

in its recent decision in Hamdan v. Rumsfeld where it examined the military commissions used to try prisoners held at Guantanamo Bay. As noted in Justice Kennedy's concurring opinion, the use of these commissions by the Executive Branch raised "separation of powers concerns of the highest order. Located within a single branch, these courts carry the risk that offenses will be defined, prosecuted, and adjudicated by executive officials without independent review." The Court firmly rejected this attempted usurpation of the judicial function by the executive.

This case brought the Court back to an examination of the lines that must be drawn between the branches of government. The basic principle was set forth by the Court in Miller v. French: "The Constitution enumerates and separates the powers of the three branches of Government in Articles I, II, and III, and it is this 'very structure' of the Constitution that exemplifies the concept of separation of powers ... While the boundaries between the three branches are not 'hermetically sealed' ... **the Constitution prohibits one branch from encroaching on the central prerogatives of another.**" (Citations omitted; emphasis added)

The Wisconsin Legislature, in sec. 15.001(1), has laid down a similar line:

(1) **THREE BRANCHES OF GOVERNMENT.** The "republican form of government" guaranteed by the U.S. constitution

contemplates the separation of powers within state government among the legislative, the executive and the judicial branches of the government ... It is a traditional concept of American government **that the 3 branches are to function separately, without intermingling of authority, except as specifically provided by law.** (Emphasis added)

History is replete, of course, with examples where the lines between branches have not been respected. One is depicted in a recent book about the formation of Abraham Lincoln's cabinet, "A Team of Rivals." James Buchanan, a proponent of slaveholder rights, preceded Lincoln as President. During Buchanan's campaign in 1856, the country was eagerly awaiting the decision of the U.S. Supreme Court in the Dred Scott case in which it had been argued that slaves were mere property unprotected by the Constitution. At his inaugural, Buchanan announced that he would "cheerfully submit" to the Court's decision, whatever it might be.

Well, research has shown that Buchanan was tipped off as to how the case would be decided, and that accounted for his willingness to accept what may come. Indeed, two days later the Court held that blacks were "so far inferior that they had no rights which the white man was bound to respect," and Buchanan "cheerfully" accepted that conclusion.

The decision in the Dred Scott

case was repugnant in its own right. What made it worse was the collusion between the judicial and executive branches. In fact, the Court and President were soon accused of a corrupt conspiracy on the Senate floor.

So, we see from history that judicial independence can be threatened any number of ways. Another branch of government can make a power grab. Or, the judicial branch can give up its independence by playing too nice with another branch. Either way, the constitutional foundation for separation of powers is weakened when judges fail to respect – and enforce – their assigned responsibilities under the Constitution. That is the challenge for us – and the reason we have made this a topic throughout this year's seminars.

NEW JUDGES, NEW COURTS & RESIGNATIONS

District II: **Mark F. Nielsen** was appointed in the City of Racine on August 14, 2006, replacing Judge **Rob Weber** who resigned to become the city attorney.

District V & VII: **Rhonda Hazen** was appointed on October 23, 2006, as judge of the joint court of Blue Mounds/Barneveld/Ridgeway to replace the late **Dennis Barr**.

District VIII: **Stephen J. Schindler** was appointed on July 3, 2006, in the Village of Coleman replacing Judge Mark Widmer who resigned when he moved outside of the Village.

District X: **Allen Pape** was appointed on May 8, 2006, as judge for the newly created City of Richmond Municipal Court. **Dominique Beck** and **Kristela Cervera** were appointed as municipal court commissioners for the City of Milwaukee.



NEW LEGISLATION

This was a busy year for the legislators. A list of recent legislative changes impacting municipal courts follows:

- 2005 Wisconsin Act 185 - Unregistered Vehicles – Broadens the definition and allows municipal authority for greater enforcement for immobilization, impoundment and disposal of unregistered vehicles, amending sec. 341.65, effective 4/7/2006
- 2005 Wisconsin Act 329 – Operation of neighborhood electric vehicles on local highways – allows city, town or village to adopt an ordinance to permit the operation on local highways. The term *neighborhood electric vehicle* is defined in the act but does not include a golf cart, creating sec. 349.26, effective 4/29/2006
- 2005 Wisconsin Act 106 – Child restraint law expanded to 8-year olds and modified upon height & weight,

