



FBAnewsletter

Fall 2008

Federal Bar Association - Eastern District of Michigan Chapter - 51 years of service to our Federal Bench and Bar

Rakow Awards/Court Historical Society Luncheon November 18th

Once again, the Chapter looks forward to co-hosting our annual Rakow Awards luncheon with the Court Historical Society at the Athenum Hotel in Greektown. The reception begins at 11:30 a.m. with the luncheon starting at noon. Tickets are \$25.00 for Chapter members, \$30.00 for non-members.

Continuing another proud tradition, our Chapter will present scholarships financed by our Foundation to one deserving student from each of our six Michigan law schools. Rakow scholarships are given annually in honor of one of our energetic Chapter founders, Ed Rakow.

For its part, the Historical Society has planned yet another compelling program. The Historical Society has engaged Greg Stohr, the Bloomberg News Supreme Court reporter and author of "A Black and White Case: How Affirmative Action Survived Its Greatest Challenge," the first book to examine the 2003 U.S. Supreme Court decisions in the landmark University of Michigan cases. At the conclusion of the luncheon, Mr. Stohr will be available for a book signing (for your convenience, books will be available for purchase at a special low price).

For more information about this luncheon or the luncheon series, please contact Thomas G. McNeill, Chapter Program Chair, at (313) 223-3632 or by email at tmcneill@dickinson-wright.com. Information is also available on the Chapter's website at www.fbamich.org.

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Sentencing Advocacy Seminar November 12th

The Criminal Practice Committee will present a panel discussion entitled "How to Improve Sentencing Advocacy: The View from the Bench and the Probation Department," at
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President's Column

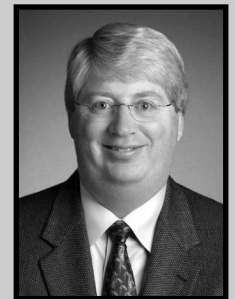
Barbara L. McQuade

Key Contributors

Throughout the year, this column will focus on members whose work has made a significant impact on our Chapter.

One of our Chapter's key contributors is Tom McNeill. As Program Chair, Tom leads the planning of our quarterly luncheon series and other programming areas. Quality programming is one of the Chapter's top goals this year, and the reason for that priority can be credited to Tom as well.

The Chapter saw unprecedented growth last year with Tom as Chair of the Membership Committee. At the behest of Past President Judge Mark Goldsmith, Tom and his Committee launched a membership drive that attracted 300 new members.



Tom McNeill

The Chapter seeks to retain all of these new members by providing high quality programming, educational seminars, and networking opportunities. So Tom's success last year has given him new challenges this year, and he has met them with typical aplomb.

Programs in the works include a seminar on presenting financial proofs in court, a brownbag panel discussion on sentencing advocacy, a Courthouse tours orientation breakfast, and the Rakow Awards Luncheon.

In addition to offering programs to our members, we want to engage them as active participants in committees. Committee chairs attended an August orientation session, at which they were encouraged to invite to committee meetings all new members who indicated a preference for a particular committee on their application form. If you are interested in serving on a committee, a list can be found on the chapter's website at

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

President's Column (continued)

www.fbamich.org or by sending an email to Executive Director Brian Figot at fbamich@fbamich.org.

Other goals for the year relate to our diversity and pro bono efforts. President-Elect Elisa Angeli Palizzi leads our Diversity Task Force, co-chaired by Judge George Caram Steeh and Assistant U.S. Attorney Elizabeth Stafford. The Diversity Task Force has been asked to develop specific recommendations to improve the diversity of our Chapter in all forms.



Elisa Angeli Palizzi

Judge Goldsmith serves as officer liaison to our Pro Bono Committee, chaired by Rick Haberman of Dickinson Wright, Patrice Arend of Jaffe Raitt Heuer & Weiss and John Nussbaumer, Associate Dean at Cooley Law School at Auburn Hills. The Chapter's Pro Bono Committee works with the Court's Pro Bono Committee to best support the pro bono needs of our district. Attorneys performing pro bono service were honored at the State of the Court Luncheon on Sept. 23. We'll hear more about the work of these and other key contributors in the coming months.



Mark Goldsmith

But, back to Tom McNeill. Tom practices at Dickinson Wright in the areas of commercial litigation, securities and corporate governance. He also lectures extensively on electronic data and E-discovery. As Membership Chair last year, Tom showed his creativity, challenging lawyers to bring in new members and offering the winner lunch with author Scott Turow at the Chapter's Gilman Luncheon in April. We look forward to reaping the benefit of Tom's energy and creativity in the years to come.

Advocacy Seminar (from page 1)

noon on Wednesday, November 12th in Room 115 of the Courthouse. There is no charge for the presentation, and those attending should feel free to bring a brown bag lunch. The panel members will include Judge Robert Cleland, Judge Victoria Roberts, and Phil Miller, Chief Probation Officer.

