



FBA newsletter

Fall 2006

Federal Bar Association - Eastern District of Michigan Chapter - 49 years of service to our Federal Bench and Bar

State of the Court Luncheon Tuesday, September 26th

The Chapter will kick off its annual Luncheon Program on Tuesday, September 26th. This time the venue will be the Antheneum Hotel Ballroom. The reception will begin at 11:30 a.m., with the luncheon following at 12:00 noon.

The featured speaker will be Chief Judge Bernard A. Friedman, who will deliver the annual "State of the Court" address. On behalf of the Court, Judge Denise Page Hood will honor pro bono attorneys.

Tickets are \$25 for Chapter members, \$30 for non-members, and \$20 for judicial law clerks. Law firm sponsorships are still available for this luncheon and the three luncheons to be held in the coming months.

To register online for the luncheon, visit the Chapter's website at www.fbamich.org and click Events and Activities. For more information, contact Program Chair Laurie Michelson at (313) 983-7463 or e-mail her at michelso@butzel.com.

BAPCPA: One Year Later (A Columbus Day Seminar)

The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) is about to mark its first anniversary. On Monday, October 9, 2006, at the Sheraton Novi Hotel, the Chapter, the Consumer Bankruptcy Association, and the Debtor/Creditor Rights Committee of the Business Law Section of the State Bar of Michigan

will join together to present this in-depth look at U.S. bankruptcy law after the most extensive amendments in over twenty five years. Find out which parts of the new law are settled and which remain open questions; where we are; and where we

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President's Column *Grant P. Gilezan*

Welcome to the start of our Chapter year, and do I have some welcome news to share with you. Our Chapter is on an impressive roll, giving us every reason to begin with pride, excitement and ambition. Free of any significant organizational problems, we are focused on how best to enhance our Chapter's membership and services. By drawing upon the spirit of stewardship, mission and leadership that is thriving among our members, I am confident that we can further develop our Chapter into an even more helpful, representative and valuable resource for our members and community. I hope the following report inspires you to be a part of that effort.

What better way to start a new Chapter year than with several honors from the National FBA, which includes ninety-four chapters and more than 16,000 members. At the National FBA Annual Meeting and Convention, which I attended in Las Vegas during August 24-26, our Chapter received more honors than any other chapter in the country.

We were one of eleven Chapters to receive a Presidential Excellence Award, which recognizes a superior job in overall Chapter performance. We also received two Presidential Citation Awards – recognizing exceptional efforts on a specific project – for our support of the Sixth Circuit Judicial Conference (held in Detroit last May for the first time in twenty-six years) and our presentation of the Removal And Remand To Federal Court seminars. Our Chapter was one of only four chapters that received two Presidential Citation Awards. Equally impressive was our being one of five chapters to receive an Outstanding Newsletter Recognition Award, which honor is even greater when you consider that this is the fourth year in a row we have received this award.

To put our achievements

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**WINNER
4 YEARS**
National FBA
Outstanding
Newsletter
Award

President's Column (continued)

in perspective, we were the only chapter to get awards in all four of the National FBA award categories. In recognition of our high level of performance, the National FBA has invited us to host a future Annual Meeting and Convention in Detroit. But the honors for our Chapter do not end there.

We also had two members receive significant individual awards. Hon. Damon J. Keith was awarded the Sarah T. Hughes Award, which is National FBA's highest individual honor, recognizing extraordinary contributions to the advancement of civil rights, justice and the legal profession in the United States. This award provides our Chapter and the entire legal community in the Eastern District with a wonderful and fitting tribute to Judge Keith's outstanding career in the law.

The other individual award winner was Brian Figot, our Chapter's Executive Director and Past President, who received an Outstanding Service and Recognition Award for his role as Sixth Circuit Vice President. This award is given to Circuit Vice Presidents who exemplify outstanding service and leadership both within their circuit and nationwide.

Congratulations to Judge Keith and Brian on their deserving honors, as well as to the many members whose dedicated efforts led to our Chapter's awards. A special thank you goes to Brian for his leading role in preparing Judge Keith's nomination for the Sarah T. Hughes Award and applications for

all of the awards our Chapter received.

I hope you, too, are invigorated by our Chapter's success and will join me in being stewards of its future. Stewardship involves a combination of time, talent and treasure, all of which have played a major part in our current success story. Following is a brief description of how our Chapter operates. Please take a moment and consider how you might benefit from being more actively a part of our Chapter.

We are the fifth largest FBA chapter, with over 600 members. We have seven officers (President, President-Elect, Vice President, Secretary, Treasurer, Program Chair and Immediate Past President) and an Executive Director, all of whom tend to the day-to-day affairs of the Chapter. We currently have eighteen Executive Board members, who serve three-year terms, set Chapter policy and provide advice to the Officers.

We also have twenty active committees devoted to practice areas (Appellate, Bankruptcy, Criminal, Environmental, Immigration, Intellectual Property, Labor, Pro Bono and Rules/Civil Practice) and programs (Annual Dinner, Courthouse Tours, Golf Outing, Law Student Initiative, Membership, Newer Lawyers, New Lawyers Seminar, Newsletter, Social Justice, Special Events and Summer Associate Program).

