

MINUTES

The Historical Society of the United States Courts in the Eighth Circuit

Annual Meeting September 4, 2002 (Via Conference Call)

Directors present:

Court of Appeals:	Thomas H. Boyd
Eastern District of Arkansas:	Frances Ross, Vice-President
Western District of Arkansas:	Katherine C. Gay
Southern District of Iowa:	F. Richard Lyford
District of Minnesota:	Judge John R. Tunheim
District of Minnesota:	Randall M. Tietjen
Eastern District of Missouri:	Judge E. Richard Webber
Eastern District of Missouri:	Ann E. Buckley
Western District of Missouri:	Judge Ortrie D. Smith
Western District of Missouri:	F. Russell Millin
District of Nebraska:	Judge Richard G. Kopf, President
District of North Dakota:	Judge Dwight C. H. Kautzmann
District of North Dakota:	M. Daniel Vogel
District of South Dakota:	Judge Karen E. Schreier
District of South Dakota:	Mark F. Marshall

Others in attendance:

Ann Fessenden, Secretary-Treasurer
Judge Richard W. Peterson, Ex-Officio Director
Joan Stevens, Library Staff

Absent were Judge Donald P. Lay (Court of Appeals), Judge William R. Wilson, Jr. (Eastern Arkansas), Judge Mark W. Bennett (Northern Iowa), Eric W. Lam (Northern Iowa), Judge Ronald E. Longstaff (Southern Iowa), and Mary Hewitt Jones (Nebraska).

President of the Historical Society Judge Kopf called the meeting to order at noon and took roll call. Judge Kopf introduced the 2001 annual meeting minutes and asked for any needed changes. None were called for and a motion was made to adopt the 2001 minutes. The motion was seconded, all responded favorably, and the 2001 Historical Society minutes were approved.

Secretary-Treasurer's Report

Secretary-Treasurer Ann Fessenden presented the parent Society's Treasurer's Report. She noted that the funds were dwindling, with the Society's only income having been dividends. Last year's expenditures were the cost of printing the newsletter and the continuing expenses incurred mailing Society correspondence. Ms. Fessenden explained that she had requested email addresses from the Board with an eye toward possibly emailing future correspondence in an effort to reduce expenses.

Judge Peterson asked Ms. Fessenden if the branches were paid up, and she replied that most were, though many had not submitted reports. Mr. Boyd asked if the bulk of the balance was fees from a class action suit. Ms. Fessenden said that this was correct. Mr. Lyford moved that the Treasurer's Report be approved and it was.

Ms. Fessenden then noted that the branches' annual reports as of June 30 were due and noted that she had received less than half. She encouraged the remaining branches to send theirs in and said that the branch reports would be made available to the Board by the end of September. They may be posted on the Society's website, mailed or emailed.

Reports from Branches

Judge Kopf asked for a report from each branch on its activities.

Court of Appeals

Tom Boyd reported that the Appeals branch's primary project is publication of a history of the Eighth Circuit, for which Professor Jeffrey Morris had been hired. The seven-chapter manuscript has been drafted and sent to the Court of Appeals judges, Judge Peterson, and the University of Missouri Press. The University of Missouri Press editor believes the manuscript is too lengthy, so the branch is pursuing other publishers: University of Nebraska, University of Minnesota, and the GPO, which printed the Fourth Circuit's history. Judge Peterson commented that Professor Morris had produced a thorough, excellent manuscript. Mr. Boyd agreed that it is a nice piece of scholarship but has some redundancies. Mr. Boyd said a revised draft will be sent later this year. The peer review process will take six months, and then production will take a further one and a half years.

Other Appeals activities are the John F. Dillon essay contest, with the 2001-2002 academic year award going to Evan Simone.

Judge Peterson pointed out that Mr. Boyd will be presenting at this year's State and Federal Court Historical Societies' meeting. Judge Kopf noted that the Nebraska branch was prepared to use federal practice funds to send Nebraska branch President Mary Hewitt Jones to this meeting,

but as it turns out, Ms. Jones is unable to go. But the Nebraska branch will support its members' attendance at this meeting.

