Newsletter of the

WESTERN DISTRICT OF WISCONSIN BAR ASSOCIATION

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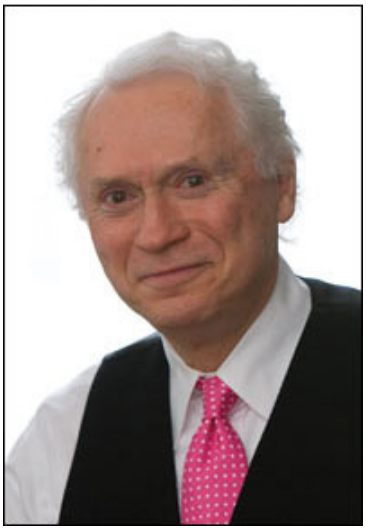
Annual Meeting to Feature Evans Speech, Conley Investiture

This year's Annual Meeting of the Western District of Wisconsin Bar Association on May 21, 2010, will be an opportunity for members to hear an address from one of Wisconsin's most highly respected and admired jurists as well as to participate in the investiture of our District's newest judge.

The keynote speaker at our lunch will be the popular Judge Terence Evans, who has served on the United States Court of Appeals for the Seventh Circuit since 1995, having also served as a Judge and Chief Judge on the United States District Court for the Eastern District of Wisconsin from his appointment in 1980. Judge Evans is a Wisconsin native who served as an assistant district attorney and in private practice before taking the bench in 1976 as a Circuit Court judge for Milwaukee County. He took senior status in the Seventh Circuit on January 7 of this year, to coincide with the 30-year anniversary of the date he first took the federal bench. Judge Evans' career has been marked by the thoughtfulness and thoroughness of his opinions, and on numerous occasions by his wit—which will surely also be featured in his remarks and highlight what promises to be a memorable luncheon. The luncheon will begin at noon at the Concourse Hotel in Madison.

As has been the Association's annual practice, our meeting will also feature a CLE program from 1:30 to approximately 3:45 at the Federal Courthouse. Presentations this year will include a summary of civil and criminal law developments from representatives of the Wisconsin Attorney General's office, the Federal Public Defender's office, and the U.S. Attorney's office, as well as a presentation on "HIPAA for Litigators." Clerk Oppeneer will provide his valued annual summary of Court statistics and information from the Clerk's office.

This year's program will also include our traditional and popular Judges' panel, with a first appearance by our newest Judge, William M. Conley. The panel will be moved to a slightly earlier time (2:55 p.m.) to allow participants and attendees time to travel to and attend Judge Conley's investiture, commencing at 4:00 p.m. at the Lecture Room of the Monona Terrace.



Wisconsin Law Journal Photo by Corey Hengen

Hon. Terence T. Evans

We are pleased that Judge Conley has chosen to coordinate his investiture with our annual meeting, and this will be a unique opportunity for our membership to welcome Judge Conley to his service on the Federal bench. Following the investiture, there will be hors d'oeuvres and refreshments served outside (weather permitting) at the Monona Terrace, with an alternative indoor location at the Terrace if required.

Registration materials and a full agenda for this Annual Meeting are enclosed with this newsletter.

We look forward to seeing you there.

Western District of Wisconsin Bar Association 2009-2010

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President's Corner

by Sarah A. Zylstra

On March 4, 2010, the United States Senate confirmed the nomination of William Martin Conley as a District Court Judge for the United States District Court of the Western District of Wisconsin.

I got a chance to sit down and talk with Judge Conley about his new job.

ATTY. ZYLSTRA: Congratulations. I understand that you are already working. When did you start?

JUDGE CONLEY: My first official day on duty was April 12th. Judge Crabb was kind enough to swear me in privately at the end of March so that I could begin to perform judicial and administrative tasks. The formal investiture is scheduled for May 21st in connection with the Western District of Wisconsin Bar Association's annual meeting.

ATTY. ZYLSTRA: For those members who don't know your legal history well, can you summarize your legal background?

JUDGE CONLEY: I was a partner in the law firm Foley & Lardner LLP and worked there for 25 years. Over my career, I specialized mainly in commercial litigation, handling a wide variety of matters, including constitutional, distribution, antitrust and regulatory litigation. I also counseled clients in those areas. I received a B.A. in 1978 and a J.D. in 1982, both from the University of Wisconsin here in Madison. After graduating from law school, I clerked for Judge Thomas E. Fairchild on the Seventh Circuit for two years before joining Foley & Lardner.

ATTY. ZYLSTRA: Can you tell the WDBA membership a little about your personal background?