I invite you to "activate" your membership in our Chapter and to become a part of the leadership legacy of one of the top chapters in the nation's premier organization for federal practitioners.

BAPCPA (continued)

might be headed. Learn from recognized leaders what the state of the law is today. And then join us for a complimentary reception to review the day's knowledge in a relaxed and informal setting. For additional information including a listing of the faculty, program details and a link to the registration website, go to www.fbamich.org and click on Events & Activities.

Summer Associate/ Law Clerk Program

The Fourth Annual Summer Associate/Law Clerk Program was once again a resounding success. The program was held on July 27th in Room 115 of the Theodore Levin U.S. Courthouse in Detroit.

Committee Chair Cameron J. Evans opened the program by welcoming the summer associates, judicial law clerks, and members of our Federal Bench who were in attendance. Chief Judge Bernard A. Friedman

entertained the crowd with his witty opening remarks. Judge Marianne O. Battani spoke at length about the differences she has observed between being a judge in State circuit court and in the U.S. District Court. Judge Battani also shared her insights on successful briefing and oral argument, and answered questions from the audience. Finally, Judge Gerald E. Rosen spoke to a number of law students after the conclusion of the program. Judges Avern Cohn and Arthur J. Tarnow, and Magistrate Judge Paul J. Komives were also in attendance.

A total of fifty-five summer associates from the following law firms attended the program:

Charles J. Taunt & Associates
Clark Hill
Cox, Hodgman & Giarmarco
Dickinson Wright
Dykema Gossett
Garan Lucow Miller
Harness, Dickey & Pierce
Honigman Miller Schwartz and Cohn
Kerr, Russell and Weber

Kemp Klein
Sommers Schwartz

In addition to the summer associates, numerous judicial law clerks and interns were in attendance.

Special thanks to Committee Chair Evans for organizing the event, to Chief Judge Friedman and Judges Battani and Rosen for their participation. Thanks also to Court Administrator David J. Weaver and his office for invaluable assistance with the logistics of this event.



Sixth (Circuit) Sense

Brian D. Figot

Since my last column, the Chapter has been the catalyst for this year's two most significant achievements related to the federal bar and the Federal Bar Association. One was a matter

of group effort of the highest degree; the other a matter of lifetime personal accomplishment. Both were recognized by the Federal Bar Association at its recent national convention.

Chronologically, the first was the Sixth Circuit Judicial Conference in May, covered in detail elsewhere in this Newsletter. Suffice it to say that the Chapter's contributions to the Conference made the conclave a success so far beyond expectations that it set a new standard not just within this Circuit, but nationally. Kudos are due: From the generosity of the law firm and corporate sponsors to the innumerable hours put in by Chapter leadership, committee co-chairs and other volunteers to the imagination shown in the scheduled events which included an unparalleled opening reception to the first-ever Chapter-sponsored showing of the world-renowned "Marching Toward Justice" and "Saluting a Giant" exhibit created by the Damon J. Keith Collection.

Which brings us to the second event: the recognition of Judge Damon J. Keith, at the FBA's national convention just concluded in late August, with the most prestigious honor accorded by the Association -- the Sarah T. Hughes Civil Rights Award, which, the FBA's website trumpets, "was created to honor that man or woman who promotes the advancement of civil rights amongst us, and who exemplifies Judge Hughes' spirit and legacy of devoted service and leadership in the cause of equality." Judge Keith is only the fourth recipient of the Hughes Award, the presentation of which is limited to "an attorney or judge whose career achievements have made a

difference [through] either ground-breaking achievement or a body of sustained and dedicated work in the area of civil rights, due process, and equal protection."

Judge Keith, as an attorney and as a judge, at the district and circuit court levels, has indeed made a difference. The Detroit Legal News posed to me the following questions: "Why did the Eastern District of Michigan Chapter nominate Judge Keith for this award? How did he compare to other people the FBA-ED was considering for the nomination? What are your personal views on Judge Keith's contributions to the legal community and society as a whole? Why do you feel he is deserving of this honor?" I responded:

"It is difficult to put into words the images which Damon Keith evokes in anyone who knows the man, what he has done and what he has been. The Eastern District of Michigan Chapter has never considered nominating anyone but Judge Keith for the Sarah T. Hughes Award. . . . Judge Keith's lifetime of devotion to the cause of equality and his accomplishments in the service of justice are unparalleled not just among living Michiganders but among all Michiganders. He is indeed the rare combination of the best qualities humanity has to offer. His has been ground-breaking achievement and a body of sustained and dedicated work. And much, much more. He is elegant and unassuming, eloquent and understandable, brilliant and courageous and curious. Yet, his humility and approachability belie the fact that he is living history. A colleague [past FBA president, Mike Leibson] put it perfectly: 'When one is in Judge Keith's presence, one walks among greatness.'" Anyone wanting more information about this great man and the Hughes Award can find both on the Chapter's website, www.fbamich.org, (<http://www.fbamich.org/index.cfm?location=160&ParentID=156>).

