

Judicial Observation Program
for International Law Students,
Lawyers, and Judges

2001

A project of the U.S. Judicial Conference's
Committee on International Judicial Relations
Taskforce on Education
and cooperating law schools

Information and Curricula Package

Judicial Observation Program for
International Law Students, Lawyers, and Judges

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Introduction

The opportunity to study law in the United States is highly sought after and cherished by students and lawyers from all over the world. Each year, thousands of lawyers and law school graduates from overseas, including many from developing countries, enter LL.M. or J.D. programs in the U.S. Some students pursue a degree from a U.S. law school to expand their professional opportunities and earn a better living. Others seek a U.S. law degree to enhance their understanding of the principles of the rule of law and judicial independence -- particularly if their own country does not share these traditions -- so that they may credibly promote these ideals when they return home.

Like most American law students, international students desire more from their professional education than theoretical scholarship. They seek direct exposure to the practice of law and the institutions that support the law. Direct exposure provides an invaluable experience for visiting students, giving them the opportunity to observe first-hand how justice in the United States is administered.

In recent years, the U.S. courts have been reaching out to international law students through informal opportunities and more formal programs. Working with various law schools throughout the country, the U.S. Judicial Conference's Committee on International Judicial Relations has encouraged courts and judges to welcome international students into chambers, court rooms, and clerk's offices, for the purpose of observing the operation of the U.S. judicial system. The experiences reported by students, judges, and deans have been positive and uniform in their conclusion that direct exposure to the U.S. courts may be an important component of an international student's education. Many participating judges have also remarked that they and their staffs benefitted greatly from their interaction with international students, most of whom are lawyers and are able to share their own unique perspectives and experiences with their U.S. colleagues.

As discussed in this package, a Judicial Observation Program may assume a variety of forms, depending on the interests and priorities of the participants. U.S. law schools have worked with their local courts to develop appropriate curricula, in which law students spend anywhere from a few hours per month to several hours per week

observing the daily court business. Some of these programs give students credit for their participation; others do not. Some emphasize observation and informational exchange, others operate on an internship model in which students are expected to engage in research, writing, and oral advocacy projects. Of course, students' experiences vary according to their own interests and needs, which may turn on their country of origin, academic priorities, and goals for the future.

The purpose of this information package is to explain the approaches individual law schools may take toward developing their own Judicial Observation Programs, explain how a law school may work with the U.S. courts to develop its own program, and provide suggestions for curricula. We welcome your questions concerning the program.

The Committee on International Judicial Relations

The Committee on International Judicial Relations (Committee) is one of a network of committees established to support the Judicial Conference of the United States, the policy-making body for the federal courts. The chair and members of the Committee, including 11 federal judges and one law school dean, are appointed by the Chief Justice of the United States, who also presides over the Conference. Established in 1993, the Committee coordinates the federal judiciary's relationship with foreign judiciaries and agencies and organizations involved in international judicial relations, the expansion of judicial independence and the rule of law, and the administration of justice. The Committee's primary role is to support the establishment and expansion of independent judiciaries and rule of law by providing expertise in judicial administration and similar areas of interest. To that end, the Committee's Taskforce on Education works closely with law schools in their efforts to provide educational opportunities to international students, particularly those students from developing countries who plan to return home.

Staff support is provided to the Committee by the Administrative Office of the U.S. Courts, the administrative arm of the federal judiciary. The Committee is also assisted by advisors and liaisons from the office of the Chief Justice, the Federal Judicial

Center, the Department of State, and the United States Agency for International Development.

The Committee on International Judicial Relations

Chair

Honorable Paul A. Magnuson, Chief Judge
U.S. District Court for the District of Minnesota

Co-Chairs, Taskforce on Education

Honorable Myron H. Bright, Senior Circuit Judge, Eighth Circuit
Dean Michael K. Young, George Washington University Law School

Taskforce Members

Honorable Peter J. Messitte, District Judge, District of Maryland
Honorable Vicki Miles-LaGrange, District Judge, District of Oklahoma

Judicial Observation Program Models

In recent years, law schools have developed many different Judicial Observation Programs based on the needs of their international students, the level of interest of their local courts, and the academic requirements of their respective institutions. The Taskforce on Education does not endorse a single model. Instead, the Taskforce supports the efforts of individual institutions to develop effective models that meet that institution's academic standards and requirements and serve the shared goal of providing an experience that best fits the needs and interests of all participants. An underlying key to the success of any Judicial Observation Program is continuing communication between a designated faculty member and the judges involved with the program. Specific, illustrative curricula suggestions are set forth in Appendix B (District Court) and Appendix C (Appellate Court).

(1) The academic credit model: University of Minnesota Law School and the state and federal judiciaries in the Minneapolis-St. Paul area

During the 1998-99 academic year, seven students from the University of Minnesota Law School's LL.M. Program for Foreign Lawyers participated in the first, experimental observation program. Designed by members of the Committee who also work in proximity to the Law School, the program emphasized the litigation process,

encouraging observation of a range of judicial and court functions, from scheduling conferences to such matters as motions, trial, and appellate advocacy.

Working closely with Associate Dean Meredith McQuaid, the Law School's Director of International Programs, Chief Judge Paul Magnuson of the District Court for Minnesota and Senior Judge Myron Bright of the Eighth Circuit contacted several local state and federal judges to determine their level of interest in the program. Those judges who expressed an interest were provided with a list of specific events in criminal and civil cases and appeals that students should observe. (These suggestions are incorporated in Appendices B and C). All participating judges were invited to an orientation lunch to meet one another and the participating students, and to participate in a discussion of expectations for the program.

The University of Minnesota Law School selected student participants on the basis of such characteristics as English-language proficiency, academic interest, and professional background. Students were then paired with participating judges; pairings were fairly random, except where a student expressed a particular interest in bankruptcy law and was assigned to a bankruptcy judge. The original participants included students from Uzbekistan, Kyrgyzstan, Colombia, Cameroon, Kazakstan, Brazil, and Taiwan.

