

2021 ANAO Mid-Year Meeting

May 1, 2021

The 2021 ANAO Mid-Year meeting convened at 8:00 pm (New York time) via video link. The following persons participated:

Australia: Jennifer Davies; Glenn Martin, Carolyn Kirton

Bermuda/CAJO: Juan Wolffe; Vivian Taylor-Alexander

Canada: Thomas Cyr; Julie Dutil; Robert Blair; Clayton Conlan; Kristine Eidsvik

Kazakhstan: Abdolla Saken; Aidar Aralbayev

New Zealand: Gerard Winter; Jeff Smith

Philippines: Anne Beatrice Aquana-Belmaceda; Eileen Joy Bonghanoy

Puerto Rico: Elsie Ochoa

Taiwan: Grace Lin

United States: Allyson Duncan; Richard Clifton; Cynthia Rufe; Marilyn Huff; Margaret McKeown; Joanna Seybert

A. Previous Minutes

Julie Dutil moved and Cynthia Rufe seconded the approval of the previous minutes of the Sunday, May 2020, Mid-Year ANAO meeting via video link. The participants voted to approve.

B. President's Report

1. Allyson Duncan reported on significant events that have occurred since the last meeting.

- a. Louise Mailhot received the Order of Canada, one of Canada's highest honors.**
- b. Tsogt Tsent was appointed to the Mongolian Supreme Court.**
- c. Peter Hall, FJA member, former chair of the First Study Commission and Judge, Second Circuit Court of Appeals, passed away.**
- d. Allyson asked whether any participants had information they wished to share during the present meeting, and further asked that they please similarly communicate with her and other ANAO members between meetings. She then welcomed Richard Clifton, the new President of the Federal Judges Association in the United States, and he introduced himself to the participants.**

2. Annual IAJ Meeting

- a. The Presidency Committee has recognized that it would not be feasible to schedule an in-person meeting in Costa Rica in**

September of 2021. It therefore decided that the Annual IAJ meeting is to take place virtually on September 11 and 12, and possibly 13 and 14 and scheduled on Rome local time. Subject to Central Council approval, subsequent meetings are to take place in Israel in 2022 and Taiwan in 2023.

- b. Although time would be allotted for regional group meetings during the annual meeting, the variations in time zones encompassed within ANAO make that difficult. The group therefore decided to hold its annual meeting at an as-yet-to-be determined time prior to the September meeting.**
- c. Robert Blair reminded the group of the discussion topic to be considered at the Annual Meeting. Carolyn Kirton had agreed to present a paper on Implicit Bias, and Juan Wolffe, Clayton Conlan and Grace Lin agreed to respond. The ANAO membership was comfortable with proceeding with the discussion in a virtual format.**

d. Dues

Last year's dues were divided in half; this year's dues will return to the full amount except for those who paid the full amount last year. Those members will be allowed to remit half this year. The status of countries scheduled for membership termination

due to non-payment of dues will be frozen and the issue revisited at the next meeting.

e. With respect to the Study Commissions, the following matters were discussed.

(1) The substantive work of the Commissions is to be conducted in writing. A time period will be allocated during the Central Council meeting for the chairs to report out.

(2) With respect to elections, the IAJ Presidency Committee has expressed a preference that the Study Commissions continue them on schedule, and the First, Second and Fourth have expressed a willingness to do so. The 3rd Study Commission is, at this writing, considering holding them over.

3. Amendments to the IAJ Governing Document

- a. An amendment to the document is proposed that would provide for a postponement of an annual meeting in the case of a force majeure event. A red-lined version was circulated with the agenda on March 31, 2021.**
- b. Allyson entreated members to give proxies to other members to vote if they are unable to attend or participate in the 2021**

Annual Meeting. It requires a 2/3 vote of the total membership to amend the Constitution.

In this context, she reminded everyone that a constitutional amendment put forward in Nur-Sultan that if passed would have allowed the Caribbean Association of Judges Organization (CAJO) to join as an IAJ member instead of functioning through Bermuda failed because, although attracting a majority of votes cast, failed to reach the threshold for amendment. Going forward, Juan Wolffe is to work with Sally Cahill of the United Kingdom on language to bring back to the Central Council.

4. Working Groups and Consultative Groups

a. IAJ

(1) Creating New Judicial Associations

(Michael Skoeberg)

This Working Group has completed its work. That work was reviewed by Gerard Winter and Allyson Duncan for a common law perspective.

b. Judicial Education

Rafael de Menendez chaired this group prior to his stepping down from the IAJ Presidency Committee as President of the Ibero-American Regional Group and Chair of the Judicial Education Working Group. ANAO members Allyson Duncan,

Robert Blair and Virginia Kendall were members of this group. Since Rafael stepped down, its work has largely ceased.