The goal of the presentation is to give defense attorneys and prosecutors alike practical advice for enhancing the quality of their sentencing presentations. The judges on the panel will describe the sentencing councils used by many judges in this District and the types of arguments that the councils have found most persuasive. They will also address the role that letters from crime victims and from supporters of the defendant play in the sentencing process and how to make such letters more relevant and persuasive. Finally, the judges will offer tips on how to present sentencing arguments in the most effective format. Phil Miller will explain how defense attorneys and prosecutors can maximize their input into the Probation Department's consideration of each case and shape the sentencing posture of the case before it even reaches the judge's desk.

For more information, contact Matthew Leitman at 248-267-3294 or Daniel Hurley at 313-226-9780.

New Lawyers Seminar December 2nd and 3rd

The nationally acclaimed (and copied) annual New Lawyers Seminar will be held on Tuesday and Wednesday, December 2-3, 2008, starting in Room 115 at the Courthouse. Register your associates early, as the capacity is limited.

The Seminar utilizes a "nuts and bolts" how-to-do-it approach which is designed to assist recent graduates in understanding certain areas of substantive practice and the fundamental procedures followed in the Court and also in the State courts in Wayne, Oakland and Macomb counties, featuring a faculty of judges, court personnel and practicing attorneys.

The first day of the Seminar, December 2nd, is "Federal Day," with intensive focus on the practicalities of federal practice, followed by a swearing-in ceremony which will be coordinated by the Clerk's Office. (Separate registration with, and payment to, the Clerk's Office is required for the swearing-in.) The latest information regarding the swearing-in ceremony is on the Court's website, at www.mied.uscourts.gov/.

The second day, December 3rd, is "State Day" and leads the uninitiated through the vagaries of the tri-county court systems, with a luncheon at the historic Detroit Club, usually addressed by the Chief Judge of the Wayne County Circuit Court.

Additionally, for each subject covered, there is an accompanying outline and/or substantive article, conveniently formatted for word searching on a CD-ROM.

Over the years, this Seminar has been copied, first nationally by other FBA Chapters and more recently by local bar associations and law firms. However, it remains unparalleled both in content and in pricing. The two-day Seminar, luncheon and Seminar materials are all provided

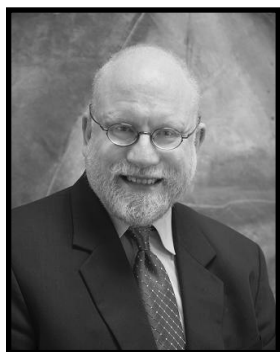
for only \$65.00 to members of the national FBA; \$95.00 to non-members. A special price of \$140.00 includes the seminar plus one year of membership in both the national FBA and the Chapter.

Co-chairs for the Seminar are Brian Akkashian, Christine Dowhan-Bailey, Brian Figot, Grant Gilezan, Geneva Halliday and Cathrine Wenger.

Reservation checks should be made payable to the Federal Bar Association, and mailed to New Lawyers Seminar, 30100 Telegraph, Ste. 428, Bingham Farms MI 48025-4564.

Online registration with secure payment by credit card is available at www.fbamich.org.

If you have any questions, email the FBA at fbamich@fbamich.org or call Brian Figot at (248) 358-0870 x11.



Tidbits & Trivia **By Brian D. Figot**

Looking Back at an Historical Blog

An historical blog? Outrageous! The word “blog” did not even exist until less than a decade ago and the medium in which blogs are published is a creation of the modern era. However, while the word is new, the medium is recent and the use has proliferated (nearly everyone seems to have one), the concept is ancient.

As defined in the online Merriam-Webster dictionary, a blog is nothing more than a noun whose etymology is a shortening of the term “Weblog,” dating back to 1999, defined as:

a Web site that contains an online personal journal with reflections, comments, and often hyperlinks provided by the writer; also : the contents of such a site

We used to call a journal with reflection, comments and other integrated materials a “diary” or “scrapbook” if maintained infor-

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A Message from the Pro Bono Committee

Dear Chapter member:

Representatives of the FBA Pro Bono Committee met with Judge Denise Page Hood, Judge Victoria Roberts, Court Administrator David Weaver, and Deputy Court Administrator Libby Smith. The foreclosure crisis has made its way into federal court in the form of pro se cases filed by plaintiffs seeking to set aside a sheriff’s sale and have title restored, and we need your help.

We are in the process of putting together a training program for volunteer lawyers willing to help handle these cases that we hope to present in late October, and we are reaching out to you to ask you to volunteer your time to help address this pressing need.

In the past, many of the FBA’s pro bono cases have focused on practice areas that some of you felt were outside your comfort zone. This may be an opportunity for those of you who have wanted to get involved, but did not feel comfortable doing so.

Judge Roberts has provided us with a summary of the kinds of cases that are being filed in federal court as diversity actions and as original jurisdiction actions. Federal statutes sometimes cited are the Fair Debt Collections Practices Act, the Truth in Lending Act, the Racketeering and Influenced Corrupt Organizations Act, and the Real Estate Settlement Procedures Act. Plaintiffs also rely on the Fifth and Fourteenth Amendments.