Finally, I want to thank the FBA members of the Sixth Circuit for the opportunity to serve your interests at the National level of our Association for the past four years. Thank you, especially, to the Chapter leadership, who supported me in my "write-in" campaign after our National leadership denied my request for re-nomination. (In this, I am reminded of the editorial that appeared in the National Lampoon the month after the famous, but tasteless, "If You Don't Buy This Issue . . ." cover. In a rare mark of respect to discretion, I will leave the reference to the reader's prior knowledge or further inquiry.)

I wish my successor as a Sixth Circuit Vice President, Michael Newman of Cincinnati, all the best and congratulate him upon his electoral victory. Michael: Please remember, always, that the Chapters are the life blood of the Association. Your mandate, under the FBA

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Sixth (Circuit) Sense (continued)

Constitution, is to serve the Chapters within this Circuit and your responsibilities are to serve as counselor and advisor for such Chapters in the promotion of their welfare and to represent the Circuit on the National Council. When the interests of the Chapters and the Circuit diverge from the interests of the National association (and they occasionally do), do not be hesitant to stand up for the interests of those you are to serve. I hope my willingness to do so is my legacy.

Hon. Sean F. Cox Is Newest District Judge By Jeffrey T. Rogg*

The first thing that one notices upon entering the still-austere chambers of Judge Sean F. Cox is a table. On it, there are two letters on either side of a Bible: one from President George W. Bush and the other from the Chief Justice of the United States, John G. Roberts, Jr. Judge Cox was confirmed to his position on June 8, 2006, and entered on duty immediately. His formal investiture followed August 10, 2006.

Judge Cox grew up in South Redford. He attended Catholic Central High School at its original campus, then located in Detroit. The strength of character recognized by President Bush originated, as it does with many successful people, with Judge Cox's parents. Both his mother and father were immigrants from Ireland who arrived separately in the United States shortly after World War II. After they met and married, his father was a carpenter for many years and later ran construction jobs in southeast Michigan. His mother was a busy homemaker who worked full-time raising the couple's three sons.

The elder Cox's work ethic was imparted at an early age when, in the summer between his junior and senior year of high school, Judge Cox worked at the Acme Screw Company. It was a tough factory job full of 10 hour workdays and an additional five hours on Saturdays. A later summer job in the construction field found Judge Cox helping to build such locally prominent landmarks as the Dearborn Hyatt Regency Hotel and Detroit's Re-

naissance Center. That work, Cox says, required him to overcome his fear of heights.

Judge Cox's education continued at the University of Michigan between 1975 and 1979, in the immediate aftermath of the Watergate scandal, which precipitated his lifelong interest in politics and in law. The events of those days also influenced his decision to go on to law school at the Detroit College of Law, from which he graduated in 1983. During law school, Judge Cox had a part-time job as a litigation clerk, which he found

so interesting he became permanently "hooked" on trial work.

The newly-graduated lawyer began his career at the litigation firm of Kitch, Saurbier in 1984 and later became a partner at Cummings, McClorey in Livonia, between 1990 and 1996. His outside professional activities then included a stint as the President of the Livonia Bar Association and service on the State Bar of Michigan's Judicial Qualifications Committee from 1992 to 1996.

During his undergraduate years at U of M, Judge Cox became involved in the Livonia Republican Party. He worked

his way up through the grassroots ranks, serving as a Precinct Delegate, District Chair, and eventually becoming the Chair of the Policy Committee of the Michigan Republican Party.

Although he enjoyed the challenges and rewards of private practice, when then-Governor John Engler called personally to tell Cox that he was appointing him to succeed Richard Kaufman on the Wayne County Circuit Court in March of 1996, Cox was thrilled. He served in the Criminal Division for nine years, presiding over innumerable capital (in Michigan, life sentence) cases. Judge Cox was subsequently reelected to the Wayne County bench in 1998 and in 2004.

Judge Cox describes the call from Governor Engler as one of the two most memorable moments in his professional career. The other occurred eight years later, on March 16, 2004, when in a quiet moment at ten minutes to two, he experienced an epiphany as he considered his incredible good fortune while waiting in the White House for a "job interview" with the President's Office of Legal Counsel for the position he now holds.

There are differences between being a judge in the State system and Federal court. The most immediately



The Honorable Sean F. Cox with Randy Noel, from the ABA's Standing Committee on the Federal Judiciary.

obvious is the difference in physical surroundings. The staid and sedate Theodore Levin Courthouse is in stark contrast to the often-raucous Frank Murphy Hall of Justice.

Although he is only three months into his new position, Judge Cox has observed that there is not the same volume of cases, but that they are more complicated. The biggest difference he has noticed so far is in the plea and sentencing procedure in criminal cases. Judge Cox is absolutely confident, however, that he is well-prepared by his state court tenure for the federal bench. Cox says the nature of the judicial process is identical and that “the same principles are applied.”

