



Report me and my cause aright
Hamlet, Act V, Scene 2

The Catchline

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President's Message

As I write this President's Message, ARJD's 30th annual meeting in Boston is only five months away. It is hard to beat Boston as a meeting destination, and Cliff Allen has planned another outstanding educational program. Please see a tentative description of the educational program in this issue of the *Catchline*. I think one of the very valuable parts of the program will be a panel discussion in which our vendors talk with us about what the publishing contract of the future might look like. As the legal publishing paradigm continues to evolve in the electronic age, the historical model of a publishing contract based on paper and bound volumes may not be the most appropriate model for the future.

This annual meeting will be special for a variety of reasons. It will mark the 30th anniversary of the organization, and we will be awarding the Henry C. Lind Award to Boston College law professor Daniel C. Coquillette, who will speak to us about his research into some of the earliest law reporting in America. As an association, we will be discussing further the 2013 meeting site (see the update on the work of the Kenya committee in this issue of the *Catchline*) and attending to other business. And most importantly, the annual meeting is the very best opportunity you will have to discuss what is bothering you as a reporter of decisions with your colleagues face to face.

What? Is that the crack of a baseball meeting at bat? Rumor has it that we will be attending a baseball game at historic Fenway Park between the Cleveland Indians and the Red Sox! Rumor also has it that we will be touring historic Boston by land and by sea and more! Our very generous vendors, to whom we owe so much, will again be helping make our Boston meeting an educational and entertaining success.

Even though many public budgets remain strained, I hope that all of you will make the effort to attend the annual meeting. ARJD's annual meeting is the lifeblood of the organization, and it is the only opportunity many of us have to share ideas and problems with our colleagues. For those who wish to secure funding from your organizations for the annual meeting now, there is some information in this *Catchline* relating to hotel costs for planning purposes.

The executive board held its fall board meeting at the United States Supreme Court on November 19, 2010. The overall focus of the meeting was to step back and examine ARJD as an organization that is going through a change of sorts as the cadre of members who so ably steered the organization through its first 30 years are moving into retirement. The board considered membership issues (how do we expand our active membership, how do we keep our retired members engaged, etc.), the optimum structure for committee organization and committee membership, an extension

of the discussion we had at the Las Vegas annual meeting, ways to enhance member to member communication, and ways to tweak the historic structure of our annual meetings so as to better use those meetings to expand our membership. The board also discussed planning for this year's annual meeting in Boston.

Admittedly, some of those issues are hard to get one's hands around. The board did decide to move forward with development of a Facebook page to enhance member to member communication, and there will be more information forthcoming in that area. The board also decided to revamp ARJD's committee structure. There is a separate article in this issue of the *Catchline* that describes our new committee structure. I will be undertaking a member survey soon to seek the views of our members on possible tweaks to our annual meeting structure, and we will be contacting all Reporters of Decisions who are not currently members of ARJD to better understand why they have not joined ARJD and to encourage them to "give us a try" at the Boston annual meeting. Our objective in all of these activities is to secure the foundation of ARJD for the next 30 years.

The executive board will hold its spring meeting on April 8, 2011, to continue its discussion of some of the issues described above and to finalize planning for the annual meeting. I encourage all of you, if you have views to express on these or any other issues important to ARJD, to share your views directly with the officers. The more input we have, the better our discussions can be!

I think that brings you up to date for now. I look forward to seeing you all in Boston!

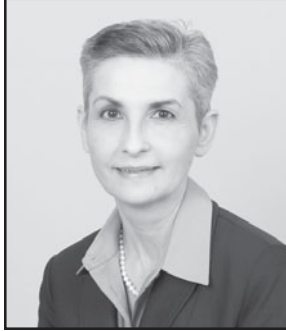
RALPH PRESTON
APRIL 30, 2011

CONTENTS

	Page
Africa Report	2
New Reporters Appointed	2
Boston Meeting—Education Program	2
Frank Wagner Article—Part II	3-6
Boston Meeting—Cost Planning	6
Kenya 2013 Update	6
Revisit 2008 Annual Meeting Issues	6
E-Publications Update	7
Committee Reorganization	8

New Reporters Appointed

The Supreme Court of the United States released the following on March 7, 2011: **Christine Luchok Fallon**, long-time Deputy Reporter of Decisions, has been named the new Reporter of Decisions of the Supreme Court of the United States. She will be the 16th Reporter of Decisions and the first woman to hold the position. She succeeds Frank D. Wagner, who retired from the Court after more than 23 years of service on September 30, 2010. Fallon assumed her new duties on March 3.



Christine Fallon

Fallon has served as Deputy Reporter of Decisions since February 1989, writing syllabuses and editing the opinions of the Court for release and publication in the United States Reports. From 1982-1989, Fallon served as a legal editor at the Research Institute of America in Washington, DC, where she supervised an editorial staff of seven attorneys, writing, revising, and supplementing loose-leaf employment law publications. Prior to that, she practiced law in Pittsburgh, PA and Tallahassee, FL. Fallon has been active in the Association of Reporters of Judicial Decisions, serving as president, vice president, and secretary. She also chaired and served on the Association's Education and Honors Committees.

Fallon earned her Bachelors degree at West Virginia University, graduating magna cum laude in 1974, and her J.D. at The Columbus School of Law, The Catholic University of America, in 1977.

* * *

On October 13, 2010, **John O. Juroszek** was named Reporter of Decisions for the Michigan Supreme Court and Michigan Court of Appeals. The Michigan Supreme Court released the following on October 28, 2010:

Chief Justice Marilyn Kelly said that Juroszek "brings a wide range of experience to this important position, including six years as Legal Editor working under the Reporter of Decisions. The Court is pleased to have someone of his expertise as Reporter."