The students earned one or two credits for their participation, depending upon the amount of time they dedicated to the program. To earn two credits, students were required to spend, on average, 10-15 hours per month observing court proceedings; one credit was given to students who participated for fewer than 10 hours a month. Students paired with an appellate judge were given the opportunity to observe trial court as well as appellate court business. All students had opportunities to observe events in courtrooms and chambers beyond those of their assigned judge.

In addition to the mandatory time commitment, the Law School required each participant to produce a written report on his or her experience in journal/portfolio format. The portfolios prepared by the participants provided a number of helpful insights for planning future programs. For example, one student commented that discovery leads to a rate of case settlement in the U.S. that would be unheard of in his country. Another student, after observing the litigation of a civil rights case, wondered if his country would benefit from equal employment opportunity laws. A third observed that the court recording system in the U.S. is preferable to his country's non-verbatim court reporting system.

The University of Minnesota Law School has continued to demonstrate leadership in the development of practical opportunities for international law students. During the

spring 2000 semester, students from Russia, Moldova, Switzerland, Taiwan, and Argentina participated in the program.

Of course, an academic credit model must take into account the participating law school's own internal academic requirements – which is up to the law school to establish and supervise – including any requirement that students complete specific classroom or writing projects in order to receive credit for the experience. The law school similarly has responsibility for adhering to any ABA-mandated requirements pertaining to J.D. students' receipt of credit for Study Outside the Classroom (see ABA Standards for Approval of Law Schools, Standard 305). Regardless of these requirements, experience has shown that a contemporaneous classroom experience is a valuable component of a for-credit Judicial Observation Program. Classroom discussion allows consideration of a variety of issues, including substance, process, and ethics, that arise during the course of a Program.

Moreover, the most enriching and meaningful programs will necessarily incorporate continued communication between a supervising faculty member and participating judges. This includes the opportunity for participating judges to have the benefit of the law school's experiences with “out placement” of international students, as well as the law school's benefit of the judges' experiences working with Judicial Observation Program participants. The comments of participating students should also be solicited and considered in constructing future programs.

(2) The summer internship model: Washington University of St. Louis School of Law and the U.S. District Court for the Eastern District of Missouri

During the summer of 1999, the Washington University Law School initiated a formal Judicial Observation Program under the guidance of Chief Judge Jean Hamilton (E.D. Mo.) and Michele Shoresman, Ph.D., Director of Joint Degree and Graduate Programs.

Four LL.M. students, representing Egypt, Nigeria, Italy, and Taiwan, were paired as full-time interns with two district court judges and two magistrate judges. Some participants completed written projects. One was invited to make a presentation to court personnel and law clerks about her own legal system. “Unexpected benefits” of the program, according to Magistrate Judge David Noce, included “not only the enlightenment of court personnel about the legal system of Taiwan, but also a deeper understanding of our own American legal system realized through explanations and discussions with [the student].”

Washington University continued the internship model during the academic year. One student from Germany commented that the opportunity to perform legal writing under Chief Judge Hamilton was invaluable. A program alumnus from Nigeria, who ultimately switched his status from LL.M. student to J.D. degree candidate, reported that his court experience helped him obtain paid employment the following summer.

Several courts around the country have used the internship model informally for many years. International students pursuing both LL.M. and J.D. degrees have found opportunities to work in the U.S. courts as student law clerks, full and part-time, both for academic credit and without credit. It is not mandatory that international students and their academic institutions collaborate with the Committee on International Judicial Relations. However, the Committee and its members are available to provide assistance with program development and court placement. The Committee also serves as a resource through which law schools can learn about the experiences of other law schools and courts in the area.

(3) The informal model: Georgetown University Law Center and the U.S. District Court for the District of Maryland, Southern Division

As a member of the Taskforce on Education, Judge Peter Messitte (D. Md.) initiated a Judicial Observation Program in Maryland's Southern Division by contacting the Director of Georgetown University Law Center's LL.M. program in the fall of 1999. Although it was not incorporated into the Law Center's formal curriculum, the Judicial Observation Program was offered to students as an opportunity to become familiar with the day-to-day activities of a busy federal district court.

During the months of February, March, and April 2000, twelve LL.M. students from the Law Center visited the court for approximately three hours per week, observing court proceedings on the calendar that day, such as a plea, sentencing, or probation revocation hearing. Each student was assigned a "judge-mentor" from the court. All of the judges of the Southern Division of the District of Maryland participated – three District Judges, three Magistrate Judges, and two Bankruptcy Judges.

Judge Messitte also arranged a visit to the local FBI office, a joint presentation by a prosecutor and public defender, and an orientation by the probation and pre-trial officers. At the end of the program students were invited to a social event where they discussed their experiences. The court also presented a certificate to each student honoring their participation in the program.

(4) Other approaches

In late 1999, the Taskforce on Education surveyed the U.S. courts about their recent experiences working with international law students. Many responses were received, revealing a great deal of interest in this area and providing examples of how other courts and law schools have pursued similar programs. For example:

- Each year, the University of Notre Dame Law School hosts a visiting scholar from the Japanese judiciary. The Japanese judge is chosen by the Supreme Court of Japan and spends a year at the Law School studying a variety of subjects from the regular curriculum. The Japanese judge meets with Judge Kenneth Ripple of the Seventh Circuit Court of Appeals to discuss the American legal system regularly throughout the year. The visiting judge also accompanies Judge Ripple to a session of the Seventh Circuit. The Law School coordinates opportunities to observe proceedings in the U.S. District Court and U.S. Bankruptcy Court in South Bend, Indiana. Many other similar examples of collaboration exist involving international law students, lawyers, or judges, and American law schools.

