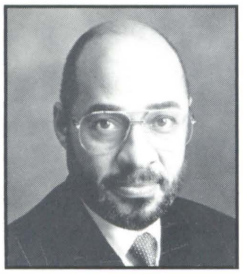
FBA newsletter

Vol. 1999
Spring 2000

Federal Bar Association - Eastern District of Michigan Chapter - 39 years of service to our Federal Bench and Bar



Mayor Dennis W. Archer

McCree Luncheon

Mayor Dennis W. Archer will be the keynote speaker at the FBA's annual McCree luncheon on February 16, 2000.

The luncheon honors the memory Judge Wade H. McCree, Jr., a champion of social justice who served as Solicitor General of the United States as well as judge in the Wayne County Circuit Court, the U.S. District Court and the U.S. Court of Appeals for the Sixth Circuit.

During the luncheon, the FBA also will honor participants in the court's civil pro bono project. Attorneys who have volunteered their time to represent indigent clients in federal court during the past year will be recognized.

The luncheon will be held at the Pontchartrain Hotel beginning with a reception at 11:30 a.m. Lunch will be served at noon. Tickets are $25 for FBA members, $27 for non-members. For tickets, contact Program Chair Dennis Barnes at (313) 965-9725. *(cont'd on page 2)*

Y2K Reflections on Martin Luther King, Jr. Day

By: The Honorable Julian Abele Cook, Jr.

INSIDE THIS ISSUE

It is fitting that a memorial in honor of Dr. Martin Luther King, Jr. will occupy a site at the Tidal Basin in Washington, D.C., nestled among the tributes to our towering presidents: George Washington, Thomas Jefferson, Abraham Lincoln and Franklin Delano Roosevelt.[1] Un

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President's Column

A Credo for a Democratic Society of Laws

As I watched the protests in Seattle against the World Trade Organization (WTO), I could not help but wonder what Dr. Martin Luther King, Jr., who would be sympathetic with demands that the WTO establish and enforce labor and human rights standards, would counsel as tactics to achieve those goals. The advice from the man who died while leading the fight for human and labor rights for striking sanitation workers in Memphis and whose birthday we soon celebrate, would undoubtedly be that of nonviolent civil disobedience.

As a society of laws which must also honor our commitment to the First Amendment so that those who seek change can have the opportunity to present their views and persuade others, Dr. King's advice to society and to those who seek change is as relevant today as when he delivered it. Gathered from Dr. King's speeches and writings, please reflect on his philosophy of nonviolent resistance and the importance of such a philosophy in a democratic society of laws:

"From the very beginning there was a philosophy undergirding the Montgomery boycott, the philosophy of nonviolent resistance. There was always the problem of getting this method over because it didn't make sense to most of the people in the beginning. We had to use our mass meetings to explain nonviolence to a community of people who had never heard of the philosophy and in many instances were not sympathetic with it. We had to make it clear that nonviolent resistance is not a method of cowardice. It does resist. It is not a method of stagnant passivity and deadening complacency. The nonviolent resister is just as opposed to the evil that he is standing against as the violent resister but he resists without violence. This method is nonaggressive physically but strongly aggressive spiritually.

Another thing that we had to get over was the fact that the nonviolent resister does not seek to humiliate or defeat the opponent but to win his friendship and understanding.... The end of violence or the aftermath of violence is bitterness. The aftermath of nonviolence is reconciliation and the creation of a beloved community....

Then we had to make it clear also that the nonviolent resister seeks to attack the evil system rather than individuals who happen to be caught up in the system.... The struggle is rather between justice and injustice, between the forces of light and the forces of darkness....

Many tend to confuse passive resistance with nonre-

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President's Column *(cont'd)*

sistance. This is completely wrong. True nonviolent resistance is not unrealistic submission to evil power. It is rather a courageous confrontation of evil by the power of love, in the faith that it is better to be a recipient of violence than the inflictor of it, since the latter only multiplies the existence of violence and bitterness in the universe, while the former may develop a sense of shame in the opponent, and thereby bring about a transformation and change of heart....

There is more power in socially organized masses on the march than there is in guns in the hands of a few desperate men. Our enemies would prefer to deal with a small armed group rather than with a huge, unarmed but resolute mass of people. However, it is necessary that the mass-action method be persistent and unyielding. Gandhi said the Indian people must "never let them rest," referring to the British. He urged them to keep protesting daily and weekly, in a variety of ways. This method inspired and organized the Indian masses and disorganized the demobilized the British. It educates its myriad participants, socially and morally. All history teaches us that like a turbulent ocean beating great cliffs into fragments of rock, the determined movement of people incessantly demanding their rights always disintegrates the older order.

There is no easy way to create a world where men and women can live together, where each has his own job and house and where all children receive as much education as their minds can absorb. But if such a world is created in our lifetime, it will be done in the United States by Negroes and white people of good will. It will be accomplished by persons who have the courage to put an end to suffering by willingly suffering themselves rather than inflict suffering upon others. It will be done by rejecting the racism, materialism and violence that has characterized Western civilization and especially by working toward a world of brotherhood, cooperation and peace."

Powerful words equally applicable today and a credo for a democratic society of laws tolerant of dissent.

President,
Mark Brewer

(McCree cont'd from page 1)

Mayor Archer, who has served as the mayor of Detroit since 1993, is a former Michigan Supreme Court Justice. He also has served as president of the State Bar of Michigan, the National Bar Association and the Wolverine Bar Association. Before being elected mayor, Mayor Archer practiced law at the firm of Dickinson, Wright in Detroit.