JUDGE CONLEY: I was born and raised in Rice Lake, Wisconsin. My Dad was a city attorney and a trial lawyer there. My mom was a school teacher; before having six children. Of my five siblings, four also earned law degrees, so you could say it runs in the family. I am married to a wonderful woman, Susie, and we have two children, a son and a daughter.

ATTY. ZYLSTRA: For many years, the Western District has earned a reputation for being efficient and resolving cases quickly. How have your personal experiences in this district shaped what you hope to do?

JUDGE CONLEY: I have had many cases in the Western District and in my experience, I always have found this court to be efficient and run well. The clerk's staff here is simply outstanding. So from my perspective, my goal is to support, or at least not to get in the way of, all the good things that are already happening here.

ATTY. ZYLSTRA: The Western District of Wisconsin has very few local rules compared to other federal and state courts. Are you in favor of adding more local rules?

JUDGE CONLEY: I do not anticipate that being necessary. The Federal Rules of Civil Procedure are quite detailed already, and this court hasn't felt the need to put a separate gloss on them. I might be persuaded otherwise if there was a reason to do so, but in general, think that local rules tend to make it more difficult, not easier, for people to practice in this District, whether or not they do so regularly.

I do intend to review individual procedures, get input from practitioners and then if necessary, I might tweak those, without making radical changes, in ways that I think would make this court run best for the court and the litigants before me, not unlike what Judge Griesbach has attempted in the Eastern District of Wisconsin.

ATTY. ZYLSTRA: Do you intend to allow lawyers to conduct voir dire in your courtroom or will you follow the current Western District practice of the court conducting voir dire?

JUDGE CONLEY: Coming in, I'm inclined to follow the court's current practice, but it is possible that I might vary that practice if a case truly warranted it.

ATTY. ZYLSTRA: Do you have tips for the attorneys who'll be appearing before you or any pet peeves you would like to share?

JUDGE CONLEY: Not that most lawyers would not already know. In general, what's most important is to just convey, in a straightforward and organized way, the aspects of the case that are crucial for the court to understand. How you do that will vary depending upon the nature of the case.

As far as pet peeves, I would hope that all remarks from counsel will be directed to the bench. I don't want attorneys to have a separate dialogue with each other while I'm on the bench.

ATTY. ZYLSTRA: Any thoughts you would like to share with the members of the Western District Bar Association?

JUDGE CONLEY: Only that I'm sincerely grateful for and humbled by the position, and by the confidence that has been placed in me by the President, the Senate, and those others involved in my nomination. I will do my very best to justify that confidence, uphold the traditions of this court and to deliver justice to the people who appear in front of me.

WDBA

MISSION STATEMENT

It is the mission of the Western District of Wisconsin Bar Association to promote the just, speedy, respectful and efficient determination of every action filed in the District Court: by acting as an effective liaison among the District Court, federal practitioners, litigants and the public; by encouraging, fostering and supporting educational opportunities that improve the practice of law in this District; and by serving the needs of the District Court, federal practitioners, litigants and the public.

WDBA

Western District of Wisconsin Bar Association

AGENDA
ANNUAL MEETING AND CLE PROGRAM
FRIDAY, MAY 21, 2010

10:30 a.m. **Annual Business Meeting -** United States Courthouse, Room 250

12:00 noon **Eighteenth Annual WDBA Luncheon** - The Concourse Hotel,
1 West Dayton Street
Keynote Speaker: Hon. Terence T. Evans,
Seventh Circuit Court of Appeals

CLE Program and Judges' Panel - United States Courthouse, Room 250

1:30-1:55 p.m. **CLE Program: HIPAA for Litigators**
Sarah Coyne, Quarles & Brady

1:55-2:20 p.m. **CLE Program: Civil Law Update/Seventh Circuit E-Discovery Pilot Project**
Richard Briles Moriarty, Assistant Attorney General
Wisconsin Department of Justice

2:20-2:45 p.m. **CLE Program: Criminal Law Update**
U.S. Attorney/Federal Public Defender Representatives

2:45-2:55 p.m. **Break**

2:55-3:20 p.m. **Judges' Panel and Discussion of Practice Expectations**

3:20-3:45 p.m. **State of the Court/Electronic Filing Sub-Committee Report**
Peter Oppeneer, Clerk of Court; James Peterson, Godfrey & Kahn

3:45-4:00 p.m. **Travel to Investiture for the Hon. William M. Conley**

4:00-5:00 p.m. **Investiture — Monona Terrace, Lecture Hall**

5:00 p.m. **Reception (beverages and hors d'oeuvres) — Monona Terrace, Lecture Hall**

Vehicle Searches Incident to Arrest After *Arizona v. Gant*

In *Arizona v. Gant*, 129 S. Ct. 1710 (2009), the United States Supreme Court significantly curtailed police authority to search vehicles incident to arrest. Before *Gant*, it was generally understood that the "bright line" rule first articulated in *New York v. Belton,* 453 U.S. 454 (1981), allowed law enforcement to conduct vehicle searches--to include containers therein--when the vehicle had been recently occupied by the arrestee. *Gant*, 129 S. Ct. at 1718-19.