The Reporter of Decisions is responsible for editing and publishing decisions of the Supreme Court and Court of Appeals. The Reporter also publishes Michigan court rules, evidence rules, and Supreme Court administrative orders.

As Legal Editor, Juroszek was responsible for editing Supreme Court and Court of Appeals opinions. Before joining the Reporter of Decisions office, he was a prehearing attorney and law clerk with the Court of Appeals, then joining the Lansing law firm of Loomis, Ewert, Ederer, Parsley, Davis & Gotting, P.C. He subsequently served as legal counsel to the Legislative Service Bureau.

Juroszek's undergraduate degree is from Michigan State University, where he majored in geology and also earned a master's degree in chemistry. He received his law degree from Thomas M. Cooley Law School in 1984.

Juroszek, who served as an adjunct professor at Cooley Law School, is a member of the Association of Reporters of Judicial Decisions. He is also a member of the Publications and Website Advisory Committee of the State Bar of Michigan.

He resides in Haslett with his wife Christine.

Africa Report

Michael Murungi reports that the Kenya National Council for Law Reporting has been rethinking the hosting of the ARJD meeting in Nairobi. Instead, we are thinking of hosting an international symposium for law reporters in which ARJD members will be invited and possibly given some concessions. We will still engage with the Commonwealth Secretariat as well as other donors on this.

Our rethink is based on: First and foremost, the need for us to be respectful and considerate of the interest of the significant number of ARJD members who are unwilling or unable to travel to Kenya for the meeting.

The fact that the site committee will need to firm up the venue this August and by then, I will not have much to report on Kenya's preparation to host the meeting because we are now in 2011 and planning for a meeting that will take place in 2013 is turning out to be a very delicate affair for us (for instance, we have an intervening general election in 2012 and with a new government, there is a possibility of change in leadership and priorities in the ministry of justice, who will be our key partners in organizing the meeting, and other factors).

Even if the Commonwealth Secretariat was to fully or significantly fund the ARJD meeting in Kenya, the first issue above is very compelling to us and on it alone, we would retract our bid to host the ARJD Annual Meeting for now.

We plan to make a full report on the foregoing at the next Annual Meeting of the ARJD in Boston this August.

Education Program

Boston 2011

The 2011 Education Program should provide something for everyone's taste. The presentations will be rich in history (What did you expect, it's Boston!), but focus on the present and future as well. We will hear from John Ellement, reporter at Boston Globe/boston.com, who will discuss legal blogging; engage in a discussion regarding the process of digitizing printed materials; and participate in a panel discussion on the next generation of printing contracts. In addition, we will hear from Bruce Shaw, the Director of the Massachusetts Supreme Court Archives Department, on the topic: "What do you mean we can't save everything forever?": The why's and how's of creating archival preservation and records management programs for paper based records."

Did I mention history? We will hear from the next Henry C. Lind Award recipient, Professor Daniel R. Coquillette of Boston College and Harvard Law School, who will take us back to the mid-Eighteenth Century with his fascinating story of "The Birth of American Judicial Reporting and the Extraordinary 'Lost Patriot,' Josiah Quincy Junior." Professor Ross E. Davies, Professor of Law from George Mason University School of Law, who will be remembered by those at the Pittsburgh annual meeting for his presentation about Supreme Court Justice Benjamin Curtis (and the "bobbleheads"), takes us back to the late Eighteenth Century and "Justice William Cushing Not At Rest: The Reported and Unreported Work of a Supposedly 'incompetent' Old Man." We will also sample the early Nineteenth Century with Robert J. Brink, Esq., the Executive Director of the Social Library, who will tell us about "The Angry Politics of the Early 19th Century and the Social Law Library's Role in the Americanization of the English Common Law."

Frank Wagner Retires — Part II

No, Frank Wagner has not retired a second time. The following is the second part of an on-line interview conducted by Tony Mauro, Supreme Court Correspondent of the *National Law Journal/ALM*, with Frank, who in September retired as Reporter of Decisions of the Supreme Court of the United States.

Mauro: In your Journal of Supreme Court history article, you quote a predecessor as describing the job and the staff as that of “double revolving peripatetic nitpickers.” In the era of spell-check, is that still an accurate description? How would you describe the job?

Wagner: I think spell-check’s impact on modern writing, editing, and publishing is highly overrated. Spell-check will tell you whether a word is, in fact, a word, but not whether it’s the right word. My wife, Carol—a technical editor—keeps a list of words she has found that, in context, were the wrong words, but that spell-check failed to highlight because they were real words recognized by the dictionaries: for example, “manger” for “manager,” “reverence” for “reference,” “singer” for “signer,” “prefect” for “perfect,” etc., etc. And grammar-check programs are even worse than spell-checks, giving laughably bad advice in many, many instances. Unless and until they are vastly improved, these computer programs are not the death knell for editors, but a guarantee of perpetual gainful employment.

