



# Side BAR

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## OPENING STATEMENTS

### Message from the Chair

**Alan Blakley**

At the end of my first full year as chair of the Federal Litigation Section (it just seems like its been a lifetime since I was deputy chair for quite some time prior to becoming chair), I am pleased with all of the progress we are making. Michelle Hamilton is doing a great job with communications and of putting this newsletter together. Colin Hite, who has been active in the section for quite some time, has come up with some excellent ideas for generating dialogue among section members in conjunction with the Web page that we have not quite got going just yet. We hope it will be going soon. I just need a day or two with nothing to do to get it ready to go. Perhaps if we have an early snow and I can't get out of the house I will get it done. Aaron Resnick has been a great help with links for the Web site and articles for *Sidebar*.

I look forward to seeing all of you at the Federal Litigation Section hospitality suite at the Federal Bar Association's Annual Meeting and Convention in Northern Virginia. It will be an outstanding convention.

The biggest news that the section has concerns the relation-

ship with The Sedona Conference described in the last *Sidebar*. Jonathan Redgrave, an active member of the Federal Litigation Section, was the chair of The Sedona Conference's first Working Group addressing the best practices for electronic document retention and production. The product of this Working Group has already received national attention by being cited in *Zubulake v. UBS Warburg, LLC*, 2003 U.S. Dist. LEXIS 7939 (S.D.N.Y. May 13, 2003), as well as in a variety of national publications including August 2003 *Law Technology News* and a recent issue of *American Lawyer Media*.

The Sedona Conference asked me to be the chair of the next Working Group on Protective Orders, Confidentiality, and Public Access. As you may have noticed from the July issue of *The Federal Lawyer*, Federal Bar Association members will receive discounts on participation in the Working Group. Anyone interested in being part of the Working Group should contact me or visit The Sedona Conference Web site: [www.thesedonaconference.org](http://www.thesedonaconference.org). I am quite excited about the prospect.

The board of the Working Group has accepted a charge to gather a cross-section of academics, judges, attorneys, journalists, and court clerks from various backgrounds to provide a balanced analysis of issues and to create forward-looking principles and best practices recommendations for attorneys, courts, media, and others who regularly confront issues related to public access to information gathered through court proceedings and other dispute resolution scenarios. A recent law review article that I wrote on legal ethics implicated in these issues will be published in volume 34 of the *Cumberland Law Review* in October or November 2003. We are hoping to generate a great deal of dialogue and interface with many other organizations including the Federal Judicial Center, American College of Trial Lawyers, ALI-ABA, PBS, and gain greater recognition for the Federal Bar Association, enhance our membership, and provide more series for you.

Thank you for taking the time to read this message and the newsletter. We hope to continue to provide better service to our members and hope you will continue to contact us with your suggestions.

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## Message from the Editor

### Michelle Hamilton

I hope that all of our *Sidebar* readers snuck away from the office for some repose or respite this summer. In the spring it was decided to dispense with a summer issue and confine our publication to fall, winter and spring editions. If enough of you litigators complain that July poolside reading is meaningless without a *Sidebar* issue, perhaps we will rethink this schedule.

I recently accepted a new job. For nearly 18 years I have practiced criminal defense; in the last 10 years most of my practice has been in federal court. On Sept. 22 I will join the U.S. Attorney's Office in the white-collar unit, primarily prosecuting business, securities and tax crime. Most of my friends in the legal community react with quiet bemusement, offer their congratulations and wish me god speed on my new adventure. A minority, however, view this change as a drastic change of hats, an about-face, or a passage from the dark side to the light side or vice-versa, depending upon their point of view. I tell them: I am a litigator ... have been ... and probably always will be. The arguments I make do not define me; they are intended to define my case.

To "litigate" is defined variously as follows: to be part of a lawsuit ... to contest or be involved in a lawsuit ... to carry on a legal contest by judicial process ... to contest in law ... to prosecute or defend. As lawyers we have no voice absent the law of which we speak. I think that this concept should take the form of a children's cartoon on Saturday morning, which features creatures battling with swords that represent various laws. A narrator could explain how a murder statute wouldn't apply when the accused acted in self-defense. The creature with the murder statute sword would lie on the ground defeated. Perhaps this might make the point more clear to the general public, that

it is the law, not the lawyer in the vast majority of cases that defines outcomes.