Martin Luther King, Jr. Day (cont'd)

doubtedly, many other Americans have been great and important leaders in different ways, but Dr. King and these presidents share something that earns them a paramount place in our hearts and minds. Each of them symbolized a vision of freedom, hope and prosperity that resounds within all of us, long after the worries of the day have nearly chased our dreams away. In their wake, they tell us that we can be greater than who we are.

An important step in a realization of Dr. King's bold vision of America and its future is our remembrance of his life and the ideals for which he stood and died. In this respect, our observance of his birthday throughout the nation has had a positive effect. But we must quickly realize that this is only the first step. The true question is whether we have undertaken other measures on our own to effectuate his dream. In order to answer this question, it is imperative that we first know the content of his envisionary dream.

Two themes from Martin Luther King Jr.'s life and speeches have captured America's attention. First, we were taught the value of service to our country and to our community. He once said, "[e]verybody can be great. Because anybody can serve. You don't have to have a college degree to serve. You don't have to make your subject and your verb agree to serve. You don't have to know about Plato and Aristotle to serve. You don't have to know Einstein's theory of relativity to serve. You don't have to know the second theory of thermodynamics in physics to serve. You only need a heart full of grace. A soul generated by love."[2]

In this sense, Dr. King gave us the hope that, by opening ourselves to others, we could have a significant impact upon the development of a greater understanding among people of all races, religious persuasions and ethnic backgrounds. Today, many people throughout this nation celebrate Dr. King's birthday and his commitment to service by expending time and energy in addressing the specific needs of their community and, in this way, they

honor his legacy.

Second, Dr. King endowed us with the vision of a "color blind" society, which inspired people from diverse backgrounds to become sensitive to the goal of human equality. Representative John Lewis has remarked[3] that it is appropriate to place the memorial of Martin Luther King, Jr. near that of Thomas Jefferson, a slaveholder, since Dr. King dreamed "that one day . . . the sons of former slaves and the sons of former slave owners will be able to sit down together at the table of brotherhood."[4] If remembering him and his aspirations brings us closer together as a people and produces a greater understanding of our differences, then the annual national celebration of Martin Luther King, Jr. Day will have been well spent.

Martin Luther King Jr. devoted every aspect of his life to the cause of social justice. Consistently, he advocated for the elimination of hunger and poverty. Early in his career, he discussed the persistent economic inequalities in America and proclaimed, "God never intended for one group of people to live in superfluous inordinate wealth, while others live in abject deadening poverty. God intends for all of his children to have the basic necessities of life, and he has left in this universe 'enough and to spare' for that purpose."[5] He once lamented that "[o]ne hundred years [after the signing of the Emancipation Proclamation], the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity."[6] In 1964, speaking of his role in "a movement which is beleaguered and committed to unrelenting struggle [and] which has not won the very peace and brotherhood which is the essence of the Nobel Prize," he noted, "I am mindful that debilitating and grinding poverty afflicts my people and chains them to the lowest rung of the economic ladder."[7] And on the eve of his assassination, Dr. King reminded his audience, "God has commanded us to be concerned about the slums down here, and his children who can't eat three square meals a day."[8]

Dr. King also spotlighted other matters of social justice. He had "the audacity to believe that peoples everywhere can have . . . education and culture for their minds, and dignity, equality and freedom for their spirits." We were urged "to get rid of every aspect of segregation,"[9] including segregation in housing. From the Lincoln Memorial in 1963, he declared, "We can never be satisfied as long as the Negro is the victim of the unspeakable horrors of police brutality."[10] Moreover, it should not be forgotten that Dr. King preached a strong message that African Americans should exercise their collective economic power and independence to bring about justice for all people.[11]

It is regrettable that I need only look out the window of my courtroom in Detroit, Michigan to see that little has changed in the last thirty-five years to alleviate the harsh poverty that afflicts our citizens, to promote racial tolerance in matters of housing,[12] to curb police brutality or to ensure that every child has a good education and a measure of dignity. While some improvements have occurred, I am reminded that "[t]his is no time to engage in the luxury of cooling off or to take the tranquilizing drug of gradualism."[13] Rather, if the Martin Luther King, Jr. Day is to permit sincere homage to the man whom it honors, it must be a day of true reflection, identification of injustice, and initiation of action.

In 1956, Martin Luther King, Jr. encapsulated the thesis that could be his legacy: "In your struggle for justice, let your oppressor know that you are not attempting to defeat or humiliate him, or even to pay him back for injustices that he has heaped upon you. Let him know that you are merely seeking justice for him as well as yourself." While America has embraced the first part of his mandate (to wit, the process of giving grace and forgiveness), it has obscured the second, more substantive commitment that everyone within the continental United States is entitled to basic human rights and justice. If we are to fulfill this calling, it must be understood that Dr. Martin Luther King, Jr. was not so much the rider of the high tide of social equality, for "[n]ineteen sixty-three [was] not an end but a beginning."[14] Rather, he was the precious drop of water who must precipitate the waterfall. The responsibility now falls upon all of us to do what he made us believe that we could do; namely, to become greater in deed and spirituality in our relationships with each other. As we enter the new millennium, we must adopt his vision for social equality and create the America about which we aspire — the one in which there is liberty and justice for all.

