



# FBAnewsletter

Fall 2009

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

## Rakow Luncheon November 19

The Chapter and the Court Historical Society annual joint luncheon will be held on Tuesday, November 19, 2009, at the Westin Book Cadillac Hotel. The Federal Bar Foundation's annual Rakow Scholarship Awards will be presented to a student from each of Michigan's five law schools.

The Historical Society presentation will focus on U. S. Supreme Court Justice Henry Billings Brown, most known for authoring the majority opinion in *Plessy v. Ferguson*. Before serving on the Supreme Court, he was a District Judge in the Eastern District for fifteen years. As always, the Historical Society program promises an engaging topic of significance to the Detroit legal community and new perspectives in its presentation.

For more information about this Luncheon or the luncheon series, please contact Michael K. Lee, Chapter Program Chair, at (248) 350-5900 or by email at mlee@leeandcorrell.com. Online registration for the luncheon is available at the Chapter website, [www.fbamich.org](http://www.fbamich.org).

## New Lawyers Seminar December 1 and 2

The Chapter will once again sponsor a New Lawyers Seminar, a two day "nuts and bolts/how to do it" seminar for new lawyers. This year's Seminar will be held on December 1 and 2, in Room 115 of the the Courthouse.

The Seminar, now in its 34th year, is designed to

assist recent graduates in understanding certain areas of substantive practice and the fundamental procedures followed in the United States District Court for the Eastern District of Michigan and in the State courts in Wayne, Oakland and Macomb counties. The faculty is made up of practicing attorneys, court per-

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## President's Column

*Elisa Angeli Palizzi*

The Chapter's quest to be more inclusive has two fronts: participation and the diversity of the participants. On the participation front, we bring more members to the table. Whether your practice needs a boost or you just want to socialize with some of the finest lawyers and judges in the country, or anything in between, we encourage you to get involved. Opportunities for participation abound:

- Join a committee. The breadth and depth of our committees continues to grow. Currently, the Chapter has 25 committees, ranging from practice committees that address substantive areas of federal law and public service, to Chapter Committees that assist in the administrative aspects of a bar association including luncheons, social events and membership promotion. Each and every one of these committees is eager for assistance. Leadership positions are within reach.
- Undertake pro bono work to boost your reputation and gain additional experience while giving back to the community.
- Showcase your legal expertise and writing ability by submitting an article for publication in this award-winning Newsletter.
- Participate in or attend a program to learn more about your area of law, branch into something new or network with our exceptional legal community.

For a full list of committees, programs, and events, see our website, [www.fbamich.org](http://www.fbamich.org). If you don't see one you like, petition for a new one. Just give a committee chair, or one of our officers or Executive Board members, a call or email. Your communication will be welcomed.

Diversity, the second part of our focus, in particular and by definition has room for us all. The newly formed Diversity Commit-

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

## President's Column (continued)

tee will lead the effort to improve the diversity of the Chapter and the District that we serve. The Diversity Committee is chaired by Judge George Caram Steeh, Amanda Shelton, and Elizabeth Stafford, who also led the Diversity Task Force. Institutionalizing the Committee is just one of the Diversity Task Force's Recommended Initiatives and Activities, all of which were recently adopted by the Executive Board.

"Diversity" is defined as broadly as possible to encompass race, gender, religion, age, disability, sexual orientation, national origin, physical stature, and all of the many other qualities that are part of our community, in addition to type and size of practice. For a complete copy of the Recommended Initiatives and Activities and the Resolution adopting them, see [www.fbamich.org](http://www.fbamich.org) under "Speeches/Remarks."

The Diversity Committee's focus this year is on implementing the short term initiatives and two of the long-term initiatives (law students and practitioners who are starting a new federal practice or seeking to expand to federal practice). Already, the Committee has held interview clinics for law students at Wayne State University Law School and Thomas M. Cooley Law School. The Committee needs volunteers, including subcommittee chairs. If you are interested, please contact Elizabeth at [elizabeth.stafford@usdoj.gov](mailto:elizabeth.stafford@usdoj.gov)

While the Committee will lead the charge, a significant part of the diversity effort is up to us as individuals. The Executive Board's Resolution states:

[T]he Chapter's leaders and members should promote diversity on an individual basis. Specifically, leaders and members should:

- Invite at least one diverse lawyer to Chapter events and introduce that guest to other members.
- Distribute Chapter membership applications to new lawyers when they join the firm/organization.
- Circulate Chapter Luncheon invitations to lawyers at the firm/organization.
- Personally ask diverse lawyers at the firm/organization to join the Chapter.
- Promote membership with the firm's/organization's legal personnel coordinators, with an emphasis on identifying diverse lawyers.
- Ask firm/organization legal personnel coordinators to include membership applications in new lawyer orientation packets.
- Encourage the firm/organization's mentoring program to include participation in a Chapter event.

