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# U.S. COURT OF FEDERAL CLAIMS BAR ASSOCIATION



## E-Newsletter

### Fall Edition | 2012

#### Dear Member,

We hope you enjoy our E-Newsletter. If you have any questions or comments or would like to submit an article for the newsletter, please email [newsletter@cfcbbar.org](mailto:newsletter@cfcbbar.org).

#### Upcoming Events



#### November 15:

25th Annual Judicial Conference  
U.S. Court of Federal Claims  
National Courts Building  
Washington, DC

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#### President's Message



*Luke Levasseur*

You should have heard by now that the Court of Federal Claims 25th Annual Judicial Conference will take place on November 15, 2012, here in Washington, D.C. The conference will include topical sessions at the Court led by the Court's judges and special masters during the day, followed by a reception at Decatur House just across Lafayette Park that evening. The Bar Association has been working closely with the Court to ensure that the conference will offer something for everyone who has an interest in the Court - whether you practice routinely before the Court or have only had a few experiences with the Court's jurisprudence.

If you have not yet decided whether to attend this year's conference, I encourage you to do so. In my experience, these conferences are extremely informative and educational, and provide a great opportunity for connecting with both private and government lawyers who practice in your field. The conference is also a good value, as the Court's staff and the Bar Association have worked to keep costs as low as possible to ensure the widest possible participation. In fact, consistent with our status as a 501(c)(3) organization, and in furtherance of our educational mission, we offer a scholarship program for those unable to afford even the relatively modest conference fee.

To make things easy for you, [CLICK HERE](#) for the conference website.

I sincerely hope that you will join us at this year's Judicial Conference. It will be well worth your time.

Luke Levasseur, President  
U.S. Court of Federal Claims Bar Association  
[president@cfcbar.org](mailto:president@cfcbar.org)

## Letter from the Chief Judge



*Chief Judge  
Emily C. Hewitt*

Members of the United States Court of Federal Claims Bar Association, greetings, and, from the point of view of the court year, Happy New Year! August and September brought the arrival of the Court's new roster of law clerks and the start of the new year for our returning clerks.

The "Welcome Breakfast" on September 12, sponsored by the CFC Bar Association, gave our incoming clerks an opportunity to meet judges and clerks from other chambers, members of the Court's administrative staff, and Bar Association leaders, while enjoying a delicious breakfast buffet.

The new and returning clerks were greeted by Bar Association Board members **Don Grove** of the Nordhaus Law Firm, and **Altom Maglio** of the firm Maglio Christopher & Toale, on behalf of the plaintiffs' counsel bar, and **John Fargo**, on behalf of the Department of Justice. Each Bar Association leader gave a thumbnail sketch of his own practice, and John Fargo identified the various offices within the Department of Justice that practice before the Court and the Office of Special Masters.

Other new year arrivals at the Court include several important additions to the Office of the Clerk of Court:

**Bill Barto** joined the Court in August as the Chief Deputy Clerk for Administrative Services. Bill comes to us from the AO, where he served for four years as an Attorney Advisor in the Article III Judges Division. Prior to his work at the AO, Bill provided extensive legal services to the U.S. Army both here and abroad as a Staff Judge Advocate at Ft. McNair, an Appellate Judge at the U.S. Army Court of Criminal Appeals in Arlington, VA, the Chief of the Judge Advocate General's Criminal Law Division in Arlington, VA, a Military Judge in Mannheim, Germany and a professor at the JAG School in Charlottesville, VA. Bill has a Bachelor's Degree in Political Science from Johns Hopkins University and earned his J.D. with honors from the University of North Carolina Law School.

**Jennifer Bayles** joined the clerk's office in June from the U.S. Tax Court, where she worked as a Trial Clerk from 2007-2012. Jennifer will join Anthony Curry as our first Electronic Court Recording Operator ("ECRO") Case Administrators. You will be seeing both Jennifer and Anthony in the courtroom as they learn to use this forward-looking technology.

**Ashley Reams** joined the clerk's office in May as an Intake Coordinator. Ashley came to us from the Federal Circuit, where she worked from 2009-2012 in the clerk's office as a CM/ECF Development Assistant.

The Court is also saying a fond farewell to **Special Master Gary Golkiewicz**, who has let us know that he is looking forward to spending more time with his grandson, Mason, and to **Special Master Sandra Lord**, who will be joining the Social Security Administration as an Administrative Law Judge in Fairfax, VA.