Several years ago Glenn Martin brought forward the principles of the International Organization of Judicial Training (IOJT) with a request that the IAJ consider endorsing them. The Presidency Committee forwarded the principles to Rafael's working group for consideration, where they have languished since.

Walter Barone of Brazil graciously agreed to assume the position as President of the Ibero-American Regional Group and to take over the work of the Judicial Education Working Group.

Allyson facilitated the exchange of information on the principles between Walter and Glenn to continue their consideration for purposes of presentation to the IAJ.

c. Monitoring Working Group

The work of the Monitoring Work Group, assigned to review the self-assessments of member associations on a rotating basis, is currently on hold. Clayton Conlan and Kristine Eidsvik graciously agreed to serve as the ANAO representatives to this Working Group when it is reinvigorated.

d. Working Group on Adding Another IAJ Official Language

The IAJ created a working group to consider adding Portuguese to the list of official languages recognized by the IAJ. Elsie Ochoa agreed to represent ANAO on this working group, the efforts of which also appear to be largely on hold.

e. The United Nations

The IAJ serves a liaison function with the UN on several matters. ANAO Member and former President Joanna Seybert is the IAJ's representative to the UN and provides an annual report on relevant activities to the Presidency Committee.

One of the primary functions the IAJ engages in with respect to the UN is to report three times a year to UNODC Special Rapporteur Garcia-Dayan. Glenn Martin has been the ANAO representative and has asked to be relieved of this responsibility. Margaret McKeown offered to work with this effort, because of its overlap with her role as Chair (?) of ABA-ROLI. Allyson is to communicate with Glenn and Margaret after the meeting about this responsibility.

And finally, the IAJ receives frequent requests from agencies associated with the UN to participate in sponsored activities. Allyson asked that ANAO members consider volunteering to participate in these initiatives, as members of the European Regional Group have done.

Examples include:

- **Webinar on NGO Access to the UN during the pandemic (Allyson participated)**
- **ConGo (Congress of NGOs) annual meeting, November 14-16, 2021 (Allyson has signed up to participate, at least periodically, and Joanna usually does as well.)**
- **UN Group On AI. Gerard Winter asked a judge from New Zealand who has written on the topic, David Harvey, to participate.**

5. The Provident Fund

When former members of the Turkish Judicial Association were ousted from office and imprisoned, the European Regional Group of which they were a part created a Provident Fund initially to pay the dues of the Association, Yarsav, and then to provide support for the families of affected judges. The requests continue to come in and the funds have large been depleted. Allyson circulated banking information that would enable individual ANAO members to make contributions for the support of their former colleagues.

6. Country Reports

a. Australia

Glenn Martin reported for Australia. He reported that courts are generally functioning at or near capacity. However, there is a backlog, particularly in criminal cases, that will take 7 to 10 years to fully resolve. Politicians have expressed concerns about certain rulings.

With respect to travel, individuals are not restricted as to movement within Australia, but international travel is subject to restrictions.

Compared to other countries, however, Australia has remained relatively unscathed.

b. Bermuda

Juan Wolffe reported for Bermuda. He described a situation in which Bermuda had largely come to terms with early waves of COVID, but is now experiencing a third wave that is resulting in an unprecedented number of positive infections and deaths.

The courts have experienced the uptick differently. The magistrate judge courts have generally remained up and running and have fared relatively well. In the Supreme Court, however, jury trials have been seriously affected. The Supreme Court was only able to conduct one jury trial last year (2020) and two so far this year (2021). Courts of Appeals proceedings have proceeded virtually.

c. CAJO

Justice Vivian Taylor-Alexander spoke about other areas of the Caribbean. She described a situation in which judges have become increasingly isolated from the courts and each other. Her efforts have therefore been largely directly in reaching out with judicial training and outreach initiatives to support judicial well-being.

Although some areas have resumed jury trials, most have not. Most have relied on Zoom to conduct hearings, case management and detention proceedings. This situation is likely to continue through September. Like Australia, the Caribbean faces a back log that will take years to resolve.

d. Canada

Thomas Cyr has served as President of the Canadian Association of Superior Court Judges since July of last year. Although that would normally have involved considerable travel, in-person meetings have not taken place since March of last year.

The provinces of Canada have responded to COVID differently with respect to judicial administration. They have also been impacted differently and at different times.

For example, New Brunswick is still having jury trials, holding them in convention centers. It was one of the first provinces to empanel a jury.

Each province has a recovery docket and is trying to reach a point of equilibrium with respect to their caseload.