We should each do our part to improve the diversity of our Chapter and our District.

A bright spot in these difficult economic times is the opportunities that bar organizations, and ours in particular, provide for professional and social interaction and growth. Whether the Diversity Committee or one of the Chapter's other committees or efforts interest you, I urge you to get involved. If nothing else, you will make us a better organization.

## New Lawyers *(from page 1)*

sonnel and judges who are well-qualified to present the subjects upon which they are asked to speak.

The first day of the Seminar is Federal Day, with intensive focus upon the practicalities of federal practice, followed by a swearing in ceremony (for which there is separate registration through the Clerk's Office). The Federal Practice component has been accepted by out-of-state courts that require a federal practice component for admission. We've had numerous seasoned practitioners sign up for the Seminar for that reason alone!

The second day is State Day and leads the uninitiated through the vagaries of the tri-county court systems, with a luncheon at the Doubletree Fort Shelby, 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.

The Seminar, reception, luncheon and Seminar materials are all provided for only \$65.00 to National FBA members; \$95.00 to non members. Since membership in the National FBA has many other benefits as well, we offer a reduced membership rate of \$75.00 in conjunction with Seminar attendance.

In addition to the Seminar, attendees may take advantage of the Mass Swearing-In Ceremony taking place at the Courthouse on December 1, 2009 at 4:15 p.m. which is open to all attorneys not yet admitted to practice in this District. For more information about this year's Mass Swearing In, go to the Court website, at [www.mied.uscourts.gov](http://www.mied.uscourts.gov) and click on the link under News. Seminar space is limited to the first 120 attorneys that register. Firm coordinators: don't hesitate to sign up your recent hires. Bar passers: sign up as soon as possible. The New Lawyers' Seminar is offered only once a year.

For more information, or to assist with the Seminar, visit the Chapter website or contact one of the Seminar co-chairs (Christine Dowhan-Bailey, Brian Figot, Grant Gilezan, Geneva Halliday, Theresa Serra or Cathrine Wenger) or the Executive Director. [fbamich@fbamich.org](mailto:fbamich@fbamich.org)

## Health Care Fraud Thursdays: A Series Of Informative Seminars

This Fall, the Chapter's Health Care and Criminal Committees will be jointly sponsoring "Health Care Fraud Thursdays." One Thursday each month there will be a conference based on current health care fraud issues. Save the following Thursdays: October 22, November 12, and December 3. Featured topics include:

Health Care Fraud- How to successfully resolve all federal aspects of a health care fraud case. What you really need to know about putting all of the pieces together from a federal perspective.

The New Face of Health Care Fraud Enforcement – The Amendments to the False Claims Act and The Health Care Strike Force here in Michigan.

Experts in Health Care Fraud Cases: When you need one. How to find one. How to manage one. What works and what doesn't. A view from the bench.

There will be representatives from the bench, attorneys who have handled these cases, and hospital representatives all providing practical information on health care fraud and practice here in Michigan.

All sessions will be held in Room 115 of the Levin Courthouse and lunch will be provided for a small fee. For more information, contact Leslie Wizner at [Leslie.Wizner@usdoj.gov](mailto:Leslie.Wizner@usdoj.gov) or visit the Chapter website.

## State of the Court Luncheon

Few Chapter traditions are as deeply rooted as the State of the Court Luncheon which takes place in September at the beginning of the Chapter program year. At the invitation of Chapter officers, Chief Judge John Feikens began the custom early in the 1980s.

Another custom, nearly as well-established, is the recognition of attorneys who have provided pro bono representation for parties before the Court. Pro Bono Committee chair Judge Denise Page Hood and Committee

members Judge Arthur J. Tarnow and Judge Paul D. Borman presented plaques to more than 60 attorneys whose names appear on page thirteen in this issue.

Chief Judge Gerald E. Rosen continued the practice of reporting on the State of the Court on September 15, 2009 before 250 Chapter members and guests in the Venetian Ballroom at the Westin Book Cadillac. In a substantial departure from past years, he introduced Court Administrator David Weaver who gave an overview of the administration of the Court and then called on the following members of the Court's administrative team to give more detail on each of the functional areas: Deputy Court Administrator Libby Smith, Chief Probation Officer Phil Miller, Chief Pretrial Services Officer Alan Murray, Human Resources

Manager Michael Wade, IT Manager Evelyn Knabusch, Operations Manager Kevin Williams and Court Services Manager Michele Chittick.

