit.[126] Further, in the Felkner II case, the government and Office of the Solicitor prompted the Court to deny the petition because the government felt the split "did not merit the Court's review at this time."

Congress also has been unresponsive and refuses to pass reform legislation that would clarify the inconsistencies between the DBA and Longshore Act. Passing reform legislation, like Congress did with the BLBA, would easily fix the problem. Several of the courts within the circuit split, arising on both sides of the jurisdictional issue, have hinted to Congress that reform is necessary. The only step left for Congress is to institute the reform.

With both branches of government refusing to paint a clear picture as to claimants' appellate rights for workers' compensation claims, future practitioners and claimants will need to think outside of the box when planning for litigation. The next time that a practitioner considers appealing up to the Supreme Court, it will be necessary to include amicus briefs in order to persuade the Court of the importance of the jurisdictional issue. Because litigation can take an inordinate amount of time to effectuate public policy, claimants may seek retribution through legislative means and lobby Congress to clarify the law. Either way, the thirty-year circuit split is still looming over claimants' heads and causing unnecessary confusion, to which the Supreme Court and Congress can no longer ignore.

Continued, Page 11

"Cue the lights," *from page 10.*

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The footnotes for this article are at the end of this edition, page 34.

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Shelby Skeabeck is a third year law student at the Earle Mack School of Law at Drexel University in Philadelphia, Pennsylvania. Shelby graduated *summa cum laude* from East Stroudsburg University in East Stroudsburg, Pennsylvania with dual degrees in Political Science and English. During her law school education, she worked in chambers for the Honorable Albert J. Snite, Jr. in the Philadelphia County Court of Common Pleas and for the Honorable Sue L. Robinson in the District of Delaware. Currently, Shelby works as a law clerk at the Law Offices of Thomas More Holland in Philadelphia, Pennsylvania and as a co-op at the Philadelphia district office of the Equal Employment Opportunity Commission. She is currently focusing her studies on employment law and hopes to pursue a career in the DC metro area in the labor and employment field. Shelby would like to thank Scott and her parents for their tireless support during her law school education.

_____

The foregoing paper placed second in the College of Workers' Compensation Lawyers 2011 Annual Writing Contest for Law Students. It is a compliment to our segment of the legal spectrum that such praiseworthy students participate in that contest and show an interest in workers' compensation. This was reprinted with the author's permission. Future editions will contain other winning entries.

THE COLLEGE OF WORKERS' COMPENSATION LAWYERS

The College of Workers' Compensation Lawyers was "established to honor those attorneys who have distinguished themselves in their practice in the field of workers' compensation." It is an organization dedicated to admirable principals and the ideals of professionalism. These ideals include:

- A Fellow stands out to newer attorneys as a model of professionalism in deportment and advocacy;
- A Fellow has earned the respect of the bench, opposing counsel and the community;
- A Fellow displays civility in an adversarial relationship;
- A Fellow avoids allowing ideological differences to affect civility in negotiations, litigation and other aspects of law practice;
- A Fellow demonstrates an active interest in resolving issues;
- A Fellow is a student of the law;
- A Fellow has a thirst for knowledge in all areas of the law that affects their representation of their clients in Workers' Compensation or their duties in adjudicating cases brought before them;
- A Fellow actively participates in the state, local and/or National Bar.

NAWCJ Members in the News:

On March 10, 2012 in San Antonio, Texas, Associate NAWCJ Member **James M. Anderson, Esq.,** of Anderson, Crawley & Burke, PLLC, Mississippi, was inducted as a Fellow of the ABA-affiliated College of Workers' Compensation Lawyers. At that meeting, Associate NAWCJ Member **Gerald A. Rosenthal, Esq.,** of Rosenthal, Levy, Simon & Ryles, P.A., Florida was elected to the Board of Governors, College of Workers' Compensation College, for the 2012-15 term. He was inducted as a Fellow in 2009. The College is a national organization that recognizes attorneys, judges, and academicians who have distinguished themselves in the field of workers' compensation law for 20 years or longer.

The Southern Association of Workers' Compensation Administrators Announces their 64th Annual Convention

July 9 – 13, 2012; The Homestead, Hot Springs, VA

Monday July 9, 2012
Executive Committee Meeting 2:00 pm - 5:00 pm ,
Executive Committee Dinner 7:00 pm- 9:00 pm

Tuesday July 10, 2012
Commissioner's Lunch 12:00 pm - 1:45 pm
Regulators Roundtable 2:00 pm - 5:00 pm
New Member Reception 6:00 pm - 6:45 pm
President's Reception 6:30 pm - 8:00 pm

Wednesday July 11, 2012
Welcome & Opening Ceremony 8:30 am - 8:45 am

Honorable Dwight T. Lovan, Commissioner of the Kentucky DWC & SAWCA President
General Session 1: 8:45 am -10:00 am

Keynote Speaker:
Committee Announcements 10:00 am - 10:15 am

General Session 2: 10:30 am - 12:15 pm

Guest Speaker: Honorable Karen Michael / Richmond, VA (invited)
Join Karen Michael, for an interactive presentation on the impact of Social Networking in the Workers' Compensation Environment… where "legal" & "practical" meet.

Guest Speaker: Larry White (Louisiana WCC)
"Apps For Dummies"
Bring your smart phones, iPads, and other tech gadgets and learn how to do more than play "Angry Birds"…Discover Useful Apps…Paper Handouts Available!

Convention Lunch For All Attendees 12:15 pm - 1:30 pm

Committee Meetings 1:30 pm - 3:30 pm
Self-Insurance / Insurance
Adjudication

Afternoon Break 2:15 pm

Thursday July 12, 2012
General Session 3: 8:30 am - 8:45 am
Welcome & General Announcements
Special Surprise Guest Speaker 8:45 am - 10:00 am
Mid Morning Break 10:15 am - 10:30 am

General Session 4: 10:30 am - Noon Regency East
Special Guest Panel: "Doc's Drugs & Dollars"
Bring Your Questions & Your Answers…Your Stories & Your Worries…and share them with our distinguished panelists including…Dr. Kathryn Mueller (Colorado), Greg Gilbert (Concentra), Kevin Tribout (PMSI), plus NCCI and State Regulators.
Lunch On Your Own

Committee Meetings 1:30 - 3:30 pm
Administration & Procedures & Claims
Administration - Blue Ridge
Medical Rehab - Piedmont Room

Afternoon Break 2:15 pm Regency West

Friday July 13, 2012
Friday "Farewell" Breakfast 7:30 am - 9:00 am
General Session 5: 9:00 am–11:00 am Regency East
Committee Reports & Announcements
ISO's "iPad" Drawing Exhibitors & SAWCA Give-A-Ways SAWCA All Committee Conference Preview…November in New Orleans!

Do Not Miss the SAWCA Regulator's Roundtable at the National Workers' Compensation Institute Education Conference

August 18-23, 2012 Marriott World Center, Orlando

10th Anniversary 1999-2009
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Improving Workers' Compensation Through News and Education

Supporters Hope to Revive Alternative Benefits Bill in Oklahoma in May

By Bill Kidd, Central Bureau Chief

Supporters of legislation to allow some Oklahoma employers to opt out of the state's workers' compensation system by offering alternative benefit plans are trying to revive the proposal, which failed in the House of Representatives Wednesday night. The resuscitation attempt must come on Monday or Tuesday. House Bill 2155 by Speaker Kris Steele, R-Shawnee, failed on a vote of 42 ayes to 50 nays -- with 51 votes needed for passage in the 101-member House. The bill originally passed the House March 13 on a 70 to 22 vote.

Rep. Fred Jordan, R-Jenks, used a parliamentary procedure on Wednesday that allows him to bring the measure up for reconsideration. The procedure allows Jordan to request another vote on the bill within three legislative days -- in this case, on Thursday, Monday or Tuesday, because the House is not in session today.

John Estus, Steele's press secretary, told WorkCompCentral that no attempt was made Thursday to reconsider the Wednesday night vote. "No decision has been made yet on whether to ask for another vote," Estus said. He added that "discussions are continuing" with members and supporters and opponents of the bill. Mike Seney, senior vice president of operations for the Oklahoma State Chamber, which has supported the legislation, told WorkCompCentral that some members who had been expected to vote for the bill were absent Wednesday night, apparently due to the late hour. Debate on the measure lasted more than two and a half hours.

Supporters of HB 2155 contend it would allow businesses to reduce their expenses and to provide medical care more quickly to injured workers. But during the debate, both Democrats and Republicans expressed concerns about the legislation. Rep. Aaron Stiles, R-Norman, said that moving some employers from the state workers' compensation system to a system that operates under federal regulation might be compared to the "ObamaCare," a pejorative nickname given by opponents to the national health care reform bill passed by Congress with the urging of President Barack Obama.

Advertisements by OklahomaWorks, which opposed HB 2155, have labeled the proposal "ObamaComp," and said it would "federalize" part of the state's workers' compensation system. OklahomaWorks has not responded to requests from WorkCompCentral regarding its membership, but says on its website that it is a coalition of stakeholders and interested parties committed to protecting and preserving the newly reformed Oklahoma state workers' compensation laws." The version of SB 2155 that was passed by the Senate would allow qualifying employers to offer medical and indemnity benefits under an Employee Retirement Income Security Act (ERISA) plan to employees. ERISA plans are regulated by the federal government.