- George Washington University Law School regularly sends international LL.M. students to observe federal courts in the Washington, D.C. area, especially some of the specialized courts, including the U.S. Court of Appeals for the Federal Circuit. The LL.M. students have often proven especially knowledgeable about the substance of the matters handled by the Court -- often more so than J.D. students -- and have themselves reported very favorably about their experiences.

- On an ad hoc basis, U.S. courts routinely receive delegations of lawyers, judges, and law students from overseas, often from developing countries, offering brief opportunities to observe court proceedings and discuss aspects of the U.S. judicial system. Where time and resources permit, courts provide informative discussions addressing both the substantive and procedural details of the U.S. legal system. These programs have involved not only judges, but also court clerks, pretrial officers, prosecutors, public defenders, probation officers, court reporters, and others.

- Many U.S. judges have established relationships with professors and students at law schools and other academic academies overseas. For example, in spring 1999, Senior Judge Robert Sweet (S.D.N.Y.) traveled to the People's Republic of China under a U.S. Information Agency grant, visiting law schools throughout the country and addressing almost a thousand law professors and students about the role of a judge in the U.S. and the rule of law.

- The Ewing T. Kerr Rotary Fellowship in American Law Studies, named for a U.S. district judge and Rotarian, was established at the University of Wyoming Law

School in 1997 largely through the efforts of Chief Judge William F. Downes (D. Wyo.). The fellowship is awarded to an academically superior graduate of the Saratov Law Academy in Russia who is literate in English and has demonstrated a desire to practice law in Russia. The student audits courses at the Law School in the fall for a term, and then serves as an extern in the District of Wyoming or the United States Court of Appeals for the Tenth Circuit for two months. The University of Wyoming Law School waives tuition, and Rotary Clubs in Wyoming provide a host family and financial support. The state and local bar associations also provide financial assistance.

- In 1999, Judge Sidney B. Brooks (Bankr. Colo.) established a fellowship program at the University of Denver College of Law modeled on the Kerr Fellowship in Wyoming. The Denver fellowship is awarded to an academically superior student from the Moscow State University Faculty of Law in Russia who is literate in English. The fellow spends one semester at the College of Law, auditing classes, observing cases, trials, and federal court operations. Following the completion of course work, he or she then serves as a full-time extern in the District of Colorado or a comparable legal environment for approximately one month before returning to Russia. The program is co-sponsored by the Rotary Club of Denver, the Denver University Law School, and the Colorado Bar Association. The College of Law provides a tuition waiver, and the Denver Rotary provides a host family and financial support. The Bar Association also provides financial assistance.

Program options/considerations

(1) Ethics orientation

Regardless of the model that is selected for a Judicial Observation Program, participating students will be subject to certain rules of ethics and conduct while visiting courtrooms, chambers, and other U.S. judicial institutions. When planning a Program, the law school and the judges involved should establish a procedure for informing students about their expectations concerning confidentiality, conflict of interest, and other similar topics. An introduction to the ethical guidelines applying to Judicial Observation Program participants should incorporate a discussion of the ethical canons binding judges, attorneys, and other legal professionals in the United States. In addition, students should have the opportunity to ask questions about professional ethics and the consequences of ethical breaches. Although participants in the Judicial Observation Program are not themselves employees of the U.S. Courts, two sources of guidance for a discussion about ethics are the Judicial Code of Conduct and the Code of Conduct for Judicial Employees (Appendix D).

(2) Appellate court observation

In developing a Judicial Observation Program, the significance of appellate practice in the U.S. judicial system should not be overlooked. The Taskforce on Education recommends incorporating an appellate component into programs developed for international students. Working closely with an interested appellate judge, the student can focus on the significance of written advocacy – including legal research – and oral advocacy, as well as on the complexities of the appellate decision-making process. The Taskforce is available to assist with identifying appellate judges who are available to work with international students.

(3) State court observation

Due to the vast differences in the state and federal systems in the U.S., exposure to both would be of great interest to any student. For example, federal courts and state courts often administer their cases differently. A federal district judge is generally responsible for cases from beginning to end, overseeing all phases of a case from the filing of a complaint or return of an indictment, through trial, and up to execution of judgment. By contrast, state courts often employ “master calendars,” dividing case responsibilities so that different judges are involved at different stages in a single case, such as the motions phase, attempts at alternate dispute resolution, and trial. State courts also handle a variety of functions and substantive law not typically seen in federal courts and often judges sit in specialized courts, such as criminal, family, chancery, juvenile, and small claims. In addition, state courts handle a high volume and broad variety of cases, such as misdemeanors, traffic tickets and landlord-tenant disputes. Observing a state court system is especially valuable to students from countries that are struggling to cope with massive case backlogs. The Taskforce on Education is eager to assist in developing programs that incorporate both the federal and state court systems.

(4) AO/FJC observation

The Administrative Office of the U.S. Courts (AO) and the Federal Judicial Center (FJC) support the U.S. court system. Created by an act of Congress in 1939, the AO supports the work of the judicial branch, providing staff support and counsel to the Judicial Conference as well as a broad array of administrative, legal, technical, communications, and other services that support the operation of the federal district, appellate, and bankruptcy courts. The FJC, established in 1967, is the research and education agency of the federal judiciary. The FJC conducts and promotes education and

training for federal judges and court personnel and researches federal judicial processes, court management, and other issues affecting the judiciary.

The AO and FJC also sponsor international programs, hosting delegations of judges from overseas for informational briefings and longer-format programs on a broad range of topics related to judicial administration. Law schools interested in incorporating the AO or FJC into their programs for international students may contact the AO or FJC to arrange a briefing.

(5) Observers as teachers: Program opportunities to inform U.S. lawyers and judges about foreign judiciaries

As noted by Taskforce co-chairman Senior Circuit Judge Myron Bright, the Judicial Observation Program “is an exciting opportunity for cross-cultural exchange.” Indeed, many judges and court staff who have worked with international students have learned and benefitted from their contacts. One way to take advantage of the exchange is to encourage the international student to prepare and deliver a talk about his or her own legal system.