The next major Court event sponsored by the CFC Bar Association will be the Court's 25th Annual Judicial Conference to be held on Thursday, November 15th at the Court, with a reception following.

The bench and bar of both the Court and the National Vaccine Injury Compensation Program will attend the opening and closing sessions in Courtroom 201.

The opening session at 9:15 a.m. will feature the **Honorable S. Jay Plager** as moderator of a discussion with the newest judges of the U.S. Court of Appeals for the Federal Circuit: **Circuit Judges Kathleen M. O'Malley, Jimmie V. Reyna and Evan J. Wallach**. The closing session will be a panel on ethical concerns raised by collective and class actions chaired by **Judge Eric G. Bruggink**.

In its separate sessions, the Vaccine Program will provide updates on best practices and discussion of possible Vaccine Injury Table amendments.

The second morning session of the Court, chaired by **Judge Wheeler**, will address recent developments in government contract law. Early and mid-afternoon sessions of the Court will address military pay claims and the "The Changing World of Tax" chaired, respectively, by **Judges Lettow and Horn**.

All participants in the conference are then invited to adjourn to Decatur House, just across Lafayette Park from the Court, for a bench and bar reception.

The Court thanks the CFC Bar Association for its generous sponsorship of the Judicial Conference!

Upcoming events: keep an eye out for a save-the-date announcement of the Law Day luncheon at the Willard Hotel in early May.

With all best wishes,

Chief Judge Hewitt

## Bar Association to Award Law Student Scholarship

In furtherance of its mission as a 501(c)(3) organization, this year the Bar Association will award its first annual law student scholarship in honor of the Court's former Chief Deputy Clerk of Administrative Services, **Carole Bailey**.

Carole had been asked to serve as assistant dean for administration at Delaware (now Widener) School of Law when she met Judge Loren Smith. A few months later, she moved to Washington, D.C., to serve at the Administrative Conference with Judge Smith. She followed him to the Court of Federal Claims in 1985, serving as then Chief Judge Smith's first chief of staff and law clerk. Two years later, she left the Court to join the FTC, and ultimately moved to Atlantic City, where she operated a successful construction supply business with her husband, and eventually became an adjunct professor of business at the local community college. In 2001, she returned to D.C. and, seeing the needs in the D.C. school system, wrote to the Superintendent of D.C. schools, offering her assistance to do anything, eventually serving as a 4th grade teacher and adjunct professor at the University of the District of Columbia. In 2003, Carole returned to the Court as a staff attorney, and rose rapidly through the ranks, culminating in her position as Chief Deputy Clerk, from which she retired at the end of 2011. During her tenure with the Court, Carole worked closely with the Bar Association and provided invaluable help to the Association in its mission to serve the Bar of the Court.

In commemoration of Carole's longstanding commitment to public service and her tireless efforts in working with and providing assistance to the Bar Association, the Bar Association is pleased to award scholarships of up to \$5,000.00 to law students with a demonstrated commitment to public service. Application rules and eligibility requirements are available on the Bar Association's [website](#). **Applications are due by midnight on October 31, 2012**. The recipient(s) will be notified by November 15, 2012.

## Court Community Celebrates Law Day 2012

On May 1, the Bar Association hosted a luncheon at the historic Willard InterContinental Hotel in celebration of 2012 Law Day. The luncheon was attended by over one hundred Bar members,

judges and other distinguished guests. The keynote speaker at the event was **Linda Greenhouse**, who served for thirty years as Supreme Court reporter for The New York Times and is now a Senior Research Scholar in Law, the Knight Distinguished Journalist in Residence and Joseph M. Goldstein Senior Fellow at the Yale Law School.

The theme for Law Day 2012 was "No Courts, No Justice, No Freedom." Ms. Greenhouse focused her remarks on the "justice" aspect of the theme, and addressed the role of empathy in judging. She noted that empathy is generally viewed by the legal profession as having no proper place when applying the law. But according to Ms. Greenhouse, the application of the law is not clear in every case, and the outcome should not be based merely on abstract principals, but rather will depend on the judge's ability to place himself or herself in the shoes of the litigants.

The Bar Association also honored **Judge Bohdan A. Futey** for his twenty-five years of service on the Court's bench. (A separate gavel presentation ceremony honoring Judge Futey was held on May 8, as shown in the photo below.)