Rep. Emily Virgin, D-Norman, said federal regulation of ERISA plans would not protect injured workers, who would be forced to go to court to appeal denial of their claims. Rep. Scott Inman, D-Del City, minority leader of the House, questioned why the legislation is needed after the Legislature passed major changes in the workers' compensation system last year. Many of those changes have gone into effect only recently, and lawmakers should wait to see their effects, Inman said.

Senate Bill 878, passed in 2011, included provisions directing the administrator of the Workers' Compensation Court to develop new medical and hospital fee schedules to reduce overall medical care costs by 5%, targeting doctor-shopping by limiting when injured workers can change doctors and requiring use of the Official Disability Guidelines (ODG). The changes were aimed at reducing system costs. But Speaker Steele said businesses continue to complain that high costs and the adversarial nature of the current workers' compensation system are hampering economic development. Steele also denied reports that he had made a deal with Senate President Pro Tempore Brian Bingman, R-Sapulpa, the Senate sponsor of HB 2155, to bring the workers' compensation bill up in the House in exchange for passage of Steele's prison reform bill. There was no deal, Steele said.

Continued, Page 14

"Oklahoma," from Page 13

Rep. Mike Brown, D-Tahlequah, said the bill would take larger employers out of the workers' compensation system, resulting in higher rates for smaller employers. Approving the bill would be "an awful big risk," he said. The Oklahoma Injury Benefit Coalition, which initiated the effort for alternative benefit plan, did not comment on the House action. The version of HB 2155 that was passed by the Senate would have allowed qualifying employers with only one employee to offer an alternative plan, instead of the 50-employee minimum in the House-passed bill.

Employers would be eligible to offer an alternative plan if they have either:

-- A workers' compensation experience modifier, as reported by the National Council of Compensation Insurance (NCCI), of "greater than one (1.00) for the preceding Oklahoma workers' policy year," or;
-- Total annual incurred claims, "as reflected in an NCCI experience modifier worksheet or their workers' compensation carrier loss runs," greater than $50,000 in at least one of the three preceding Oklahoma workers' compensation insurance policy years.

The benefits under the alternative plans would have to equal or exceed the benefits provided under workers' compensation.

WCRI Publishes Annual Report and Research Review

The Workers Compensation Research Institute on Monday published its 2012 annual report and research summary. WCRI published 54 studies last year, including its annual CompScope Medical Benchmarks identifying changes in treatment patterns and where medical payments per claim or utilization is atypical among 16 states, including California, Florida, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, North Carolina, Pennsylvania, Tennessee, Texas and Wisconsin.

The study found that medical costs per claim are increasing faster in Illinois than other states because of higher prices paid to nonhospital providers, higher outpatient payments per service and higher hospital payments per inpatient episode. Medical costs in Louisiana increased by 15% in 2008 because of similar cost drivers as in Illinois, according to the summary in the annual report.

WCRI also published the 2nd edition of its Prescription Benchmarks last year that found prescription costs per claim was the highest in Louisiana among 17 states studied. Average payments were $1,182 per claim that had seven days of lost time and at least one prescription paid. Costs were $330 to $350 in the states with the lowest prescription costs.

Other WCRI studies looked at medical cost containment practices, interstate variations in the use of narcotics, interstate variations in treatment of low back conditions and the impact of provider choice on work comp costs and outcomes.

The foregoing two pages are reprinted from Workcompcentral.com. The National Association of Workers' Compensation Judiciary acknowledges and thanks Workcompcentral.com for their commitment to the education of and collegiality among the various adjudicators of workers' compensation disputes across the country. Their gracious and continual support of the NAWCJ is appreciated.

The NAWCJ Has Members From Twenty Jurisdictions!

Patricia Adams	Maryland Workers' Compensation Commission
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R. Karl Aumann	Maryland Workers' Compensation Commission
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Melodie Belcher	Georgia State Board of Workers' Compensation
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Karen Calmeise	Department of Employment Services, District of Columbia
Gary Cannon	South Carolina Workers Compensation Commission
Fred Carney, Jr.	Department of Employment Services, District of Columbia
Gerardo Castiello	Florida Office of the Judges of Compensation Claims
Caroline Clark	Kentucky Workers' Compensation Board
Robert Cohen	Florida Office of the Judges of Compensation Claims
John Coleman	Kentucky Workers' Compensation Board
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Emile Cox	New Jersey Department of Labor and Workforce Development
Mary D'Ambrosio	Florida Office of the Judges of Compensation Claims Claims
Alan Drescher	West Virginia Workers' Compensation Office of Judges
Lauren Godwin	Maryland Workers' Compensation Commission
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Charles Hill	Florida Office of the Judges of Compensation Claims Claims
Marjorie Renee Hill	Florida Office of the Judges of Compensation Claims Claims
Geraldine Hogan	Florida Office of the Judges of Compensation Claims
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Neal Pitts	Florida Office of the Judges of Compensation Claims
Thomas Portuallo	Florida Office of the Judges of Compensation Claims
Shelley Punancy	Florida Office of the Judges of Compensation Claims
Maureen Quinn	Maryland Workers' Compensation Commission

"NAWCJ Members," from page 15.

Donna Remsnyder	Florida Office of the Judges of Compensation Claims
Andrea Roche	South Carolina Workers' Compensation Commission
Laura Roesch	Florida Office of the Judges of Compensation Claims
Juanita Roibal-Bradley	New Mexico Workers' Compensation Administration
Stephen Rosen	Florida Office of the Judges of Compensation Claims
Thomas Sculco	Florida Office of the Judges of Compensation Claims
Margaret Sojourner	Florida Office of the Judges of Compensation Claims
E. Douglas Spangler	Florida Office of the Judges of Compensation Claims
Jerome Stenger	Georgia State Board of Workers' Compensation
Tom Stine	Nebraska Workers' Compensation Court
Franklin Stivers	Kentucky Workers' Compensation Board
Kathy Sturgis	Florida Office of the Judges of Compensation Claims
James Szablewicz	Virginia Workers' Compensation
Richard Thompson	Georgia State Board of Workers' Compensation
David Torrey	Pennsylvania Department of Labor
Harriet Turney	Industrial Commission of Arizona
Anand Verma	Department of Employment Services, District of Columbia
Kimberly Ward	Maryland Workers' Compensation Commission
John Webster, Jr.	Maryland Workers' Compensation Commission
Jeffrey Weinberg	Maryland Workers' Compensation Commission
Nolan Winn	Florida Office of the Judges of Compensation Claims
Jacqueline Wohl	Industrial Commission of Arizona

The NAWCJ Thanks our Associate Members

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Robert Barrett	Rissman, Barrett, Hurt, Donahue & McLain, P.A
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Sharkey Burke, Jr.	Anderson Crawley & Burke,
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Mark Davis	McAngus, Goudelock & Courie
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Terry Germany	Anderson Crawley & Burke,
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J. Russell Goudelock, II	McAngus, Goudelock & Courie
Laurence Leavy	Laurence Leavy & Associates
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Workers' compensation is a very important field of the law, if not the most important. It touches more lives than any other field of the law. It involves the payments of huge sums of money. The welfare of human beings, the success of business, and the pocketbooks of consumers are affected daily by it.

Judge E.R. Mills, Singletary v. Mangham Construction, 418 So.2d 1138 (Fla. 1st DCA, 1982)

THE NATIONAL ASSOCIATION OF WORKERS' COMPENSATION JUDICIARY
APPLICATION FOR MEMBERSHIP

THE NAWCJ MEMBERSHIP YEAR IS A FOR 12 MONTHS FROM YOUR APPLICATION MONTH. MEMBERSHIP DUES ARE $75 PER YEAR OR $195 FOR 3 YEARS. IF 5 OR MORE APPLICANTS FROM THE SAME ORGANIZATION, AGENCY OR TRIBUNAL JOIN AT THE SAME TIME, ANNUAL DUES ARE REDUCED TO $60 PER YEAR PER APPLICANT.

NAME: _____ **DATE:** ____/____/____

OFFICIAL TITLE: _____

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PROFESSIONAL E-MAIL: _____

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PROFESSIONAL TELEPHONE: _____Fax:_____

YEAR FIRST APPOINTED OR ELECTED? _____

CURRENT TERM EXPIRES: _____

HOW DID YOU LEARN ABOUT NAWCJ? _____

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DESCRIPTION OF JOB DUTIES / QUALIFICATIONS FOR MEMBERSHIP:

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IN WHAT WAY WOULD YOU BE MOST INTERESTED IN SERVING THE NAWCJ:

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Mail your application and check to:

Kathy Shelton
P.O. Box 200
Tallahassee, FL 32302
850.425.8156
Email: kathy@fwciweb.org

THE NATIONAL ASSOCIATION OF WORKERS' COMPENSATION JUDICIARY
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THE NAWCJ ASSOCIATE MEMBERSHIP YEAR IS A FOR 12 MONTHS FROM YOUR APPLICATION MONTH. ASSOCIATE MEMBERSHIP DUES ARE $250 PER YEAR.