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1 Irvin Molotsky, Panel Approves Site for Dr. King Memorial, N.Y. Times, Dec. 3, 1999, at A23.

2 See Jesse Arnelle, Disturbers of the Peace: The Civil Rights Movement — An American Odyssey, Executive Speeches, Oct./Nov. 1998, at 5; Paula Schwed, Building a Hands On Holiday, Atlanta J. & Const., Jan. 10, 1997, at 1E.

3 Molotsky, supra note 1, at A23.

4 Dr. Martin Luther King, Jr., Address at March on Washington for Jobs and Freedom (1963), reprinted at The Martin Luther King, Jr., Papers Project at Stanford University, (visited Dec. 3, 1999) <http://www.stanford.edu/group/King/Docs/march.html>. The text and copyright information for each of the speeches cited herein can be found at the Martin Luther King, Jr., Papers Project at Stanford University, <http://www.stanford.edu/group/King>.

5 Dr. Martin Luther King, Jr., Paul's Letter to American Christians (1956).

6 Dr. Martin Luther King, Jr., Address at March on Washington for Jobs and Freedom (1963).

(Martin Luther King cont'd from page 3)

[7] Dr. Martin Luther King, Jr., Nobel Prize Acceptance Speech (1964).

[8] Dr. Martin Luther King, Jr., I See the Promised Land (1968).

[9] Dr. Martin Luther King, Jr., Paul's Letter to American Christians (1956).

[10] Dr. Martin Luther King, Jr., Address at March on Washington for Jobs and Freedom (1963).

[11] Dr. Martin Luther King, Jr., I See the Promised Land (1968) ("Always anchor our external direct action with the power of economic withdrawal. Now, we are poor people, individually, we are poor when you compare us with white society in America. . . . Never stop and forget that collectively . . . we are richer than all the nations in the world, with the exception of nine. Did you ever think about that? . . . We have an annual income of more than thirty billion dollars a year, which is more than all of the exports of the United States, and more than the national budget of Canada. Did you know that? That's power right there, if we know how to pool it.").

[12] See also Douglas S. Massey & Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass (1993).

[13] Dr. Martin Luther King, Jr., Nobel Prize Acceptance Speech (1964).

[14] Dr. Martin Luther King, Jr., Address at March on Washington for Jobs and Freedom (1963).

More on Martin Luther King, Jr. Day Celebration at Focus:Hope

Hon. Damon Keith and Jennifer Granholm will both serve as keynote speakers for the chapter's annual celebration of Martin Luther King Day. In partnership with the Wolverine Bar Association and Focus:Hope, the FBA will honor the life of Dr. Martin Luther King, Jr. on Monday, January 17, 2000 at Focus:Hope. The program will begin at 11:30 a.m. and will include a box lunch. Tickets will be available at a cost of $10.00.

The purpose of the program is to challenge us to continue to strive toward the goals of equality and human dignity which defined Dr. King's mission. The program will include a video presentation and folk and gospel music.

Last year, more than 1,000 members of the bench and bar attended the Martin Luther King Day celebration. Last year's keynote speaker, Rev. Samuel Kyles, who was an associate of Dr. King's, stated that Dr. King would be pleased with the progress that has been made toward his vision since his death, but that much remains to be done.

Rakow Luncheon

On November 24, 1999, the Federal Bar Association hosted its annual Rakow Luncheon at the Crowne Plaza Pontchartrain Hotel. The luncheon honors the memory of Edward H. Rakow, a securities law practitioner in Detroit and one of the founders of the Eastern District of Michigan Chapter of the FBA. Each year, scholarships are awarded in Mr. Rakow's name to a deserving student at each of Michigan's five law schools. Judge Cornelia Kennedy delivered a speech in which she discussed women in the judiciary and recounted her career, including her appointment to the Eastern District of Michigan and the Sixth Circuit Court of Appeals. Honored with Edward H. Rakow Scholarships at this year's luncheon were: Marie Barnes (Thomas M. Cooley Law School); Lisa Renee Harris (Detroit College of Law at Michigan State University); Lisa M. Clark (University of Detroit Mercy Law School); Hugo Sueiro (University of Michigan Law School); and Lee B. Kellert (Wayne State University Law School).

Practice Tips: Determining Federal Venue

Despite the amendments to 28 U.S.C. § 1391, which have made it easier for a plaintiff to elect a federal venue which is "closer to home," too many litigants and courts have continued to utilize the outmoded concepts embodied in the unamended statute — disqualifying all possible, appropriate venues except the venue most favorable to the defendant.

As amended, subsection (a) of the general venue statute provides:

(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in

which the action may otherwise be brought.[1]

Nearly a decade ago, in 1990, Congress amended the statute which governs venue in the federal district courts, replacing the language "***the* judicial district** . . . in which the claim arose" with the broader term "***a* judicial district** in which a substantial part of the events or omissions giving rise to the claim arose." 28 U.S.C. § 1391(a)(2) [emphasis added]. In 1995, the statute was again amended, substituting "a judicial district in which ***any defendant*** is subject to personal jurisdiction," in § 1391(a)(3), for the narrower provision "a judicial district in which ***the defendants*** are subject to personal jurisdiction." [Emphasis added.]