The next Chapter luncheon at the Westin Book Cadillac will be the annual joint meeting with the Court Historical Society on November 19th. The subject of the presentation will be Supreme Court Justice Henry Billings Brown from Michigan, who wrote the majority opinion in *Plessy v. Ferguson*.



*Chapter President Elisa Angeli Palizzi, Chief Judge Gerald E. Rosen, Program Chair Michael K. Lee and Outgoing State Bar of Michigan President Edward H. Pappas at the State of the Court Luncheon.  
Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.*

## Careers in Justice Program for High School Students

On May 21, 2009, the Chapter's Social Justice Committee sponsored its third annual "Careers in Justice" program. This year's event was held at Romulus High School. Over 70 National Honor Society students participated in the two-hour event, designed to introduce the students to a cross-section of legal professions. Speakers included Dean Kinsman, FBI Special Agent; Aaron Joe Garcia, Deputy U. S. Marshal/Criminal Investigator; Carrie S. Bryant, Assistant General Counsel, Blue Cross Blue Shield of Michigan; Kim Ferranti, paralegal, Federal Defender Office; Leroy Soles, Supervisory Attorney, Federal Defender Office; and attorneys Eric Mathis and Cynthia Haffey, Butzel Long.

After a superb continental breakfast (complete with ice sculpture) provided by Romulus High School's culinary arts students and staff, the speakers and students were given a warm welcome by RHS's Assistant Principal, Linda Poirier. The students, in groups of 15-20, rotated among the speak-

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## Careers in Justice *(from page 3)*

ers, giving the students an intimate opportunity to hear the legal professionals talk about their jobs and the educational requirements needed to get into the profession and to permit the students to ask questions. Many students stayed on after the program to ask additional one-on-one questions.

The program was a resounding success. The speakers were excellent (a big thank you, again, to all of the speakers) and generated a great deal of interest on the part of the students, who walked away with insight into new career possibilities in the legal field.



### **From Court Administrator David Weaver**

#### **New Juror Management System**

All U.S. District Courts use an automated Jury Management System (JMS). While JMS manages our juror information, we continue to send out juror questionnaires, summons and other correspondence on paper via the U.S. Mail. In January 2010 that will change when the Court implements the new eJuror system.

eJuror will allow potential jurors to respond to questionnaires and summonses online. eJuror is highly configurable and will be tailored to our local processes. It will also allow jurors to submit requests for deferrals and excuses online. Other standard communications with potential jurors will be handled electronically. Almost 50 courts have or are

currently in the process of implementing eJuror. According to an informal report from the Administrative Office of the U.S. Courts, it was hoped that at least 20% of all poten-

tial jurors would utilize eJuror. The courts that piloted eJuror have reported close to a 50% utilization rate, far exceeding expectations.

In the Eastern District of Michigan, we currently ask all jurors to complete a questionnaire fol-

lowing the conclusion of their service. All judges receive the completed questionnaires and my office prepares a biannual compilation of a sampling of the responses. As you might imagine, we receive some very interesting comments. By far, the comments we receive from jurors are highly favorable regarding judges, the Court, the process and jury service in general.

Some of the more interesting responses include a juror who stated, "The only negative aspect I ran into were the other perspective jurors. There were a lot of angry people in that room!" Based on our surveys, it appears much of that anger goes away. Again, the majority of comments are positive, however several comments about lawyers during trial include, "The judges should make sure the lawyers are properly prepared each day of trial", and "The lawyers did not ask the right questions!"

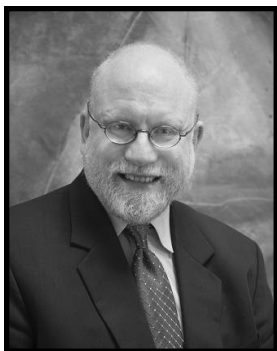
We also ask the jurors what they would tell a friend or relative who has been summoned for jury service. Responses again are very positive, but include some interesting comments such as "Take aspirin", and "Great experience", and "Go into it believing you will serve, keep an open mind and remember it's a civic duty to help maintain the freedoms of our country." Finally, a comment in hindsight from a juror, "Don't tell anyone about the summons!"

As always, if you have questions or comments, please email me at [david\\_weaver@mied.uscourts.gov](mailto:david_weaver@mied.uscourts.gov).



*Participants in Careers in Justice program.*

*Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.*



## Tidbits and Trivia

By Brian D. Figot

Readers of this column (both of them) know that I have a penchant for finding FBA connections between and among seemingly unconnected facts from Chapter history and issues of current relevance. The linkage this issue is perhaps less

attenuated than might be suspected upon cursory review of the key words and concepts: John MacMillan; Myzell Sowell; Russell Paquette; service to the Bench, Bar, legal community and the public; diversity, the Rakow Awards, the New Lawyers Seminar, the FBA Newsletter and leadership.