On the subject of outcomes, our federal courts have been busy lately reviewing interesting cases. A federal court upheld the largest fine ever in a lawsuit brought under the federal Superfund Law. An Ohio District Court judge ruled in favor of the federal government in imposing the \$54.5 million dollar fine against W.R. Grace & Co. The Ninth Circuit Court of Appeals ruled recently that psychiatrists can't testify in a criminal proceeding against their patients who made dangerous or threatening confessions. The en banc panel split 8 to 3. *U. S. v. Chase* (8/22/03, No. 01-30200) On Aug. 26, the U.S. Supreme Court refused to accept an emergency request from several sports promoters who had challenged in federal district court on antitrust grounds an NCAA rule that prohibits Division I teams from playing in more than two exempt tournaments in a four-year period. *Worldwide Basketball and Sports Tours Inc., et al. v. NCAA* (6th Cir. No. 03-4024) Although the district court in Ohio had found in favor of the promoters, the Sixth Circuit Court of Appeals issued a stay of the lower court ruling. The argument by the promoters was that only allowing the teams to play in two tournaments outside their regular season caused some popular preseason tournaments to cancel because they could not attract fans if teams that attract large audiences would not be allowed to play.

Once again I remind members of our litigation section to send in articles for publication in this newsletter. It's a great opportunity to enhance writing skills and disseminate useful information.

*Quote of the day: "Law is order in liberty, and without order liberty is social chaos." Archbishop Ireland*

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## MEMBER PROFILES

*An intimate look at the people who make up our section*

### Drue Morgan-Birch

Employer: Law Office of Drue A. Morgan-Birch, P.C.

Birthplace: Plattsburgh, N.Y.

Pets: 2 dogs: a Miniature Pinscher and a Weimaraner.

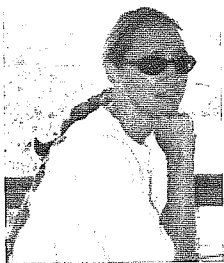
First job: Babysitting, grocery store clerk; first law job: clerk with Cory, Farrell & Bogutz.

Biggest professional challenge over-

come: Balancing work and family. I am still not certain I have the proper balance at all times.

Biggest professional challenge ahead: Reaching financial security so that I may retire.

Biggest regret: Not getting my J.D. right after I received my B.S.



Pet peeve: Smart people acting stupid; dishonesty.

Sports/Hobbies: Weightlifting, jogging, reading.

Practice area: Commercial and real estate litigation, arbitration and mediation for AAA, Pima County Superior Court and U.S. District Court.

Most interesting case: On-going, current; can't discuss but has evolved and now includes criminal charges.

Future plans: More work, more play.

Last book read: *The Elegant Gathering of White Snows* by Kris Radish.

Things usually found in your refrigerator: Peanut butter, Atkins bars, milk, cheese, salad "stuff", leftover takeout and some green and black stuff yet to be identified.

## FEDERALLY SPEAKING

### New Frontier: Disability Harassment

By David Anderson

Claims under the American with Disabilities Act (ADA) traditionally have focused on adverse employment decisions such as terminations or challenged working conditions or assignments. Recently, however, ADA plaintiffs have been adding claims for harassment because of their disability.

This trend mirrors the development of sexual discrimination case law; initially cases were focused on adverse job decisions and only later sexual harassment claims became prevalent. Employers can be liable for sexual harassment if co-worker or supervisory mistreatment becomes sufficiently "severe or pervasive" to create an abusive work environment. Recognizing this, most employers have provided employee training and have established policies that forbid sexual harassment.

Employers are less familiar with the risks associated with conduct that can be characterized as harassment of a person with a disability. Nevertheless, based on recent ADA developments, they should consider adopting the same prophylactic measures they use for avoiding sexual harassment claims.

A recent case filed in Utah reflects this trend toward focusing on harassment in the context of a disability issue. The employee had a substantial attendance problem, allegedly because of his depression and asserted post-traumatic stress condition. The employer repeatedly contacted the employee while he was on leave, demanding that he return to work. The employee eventually filed a charge claiming that the employer's aggressive "dunning" him to return to work and questioning whether his disability was real committed disability-based harassment. He also claimed that while he was at work other employees persecuted him because of his disability, making fun of him for being depressed and not performing his job well.