In spite of the lifetime appointment he now enjoys, Judge Cox is still working toward several goals. He first wants to “fulfill the duties of the bench” by meeting the many immediate challenges that his new job presents. In the long term, Cox says he wants to be like two of his new colleagues, Judges Avern Cohn and Patrick J. Duggan—still working hard 20 years from now and, he says, “to have their passion!” Cox describes both as “fully engaged,” and “still intellectually interested” in the job.

Judge Cox describes both himself and his family as “very fortunate.” He now lives in Canton Township with his wife, a registered nurse, and their five children, who range in age between eight and eighteen. While being the father of five active children does not currently allow for many personal hobbies or outside interests, he does enjoy reading in the areas of history, biography and political science; and running.

The heights Judge Cox once feared in the construction business have certainly been exceeded by his professional accomplishments. He can be justifiably proud of a legal career that is an individual example to the people of Michigan, Ireland and around the world of the enduring appeal of the American Dream.

** Mr. Rogg is a Senior Attorney in Miller Canfield's Detroit office where he practices in the areas of civil litigation, dispute resolution, criminal defense, corporate compliance and family law. He is the former prosecuting attorney for Alpena County*

Supreme Court Decides Michigan Clean Water Act Cases

By Christine Dowhan-Bailey & Thuy Dao*

Nearly twenty years ago, Southeast Michigan entered the national spotlight when a challenge to the Clean Water Act was considered by the U. S. Supreme Court. In a landmark case. The Court rendered a unanimous decision declaring that wetlands adjacent to waters of the United States are also waters covered by the Act

and, therefore, subject to regulation. *U.S. v. Riverside Bayview Homes Inc.*, 474 U.S. 121 (1985). The property at issue in that case is in Macomb County and is bordered by the Black Creek and the Clinton River,

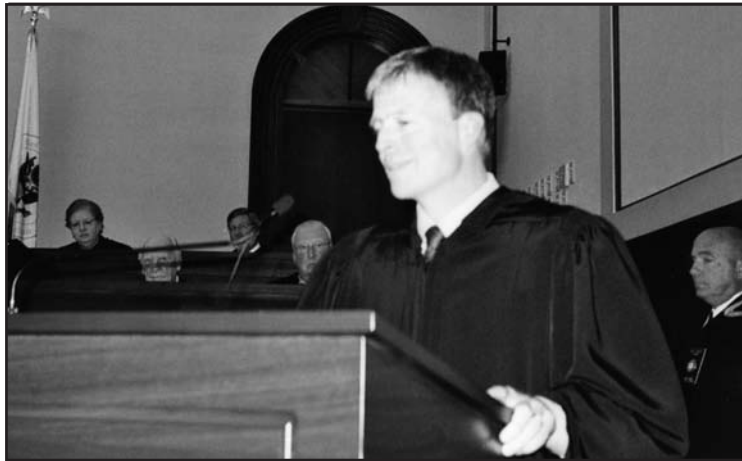
This year, the Court once again turned its attention to Michigan and Section 404 of the Clean Water Act, but unlike the *Riverside* decision, it produced a fragmented legal

outcome. The Court consolidated two matters, *Rapanos v. United States* and *Carabell v. U.S. Army Corps of Engineers*, when it granted a writ of certiorari from the Sixth Circuit in controversies regarding Federal jurisdiction over wetlands. The instant cases differ from the facts presented in *Riverside* as the wetlands in question were proximate to drains, creeks and streams that connect to traditional navigable waters. Therefore, these proceedings moved the question of Federal authority further up the hydrologic system.

In 1972, Congress passed the Clean Water Act, 33 U.S.C. 1251 *et seq.*, to restore the “chemical, physical, and biological integrity” of waters of the United States. Section 404 requires that a Department of Army permit be obtained before introducing fill. Congress vested the permitting authority in the Army Corps of Engineers. The Corps and the EPA share enforcement authority to compel compliance. Consequently, the origins of the cases differ. The Carabells sued the Corps for denying their permit application to construct condominiums on twenty acres (sixteen of which are wetlands). The EPA, on the other hand, initiated legal action against Rapanos for refusing to seek a permit before discharging fill.

The Carabells’ wetland is next to the Sutherland-Oemig Drain which connects to Auvase Creek and

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The newest addition to the District Court Bench, Sean F. Cox, speaks at his investiture.

Clean Water Act (continued)

ultimately empties into Lake St. Clair approximately one mile away. The Carabells asserted that a four foot manmade berm effectively isolates the wetland from U.S. waters.