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PROFESSIONAL E-MAIL: _____

ALTERNATE E-MAIL: _____

PROFESSIONAL TELEPHONE: _____Fax:_____

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Mail your application and check to:

Kathy Shelton
P.O. Box 200
Tallahassee, FL 32302
850.425.8156
Email: kathy@fwciweb.org

THE NATIONAL ASSOCIATION OF WORKERS' COMPENSATION JUDICIARY

There are opportunities for sponsorship of the 2012 NAWCJ Judicial College August 19 through 22, 2012, in Orlando, Florida. If you are interested in sponsoring any of the following:

WELCOME LUNCHEON PRIME SPONSOR

JUDICIAL RECEPTION PRIME SPONSOR

JUDICIAL ATTENDANCE SCHOLARSHIP

Please Contact

Cathy Bauman
P.O. Box 200
Tallahassee, FL 32302
850.425.8186
Email: cathy@fwciweb.org

NAWCJ SCHOLARSHIP 2012 OFFER

The National Association of Workers' Compensation Judiciary is offering limited scholarship opportunities to adjudicators attending the 2012 Judicial College in Orlando, Florida, August 10-23, 2012!

Scholarship may be awarded to any currently presiding workers' compensation adjudicator, who is also a member of NAWCJ. Scholarships may include hotel accommodations, and/or waiver of the conference registration fee and/or one-half of travel expenses to and from the college. No scholarship funds are available for meals, although there are two lunches and two receptions with heavy appetizers included in the registration. The evaluation of scholarship applications will include whether the agency for whom the applicant works will or will not provide funding. Preference will be given to adjudicators who have not previously attended the college and who are interested in becoming more actively involved in NAWCJ and helping recruit members and future attendees at the college.

The scholarship program is made possible through a grant from the Florida Workers' Compensation Institute as well as annual dues from associate members of NAWCJ who are attorneys and other individuals or companies interested in supporting the education of members of the workers' compensation judiciary.

Each interested adjudicator must complete an application for the scholarship and submit by e-mail to NAWCJscholarship@gmail.com on or before May 15, 2012. The successful scholarship recipients will be informed of their selection on June 15, 2012, and will be asked to make their travel arrangements soon after selection to help minimize airfares.

College attendees will have an opportunity to meet members of the workers' compensation judiciary from around the country, as well as practitioners and industry leaders in the field. The judicial college is an excellent opportunity to receive continuing education credit in a variety of areas including evidence, medical issues, and other matters that routinely come before members of the workers' compensation judiciary.

I encourage you to apply for a scholarship to the 2012 judicial conference and look forward to meeting you when the college convenes in August.

Sincerely,

Ellen Lorenzen, President

Application for Scholarship, NAWCJ College, August 19-23, 2012

Name: _____

Address: _____

E-mail: _____

Phone #: _____ Fax #: _____

Agency Name and Address: _____

_____

NAWCJ member since _____ (year)

Have you ever attended a NAWCJ Judicial College or FWCI Annual Meeting and Conference? ___YES ___NO

If so, what year(s)? _____ Did you receive a scholarship? _____

Have you participated on a NAWCJ panel or committee in the past or would you be willing to do so in the future? ___YES ___NO

Explain how you would like to participate in the NAWCJ: _____

Will you receive any support from your employer to attend the college? (leave time, payment of expenses beyond registration waiver and partial reimbursement of travel expenses): ___YES ___NO If yes, explain support offered by employer:

_____

_____

_____

Please estimate your travel expenses for attending the college: _____

Current adjudicatory position, dates held and brief description of duties: _____

_____

_____

_____

Past experience in workers' compensation law (may attach resume): _____

_____

_____

_____

Please attach a brief statement specifically describing how you believe attending the 2012 NAWCJ Judicial College and FWCI Conference will benefit you in the performance of your job:

_____

_____

_____

Would you be willing to write a brief article for the NAWCJ newsletter about the 2012 NAWCJ Judicial College and FWCI Conference and its benefits? ___YES ___NO

NAWCJ Judiciary College 2012!

August 19 through 22, 2012, in Orlando, Florida

Sunday, August 19, 2012

2:30 PM – 5:00 PM E. Earle Zehmer Moot Court Competition, Preliminary Rounds

Celebrating 25 years in 2012, the E. Earle Zehmer Competition will include sixteen teams. The competition is co-sponsored by the NAWCJ and the preliminary rounds are judged by members of the NAWCJ. The final rounds on Monday are judged by a panel of the Florida First District Court of Appeal. The competition is outstanding, the participants are exceptional, and this opportunity to contribute to the student's development is both exciting and gratifying.

Monday, August 20, 2012

9:00 AM - 11:50 AM EFFECTIVE JUDICIAL WRITING (150 MINUTES, 3 CREDIT HOURS)

Honorable Sheral Kellar, Louisiana, introduction of speakers

Professor Timothy Terrel
Atlanta, GA
Emory University

The ability to write well, with clarity, is critical in the legal profession. Judicial writing is unique though. Adjudicator clarity is critical to the lawyers' and parties' clear understanding of both the trial outcome and the reasons for it. Effective judicial writing is a service to the parties, and facilitates an effective appellate review process. Professor Terrel is a nationally-recognized expert in judicial writing, and brings his wealth of knowledge back to the NAWCJ in 2012.

11:50 AM - 12:00 PM BREAK AND TRANSITION TO GRAND BALLROOM 4

12:00 PM - 12:30 PM WELCOME LUNCH (PROVIDED)

Honorable Ellen Lorenzen, NAWCJ President, welcoming remarks

12:30 PM - 1:45 PM MULTI-JURISDICTION COMPARATIVE LAW PANEL (75 MINUTES, 1.5 CREDIT HOURS)

Moderator,
Honorable Jennifer Hopens
Austin, TX
Texas Department of Insurance, Division of Worker's Compensation

This panel discussion will bring perspective on how our statutes are different, and how they are similar. Dealing with statutory interpretation is part of our daily routine. Despite the diversity of our particular statutes, we share a multitude of concordant issues and challenges, which this program illuminates.

12:30 PM - 1:45 PM **MULTI-JURISDICTION COMPARATIVE LAW PANEL (CONT.)**

Speakers,

Honorable Michael Alvey
Frankfort, KY
Kentucky Workers' Compensation Commission

Honorable Melba Dixon
Jackson, MS
Mississippi Workers' Compensation Commission

Honorable *Sylvia Medina Shore*
Miami, Florida
Florida Office of Judges of Compensation Claims

Honorable James Szablewicz
Richmond, Virginia
Virginia Workers' Compensation Commission

1:45 PM - 2:00 PM **BREAK AND TRANSITION TO GRAND BALLROOM 1.**

2:00 PM - 2:50 PM **DETERMINING CREDIBILITY OF MEDICAL OPINIONS** (50 MINUTES, 1 CREDIT HOUR)

Honorable James Szablewicz, Virginia, introduction of speakers

Moderator:

Nat Levine
Broward Orthopedic Specialists
Ft. Lauderdale, FL

Speaker:

James McCluskey, M.D., MPH, PhD.
University of South Florida
Tampa, FL

Adjudicator's decisions are often founded upon the expert opinions of physicians. Issues of compensability, the need for specific medical care, and entitlement to indemnity benefits usually hinges upon the conflicting opinions of various experts. How does an adjudicator determine the credibility of those opinions, particularly when they are presented by deposition or affidavit, and the expert is not present in trial to be observed and assessed through the course of rendering those opinions? Dr. McClusky will provide methods for analyzing the experts' medical records and the other expert opinions to make these critical credibility determinations.

Monday, August 20, 2012, Cont.

2:50 PM - 3:00 PM **BREAK**

3:00 PM - 4:50 PM **EVIDENCE FOR ADJUDICATORS** (100 MINUTES, 2 CREDIT HOUR)

Honorable John J. Lazzara, Florida, introduction of speaker

Professor Charles Ehrhardt
Florida State University
Tallahassee, FL

Workers' Compensation adjudicators across the country are bound by evidence codes to varying degrees, sometimes depending upon the type of hearing they are then presiding over. Professor Ehrhardt brings over forty years of experience teaching evidence. This program will provide insight into specific challenges of trial evidence, effective consideration of and ruling upon evidentiary objections, and interpretation of specific evidentiary issues common to evidence codes.

4:50 PM - 5:00 PM **BREAK**

5:00 PM - 5:30 PM **NAWCJ ANNUAL BUSINESS MEETING**

7:00 PM - 11:00 PM **RECEPTION AND ENTERTAINMENT**

Tuesday August 21, 2012

8:45 AM - 9:45 AM **LIVE SURGERY** (60 MINUTES, 1 CREDIT HOUR)

Moderator:

Randy Schwartzberg, M.D.
From Orlando Orthopaedic Center, Orlando, FL

Surgeon

Steven E. Weber, D.O.
From Orlando Orthopaedic Center, Orlando, FL

Don't miss the opportunity to observe a renowned and highly respected surgeon in both the medical and sports communities Dr. Randy Schwartzberg, perform this year's ***LIVE SURGERY***…an Arthroscopic Dr. Randy Schwartzberg is board certified in orthopaedic surgery, fellowship trained and board certified in sports medicine and specializes in knee and shoulder injuries. ACL Reconstruction! Dr. Steven Weber, a fellow orthopaedic surgeon at Orlando Orthopaedic Center will be moderating this event.