Eastern District of Arkansas

Frances Ross reported that the branch has been collecting biographical essays for the Eastern and Western Districts of Arkansas. Most have been received, and the branch is now waiting on 2-3 that are taking a little longer. Ms. Ross said she will attend the State and Federal Court Historical Societies' meeting in Portland. Judge Kopf asked if she was receiving financial support for the trip, and Ms. Ross said she was. Mr. Boyd said he had not looked into funding, but he felt his firm would support this. Judge Kopf stated that he is in favor of financial support to attend the State and Federal Court Historical Societies' annual meeting, and asked that this topic be added to the Executive Committee's next meeting agenda. Mr. Boyd suggested that perhaps the best way to deal with support for this was to add it to the parent Society's budget.

Western District of Arkansas

Katherine Gay reported that the Western District of Arkansas has no members and no funds. Therefore, it has had no activities other than working with the Eastern District of Arkansas on the biographical essays.

Southern District of Iowa

F. Richard Lyford reported that the Southern District of Iowa had its annual meeting on June 21, 2002. Branch activities include display of the Polk County Bar Law Day poetry and art work in the United States Courthouse in Des Moines, Iowa, retirement videos for District Judge Charles R. Wolle and Bankruptcy Judge Russell J. Hill, and a reception for Judge Hill. Mr. Lyford reported that their treasury was depleted, so they need to do something about membership. Magistrate Judge Walters [Chair of the Federal Practice Committee of the Iowa State Bar Association] agreed to have attendees of the Federal Practice seminar go through a check-off procedure to join the Historical Society.

Mr. Lyford expressed interest in Ms. Fessenden's mention of the parent Society possibly sharing funds with the branches. He thought \$500 per year would help support activities.

The branch also has some old archival papers and vault doors. Mr. Lyford welcomed suggestions on what to do with the vault doors, and Judge Peterson pointed out that the doors are from the Clerk's Office. They bear the seal of the Southern District of Iowa and are massively heavy. Judge Kopf suggested checking with the state historical society. One considered use, said Judge Peterson, was placing them on display.

Minnesota

Judge Tunheim reported that the Minneapolis courthouse erected a window display honoring the professional career of Judge Robert G. Renner, who served as both a magistrate and district judge for the District of Minnesota. The History Committee is organizing a history room with materials

previously located in obscure places in the courthouse. They are also involved with restoration of the Fergus Falls courthouse.

Tom Boyd also mentioned the Minnesota Legal Series. Although this is not sponsored by the branch, he thought it might be of interest. Paul Nelson, author of *Frederick L. McGhee: A Life on the Color Line, 1861-1912*, will speak on October 16 at the historic Landmark Center, the old federal courthouse, about Frederick McGhee, a St. Paul lawyer who was one of Minnesota's pre-eminent African Americans at the turn of the century. The Legal Series also includes a trial re-enactment based on the Volney Davis proceedings at the Landmark Center on November 7.

Eastern District of Missouri

Judge Richard Webber reported that he and Ann Buckley met last week to discuss activities for the Eastern District: planning a membership drive, picking up with stalled video recordings of retired judges, and selecting an author to write on the three divisions of the District of Missouri.

In addition, Judge Webber gave an update on the plans for the Eastern District's educational center. A place has been designated in the Thomas F. Eagleton Courthouse, the design firm Kiku Obata has been hired, some drawings have been made, and funds are being raised for completion. The educational center will include space for a jury and a judge's bench, and will provide interactive learning on the functions of the jury, judge and other functions of the court. It will occupy about 2,200 square feet.

Western District of Missouri

Judge Ortrie D. Smith reported that the Western District is considering a second edition of *Federal Justice in Western Missouri: the Judges, the Cases, the Times* and is moving forward on an historical display in the Bell Room of the Charles Evans Whittaker Courthouse. The Bell Room features a courthouse bell from 1889. It will include six figures in an interesting, interactive display. Vice President of the Western District Historical Society Paul Donnelly is spear-heading fund raising efforts, hoping to acquire \$200,000-\$400,000, as the Court cannot be involved in fund raising.

Nebraska

Judge Kopf reported that the Nebraska District has John Wunder, Professor of North American West and U.S. Legal History, continuing on the written history of the Nebraska branch. It covers up to Judge Urbom's Wounded Knee case in the early 1970s. Following Tom Boyd's suggestion, there will be a \$500 prize awarded to the Law School of Nebraska law student who writes the best piece on Nebraska history. The piece must be of interest to Nebraska lawyers, but it does not have to concern legal history.