Whether the plaintiff will prevail on his claim remains to be seen, but the case illustrates why employers need to be attentive to the conduct of supervisors and co-workers toward an employee who may have an actual disability, but who may still be viewed as just a "slacker." Two recent federal court of appeals decisions also make clear that disability harassment is just as actionable as sexual or racial harassment. In *Flowers v. Southern Regional Physician Services*, 247 F.2d 229 (5th Cir. 2001) a federal appeals court ruled for the first time that ADA prohibits disability harassment. The suit was brought by a plaintiff who claimed that she had been subjected to harassment and later fired, after her supervisor learned that she was HIV positive. The plaintiff presented evidence that, after she

revealed that she was HIV-positive, her supervisor began treating her differently; among other things, he stopped socializing with her and attempted to overhear her telephone conversations. She also claimed that she was then required to undergo a number of drug tests and was placed on probation before she was finally discharged.

Based upon that evidence, a jury determined that the plaintiff was subjected to disability harassment. The appeals court affirmed, explaining that the ADA, just like the sex discrimination laws, is intended to protect employees against harassment because of their protected status.

In a second recent federal appeals court decision, *Fox v. General Motors Corp.*, 247 F.3d 169 (4th Cir. 2001), the plaintiff claimed that, after a work-related back injury, his supervisors and co-workers verbally harassed him. The plaintiff also claimed that his supervisors required him to do jobs beyond his physical capabilities. After a jury verdict in his favor, a federal appeals court decided that the plaintiff had offered "a good deal of evidence" that his supervisors had harassed and ostracized him and other employees with disabilities, even to the point of preventing them from doing their assigned tasks.

All these cases are instructive because they show that employers should ensure that they have a policy that expressly forbids not only sexual harassment, but all forms of harassment and mistreatment. This is particularly important because without such a policy the employer may be unable to make out a crucial legal defense: that the plaintiff did not avail himself of a reporting procedure that could have ended the alleged harassment. Similarly, the cases make clear that employers must recognize the potential for real biases against employees with impairments. As the law develops under the ADA, employers accordingly should adopt the same prophylactic measures — through written policies and training — they now use to anticipate and avoid sexual, racial, and other types of work-related harassment.

*David Anderson, is a partner with the Utah law firm of Parsons, Behle and Latimer. He is the chair of the Employment Department.*

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**Sidebar** is published by the Federal Litigation Section of the Federal Bar Association. The views expressed herein do not necessarily represent those of the FBA. Send all articles or other contributions you may have to: Michelle Hamilton, U.S. Attorneys Office, Two Renaissance Square, 40 North Central, Suite 1200, Phoenix, AZ 85004, (602) 514-7500, michham@hotmail.com.

## NEWS AND NOTES

### *Supreme Court Addresses Use of Race in Admissions*

**By Ely Leichtling and Pam Floor**

Much has been written about the potential impact the U.S. Supreme Court's split decisions in the two University of Michigan affirmative action cases will have on employment law issues, particularly on those involving private sector affirmative action programs. (*Grutter v. Bollinger* and *Gratz v. Bollinger*, decided June 23, 2003). The analysis used by the justices, however, does not apply to private sector affirmative action programs aimed at creating diversity in employment.

In *Grutter*, an applicant was denied admission to the University of Michigan Law School, which based its admissions decisions on undergraduate achievement, LSAT scores, work experience, leadership and services, and letters of recommendation. The law school considered whether the applicant was an underrepresented minority. In the companion case, *Gratz*, the University of Michigan's undergraduate College of Literature, Science and Arts rejected a candidate. The college assessed applicants based on a 150-point system in which 20 points could be awarded to applicants who were members of underrepresented minority groups (African-American, Hispanic, or Native American). The Supreme Court struck down the points-based undergraduate system because its use of race was not narrowly tailored to achieve the college's interest in diversity and, therefore, was unconstitutional. It upheld the law school's process, however, because it was narrowly tailored. The Supreme Court justices relied on cases defining the scope of permissible affirmative action in the context of public education and concluded that race (and gender) can under certain narrow circumstances be viewed as a "plus" factor in making individualized decisions as to whom should be admitted to a public university in order to promote educational diversity.

For affirmative action in the employment context, the most recent U.S. Supreme Court pronouncement on this issue remains a 1987 decision in *Johnson v. Transportation Agency, Santa Clara County, CA*, 480 U.S. 616 (1987). In *Johnson*, the Supreme Court held in a split decision that the county agency did not violate Title VII by taking a female employee's sex into account and promoting her over a male employee with a higher test score. The Court reasoned the action was permissible because the decision was made pursuant to an affirmative action plan directing that sex and race be considered to remedy under-representation of women and minorities in traditionally segregated job categories. The Court also found that the plan did not unnecessarily trammel rights of male employees or create an absolute bar to their advancement.