Tuesday August 21, 2012, Continued

10:00 AM - 11:50 AM — **TO TELL THE TRUTH** (100 MINUTES, 2 CREDIT HOURS)

Honorable David Imahara, Georgia, introduction of speaker

Speaker:

Susan Constantine – As seen on CNN, MSNBC, ACB, CBS, and HLN.
Orlando, FL

Adjudicators are constantly called upon to make credibility determinations. Susan Constantine is an expert in reading people, with extensive training and experience in understanding the evaluation of truthfulness. Susan has consulted for major news outlets in conjunction with their reporting and evaluating testimony in high profile cases. This program will bring the old game show "To Tell The Truth" to the stage with three live panelists, each claiming to be the same person. The moderator will question the panelists in an attempt to glean the truth, and Susan will instruct the audience on the signs and indicators that she perceives as they respond. The audience will vote for whom they believe is telling the truth and then "the real" person will stand up!

11:50 AM - 12:00 PM — **BREAK**

12:00 PM -1:00 PM — **FLORIDA BAR WORKERS' COMPENSATION SECTION JUDICIAL LUNCHEON (GRAND BALLROOM 4)**

The Workers' Compensation Section of The Florida Bar hosts this annual luncheon. The event is focused on building bridges between the litigators and the adjudicators. Since 2009, the Section has graciously welcomed all NAWCJ attendees to this event, providing an exceptional opportunity for establishing collegiality and maintaining professionalism.

1:00 PM - 1:10 PM — **BREAK**

1:10 PM – 2:00 PM — **KEEPING THE CASE ON TRACK TO TRIAL** (50 MINUTES, 1 CREDIT HOUR)

Honorable Melodie Belcher, Georgia, introduction of speakers

Honorable Melissa Jones
Washington, D.C.
District of Columbia Department of Employment Services

Keeping a case on track can be a challenge, particularly with unrepresented litigants. Adjudicators can and should provide leadership throughout the litigation process, to assist the parties in navigating the process to reach the trial. Judge Jones will provide insight and tips on utilizing the pretrial process to move the case to trial and to assure the due process and fair hearing rights of the parties.

2:00 PM - 5:00 PM ROUNDTABLE BREAKOUTS

2:00 - 2:50 CHOICE OF "INTRO TO SOCIAL MEDIA" OR "APPELLATE REVIEW OVERVIEW"

INTRO TO SOCIAL MEDIA

Honorable David Torrey, Pennsylvania, introduction of speakers

Elizabeth Rissman
Orlando, FL

William Wieland, Esq.
Orlando, FL

Social media is pervasive in American society and its influence seems to expand every day. Facebook, Linkedin, Twitter, and others consume hours and days of peoples' lives. Judges need to understand what social media is and why people are engaged in it. Elizabeth Rissman will bring that introduction to the subject. The Judge's interest may then turn to how social media interaction will come before the bench, as evidence, and as admissions against interest. William Wieland will provide this "so what" of social media.

APPELLATE REVIEW OVERVIEW

Honorable Robert Cohen, Florida, introduction of speakers

Honorable Michael Alvey
Frankfort, KY

Honorable Nikki Clark
Tallahassee, FL

Honorable Melissa Jones
Washington, D.C.

Honorable Stephen Farrow,
Atlanta, GA

How does the appellate process works in a various jurisdictions? What suggestions do appellate judges have for drafting an effective order? How does the collegial groups/panels/commission process differ from the trial judge process? How do appellate judges divide appellate workload and produce decisions? These insights and more will be discussed by our distinguished panel and the attendees. This is a must-attend for any trial adjudicator.

Tuesday August 21, 2012, Cont.

2:50 - 3:00 BREAK

3:00 - 3:50 CHOICE OF "APPELLATE REVIEW OVERVIEW" OR "JUDICIAL TECHNOLOGY"

APPELLATE REVIEW OVERVIEW

Honorable Robert Cohen, Florida, introduction of speakers

Repeat of 2:00 Roundtable, see above.

JUDICIAL TECHNOLOGY

Honorable Karl Aumann, Maryland, introduction of speakers

Honorable Steven Rosen
St. Petersburg, FL

Electronic filing, paperless offices, videoteleconference, dictation software, electronic calendars and reminders, smartphones, and more have invaded the process of adjudication and the practice of law. Judge Rosen will lead a roundtable discussion about how States are leveraging technology to deliver customer service to their citizens in an ever challenging budgetary environment.

4:00 PM – 4:50 PM CHOICE OF "JUDICIAL TECHNOLOGY" OR "INTRO TO SOCIAL MEDIA"

JUDICIAL TECHNOLOGY

Honorable Karl Aumann, Maryland, introduction of speakers

Repeat of 3:00 Roundtable, see above.

INTRO TO SOCIAL MEDIA

Honorable David Torrey, Pennsylvania, introduction of speakers

Repeat of 2:00 Roundtable, see above.

5:15 PM - 6:15 PM RECEPTION

Non-judicial (Associate) and members of NAWCJ are cordially invited to attend this reception in honor of the Judges.

Wednesday August 23, 2011

Registration for the NAWCJ entitles attendees to participate in any combination of three programs conducted on Wednesday. These include a full day mediation program, a full day Multi-State Program and a full-day Medicare Set Aside Program. Details on these schedules will be forthcoming in future editions.

NAWCJ Judiciary College 2012

Limited Scholarships Available to Facilitate Your Attendance

Application Deadline May 15, 2012

Apply Today

Application on Page 19 of this Issue

NAWCJ Members who are also members of the College of Workers' Compensation Lawyers

Judges		Associate Members	
John Lazzara	Florida Office of the Judges of Compensation Claims	Gerald Rosenthal	Rosenthal, Levy & Simon
Stephen Rosen	Florida Office of the Judges of Compensation Claims	Glen Wieland	Wieland, Hilado & Delaitre
David Torrey	Pennsylvania Department of Labor	James McConnaughhay	McConnaughhay, Duffy, Coonrod, Pope & Weaver
		Steven Rissman	Rissman, Barrett, Hurt, Donahue & McLain, P.A
		William Pipkin, Jr.	Austill, Lewis & Pipkin

NAWCJ Judiciary College 2012 Faculty

Honorable Mike Alvey – Chair Kentucky Workers' Compensation Commission

Chairman Michael W. Alvey received his Bachelor's degree from Western Kentucky University, and his J.D. from the University of Kentucky College of Law. Admitted to the Kentucky Bar in 1988, Chairman Alvey practiced primarily defending workers' compensation, federal black lung and personal injury claims. On November 13, 2009 Chairman Alvey was appointed to serve as Chairman of the Kentucky Workers' Compensation Board effective January 5, 2010. Chairman Alvey was recently appointed to the board of directors of the National Association of Workers' Compensation Judiciary, Inc.

Chairman Alvey retired from the Kentucky Army National Guard in 2000 where he served nearly 21 years as an armor officer and is a graduate of the Armor Officer Basic Course and Armor Office Advanced Course.

Chairman Alvey resides in Owensboro, Kentucky where he has been involved in various church and civic activities as well as working with youth sports including both coaching and officiating.

Honorable Nikki Clark

Judge Clark serves on the Florida First District Court of Appeal. She was appointed by Governor Charlie Crist in 2009. She previously served on the
Circuit Judge, Second Judicial Circuit of Florida, 1993 – 2009. She presided in Felony, Civil, Family, and Juvenile Divisions, 1993 - 2009; Administrative Judge, Family Law Division, 2005 – 2009; Designed and implemented Independent Living Court to address needs of foster children after age 18; Designed and implemented Unified Family Court for management of families' cases in multiple Divisions.

Judge Clark served as a Chief Cabinet Aide, Office of the Governor, 1993; Legislation and Policy Development Director, Florida Department of Environmental Regulation, 1991 – 1993; Assistant Attorney General, Office of the Florida Attorney General, 1981 – 1991; Attorney, Legal Services of North Florida, 1979 - 1981.

She received her Juris Doctorate from Florida State University College of Law in 1977 and her Bachelor of Arts from Wayne State University in 1974. Judge Clark is an instructor, Continuing Legal Education Courses on mortgage foreclosure, ethics, procedures for high-profile cases, and creation of the trial record, 1995 – present. She serve as the Committee Chair, Florida Supreme Court Committee on Families & Children in the Court, 2006 – present. Judge Clark was an Adjunct Professor of Trial Practice, Florida State University College of Law, 1998 – 2009. She served as a Foreign Elections Consultant in Nigeria and Liberia, 2005 – 2008, and was a member of the Florida Supreme Court Committee on Fairness & Diversity, 2004 – 2006.

Judge Clark is a member of the William H. Stafford Inn of Court, the Tallahassee Women Lawyers Association, the Tallahassee Barristers Association, and is a former member of the Florida Conference of Circuit Judges.

She is the recipient of the Florida Supreme Court Chief Justice's Distinguished Judicial Service Award, 2010, the Rosa L. Parks Servant Leadership Award, (Florida State University), the Rosemary Barkett Outstanding Achievement Award, 2009 (Tallahassee Women Lawyers); the Sojourner Truth Award (National Coalition of 100 Black Women), the Judge of the Year (Florida Law Related Education Association), the Administration of Justice Award, Florida (American Board of Trial Advocacy); Distinguished Service Award (Florida Council on Crime & Delinquency), the Children's Advocate Award (Legal Services of North Florida), and the Judicial Appreciation Award (Florida Conference of Circuit Judges).