So, yes, I would say Henry Putzel’s description of the Reporter’s Office staff as “double revolving peripatetic nitpickers” is still apt. Our job is to carefully examine each draft of each opinion to assure the accuracy of its quotations and citations, and, to the extent we can, its facts. We are not “fact-checkers” in the accepted sense of that term, however. We do not question a fact stated in an opinion unless it seems obviously wrong based on information gleanable from the record, the parties’ briefs, or the lower court opinions. Of course, we also check each opinion for any typographical errors, misspellings, grammatical mistakes, deviations from the Supreme Court’s style rules, and departures from traditional, technical rules of opinion drafting. For example, we try to assure that a concurrence or dissent does not refer to its author and joiners as “we,” the pronoun traditionally reserved to the members of the majority. And when an opinion refers to another opinion as “the plurality,” we check to make sure that the other writing satisfies the technical definition of that term. We perform all of our editorial functions before each case is released and then redo them, fully and completely, in preparation for the case’s republication in the preliminary print and, later, the bound volume of the official United States Reports. In a nutshell, therefore, what we do is to pick the nits out of the opinions, over and over and over again until, we believe, they’re perfect. What the Reporter’s Office does not do, for the vastly most part, is to “correct” substantive errors in opinions. In the relatively few instances in which substantive changes have been made to opinions during my 24 Terms, the impetus to do so has almost always come from chambers or from the public through chambers.

Mauro: How big is your staff, and how many lawyers and paralegals review each opinion before it is published?

Wagner: The Reporter’s Office has about 11½ employees: 3 attorneys (the Reporter, Deputy Reporter, and Assistant Reporter); the Publications Officer (who monitors and guides the publication of the U. S. Reports); 5 Technical Assistants or Staff Assistants (who are, basically, paralegal editors); a Secretary; a Clerk-Messenger; and a part-time Intern.

Prior to a case’s initial release, we generally try to have the same attorney and the same paralegal editor read each and every word of every draft of every opinion within the case. I say “generally” because there have been exceptions to our normal practice that were driven by necessity. For example, in *Bush v. Gore*, when asked to decide whether the Florida Supreme Court had properly ordered recounts in certain counties of ballots cast during the 2000 Presidential election, the Court was forced by time constraints imposed by federal law to adopt a very compressed briefing, argument, and decision schedule. Specifically, certiorari was granted on a Saturday, the case was argued the following Monday, and the decision—holding on equal protection grounds that the Florida court had erred in ordering recounts—was issued on Tuesday. The compressed schedule resounded in our very small office. The case consisted of a *per curiam* opinion, a concurrence, and four dissents, which totaled some 59 pages. On the day of decision, each of those six opinions was sent to the Reporter’s Office at least once for editorial work. As I just said, we try to have the same lawyer and the same paralegal read every draft of every opinion in order to assure familiarity with the case and to achieve consistency in the editorial work. However, we split up each of the *Bush v. Gore* opinions three ways among the office lawyers and five ways among the paralegals just to assure that the work was completed before the next draft of the opinion arrived. Although we were able to fully read and edit all of the draft opinions that day, our practice of using the same people to do all the work had to yield to expediency. I believe we found most of the erroneous cites and typos before the case was released in the evening, but full editorial consistency between the various component opinions had to await their publication in the preliminary print.

Mauro: Do the opinions come to your office fully completed, including case citations in proper form, etc., or is that left to you and your staff to do?

Wagner: When we receive opinions, they are as complete as possible in a technical, editorial sense, usually with full citations to briefs, cases, statutes, regulations, court rules, etc. We examine each opinion’s text and cites for the types of problems I just mentioned and return a copy of the opinion to chambers with all of our suggested changes marked in the margins and with an explanation for each suggestion. Obviously, an opinion’s first draft usually prompts the most suggestions from my office, while the bound volume version frequently engenders no suggestions at all.

Citations to the Court’s prior opinions, even in the first draft, usually elicit few suggested corrections due to our “Cites Retrieval Macro.” Actually, as it has evolved, this device is no longer a computer macro at all; it is now a programming sequence within the Court’s opinions-preparation software. For many years, chambers personnel writing opinions and Reporter’s Office employees checking opinions spent a great deal of time typing, proofreading, editing, and correcting citations to earlier cases. Obviously, this was done in an attempt to eliminate errors, achieve consistency, and comply with our intricate case-naming rules. However, although we tried diligently, consistency in citations was a goal that was not always achieved. Associate Justice Harry Blackmun, one of the Justices who hired me, seemed to love to tease me occasionally about inconsistencies in the way particular cases were cited from volume to volume in the U. S. Reports. These inconsistencies rarely involved major discrepancies, but more typically entailed

contd. on page 4

Frank Wagner Retires – contd. from page 3

minor differences in the abbreviation or nonabbreviation of particular words, or the inclusion or exclusion of particular minor words or phrases. Justice Blackmun would note six or seven ways a case had been cited over the years, then ask me which one was “correct.” Well, they all were correct under our rules, but the Justice wanted an answer, so I would choose a winner and share my choice with the other employees in the office. In 1995, a team of those employees, led by Deputy Reporter Chris Fallon, completed a project aimed at eliminating such citation inconsistencies. They finished our “Cites Directory,” which contains volume-by-volume lists of recommended citation forms for each and every case decided by signed or *per curiam* opinion and reported in the U. S. Reports. The Directory even includes a list of the cases argued during the present Term. The question then became how best to make the lists available to chambers and our cite checkers. We devised the solution in 1996, tasking our Intern, Derrick Lindsay, with creating the “Cites Retrieval Macro.” (At the time, Derrick was a law student and an amateur computer whiz. He is now the Assistant Reporter of Decisions.) The macro allows an opinion writer automatically to import a recommended citation form directly from the Cites Directory lists into an opinion-in-process with a few simple keystrokes, without retyping the case name, and without the possibility of committing a typographical or other error (unless, of course, we input it wrong in the first place). Obviously, this has greatly simplified the process of using, and proofreading, citations to the Court’s past opinions. We now make the recommended case citations available to the bench, the bar, and the public on the Court’s Web site, under the heading “Case Citation Finder,” on the “Opinions” page.