(6) Program evaluation and reports

Learning the strengths and weaknesses of a Judicial Observation Program will strengthen the quality of future programs. All participants -- students, judges, and any other participants -- should be provided with the opportunity to comment upon their experiences. Continuing consultation between the supervising faculty member and the court is also a valuable means of responding to the interests and needs of students. Moreover, based on written evaluations along with oral consultations, participating law schools and courts should exchange information about their respective experiences. The Taskforce on Education welcomes reports from participants so that it may provide guidance to other law schools and courts engaging in similar programs in the future.

Planning a Program for 2001

The Taskforce on Education looks forward to assisting law schools in developing Judicial Observation Programs for the spring and summer 2001 semesters. Many law schools already have long-standing relationships with their local courts, both federal and state, through which regular J.D. students have had the opportunity to visit the courts, whether through informational tours, internships, or clinical legal education programs. Creating a new type of opportunity, one which focuses on the special educational interests of international students, may involve many of the same representatives from the

law schools and the courts and may also attract some new ones. The Taskforce on Education can assist law school deans by identifying federal judges in their area with an interest in international issues and exchanges.

Once a law school has decided to develop a Judicial Observation Program for its international students, the Taskforce suggests the following steps:

- After reviewing this package and considering the factors particular to your law school (i.e. proximity to courts, desired number of participants, academic issues, etc.), contact the Taskforce on Education (Contacts, Appendix A).

- Based on your law school's existing relationships along with the Taskforce's own informational resources, a Taskforce representative will assist you in identifying one or more judges in a local U.S. court who have expressed interest in international exchanges. Through meetings and consultations between law school representatives and the interested judges, a program may be developed based on the level of court time and resources available, as well as on such factors as the number of students anticipated, the academic mission of the law school, and the interests of all the participants.

- The Taskforce recommends that each participating chambers place one person – perhaps an enthusiastic law clerk – in charge of coordinating and facilitating the international student's participation.

- Your law school's experience developing and executing a Judicial Observation Program will be of great interest to the Taskforce. Representatives of the Taskforce will be available by telephone and e-mail to lend assistance throughout the process. They look forward to hearing comments and reading evaluations from programs across the country.

The overriding objective of the Judicial Observation Program is to introduce international lawyers, international law students, or judges already in the United States to the practical operation of federal and state courts and to the administrative of justice generally in these United States.

Appendix A

Contacts

For further information and assistance in developing or participating in a Judicial Observation Program in 2001, interested law schools are invited to contact:

Louise D. Williams Senior Attorney Article III Judges Division Administrative Office of the United States Courts One Columbus Circle N.E. Washington, DC 20544 Phone: (202) 502-1864 Fax: (202) 502-1888	Michael K. Young Dean, George Washington University School of Law 2000 H Street, NW Washington, DC 20052 Phone: (202) 994-6288 Fax: (202) 994-5157	Meredith M. McQuaid Associate Dean University of Minnesota Law School 285 Law Center 229 19 th Avenue South Minneapolis, MN 55455 0401 Phone: (612) 625-3025 Fax: (612) 626-1874
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Interested judges, including federal and state judges, are invited to contact:

Honorable Myron H. Bright United States Court of Appeals 340 Quentin N. Burdick United States Courthouse 655 First Avenue North Fargo, ND 58102-4952 Phone: (701) 297-7260 Fax: (701) 297-7265	Honorable Peter J. Messitte United States District Court 6500 Cherrywood Lane Greenbelt, MD 20770 Phone: (301) 344-0632 Fax: (301) 344-0636	Honorable Vicki Miles-LaGrange United States District Court 5011 United States Courthouse 200 Northwest Fourth Street Oklahoma City, OK 73102 Phone: (405) 231 4518 Fax: (405) 231-4522
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Appendix B

Curricula Suggestions for International Students Observing District Courts

To gain a comprehensive understanding of both the civil and criminal litigation process in the United States, students should observe the litigation proceedings listed below.

CIVIL CASES

- Rule 16 Pretrial Scheduling Conferences

Scheduling conferences held before the district court judge in which deadlines for discovery, non-dispositive motions, dispositive motions, and trial readiness are set.

- Rule 12 and Rule 56 Dispositive Motions

Motions to dismiss or for summary judgment, heard by the district court judge.

- Non-Dispositive Motions

Motions often involving discovery issues and other pretrial matters, heard in many instances by the magistrate judge.

- Report and Recommendation Process

Process by which the magistrate judge hears a motion, and then submits a report and recommendation to the district court judge. The parties have a short time period in which to file objections to the report and recommendation, after which the district court judge may choose whether to adopt the recommendations of the magistrate judge.

- Settlement Conference

Conference held by the magistrate judge, and attended by all parties, with the goal of settling the case before a trial is necessary.

- Final Pretrial Conference

Conference held by the district court judge shortly before the trial is scheduled to begin. Estimations are made as to the length of the trial, the number of witnesses to be called, and general rules and protocols are established regarding the conduct of the trial.

- Trial
- Verdict
- Visit with Jury after Verdict Returned

Following the jury's verdict, the district court judge visits with the jury members in chambers to answer any questions jury members may have about the trial process.

- Post-Trial Motions

These motions may include those for a new trial or for judgment as a matter of law, as well as motions to reduce an awarded verdict.

CRIMINAL CASES

- Pretrial Services

The Pretrial Services office is in charge of a defendant's pretrial detainment from the point a criminal complaint is filed until a defendant pleads guilty or is found guilty at trial. A pretrial services officer recommends whether a defendant should be released on bond and, if so, the conditions of that release.

- Grand Jury Return

Point at which a grand jury returns an indictment for a criminal case. Grand jury proceedings and deliberations are secret; thus, this is the only portion of the grand jury's activities which may be observed.

