

Federal Judges Association  
Fall Board of Directors Meeting  
Zoom Video Conference Meeting—Due to COVID-19  
November 15, 2020

**In attendance:**

Officers: Cynthia M. Rufe (president); Richard R. Clifton (president-elect), Karen E. Schreier (secretary), J. Michelle Childs (treasurer), Marilyn L. Huff (immediate past President)

Executive Committee Members: Nannette Jolivette Brown, Leo M. Gordon, Malachy Mannion, Leigh M. May, Lawrence L. Piersol, Dan A. Polster, Patti B. Saris, Patty Shwartz, Charles R. Simpson

Past Presidents: Sarah Evans Barker, W. Royal Furgeson, Jr.

At-Large Directors: Allison Dale Burroughs, Jon David Levy, John J. McConnell, Jr. (1<sup>st</sup> Circuit); P. Kevin Castel, Stefan R. Underhill (2<sup>nd</sup> Circuit); Cathy Bissoon, Esther Salas, Mark A. Kearney (3<sup>rd</sup> Circuit); Albert Diaz, John A. Gibney, Jr. (4<sup>th</sup> Circuit); Shelly Dick, James E. Graves, Jr., Debra Brown, Marina Garcia-Marmolejo (5<sup>th</sup> Circuit); David Jason Hale, Sean F. Cox, Aleta Trauger (6<sup>th</sup> Circuit); Sara Darrow, Tanya Walton Pratt, Sara Ellis, James D. Peterson (7<sup>th</sup> Circuit); Susan Richard Nelson, John M. Gerrard, Jane L. Kelly, Stephen Bough (8<sup>th</sup> Circuit); Michael McShane, Richard F. Boulware, Mary H. Murguia, Janis L. Sammartino (9<sup>th</sup> Circuit); James O. Browning, Joe Heaton, Julie A. Robinson (10<sup>th</sup> Circuit); Leslie Abrams Gardner, Robin S. Rosenbaum, Mary S. Scriven, W. Keith Watkins (11<sup>th</sup> Circuit); Kara Stoll (Federal Circuit); Mark Barnett (Court of Int'l Trade)

**Also attending:**

David Carter (Chair International Rule of Law Committee)  
Henry Hudson (Chair Security Committee)  
Robert Lasnik (Co-chair of 2022 Quadrennial)  
Megan Cruz, Grace Jan and Julianne Clark (MSP)

**Excused:**

Peter W. Hall, Frederick J. Scullin, Jr., Robert D. Mariani, Gina Marie Groh, Bruce H. Hendricks, James G. Carr, Joel Carson III, Cornelia Pillard, Mary Scriven, Barry Ashe (FBA Liaison) and Rodney Sippel (Judicial Branch Liaison)

**Welcome:**

Judge Rufe called the meeting to order at 2:02 p.m. (EDT). Judge Rufe welcomed all the members of the Board of Directors and thanked the Board members for spending their weekend committed to the FJA. She noted that COVID-19 continues to impact all of us in our work and personal lives. She also thanked MSP for their efforts in helping us pursue the mission of FJA during these trying times. The MSP management team

was then introduced: Megan Cruz, executive director; Grace Jan, meeting logistics; and Julianne Clark, membership.

The COVID-19 pandemic prevented the FJA Board from holding its Annual Meeting in person in April (when we resorted to a teleconference at the time and postponed the in-person meeting to November) and still prevented the November meeting. We avoided liability on the hotel contract by agreeing to schedule our 2023 meeting at The Brown Palace in Denver.

### **Moment of Silence:**

Judge Rufe noted that Associate Justice Ruth Bader Ginsburg passed away since our last meeting. Memorials and photos of Justice Ginsburg have been posted on the FJA website. Judge Rufe encouraged the Board to submit additional memorials.