Mauro: Who writes the syllabus, and what kind of time pressure is there to write the syllabus?

Wagner: The Reporter, the Deputy Reporter, and the Assistant Reporter “write” syllabuses. I say “write” advisedly here because, in this modern computer age, syllabus preparation often involves taking an electronic copy of the majority opinion and boiling it down and down and down until we’re left with the case’s essence, its bare bones. I also say “syllabuses,” rather than “syllabi,” because once a Latin word has made the transition to English, I believe it should take an English plural.

The amount of time available to prepare a particular syllabus depends on a number of factors, including the case’s length and complexity and the lead time available before the case’s release. Normally, we try to allow about a day to prepare a syllabus, although the case’s length or brevity, or its complexity or simplicity, can greatly affect the calculation. And lead time can be the most important determinant of all. At the end of each Term, in May and June, the Court conferences on Thursday to decide which cases will be released the following Monday. Normally, we ask chambers for permission to do a syllabus once the majority opinion has garnered five votes, which generally occurs well before the Thursday conference. But occasionally a flurry of last minute votes will prompt a case’s scheduled release before a syllabus has been started. If that happens, all bets are off: We have just a few hours to prepare the syllabus, in order to allow time for chambers to digest, edit, and approve it and for the Court’s Publications Unit to prepare it for publication in the paper bench opinion pamphlet, for transmittal to our Project Hermes subscribers, and for inclusion as part of the paper and electronic versions of the slip opinion.

Mauro: Do the justices get to approve the syllabus and whatever changes your staff makes to the opinions, down to the last comma?

Wagner: The Justices approve everything we do, down to the last suggested comma, thin-space, or em-dash/character “bump.” The U. S. Reports is the record of their work, not mine, and they are entitled to have it appear exactly as they wish. And the syllabus-approval process actually provides a great deal of security and comfort for me and my assistants. Several times since I’ve been Reporter, I’ve gotten letters claiming that a syllabus misinterpreted the case it summarized. In each instance, I was able to respond that I stood by my syllabus, since it had been approved by chambers before the case went to print, but offered to run it by the Justice again, just in case. Each time the syllabus came back reapproved without change.

Mauro: In your 2001 article you indicated different justices have different preferences regarding syllabi, with Stevens and Scalia preferring brevity, and Ginsburg preferring fuller summaries. Are there still differences on this, or are they more uniform in length and detail now?

Wagner: It’s still much the same: The two positions represent the opposite poles of thought on the subject, and all of the present Justices (except, possibly, Justice Kagan, of course) seem to fall somewhere along the continuum. Personally, I agree with the traditional “brevity” school. Those wishing to determine what a particular case is about should read the case itself, not the syllabus, and should use the syllabus only as a road map to the case. A note at the top of each bench and slip opinion syllabus warns: “The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.” *Detroit Timber & Lumber* reveals the reason for that warning, recounting counsel’s attempt to rely on a headnote in an earlier case that misinterpreted the decision it was purportedly summarizing. Ouch! In all fairness, however, I should also note that there is support for the view that the syllabus should be fuller because it is the only information on a case that busy readers have time to digest. For example, several years ago the director of Cornell University’s Legal Information Institute told a gathering of Reporters of Decisions that more people read the syllabus for a given case on LII’s Web site than read the majority opinion.

Mauro: How often do you receive letters from practitioners and others suggesting corrections or changes in the opinions and in the syllabi? Do you welcome these suggestions?

Wagner: As I said, we rarely receive letters suggesting corrections to syllabuses. I’d like to think that’s because they’re perfect, but I recognize that it’s probably because of their relative unimportance in the grand scheme of things. As to the opinions themselves, we receive roughly 10-to-20 letters per Term suggesting changes. Letters sincerely intended to help correct errors are very, very welcome. As the note at the top of each bench and slip opinion states: “This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions . . . of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.” I tend to discount only those letters in which a correspondent expansively interprets “typographical or other formal errors” to promote his or her own self-interest. For example, I have several times rejected out of hand letters

contd. on page 5

Frank Wagner Retires – contd. from page 4

from authors stating that, surely, the Court's oversight in failing to cite their worthy tomes in an opinion should be corrected when the case is reprinted in the U. S. Reports. One of these people then went so far as to write directly to the Justice in question to correct the "formal error" that I had so cavalierly ignored. Gratifyingly, that person received an even cooler reception from chambers than she had from me.

Mauro: You wrote about disagreement over spelling of "attorney's fees" and "marijuana" (which I wrote about way back when). Have there been any recent disagreements over style or spelling, and how were they resolved?

Wagner: I can think of only one such thing at the moment, but I wouldn't call it a "disagreement," just a difference in preferences. And I doubt it needs to be resolved, at least at the present. When I came to the Court in 1987, the prevailing rule for a possessive of a word ending in "s" was simply to add an apostrophe after the "s." For example, "Congress'." Over the years, however, four Justices informed my office they preferred to add another "s" following the word's final s-apostrophe—e.g., "Congress's"—albeit each in slightly differing circumstances. The Justices are all highly capable legal writers committed to maintaining their own individual writing styles. Thus, while we try to maintain a high degree of consistency as to style in the U. S. Reports, the Reporter's Office has always kept a list, and has attempted to assure the incorporation, of each Justice's individual style preferences in his or her opinions. I have monitored the plural-possessives situation over the years, but because a majority of the Court has always continued to follow the original prevailing rule—which I prefer—I have never felt the need to poll the Court to try to achieve common ground. There seems even less reason to do so now, since only three of the four dissenters from the prevailing view are still on the Court.