- Role of United States Marshals

The Marshals are in charge of transporting pretrial detainees from their place of detainment to any scheduled court hearing. They are also responsible for court security whenever a detainee is present in the courtroom.

- Arraignment

Hearing before a magistrate judge at which a defendant makes his or her initial plea of guilty or not guilty. The magistrate judge also determines whether to release the defendant on bond or continue detainment until trial.

- Pretrial Motions

Motions heard by a magistrate judge concerning discovery and other pretrial issues.

- Report and Recommendation Process

Process by which a magistrate judge hears a motion, and then submits a report and recommendation to the district court judge. The parties have a short time period in which to file objections to the report and recommendation, after which the district court judge may choose whether to adopt the recommendations of the magistrate judge.

- Change of Plea

Hearing before a district court judge in which a defendant changes his or her plea from non-guilty to guilty. The district court judge must be satisfied at the hearing that the defendant is voluntarily waiving his or her constitutional right to a trial.

- Jury Selection (Voir Dire)

Process by which jury is selected for a criminal trial. Includes calling of prospective jurors, questioning, and ultimate selection of jury panel.

- Trial

- Verdict

- Probation Office

The Probation Office plays a significant role in the sentencing of a criminal defendant, as well as in monitoring and supervising a convicted defendant after release from prison.

- Presentence Investigation (PSI)

Investigation conducted by probation officer after a defendant is found guilty. The investigation includes interviews with the defendant, family members, and friends; a criminal history background check; a health background check; and a description of the offense for which the defendant was convicted. The PSI is then submitted to the district court judge to review before sentencing.

- Judge's Visit with Probation Officer

The district court judge will meet with the probation officer to review the PSI and discuss the probation officer's recommended sentence. This meeting generally occurs immediately prior to sentencing.

- Sentencing

A defendant's sentence may include a combination of imprisonment, supervised release, a fine, or restitution.

- Revocation of Release

If a defendant violates any of the conditions of supervised release, that defendant's release may be revoked. The probation officer will notify the district court judge of the violations that have occurred, and recommend whether a revocation hearing should be held. At the revocation hearing, the defendant may admit or deny the allegations, and the defendant may be ordered to serve the remainder of the term of supervised release in prison.

Appendix C

Curriculum Suggestions for International Students Observing Appellate Courts

International Judge/Lawyer/Student Observation Program: Court of Appeals Protocol

I. INTRODUCTION

This protocol is designed as a guide for the implementation of a Judicial Observation Program in the chambers of an appellate judge. The overriding objective of the program is to introduce the practical details of our federal courts to select international lawyers pursuing LL.M. degrees at U.S. law schools. It is important to emphasize at every opportunity how the rule of law, judicial independence, and the economic administration of justice are implemented in our courts.

The material presented may be conveyed in a variety of ways, including videotaped programs, one-on-one tutorials, case studies and group discussions. As a logistical matter, we recommend that each chambers put one person – perhaps an enthusiastic law clerk – in charge of coordinating the observer's visit. This assignment of responsibility will both identify a ready resource for the student observer and ease supervision for the participating judge.

The following outline suggests topics that an appellate judge may wish to include in his or her program with an international law student, judge, or lawyer.

II WRITTEN ADVOCACY & THE PROCESS IN CHAMBERS

A. Filing an Appeal

1. Jurisdiction – Where do the cases that reach our circuit courts come from? Emphasize that cases originate not only in the district court, but also from the decisions of administrative panels and through other mechanisms.

2. Time Requirements – When may an appeal be taken? Are rights forfeited if time requirements are not adhered to?

3. The Clerk's Office – What happens within the court system when an appeal is taken? Discuss administrative screening panels, the establishment of briefing schedules and the setting of the court's calendar.

B. Briefs of the Parties – Allow the observer to review examples of case briefings.

1. Appellant – Who is the appellant?

2. Appellee – Who is the appellee? Discuss the possibility of cross-appeal.

3. Reply – Why does the appellant get this second chance?

4. Amici – Who are the friends of the court and why do we allow them to appear?

C. Content

1. Jurisdiction – Why must the appellant show the court that it may hear the case?

2. Facts – What facts will the parties include and why?

3. Legal Issues – Emphasize that the parties are generally responsible for framing the issues before the court.

4. Argument – Discuss the citation and the importance of precedent, as well as the need for the parties to connect existing law to the facts of their case.

D. The Record – Allow the observer to examine a sample record. What should the parties include? Discuss the transcripts of proceedings in the courts of first instance, depositions, administrative records, and photographs or maps (as appropriate).

E. Research, Preliminary Discussions, and Bench Memoranda – Discuss with the observer how case files are handled within your chambers. What role do the law clerks play? Is research done on the legal issues or are the briefs taken at face value? How do judges prepare for oral arguments?

III ORAL ADVOCACY & DECISIONS

Ideally, the observer will be able to witness appellate oral argument first-hand, although that may not always be possible in light of the court's calendar and the constraints of the academic year.

A. Argument Before a Panel

1. Time Limits – How long does each side have? Why? How is that determined?
2. Decorum – In what manner do the parties and judges approach oral argument? Are they emotional, demonstrative, or combative, as they often might be before a trial court?
3. Order of Arguments – Who goes first? Why? What purpose is served by inviting rebuttal?
4. Questions from the Bench – Are questions from the judges limited in any way? What if the lawyers don't address the court's questions? What might the court's questions suggest to the lawyers arguing the appeal?

B. Conference

1. Discussion – Once argument is complete, what do the judges do?
2. Vote – How are the appeals disposed of? Are decisions usually unanimous or divided?
3. Assignment of Opinion – Who writes the opinion for the panel? How is that decision made?
4. Role of Dissent – What happens to the judge who disagrees with her colleagues?

C. Opinion Writing – The observer should have the chance to review examples of different types of opinions. Selecting appropriate cases, the observer might review a draft opinion, a memorandum opinion, a full opinion, and a dissent.