Thus, in order to satisfy the statute, suit need only be filed in a district which has a substantial nexus to the claim, since the statute is stated in the disjunctive instead of the conjunctive.[2]

Nonetheless, some defendants and courts have continued to rely upon principles which evolved prior to the amendments, in particular utilizing the "weight of contacts" test set forth in *Leroy v. Great W. United Corp.*, 443 U.S. 173; 99 S. Ct. 2710; 61 L.Ed.2d 464 (1979), and following the *Leroy* court's admonition that "the purpose of statutorily specified venue is to protect the defendant against the risk that a plaintiff will select an unfair or inconvenient place of trial." 443 U.S. at 183-184.[3] Other courts have rejected *Leroy* in the post-amendment period, finding that continued adherence to the *Leroy* standards "would refuse to give effect to the plain language of the statute."[4]

In *First of Michigan Corp. v. Bramlet*, 141 F.3d 260 (6th Cir. 1998), the Court of Appeals for the Sixth Circuit provided the most cogent analysis of any court to date, in its first review of "the determination of venue under the amended version of § 1391." *Id.* at 262. Beginning by noting that the proper standard of review should be *de novo*, as a matter of interpretation was involved, the *FoM* Court rejected a lower court analysis which had focused upon "the most significant event giving rise to plaintiff's complaint . . . ." *Id.* at 263. Instead, the Court focused upon the intent of the 1990 amendment, which it held to be "to broaden the venue provisions." *Id.* Building upon that intent, which is also reflected in the commentary following the 1990 revisions,[5] the Court went on to hold:

[I]n diversity of citizenship cases the plaintiff may file his complaint in any forum where a substantial part of the events or omissions giving rise to the claim arose; this includes any forum with a substantial connection to the plaintiff's claim." *Id.*

Thus, the issue of ***proper*** venue is no longer a question of ***best*** venue; nor is propriety linked with convenience, which is appropriately considered under 28 U.S.C. § 1404. The focus is upon all of the underlying events, not upon the activities of one party or the other or the divining of "the most" substantial event.

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1. Subsection (b), which governs civil actions "wherein jurisdiction is not founded solely on diversity of citizenship," differs only in subpart (3), which provides for venue in "a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought."
2. See, e.g., *Wise v. Lindamood*, 1999 U.S. Dist. LEXIS 15051 (D. Colo. 1999). But see *Cobra Partners L.P. v. Liegl*, 990 F. Supp. 332 (S.D.N.Y. 1998).
3. See, e.g., *Cottman Transmission Systems, Inc. v Martino*, 36 F.3d 291 (3d Cir. 1994) ("Although the statute no longer requires a court to select the 'best' forum, the weighing of 'substantial' may at times seem to take on that flavor"); *Woodke v Dahm*, 873 F. Supp. 179 (N.D. Iowa 1995) (following *Cottman* and also analyzing venue in order to "protect the defendant"); *Lewis v. Mobil Oil Corp.*, 1999 U.S. Dist. LEXIS 6972 (D.D.C. 1999) (interpreting § 1391(b)(1) in light of the "convenience" of the defendants); *Brink v. Ecologic, Inc.*, 987 F. Supp. 958 (E.D. Mich. 1997) (requiring plaintiff to show that chosen forum "is the judicial district wherein ***the*** substantial part of the events . . . occurred") (emphasis added).
4. *The Market Transition Facility of New Jersey v. Twena*, 941 F. Supp. 462 (D.N.J. 1996) (collecting cases). See also 15 C. Wright, A. Miller and E. Cooper, *Federal Practice and Procedure*, § 3806 (Supp at page 17) ("Amendments . . . have made the Leroy case of historical interest only").
5. The commentary rejects the reinstitution of the pre-amendment "pinpointing problem," concluding "If the selected district's contacts are "substantial," it should make no difference that another's are more so, or the most so." D. Siegel, *Commentary on the 1988 and 1990 Revisions of Section 1391, Subdivision (a), Clause (2), 28 U.S.C.A. § 1391* (1993), *quoted in FoM*, 141 F.3d at 263.

Wayne State University Law School Under Construction

Wayne State University Law School Dean Joan Mahoney is pleased to announce that Wayne State has commenced a major construction and renovation project that will significantly enhance the law school's educational, library and public outreach programs. The project consists of construction of a 51,000 square foot building attached to the existing Law School Building, demolition of a 28 year-old "temporary" Annex, and renovation of the existing building. The current project budget is $15.6 million.

Important features of the project include:

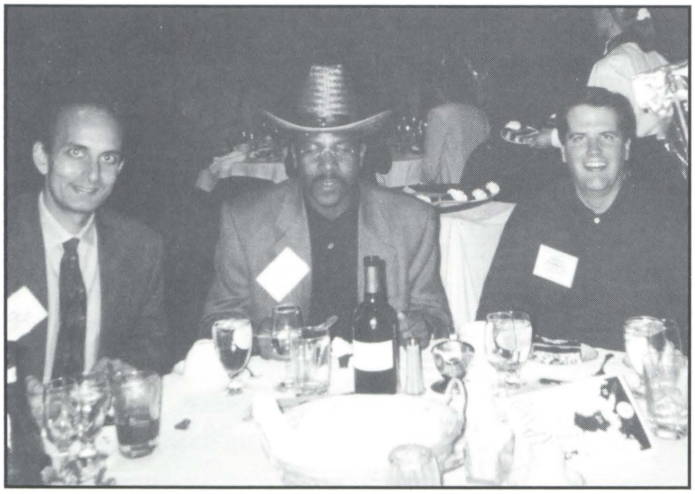
- An innovative 250-seat auditorium/courtroom facility permitting the Law School to host live sessions of court, hold important lectures and symposia, and

(Wayne State cont'd from page 5)

improve the quality of instruction in trial and appellate practice.