Mauro: How has technology helped or impeded the job of reporter of decisions?

Wagner: The ways in which technology has facilitated our work are legion. I'll name just a few. Automation allows us to post the Court's slip opinions on our Web site just moments after they are announced from the Bench and to include a permanent and growing collection of U. S. Reports bound volumes online. It has also enabled the creation and dissemination of our Cites Retrieval Macro, which all but eliminates the possibility of typos in cites to the Court's earlier opinions. And it has allowed us to create and post on the Court's internal network a fully searchable, bookmarked version of the Supreme Court Style Manual, which has been a favorite of the law clerks, almost all of whom are new each year. Speaking of law clerks, technology has enabled the Deputy Reporter to create an online, segmented, audio-visual version of her yearly law clerk orientation program, which the clerks can view and revisit at their leisure as they are confronted with particular tasks. And the ability to borrow and manipulate majority opinion text has allowed us to prepare tighter, more informative syllabuses in a shorter period of time. Finally, we no longer have to remember so many things. For example, we can instantly determine whether the Court has traditionally hyphenated a particular unit modifier by doing a simple computer search. The only negative I can think of—and, obviously, this is only from my perspective, not from the Court's—is that technology has greatly shortened the response time between opposing opinions, allowing the dialogue to extend longer into the production cycle than it did in the old, hot-metal-printing days.

Mauro: A veteran Supreme Court practitioner recently told me he has not cracked open a volume of the printed U. S. Reports in at least five years, because of the ease of using online versions. Do you still see a role for the printed U. S. Reports, or do you foresee a time when it will fade away?

Wagner: I think your practitioner may be flirting with disaster if he is using online versions of opinions to actually conduct negotiations and litigation, particularly if the online cases on which he is relying are anything other than those contained in the 48 bound volumes of the U. S. Reports that we have reproduced on the Court's Web site. Supreme Court opinions evolve over time, changing continually in small—but sometimes large and important—ways as they progress through their various iterations, from bench opinion to slip opinion to preliminary print to bound volume. There are even a relatively few post-bound-volume changes included in the occasional *errata* notes at the front of some volumes. A failure to account for this evolution represents an enormous potential pitfall for the unwary lawyer wishing to rely to his or her client's detriment on language that may have changed significantly since the case was released. A similar problem inheres with respect to reliance on unofficial versions of the Court's cases: As reliably as the scanner or transcriber may have reproduced the Court's text, if the result deviates in any way from the official version, it is wrong. Even the Court's own online cases may be unintentionally and inadvertently deficient in some way. In 28 U. S. C. §411, Congress has designated the U. S. Reports the official publication of Supreme Court decisions. The Court's Web site cautions: "Only the printed bound volumes of the United States Reports contain the final, official opinions of the Supreme Court In case of discrepancies between a bound volume and the materials included here—or any other version of the same materials, whether print or electronic, official or unofficial—the printed bound volume controls."

Please don't get me wrong here. I'm not denigrating the work of unofficial republishers of the Court's opinions, who perform a valuable service for the Court by sharing its opinions with a much wider audience than would otherwise be the case. I think your practitioner is perfectly safe if he is using unofficial online sources simply to apprise himself of the results of particular cases or the development of the law. Nor am I a Luddite. I acknowledge that budgetary constraints may eventually force most governmental units to abandon the printed word in favor of publishing their official materials exclusively online. That has already begun to happen around the world. It is occurring in this country primarily with respect to state administrative codes, but the conversion of other materials, both federal and state, has already begun. Several years ago, I co-chaired an Association of Reporters of Judicial Decisions committee that looked into this development. We concluded that the Internet is probably the future of most official governmental information, but that the time is not yet ripe to abandon the official print medium. Rather: "[O]n-line government documents should not be designated 'official' unless they are (1) authenticated by encryption, digital signature, or some other computerized process to safeguard them from illegal tampering and (2) permanent in that they are impervious to corruption by natural disaster, technological obsolescence, and similar factors and their digitized form can be readily translated into each successive electronic medium used to publish them. So long as no computerized process guarantees such permanence, a governmental entity should not designate a non-print-published, electronic document

contd. on page 6

Frank Wagner Retires – contd. from page 5

‘official’ unless there is a statute in the particular jurisdiction requiring the authentication and perpetuation of ‘official’ online documents or the issuing governmental entity undertakes to make whatever conversions are necessary in the future in order to perpetuate the document in an accessible, accurate, ‘official’ form.” Statement of Principles: “Official” On-Line Documents ¶3 (2008), http://arjd.washlaw.edu/ARJD_Statement%20of%20Principles_May2008.pdf.

I am very happy that (apparently) I will not be the last Reporter of Decisions to publish the U. S. Reports. However, I recognize that the Reports may be somewhat closer to extinction than most official publications because the Government Printing Office is currently undertaking a massive project to place authenticated and permanent versions of seminal federal publications, including Supreme Court opinions, online. But even if the printing of the U. S. Reports were ultimately discontinued, I don’t believe that would spell the end of the Reporter’s Office. What the office does for the Court is editorial work, not just publication of its books. We write the syllabuses and we check the opinions for errors in their quotations, citations, and facts. Those things don’t have anything to do with whether there are official books or not. The value we add is there even before the opinions go to the printer or are posted on the Web site. Incidentally, state authorities have been much slower than the GPO to address the authentication and permanence of their online materials. Although the National Conference of Commissioners on Uniform State Laws is drafting a model Act on the subject, the draft reportedly lacks the teeth necessary to assure the permanence of official online documents.