1. Early Drafts – Who writes them? What process does the drafter go through?
2. Editing & Revision – How are opinions modified after drafting?
3. Circulation – When do the other judges see the draft? Discuss the mechanics and process involved with concurrence.
4. Comment & Amendment
5. Decision & Publication – Who publishes opinions and why? When does the decision of the court become final?

D. Post-Decision Process – Discuss the possibility of rehearing, as well as the opportunity to appeal once again and the submission of petitions for certiorari.
Appendix D

Sample Codes of Conduct

These codes of conduct may serve as guidance to law schools and judges who are speaking to international students about their expectations for the conduct of participants in a Judicial Observation Program.

I. Code of Conduct for United States Judges

Additional information about each of the Canons is available from the Administrative Office of the U.S. Courts.

- Canon 1 A Judge Should Uphold the Integrity and Independence of the Judiciary
- Canon 2 A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities
- Canon 3 A Judge Should Perform the Duties of the Office Impartially and Diligently
- Canon 4 A Judge May Engage in Extra-Judicial Activities To Improve the Law, the Legal System, and the Administration of Justice
- Canon 5 A Judge Should Regulate Extra-Judicial Activities To Minimize the Risk of Conflict with Judicial Duties
- Canon 6 A Judge Should Regularly File Reports of Compensation Received for Law-Related and Extra-Judicial Activities

Canon 7 A Judge Should Refrain from Political Activity

II Code of Conduct for Judicial Employees¹

This Code of Conduct applies to all employees of the Judicial Branch except Justices; judges; and employees of the United States Supreme Court, the Administrative Office of the United States Courts, the Federal Judicial Center, the Sentencing Commission, and Federal Public Defender offices. Participants in a Judicial Observation Program are not employees of the U.S. judiciary, and therefore are not covered by this code. They can expect, however, that the judges whose chambers and courtrooms they visit will impose these or similar ethical standards on them, as appropriate.

As used in this code in canons 3F(2)(b), 3F(5), 4B(2), 4C(1), and 5B, a member of a judge's personal staff means a judge's secretary, a judge's law clerk, and a courtroom deputy clerk or court reporter whose assignment with a particular judge is reasonably perceived as being comparable to a member of the judge's personal staff.

Canon 1 A judicial employee should uphold the integrity and independence of the judiciary and of the judicial employee's office.

An independent and honorable Judiciary is indispensable to justice in our society. A judicial employee should personally observe high standards of conduct so that the integrity and independence of the Judiciary are preserved and the judicial employee's office reflects a devotion to serving the public. Judicial employees should require adherence to such standards by personnel subject to their direction and control. The provisions of this code should be construed and applied to further these objectives. The standards of this code shall not affect or preclude other more stringent standards required by law, by court order, or by the appointing authority.

Canon 2 A judicial employee should avoid impropriety and the appearance of impropriety in all activities.

A judicial employee should not engage in any activities that would put into question the propriety of the judicial employee's conduct in carrying out the duties of the office. A judicial employee should not allow family, social, or other relationships to influence official conduct or judgment. A judicial employee should not lend the prestige of the office to advance or to appear to advance the private interests of others. A judicial employee should not use public office for private gain.

Canon 3 A judicial employee should adhere to appropriate standards in performing the duties of the office.

In performing the duties prescribed by law, by resolution of the Judicial Conference of the United States, by court order, or by the judicial employee's appointing authority, the following standards apply:

A. A judicial employee should respect and comply with the law and these canons. A judicial employee should report to the appropriate supervising authority any attempt to induce the judicial employee to violate these canons.

B. A judicial employee should be faithful to professional standards and maintain competence in the judicial employee's profession.

C. A judicial employee should be patient, dignified, respectful, and courteous to all persons with whom the judicial employee deals in an official capacity, including the general public, and should require similar conduct of personnel subject to the judicial employee's direction and control. A judicial employee should diligently discharge the responsibilities of the office in a prompt, efficient, nondiscriminatory, fair, and professional manner. A judicial employee should never influence or attempt to influence the assignment of cases, or perform any discretionary or ministerial function of the court in a manner that improperly favors any litigant or attorney, nor should a judicial employee imply that he or she is in a position to do so.

D. A judicial employee should avoid making public comment on the merits of a pending or impending action and should require similar restraint by personnel subject to the judicial employee's direction and control. This proscription does not extend to public statements made in the course of official duties or to the explanation of court procedures. A judicial employee should never disclose any confidential information received in the course of official duties except as required in the performance of such duties, nor should a judicial employee employ such information for personal gain. A former judicial employee should observe the same restrictions on disclosure of confidential information that apply to a current judicial employee, except as modified by the appointing authority.

E. A judicial employee should not engage in nepotism prohibited by law.

F. Conflicts of Interest.

(1) A judicial employee should avoid conflicts of interest in the performance of official duties. A conflict of interest arises when a judicial employee knows that he or she (or the spouse, minor child residing in the judicial employee's household, or other close relative of the judicial employee) might be so personally or financially affected by a matter that a reasonable person with knowledge of the relevant

facts would question the judicial employee's ability properly to perform official duties in an impartial manner.