Many of the justices who upheld the county agency's affirmative action plan in the *Johnson* decision are no longer on the Court. Like reading tea leaves, predicting how the

Supreme Court will rule on a future case involving an employment preference for a minority or woman based on an affirmative action plan, is a risky proposition, particularly given the possible changes in the composition of the Court in the near future. We believe it would be a very risky proposition for an employer to give a preference to a minority or woman based solely on the existence of determined "underutilization" in a particular "job group" for several reasons, particularly if the method of determining underutilization is the "any difference" or "whole person" test, as those terms are used in connection with affirmative action programs mandated by Executive Order 11246 and the implementing regulations enforced by the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP).

First, the "swing" vote in the 2003 University of Michigan Law School case was Justice O'Connor. The four justices who voted against the University of Michigan Law School almost certainly will vote against any such affirmative action in the employment context if faced, for example, with an unsuccessful white or male applicant or employee who brought a "reverse discrimination" claim where the employer acknowledged that the plaintiff male candidate or plaintiff white candidate would have been selected, if the successful candidate was not female or a minority.

Second, in the 1987 *Johnson* decision, Justice O'Connor concurred in upholding the employer's action based on its affirmative action plan, but made clear that the plan could only be justified because of a statistical disparity that was so great as to make out a *prima facie* case of discrimination against the employer. In other words, a determination by an employer that underutilization exists and that a goal is necessary based on a minor statistical difference or based on the "whole person" test, would be insufficient. Rather, the employer would need to show that the difference between the expected and actual number of minorities or women in the employer's workforce (given the percentage of minorities and women in the relevant labor market who possess the requisite skills to fill the position at issue) was sufficiently large to be statistically significant at the two standard deviation level or above.

Third, the 1987 *Johnson* decision involved a preference given to an employee seeking a promotion. The impact on the unsuccessful male candidate obviously was less than if the decision had involved hiring, in which case the unsuccessful candidate would have been without a job entirely.

Fourth, the governmental entity involved in the Michigan cases (the university itself) had determined that providing a preference for the sake of diversity was necessary to its educational mission. In the private sector affirmative action employment context, the governmental entity charged with enforcement of the Executive Order, the OFCCP, has made no such finding and in fact has stated in its regulation that "Placement goals do not provide the contractor with a justifi-

fication to extend a preference to any individual, select an individual, or adversely affect an individual's employment status, on the basis of that person's race, color, religion, sex, or national origin. ... Placement goals may not be used to supersede merit selection principles. Affirmative action programs prescribed by the regulations in this part do not require a contractor to ... hire a less qualified person in preference to a more qualified one." See 41 C.F.R. § 60-2.16(e).

#### ***New Proposed Guidelines On Who Is An "Applicant" Are, Once Again, Delayed***

Proposed guidelines from the four agencies, including the OFCCP and the EEOC, charged with the task of proposing new guidance on the definition of "applicant" as that term is used in the Uniform Guidelines on Employee Selection Procedures have, once again, been delayed. The proposed guidelines on the definition of an applicant will not be expected until fall of 2003, at the earliest. The definition is critical to federal government contractors and subcontractors for purposes of the tracking and analysis they must do as part of their affirmative action programs (AAPs). Because of the advent of new technology and use of the Internet, the OFCCP's old approach to defining who is an applicant has become unworkable.

At a recent affirmative action seminar, Harold Bush, the director of OFCCP's Division of Program Operations, suggested that, as a practical matter, until new guidelines on the definition of applicant are adopted, OFCCP compliance officers have been accepting, a "provisional" definition of applicant if used consistently by an employer. The provisional definition is as follows: an applicant is an individual (1) who is minimally qualified, (2) has been considered as part of a pool of candidates who have survived some initial screening prior to the formal interview process, and (3) is in the final pool from which the employer performs its impact ratio analysis comparing hires to applicants.

#### ***EEOC Proposes Changes to Individual and Job Categories Used in the Employer Information Reports (EEO-1)***

In June of 2003, the EEOC proposed changes to the EEO-1 form and is seeking comment on its proposal through August 11, 2003. The primary change in individual categories is that employees will be able to identify themselves both by their ethnicity and by their race or races. Employees will be asked to identify whether they are or are not Hispanic or Latino and, regardless, whether they are White, Black or African-American, Native Hawaiian or Other Pacific Islander, Asian, American Indian or Alaska Native, or two or more races (anyone who identifies him or herself as being Hispanic or Latino will automatically be classified in the "two or more races" category).