Mauro: In decades past, the U.S. Reports would include summaries of arguments and, in rare instances, notes from the Reporter of Decisions. Should those be brought back?

Wagner: We still use Reporter’s Notes occasionally, primarily to point out that the Court somehow modified a particular order after issuing it. I don’t foresee any major changes in the frequency or scope of such notes in the future. I also think that the practice of summarizing arguments will never be resurrected. It seems sufficient to me that the Court’s Web site presently reproduces, for each and every argued case, both the merits briefs (through the auspices of the American Bar Association) and the transcript of the oral argument (with the assistance of our Court reporter, Alderson Reporting Service).*

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Boston Meeting Cost Planning

Materials for the Boston annual meeting will be distributed to the membership later in the spring, but the following information may be helpful for members who would like to apply for funding from their organizations now.

The dates of the meeting are Wednesday, August 3, 2011, through Monday, August 8, 2011. The meeting will be held at the Millennium Hotel in Boston. The negotiated room rates for the meeting are \$169.00 per night for singles and doubles. The current tax rate is 14.45%, making the room plus tax cost for a single or double \$193.42 per night. The triple and quad room rates are \$189 and \$209, respectively.

Update on 2013 Kenya Meeting

At the Las Vegas annual meeting, Roger Bilodeau, Michael Murungi, and Leah Walker were appointed as a committee to move forward with the planning for holding ARJD’s 2013 annual meeting in Kenya, possibly in connection with an international symposium for law reporting. Then-president Louise Meagher announced that the membership would make the final decision on the 2013 annual meeting this summer at the Boston annual meeting.

With Michael doing a fair part of the heavy lifting, the committee has been very active in seeking possible sources of financial support for this major undertaking, including contacts with the Commonwealth Secretariat that Roger helped facilitate. However, reflective of the challenges in planning such a project, Michael sent the following communication on February 24:

“We at the Kenya National Council for Law Reporting have been rethinking the hosting of the ARJD meeting in Nairobi. Instead, we are thinking of hosting an international symposium for law reporters in which ARJD members will be invited and possibly given some concessions. We will still engage with the Commonwealth Secretariat as well as other donors on this.

“Our rethink is based on:

“First and foremost, the need for us to be respectful and considerate of the interest of the significant number of ARJD members who are unwilling or unable to travel to Kenya for the meeting

“The fact that the site committee will need to firm up the venue this August and by then, I will not have much to report on Kenya’s preparation to host the meeting because:

“We are now in 2011 and planning for a meeting that will take place in 2013 is turning out to be a very delicate affair for us (for instance, we have an intervening general election in 2012 and with a new government, there is a possibility of change in leadership and priorities in the ministry of justice, who will be our key partners in organizing the meeting, and other factors).

“Even if the Commonwealth Secretariat was to fully or significantly fund the ARJD meeting in Kenya, I think issue number 1 above is very compelling to us and on it alone, we would retract our bid to host the ARJD Annual Meeting for now.”

Michael will make a full report to the membership on events as they are developing at the Boston annual meeting. In the meantime, the executive board will begin the process of considering alternative meeting sites for 2013 at its spring board meeting.

Revisit of Issues Explored at 2008 Annual Meeting

At the 2008 annual meeting of the ARJD in Pittsburgh, a presentation entitled, “Reporting Judicial Decisions to a World of Google and Wikis,” was made by Professor Peter W. Martin, Jane M. G. Foster Professor of Law (now Emeritus) of the Cornell Law School. Since the State of Arkansas has substituted an official database of appellate decisions for printed law reports, Professor Martin has revisited the issues he explored with the ARJD membership. Presented below is a summary of that revisitation prepared by Peter Keane, a second year student at Suffolk University Law School and a legal intern in the office of the Reporter of Decisions of the Massachusetts Supreme Judicial Court.

The complete text of Professor Martin’s working draft is found at:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1743756

Summary of Working Draft

In 2009, Arkansas became the first jurisdiction to completely and officially transition from printed case law reports to a database of electronic documents. This is the most recent shift in case law publication, which in many ways mirrors the shift many jurisdictions made in the twentieth century from public dissemination of case law by a judicial officer to publication in a commercial series such as West and LexisNexis. If Arkansas's system is successful—and states continue to face increased budgetary concerns—other states may soon follow Arkansas's lead.

Like many states, Arkansas is mandated by statute to produce law report publications. While many states have outsourced this task to commercial firms, Arkansas has maintained publication as a public function. Prompted by increased budgetary concerns—coupled with skyrocketing prices and decreasing demand for print copies—the Arkansas legislature was quick to authorize the complete conversion to a database of electronic documents.

While most states have been releasing appellate court opinions electronically in the form of slip opinions for several years, the system is flawed. The slip opinions can lack critical information, permanent citations, and editorial revisions that will be included in the final draft, and are accompanied by a disclaimer that they are subject to modification.

The Arkansas judiciary has addressed several of the flaws. They use medium and vendor neutral citations, release the preliminary report watermarked with “SLIP OPINION” on every page, and replace that with the authenticated electronic file that bears the deciding court's seal and a digital signature. Arkansas is the first jurisdiction to implement this level of authentication for electronic documents with the assurance of authoritativeness.

Arkansas is in a particularly unique position along with about a dozen other jurisdictions that have maintained at least a partial public function for publication. Many of these states have an in house editorial staff that is capable of adjusting to the increased workflow needed for electronic publication. States that have already outsourced to commercial firms, or that have maintained the office of reporter of decisions but have outsourced much of the editorial work and publication to commercial firms, would have difficulty providing their own database of electronic documents given their lack of in house editorial capacity.