Judge Rufe called for a moment of silence in memory of Justice Ginsburg and the FJA members who passed since our last meeting: Jack Shanstrom, Deborah Batts, Raymond Fisher, Michael Telesca, William Enright, A. Richard Caputo, Patrick Duggan, Thomas Wiseman, James Munley, Monroe McKay, Kevin Duffy, Gregory Carman, Lowell Reed, Charles Shaw, Lee West, Arthur Spatt, James Churchill, James Hancock, Pamela Reeves, Blanche Manning, Laurie Smith Camp, and Juan Torruella.

### **Introduction of Guests:**

#### **Federal Magistrate Judges Association (FMJA):**

Deborah Smith, President of the FMJA, reported that FMJA has established a scholarship/stipend fund for law students with diverse backgrounds who intern with magistrate judges. The FMJA believes this will improve the pathway for students with diverse backgrounds into future clerkships and potentially judgeships. They also are continuing to look at systemic bias issues. The FMJA is working with the FJA on security issues. Additionally, it is collecting oral histories of its members.

Magistrate Judge Smith noted that in March 2020, the Judicial Conference noted its express disapproval of the practice of Magistrate Judges ghost writing opinions for district court judges and conducting an initial review of objections to Reports and Recommendations. These practices are limited to a small number of jurisdictions, but this is the first time the Judicial Conference has taken a position on these two issues.

#### **National Conference of Bankruptcy Judges (NCBJ):**

Frank Bailey, President of NCBJ, reported that the bankruptcy judges are anticipating a tsunami of new bankruptcy filings as a result of COVID-19. NCBJ held its 2020 annual meeting virtually and cancelled its in-person meeting that was to have been held in San Diego. The NCBJ has been working with the FJA on court security issues.

NCBJ issued a diversity handbook that identifies diversity programming across the districts. NCBJ participated in the Pathways to the Bench program last year and continues to expand outreach to affiliate groups on the diversity issue.

**David Best – Legislative Affairs Officer for the Administrative Office:**

James Duff, Administrative Director of the Courts, was scheduled to attend the meeting but was unable to do so for medical reasons (not serious). David Best, AO Legislative Affairs officer, extended Director Duff's regret at not being able to participate. He reserved his remarks for later during the meeting.

**President's Report:**

Judge Rufe noted that this has been a very busy time for FJA. Currently, there is a written history of the FJA through 2000. It is Judge Rufe's goal to update the written history by the next Quadrennial, which will coincide with the 40<sup>th</sup> Anniversary of the founding of FJA. Judge Schreier will spearhead this effort. Judge Rufe asked for the best writers in the judiciary to step forward to volunteer. Videos and webinars will also be considered as methods to share this history during the Quadrennial and our reformatted website.

Another major project that is underway is the restructuring of the FJA website to make it more accessible, informative, and interactive. The new website will allow us to communicate within our internal communities. All the committees have been active and have persevered during COVID-19.

A moment was then taken to reflect on the unspeakable tragedy of the brutal attack on Judge Salas's family on July 19, 2020. Judge Salas lost her son, Daniel Mark Anderl, and her husband, Mark Anderl, was critically wounded. In response, the Daniel Anderl Judicial Security and Privacy Act of 2020 is currently pending in both chambers of Congress. We should never forget the tragedy, and as an organization are working intensely to improve judicial security for not only judges, but their families as reported herein.

Judge Salas personally thanked everyone for reaching out. She reported that Mark continues to struggle with his health. After spending 20 years focused on her son, she is now pursuing causes critical to justice for all. Her short-term goal is passage of the Judicial Security bill. Her longer-term goals are gender equality and equality for all. She again thanked everyone for their love, support and prayers.

**Secretary's Report:**

Judge Schreier moved and Judge Gibney seconded a motion to approve the minutes from the last meeting. The motion passed.

**Treasurer's Report:**

Judge Childs reported a balance in the treasury of \$958,640.94. The FJA's operations over the past year have generated revenue in excess of expenses by about \$50,000 more than anticipated because meetings were held by videoconference and not in person during 2020. Upcoming expenses include the audit, meeting care packages, and audio/visual expenses.