In addition, the EEOC has proposed changes to the EEO-1 job categories. The EEOC has proposed dividing the "officials and managers" job category into three subcategories: (1) executive/senior level officials and managers, (2) mid-level officials and managers and (3) lower-level officials and managers. The EEOC also has proposed changing the order of

a number of the other categories and making minor adjustments to the titles of some of the other categories.

#### ***Of CCP Schedules 2,000 New Compliance Review Based on the EO Surveys Completed by Employers Earlier This Year and Will Focus Those Reviews on Compensation***

In January of 2000, 49,000 federal government contractors and subcontractors were sent EO surveys to obtain information about their applicants and workforce that went far beyond the workforce profile snapshot contained in the EEO-1 form. In addition to the snapshot, the EO survey required contractors and subcontractors to provide information about the prior year's applicant flow, hires, promotions, terminations and annual monetary compensation by gender and minority/non-minority status by EEO-1 category. Hundreds of thousands of hours were spent by employers preparing this information and providing it to the government. It now appears that none of the information will be used. Instead, the government will be relying on the 10,000 EO surveys sent to selected federal government contractors and subcontractors in January of 2003.

Two thousand of those 10,000 contractors who responded to the EO survey earlier this year will be selected randomly for audit by the OFCCP during the balance of the year. Many have already been selected and received desk audit notices. In an "Alice through the looking glass"-like approach to determining whether the EO survey can be used effectively as a predictor of possible discrimination, an outside consultant hired by the federal government will analyze the validity of the surveys as a predictor based on, for example, the actual dollars collected by the government from those contractors who were randomly selected for audit following their submission of the survey. While such a result oriented "after the fact" approach might well have social scientists pulling out their hair, we are stuck with it.

*Ely Leichtling and Pam Floor are both attorneys with the Milwaukee office of Quarles & Brady, LLP. Leichtling chairs the Milwaukee District OFCCP Industry Liaison Group. Reprinted with permission, [FindLaw.com](http://FindLaw.com).*

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## FOOD FOR THOUGHT

### *Dogs as Conflict Mediators*

**By R. D. Benjamin**

I am a professional mediator, retained by two or more warring parties to be in the middle of their dispute to help them survive and arrive at some accommodation short of violence or costly litigation. The conflict may be labeled a business matter or divorce but it is invariably over money, property or some other perceived personal slight, violation of right or entitlement. It's a tough business; people are often at their worst and trust is at low ebb. Frustration and anger flow freely or gather force just under the surface. I am not a therapist; I take a no-nonsense, business approach. So even though I have always had dogs around, I did not immediately recognize their potency in managing conflict.

Dogs know about conflict. The term "dogfight" was coined in their name, although they have perhaps been maligned. While dogs can be aggressive, they won't usually fight unless they have been encouraged, cornered, or threatened. Many of the disputes I deal with closely resemble dogfights; one or more people usually feels cornered.

At the same time, there are those who romanticize dogs and believe they are without guile. I have been suckered on too many occasions by that innocent look that is the prelude to stealing the steak or the turkey right off the table the second my back is turned to slip into that kind of anthropomorphic sentimentality. Their evolutionary psychology shares much in common with humans, not the least of which is the penchant for deception. Some suggest they only pretend to like us and we humans have merely been primed to interpret their languishing eyes and countless 'too cute' poses as love and fidelity when they may be nothing more than slick strategies calculated to get a handout, a paw in the door, or a warm bed. (Budiansky, S. *Why Dogs Pretend to Like Us*, 2001)

Dogs may be so alluring because they remind us of ourselves. The close physical resemblance between dog and owner has struck me more than once and I regularly check the mirror to check for signs of my own metamorphosis. Not in spite of their basic canine nature but because of it, dogs are uniquely attuned to and synchronized with human behaviors. That makes them valuable aides-de-camp to the practicing conflict mediator. My dogs, Rigger, a 14-year-old yellow Labrador, and Reilly, a 9-year-old soft-coated wheaten terrier, have been my professional associates for several years now.