Michigan statutes cited include Foreclosure by Advertisement, the Michigan Consumer Mortgage Protection Act, and the Michigan Mortgage Brokers Lenders and Servicing Lending Act. Common law actions cited include fraud, fraudulent inducement, quiet title, and breach of contract. Plaintiffs sometimes challenge the notice provisions that allow foreclosure by advertisement and make a due process argument from that.

If you are interested in volunteering, please contact Administrative Assistant Sabrina Wescott at Cooley Law School’s Auburn Hills campus. She can be reached at wescotts@cooley.edu or at 248 751-7800 Ext. 7778. This contact will not commit you to taking a case. Before you are asked to accept a case, you will have the opportunity to review the case file to determine if you want to accept it.

Please seriously consider joining us in this worthwhile effort.

Sincerely,

Eastern District Judges Pro Bono Committee
Judge Denise Page Hood
Judge Thomas L. Ludington
Judge Victoria A. Roberts
Judge Arthur J. Tarnow

FBA Pro Bono Committee
Patrice Arend (Jaffe Raitt)
Richard Haberman (Dickinson Wright)
John Nussbaumer (Cooley-Auburn Hills)

Tidbits & Trivia *(from page 3)*

mally and/or individually. When maintained officially or organizationally, we call such journals “minute books” or “annals.”

Without the relative permanence of cyberspace, the old “blogs” are (regrettably or not) more prone to disappearance. Destruction of one copy may endanger the species, where destruction of one hard drive or one server is usually insignificant (as the forensic discovery experts will confirm).

We are fortunate therefore to have had access to the scrapbook maintained by E.A. Karu, the FBA historian who more than a generation ago put aside little tidbits of information from the 1930s, 1940s, and 1950s, ranging from the crucial to the trivial and including select minutes from meetings held during the period, some printed programs from the FBA’s annual anniversary dinners and some odds and ends.

For example, the binder for the 1930s contains an August 9, 1933 letter to the membership from FBA president William A. Roberts, correspondence which contains a contemporaneous and vivid account of the depths of the Great Depression and the birth of the New Deal:

“Dear Fellow Members:

“It does not require a letter from me to let you know that the past few months have been the supreme trial to the lawyer in Government service and to the Federal Bar Association. Financial stringency, lack of security, and unsettling rumors have been prevalent at a time when our every nerve was strained to place in effect swiftly the most revolutionary and thrilling -- and the most complex program in the legislative and administrative history of the country.

“... The Association, like the Nation, will and must continue regardless of changes in the men who constitute each. Now, however, things are brighter. We have our new office here in the Earle Building [at 13th and E Sts., N.W.], our financial program has been overhauled on a basis of rigid economy and a clearing in the banking situation is enabling us to regain our equilibrium and to pay off in part our accrued obligation.”

Also retained was a “link” to a March 5, 1936, article from the Washington Star, headlined “LOCAL RULE HELD SLIPPING IN U.S.,” subtitled “Federal Bar Hears Ransom Defend People Control and Independence” and providing in part:

“‘The independence of American local self-government is being destroyed,’ William L. Ransom of New York, president of the American Bar Association, charged last night in an address at the 16th annual dinner of the Federal Bar Association held at the Mayflower Hotel.

“‘The American people are entitled to be well governed, and they are entitled to have Government kept close to the people and close to local needs and wishes,’ he declared.

‘That cannot be accomplished through reliance on any remote and bureaucratic centralization of power . . . ‘

...

“Speaking shortly after Senator Sherman Minton, Democrat, of Indiana had advocated that a 7-to-2 vote by the Supreme Court be required to declare a law unconstitutional, Ransom maintained it is vitally necessary that the powers of the courts be unabridged ‘in enforcing compliance to the fundamental law * * * ‘

“‘Unless the most sacred of human liberties are to be destroyed in America as they are being destroyed in other lands,’ he said ‘we must be sure that no steps are taken which will take away the powers of our courts, to defend and protect the rights and liberties of the people.’”

An excerpt from the Minutes of the April 21, 1936, Executive Committee meeting indicates a then-insignificant event, action on the membership application of Alger Hiss. Years later, Hiss would be at the center of the “Communists in the State Department” controversy that propelled a young Congressman, Richard M. Nixon, to the national stage and which signaled the birth of another era in American history, “McCarthyism.”

Minutes from the meeting of September 22, 1936, note the acceptance to membership of various attorneys from a then-proposed Chapter in Philadelphia, whose government affiliations would have seemed obscure for more than seventy years, but whose employment now provides a responsive chord: Of the 44 attorneys: three were employed by the Reconstruction Finance Corporation, a government agency that made loans to banks, railroads, farm mortgage associations, and other businesses, and another 18 were “Foreclosure Attorneys” employed by an until recently obscure government agency known by its Rooseveltian initials: HOLC.