## **Security:**

Judge Hudson, chair of the Security Committee, said that the FJA needs to stress security awareness among its members. Judges in general are targets—as are their family members, including children. Judges need to make sure the area around their homes is trimmed and adequate door locks need to be in place. The committee wants to begin teaching judges how to lower their profile and how to limit the availability of personal information in local and state public records. The committee plans to develop a 1-2 page handout called “10 Simple Steps to Enhance Your Security.”

David Best reported that bills proposing “the Daniel Aderl Judicial Security and Privacy Act” are pending in both the Senate (S 4711) and the House of Representatives (HR 8591). The bills provide funding to upgrade the security systems of judges so those inside the home could see, speak to and record the conversations of individuals coming to a judge’s home. The bill also authorizes funding to replace non-functioning cameras at the courthouses. It would also authorize funding for the AO and the United States Marshals Service to monitor and assess online threats, maintain records, investigate complaints and address acts of aggression against federal judges. It would allow the Marshals Service to hire additional intelligence analysts, deputy U.S. Marshals, and other personnel to ensure the agency is able to anticipate and deter threats to federal judges. The bill requires federal agencies to protect the personal identifying information of federal judges. It also authorizes a federal grant program to encourage protection of such information by state and local governments by covering the expenses of such action. The AO has proposed limited amendments to the bills, including bolstering the grant program with a mandate that state and local governments protect judges’ information.

We are pushing for the bill to be on the Senate Judiciary mark-up calendar next week. There is some hesitancy from media and civil liberties groups regarding the definition of who is a “data broker.” Mr. Best indicated that we are trying to address their concerns. Because of the Thanksgiving recess and the limited number of remaining session days, time is of the essence to get this bill passed this session.

Mr. Best also reported that there are budget constraints across the federal government, but there is potential for limited budget growth for the judiciary. The 2021 mark includes authorization for funding for security system upgrades and cameras outside of federal courthouses. The judiciary is working with DOJ to identify any money that is immediately available for those upgrades.

Judge Rufe noted that after the tragedy involving Judge Salas’s family, the FJA immediately began coordinating with Judge McKeague, Chair of the Judicial Conference’s Committee on Judicial Security. The FJA, NCBJ, and FMJA have worked together in a coordinated effort to push for the bill’s passage lending support to the JCUS and the AO’s efforts.

Please refer to the Board Book written report and materials for further detail.

**Legislation:**

Judge Simpson indicated that the Legislation committee is supporting passage of the Daniel Anderl Judicial Security and Privacy Act and helping it move towards Senate mark-up. The bill is co-sponsored by the chair and ranking member of Senate Judiciary. The biggest hurdle is the short calendar. The committee has been reaching out to members of the Senate Judiciary committee. If anyone in FJA has good contacts on Senate Judiciary or anywhere else within Congress, let Judge Simpson know. He is building his Rolodex with contacts that can be called upon for a variety of issues. He's been working with the Branch committee, our leadership Cynthia and Rick, FMJA, and NCBJ. He stated that FJA is ready to do a full court press when the time is right.

Judge Clifton observed that this will be an ongoing effort. Even if the Security Bill is not passed during the lame duck session, we will continue to push. He also emphasized that we need to identify any personal contacts that our members have with members of Congress and let Judge Simpson know of those contacts.

Please refer to the Board Book written report and materials.

**Membership Development:**

Judge May reported that the Membership committee is made up of one person from each circuit. She observed that is a minimum only and additional circuit directors can be involved. If anyone else would like to join the Membership committee, just let her know your interest. She encouraged all members of the Board of Directors to help recruit new members immediately after a new judge takes their oath of office. The membership brochure, membership application, and dues allotment form are on the FJA website. Personal outreach from a Board member is important in the recruitment process.

Judge May noted that the current list of FJA members is included in the Board Book. On page 65, is a list of retired judges for whom we do not have email addresses. Please help her track down email addresses for these judges and forward them to her.