Susan Constantine

Susan Constantine is a leading body language expert / Jury Consultant / Florida Supreme Court County Mediator and President of Silent Messages. She has appeared on CNN, MSNBC, ACB, CBS, and HLN. She established herself as a leading body language expert, renowned speaker and trainer specializing in "deception detection" through verbal and non-verbal communication. She conducts seminars and workshops for corporate clients, lawyers, investigators, government agencies, and individuals sharing her body language expertise in easy to grasp formats. Her expertise focuses on understanding and predicting human behavior thru the hidden "Secrets of Reading Body Language.

Susan's skills have allowed her to serve as a Jury Consultant and trainer for Jury Quest LLC, and a core trainer for the south east region of the U.S. for Analytic Interviewing. As a Florida jury consultant, she provides scientific jury selection (objective) and reading people (subjective) during vior dire including witness preparation in high profile cases in Florida. Additionally, she conducts continuing education programs for lawyers, mediators and business.

Susan is a regular contributor on *CNN "In Session" Court TV.* She has been featured in trade journals, newspapers, and television, including the Orlando Sentinel, Miami Herald and the New York Times Journal. She appears frequently on *Fox 35, Fox News, and WESH, as well as channels 6, 9 and 13.* Susan analyzes body language, word content, and voice tone of witnesses, suspects, presidential candidates and discusses reading people's body language.

In 2008, she became a Florida Supreme Court County Mediator, and volunteers for the Orange County Courts. Sharing her conflict resolution experience and professional/personal life experiences, her communication skills have gained the interest of Fortune 500 companies and small business owners. She has taught sales executives, mangers, sales professionals and CEO's how to overcome adversity through excellent communication skills in the workplace using "The Four Secret Languages of Communication." As leading body language expert, Susan provides seminars on reading/interpreting body language, deception detection, and voice analysis.

Though the development of these customized training programs, participants will be equipped to make better judgments. These body language skills aid in assessing credibly, truth and deceptive behavior in the field. Research has proven that verbal and nonverbal cues can reveal ones true intentions. This research is scientifically validated and has been implemented by the FBI, CIA, homeland security and other governmental agencies to heighten the subjective skills of its investigators, judges, attorneys, social workers in reading the true intention of others' hidden agendas.

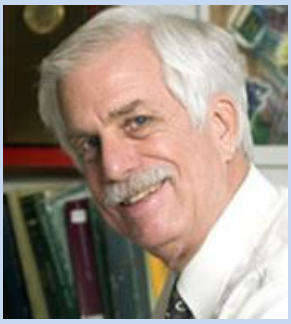
Honorable Melba Dixon

Judge Melba Dixon graduated from Linwood Elementary School and Benton High School (valedictorian) in Yazoo County, Mississippi. She has a Bachelor of Arts degree (Magna cum Laude) in Economics with a minor in Business Administration from Tougaloo College, an MBA degree from Jackson State University, and a Juris Doctorate from Mississippi College School of Law. She has completed course work at the National Judicial College.

Judge Dixon currently serves as one of eight administrative law judges with the Mississippi Workers' Compensation Commission. She is the first African American female to serve in this capacity. Prior to joining the Commission in 1997, she served as Special Assistant Attorney General with the Office of the Attorney General for the State of. Mississippi. She served as key advisor to the State Personnel Board and state government agencies in the area of labor and employment law. She has also worked as a staff attorney for Central Mississippi Legal Services, where she provided comprehensive legal services to indigent clients in civil cases. She was employed in the area of Personnel and Human Resource Management with the Mississippi State Personnel Board and the Mississippi Library Commission for approximately ten (10) years prior to entering the legal profession.

Judge Dixon is a member of the Mississippi Bar, the Magnolia Bar Association, the Capital Area Bar Association, and the Mississippi Women Lawyers' Association. She is also a member of Beta Delta Omega Chapter of Alpha Kappa Alpha Sorority Inc., a local / international community service organization. She formerly served as Secretary / Treasurer for the Association of State Personnel Administrators, was on the Board of Directors of the Mississippi Association of State Personnel Administrators, and was a member of the Charles Clark Inn of Court. She has also served on the Board of Directors of the Middle Mississippi Girl Scout Council. Judge Dixon is among those featured in *The 2010 Inaugural Edition of Who's Who in Black Mississippi.*

Professor Charles Ehrhardt – Florida State University



Author of Florida Evidence (West 2011), the leading treatise on the topic, and Florida Trial Objections (West 4th ed. 2007), Professor Ehrhardt has been cited as an authority by appellate courts more than 500 times. He taught Torts, Evidence, Trial Practice and Trial Evidence Seminar, and was named Outstanding Professor seven times. After serving as the Ladd Professor of Evidence for 35 years, he earned emeritus status in 2007. He continues to teach Evidence at the law school.

Professor Ehrhardt served as a commissioner to the National Conference of Commissioners on Uniform State Laws from 1996-2005. He was a member of the faculties of both the National Judicial College in Reno, Nevada, and the Federal Judicial Center in Washington, D.C. He has been a visiting professor at University of Georgia and Wake Forest. Professor Ehrhardt received the Selig I. Goldin Award from the Criminal Law Section of The Florida Bar and the President's Award from the Florida Board of Trial Advocates. He clerked for the Honorable M.D. Oosterhout of the U.S. Court of Appeals for the Eighth Circuit and joined Florida State University College of Law's faculty in 1967.

For almost 20 years, he served as the university's representative to the NCAA and the ACC. In 2007, he was inducted into the Florida State Sports Hall of Fame. Education: J.D., University of Iowa, 1964; B.S., Iowa State University, 1962.

Stephen B. Farrow

Stephen Farrow is a Director with Appellate Division of the State Board of Workers' Compensation. He assumed his duties on October 1, 2009, having engaged in a general litigation practice for 27 years in the northwest Georgia area prior to that time. He is a 1982 graduate of the University of Georgia School of Law. In addition to his active law practice, he served in the Georgia State Senate for two terms. Subsequent to that public service, he also served terms on the State Ethics Commission and the State Transportation Board.

Honorable Jennifer Hopens - Texas

Jennifer Hopens received her undergraduate and law degrees from the University of Texas at Austin. She was licensed to practice law in Texas in 2002. In 2007, she joined the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) as a Hearing Officer. She has traveled extensively for the Division, holding contested case hearings in workers' compensation matters in the Austin, Beaumont, Bryan/College Station, Corpus Christi, Dallas, Fort Worth, Lufkin, Missouri City, Houston East, Houston West, San Antonio, Uvalde, Victoria, and El Paso Field Offices of TDI-DWC. She attended the Judicial College of the National Association of Workers' Compensation Judiciary (NAWCJ) in Orlando, Florida in 2009, 2010, and 2011. In 2010, she was chosen to serve on the NAWCJ Board of Directors. She was previously a Hearing Officer for the Texas Workforce Commission. In her free time, Jennifer enjoys reading, traveling, genealogy, and photography.

Honorable Melissa Jones – District of Columbia

Melissa Jones is an Administrative Appeals Judge with the Government of the District of Columbia, Department of Employment Services (DOES). She formerly served as an administrative law judge presiding over workers' compensation claims between 2006 and 2010. Prior to joining the DOES, she practiced workers' compensation defense both in private practice and as staff counsel at The Hartford. Her legal experience also includes acquisitions and real estate litigation.

Judge Jones is a graduate of St. Bonaventure University, where she authored a thesis on "The Influence of Modern Technology on the Right to Refuse Medical Treatment: The Nancy Cruzan Case." She received her Juris Doctor at the University of Buffalo School of Law in 1994.

Judge Jones serves on the faculty of the National Judicial College in Nevada, and has lectured as an adjunct professor at the University of Maryland University College. She has also lectured for National Business Institute and at the National Association of Administrative Law Judiciary.

James McCluskey, M.D. – Univeristy of South Florida

Dr. James McCluskey is a Board Certified Occupational Medicine Physician and a PhD-trained Toxicologist. He is the Medical Director of the Center for Environmental/Occupational Risk Analysis and Management at the University of South Florida, Tampa, Florida. In addition, he is an assistant professor at the USF College of Medicine in the Department of Internal Medicine, and a research assistant professor at the USF College of Public Health in the Department of Environmental and Occupational Health. Dr. McCluskey completed an advanced subspecialty residency in Occupational Medicine in which the program curriculum and clinical experiences were extensively weighted towards the recognition and evaluation of complex occupation-related diseases. In addition, he has a PhD in Toxicology and Risk Assessment. Dr. McCluskey is actively involved with a research team investigating the human health effects of chemical exposure(s). His publications include articles on chemical exposures and various pulmonary conditions, as well as co-authorship of a chapter on occupational asthma. He is a frequent lecturer for public, private and academic groups. His medical practice is focused on the evaluation of medical cases involving environmental/occupational chemical, respiratory, infectious and allergen exposures.