Among the states that still have a reporter of decisions responsible for publication are New York, California, and Illinois. The prospect of budgetary relief that inspired Arkansas to switch to electronic publication is of little to no consequence to these states. Due to their large populations and importance as legal markets, each has either a “no cost” contract with their respective publishers, or receives the volumes at heavily discounted prices. In all three states, the commercial publisher bears some or all of the risk that market demand may decline. Smaller states such as New Hampshire and Vermont that assume the risk of excessive inventory, or states like Kansas where state officials conduct all functions of publication, may be motivated by the prospect of budgetary relief to follow Arkansas's direction.

A few states, such as Arizona and New Mexico, are still mandated by statute to produce law reports but have outsourced the entire process to West. The states then purchase the West volumes and mark them as official,

thus complying with state law. Budgetary concerns could lead these states to follow Arkansas's path.

Several states, such as Maine, North Dakota, and Oklahoma, already have medium and vendor neutral citations and archive their final opinions on their website. None, however, declare the electronic version to be official or unaltered. All three states would have little trouble clearing the final hurdle of official authentication for the electronic version.

In Alabama, the state provides an online archive service for an annual fee. In New Mexico, the New Mexico Compilation Commission publishes case law and statutes in electronic versions and distributes them for a fee. Each state already has the infrastructure in place to supplant the print version with the electronic version as the official volume. The desire to maintain the fee-based system may deter these states from ultimately converting to the Arkansas model.

The intended benefits of Arkansas's system have been accompanied by some immediate consequences. The medium and vendor neutral citation scheme has caused some issues with internal pagination in the commercial reporters, most notably West. In addition, Arkansas's decision to no longer differentiate between published and unpublished decisions has made it more difficult for the commercial publishers to determine which cases are precedent and which cases are not.

Other states that wish to convert to an Arkansas style system will face additional obstacles. There are issues with copyright claims, pagination and pinpoint citations, lead time, and assuring authenticity and permanence. States that model themselves after Arkansas will initially be confronted with a bifurcated system of official reports consisting of previous print volumes and current electronic volumes. Most importantly, systems such as Arkansas's lack the ability to provide cross linkages between case law, legislative material, and administrative material, which is the hallmark of commercial services.

In the end, the Arkansas system advances the needs of government agencies and the private sector by allowing free access to important legal tools and improving the quality of legal research. The remaining panoply of state models, which rely heavily on commercial partnerships, restricts access to these resources by making them expensive to obtain. Ultimately, the most effective state scheme would provide electronic cross linkages between all three branches of primary law publication.



Committee Reorganization

At the Las Vegas annual meeting, the membership engaged in a wide-ranging discussion of ARJD's committee structure. It was noted that many committees only have a chairperson with no members, and as the organization "grays", some long-serving committee chairs are moving out of those positions. It was also pointed out that there is overlap among duties of some committees, and certain efficiencies might occur if some committee functions were consolidated.

The membership also discussed the recruitment of members, especially new members, onto committees, and the suggestion was made that perhaps all members should be required to serve on a committee. After a full discussion, which raised many points of view, the matter of committee reorganization was referred to the executive board.

At its fall board meeting, the executive board discussed these and other ideas at length. The board concluded that there were many advantages to a more streamlined committee structure than ARJD has had in the past. The board also concluded that the key to a vibrant committee structure was to identify areas of responsibility and then challenge committee leadership to "take ownership of" an area and be creative in advancing the interests of ARJD in that area. The board also concluded it should not attempt to *require* each member to participate on a committee but rather should encourage members to find an area in which they were interested and then actively participate in a committee.

The board believes that four on-going committees are appropriate for ARJD. The activities of some committees may be amenable to the creation of subcommittees, but that would be a matter of how each committee decided to organize. They are:

Education: The Education committee will be responsible for developing the educational programs for our annual meetings. In that regard, the role of the Education committee is little changed from our historic committee of that name. However, our historic committee has essentially been a one person committee (we will always be indebted to Cliff Allen for his work over many years), and we would like to make educational planning a group activity. If other educational venues arise (distance learning, etc.), the Education committee would be involved in the *content* of such programming, but it would not be the responsibility of the Education committee to develop those opportunities.

Communications: The Communications committee will be responsible for internal communications among members. The committee will be responsible for the existing communication vehicles, i.e., the *Catchline* and website, the Facebook communication tool being developed, and new tools not yet in process, as well as the membership directory. The committee will also be responsible for cultivating the interest of new members in ARJD and for considering possible alternative communication venues (e.g., distance learning). This committee will need members with a variety of skills—technical, editorial, publishing, communications, etc.

External Outreach: The Outreach committee will be responsible for developing and enhancing ARJD's relationships with other organizations and audiences. Vendors, law schools, libraries and librarians, technology organizations, and the like are all possible targets of this committee, as are

prospective members of ARJD. By way of example, we would expect this committee, if the annual meeting were to be held in Chicago, to think about persons or organizations located in the surrounding states who might be invited to participate in the meeting, either as prospective members or in another capacity. This committee would also consider opportunities for activities that might be considered "fundraising" for ARJD.

Annual Meeting: The Annual Meeting committee's principal focus will be on organizing each year's annual meeting. Historically, the work involved in organizing the annual meeting has usually been done by the ARJD president. While the president will still be responsible for the meeting, the committee will participate in that process, thereby relieving the president of some of the burden. The committee will also be responsible for site selection for future meetings and for annual meeting-related tasks, such as determining whether there are nominees for the Henry Lind award.