Sometimes it takes generations for trivia to emerge from obscurity. From the September 25, 2008, Op-Ed article by Senator Hillary Clinton, published in the “Wall Street Journal” and since then cited in numerous “blogs”:

“This is not just a financial crisis; it’s an economic crisis. Therefore, the solutions we pursue cannot simply stabilize the markets. . . . First, we must address the skyrocketing rates of mortgage defaults and foreclosures that have buffeted the economy and ignited the credit crisis.

...

“I’ve proposed a new Home Owners’ Loan Corporation (HOLC), to launch a national effort to help homeowners refinance their mortgages. The original HOLC, launched in 1933, bought mortgages from failed banks and modified the terms so families could make affordable payments while keeping their homes. The original HOLC returned a profit to the Treasury and saved one million homes. We can save roughly three times that many today.”

Finally [for purposes of this column], the scrapbook also contains something of a far less serious nature -- hand-

written correspondence from Justice Louis Brandeis, who wrote to FBA President William Morell, in response to an October, 1939, invitation to honorary membership:

“Re yours of 8th.

“A self-denying ordinance of long standing forecloses my accepting membership, as you so courteously suggest.

Fortunately, Mr. Morell also received acceptances from Justices Hughes, Frankfurter, Black, Douglas, Stone, Roberts, Sutherland, and Reed, thus revealing an 8–1 split in the FBA’s favor. Even under the constitutional majority that Senator Minton would have required, the FBA would have prevailed.

warm since illness had prevented him from speaking a year ago. He thanked Judge Gerald E. Rosen for standing in for him on that occasion and on many other occasions as well.

He thanked the Chapter for joining his name with that of Judge Julian Abele Cook, Jr. in establishing the new Julian Abele Cook, Jr.-Bernard A. Friedman FBA Civility Award.

He introduced the newest District Judge, Steven J. Murphy, III, and acknowledged the presence of still-relatively-new Flint Magistrate Judge Michael Hluchanuk.

He noted that it was a year since the death of Judge George E. Woods “who will always be remembered as a great judge and a wonderful colleague and friend.”

He introduced the Court’s ombudsman George Bedrosian as “the person to interface with when there is no institutional solution to a problem” and stressed the confidential nature of communications with Mr. Bedrosian.

Chief Judge Friedman went on to recall the State of the Court address given by then Chief Judge James P. Churchill in 1989. Among several subjects, Judge Churchill voiced his “suspicion” that the grand jury served as the “rubber

stamp of the prosecution.” Judge Friedman described in detail how the grand jury works, in secret with the prosecutor present but no defense bar present. He came to the same conclusion that Judge Churchill closed with: “It [the grand jury] works not because of the inherent safeguards but because of the integrity of the people that make it work.”

As he has done in the past, Chief Judge Friedman devoted a substantial portion of his time to the human side of the Court by comparing it to a law

firm. His firm has 32 partners (judicial officers) and 70 associates (law clerks). The annual payroll for associates is \$6,414,254, or an average per associate of \$91,632, with salaries ranging from \$58,996 to \$149,000. The associates attended 27 law schools in 12 states, with the University



Judge Denise Page Hood presents certificates of appreciation from the Court. Photo by John Meiu, courtesy of Detroit Legal News.

State of the Court Luncheon Held

The Chapter’s popular luncheon series returned from summer hiatus on September 23rd with the State of the Court address.

The program began with a welcome from Chapter President-Elect Elisa Angeli Palizzi, who was pinch-hitting for Chapter President Barb McQuade.

In keeping with tradition, attorneys who provide pro bono service to the Court were honored. Judge Denise Page Hood, Chair of the Court’s pro bono committee, presented certificates of appreciation from the Court to several deserving practitioners and thanked them for their dedicated service to the public. Judge Hood also noted that this year attorneys will be asked to volunteer their services not just on criminal and civil rights cases, but on cases involving foreclosures, which the Court has seen a substantial increase in pro se filings given the state of the economy.

Following recognition of the pro bono attorneys, Chief Judge Bernard A. Friedman gave the annual State of the Court address to the Chapter. His welcome was especially



Chief Judge Bernard A. Friedman, Elisa Angeli Palizzi and Thomas G. McNeill. Photo by John Meiu, courtesy of Detroit Legal News.

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State of the Court *(from page 5)*

of Michigan leading the way and Wayne State University a close second.

He went on to compare aspects of the Court today to what it was in 1988. During those 20 years, the pending caseload has diminished from 6,800 to 5,500. The Clerk's Office staff has only increased from 110 to 115, however within that total the IT (information technology) staff has grown from 3 to 16. Many fewer staff members are involved in handling records and making docket entries.

Echoing Judge Rosen from last year, he commented on our aging Courthouse. He characterized it as having "an infrastructure that is old and worn out and beyond repair. . . We are working on a fix and will keep you posted."