*L-R: Luke Levasseur, Chief Judge Hewitt,  
Judge Futey, Lewis Wiener*

Law Day was first proclaimed by President Dwight Eisenhower in 1958, at the urging of Charles Rhyne, then-President of the American Bar Association, setting aside the 1st of May of that year as the occasion to recognize our country's "great heritage of liberty, justice and equality under law." In his proclamation, President Eisenhower especially urged the legal profession to take a leading role in promoting and participating in this observance. In 1961, Congress, by joint resolution, officially designated May 1 for the celebration of Law Day.

### **In Memorium: Neil B. Kabatchnick**

When Neil B. Kabatchnick passed away this past December, he left behind a legacy of nearly fifty years of practice in which he specialized in military law, including the articulation before the United States Supreme Court of the arguments that led directly to legislation authorizing the Court of Federal Claims to provide equitable relief. See 28 U.S.C. § 1491(a)(2).

At a memorial proceeding at the E. Barrett Prettyman United States Courthouse on March 12, 2012, at which Chief Judge Royce C. Lamberth and I presided jointly, our courts heard memorials from lawyers and jurists well acquainted with Neil Kabatchnick's contributions. I am pleased that the Newsletter of the Court of Federal Claims Bar Association has been afforded the opportunity to publish the remarks of Eugene R. Fidell, Florence Rogatz Visiting Lecturer on Law at Yale Law School, who, like Neil Kabatchnick, is a leader in the practice of law on behalf of military personnel.

Chief Judge Emily C. Hewitt

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In Memorium: Neil B. Kabatchnick

Remarks of  
Eugene R. Fidell  
Florence Rogatz Visiting Lecturer in Law  
Yale Law School

March 12, 2012

Ceremonial Courtroom  
E. Barrett Prettyman Federal Courthouse  
Washington, D.C.

It is an unfortunate fact that with the growth of the District of Columbia bar and the rise in mega-firms, the sense of community among lawyers has eroded. Less binds us together than once did - although I wonder if that is one of those profession-specific myths that are repeated from generation to generation. I recall reading an essay that collected quotations going back well over a century, bemoaning the fact that all the old standards of our profession had fallen by the wayside, and that the past was a Golden Age. It's like the saying that in "the Old Country," all the men were pious and all the women were beautiful.

But even if the narrative about the decline of the bar is on the whole wrong - either because the past was not so golden or because there is more that binds us together than we might admit - there is an undeniable truth in the fact that the bar of this particular judicial district is a remarkable collection of diverse specialties, the practitioners of which may not have all that much in common professionally. To some extent this is an inevitable result of the way American law in general has evolved over the last several generations, but it is also a phenomenon that is especially salient in the District of Columbia, where what we do is so directly a function of the long and increasingly complicated shadow cast by the government.

So there is a tension in the life of the bar of this little jurisdiction. Centrifugal forces drive practitioners out to ever narrower fields of specialization in order to serve clients' needs competently. And, perhaps in response, there are centripetal forces that impel many lawyers to concern themselves with the vitality and public responsibility of the bar as a whole.

Neil Kabatchnick exemplified both of these powerful impulses. Others will speak about his long involvement with the voluntary bar and the communal life of our profession. I'll talk about his work in one of the District's innumerable specialized fields of practice - in his case, a specialty as narrow, as challenging (given the government's many advantages), and as sparsely populated as it is critical to the rule of law in a democratic society: judicial review of agency action respecting the rights of military personnel and veterans.

Neil was for many years the undisputed leader of the portion of the bar that handles military personnel claims. Many of the greatest victories were his. He was an arguing *amicus* in the landmark case of *Sanders v. United States*.<sup>[1]</sup> He also argued before the Supreme Court of the United States, and although his gifted adversary - Assistant Attorney General (as he then was) William D. Ruckelshaus - gained the day,<sup>[2]</sup> Neil had the satisfaction, following hearings at which he testified,<sup>[3]</sup> of seeing Congress enact corrective legislation that benefited a huge swath of veterans and other litigants by authorizing the United States Court of Federal Claims to do complete justice rather than being limited to the entry of bare money judgments.<sup>[4]</sup>

He was unstinting in his help to new practitioners, and, without ostentation, could cite cases by volume and page number. This was probably not as hard as it sounds, since many of the leading cases were ones in which he had been counsel.

Of course there were times when Fran (who ran the office and from whom he was inseparable), knowing Neil's propensity for helping others, would run interference if he was under the gun. But left to his own devices, Neil was never too busy to take or return a call, even if it meant putting one of his own cases aside for a while. It's one thing to be generous with your time and knowledge in a big firm with battalions of lawyers to keep the work flowing, but it's quite another if, like Neil, your practice was either solo or with only one associate or paralegal - *and Fran*.