I don't include the dogs in the first sessions, being necessarily wily and cautious about the risk of injury to my professional image. The idea of mediation of disputes is already "counter-cultural" enough in an America built with "no-negotiation" icons like John Wayne. Most people who come to my office are distrustful and skeptical to begin with — of each other, of me, of the strange notion that they could actually settle their dispute themselves — without adding the novelty of dogs into the mix. While mediation may be an eminently sensible approach to

dealing with conflict, effective marketing requires that I dress it up and disguise it to appear legitimate, professional, and established. I also have to be mindful of those people who are uncomfortable around dogs, (although I admit to a bias against such folks that has to be scrupulously suppressed). After careful screening, my canine comediators will attend some or all of the subsequent mediation sessions.

At the very least, their presence helps divert the clients' attention away from all the negative stuff that is preoccupying them. For those who are "dog people", their affinity can be a reminder of a remaining thread of understanding between them when everything else appears to be in shreds. But most strikingly, dogs have an uncanny ability to sense and ease emotional tension in humans that is not unlike their ability to sense an impending epileptic seizure. Most of us have at some point experienced those pained moments in discussions where what is not being said sucks the air out of the room; the atmosphere is choked and stifled by the unstated agendas and closely guarded secrets.

I stumbled upon the value of canine comediators quite by accident. Some years ago, both dogs were present in a session with two Ph.D. psychologists in the throes of a divorce. Both had, as one would expect of professionals in general and child psychologists in particular, presented themselves as reasonable; committed to their children's welfare and to the importance of cooperation. Seasoned practitioners are of course wary of such positive weather reports and know that divorces between professionals, especially therapists, lawyers or doctors, can quickly turn ugly. They often bring to a dispute an intensity and passion that few others can muster. Maybe it is because as experts they know so much, or maybe it is because for all their training and education they are as confused as the rest of us and have a harder time admitting it. In any event, professional people, despite claims to a higher level of rational discourse, can be the most angry, least reasonable, and most difficult clients. These two confirmed my suspicions, but no matter how prepared, you can never be ready enough.

In this particular mediation session, He was screaming something about how she had betrayed him and the children. She, his wife, sat momentarily still, readying herself to respond in kind. Rigger, who up to this time had been laying quietly, now looked up and away, ears down with an apparent expression of dismay that Labs display when humans are angry and heated — they seem to take it personally. Being opportunistic, I seized the moment for my intervention: "Folks, I'm sorry to interrupt, but your discussion seems to be upsetting Rigger." They stopped on a dime and apologized. While all of my previous best-devised and well-studied efforts to manage the conflict were to no avail, they accorded Rigger the special consideration and courtesy he deserved. Dogs are, after all, a special breed.

But it only worked for a while. Conflict mediators know that any particular tactic, no matter how good, seldom works all of

the time. You need a broad repertoire so that if one technique doesn't work, there's another in reserve. Suffice it to say, the verbal battle between the parties resumed with a vengeance later in the session. This time however, it was Reilly who offered up an even more potent intervention strategy unavailable to human conflict moderators. As "He" again became agitated and animated with arm outstretched and forefinger pointing toward the heavens, shrieking about how "She" was destroying his family and was the sole cause of his and the children's ruination, I looked again toward Rugger for my salvation. This time, however, being old and half deaf, he was fast asleep. I would learn in later months to surreptitiously nudge him so that he would lift his head, if for no other reason, because he was bewildered by the interruption, so that I could pretend he was disturbed, but this time I was regrettably stumped. Then I noticed that Reilly, usually next to Rugger, was not there.

Terriers in general, don't seem to be as sensitive to human stuff, so I didn't immediately think much of it. In the same instant I realized the man's tone had suddenly calmed and I watched the blood in his flushed angry face, visibly recede. I followed the gaze of his eyes downward down toward his legs. There was Reilly; he had walked over and gently placed his chin on the guy's knee in mid scream and with what I gauged to be a quizzical expression so as if to say "what's wrong, can I do anything?" looked up at him. A calmness seized the room and by the time I looked up at him, he was smiling, patted Reilly, and apologized for the outburst.

No mere mortal mediator could have done the same. Dogs have a capacity to trigger a human response and dissipate stress in ways unavailable to other humans. Since then, there have been countless other examples revealing their talent as conflict mediators.

Even if dogs merely pretend to like us for the security and comfort they obtain, we as humans gain more than a fair trade-off in support and service. It is a pretense that works to our advantage. And, as further benefit, that would do any wily dog proud, all expenses — food, toys, vet bills — can be bona fide tax write-offs, although I might need to bring Rugger and Reilly with me to the IRS audit to soften their hard hearts as only dogs can do.

