

# On Seminar Circuit, a Ski Slope Doesn't Hurt

## Under new policy, judges are reporting trips to privately funded seminars. A popular destination: Bozeman, Mont.

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Legal Times  
November 26, 2007

While Washington was roasting through an unbearably hot summer, Judge Royce Lamberth of the U.S. District Court for the District of Columbia took an expense-paid trip in August to a seminar in the Rocky Mountain mecca of Bozeman, Mont.

Lamberth says the weeklong seminar on terrorism issues, hosted by the Foundation for Research on Economics & the Environment, was well-balanced and informative, and the scenic locale certainly didn't hurt, either.

"I think if you want to get judges to attend, you want to do it someplace nice, frankly," Lamberth says. "If there was a course like that in Baltimore, I don't think I would go to it, no offense to Baltimore."

Lamberth says he attended another weeklong seminar this month in Sanibel Island, Fla., hosted by George Mason University's Law & Economics Center. And he doesn't believe the free trips create any real or perceived conflicts of interest for him as a judge.

But federal judges like Lamberth face increased scrutiny this year under a new policy requiring greater disclosure of expense-paid trips to privately funded seminars. Judges now must file seminar disclosure forms. So far this year, 11 judges from district and circuit courts within the D.C. and 4th circuits have reported 13 trips to destinations including Bozeman; Sedona and Tucson, Ariz.; Aspen, Colo.; and New York. They've also reported attending several local seminars.

Privately funded seminars, derided by critics as corporate-funded judicial junkets, triggered the new policy from the Judicial Conference, which became effective Jan. 1. The policy, which applies to all federal judges except Supreme Court justices, requires that judges report their attendance at privately funded seminars to their court system within 30 days of the expense-paid trip. Seminar hosts also must disclose all of the private funders of their seminars, although the amounts of those donations aren't revealed.

The Judicial Conference approved the new policy in September 2006 under intense pressure from public interest groups, the media, and a bill pushed by Sen. Patrick Leahy (D-Vt.) that would have imposed stricter requirements on privately funded seminar trips.

Leahy, the Senate Judiciary Committee chairman, let his bill die because the Judicial Conference took action, but it "is certainly something he is closely following and monitoring," says Leahy

spokeswoman Erica Chabot.

“Congressional intervention here is certainly not beyond the scope of possibility if Sen. Leahy doesn’t see the results that he thinks should be coming from this [policy],” she says.

<b>TRIPS TO PRIVATELY FUNDED SEMINARS IN 2007</b>			
<b>Judge</b>	<b>Court</b>	<b>Seminar/Seminar Host</b>	<b>Location</b>
John Facciola	U.S. District Court, D.C.	“The Attorney Client Privilege,” The Sedona Conference	Sedona, Ariz.
Douglas Ginsburg	D.C. Circuit	“Economics, Energy, and the Law,” Foundation for Research on Economics & the Environment	Bozeman, Mont.
Royce Lamberth	U.S. District Court, D.C.	“Terrorism, Civil Society, and the Law,” FREE	Bozeman, Mont.
M. Blane Michael	4th Circuit	“Panel Presentation to Accepted Law Students” and “Root Tilden Scholarship Selection,” NYU School of Law	New York City
Diana Gribbon Motz	4th Circuit	“Root Tilden Scholarship Selection,” NYU School of Law	New York City
Louis Oberdorfer	U.S. District Court, D.C.	“Terrorism, Civil Society, and the Law,” FREE	Bozeman, Mont.
David Sentelle	D.C. Circuit	“Terrorism, Civil Society, and the Law,” FREE	Bozeman, Mont.
Judith Rogers	D.C. Circuit	“The Courts and Social Policy,” The Aspen Institute	Aspen, Colo.
<b><i>Includes only D.C.-area judges who made trips outside the Washington metro area.</i></b>			
<b><i>Source: court filings.</i></b>			

## **FREE TRAVEL**

The new policy, which has several loopholes, requires only greater disclosure. It doesn’t prevent federal judges from taking expense-paid trips to seminars in resort locales funded by private groups, some of which have scores of corporate sponsors. Though they are not required to give specific amounts, judges must report travel expenses that total more than \$305 per event, the threshold for reporting on annual financial disclosure forms.

“It’s inadequate. I think the judge should have to reveal the value of the [trip],” says Stephen Gillers, a New York University School of Law professor who has taught and written about judicial ethics.