Honorable Sylvia Medina-Shore

Judge Medina-Shore began her legal career as in-house counsel for the Florida Department of Insurance Insolvency Division. After serving one year as in-house counsel, Judge Medina-Shore joined the law firm of Almeyda & Hill and represented injured workers, employers and insurance carriers in workers' compensation and health insurance cases. Judge Medina-Shore was an associate and partner of same Miami law firm for 5 years. For the following 5 years, Judge Medina-Shore worked at the law firm of Conroy, Simberg, Ganon & Abel in West Palm Beach, Florida representing employer and insurance carriers.

In March of 2000, Governor Bush appointed Judge Medina-Shore to the Miami-Dade and Monroe County District. She was re-appointed by Governor Bush in March of 2004 and by Governor Crist on 2008. To that extent, Judge Medina-Shore has volunteered to accept college and law school students as interns for numerous Miami-Dade County and Broward colleges. For the past four years, Judge Medina-Shore has served in the executive committee of the Conference of Judges of Workers' Compensation. In March of 2006, Judge Medina-Shore was named Administrative Judge for the Miami- Dade and Monroe Counties. Judge Medina-Shore has lectured at numerous workers' compensation seminars and Miami-Dade County bench and bar conferences.

Elizabeth Rissman

Elizabeth is the Director of Social Media at Blueorb, Inc. in Orlando, Florida. She provides leadership and development strategies for companies with the goal of increasing brand exposure, customer acquisition, and sales. This involves creating and maintaining social media platforms with intriguing content, using platforms such as Facebook advertising campaigns and page promotion, blog posts, video blogs, LinkedIn updates, and Twitter engagement. Ms. Rissman provides business entities with expertise on developing and deploying web content, optimizing search engine recognition, and maximizing the exposure and advertising benefits of the vast array of Internet options including social media, e-mail, and web presence. Her responsibilities include composing and editing diverse forms of internal and external communication, including email campaigns, cover letters, press releases, and other forms of correspondence as an integrated effort with social media. She attends industry events to discuss social media and market promotion. She has previously worked in the media as a radio host, staff writer and copywriter. Elizabeth earned her Bachelor of Arts in Communication Studies from Vanderbilt University in 2007.

Only 120 Days Until Judiciary College 2012!

Honorable Steve Rosen

Since being admitted to the Florida Bar in 1974, Judge Rosen has spent his entire legal career in the area of workers' compensation law. He began his practice in the Tampa office of Marlow, Mitzel & Ortmayer and will leave Stephen L. Rosen, P.A. to serve his term as Judge of Compensation Claims. He has represented insurance carriers in the past, but since 1976 has represented the rights of injured and uninsured employer. Judge Rosen was a member of the initial Florida Bar Workers' Compensation Board Certification Committee, and has been Chair of The Florida Bar Workers' Compensation Section. From 1990 to 1993, he had the honor of acting as Chair of the Statewide Judicial Nominating Committee for Judges of Compensation Claims. He is also a founding member of the Florida Workers Advocates. In 2005, Judge Rosen was honored to have been nominated to the Governor for the position of Deputy Chief Judge for workers compensation. He has been a frequent lecturer and author on workers' compensation issues. He has appeared before the Florida legislature to propose amendments to the workers' compensation laws and has served on legislative advisory committees. He been continuously listed in The Best Lawyers in America since 1995, "AV" rated by Martindale-Hubbell, "Superlawyers" in Florida since 2005, and is the recipient of the W. L. "Bud" Adams Award for excellence in the field of workers' compensation, 1991.

Honorable James Szablewicz – Virginia

Jim Szablewicz is the Chief Deputy Commissioner of the Virginia Workers' Compensation Commission and has been in that position since April 2004. In this capacity, he supervises the Judicial Division of the Commission, including the functions of the Commission's Clerk's Office, six Regional Offices and all of the Deputy Commissioners state-wide. Prior to becoming Chief Deputy Commissioner, Jim served as a Deputy Commissioner for two years, and was engaged in the private practice of law on Virginia's Eastern Shore for eleven years, primarily representing injured workers. Jim received his B.A. in Political Science from Yale University in 1984 and his J.D. from the University of Virginia School of Law in 1987.

Professor Timothy Terrel – Emory University

Timothy P. Terrell, a former Fulbright Scholar, received another Fulbright grant-in-aid for scholarly research and teaching in England. Before coming to Emory, he practiced with the Atlanta law firm of Kilpatrick & Cody. His works include "Rethinking Professionalism" and "When Duty Calls" both published in the Emory Law Journal (1992); Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing (Clark Boardman Company, 1992); "Transsovereignty: Separating Human Rights from Traditional Sovereignty and the Implications for the Ethics of International Law Practice," Fordham International Law Journal (1994); "A Tour of the Whine Country: The Challenge of Extending the Tenets of Lawyer Professionalism to Law Professors and Law Students," Washburn Law Journal (1994); "Ethics with an Attitude," Law and Contemporary Problems (1996); "Professionalism as Trust: The Unique Internal Legal Role of the Corporate General Counsel," Emory Law Journal (1997) and several articles on legal writing and editing for West Publishing Company's Perspective periodical.

Professor Terrell has organized conferences on topics such as "Rethinking Liberalism" and "Human Rights and Human Wrongs: Investigating the Jurisprudential Foundations for a Right to Violence." He is director of the Hugh M. Dorsey Jr. Fund for Professionalism and also has been active in continuing legal education for practicing lawyers, presenting programs around the country for the American Law Institute and the National Practice Institute on legal writing and legal ethics. He served part-time as the director of professional development for the Atlanta law firm of King & Spalding, assisting that firm in developing its associate training program. He also helped produce two videotape-based educational programs on legal ethics, one for prosecutors and criminal defense lawyers, the other involving representation of clients in the healthcare industry.

Education: BA, University of Maryland, 1971; JD, Yale University, 1974; Diploma in Law, Oxford University, 1980.

William Wieland

Billy received his Bachelor of Business Administration Magna Cum Laude with a minor in business law from Stetson University in 2007. Billy received his Juris Doctor Cum Laude from Stetson University College of Law in 2010 and was admitted to practice law in Florida in 2010. During law school, he worked as a research assistant coordinating the National Conference on Law and Higher Education and was a founding Member of the Defense Research Institute student chapter at Stetson University College of Law. He also served as clerk to the Honorable Circuit Judge Stan Strickland of the 9th Circuit Court in Orange County, Florida. Billy was fortunate enough to be published in the Florida Bar Workers' Compensation Section: News and 440 Report in 2010. Billy volunteers at the Orange County Teen Court as a Jury Advisor and Bailiff supervising and supporting at risk teens.

Steven E. Weber, D.O.

Board Certified in orthopaedic surgery, specializing in adult spinal reconstruction cervical and lumbar spine surgery. A native of Michigan, Dr. Weber attended the University of Michigan in Ann Arbor, MI, where he received a B.S. degree in Biology. He earned his medical degree from Michigan State University, College of Osteopathic Medicine in East Lansing, MI. He remained there to complete his internship and Orthopaedic Residency at Michigan State University.

Following his residency, Dr. Weber completed a Reconstructive Spinal Surgery Fellowship with the University of Florida, in Gainesville, Florida. He has been published within the field of Orthopaedics and has presented his research at several national Orthopaedic meetings, including the American Osteopathic Academy of Orthopaedics. Dr. Weber specializes in Spinal Reconstruction and General Orthopaedic Surgery.

Randy S. Schwartzberg, M.D.

Board Certified in Orthopaedic Surgery and Board Certified in Sports Medicine. After growing up in South Florida, Dr. Schwartzberg attended the University of Michigan for his undergraduate education. He earned his medical degree from the University of Florida College of Medicine. After medical school, Dr. Schwartzberg completed his orthopaedic surgery residency in Orlando.

Following his residency program, Dr. Schwartzberg pursued his subspecialty interests in sports medicine and engaged in sports medicine training at the esteemed American Sports Medicine Institute in Birmingham, Alabama. His extensive training served as a strong platform to infuse his sports medicine enthusiasm and skills into the Central Florida area.

A Great Bargain and a Great Benefit!

There are many seminars and programs that provide Continuing Legal Education Credit; many of those are even specific to workers' compensation. Those programs cost as much as $50.00 per hour, and none are focused on the educational needs of adjudicators. The NAWCJ Judiciary College is specifically directed to the workers' compensation adjudicator, and is presented by the NAWCJ at less than half the price of the more generic workers' compensation CLE opportunities. Make plans today to attend this unique educational opportunity, and enjoy the collegiality of other judges, commissioners, deputies, administrators and more.

"Cue the lights," *from page 11.*

[1] *See* Profit v. Serv. Emp'rs Int'l, Inc., 40 B.R.B.S. 41 (2006) (explaining how an overseas contractor can earn up to three times what he could earn in the United States).

[2] 42 U.S.C. §§ 1651-54 (2003).

[3] *See id.*

[4] *See* 33 U.S.C. § 901 (2000).

[5] *See* 33 U.S.C. § 901.

[6] *See* Home Indem. Co. v. Stillwell (Stillwell I), 597 F.2d 87, 88 (6th Cir. 1979) *cert. denied*, 444 U.S. 869 (1979).

[7] *Current Circuit Splits: Civil Matters: Labor Law*, 6 SETON HALL CIR. REV. 347, 347-48.