The Association was asked to appear before the Justice Committee of the House of Commons, and he and Kristine Eidsvick represented the group. They were asked to discuss how courts were responding to the pandemic, and were very well received.

With respect to the Association, it is continuing to handle its workload and litigating cases involving issues where judges are

impacted. It also speaks out when the government is considering legislation which will impact the judiciary. The Association is working on implementing term limits for Chief Justices.

New conduct legislation, which will hopefully be more streamlined and equitable, is expected shortly after lengthy and cooperative work with the Canadian Judicial Council (CJC).

The Judicial Compensation and Benefits Committee meets every four years to review judges' salaries. Although the meeting has been postponed due to COVID, the proceedings have been initiated. Public hearings with submissions by the Association were scheduled May 10 and May 11, 2021. Assistance from other IAJ members was obtained to help with this process.

e. Kazakhstan

When COVID first surfaced the country established a working group to monitor health and safety issues with respect to judges. Despite that activity, the Association has nevertheless also been able to organize a number of important international meeting.

At this point, vaccinations are proceedings, but fifty per cent of the courts' work is still virtual. The Supreme Court has also initiated Artificial Intelligence initiatives that will enable judges to work more effectively remotely.

f. New Zealand

In New Zealand, courts are all basically up and running but the backlog numbers are similar to those in Australia. However, the freedom to travel in the area has increased dramatically of late, and the level of social interactions are returning to normal.

There has been a significant increase in the number of judicial appointments, with 22 coming on board in the past two months.

Judges have experienced attacks in the press which find their way into social media, and those sources have targeted both judges and members of their families.

Judges are looking at the issue of the mandatory retirement ages of 70, and are considering seeking to increase it.

In September, the Association is planning a first-ever judicial gathering discussing a range of issues of mutual concern.

g. Philippines

Anne Beatrice Aquana-Belmaceda reported for the Philippines. The Association has had limited activities due to the pandemic. In the national capital region, courts have essentially been closed for the past month due to a spike in cases. Elsewhere, individuals work from home or there are skeletal rotating work forces. Hearings have been conducted on the Judiciary 365 platform, but internet connectivity is not as good as it could be.

An effort is being made to help judges and court personnel who have been personally affected by the pandemic.

Red-tagging, such as putting up a poster with a judge's poster on it, has become an increasing problem. This is a form of blacklisting or public shaming of judges considered to be too lenient on individuals perceived as communist sympathizers. The integrated bar of the Philippines is trying to find a solution to this problem.

Eileen reported that COVID numbers are not as high in her part of the Philippines, and vaccinations have begun. There is not much red-tagging in her area either.

h. Puerto Rico

Elsie Ochoa reported for Puerto Rico. All of the civil cases are being processed virtually and all the criminal matters in person. Family court, which is where she sits, are approximately fifty-fifty.

Judges have had success in being treated as first responders, and have all been vaccinated.

The government is concerned about the use of domestic tourist flights to which allow suspected criminals to leave the area and go to other states. It is seeking to address the problem.

The Press has also expressed concern about a sentence given to a domestic violence victim that was regarded as too lenient.

i. Taiwan

Grace Lin reported. The new Presidency Committee has been created and has begun the planning process to host the 2023 annual IAJ meeting.

The judiciary system in Taiwan has not been badly affected by COVID; trials are continuing as usual except for the fact that participants are required to wear masks and comply with social distancing requirements. Taiwan's success in thwarting the spread of the virus has in fact handicapped its vaccination efforts, as people do not perceive COVID to be a significant problem.

j. United States

Rick Clifton spoke primarily about the COVID situation in the US generally. There have been 575,000 deaths in the country attributed to COVID, ten percent of the population have been estimated to have contracted the disease. A third of people have been vaccinated but vaccinations are now running into resistance although they are widely available.

The Courts have been impacted as they have elsewhere. The Supreme Court has been conducting arguments by telephone and will continue to do so for the remainder of this term. Hopefully by

the start of the next term in October it will meet in person but that is unclear.

Courts of Appeals have functioned virtually fairly well but hope to begin meeting in the fall, although it remains to be seen when attorneys will be able return to the courts.

District courts, the trial courts, have a bigger problem because of the need to accommodate parties, witnesses, juries, etc. There is a substantial backlog as a result.

State courts have a more substantial backlog because they tend to have fewer resources than the federal system.

Cynthia Rufe talked about the murder of Esther Salas's son and the need to increase the home security of judges. The FJA is working with other entities to have Congress take action in this regard. She also talked about the need to get the criminal docket cases heard.

Allyson thanked everyone for their participation and the meeting adjourned at 10:00 pm.