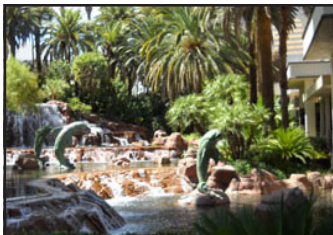
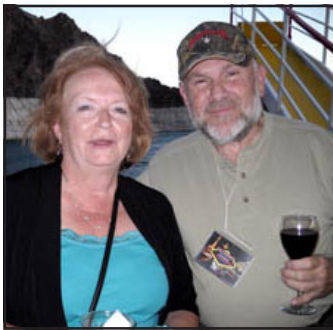
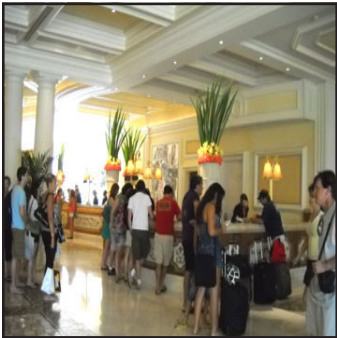
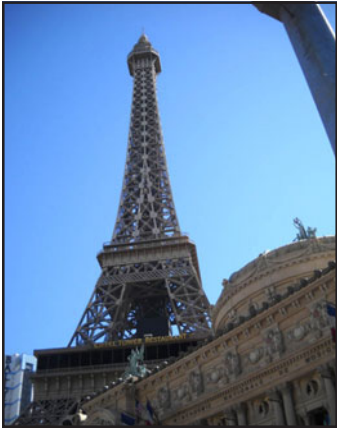
The board also concluded that the past president, in the normal course having spent the preceding three years moving through the officer positions and getting to know the members well, was uniquely positioned to recommend persons to the board as nominees for officer or committee positions. In addition, the board concluded that the secretary was the logical person to maintain the list of members and current contact information for those members.

Finally, the board decided that occasionally there would be a need to simply appoint a member to monitor on behalf of ARJD activities going on outside ARJD in some substantive area rather than have an actual committee with only a chair and no members. An example would be electronic publishing, where one person has been participating on the Uniform Law Commission state electronic materials act drafting committee, but there has not been any ARJD "committee" activity for several years.

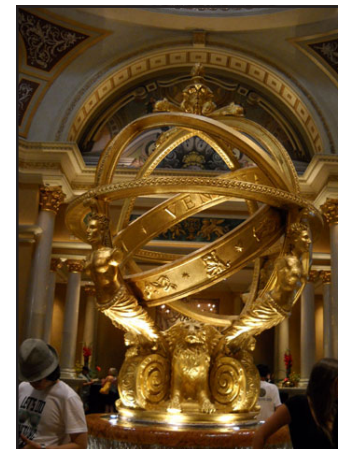
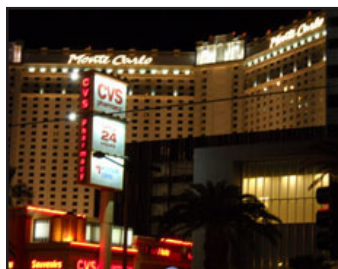
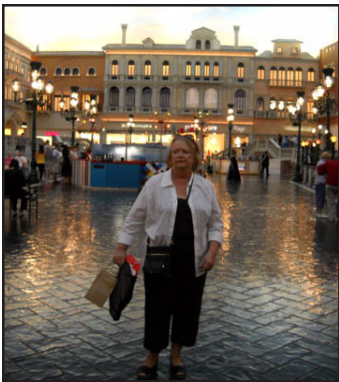
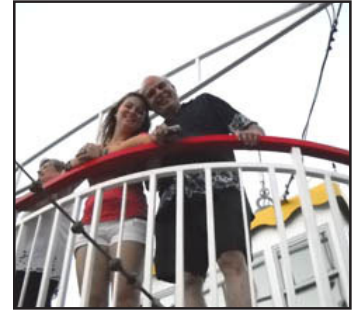
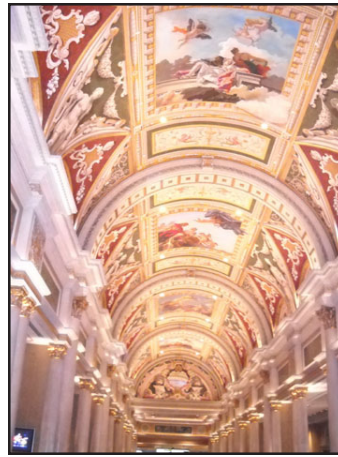
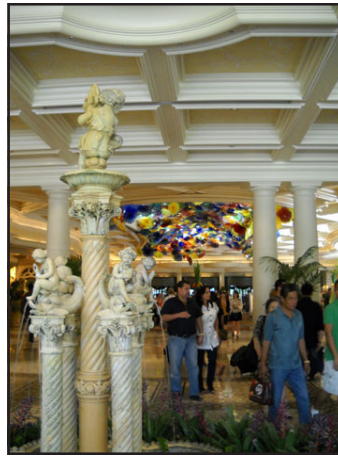
The board's objective is to have chairs for these committees in place before the annual meeting, with the expectation that members will join these committees before or during the annual meeting and that the committees will be fully functioning at the end of the Boston annual meeting.



Las Vegas, Nevada - 2010 Annual Meeting Photos



Las Vegas, Nevada - 2010 Annual Meeting Photos



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