### Postscript

Reilly and Rugger died within three weeks of one another in 1999. While deeply missed, their work is carried on by Bean, a beguiling three year-old wheaten terrier with a 1,001 "too cute poses."

*Robert Benjamin has been a conflict mediator for more than 25 years. He has degrees in law and social work, practiced for many years and now teaches and writes on negotiation, mediation and conflict management nationally and internationally. He is a Fellow of the Straus Institute of Conflict Resolution and adjunct professor at the Pepperdine University School of Law, Southern Methodist University and Washington University, GWB School of Social Work. More information is available on the Web at: [www.rbenjamin.com](http://www.rbenjamin.com) or [www.wisenegotiator.com](http://www.wisenegotiator.com) or e-mail: [rbenjamin@mediate.com](mailto:rbenjamin@mediate.com).*

*This article is a revised version (2003) of one originally published in: Mediation News, Vol. 19, No. 1, 10-11, Dec. 2000; Dog Nose News, Portland, Oregon, July, 2001; and is posted at [www.mediate.com](http://www.mediate.com).*

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## NEWS AND NOTES

### Court Information on the Internet

By Aaron R. Resnick and Anishah Cumber

Federal and state courts are following the Internet trend and placing much of their information online. Not only is such information convenient in terms of following your case, but lawyers can use these services to learn a lot about the court itself, including obtaining local rules, information about the court and its judges, and other practical information, which will make a trial lawyer's life much easier.

For instance, the official Web site of the Supreme Court ([www.supremecourtus.gov](http://www.supremecourtus.gov)) allows users to search the Supreme Court docket and review oral argument transcripts, past opinions, Court rules, and information about the Court itself. Northwestern University's OYEZ project even includes audio recordings of oral arguments from major Supreme Court cases, as well as information on cases and the Supreme Court Justices ([www.oyez.org/oyez/frontpage](http://www.oyez.org/oyez/frontpage)).

Another useful site is U.S. Courts ([www.uscourts.gov](http://www.uscourts.gov)), which is the official site for the federal judiciary. This Web site

includes information on the federal courts and links to the official Web sites for the Supreme Court, the U.S. Courts of Appeals, all the U.S. District Courts, as well as all the all the U.S. Bankruptcy Courts. The federal judiciary itself has a site for its Administrative Office, Pacer, which provides access to electronic court records for a fee (<http://pacer.psc.uscourts.gov>). Using Pacer, a user can review a court's docket, recent court decisions, and even conduct a search by party name.

The Federal Court Locator, hosted by Villanova Law School, which provides links for official Web sites for the federal judiciary, permits searches of all the federal agencies Web sites (<http://vls.law.villanova.edu/Locator/fedcourt.html>). In addition, the Web site provides access to information related to the federal judiciary, including slip opinions. This information can be viewed online or it can be downloaded. Fedcourts.com ([www.fedcourts.com](http://www.fedcourts.com)) allows users to click on a state and then find links to all the federal courts in that state, as well as court resources for that state like court rules and bar information. The Federal Judicial Center (FJC) gives access to FJC publications on court-related topics, information on past and present federal

judges, general information on federal courts, and information on electronic discovery ([www.fjc.gov](http://www.fjc.gov)). Courts.net has links to federal and even state court sites, links to other court-related Web sites, and information on court issues such as electronic filing ([www.courts.net](http://www.courts.net)).

The National Center for State Courts (NCSC) Web site is extremely useful in that it provides links to most, if not all, of the Web sites for the state courts in the United States ([www.ncsconline.org](http://www.ncsconline.org)). In addition to the links to the official state court sites, the NCSC site also provides links to some federal court and international court sites. The NCSC has its own publications and lists of frequently asked questions on court-related information such as jury selection and courtroom technology, and has useful links to other legal Web sites.

Even court forms are available on the Internet, although some require a small fee. For example, at LegalForms ([www.uslegalforms.com](http://www.uslegalforms.com)) or LegalDocs ([www.legaldocs.com](http://www.legaldocs.com)), one can access official court forms and legal documents. Other

sites for forms include FormsGuru ([www.formsguru.com](http://www.formsguru.com)), FindForms ([www.findforms.com](http://www.findforms.com)), LawResearch Forms ([www.lawresearch.com/practice/ctforms.htm](http://www.lawresearch.com/practice/ctforms.htm)), FindLaw Forms (<http://forms.lp.findlaw.com>), Legal-Forms-Online ([www.legal-forms-online.com](http://www.legal-forms-online.com)), WashLawForms ([www.washlaw.edu/legalforms/legalforms.html](http://www.washlaw.edu/legalforms/legalforms.html)), U.S. Court Forms ([www.uscourtfirms.com](http://www.uscourtfirms.com)), and Legal-Kits ([www.legal-kits.net](http://www.legal-kits.net)). Forms are also available at the Web sites for the Supreme Court, the U.S. Courts of Appeal, and the U.S. District Courts.