[8] *See* 42 U.S.C. § 1651(a); *see also* 33 U.S.C. § 901.

[9] *See* 42 U.S.C. § 1653(b) ("Judicial proceedings . . . shall be instituted in the United States District Court of the judicial district wherein is located the office of the deputy commissioner whose compensation order is involved . . . ."); 33 U.S.C. § 921(b) (1970) (amended 1972) ("If not in accordance with the law, a compensation order may be suspended or set aside . . . through injunction proceedings . . . instituted in the Federal district court for the judicial district in which the injury occurred.").

[10] *See* 33 U.S.C. § 921(b).

[11] *See* 42 U.S.C. § 1653(b).

[12] *See* Claire Been, *Bypassing Redundancy: Resolving the Jurisdictional Dilemma Under the Defense Base Act*. 83 WASH. L. REV. 219, 227 (May 2008).

[13] 597 F.2d 87, 88 (6th Cir. 1979).

[14] *Id.* at 90.

[15] *See* Been, *supra* note 12, at 228.

[16] *See, e.g.*, *Stillwell I*, 597 F.2d at 88; AFIA/CIGNA Worldwide v. Felkner (Felkner I), 930 F.2d 1111, 1116 (5th Cir. 1991); Lee v. The Boeing Co. (Lee), 123 F.3d 801, 808 (4th Cir. 1997); ITT Base Serv. v. Hickson (Hickson), 155 F.3d 1272, 1274-75 (11th Cir. 1998).

[17] *See, e.g.*, Air Am., Inc. v. Dir. Office of Workers' Comp. Programs (Air America), 597 F.2d 773, 776 (1st Cir. 1979); Pearce v. Dir., Office of Workers' Comp. Programs (Pearce I), 603 F.2d 763, 766 (9th Cir. 1979); Pearce v. Dir., Office of Workers' Comp. Programs (Pearce II), 647 F.2d 716, 721 (7th Cir. 1981); Serv. Emps. Int'l, Inc. v. Dir., Office of Workers' Comp. Program, 595 F.3d 447, 452-53 (2d Cir. 2010).

[18] *See, e.g.*, *Stillwell I*, 597 F.2d at 88; *Felkner I*, 930 F.2d at 1111.

[19] *See Felkner I*, 930 F2.d at 1116-17; *Lee*, 123 F.3d at 806; *Hickson*, 155 F.3d at 1275.

[20] *See Stillwell I*, 597 F.2d at 88, 90.

[21] *Id.* at 87

[22] Literally the day after the *Stillwell I* decision came down, the First Circuit stated unequivocally in *Air America*, that the Board's order was appealable to the court of appeals. The court was so confident in its jurisdictional finding that it did not devote more than a single sentence to justifying it. *See Air America*, 597 F.2d at 776.

[23] 603 F.2d 763, 764 (9th Cir. 1979).

[24] *See id.* at 765.

[25] *See id.* at 771. If the court had not transferred the case, the petitioner would have been required to start the litigation process anew and could have possibly encountered time bars, a denial of application, administrative *res judicata*, or encountered the doctrine of administrative action.

[26] *See* Pearce v. Dir., Office of Workers' Comp. Programs, 647 F.2d 716, 721 (7th Cir. 1981). The court accepted the case without a single question as to jurisdiction.

[27] AFIA/CIGNA Worldwide v. Felkner, 930 F.2d 1111, 1115 (5th Cir. 1991) ("Under the current statutory scheme, compensation orders for claims arising under either the DBA or the LHWCA are first reviewed by the BRB. After that, further judicial reviews follow divergent paths depending on whether the claim originated under the DBA, or the LHWCA."); Lee v. The Boeing Co., 123 F.3d 801, 805 (4th Cir. 1997) ("We therefore conclude that judicial review of DBA claims differs from judicial review of the LHWCA claims."); ITT Base Serv. v. Hickson, 155 F.3d 1272, 1274 (11th Cir. 1998) ("[W]hile judicial review in all cases originating under the LHWCA now beings in the federal courts of appeal, the DBA continues to provide for judicial review in the "district court" of the appropriate judicial district.") (citing 42 U.S.C. § 1653(b)). The DC Circuit has commonly followed the Fourth Circuit and in Hice v. Dir., Office of Workers' Comp. Programs, it denied the petitioner benefits for injuries sustained overseas because the proper forum for review resided in the district court. *See* 156 F.3d 214, 218 (App DC 1998).

[28] *See Felkner*, 930 F.2d at 1116-17 ("While we recognize that taking this rather attenuated avenue to review the DBA compensation orders may be cumbersome and duplicative . . . ."); *Lee*, 123 F.3d at 806 ("We realize that our conclusion results in a somewhat cumbersome and duplicative review procedure in DBA cases and that Congress may not have made a conscious decision to create such a procedure."); *Hickson*, 155 F.3d at 1275 ("If the LHWCA and the DBA are 'out of synch,' . . . .").

[29] *See Felkner I*, 930 F.2d at 1116-17; *Lee*, 123 F.3d at 806; *Hickson*, 155 F.3d at 1275.

[30] *Felkner I*, 930 F.2d at 1116-17.

[31] *Lee*, 123 F.3d at 806.

[32] *Hickson*, 155 F.3d at 1275.

[33] 502 U.S. 906 (1991).

[34] *See Felkner I*, 930 F.2d at 1112.

[35] *See* E-mail from Kenneth G. Engerrand, Esq., former Plaintiff's attorney for AFIA/CIGNA, to author (Feb. 26, 2011, 19:50 EST) (on file with author); *See also, id.*

[36] 595 F.3d 447, 452-53 (2d Cir. 2010).

[37] *See id.* at 447.

[38] *See id.* at 454.

[39] *See id.* ("No modification of the DBA has been made since its inception . . . .").

[40] *See generally*, GORDON SILVERSTEIN, LAW'S ALLURE: HOW LAW SHAPES, CONSTRAINS, SAVES, AND KILLS POLITICS (2009).

[41] Black Lung Benefits Act of 1972, Pub. L. No. 92-303, 86 Stat. 153 (1972) (codified as amended at 30 U.S.C. § 901 (2000)).

[42] Federal Coal Mine Health and Safety Act, Pub. L. No. 91-173, 83 Stat. 742 (1969) (codified as amended at 30 U.S.C. § 901) (2000)).

[43] *See* Been, *supra* note 12, at 218-19.

[44] *See* Dir., Office of Workers' Comp. Programs v. Peabody Coal Co., 554 F.2d 310, 317 (7th Cir. 1977) ("Obviously, Congress made a technical mistake with respect to the October 1972 (Longshore Act) [A]mendments.").

[45] *See id.*

[46] *See id.* at 323; Dir., Office of Workers' Comp. Programs v. E. Coal Corp., 561 F.2d 632, 638-39 (6th Cir. 1977); Dir., Office of Workers' Comp. Programs v. Nat'l Mines Corp., 554 F.2d 1267, 1274 (4th Cir. 1977).

[47] 30 U.S.C. § 901.

[48] Sup. Ct. R. 19.

[49] *See* Sup. Ct. R. 19(b).

[50] *See* Harold J. Spaeth, *The Attitudinal Model*, *in* CONTEMPLATING COURTS, 305 (Lee Epstein ed.) (1995) (arguing that "justices decide their cases on the basis of the interaction of their ideological attitudes and values with the facts of a case.").

[51] *See* Peter Linzer, *The Meaning of Certiorari Denials*, 79 COLUM. L. REV. 1227, 1228 (1979).

[52] United States v. Carver, 260 U.S. 482, 490 (1923).

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"Cue the lights," *from page 17.*