- A greatly expanded Law Library (already the 21st largest public law library in the nation), equipped with upgraded, powerful electronic data capabilities, and offering increased space for the law collection and government documents repository for use by members of the bar and the public.
- A state-of-the-art multi-media distance learning classroom and new seminar rooms.
- A new moot courtroom and student publications suite.
- A consolidated student services area giving students and prospective students convenient and timely access to admissions functions, financial aid, academic counseling, supportive services and career counseling.
- Increased and improved student organization and student lounge space.
- Additional faculty offices, allowing the school to expand the size of the faculty and augment the curriculum.

"The building project will give Wayne State one of best-equipped facilities of all urban, public law schools,"said Dean Mahoney. "It will help us improve our service to the bench and bar, as well as the student body. It will also help the school attract highly qualified students and faculty members." The new building is scheduled to open in August 2000, with the renovation of the existing building to be completed in the spring of 2001. View the progress of the construction on the Law School's website at www.law.wayne.edu.



Assistant U. S. Attorneys (left to right) Kris Dighe, Kelvin Scott and Steve Murphy are always hungry.

Magistrate Judge Morgan and Margaret Raben prepare to toast the evening.

Shanty Creek IV A Huge Success

On the last weekend in October, 1999, a couple hundred federal judges and practitioners gathered at the Shanty Creek Conference Center in Bellaire, Michigan, to discuss significant issues in federal cases. While the discussions were energetic and intense at times, the setting was beautiful and relaxing. The weather was warm, with the leaves brilliant orange, yellow and red. Participants golfed, ran, walked, bicycled and engaged in other fun extracurricular activities.

The Shanty Creek IV Conference started out with an "Ask the Judges" forum, where federal judges from both the Eastern District and Western District of Michigan entertained and openly answered questions posed by participants. The questioners were not meek in posing the questions and the judges did not hold back in answering the questions. The forum was followed by a reception, where old friendships were rekindled and new ones developed.

The second day of the conference consisted of breakout sessions, where each group had one to three leaders and discussed such timely topics as high profile trials, current issues in criminal procedure, complex litigation, voir dire, alternative dispute resolution, juries, the poor and unrepresented in the federal courts, and bankruptcy issues. Some of the discus-

FBA - District President Mark Brewer shares a moment with Mary Ellen Gurewitz.

sion groups included formal presentations, while others involved lively discussions of cutting-edge issues. Judges and practitioners were on equal footing at these discussions.

Judge Feikens and Judge Gadola discuss courthouse fire evacuation procedures.

On Saturday evening, "A (Habeas) Chorus Line" entertained the attendees at dinner with brilliant performances of "If I Were the Chief Judge," "See You Later, Litigator," "Livin' in Royal Oak-a," and "The Launderer," just to name a few. Everybody had a lot of good laughs.

Federal Defender Office . . . A Y2K Retrospective

The Federal Defender Office, a division of the Legal Aid & Defender Association, Inc. was established on January 1, 1972, to provide representation to indigent individuals charged with federal crimes in the U.S. District court for the Eastern District of Michigan.

Since 1972, the office has had three Chief Federal Defenders: James E. Roberts (1972-1979), who is now a retired Judge of the Recorder's Court of the City of Detroit; Paul D. Borman(1979-1994), a sitting U.S. District Judge for the Eastern District of Michigan, and Miriam L. Siefer (1995-present).

Judge Roberts spearheaded FDO operations during the turbulent 70's, the era of Vietnam protests and draft resisters. He staffed the office with idealistic attorneys committed to criminal defense work and the representation of indigent defendants. A reputation was born. The office opened with four attorneys and one investigator and was located in the Law Center Building at 600 Woodward Avenue. As the government began to intensely prosecute draft resisters, the office staff grew to handle the increased caseload. Some of the early defenders "defected" to the United States Attorney's office. Members of the office during this era assumed responsibility for the legal training of Chief Assistant United States Attorney Alan Gershel, an FDO law clerk in the mid 1970's.

Judge Borman took the reins throughout the 80's and part of the 90's and continued to build a staff of dedicated practitioners. His leadership further established the FDO as a viable source in the legal community on the practice of federal criminal law. Office resources and training increased and we were carried along the wave of computerization, some of us almost drowning in the sea of technology. Despite these changes, Judge Borman recognized that technology could not displace aggressive advocacy. Under Judge Borman, the office was moved to its present location in the Penobscot Building.

Miriam L. Siefer is the current Chief of the FDO, which has a staff of 31 employees. Sixteen attorneys handle an annual caseload of approximately 1,000 cases, consisting of misdemeanor, felony, appellate and post-conviction representations. In November, 1995, the office expanded to include a branch office in Flint, Michigan which is staffed by two attorneys and two support personnel. The office continues to administer the Criminal Justice Act Panel Attorney Program for the Eastern District of Michigan, where private practitioners approved by the U.S. District Court accept indigent cases in conflict situations. The office publishes a quarterly newsletter and also sponsors annual training seminars to keep panel members up-to-date on federal court practice.