He closed, saying: "We are in the forefront of courts in our country, thanks to a wonderful bench, you an engaged bar, and our dedicated staff. I can assure you that we will continue to deliver service to the bar and community at the highest levels. It is my pleasure to be your Chief."



From Court Administrator Dave Weaver

The FBA State of the Court luncheon was this week at which Chief Judge Friedman was the keynote speaker. In his speech he mentioned the

facilities problems we have in the Theodore Levin United States Courthouse. Remembering this was a topic Judge Rosen covered in his speech at last year's FBA State of the Court luncheon, I thought I would provide you with an update.

The Theodore Levin U.S. Courthouse is both stunning and historic. Unfortunately, it requires complete replacement of its critical infrastructure - plumbing, electrical and HVAC. Our landlord, the General Services Administration (GSA) has informed us the renovation would cost between \$300 and \$400 million (yes, million) to complete and would require the Court to relocate for as many as 3 to 4 years. Unfortunately, they have told us they can't afford the renovation.

The Judicial Conference Committee on Space and Facilities is currently implementing a new program to review space and facilities needs throughout the country. Our facilities, including the Theodore Levin U.S. Courthouse, have been reviewed and our problems acknowledged, but the prospect of being prioritized for renovation funding or for a new courthouse is, well, remote. Frankly, any new funding is unlikely due to problems with the project for a new federal courthouse in Los Angeles, California for which \$400 million has already been approved. Due to

cost overruns, a recent LA Times article confirmed that the LA courthouse project will run in excess of one billion dollars (yes, billion) to complete.

Although we are pursuing every avenue for funding, be it for a renovation to the Theodore Levin U.S. Courthouse or a new court facility, until the LA matter is resolved it is unlikely we will see any progress on our situation in Detroit, absent direct Congressional intervention.

On a happier note, U.S. District Judge Stephen J. Murphy III has joined our Bench. Judge Murphy will sit in the Theodore Levin U.S. Courthouse. He has been added to the civil case assignment system, but because he came to the court directly following service as U.S. Attorney he will have to wait one year before being assigned criminal cases.

The Court has also begun accepting sealed civil filings in CM/ECF. So far this new capability has gone smoothly. Please be sure to review all Local Rules and CM/ECF procedures when filing such matters under seal. I reported in my last article that the Court now requires all new civil cases be initiated online in CM/ECF. The number of new complaints being filed electronically in the Eastern District of Michigan is currently the fourth highest in the country.

Focus on an FBA Member



L. Michael Wicks

L. Michael Wicks Retiree After 33 Years of Service to the U.S. Attorney's Office

By Michael J. Riordan*

A continuing feature of the Newsletter is the periodic profiling of a FBA member. This is the fourth of such profiles.

On January 1, 2008, after thirty-three years as an Assistant United States Attorney, L. Michael Wicks retired from Federal Service and began his new career as a retiree and adjunct professor at the University of Michigan Law School teaching a course on Immigration law. For twenty-three of his years at the USAO, Mike served as Chief of the Civil Division. He also served as First Assistant to former U.S. Attorney Saul Green in 1999 and 2000.

A native of Dearborn, Michigan, Mike graduated from Dearborn High School in 1967. Like his mother and brother before him, Mike then continued his education at the University of Michigan in Ann Arbor. He graduated

Phi Beta Kappa in 1971 with a B.A. in political science. He then graduated from the University of Michigan Law School in 1974.

Mike said that his years of matriculation in Ann Arbor were an “interesting time. The United States was undergoing a bit of a social upheaval and Ann Arbor was kind of a microcosm of that.” Wicks said that “there was a lot going on with demonstrations and other acts of civil disobedience like the Hash Bash.” Even in that tumultuous climate, Mike was able to nurture his lifelong love of U of M athletics. “I was at Michigan Stadium in 1969,” Wicks said, “when first-year U of M football coach Bo Schembechler and his unheralded Wolverines knocked off the number one ranked Ohio State Buckeyes and Woody Hayes. It was quite exciting.”

Mike said the luckiest break of his legal career came the summer between his second and third years of law school when he was selected to work as an intern at the U.S. Attorney’s Office. “Then U.S. Attorney Ralph Guy told me after my internship that if there was an opening in the office when I passed the bar exam, he would hire me as a full-time AUSA.” True to his word, Guy hired Mike in October 1975. “I cannot think of a better way to spend a legal career than in the Civil Division of the U.S. Attorney’s Office,” Wicks said.

At the U.S. Attorney’s Office, Wicks defended the United States in all types of tort claims and in immigration cases. He also handled affirmative civil enforcement cases to recover money wrongfully appropriated from the United States. For the last fifteen years of his service, Mike spent the bulk of his time representing the United States in immigration matters. “I worked with some wonderful people. There never was a dull day.”

Known for his quiet, unassuming personality and great sense of humor, after joining the office, Mike quickly gained the respect of the bench and bar. In 1984, then U.S. Attorney Lenny Gilman tapped him to be the Chief of the Civil Division. In addition to his regular case load, Mike had supervisory responsibility for twenty attorneys and a support staff of twenty-five.