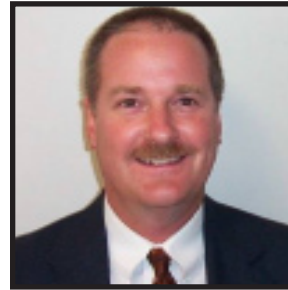
The Rapanos wetlands entailed three separate holdings known as the Salzberg site (twenty-eight acres), the Hines Road site (sixty-four acres), and the Pine River site (forty-nine acres). All sites are located near Midland in Bay County. The Salzburg wetlands stand adjacent to tributaries of the Kawkawlin River which flows into the Saginaw River connecting to Saginaw Bay. The Pine River site is next to the Pine River which also empties into Saginaw Bay. The Hines site borders the Rose Drain which joins the Tittabawassee River which is a tributary of the Saginaw River. The district and circuit courts declared the wetlands to be United States waters in both cases.

Subsequent to spirited oral argument in February, the Court rendered its judgment on June 19th. Although five justices voted to vacate and remand the lawsuits, there was no majority opinion regarding the proper test for Federal jurisdiction over tributaries and associated wetlands. Justice Scalia wrote for Justices Thomas, Alito, and Chief Justice Roberts. Chief Justice Roberts also penned a concurring opinion. This four-justice plurality requires wetlands to possess a “continuous surface connection” to tributaries that are “relatively permanent, standing or continuously flowing bodies of water.” *Cara-bell/Rapanos*, 126 S. Ct. 2208, 2225-27 (2006).

While concurring in the remand, Justice Kennedy wrote independently stating that a “significant nexus” to traditionally navigable waters must be established to confirm jurisdiction. *Id.* at 2236. Justice Stevens filed a dissenting opinion in which Justices Souter, Ginsberg, and Breyer joined to uphold the lower court’s ruling. Justice Breyer also authored a dissent.

Inasmuch as these consolidated cases represented only the third time that the Supreme Court has considered Clean Water Act issues, environmental, developmental and governmental entities were energetically engaged, filing approximately forty amicus briefs that split almost evenly between the positions. Interestingly, thirty-four states joined in an amicus brief favoring the government’s argument as did Macomb County. Since the Court announced its outcome, the decision has been the subject of a Senate hearing, a Georgetown Law Center roundtable, and will be the subject of numerous upcoming legal education programs including a Wetland Symposium in Traverse City, and session at the September State Bar of Michigan Meeting, and a Michigan CLE program in November.

** Christine Dowhan-Bailey and Thuy Dao serve as District Counsel and Assistant District Counsel, respectively, for the Detroit District of the Army Corps of Engineers. However, any opinions expressed are their own and do not purport to represent the Agency.*



From Court Administrator Dave Weaver

In view of Chief Judge Friedman’s upcoming State of the Court speech on September 26, 2006, I will keep my article very brief.

Judge Sean F. Cox was confirmed by the Senate and took a private oath on June 12, 2006. His formal investiture ceremony was held on August 10, 2006. Judge Cox’s official duty station is Detroit. His chambers and courtroom are located on the 2nd floor of the Theodore Levin United States Courthouse. His telephone number is 313-234-2065.

On August 21, 2006, Judge David M. Lawson’s official duty station was changed to Detroit. After clearing up some matters in Bay City, Judge Lawson will make the physical move to Detroit in early September. He will occupy the chambers and courtroom formerly assigned to Judge Rosen on the 8th floor of the Courthouse. His telephone number will be 313-234-2660.

Judge Thomas L. Ludington was confirmed by the Senate and took a private oath on June 30, 2006. His formal investiture ceremony is scheduled for 3:00 p.m. on Wednesday, October 11, 2006, in the Bay City Courthouse. Judge Ludington’s official duty station is Bay City. He will occupy Judge Lawson’s former chambers and courtroom. His telephone number is 989-894-8810.

Remember, if you have any questions or comments, please send them to me at mie_fba@mied.uscourts.gov.

New FBA Student Chapters At Area Law Schools

Last year the Law School Initiative Committee established a set of goals designed to capitalize on growing law student interest in the FBA. Specifically, the Committee set out to organize new FBA student chapters at Wayne State University Law School and the University

of Michigan Law School, and to reinvigorate the University of Detroit Mercy School of Law student chapter.

As a result of the effort of Law School Initiative Committee Co-Chairs Kevin Fanning and Kelly Walters, the UDM chapter has been revitalized and is expected to enjoy significant growth this year. At least fifteen second and third-year students already have joined the UDM Chapter for the upcoming school year. Plans to recruit other students, with the focus on first-year students, are currently underway.

Organizational efforts at WSU also indicate that its chapter will be up and running this fall. WSU law students Steven Migliore and Tisha Simmons are leading the organizational effort. At U-M, Pamela Chamberlain, a second-year student, has successfully gathered names and information of interested students and has undertaken to register the chapter at her law school. Next month, she will meet with the U-M Law School Student Senate to seek official Law School recognition of the U-M FBA Student Division.

In addition to their organizational activities, the chapter representatives at each of the schools already are planning a series of events for the year. The first meeting for the UDM chapter was held on August 30, 2006, where President Dan Assenmacher and Vice President Stefani Lambert sought nominations for the positions of treasurer and secretary. President Assenmacher and Vice-President Lambert also are working to fill a table at the September 26th State of the Court luncheon and have coordinated a motion day with the Chief Judge Bernard A. Friedman for November 1, 2006. Chief Judge Friedman held a brief question-and-answer session with the students afterwards.