amending 347.48, effective 6/1/2006

- 2005 Wisconsin Act 59 – Tax intercept law improved to allow filing by driver license number and to past cost on to debtor, amending sec. 71.935, effective 4/1/2006
- 2005 Wisconsin Act 294 – New penalty structure established for violation of instruction permits, adding new sections to sec. 343.07, effective 8/1/2006
- 2005 Wisconsin Act 466 – Two-wheelers permitted to go through red light under certain circumstances, creating sec. 346.37(1)(c)4, effective October 1, 2006
- 2005 Wisconsin Act 466 – New penalties for failure to yield violations, creating sec. 343.30(1j) and 346.22(1)(c-f), effective 10/1/2006
- 2005 Wisconsin Act 412 – New violation created for causing property damage, injury, or death while knowingly OWL, OWS, or OAR, creating secs. 343.05(5)(b)3, 434.44(1)(am), and 343.44(2)(e-h), effective 6/3/2006
- 2005 Wisconsin Act 411 – Vehicle Owners can be liable for hit and run violations, creating sec. 346.675 and 346.74(6), effective 6/3/2006

***New Laws/New Cases is available online at:
wicourts.gov/services/judge/edu.htm***



TRAFFIC SEMINAR

The last seminar for the current credit reporting period

The Traffic Seminar will be held March 8 & 9, 2007, at the Grand Geneva Resort in Lake Geneva. The *tentative* agenda for this seminar includes the following topics: OWI Issues (refusal hearings, administrative reviews, probable cause, who pays for tests, standardized field sobriety tests), Speeding & Speed Equipment, Driver License Restoration, Evidentiary Issues, When, Where & How can Traffic Tickets be Issued?, Judicial Independence, Ethics, New Laws & New Cases and Anonymous Tips including cell phones.

This will be the last seminar that Judge Jim Gramling will be attending & teaching at as a municipal judge; Jim is retiring when his term expires this spring. You won't want to miss Jim's sendoff as we thank him for his many, many years of hard work and dedication to Municipal Judge Education.

Announcements for this program will be mailed to your courts in early January.

JUDGE DONALD CARL: One of Wisconsin's Longest Serving Municipal Judges Retires

After 47 years as the municipal judge for the Village of Port Edwards, Donald Carl stepped down from the bench on October 1st. Judge Carl was first appointed in 1959 and was re-elected every two years since then. According to an article in the October 11, 2006, Wisconsin Rapids *Daily Tribune*, Judge Carl said "Being a judge does not have many dull moments. I have met a lot of people and heard a lot of stories." The article further quoted Mary Armatoski, who served as Judge Carl's court clerk for 23 years as saying what impressed her most about Judge Carl was his fairness. "He was genuinely interested in helping people who appeared before him" she said. Assistant City Attorney, Gary Kryshak further complimented Judge Carl by stating that "He was an excellent municipal Judge who ruled by common sense."

We will miss seeing Judge Carl's cheerful face at future seminars. Best of luck to Judge Carl and Muriel, his wife of 54 years.

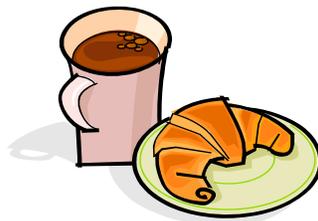
NOTE OF THANKS FROM KENT BUEHLER OF DOT

Kent was unable to attend the Clerk's seminar this past October for the first time in many, many years due to his wife Ginny's health. Many clerks sent notes & well wishes to Kent & Ginny. Kent asked that I include the following in this Muni View:

"Ginny and I want to express our thanks to all the clerks who took

the time to write us a note and express their concern and well wishes for us. Ginny and I read all the notes. We have saved them, and occasionally read them. We appreciate all the support expressed in the notes. Ginny is doing better at this time; the treatments appear to be working. We still have a long way to go, but both Ginny and I were able to return to work part-time.

*Thanks,
Kent"*



COFFEE, COFFEE, WHY ISN'T THERE MORE COFFEE AT SEMINARS!?

The question or complaint Carol and I hear most frequently at seminars is "Why isn't there more coffee?!" We would love to offer unlimited coffee & pastries, but as a state agency we may only provide two breaks per day and may only spend \$5.00 per person for each break. That \$5.00 has to cover not only coffee, but soda, tea, pastries and the hotel's service charge. Some hotels charge as much as \$35.00 a gallon for coffee, so you can see that \$5.00 per attendee does not go very far. Carol works very hard to negotiate with the hotels for the best break service we can afford. However, generally speaking, the better the accommodations or quality of the

hotel, the higher the price of the break service and thus, the lesser quantity of refreshments available.

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**HAPPY
HOLIDAYS TO
YOU & YOURS!**