In 2007, Mike married his long-time Civil Division co-worker, Liz Larin. After Mike’s retirement, Liz succeeded him as Chief of the Civil Division. “Things have kind of come full circle for me,” said Wicks. “After we were married, Liz and I bought a house in Ann Arbor. Not only am I back at U of M Law School, but retirement gives me the chance to follow the U of M teams, especially nonrevenue sports like volleyball and softball, more closely.” Retire-

ment also has allowed him more time to visit his mom and brother, a doctor, in Arizona, to work on his house and yard and to do more long distance running. Mike describes it as, “a nice retirement after a very privileged career.”

He concluded that “working in the U.S. Attorney’s Office and having the opportunity to associate with the Federal Court family is the best thing that ever happened to me.”

**Michael J. Riordan is an Assistant United States Attorney and the Chapter Treasurer.*



Dennis Clark and Christina Farinola, Chapter delegates at the FBA National Convention in Huntsville, Alabama.

FBA Annual Meeting and Convention

The FBA held its Annual Meeting and Convention in Huntsville, Alabama from September 18-20, 2008. Attendees engaged in a variety of opportunities, including CLE classes, training and board meetings. The weekend was not all academic, however, as there were several social events, including receptions at the Huntsville Botanical Gardens and the U.S. Space & Rocket Center.

Of the many opportunities afforded to attendees, there were a few of particular significance to our Chapter. The “Chapter Education Program,” which was facilitated by the Vice Presidents of the Circuits, is an event which was initiated by former Chapter President Geneva Halliday. Attendees learned from FBA Executive Director Jack Lockridge about some technological initiatives we can expect from the FBA. However, the majority of this meeting was a group discussion between Chapter representatives, organized by circuit, at which individual chapter representatives shared ideas which were then shared with the entire room.

The Chapter was front and center at the 2008 Awards Program, during which the E. D. Mich. received several Chapter Activity Awards, including a Presidential Excellence Award and Presidential Citation Awards for the Bench-Bar Conference Starring Clarence Darrow and Featuring Helen Thomas; the FBA Mentoring/Newer Attorney Trial Practice Program; and the Julian Abele Cook Jr.-Bernard A. Friedman FBA Civility Award. In addition, the Chapter received an Outstanding Newsletter Recognition Award for the sixth consecutive year.

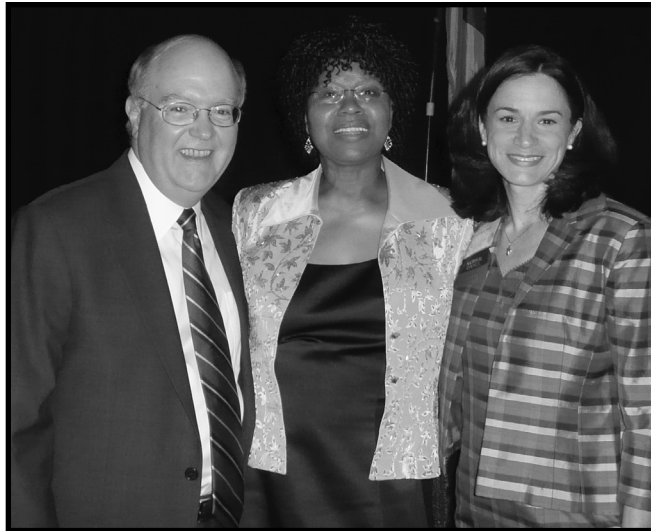
Following the FBA Awards Luncheon, Dennis Clark and Christina Farinola were Chapter delegates at the National Council Meeting, which included a report from the

(continued on page 8)

National Convention *(from page 7)*

FBA's ABA delegate, Alan Harnisch - a former president of the Chapter and of National FBA. There was also an introduction to the 2009 Annual Meeting and Convention, which will take place in Oklahoma City, Oklahoma from September 10th-12th.

The convention concluded with a reception at the Von Braun Center, during which Juanita Sales Lee was installed as the FBA's President. She captivated the guests with her remarks and her acceptance of this office was celebrated in style. Juanita is a vibrant, energetic, and approachable individual who promises to give the FBA a great year.



Dennis Clark; Juanita Sales Lee, the new FBA President, and Christina Farinola.

Supreme Court Preview - Criminal Cases**

by M Bryan Schneider*

The upcoming Supreme Court term promises to once again provide a host of decisions impacting federal practitioners. As of the opening of the Court's October 2008 Term, the Court had granted certiorari in 58 cases, a significant increase over the 47 cert. grants that had been issued by the start of the 2007 Term.