WSU will have a general meeting and officer elections in this month, with a lunch-and-learn series to follow shortly thereafter. The WSU chapter also expects to host a motion day during the spring semester.

Our Law School Initiative Committee Co-Chairs are continuing to work with the outstanding law school student representatives at the three schools. Achievement of the Committee's goal to have an FBA student chapter organized and functioning at all three schools this school year looks very promising.

Detroit's 6th Circuit Judicial Conference - A Smashing Success

In July 2005, Detroit hosted the All Star game; in January 2006, the Super Bowl; and no less exciting for judges and lawyers in the Eastern District, May 17-20,

2006, Detroit hosted the 66th Sixth Circuit Judicial Conference.

The annual gathering of circuit, district, bankruptcy and magistrate judges attracted a record number of participants who were warmly welcomed by Chief Judge Bernard A. Friedman. Every other year the Conference is open to lawyers as well as judges, and the 2006 Conference was open to all lawyers practicing in the Sixth Circuit.

The Wintergarden reception at the Marriott Renaissance Center overlooking the Detroit River kicked off the event. Motown entertainers performed a repertoire of songs from Hitsville USA. Afterward, visitors, guided by restaurant reviews provided by our local bench and bar, dined at popular downtown restaurants.

The plenary session opened on Thursday, May 18th with an introduction by Chief Circuit Judge Danny J. Boggs, followed by a panel presentation: "The Law, The Courts, and the Future of the American Automobile Industry." Sixth Circuit Life Members attended a Thursday evening reception at the Renaissance Club. Friday's program began with a fast-paced Supreme Court update presented by Prof. Erwin Chemerinsky of the Duke University School of Law.

All participants had access to the Marching Toward Justice exhibit, created by the Damon J. Keith Collection at WSU Law School. This outstanding exhibit, which has traveled for nearly six years to more than thirty sites around the country, focuses on the fundamental importance of the 14th Amendment.

While the Conference was in session, spouses chose from several social activities. The tour of the Detroit Institute of Arts began with the Diego Rivera murals followed by the Walter O. Evans Collection of African American Art, a docent-led walk through the European collections and ended with a gourmet lunch in the sunlit Kresge Court.

Some out-of-town guests toured the Ford Rouge factory and the Henry Ford Museum. A tour of the Junior League of Detroit Decorator Show House along with a visit to the Edsel and Eleanor Ford House included a luncheon with a view of Lake St. Clair. The social activities provided a glimpse into Detroit's industrial and artistic history and showcased Detroit's architecture and decorative arts.

The Conference culminated in a banquet attended by over 800 people. During the cocktail hour, Magistrate Judge R. Steven Whalen and his group performed jazz standards. The Conference was honored to have Supreme Court Justice John Paul Stevens address the group. Justice Stevens discussed recent Supreme Court

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Judicial Conference Conference (continued)

decisions originating from the Sixth Circuit.

The featured dinner speaker, Michael Barone, a senior writer for U.S. News and World Report, spoke about growing up in Detroit and his early days as a law clerk to Judge Wade McCree. Mr. Barone's interesting talk described the states of the Sixth Circuit as a highly varied region that serves as a political and geographic microcosm of the United States.

The Conference concluded with a Saturday morning breakout session for judges. After sampling the best Detroit has to offer, attendees went home with Motown goody bags containing such Detroit favorites as Faygo Red Pop, Better Made Potato Chips, Sander's Hot Fudge, a Gayle's Michigan Cherry Chocolate Bar, and a CD of Motown music.

An event of this magnitude could not place without the help of literally hundreds of volunteers who are far too numerous to mention individually. On June 13, 2006 the Chapter recognized the volunteers, committee chairs and law firm sponsors at its Annual Dinner at The Gem Theatre. Outgoing FBA President Julia Caroff Pidgeon passed the gavel to incoming President Grant Gilezan, who together spearheaded the FBA's efforts.

This was the first time in twenty-six years the Conference had taken place in Detroit. Based on the enthusiastic response, it is unlikely that so much time will pass before the Sixth Circuit meets here again.

The 2007 and 2008 Conferences are scheduled for May 9-12, 2007 at The Grove Park Inn, Asheville, North Carolina (Judges Only Conference) and May 7-10, 2008 at the Marriott Chattanooga Convention Center, Chattanooga, Tennessee (Open Conference).



The Chapter had its annual Past Presidents' Luncheon at the Detroit Athletic Club, with the largest gathering of past president's it has ever enjoyed. From left to right: Top row: Russell Paquette, Thomas Porter, Edward Kronk, Daniel Malone, Sheldon Toll, Dennis Barnes, Joseph F. Dillon, Robert Forrest, Richard Rossman, and John Mayer. Middle row: Christine Dowhan-Bailey, Elisa Angeli (current Secretary), Geneva Halliday, Justice Maura Corrigan (Michigan Supreme Court), Magistrate-Judge Virginia Morgan (E.D. Michigan), Dennis J. Clark and Brian Figot Bottom row: Grant P. Gilezan (current President), Alan Harnisch, Julia Caroff Pidgeon (immediate past President) and Richard Tarnas.