Not only is the information that one can gain from the Internet useful, it will indubitably make the practice of law easier for those who choose to use it.

*Aaron R. Resnick is an associate with Gunster, Yoakley & Stewart, P.A. ([www.gunster.com](http://www.gunster.com)) and Anishah is a member of the class of 2005 at the University of Virginia School of Law.*

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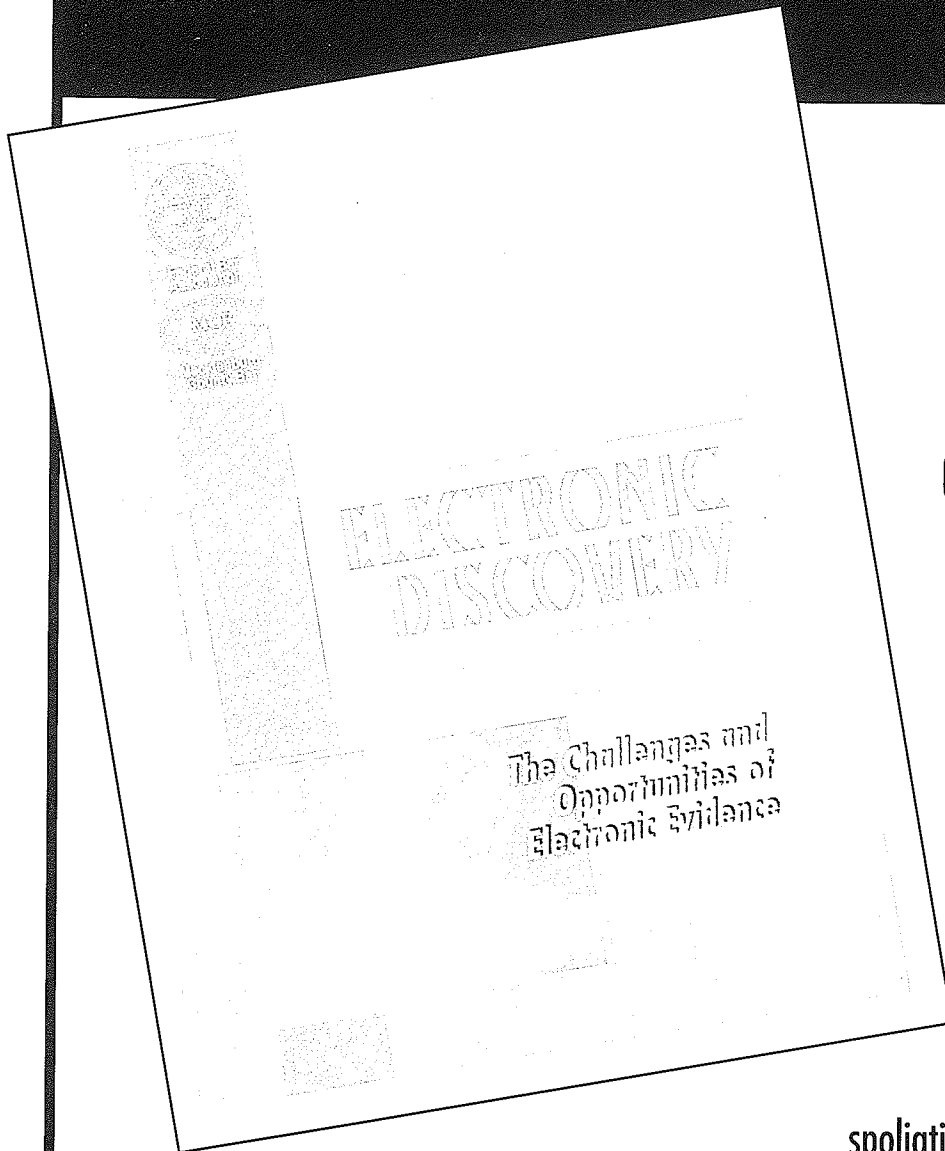


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