While the office has grown in size, it has also witnessed a dramatic change in the nature and complexity of the cases. Where attorneys would once spend weeks in trial in a multi-defendant white collar case the federalization of state crime has shifted the emphases to trials of multi-defendant drug and firearm cases. Where most defendants in gun possession charges faced a statutory maximum of two years, today, firearm cases are sometimes prosecuted under the armed career criminal statute that provides for a mandatory minimum sentence of 15 years. The implementation of federal sentencing guidelines and the enactment of statutes that require mandatory minimum sentences also drastically changed the nature of federal criminal practice. But the most significant change has been the federal death penalty prosecutions. This past year there were three death penalty cases pending in the Eastern District.

Ms. Siefer has continued the tradition established by her predecessors of building a team that provides quality representation to indigent defendants. The office continues to garner the respect of fellow practitioners as well as the bench of the U.S. District Court.

The United States Attorney's Office . . . A Y2K Retrospective

By: Richard L Delonis
Assistant United States Attorney

As we turn the calendar to the beginning of a new millennium, it seems only natural that we take yet one more look backward to see where we have been, how far we have come, and to ponder the path that leads to our future. A retrospective look at the development and changes within the United States Attorney's Office over the course of the last century provides us with a view tinged by a blend of nostalgia and historical curiosity.

The origin of the position of United States Attorney can be traced to the Judiciary Act of 1789, enacted by the Congress shortly after the adoption of the Constitution. The Act directed the President to appoint in each federal district a "person learned in the law to act as an attorney for the United States." Within days of the statute's enactment, President George Washington appointed a group of thirteen distinguished men to serve as United States Attorneys in the thirteen newly created federal judicial districts. Among those first appointees was John Marshall, the first United States Attorney for the District of Virginia. In subsequent years, two men who later became President served as United States Attorneys. Andrew Jackson was the first United States Attorney for the District of Tennessee and Franklin Pierce served as the United States Attorney for the District of New Hampshire.

At the turn of the last century, the United States Attorney's Office for the Eastern District of Michigan was far smaller in size and quite different from what it is today. The Office then consisted of the presidentially appointed United States Attorney, a Republican named William D. Gordon, and a handful of Assistant United States Attorneys (AUSAs).

In 1900, the position of Assistant United States Attorney was a political appointment and, when a new party gained control of the White House, there would be a complete turnover of attorneys in the Office. Indeed this system continued to operate for most of the 20th Century and was operative, for the last time, in November of 1969 when I was appointed an Assistant United States Attorney. At that time, not only was I subjected to a background investigation by the F.B.I., but also to a "political" clearance by my Republican district chairman. At a later point in the Nixon administration, the political clearance for new AUSAs was discontinued and, at the next change in administration in 1977, there was no significant turnover among AUSAs. The common experience had been that attorneys would serve as an AUSA for a few years and then leave the Office for private practice. Beginning in the 1970's, however, a new phenomenon began to develop: the career Assistant United States Attorney. While there continues to be a degree of turnover, AUSAs today serve for longer periods of time and several have accumulated more than twenty years of service.

In 1900, United States Attorneys and their Assistants were allowed to maintain an outside law practice in addition to their government employment. That policy was not completely eliminated until 1953. The salaries for the nation's presidentially appointed United States Attorneys in 1900 were established by law and ranged from $2,500 to $5,000 per annum, depending upon the district.

The nature of the civil and criminal caseload managed by the United States Attorney's Office in 1900 was very different from the Office's contemporary docket. Due to its size, it is likely that the Office was not yet administratively divided into civil and criminal divisions. The civil practice included a significant number of cases involving the government's acquisition of land, frequently by condemnation, as well as cases involving customs and admiralty law. On the criminal docket, the cases would likely involve offenses such as mail theft, customs violations, counterfeiting and some frauds. The FBI, as we know it today, did not yet exist. Most of the government's law enforcement effort was entrusted to the U.S. Marshal's Service, the Secret Service, the U. S. Customs Service and the Postal Inspectors. Bank robbery was not yet a federal crime and there was no "drug problem" in America. Indeed, the first substantial legislative effort regarding illicit drugs would occur with the passage of the Harrison Act in 1914. At that time, Congress also delegated the responsibility for its enforcement to a Treasury Department agency named the Federal Bureau of Narcotics or FBN. Since the Constitution had not yet been amended by the Sixteenth Amendment, there was no income tax and, therefore, no income tax offenses to be prosecuted.

After our nation emerged from World War I, many social, political and economic changes in American society led to new challenges for the United States Attorney's Office. The Prohibition Era generated numerous criminal cases involving illicit alcohol which were investigated by agents of the Department of Treasury's

Alcohol Tax Unit or ATU. An inefficient and mismanaged agency within the Department of Justice, known as the Bureau of Investigations, was taken over by an aggressive young man named John Edgar Hoover who remolded it into the Federal Bureau of Investigation. During the "gangster era," a number of notorious bank robbery gangs traveled from state to state perpetrating a wave of violent bank robberies. Congress reacted by passing the National Bank Robbery Act which made it a federal offense to rob banks which were federally chartered, whose deposits were federally insured or which were part of the Federal Reserve System. And finally, early in the administration of Franklin Roosevelt, a young man from Boston named Thomas Patrick Thornton became an Assistant United States Attorney in Detroit and began a career of federal service that would last a half a century.

After more than a decade of service as an AUSA, Thomas Thornton was appointed United States Attorney in 1947 and shortly thereafter, he was elevated to the federal bench by President Harry Truman. Although Judge Thornton would serve nearly forty years on the federal bench, many of those who knew him came to believe that his heart never left the United States Attorney's Office.