Judicial Conference Sequel: The 27th Annual FBA Dinner

Lights! Camera! Action! Flush from the success of hosting the Sixth Circuit Judicial Conference, the Chapter held its 27th Annual Dinner honoring our Federal judicial officers at The Gem Theatre on June 13, 2006.

The evening began with an outdoor cocktail reception, complimented by a soft spring breeze and enthusiastic Tiger fans on their way to another victory. The Annual Dinner continued indoors where everyone enjoyed each other's company and the ambiance of this beautiful new venue.

Over 230 guests attended, including Federal circuit, district, bankruptcy and Magistrate Judges, private practitioners, Assistant U.S. Attorneys, Federal Defenders, Judicial Law Clerks, and spouses/significant others. All gathered to pay tribute to and mingle with the judicial officers, to thank law firm contributors to the Sixth Circuit Judicial Conference, to conduct some business, and to enjoy the camaraderie of fellow FBA members.

Chief Judge Bernard A. Friedman administered the oath to new officers – Grant P. Gilezan, President; Hon. Mark A. Goldsmith, President-Elect; Barbara L. McQuade, Vice President; Elisa M. Angeli, Secretary; Barbara J. Rom, Treasurer; and Laurie J. Michelson, Program Chair.

As his first official act, President Gilezan acknowledged the dedication and leadership of the outgoing President Julia Caroff Pidgeon. He also gave individual recognition to her and to the Conference Committee members – Barbara Rom, Dona Tracey, Brian Figot, Jeff Sadowski, Kathleen Nesi, Kevin Fanning, John Mayer, Dennis Levasseur and Tom McNeill -- for their extraordinary efforts in making the Sixth Circuit Judicial Conference, hosted by this Chapter on May 17-20, 2006, a resounding success.

President Gilezan then presented plaques to the following in recognition of their contributions to the Sixth Circuit Judicial Conference:

Barris, Sott, Denn & Driker
Bodman
Brooks Kushman
Butzel Long
Charles J. Taunt & Associates
Clark Hill
Cox, Hodgman & Gianmarco
Cummings, McClorey, Davis and Acho
Dickinson Wright
Dykema
Foley & Lardner
Garan Lucow
Harness, Dickey & Pierce
Honigman Miller
Howard & Howard
Jaffe Raitt
Kerr, Russell and Weber
Kitch Drutchas Wagner
Lear Corporation
Madden Hauser
Miller Canfield
Morganroth & Morganroth
Pepper Hamilton
Plunkett Cooney
Raymond & Prokop
Veracruz, Murray & Calzone

The Chapter also received tremendous support from eighteen sponsor firms and one corporate sponsor for the 27th Annual Dinner. Thanks in large part to these sponsors, the Chapter is once again able to contribute several thousand dollars to the Federal Bar Foundation. This year's sponsors were:

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This enjoyable evening was topped off with an encore performance by our legal community's talented musical parody troupe, A (Habeas) Chorus Line, consisting of Brian Figot, Sara Fischer, Justin Klimko, Joseph LaBella, Michael Leibson, Mark Lezotte, James Robb, Angela Williams, and Judith Zorn.

Thanks also to Butzel Long for providing the invitations and programs for the Annual Dinner and to Committee Co-Chairs Laurie Michelson and Theresa M. Serra for their dedication in making the 27th Annual Dinner the perfect sequel to the Sixth Circuit Judicial Conference.

E-Discovery Amendments To Fed. R. Civ. P.

**By Dennis J. Levasseur and Niesa R. Trent,
Bodman LLP**

Effective December 1, 2006, Fed. R. Civ. P. 16, 26, 33, 34, 37, 45 and Form 35 will include new provisions concerning e-discovery. The amendments address the unique nature of electronic data.

For starters, the lifespan of electronic data is unique from that of conventional data – its existence can be fleeting or virtually indefinite. Electronic data can be lost or destroyed due to hardware or software problems, and can be easily deleted. However, electronic data may continue to exist despite an intention to destroy it.

The increased volume of electronic data also necessitates the amendments. Much more data can be stored and retrieved on hard drives, servers, back-up tapes, and other storage devices. Examining this data is often a complex, time-consuming, and expensive process.

(see page 10)

Amendments (continued)

Finally, electronic data differs from conventional documents because the former often contains “metadata” – information about when a document was created, when and how it has been modified, and by whom it has been accessed.

Under amended Rule 16(b)(5) and (6) the court is alerted that e-discovery issues may need to be addressed early in the litigation, either through a Rule 16 scheduling order or through an order adopting the parties’ agreements for asserting claims of privilege or protection after inadvertent production of privileged information.

Amended Rule 26(a) clarifies a party’s duty to include e-discovery in its initial disclosures by substituting “electronically stored information” for “data compilation.” A party must, without awaiting a discovery request, provide to other parties a copy of, or description by category and location of, “electronically stored information.”