During the past two months, the legal community mourned the passing of Myzell Sowell, in August, at the age of 84 and Russell Paquette, in September, at the age of 91. The July issue of the Michigan Bar Journal noted the previously unreported death of John MacMillan, last December, at 79. Each of the three contributed quietly but most effectively to the FBA and to the community as a whole.

Though none of them ever became a judge, each of the three was succeeded in their FBA office by someone who later became one. Russ, the ninth president of the Chapter, 1967-1968, was followed by Judge George Woods, a Bankruptcy Judge from 1981 until 1983 and thereafter a U. S. District Judge until his death in 2007.

John was the Chapter's nineteenth president, 1978-1979, and was followed by Judge Fred Mester who became an Oakland County Circuit Judge in 1982 (serving until his term expired in 2008). Myzell Sowell was a member of the Chapter's Executive Board from 1976 until 1980 and was followed by then-Chief Federal Defender Paul Borman, the

Chapter's president from 1984 to 1985 and a U.S. District Judge since 1994. Additionally, it was on Mr. Sowell's recommendation that the Honorable Harold Hood was elected to the FBA Board in 1980 -- and that some thirty years later Judge Hood served the Chapter once again as an advisor to the Diversity Initiative Task Force.

Each of the three was known for his own initiative, particularly where it came to helping others. The Detroit News obituary for Russ



Russell M. Paquette

Paquette noted his enlistment in the Marine Corps right after Pearl Harbor and his years of service until and beyond the end of World War II. His daughter recalled to the newspaper how her father, after being injured in the Battle

of Saipan, when his vehicle ran over a land mine, "saw the people who were worse off than he was, so he went back to fight." Few who knew him knew that he was on the ground at the flag raising on Iwo Jima.

It was during Russ Paquette's year as president that Myzell Sowell undertook the initiative for which he will be most remembered -- as one of the architects of the Legal Aid and Defender Association. As noted in the Detroit Free Press obituary published on August 8, 2009: "The association was formed after the 1967 Detroit riot to provide legal representation to poor people. As its chief defender from 1969 until 1980, he was in charge of hiring and training young lawyers. 'He was a pioneer of our profession,' Detroit criminal lawyer Steve Fishman said."

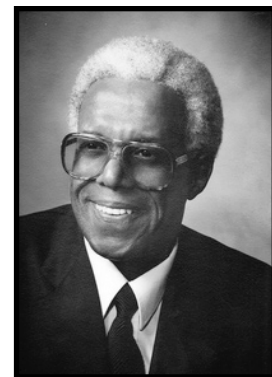
In January of 1979, both Myzell Sowell and John MacMillan received significant honors beyond the Chapter level, as reported in *The FBA News*. The January issue carried an article headlined "DETROIT NAMES 'MAN OF THE YEAR'" and published the full text of the Detroit City Council resolution congratulating and honoring him as "an exemplary lawyer whose dedication, professional verve and untiring efforts to have a positive effect on the quality of life in our community is a source of pride for all Detroiters." The Resolution further noted his "leadership roles in numerous civic organizations, such as the Black Law Student Scholarship fund of which he is founder and a sponsor."

An article in the following month's issue of *The FBA News* cataloged the achievements of John MacMillan as follows:

### Article on Detroit President Details Chapter Programs

The Chapter has received kudos from the Legal Advertiser as a "pace setter." An article appeared in the newspaper on January 11, featuring President John M. MacMillan. The Chapter, billed as one bringing innovative programs for new and experienced practitioners, justifies this definition through a series of monthly mini-seminars, a special luncheon honoring members of the federal judiciary and their Foundation annually presents a scholarship to five Michigan law schools via the Edward Rakow Memorial Scholarship. . . .

The program they are most recognized for is the semi-annual seminar for new attorneys, a two-day program designed to acquaint new lawyers with practice in the



Myzell Sowell

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## Tidbits and Trivia *(from page 5)*

state and federal courts. One reason for the success of the Chapter was the forward-thinking Executive Committee.

Myzell Sowell, as noted above, was one of the members of that Executive Committee. And, in reporting on the 5th New Lawyers Seminar, in February 1980, *The FBA News* completed the circuit on the three, indicating the Chapter's thanks "to the host school, Wayne State University Law School, Dean Gordon and Assistant Dean [Russell] Paquette" who had come on board at the law school after 27 years with the Veteran's Administration (where he worked with John MacMillan).