[53] 388 U.S. 912 (1950).
[54] *Id.* at 917-18.
[55] Linzer, *supra* note 51, at 1251 (citing *Baltimore Radio Show*, 388 U.S. at 917-18).
[56] *See id.* at 1251 n.184 (citing Wilkerson v. McCarthy, 336 U.S. 53, 66-68 (1949) (Frankfurter, J., concurring)).
[57] *See* Joseph Tanenhaus, Marvin Schick, Matthew Muraskin, & Daniel Rosen, *The Supreme Court's Certiorari Jurisdiction: Cue Theory*, 118 *in* JUDICIAL DECISION-MAKING, (Glendon A. Schubert, ed.) (1963) [hereinafter Tanenhaus].
[58] *See id.*
[59] *See generally* Saul Brenner, *Granting Ceriorari in the United States Supreme Court: An Overview of the Social Science Studies*, 92 L. LIBR. J. 193 (2000) (outlining the various social science studies researching granting certiorari); *See also*, Ulmer, Hintze & Kirklosky, *The Decision to Grant or Deny Certiorari: Further Consideration of Cue Theory*, 6 Law & Soc. Rev. 637 (1972) (finding the only substantial cue is whether the government is a party); Virginia Armstrong & Charles A. Johnson, *Certiorari Decision Making by the Warren and Burger Courts: Is Cue Theory Time Bound?* 15 POLITY 141 (1982) (finding that the government being a party to the suit is only one of many cues); Donald R. Songer, *Concern for Policy Outputs as a Cue for Supreme Court Decisions*, 41 J. POL. 1185 (1979) (finding a cue in whether the case below was decided in a direction that differed from the ideology of a majority of the justices on the Court); S. Sidney Ulmer, *Conflict with Supreme Court Precedents and the Granting of Plenary Review*, 45 J. POL. 474 (1983) (finding a cue in whether there was a conflict between the decision of the lower court and Supreme Court precedent); S. Sidney Ulmer, *The Supreme Court's Certiorari Decisions: Conflict as a Predictive Variable*, 78 AM. POL. SCI. REV. 901 (1984) (finding a cue in whether there was a genuine intercircuit conflict).
[60] *See, e.g.*, DORIS MARIE PROVINE, CASE SELECTION IN THE UNITED STATES SUPREME COURT (1980); H. W. PERRY, JR., DECIDING TO DECIDE: AGENDA SETTING IN THE UNITED STATES SUPREME COURT (1991); Stuart H. Teger & Douglas Kosinski, *The Cue Theory of Supreme Court Jurisdiction: A Reconsideration*, 42 J. POL. 834 (1980).
[61] Reports indicate that over 7,000 petitions are filed with the Court every year. *See Supreme Court FAQs*, ASIAN AMERICAN JUSTICE CENTER *available at www.napalc.org/attachments/wysiwyg/1/SCOTUS_FAQ.pdf (last visited Mar. 7, 2011).*
[62] *See* Tanenhaus, *supra* note 57, at 118.
[63] *See* GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 14 (1991).
[64] *See id.*
[65] *See id.*
[66] *See id.* at 14 n.11.
[67] *See id.*
[68] *Id.* at 25.
[69] Gregory A. Caldeira & John R. Wright, *Organized Interests and Agenda Setting in the U.S. Supreme Court*, 82 AM. POL. SCI. REV. 1109, 1118 (1988) [hereinafter Caldiera].
[70] *Id.*
[71] *See id.* at 1111.
[72] *See id.* at 1114.
[73] *See id.*
[74] *See id.* at 1118-19. Participation in filing amici curiae is, of course, not the only way to influence litigation. For example, the NAACP Legal Defense Fund used a variety of tactics in its campaign to end restrictive covenant in housing. *See id.* at 1110 (citing Clement E. Vose, *Interest Groups and Litigation*. Presented at the annual meeting of the American Political Science Association).
[75] *See id.*
[76] *See* Sup. Ct. R. 19.
[77] Home Indem. Co. v. Stillwell (Stillwell II), 444 U.S. 869 (1979).
[78] AFIA/CIGNA Worldwide v. Felkner (Felkner II), 502 U.S. 906 (1991).
[79] *See Stillwell II*, 444 U.S. at 869; *Felkner II* 502 U.S. at 906.
[80] *See* Linzer, *supra* note 51, at 1228; *see also id.*
[81] *Pearce I* was decided on August 31, 1979, and the Supreme Court denied certiorari to the *Stillwell II* case on October 1, 1979. *See* Pearce v. Dir., Office of Workers' Compensation Programs, 603 F.2d 763 (1979); Home Indem. Co. v. Stillwell, 444 U.S. 869 (1979).
[82] Essentially, when the Supreme Court denied certiorari to *Stillwell II*, three circuits stood in opposition to the *Stillwell I* decision. Included was the First Circuit in *Air America* and the Seventh Circuit's acceptance of transfer in *Pearce II*. While establishing that jurisdiction for appeals from the Board resided in the court of appeals, neither *Air America* nor *Pearce II* addressed the jurisdictional questions within their respective opinions but rather reviewed the cases simply on their merits. *See supra* text accompanying notes 21-27. Therefore, while essentially three. circuits stood in opposition to the *Stillwell I* decision, only one actually analyzed the jurisdictional issue in any depth.
[83] *See* Linzer, *supra* note 51, at 1278.
[84] See id. at 1252 n.184.
[85] See Stillwell II, 444 U.S. at 869; AFIA/CIGNA Worldwide v. Felkner, 502 U.S. 906 (1991).
[86] See Brief for the Federal Respondent in Opposition, AFIA/CIGNA Worldwide v. Felkner 502 U.S. 906 (1991) (No. 91-48) 1991 WL 11178489 at *1.
[87] See supra note 59.
[88] See Caldiera, supra note 69, at 1118.
[89] See Stillwell II, 444 U.S. at 869; Felkner II, 502 U.S. at 906.
[90] See Rosenberg, supra note 63, at 14.
[91] See id. at 15.
[92] See Brief for the Federal Respondent in Opposition, AFIA/CIGNA Worldwide v. Felkner 502 U.S. 906 (1991) (No. 91-48) 1991 WL 11178489 at *1.
[93] See Rosenberg, supra note 63, at 14.
[94] Online databases do not maintain briefs for litigants in cases dating back to the 1970s.
[95] See Brief for the Federal Respondent in Opposition, AFIA/CIGNA Worldwide v. Felkner 502 U.S. 906 (1991) (No. 91-48) 1991 WL 11178489 at *8-9.
[96] See id.
[97] See Rosenberg supra note 63 at 14.
[98] See 30 U.S.C. § 901.
[99] Online databases do not keep records of congressional hearings dating back to the 1970s.
[100] *See Compliance Assistance – Materials Library – By Law: Black Lung Benefits Act*, UNITED STATES DEP'T OF LABOR, http://www.dol.gov/compliance/materials/results.asp?category=law&law=1&page=1&lawName=Black%20Lung%20Benefits%20Act (last visited Mar. 25, 2011).
[101] See supra text accompanying note 40-47.
[102] See id.
[103] See Dir., Office of Workers' Comp. Programs v. E. Coal Corp., 561 F.2d 632, 638-39 (6th Cir. 1977); Dir., Office of Workers' Comp. Programs v. Nat'l Mines Corp., 554 F.2d 1267, 1274 (4th Cir. 1977).
[104] See Longshore and Harbor Workers' Compensation Act Amendments of 2006, S. 3987, 109th Cong. (2006).
[105] See Longshore and Harbor Workers' Compensation Act Amendments of 2007, S. 846, 110th Cong. (2007).
[106] See Longshore and Harbor Workers' Compensation Act Amendments of 2009, S. 236, 111th Cong. (2009).
[107] See Longshore and Harbor Workers' Compensation Act Amendments of 2011, S. 669, 112th Cong. (in committee March 29, 2011).

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"Cue the lights," *from page 12.*

[108] *See supra* notes 104-07.
[109] See id.
[110] See id.
[111] See Longshore and Harbor Workers' Compensation Act Amendments of 2011, S. 669, 112th Cong. (in committee March 29, 2011).
[112] See supra notes 104-07.
[113] See, e.g., S. 3987, 109th Cong. (2006); S. 846, 110th Cong. (2007); S. 236, 111th Cong. (2009); S. 669, 112th Cong. (in committee March 29, 2011).
[114] Because the Court denied certiorari in the Stillwell II case in the 1970s, online online-research databases do not contain information from that time. Further, despite online-research databases possessing information from the time period in which the Court denied certiorari to the Felkner II case, research yielded no dispositive results.
[115] See Air Am., Inc. v. Dir. Office of Workers' Comp. Programs, 597 F.2d 773, 776 (1st Cir. 1979); Pearce v. Dir., Office of Workers' Comp. Programs, 603 F.2d 763, 766 (9th Cir. 1979); Pearce v. Dir., Office of Workers' Comp. Programs, 647 F.2d 716, 721 (7th Cir. 1981); Serv. Emps. Int'l, Inc. v. Dir., Office of Workers' Comp. Program, 595 F.3d 447, 452-53 (2d Cir. 2010).
[116] Home Indem. Co. v. Stillwell, 597 F.2d 87, 88 (6th Cir. 1979); AFIA/CIGNA Worldwide v. Felkner, 930 F.2d 1111, 1116 (5th Cir. 1991); Lee v. The Boeing Co., Inc., 123 F.3d 801, 808 (4th Cir. 1997); ITT Base Serv. v. Hickson, 155 F.3d 1272, 1274-75 (11th Cir. 1998).
[117] See U.S. Department of Labor Benefits Review Board Mission Statement, United States Department of Labor, http://www.dol.gov/brb/mission.htm, (last visited Mar. 6, 2011).
[118] See Home Indem. Co. v. Stillwell, 444 U.S. 869 (1979); AFIA/CIGNA Worldwide v. Felkner, 502 U.S. 906 (1991).
[119] See Caldeira, supra note 69, at 1111.
[120] The Workers' Injury Law & Advocacy Group is a national non-profit membership organization. See Mission Statement, Workers' Injury Law & Advocacy Group, http://www.wilg.org/index.cfm?pg=MissionStatement (last visited Apr. 4, 2011). ("[D]edicated to representing the interests of millions of workers and their families who, each year, suffer the consequences of workplace injuries and illnesses. The group acts principally to assist attorneys and non-profit groups in advocating the rights of injured workers through education, communication, research, and information gathering.").
[121] *See id.*; *see also* Linzer, *supra* note 51, at 1252 n.184.
[122] See Stillwell II, 444 U.S. 869; Felkner II, 502 U.S. 906.
[123] 30 U.S.C. § 901 (2000).
[124] See supra text accompanying note 26.
[125] See Rosenberg, supra 63, at 3.
[126] See supra note 86.

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