Judge Richard Robinson left his papers as they stood on the day of his death, and the Nebraska branch has been storing this collection of papers and portraits. The branch contacted the Nebraska state Historical Society to transfer custody and care to them. The state Historical

Society was very excited to get the collection and drove two vans over to take possession at no cost to the Nebraska branch.

North Dakota

Judge Kautzmann reported that Ardell Tharaldson, law clerk to Judge Conmy, published the book he's been preparing on the history of North Dakota judges. *Patronage: Histories and Biographies of North Dakota's Federal Judges* was recently published by Northern Lights ND Press, in cooperation with the North Dakota branch, for a reasonable rate. After recouping costs, Mr. Tharaldson will donate profits from sale of the book to the North Dakota branch. Judge Richard S. Arnold authored the foreword, and the cover has already won a national award.

The North Dakota branch has silver and porcelain pitcher artifacts with the U.S. seal and is looking into the cost of resilvering. The branch is also planning to restore Judge Davies' courtroom in Fargo so children can see what a courtroom looked like in the 1960s. This work will be carried out when Judge Webb retires, as there is a connecting door between Judge Webb's space and the courtroom. Getting people to donate furniture has been a challenge. The Grand Forks courthouse was renamed in honor of Judge Ronald N. Davies in 2001 and the Minot courthouse was recently dedicated for Judge Bruce Van Sickle. U.S. Senator Byron Dorgan was involved in both ceremonies.

Judge Peterson commented that Ardell's book is great and can serve as a guide to those wanting to start a court history. Ardell carried out the project on his own at a reasonable cost. The book's 129 pages are an easy read but contain amazing historical facts among which are that Judge Amidon sat with the 8th Circuit more than any other district judge, came up with the harmless error rule, and designed the Fargo sewage system.

South Dakota

Judge Schreier reported that the branch is planning to video oral histories and is on its third year of Christmas luncheons featuring lawyers involved in historical cases. The attorneys are taped while discussing the cases. Judge Kopf inquired as to whether these tapes are donated to the historical society. Judge Schreier replied that the court keeps a copy and gives another to the state bar, but thought donating a copy to the historical society was a good idea. Judge Kopf added that the technology required to maintain oral histories is amazing. Judge Peterson mentioned that a copy of the Wounded Knee conversation was sent to Judge Piersol, and Judge Schreier said she'd get a copy from him.

President's Report

Historical Society President Judge Kopf reported that the Executive Committee has been trying to 1) meet quarterly and 2) provide a stimulus to the branches. The Committee also asked Chief Judge Hansen to write in encouragement. When Judge Kopf asked the Executive Committee for additional comments, Frances Ross added that the Committee is encouraging the maintenance of

judges' papers, and Ann Fessenden commented that meeting on a regular basis is providing continuity which was not available previously.

Judges' Papers

President Kopf stated that it is important to make a conscious effort to dispose of chambers papers and to donate them to an historical society, adding that court libraries are not appropriate repositories as they are unable to handle the papers. Circuit Librarian Ann Fessenden confirmed that court libraries are not suitable repositories for judges' papers but said the 8th Circuit library is very interested in knowing when papers are donated as they are maintaining a list of the locations of judges' papers. Judge Kopf in turn suggested the library pass these updates to the Federal Judicial History Office. Judge Peterson mentioned the FJC's very informative *A Guide to the Preservation of Federal Judges' Papers*.

Court Histories

President Kopf noted that updates on court histories had already been made during branch reports.

Web Page

Ann Fessenden reported on a number of additions to the Historical Society's web page: annual reports, minutes of recent meetings, updated Board of Director information and branch pages, some of which offer extensive information and some of which are basic.

Ms. Fessenden said that she had gotten some branch reports and inquired as to whether these reports could be posted on the Society's web page. Further, she asked if the Historical Society had blanket approval to post reports and such documents on the web. Judge Kopf commented that he felt it was appropriate to add such documents to the web page.

Ms. Fessenden then requested that branch reports and other documents be emailed to her in WordPerfect or Word formats as this facilitates posting on the Society's website.