For criminal practitioners, Fourth Amendment and habeas corpus issues again predominate the Court's docket. In the Fourth Amendment context, the Court will consider a range of issues, including:

- whether an officer may conduct a pat-down search in the context of a traffic stop where there is a reasonable basis to believe the passenger might be armed, but no reason to believe he has committed a crime (*Arizona v. Johnson*, No. 07-1122);
- the validity of the "consent once removed doctrine," which authorizes police entry into a home without a warrant immediately after an undercover officers buys drugs inside (*Pearson v. Callahan*, No. 07-751);
- whether police must demonstrate a threat to safety or need for preservation of evidence before searching a vehicle incident to arrest (*Arizona v. Gant*, No. 07-542);
- and whether suppression is required for evidence seized incident to arrest by an officer acting in reliance on facially credible but ultimately erroneous information provided by another officer (*Herring v. United States*, No. 07-513).

In its habeas cases this Term, the Court will consider two cases addressing

- what "clearly established law" under the habeas statute requires with respect to jury instructions in the context of accomplice witness instructions (*Waddington v. Sarausad*, No. 07-772)
- and jury unanimity instructions (*Chrones v. Pulido*, No. 07-544).

In addition, the Court will consider a number of procedural issues relating to habeas corpus, including:

- whether a claim may be procedurally defaulted because it is presented to the state courts a second time (*Cone v. Bell*, No. 07-1114);
- whether the statute of limitations begins to run anew when a state supreme court places a petitioner back to his original position on direct review (*Jimenez v. Quarterman*,

No. 07-6984);

- the standard to be applied under the habeas statute when a claim is not adjudicated on the merits in the state court (*Bell v. Kelly*, No. 07-1223);
- and whether the statute regarding appointment of counsel in a capital habeas case permits federally-funded habeas counsel to represent the petitioner in a state clemency proceeding (*Harbison v. Bell*, No. 07-8521).

The Court will also consider three confession issues:

- the admissibility of a defendant's statement taken without a waiver of the right to counsel for purposes of impeachment (*Kansas v. Ventris*, No. 07-1356),
- the admissibility of a statement taken as a result of a delay between arrest and presentment before a magistrate (*Corley v. United States*, No. 07-10441),
- and whether an indigent defendant must affirmatively accept appointment of counsel to preclude further police interrogation in the absence of counsel (*Montejo v. Louisiana*, No. 07-1529).

In other criminal cases, the Court will consider:

- whether a forensic laboratory report is "testimonial" evidence subject to the Confrontation Clause (*Melendez-Diaz v. Massachusetts*, No. 07-591);
- whether the Apprendi rule prohibits the imposition of consecutive sentences based on judicial fact-finding (*Oregon v. Ice*, No. 07-901);
- and issues of statutory interpretation involving the RICO, Armed Career Criminal Act, and firearm possession

statutes (Boyle v. United States, No. 07-1309; Chambers v. United States, No. 06-11206; United States v. Hayes, No. 07-608).

**Bryan Schneider is a career law clerk to Magistrate Judge Paul J. Komives.*

***A preview of civil cases before the Supreme Court will appear in the Winter edition.*

Remembering The Honorable George Brody

By Judge Steven W. Rhodes*

Judge George Brody served the United States District Court for the Eastern District of Michigan from April 14, 1960 to April 13, 1988, first as a bankruptcy referee and then as a bankruptcy judge.¹ Before that, he taught at the University of Toledo Law School and served as a law clerk for District Judge Theodore J. Levin, for whom our Detroit federal courthouse is named. He graduated second in his class from the Michigan Law School in 1947² and earned an LL.M. degree in tax from NYU Law School. Judge Brody passed away on March 6, 2008.

The job of a bankruptcy referee was very different for the first several years of Judge Brody's service. Unlike bankruptcy judges today, referees presided at all meetings of creditors. They held discharge hearings in all cases. There was no prohibition against ex parte communications and so it was a common practice. Referees did not wear robes. They signed all of the debtor's disbursement checks in chapter 11 cases. They were paid from the proceeds of the cases. They held hearings on all motions, whether contested or not. They were required to post a bond.

Over time, and especially toward the end of Judge Brody's service, these practices changed. With the adoption of the Federal Rules of Bankruptcy Procedure in 1973, referees were officially denominated bankruptcy judges. Major changes were instituted with the repeal of the Bankruptcy Act of 1898 and the enactment of the Bankruptcy Code, effective in October of 1979.

I knew Judge Brody after I became a bankruptcy judge in 1985. We worked together for 3 years until his retirement in 1988. The Judge Brody that I knew was always kind and patient with me. As a new bankruptcy judge with no bankruptcy experience, I often sought his advice on issues of law and procedure, and he always made time for me and I appreciated it.