Neil was personally modest. He never sought the limelight and perhaps for that reason you will not find his photo on *Google Images*. He believed deeply in the persuasive power of facts and his briefs showed it, sometimes to the consternation of the bench. It is widely believed that he was personally responsible when the Claims Court imposed a page limit on dispositive motions.

But he had a great nose for injustice and was tenacious on behalf of his clients. He cared deeply about them, and it showed in his writing. He was also a real gentleman, earning the respect and friendship not only of his fellow members in the plaintiffs' bar, but also of opposing counsel. Indeed, although most of Neil's cases were tried over at the Court of Claims and its successor courts, his name also appears on one in the District Court - where his adversaries included a young Assistant United States Attorney named Royce C. Lamberth.[5]

For health reasons, Neil tried to maintain an even keel. I can certainly recall occasions when he would speak with feeling about one case or another in which, in his view, the interests of justice had not been served. But I cannot remember him uttering a harsh word about another lawyer, or for that matter, about a judge. How many of us here today can say that?

Most people get a monument - a *matzevah*, in Hebrew - when they pass away. Neil will have one of those, but he already has others. You can find them in the *Court of Claims Reports*, *Claims Court Reporter* and *Federal Claims Reporter*. And you can find them in the memories of his colleagues at the bar.

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[1] 219 Ct. Cl. 285, 594 F.2d 804 (1979) (*en banc*).

[2] *United States v. King*, 395 U.S. 1 (1969). Justice Black, writing for a unanimous Court, referred to Judge Davis's opinion below, which had departed from a long line of precedent, as "illuminating and interested." *Id.* at 2. "Illuminating" is a compliment in the circumstances; "interesting" is almost certainly not.

[3] See Note, *Equitable Relief in the United States Court of Claims Under Public Law 92-415*, 23 AM. U. L. REV. 465, 482 & nn.30-31 (1973).

[4] 28 U.S.C. § 1491(a)(2).

[5] *Simmons v. Marsh*, 564 F. Supp. 379 (D.D.C. 1983) (Richey, J.).

## Bar Association Offers "Brown Bag" Programs

The Bar Association recently sponsored two "Brown Bag" events (somewhat of a misnomer, since the Bar Association provides lunch to attendees) in an effort to provide ongoing opportunities for the Court community to learn more about the Court and its various practice areas.

The first lunch program took place on Tuesday, June 26, 2012, at the Washington, D.C., offices of Sidley Austin LLP. The title of the program was "It Ain't Over 'til It's Over: The Review of GAO Decisions in Follow-On COFC Bid Protests." Panelists for the program included **Judge Victor J. Wolski** of the U.S. Court of Federal Claims; **Sharon L. Larkin**, Assistant General Counsel for Procurement Law & GAO Contract Appeals Board Judge; **David F. Dowd**, of Mayer Brown; and **Anuj Vohra**, Trial Attorney, Commercial Litigation Branch (National Courts Section), U.S. Department of Justice. The panel was moderated by Bar Association Board member **Matthew H. Solomson**, who is Counsel with Sidley Austin in the firm's government contracts practice.

The second "Brown Bag" luncheon was held on July 20, 2011, at the Court's Tayloe House. It was titled "Introduction to the Court," and the program served as a general introduction to the jurisdiction and jurisprudence of the Court for law clerks, summer associates and interns, as well as young lawyers. A panel of judges and both government and private practitioners conducted a "tour" of the court's unique and varied substantive practice areas. The panel was moderated by Matthew Solomson. The program was well-attended and very well-received. Our deepest thanks go out to the panelists: U.S. Court of Federal Claims **Chief Judge Emily Hewitt** and **Chief Special Master Patricia Campbell-Smith**; **John Fargo**, Director, Intellectual Property Staff, Civil Division, U.S. Department of Justice; **Emily Meeker**, Environment and Natural Resources Division, U.S. Department of Justice; **Shelley de Alth Leonard**, Trial Attorney, Tax Division, U.S. Department of Justice; and **Don Grove**, managing partner in the Nordhaus Law Firm's D.C. Office specializing in Indian Law.

Our next "Brown Bag" program will take place this Fall; details will be forthcoming shortly. We hope to see you there!

## Find Us On Facebook

The Bar Association has a Facebook page where we will post the latest news, events and other important information. Click on the link below and when you get to our page click "Like" so you can stay informed.



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