(2) Certain judicial employees, because of their relationship to a judge or the nature of their duties, are subject to the following additional restrictions:

(a) A staff attorney or law clerk should not perform any official duties in any matter with respect to which such staff attorney or law clerk knows that:

- (i) he or she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- (ii) he or she served as lawyer in the matter in controversy, or a lawyer with whom he or she previously practiced law had served (during such association) as a lawyer concerning the matter, or he, she, or such lawyer has been a material witness;
- (iii) he or she, individually or as a fiduciary, or the spouse or minor child residing in his or her household, has a financial interest in the subject matter in controversy or in a party to the proceeding;
- (iv) he or she, a spouse, or a person related to either within the third degree of relationship, or the spouse of such person (A) is a party to the proceeding, or an officer, director, or trustee of a party; (B) is acting as a lawyer in the proceeding; (C) has an interest that could be substantially affected by the outcome of the proceeding; or (D) is likely to be a material witness in the proceeding;
- (v) he or she has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

(b) A secretary to a judge, or a courtroom deputy or court reporter whose assignment with a particular judge is reasonably perceived as being comparable to a member of the judge's personal staff, should not perform any official duties in any matter with respect to which such secretary, courtroom deputy, or court reporter knows that he or she, a spouse, or a person related to either within the third degree of relationship, or the spouse of such person

- (i) is a party to the proceeding, or an officer, director, or trustee of a party;

- (ii) is acting as a lawyer in the proceeding;
 - (iii) has an interest that could be substantially affected by the outcome of the proceeding; or
 - (iv) is likely to be a material witness in the proceeding;
- provided, however, that when the foregoing restriction presents undue hardship, the judge may authorize the secretary, courtroom deputy, or court reporter to participate in the matter if no reasonable alternative exists and adequate safeguards are in place to ensure that official duties are properly performed. In the event the secretary, courtroom deputy, or court reporter possesses any of the foregoing characteristics and so advises the judge, the judge should also consider whether the Code of Conduct for United States Judges may require the judge to recuse.

(c) A probation or pretrial services officer should not perform any official duties in any matter with respect to which the probation or pretrial services officer knows that:

- (i) he or she has a personal bias or prejudice concerning a party;
- (ii) he or she is related within the third degree of relationship to a party to the proceeding, or to an officer, director, or trustee of a party, or to a lawyer in the proceeding;
- (iii) he or she, or a relative within the third degree of relationship, has an interest that could be substantially affected by the outcome of the proceeding.

(3) When a judicial employee knows that a conflict of interest may be presented, the judicial employee should promptly inform his or her appointing authority. The appointing authority, after determining that a conflict or the appearance of a conflict of interest exists, should take appropriate steps to restrict the judicial employee's performance of official duties in such matter so as to avoid a conflict or the appearance of a conflict of interest. A judicial employee should observe any restrictions imposed by his or her appointing authority in this regard.

(4) A judicial employee who is subject to canon 3F(2) should keep informed about his or her personal, financial and fiduciary interests and make a reasonable effort to keep informed about such interests of a spouse or minor child residing in the judicial employee's household.

(5) A member of a judge's personal staff should inform the appointing judge of any circumstance or activity of the staff member that might serve

as a basis for disqualification of either the staff member or the judge, in a matter pending before the judge.

Canon 4 In engaging in outside activities, a judicial employee should avoid the risk of conflict with official duties, should avoid the appearance of impropriety, and should comply with disclosure requirements.

A. Outside Activities. A judicial employee's activities outside of official duties should not detract from the dignity of the court, interfere with the performance of official duties, or adversely reflect on the operation and dignity of the court or office the judicial employee serves. Subject to the foregoing standards and the other provisions of this code, a judicial employee may engage in such activities as civic, charitable, religious, professional, educational, cultural, avocational, social, fraternal, and recreational activities, and may speak, write, lecture, and teach. If such outside activities concern the law, the legal system, or the administration of justice, the judicial employee should first consult with the appointing authority to determine whether the proposed activities are consistent with the foregoing standards and the other provisions of this code.

B. Solicitation of Funds. A judicial employee may solicit funds in connection with outside activities, subject to the following limitations:

(1) A judicial employee should not use or permit the use of the prestige of the office in the solicitation of funds.

(2) A judicial employee should not solicit subordinates to contribute funds to any such activity but may provide information to them about a general fund-raising campaign. A member of a judge's personal staff should not solicit any court personnel to contribute funds to any such activity under circumstances where the staff member's close relationship to the judge could reasonably be construed to give undue weight to the solicitation.

(3) A judicial employee should not solicit or accept funds from lawyers or other persons likely to come before the judicial employee or the court or office the judicial employee serves, except as an incident to a general fund-raising activity.

C. Financial Activities.

(1) A judicial employee should refrain from outside financial and business dealings that tend to detract from the dignity of the court, interfere with the proper performance of official duties, exploit the position, or associate the judicial employee in a substantial financial manner with lawyers or other persons likely to come before the judicial employee or the court or office the judicial employee serves, provided, however, that court reporters are not prohibited from providing reporting services for compensation to the extent permitted by statute and by the

court. A member of a judge's personal staff should consult with the appointing judge concerning any financial and business activities that might reasonably be interpreted as violating this code and should refrain from any activities that fail to conform to the foregoing standards or that the judge concludes may otherwise give rise to an appearance of impropriety.

(2) A judicial employee should not solicit or accept a gift from anyone seeking official action from or doing business with the court or other entity served by the judicial employee, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties; except that a judicial employee may accept a gift as permitted by the Ethics Reform Act of 1989 and the Judicial Conference regulations thereunder. A judicial employee should endeavor to prevent a member of a judicial employee's family residing in the household from soliciting or accepting any such gift except to the extent that a judicial employee would be permitted to do so by the Ethics Reform Act of 1989 and the Judicial Conference regulations thereunder.

(3) A judicial employee should report the value of gifts to the extent a report is required by the Ethics Reform Act, other applicable law, or the Judicial Conference of the United States.

(4) During judicial employment, a law clerk or staff attorney may seek and obtain employment to commence after the completion of the judicial employment. However, the law clerk or staff attorney should first consult with the appointing authority and observe any restrictions imposed by the appointing authority. If any law firm, lawyer, or entity with whom a law clerk or staff attorney has been employed or is seeking or has obtained future employment appears in any matter pending before the appointing authority, the law clerk or staff attorney should promptly bring this fact to the attention of the appointing authority.