“It’s all about public perception,” Gillers says. “These are trips that ordinary Americans can’t take, to Montana in the summer, to a golf course in Arizona in the winter. You go to meetings in the morning, but you’re playing golf in the afternoon.”

Gillers believes the impartiality of judges “might reasonably be questioned” if they receive free trips to seminars funded by corporations or other groups with litigation before the courts. “I’m not saying the judge shouldn’t go on the trip, but the judge shouldn’t sit on that issue if it comes

before him," Gillers says.

Community Rights Counsel, a nonprofit public interest law firm in Washington, D.C., has been the main force pushing for greater disclosure and transparency about privately funded judicial seminars. The new policy is "a second-best solution," says Douglas Kendall, the group's executive director. "I don't think there is an effective system for enforcing judicial disclosure rules, either these disclosure rules or the pre-existing judicial disclosure rules," he says.

Senior Judge Louis Oberdorfer of the U.S. District Court for the District of Columbia also attended the terrorism conference in Bozeman hosted by the Foundation for Research on Economics & the Environment. He says he has been to three or four of FREE's seminars.

"I don't even remember what I got out of it," Oberdorfer says about the last seminar. "I'm very comfortable with [the seminars]. I don't think my mind has been poisoned."

FREE is a nonprofit libertarian group that advocates for limited government involvement and the use of economic principles as means of protecting the environment. "We're completely supportive of transparency as far as where the judges go and who reimburses them," says Pete Geddes, executive vice president of FREE.

The group, which has held judicial seminars for 17 years, pays for judges' travel, meals, and lodging, Geddes says.

The Law & Economics Center at George Mason has a similar expense policy for its seminars.

"We do [seminars] in the off-season in nice places," says center director Frank Buckley. "They are held in retreat-type locales, so the idea is, once you get there you're prepared to do the work."

## **WHO'S PAYING?**

The Administrative Office of the U.S. Courts isn't tracking the number of judges who attend privately funded seminars. It also doesn't know whether seminar hosts are reporting all of the private funders for their seminars. "We don't have the administrative wherewithal to police it," says AOC spokesman Dick Carelli.

Judges also don't have to file seminar disclosures for expense-paid trips this year if they were invited to the same seminar last year, Carelli says.

Seminar disclosure forms from district and circuit judges within the D.C. and 4th circuits reveal that judges from the U.S. Court of Appeals for the D.C. Circuit and the U.S. District Court for the District of Columbia lead the pack, with three judges from each court attending privately funded seminars this year.

Douglas Ginsburg, chief judge of the D.C. Circuit, took an expense-paid trip to a FREE seminar in Bozeman in July. In 2005, Ginsburg resigned from FREE's board of trustees after Community Rights Counsel filed a judicial misconduct complaint alleging that his association with FREE brought his impartiality as a judge into question. That complaint, along with two others against other federal judges serving as trustees, were dropped after their resignations from the board. Ginsburg, who still serves on the judicial advisory board for the Law & Economics Center, didn't return calls for comment.

In June, Judge Catherine Blake of the U.S. District Court for the District for Maryland attended a two-day, privately funded conference on scientific evidence in the courts hosted by the American Enterprise Institute-Brookings Judicial Program. “I would be extremely surprised if there would be anything in this particular program, either in the content or the funding, that would cause any need for me to recuse myself in a case,” Blake says.

The AEI-Brookings seminars have dozens of corporate sponsors, including ExxonMobil, BP America, the American Petroleum Institute, General Motors, Pfizer, and Union Pacific Railroad. A program representative couldn't be reached for comment.

Judge M. Blane Michael of the 4th Circuit took two trips paid for by New York University School of Law, his alma mater, but they weren't judicial education seminars, he says. One trip was for a speech to law students, and the other was for a scholarship selection. Other judges who attended expense-paid seminars either declined to comment or didn't return phone calls seeking comment.

Before the new policy was enacted, the Law & Economics Center didn't disclose its private funders because it was trying to insulate judges who attended seminars from any accusations of impartiality, Buckley says.

According to its Web site, FREE received 16 percent of its \$656,000 in revenue last year from corporations, including the ExxonMobil Foundation and the GE Foundation. FREE pays for judicial seminars with funds from other independent foundations that aren't involved in any federal litigation.

While Kendall of the Community Rights Counsel believes the new disclosure policy may have a chilling effect on judges attending privately funded seminars, Geddes says the opposite has occurred at FREE.

“It gives the judges some certainty it's OK to go to these programs,” Geddes says. “It's made it easier to recruit, and our attendance has improved, so we're happy for that.”