Amended Rule 26(f) mandates that the parties’ conference include discussion of any issues relating to disclosure or discovery of electronically stored information. The discovery plan shall include: (i) the form or forms in which electronically stored information should be produced and the preservation of such information, and (ii) any issues relating to claims of privilege or protection as trial preparation material.

Amended Rule 26(b) (2)(B) clarifies a responding party’s obligation to provide discovery of electronically stored information that is not reasonably accessible. Under the amendment, “[a] party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost.”

On a motion to compel or for a protective order, the responding party “must show that the information is not reasonably accessible because of undue burden or cost.” However, the “court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C),” (i.e. whether the discovery sought is cumulative, the burden of expense outweighs the benefits, etc.)

Amended Rule 26(b)(5)(B) addresses the inadvertent disclosure of privileged or work product information. It provides:

- “If information is produced in discovery that is subject to a claim of privilege or work product, the party making the claim may notify any party that received the information and the basis for it.”

- After notification, “the party must promptly return, sequester, or destroy the specified information and any

copies it has and may not use or disclose the information until the claim is resolved.”

- “A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.”

Amended Rule 33(d) provides that where the answer to an interrogatory may be derived from electronically stored information, the responding party may specify the records from which the answer may be derived if the burden of deriving the answer is substantially the same for either party.

Amended Rule 34(a) and (b) provide that parties may request electronically stored information, translated if necessary by the responding party into a reasonably usable form. If a request does not specify the form for producing electronically stored information, a responding party must produce the information in the form in which it is ordinarily maintained or in a form that is reasonably usable.

Amended Rule 37(f) provides a “safe harbor” from sanctions when electronic data is automatically and unintentionally, deleted: “Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system.”

Amended Rule 45 includes electronically stored information among the data to be produced under a subpoena. Subpoenas may specify the form in which the electronic data is to be produced, and may be served to copy, test, or sample electronic data. As in amended Rule 34, the information should be produced in the form in which it is ordinarily maintained, or in a reasonably useable form.

As with Rule 26(b)(2)(B), a non-party need not provide discovery of electronically stored data from sources it identifies as not reasonably accessible because of undue burden or cost.

Amended Form 35 requires inclusion of a brief description of the parties’ proposals on handling the “[d]isclosure or discovery of electronically stored information,” as well as a brief description of any provisions of a proposed order reflecting the parties’ agreement “regarding claims of privilege or protection as trial-preparation material asserted after production.”

New Judicial Law Clerks

FBA welcomes the following new judicial law clerks for the Eastern District and the Sixth Circuit:

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Michael A. Pearson
University of Michigan Law School

Judge Cook

Sara Woodward
University of Michigan Law School

Judge Cohn

Lucia Christopher
University of Cincinnati College of Law

Judge Zatkoff

Michael Simoni
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Judge Roberts

Shimica D. Gaskins
Georgetown University Law School

Judge Lawson

Nicholas Fromherz
University of San Diego School of Law

Calendar of Events

Sept 12

Judge John Feikens Portrait Dedication Ceremony

11:00 A.M.
Theodore Levin U.S. Courthouse

Sept 26

State Of The Court Luncheon

Speaker:
Hon. Bernard A. Friedman
Atheneum Hotel, Greektown
11:30 A.M. Reception
12:00 Noon Lunch

Oct 9

BAPCPA: One Year Later (a Columbus Day seminar) Bankruptcy Abuse Prevention and Consumer Protection Act Seminar

Sheraton Novi Hotel
8:00 A.M. to 5:00 P.M.

Nov 16

Rakow Scholarship Awards/ Historical Society Luncheon

Speaker: David Chardavoyne
Site: TBA
11:30 A.M. Reception
12:00 Noon Lunch

Dec 5-6

New Lawyers Seminar

Theodore Levin U.S. Courthouse
8:00 A.M. Registration

Visit the Chapter website for details of these events and further developments.
[www.fbamich.org/Events & Activities](http://www.fbamich.org/Events%20&%20Activities)

Judge Cox

Katrina Staub
Wayne State University Law School
Jennifer Newby
Wayne State University Law School

Judge Ludington

Casey Fitch
University of Virginia School of Law and
Seattle University School of Law

Judge Kennedy

Erica Knievel
Harvard Law School
Josh Ruland
University of Michigan Law School

Law Clerks (continued)

Judge Keith

Jasmine Gonzales-Rose
Harvard Law School
James Perez
New York University School of Law
Ademuyiwa Bamiduro
University of Maryland School of Law

Judge Ryan

Michael J. Songer
University of Michigan Law School
Andrew E. Gelfand
University of Virginia School of Law

Judge Clay

Ivan Espinoza-Madrigal
New York University School of Law
Christiane McKnight
Northwestern University School of Law
Maya Rupert
University of California, Berkeley,
School of Law (Boalt Hall)
David Stoltzfus -
New York University School of Law

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