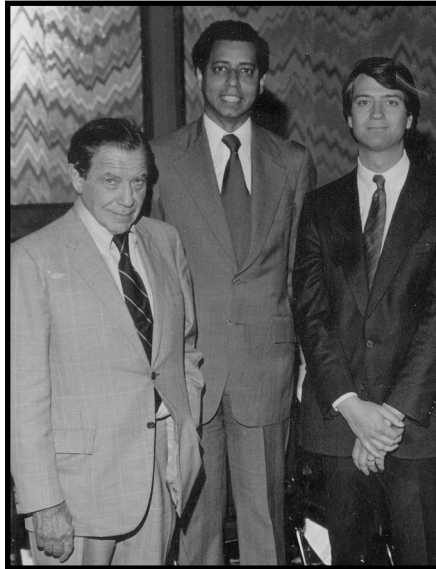
Others saw a different Judge Brody, a judge who was challenged by his changing role from referee to judge and from administrator to decision-maker. But he was always powerfully motivated by a steadfast and deep commitment to the rule of law and the necessity of equity and fairness to parties above all. While it is true that those challenges sometimes created problems for attorneys, especially on issues of attorney fees, most would agree that he in turn challenged them to become better, and better prepared, lawyers. And they would also agree that he taught them much about the law and the practice of law.

Judge Brody was known as a very bright judge. His opinions were well-respected around the country and were rarely reversed. He published sixty-four opinions beginning in 1979, when West began publishing bankruptcy judges' opinions in the Bankruptcy Reporter. Some of his more significant opinions include *In re Diamond Mortgage Corp.*, 77 B.R. 597 (1987) (holding that a professional seeking nunc pro tunc court approval of employment must show exceptional circumstances); *In re Troy Indus. Catering Service*, 2 B.R. 521 (1980) (holding that the State of Michigan must return to a chapter 11 debtor any property that it seized prepetition, foreseeing *United States v. Whiting Pools, Inc.*, 462 U.S. 198 (1983)); *In re Nikron, Inc.*, 27 B.R. 773 (1983) (holding that a bankruptcy judge has the power to convert a case from chapter 11 to chapter 7 even in the absence of a motion by a party); and *In re Matto's, Inc.*, 9 B.R. 89 (1981) (a debtor's liquor license is property of the bankruptcy estate and Article 9 of the UCC applies to a security interests in a liquor license). These holdings now seem straightforward and well-accepted, but they were hotly contested at the time.

Only two of his major published decisions were reversed. *In re Crowe & Associates, Inc.*, 16 B.R. 271 (1981) (holding that a bankruptcy court has the power to enjoin a union strike to collect a prepetition debt), rev'd, 713 F.2d 211 (6th Cir. 1983); *In re Bell*, 8 B.R. 549 (1981) (holding that a chapter 7 debtor who is current in his payments is not required to redeem or reaffirm on a secured debt to avoid the creditor's repossession), rev'd, 700 B.R. 1053 (6th Cir. 1983).

A generation ago, there was a brief time of turmoil and scandal in our bankruptcy court.³ In that moment, Judge Brody's depth of character remained a source of stability and strength for our bankruptcy court. But more than that, Judge Brody's constancy of character empowered those of us on the bench and in our bar since then to reconstruct and rebuild our institution to the distinguished place it is

(continued on page 10)



Judge George Brody, Judge Ray Reynolds Graves and Stuart A. Gold in 1984.

Honorable George Brody *(from page 9)*

today. Judge Brody was the bridge that carried us over those muddy waters.

1 Judge Brody succeeded Hon. Walter I. McKenzie, who served from March 1, 1943, until March 31, 1960. He was succeeded by Hon. Walter J. Shapero, who retired in April of 2002 and is still serving on the court as a recalled bankruptcy judge. Following Judge Brody's retirement from our court, he served as a recalled bankruptcy judge in the Southern District of California for several years.

2 While a student, he published an article in the Michigan Law Review, Constitutional Law - Impairment of Obligation of Contract, 44 Mich.L.Rev. 652 (1946).

3 See United States v. August, 745 F.2d 400 (6th Cir. 1984).

** Judge Rhodes is the Chief Judge of the Bankruptcy Court for the Eastern District of Michigan.*

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Joshua Kobrin – New York University School of Law
Joshua Levine – University of California Berkeley School of Law (Boalt Hall)
Sara Woodward - University of Michigan Law School

Calendar of Events

Nov 12 **"How To Improve Sentencing Advocacy:
The View From The Bench and the
Probation Department"**

Theodore Levin U.S. Courthouse,
Room 115

Noon; Bring your own lunch

Panelists: Judge Robert Cleland,
Judge Victoria Roberts, and Phil Miller,
Chief Probation Officer

Nov 18 **Rakow Scholarship Awards/Historical
Society Luncheon**

Speaker: Greg Stohr,

Bloomberg News Service

Author: A Black and White Case: How
Affirmative Action Survived Its Greatest
Legal Challenge"

Atheneum Hotel, Greektown

11:30 A.M. Reception

12:00 P.M. Luncheon

Dec 2-3 **New Lawyers Seminar**

Theodore Levin U.S. Courthouse,
Room 115

8:00 A.M. Registration

Dec 2 **Chapter Gala Holiday Reception**

Detroit Club

4:30 P.M.

Hold the Date: Further Details to Follow

**Updates and further developments at
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See "Hot News" and "Events & Activities"**

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