Please refer to Board Book written report and materials.

**Civics and Service:**

Judge Jolivette Brown reported the Civic and Service committee will be sending letters to the District Chief Judges asking them to identify current outreach and civics programs. The committee will use those responses to update the website. They are also asking for videos of programs to include on the website.

Additionally, the committee is starting to plan for the Quadrennial. The FJA will be sponsoring an essay/video contest at the high school level with prizes. The committee is starting to work on a flier and outreach to announce the contest.

Co-chair Judge Janis Sammartino said each district needs a contact person for the contest. The FJA will coordinate with other sponsors to advertise the contest. The committee will identify the contest topic soon.

Please also refer to the Board Book written reports and materials.

### **Judicial Independence and Integrity:**

Judges Saris and Childs gave the report. The purpose of the committee is to preserve and protect the federal judiciary. The committee has been struggling with identifying the correct approach when the judiciary as a whole or individual judges are attacked. Because the committee members have different points of view, the committee wanted guidance from the Board as a whole. The committee formulated a poll for the Board members to take, which would then be followed by discussion. The results of the poll were:

1. Should the FJA recruit academics, retired judges, bar association leaders, etc. to serve as “champions of justice” (write articles/op-eds, make statements/give speeches) explaining the importance of the independence of the Judiciary and the Rule of Law? 92% responded yes. 8% responded no.
2. Should the FJA contact individual judges who have been attacked by the media, politicians, bar members or others, not in the context of a specific case, to provide moral support and determine what, if anything, the judge wants the FJA to do? 77% responded yes, and 23% responded no.
3. Do you think the FJA president should reach out to “champions of justice” (like the FBA) to support a judge who is personally attacked after the “dust has settled” in a specific case consistent with the Code of Judicial Conduct? 67% responded yes, 33% responded no.
4. Do you think the FJA president should make a statement when a member of the judiciary is attacked after a case has concluded consistent with the Code of Judicial Conduct? 44% responded yes, 56% responded no.

General discussion was then held. Judge Scriven observed that the term “judicial independence” does not resonate with voters. She suggested that we consider moving toward language like a fair and impartial judiciary. Judge Clifton echoed her concern and noted that language matters. He suggested that we look to the National Center for State Courts for guidance on appropriate language.

A general discussion was held regarding the fourth question. Several judges noted that their response to the questions depends on who is being attacked, who is doing the attacking, and what are the circumstances of the attack. Before responding, we should ask “What interest will be served with a response?” and “What do you want to accomplish?” Question 4 was then resubmitted to the board adding the option of “it depends.” The response was 9% yes, 18% no, and 73% it depends.

Please also refer to Board Book written report and materials.

## **Senior Judges:**

Judge Piersol noted that tough budgetary times will be coming. The Senior judges staffing formula is likely to be a prime target and has been so in the past. The committee plans to gather the senior judge staffing formulas from each circuit and caseload data for senior judges. The committee wants to be prepared for any threat of cuts in the future.

## **Pay and Benefits:**

Judge Gordon announced that the committee has prepared a series of fliers that will be distributed to FJA members over the next several months. The fliers cover numerous topics including Medicare and health care options for Seniors, medivac insurance for international travel, security for international travel, etc. They also created promotional teasers. A committee member provides the introduction on each teaser on seven topics.

The committee also developed a logo to brand its communications. The logo is available to other committees as well for their use.

The Senior Judges committee had previously raised an issue about whether the flexible spending cap could be raised. The Pay and Benefits committee researched that issue and concluded that the cap is a national cap set by the IRS applicable to everyone. It is not feasible to create a higher cap for judges.

Jim DeLaTorre is available free of charge to consult with our members and assist with their individual needs.

The committee is coordinating with David Best to seek legislation to authorize the judiciary to establish a student loan repayment plan consistent with the Executive and Legislative branch plans.