As the United States Attorney's Office entered the second half of the 20th Century, it continued its metamorphosis. Bank robbery cases and income tax cases had become an integral part of the criminal docket. Although the Prohibition Era was in the distant past, illicit spirits remained a persistent law enforcement problem in Michigan. Indeed, criminal prosecutions for "moonshine" violations occupied a significant part of the District Court's docket through the early 1970's.

The societal changes of the 1960's had a profound impact upon law enforcement. The nation grew increasingly conscious of the problems of illegal drug use and drug trafficking. The Federal Bureau of Narcotics was disbanded and thereafter enforcement of the drug laws would be shared by the Customs Service and a new agency within the Justice Department known as the Bureau of Narcotics and Dangerous Drugs or BNDD. The existing drug control legislation, which had begun with the Harrison Act, had attempted to regulate and control drugs through the government's taxing power. In a prosecution for selling heroin, for example, the gist of the charge was the selling of heroin upon which the excise tax had not been paid as evidenced by the fact that it had been sold in a package to which a tax stamp had not been affixed. In 1970, using its constitutional power to regulate commerce, the Congress enacted a new comprehensive drug control statute, the Controlled Substances Act. Soon thereafter, the Drug Enforcement Administration (DEA) was created, merging together, in a new Justice Department agency, the drug enforcement personnel of the Customs Service with the personnel from the BNDD.

As a consequence of former Attorney General Robert Kennedy's concerns about the threats posed to our society by organized crime, in 1968 the Department of Justice established the Organized Crime Strike Force in a number of major metropolitan areas including Detroit. At the time of its inception, the Strike Force was a distinct entity, separate from the United States Attorney's Office, and operated by "Special Attorneys" under the direct supervision of Main Justice. Two decades later, Attorney General Dick Thornburgh would issue an order incorporating the Strike Forces into the United States Attorney's Offices.

While the Department of Justice was creating the Organized Crime Strike Force, the Congress was enacting the Omnibus Crime Control and Safe Streets Act of 1968 which gave the government, in Title III, a statutory framework for wiretapping and other electronic surveillance. This represented an important commitment to utilize the tools of modern technology in federal law enforcement. Congress was very busy in 1968, for in that year it also passed a major piece of firearms legislation, the Gun Control Act of 1968. Primary enforcement of the statute's provisions was entrusted to the Treasury Department, specifically its Alcohol and Tobacco Tax Division or ATTD. Thereafter, that agency would be reorganized and become known as the Bureau of Alcohol, Tobacco and Firearms, or ATF. In the early 1970's, the ATF began to refer fewer moonshine cases to the United States Attorney's Office for prosecution and, in their place, a steady stream of firearms.

It was in this context that I assumed the duties of an Assistant United States Attorney some thirty years ago, when I was hired by the newly appointed United States Attorney, James H. Brickley. Taking the oath of office

Looking For Articles

The FBA Newsletter welcomes the submission of well-written articles, comments and letters concerning pertinent legal issues that would be of interest to our readers. Please e-mail submissions to Krishna.Dighe@usdoj.gov or BSchneider@ck.uscourts.gov.

(U.S. Attorney Retrospective cont'd from page 9)

with me was Mr. Brickley's Chief Assistant, Ralph B. Guy, Jr. When all had come aboard, and the Office was at full strength, we numbered seventeen! Eleven Assistant United States Attorneys were assigned to the Criminal Division and four to the Office's Civil Division.

Assistants in the Criminal Division at that time were assigned to cases by categories. For example, one attorney may be assigned to handle all of the bank robbery cases, extortions, and kidnapings coming into the office, while another attorney would handle all postal theft, check forgery and counterfeiting cases. As an illustration of how things have changed, in 1970 one of my colleagues was assigned the handling of all labor law violations and all drug cases in the office. By 1975, the influx of large numbers of drug cases led to the formation of a Controlled Substances Unit, comprised of five prosecutors, within the Criminal Division. (Today, twenty attorneys are assigned to that Unit.) A few short years later, the balance of that Division was divided into specialized units: Economic Crimes, Special Prosecutions, and General Crimes. Shortly thereafter, an Appellate Division was also created within the Office. Today, I am one of 85 attorneys serving under the leadership of United States Attorney Saul A. Green.

In the last quarter century, the nature of the work has been significantly transformed. The utilization of investigative tools such as electronic surveillance and long term grand jury investigations has markedly increased. Increased emphasis has been placed upon the investigation and prosecution of labor intensive cases such as complex frauds, drug conspiracies, environmental crimes and public corruption. New legislation put additional tools at the government's disposal. Initiatives such as "affirmative civil enforcement" asset forfeiture and an increased focus on health care fraud have added new dimensions to the nature of the work undertaken by the United States Attorney's Office.

Another recent development has been the formation, on a national basis, of a professional association for Assistant United States Attorneys. This new, voluntary organization has given AUSAs an independent voice through which they can communicate with the Department of Justice, the Congress and the public.