D. Practice of Law. A judicial employee should not engage in the practice of law except that a judicial employee may act pro se, may perform routine legal work incident to the management of the personal affairs of the judicial employee or a member of the judicial employee's family, and may provide pro bono legal services in civil matters, so long as such pro se, family, or pro bono legal work does not present an appearance of impropriety, does not take place while on duty or in the judicial employee's workplace, and does not interfere with the judicial employee's primary responsibility to the office in which the judicial employee serves, and further provided that:

(1) in the case of pro se legal work, such work is done without compensation (other than such compensation as may be allowed by statute or court rule in probate proceedings);

(2) in the case of family legal work, such work is done without compensation (other than such compensation as may be allowed by statute or court rule in probate proceedings) and does not involve the entry of an appearance in a federal court;

(3) in the case of pro bono legal services, such work (a) is done without compensation; (b) does not involve the entry of an appearance in any federal, state, or local court or administrative agency; (c) does not involve a matter of public controversy, an issue likely to come before the judicial employee's court, or litigation against federal, state or local government; and (d) is reviewed in advance with the appointing authority to determine whether the proposed services are consistent with the foregoing standards and the other provisions of this code.

E. Compensation and Reimbursement. A judicial employee may receive compensation and reimbursement of expenses for outside activities provided that receipt of such compensation and reimbursement is not prohibited or restricted by this code, the Ethics Reform Act, and other applicable law, and provided that the source or amount of such payments does not influence or give the appearance of influencing the judicial employee in the performance of official duties or otherwise give the appearance of impropriety. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by a judicial employee and, where appropriate to the occasion, by the judicial employee's spouse or relative. Any payment in excess of such an amount is compensation.

A judicial employee should make and file reports of compensation and reimbursement for outside activities to the extent prescribed by the Ethics Reform Act, other applicable law, or the Judicial Conference of the United States.

Notwithstanding the above, a judicial employee should not receive any salary, or any supplementation of salary, as compensation for official government services from any source other than the United States, provided, however, that court reporters are not prohibited from receiving compensation for reporting services to the extent permitted by statute and by the court.

Canon 5 A judicial employee should refrain from inappropriate political activity.

A. Partisan Political Activity. A judicial employee should refrain from partisan political activity; should not act as a leader or hold any office in a partisan political organization; should not make speeches for or publicly endorse or oppose a partisan political organization or candidate; should not solicit funds for or contribute to a partisan political organization, candidate, or event; should

not become a candidate for partisan political office; and should not otherwise actively engage in partisan political activities.

B. Nonpartisan Political Activity. A member of a judge's personal staff, clerk of court, chief probation officer, chief pretrial services officer, circuit executive, and district court executive should refrain from nonpartisan political activity such as campaigning for or publicly endorsing or opposing a nonpartisan political candidate; soliciting funds for or contributing to a nonpartisan political candidate or event; and becoming a candidate for nonpartisan political office. Other judicial employees may engage in nonpartisan political activity only if such activity does not tend to reflect adversely on the dignity or impartiality of the court or office and does not interfere with the proper performance of official duties. A judicial employee may not engage in such activity while on duty or in the judicial employee's workplace and may not utilize any federal resources in connection with any such activity.

Appendix E

Text Materials and Bibliography

The following selection of sources is offered as a guide. Many other excellent works are available that also represent material on appellate brief writing, oral argument, and the judicial process. Those listed here are, generally, of a nature that they will be readily comprehensible to those international observers who read English as a second language – that is to say, they are materials with a practical, straightforward bent and are not always “scholarly.”

General

Administrative Office of the U.S. Courts, *Understanding the Federal Courts* (1999).

Administrative Office of the U.S. Courts, *The Federal Court System in the United States: An Introduction for Judges and Judicial Administrators in Other Countries* (2000).

Federal Judicial Center *Catalog of Publications* (1999) (This on-line catalog lists most of the publications the Federal Judicial Center has produced since its creation in 1967, grouped by subject category. The publications include reports of research and analysis done by or for the Center, as well as products of Center seminars and workshops conducted for various judicial branch personnel.).

Baum, Lawrence, *American Courts: Process & Policy* (4th ed. 1998) (Houghton Mifflin) (ISBN: 0-395-87105-0).

Fine, Toni M., *American Legal Systems: A Resource and Reference Guide* (Anderson Publishing Co. 1997) (ISBN: 0-87084-266-8).

William Burnham, *Introduction to the Law and Legal System of the United States* (West Publishing 1995).

On-line resources addressing the judiciary in the United States

www.uscourts.gov

U.S. Federal Judiciary

www.supremecourtus.gov

U.S. Supreme Court

www.fjc.gov

Federal Judicial Center (research and training arm of the U.S. judiciary)

<http://www.ncsc.dni.us>

National Center for State Courts

www.firstgov.gov

Official website for searching the U.S. government, providing links to many federal and state courts

Appellate Advocacy

Timothy A. Baughman, Effective Appellate Oral Advocacy, “Beauty is Truth, Truth Beauty”, 77 Mich. B.J. 38, January, 1998.

Myron H. Bright, How to Win on Appeal: The Ten Commandments of Oral Argument, 32 Trial Mag. 68 (July 1996).

Myron H. Bright, Appellate Briefwriting: Some “Golden” Rules, 17 Creighton L. Rev. 1069 (1984).

Frank N. Coffin, On Appeal: Courts, Lawyering and Judging, W.W. Norton, 1994 (including excellent bibliography).

Nathan L. Hecht, Extra-Special Secrets of Appellate Brief Writing, 3 Scribes J. Legal Writing 27 (1992).

Richard Polenberg, The Man and The Judge, The World of Benjamin Cardozo: Personal Values and the Judicial Process, Harvard University Press, 1997.

Harry Pregerson, The Seven Sins of Appellate Brief Writing and Other Transgressions, 34 UCLA L. Rev. 431 (1986).

Thomas J. Wright and Perry H. Piper, Oral Advocacy – Some Reminders, 30-DEC Tenn. B.J. 28 (1994).

¹ From Guide to Judiciary Policies and Procedures, Volume II (1999, updated April 2000).