The committee is also looking at judicial pay. It has been 30 years since the judiciary received a pay raise. The committee has prepared a five-page summary/update regarding judicial pay that can be used in the event pay increase issues arise during the lame duck session. If the issue does not arise, the information can be the basis for future action.

Judge Rufe commended the committee for its efforts to gather all this data and incorporate it into one area. A special thanks to Judges Buroughs and Rosenbaum for their initial drafts.

Please refer to Board Book written report.

## **Quadrennial:**

Judge Shwartz introduced her co-chair, Judge Lasnik. The Quadrennial will be May 1-3, 2022, at the Omni Shoreham in Washington, DC. The theme will be consistent with affirming our role as judges. One session will address things we've learned during COVID-19 and what can/should we hold on to. The committee recommends that we

contact the Supreme Court about holding a reception at the Supreme Court in addition to the Supreme Court swearing in ceremony. Anyone interested in serving on the committee should contact Judges Shwartz or Lasnik.

### **Communications Publications:**

Judge Mannion observed that the Communications committee has been busy. They met with vendors and selected Higher Logic to develop the communication platform and Knucklepuck to develop the information architecture. The vendors are well into the development process and hope to have the new website completed and up and running by the end of this year. The new website will include a membership directory, a communication tool through communities, a space to engage between members, and a space to share information. We will have the dynamic ability to interact with others by committee, circuit or members at large. The system will be supported mostly in-house by MSP with the ability to purchase dynamic changes from Knucklepuck or High Logic. Anyone interested in serving on the committee should contact Judge Mannion.

Please also refer to the Board Book written reports and materials.

### **International Rule of Law:**

Judge Carter reported that the Chief Justice of Malaysia, the first woman to hold that position, brought her law clerks to his chambers. They are housed at the Chapman University School of Law. He believes this is the first sharing/training opportunity of this kind and encouraged others to do the same.

The 2020 International Association of Judges (IAJ) meeting in Costa Rica was cancelled due to COVID-19. The meeting has been rescheduled for 2021 in Costa Rica. The scheduled site for the 2022 conference is now Tel Aviv. Allyson Duncan continues to serve as a member of the President's Council.

### **By-Laws and Judicial Conference Liaison:**

Please refer to Board Book written reports and materials. These reports were filed as submitted.

### **New Business:**

A short time prior to the follow discussion, Judge Salas left the meeting.

Judge Rufe noted that the Executive Committee discussed and recommended to the full Board that the FJA make a contribution to the ESMADA Trust that was set up by Mark Anderl's law partner to render assistance for the medical, rehabilitation, and long-term care expenses incurred by Judge Salas's husband, Mark Anderl.

Judge Polster moved and Judge Gardner seconded a motion that FJA contribute \$25,000 to the fund. During the discussion, it was noted that Judge Salas's family was attacked in retaliation for her actions as a judge. The attacker was an attorney

displeased with Judge Salas. Judge Salas's son was killed and her husband was seriously wounded—requiring multiple surgeries, home health care, and extensive rehabilitation. Mr. Anderl is still receiving ongoing medical and home health care, the costs of which exceed \$7000 per month and which is not covered by insurance. The FJA has over 1000 members. This donation would be about \$25 per member. The proponents argued that the FJA exists to support our members and Judge Salas and her husband need our support. It was stated: "Judge Salas is our sister. We stand with you. If you attack one of us, you attack all of us." Those opposing the motion raised concerns about the fiduciary duty of the Board towards its members and questioned the amount of the contribution. Still others argued that our donation to the trust should be increased. After lengthy discussion, the matter was put to a vote. 93% of the Directors voted in favor and 7% opposed the motion. The motion carried.

It was also noted that individual members of the FJA can contribute to the ESMADA Trust fund. Additional information about individual contributions will be sent to the members again and is currently posted on the website.

**Adjourn:**

Judge Mannion moved to adjourn. Judge Gordon seconded the motion. The motion passed.

The meeting adjourned at 6:32 p.m. (EDT).