During the course of the last one hundred years, many outstanding men and women have served in the United States Attorney's Office for the Eastern District of Michigan. One former United States Attorney became a United States Senator... Philip A. Hart. Another former Assistant United States Attorney became Michigan's Attorney General... Jennifer Granholm. A significant number of the Office's alumni and alumnae have served with great distinction as judges in the state courts. Included in that number is the Honorable James H. Brickley who, after serving two terms as Lieutenant Governor, became a distinguished member of the Michigan Supreme Court. Today, two of my former colleagues sit on that same Court, Justices Maura Corrigan and Stephen Markman. Finally, it is remarkable to consider the number of attorneys who at one time served in this Office and thereafter served with great distinction as members of the federal bench: Arthur J. Tuttle, Thomas P. Thornton, Fred W. Kaess, Lawrence Gubow, Anna Diggs-Taylor, Patricia Boyle, George Woods, Robert DeMascio, Ralph B. Guy, Jr., Paul Borman and Victoria Roberts.

A reflective consideration of the history of the United States Attorney's Office during the last century leads to several significant conclusions. First, it is interesting to note how, over that time period, changes within that Office often mirrored the societal, political and technological changes occurring in the nation at large. Second, whether it was prestige, power, the opportunity for service, or some other consideration, the Office of the United States Attorney has drawn many talented attorneys to it. And finally, from a personal perspective, those of us who have labored in that vineyard unanimously agree that it has been an absolutely wonderful place to work.

The Clerk's Office . . . A Y2K Retrospective

The Clerk's Office of the United States District Court for the Eastern District of Michigan plays a key role in the administration and operation of the Court on a day to day basis, although it often goes unrecognized.

The Office of the Clerk of Court dates back to and has evolved from Colonial times. Throughout this time, the mission of the Clerk of Court and that of the Clerk's Office remains fundamentally unchanged and still embodies the administration and operation of the Court in maintaining its records, entering judgments and orders, maintaining the Court docket, administering oaths, issuing process and writs, jury administration and the collecting, depositing and distributing funds.

How the Clerk's Office carries out its responsibilities as we approach the year 2000 has changed dramatically. The most obvious change has resulted from the relatively recent introduction and proliferation of computers and software applications in the Court environment. At a District Court Clerks seminar held in 1971, the Federal Judicial Center reported on two court projects involving computer applications by stating:

"When considering the use of computers in the courts, it is important to keep several things in mind. First, we should understand the computer cannot be and should not be thought of as central in any aspect of judicial administration."[1]

It is hard to imagine how the Clerk's Office, or any part of the Court, could perform its various functions without computers today. Looking back, we see a slow evolution in technology in the Clerk's Office beginning with simple hand-written documents and records, written in elegant penmanship. A good portion of the work in the Clerk's Office this Century saw the introduction of typewriters and mimeograph equipment. Clerk's Office staff as recently as twenty five years ago could not even begin to comprehend our electronic world today.

Ironically, the Clerk's Office has been devising contingency plans to carry out its functions in light of Y2K concerns. Depending on the preparedness of the power companies, the Court may be rolling docket sheets back into manual typewriters on January 1, 2000!

The next century will certainly bring more change in how the Clerk's Office does business and automation *will* play a central roll in judicial administration in the years to come, regardless of the original position stated by the Federal Judicial Center. Many District Courts have already implemented new computer applications that allow attorneys to file court documents electronically via the Internet.

[1]The Federal Judicial Center Series, 1971 Vol. 1

Calendar Of Events

Criminal Law Section Brown Bag Lunch
January 12, 2000
11:30 - 1:15
Location: Theodore Levin Courthouse, Room 115
Contact: Margaret Raben (313) 540-6460 or Barb McQuade (313) 226-9725

Executive Board Meeting
January 13, 2000
12:00 noon
Location: U.S. Attorney's Office

Martin Luthur King Day
January 17, 2000
11:30 a.m.
Location: Focus:Hope
Contact: Mike Leibson (313) 226-9615

Officer's Meeting
February 8, 2000
8:30 a.m.
Location: Sachs, Waldman

McCree Luncheon
February 16, 2000
11:30 a.m.
Location: The Crowne Plaza Pontchartrain
Contact: Dennis Barnes (313) 965-9725

Executive Board Meeting
February 24, 2000
12:00 noon
Location: U.S. Attorney's Office

Annual Dinner
May 12, 2000
6:30 p.m.
Contact: Kelly Schadell (313) 259-7110

Michigan Court Rule 7.305(B) Retained

On December 3, 1999, the FBA's Rules and Civil Practice Committee joined the chief judges of the Eastern and Western Districts and the Sixth Circuit, as well as the U.S. Courts Committee of the State Bar, in calling for the Michigan Supreme Court to retain Michigan Court Rule 7.305(B). That rule allows for a federal court faced with an undecided issue of state law to certify the legal issue involved to the Michigan Supreme Court for a determination of the controlling law. This past September, the Michigan Supreme Court heard public comment on whether MCR 7.305(B) should be repealed as invalid under the Michigan constitution. In a letter to Eastern District Chief Judge Lawrence P. Zatkoff signed by committee co-chair Gary Faria, the Committee explained its view that the "certified questions procedure provides a valuable mechanism by which the federal judiciary can fulfill its constitutional mandate in diversity cases, and avoid substituting its judgment for that of Michigan's judiciary." The Committee also argued that the power to answer certified questions is within the broad "judicial power" vested in the Michigan Supreme Court by virtue of Article 6, § 1 of the Michigan Constitution of 1963. The Committee analogized the power to answer certified questions to the power to issue declaratory judgments, a power which the Michigan Supreme Court has previously recognized as within the "judicial power" conferred by the constitution. Accordingly, the Committee recommended that the Michigan Supreme Court retain MCR 7.305(B).

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