Ms. Fessenden asked the Board if it would be appropriate to add contact information for all the branch Board members, particularly for purposes of encouraging membership requests. Currently Society contact information is restricted to Ms. Fessenden. Judge Kopf thought this was a good idea but suggested sending an email asking for all Board members' approval to add their contact information. Judge Kopf said he would add telephone numbers, addresses, and email addresses.

At this point in the conference call, Frances Ross announced that she needed to leave the call, and Judges Schreier and Tunheim said the same. Judge Kopf told Ms. Ross he was pleased she was attending the State and Federal Historical Societies meeting in Portland. Mr. Boyd said he would be in touch with others before he goes to that meeting. Judge Kopf asked Mr. Boyd what he would be presenting on, and he replied that the program would be about how to organize an historical society and what to do for fund raising.

Possible Review of Branch/Parent Structure

Ann Fessenden raised the question as to whether the Board was interested in reviewing the branch/parent structure of the Society, looking into the possibility of combining funds and structure. She said that some branches are active and have money, while others are not active and don't have funds. Judge Kopf said he was very interested. He thought the Society could benefit from looking at structural issues, what the parent Society expects of the branches, and what the branches expect of the parent. He'd also like information on the relationship between each court and its branch as well as whether federal practice funds are being used in support of the Society. He felt a global look would be very good.

Ms. Gay said the Western District of Arkansas would be very interested in this structural review. The Western District would like to be active but has no members and no funds. Tom Boyd felt it was worth taking a hard look at the Society's structure to see if it could be improved and to ensure all courts in the Eighth Circuit have the ability to pursue individual histories. Judge Peterson asked Ms. Gay if seed money would help the Western District. She said it would help, but they would still have the problem of fund raising. The branch has pursued membership but can't solicit funds as representatives of the Court. Judge Kopf inquired as to the status of the attorney admissions fund in Arkansas, and Ms. Gay said she wasn't sure, but she thought it might be held in the Eastern District of Arkansas. Judge Kopf told her the Nebraska branch looked to federal practice funds and that attorneys approved a draft supporting the Historical Society, offering that perhaps the Western District could avoid the solicitation problem with this approach. Judge Kopf then suggested to Ms. Fessenden that review of the branch/parent structure be added to the agenda at the Judicial Conference and the next Executive Committee meeting. Ms. Fessenden said she and Joan Stevens would also research what other circuits are doing. Judge Kopf asked if the Board's consensus was to look into Society's the branch/parent structure. A motion was made to approve the review, Ms. Gay seconded the motion, and the motion was approved.

Judge Kopf brought up the date for the next meeting of the Executive Committee, and it was determined that it would be December 4.

Judge Peterson commented that the early minutes suggested the current structure but also a later review. At the formation of the Historical Society, they were plowing new ground, but they now have 15-17 years of experience.

Judge Kopf asked Judge Peterson and Mr. Boyd to confirm the parent Society is a 501(c)(3) nonprofit corporation, and they did. Ms. Fessenden stated that the Society renews its status every year with the IRS and that the branches are subsidiaries. There was discussion in agreement that the branches are not separately incorporated but are subordinate to the parent organization and that the parent and its subordinate branches are tax exempt under section 501(c)(3). Mr. Boyd added that he had a copy of the IRS letter to this effect. Judge Kopf asked Mr. Boyd to send a copy to the Board and suggested the letter be posted on the web.

Other Topics

President Kopf asked if anyone had any other comments for the meeting.

Mr. Boyd brought up the topic of court historians. He said that Nebraska and the Southern District of Iowa have court historians and inquired as to whether any other branches had made appointments. None were reported. Judge Kopf said that Mr. Wunder had asked to be appointed court historian as he believed this would help him gain access to court records for his research regarding the Nebraska branch history. Judge Kopf suggested this was an approach that could prove helpful to other branches in pursuing histories.

Judge Kopf thanked everyone for participating in the meeting and extended a special thanks to Ann Fessenden for all her efforts in Historical Society operations. He also thanked Joan Stevens for her work.

A motion was made to adjourn the Historical Society Board meeting. The motion was seconded, and the meeting was adjourned at approximately 1:20.

Ann T. Fessenden,
Secretary-Treasurer

Approved:

Hon. Richard G. Kopf,
President