Although the "search incident to arrest" rule was first developed to preserve evidence and for officer safety (see *Chimel v. California*, 395 U.S. 752, 763 (1969)), the Court in *Belton* reasoned that, in the context of vehicle searches, police officers could not be expected to follow a "highly sophisticated set of rules, qualified by all sorts of ifs, ands, or buts" and thus developed the bright line rule noted above. *Belton*, 453 U.S. at 458-60. In 2004, the Court held that the bright line rule allowed searches even when the defendant was arrested outside of his car. *Thornton v. United States*, 541 U.S. 615, 623 (2004). Additionally, the rule was extended to searches where a person was arrested for minor crimes and traffic offenses. *Atwater v. City of Lago Vista,* 532 U.S. 318, 354 (2001)(no constitutional violation when driver was arrested and searched for failing to wear a seatbelt). Last, the rule did not require officers to show a connection between the offense triggering arrest and either the purpose or scope of the search. *See United States v. Robinson,* 414 U.S. 218, 235 (1973)(approving as constitutional the search of a crumpled-up cigarette pack that could have held neither a weapon nor evidence of the offense--driving with a suspended license); *Belton,* 453 U.S. at 455 (marijuana found in car in connection with stop for speeding); *Thornton,* 541 U.S. at 618 (gun found in car searched after initial contact based on driving with improper license plates); *Atwater,* 532 U.S. at 324 (driver arrested, handcuffed, and forced to empty her pockets after having been arrested for failing to wear a seatbelt).

The facts in *Gant* provide context for the Court's reevaluation of the "bright line" search incident to arrest rule as applied to vehicle searches. In 1999, Tucson, Arizona police were investigating whether a particular house was being used for drug distribution. 129 S. Ct. at 1714. Two officers approached the house and knocked. *Id.* Rodney Gant answered the door and told the officers that the homeowner would return later. *Id.* at 1714-15. The officers conducted a records check on Gant, finding a valid warrant for Gant's arrest for driving without a license. *Id.* at 1715. That evening, Tucson officers returned to the suspected drug house. *Id*. One of the officers who had spoken to Gant earlier saw him arrive and park his car in the driveway. *Id.* Gant was ten or twelve feet away from his parked car when the officer arrested him on the existing warrant. *Id.* The officer handcuffed Gant and secured him in the back of a patrol car. *Id.* Two officers searched Gant's car incident to arrest finding cocaine and a gun. *Id.*

While not explicitly overruling *Belton*, the *Gant* Court held that vehicle searches incident to arrest were permissible only: (1) if the arrestee is unsecured and within reaching distance of the passenger compartment or (2) when it was "reasonable to believe" that the vehicle contained "evidence relevant to the crime of arrest." *Gant*, 129 S. Ct. at 1719, 1723. The Court did not elaborate how the "reasonable to believe" standard compared to existing standards of suspicion justifying Fourth Amendment intrusions such as "probable cause" or "reasonable suspicion."

The Court held that the search of Gant's car failed both prongs. First, Gant could not have reached into his vehicle because he was handcuffed and secured in a patrol car. Second, the police lacked any reason to believe that Gant's vehicle contained evidence of the crime of arrest, that is, driving with a suspended license.

The *Gant* Court limited its ruling to searches of vehicles incident to arrest and pointedly affirmed two alternative established exceptions to the warrant requirement for vehicle searches: (a) when "reasonable suspicion" exists to search a car for weapons (under *Michigan v. Long,* 463 U.S. 1032 (1983) (which applies *Terry v. Ohio,* 392 U.S. 1 (1968) in the context of vehicle stops to hold that an officer did not violate a defendant's Fourth Amendment rights when he searched his vehicle after spotting a knife in the car)); and (b) when probable cause exists to believe that a car contains evidence of a crime. *United States v. Ross,* 456 U.S. 798 (1982) (allowing search of a vehicle where officers acting on an informant's tip stopped the vehicle to search for suspected drugs).

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Western District NEWS

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