The deaths of Myzell Sowell and Russ Paquette were noted by full obituaries in Detroit newspapers. While no such article was published upon John MacMillan's passing, a fitting tribute to him came from Fred Mester, who wrote, when informed of his death:

A number of us worked together during the 1970s and first part of the 80s in the evolution of the FBA with special emphasis on the New Lawyer Seminar and the FBA National Convention in Detroit. The success of both of these efforts owes a lot to John's leadership and involvement. . . . I also had the pleasure of representing the Veterans Administration's regional office when Russ and John ran the office and I was Chief of the U.S. Attorney's Civil Division.

Judge Mester's tribute applies equally to all three of these great leaders: "Sad news indeed."

Footnote: John MacMillan and the FBA Newsletter:

It was during John MacMillan's presidency that the Chapter first published a newsletter, as noted in the November 1978 issue of National's publication *The FBA News*:

### **Detroit Initiates Newsletter to Members**

The Chapter has recently initialed a newsletter to further the participation of members in the Chapter's activities and management.

Over the past summer, we were able to upload to the Chapter's website all of the back issues of the Newsletter that we have found. The back issues of the Newsletter

from those "salad days," however, appear to have been lost to the ages. If you have an issue that dates from 1978 to 1986, please further the cause of "Tidbits and Trivia" and let us know!

## **FBA Annual Meeting and Convention 2009**

The National FBA held its Annual Meeting and Convention in Oklahoma City, Oklahoma, from September 10-12, 2009. Participants engaged in a variety of activities including continuing legal education classes, chapter training, board and committee meetings and social events.

Our Chapter was prominently featured in the annual awards program. The Eastern District of Michigan earned the Presidential Excellence Award for having done a superior job in all of its objectives. The Chapter also received Presidential Citation Awards for four of our activities: FBA Book Club Goes to the Movies, Pro Bono Committee, Pro Bono Foreclosure Case Program, and Diversity Task Force. In addition, the Chapter received an Outstanding Newsletter Recognition Award for the seventh consecutive year.

Chapter President Elisa Angeli Palizzi and Past Chapter President Dennis Clark served as the Eastern District's delegates at the National Council Meeting. It was reported that the national organization is on sound financial footing and the membership stands at over 15,500. A new user-friendly and more helpful website will be up and running by the end of the year. A report concerning the ABA's annual meeting was delivered by the FBA's delegate to the ABA, Alan Harnisch, who is a former president of both our Chapter and the National FBA.

The CLE program offered enlightening substantive and ethics sessions covering a wide range of topics, including: ethical considerations of a lawyer president, criminal jurisdiction in Indian country, energy and the environment, how to conduct a jury trial, federalism, bankruptcy: creditors' rights and fraud, and homeland security and civil rights. A special session on the "Oklahoma City Bombing Through the Eyes of Those Who Were Here" was presented in conjunction with a tour of the Oklahoma City National Memorial and Museum Institute for the Prevention of Terrorism.

The convention provided enjoyable and informative receptions at the Oklahoma History Center and the National Cowboy and Western Heritage Museum. The Presidential Installation Banquet saw Lawrence R. Baca become the first Native American to serve as president of a national bar association. This event also included presentation of the Sarah T. Hughes Civil Rights Award to the Honorable Walter R. Echo-Hawk, Jr. for his work in the advancement of the civil and human rights of Native Americans.



*John M. MacMillan*





## Supreme Court Preview

by M Bryan Schneider

The coming Supreme Court term promises once again to provide a host of decisions impacting federal practitioners. As of the opening of the Court's October 2009 Term, the Court had granted certiorari in 59 cases, in line with the 58 grants that had been issued

by the start of the 2008 Term.

For criminal practitioners, the *Miranda* rule and habeas corpus issues dominate the Court's docket. The Court will consider three cases this term raising *Miranda* issues. Specifically, the Court will consider whether police may re-initiate interrogation of a suspect who has invoked his right to counsel after there is a break in custody or a substantial lapse of time (*Maryland v. Shatzer*, No. 08-680); whether a suspect who has been advised of his right to counsel must be specifically advised of the right to have counsel present during questioning (*Florida v. Powell*, No. 08-1175); and whether the police may attempt to persuade a suspect to cooperate after the suspect has been informed of his rights but has neither invoked nor waived them (*Berghuis v. Thompkins*, No. 08-1470).

The Court will also consider a number of procedural and substantive issues relating to habeas corpus, including the proper standard of review on habeas of sufficiency of the evidence claims (*McDaniel v. Brown*, No. 08-559); the scope of state court factual determinations which must be considered by a habeas court (*Wood v. Allen*, No. 08-9156); and whether a state procedural bar is inadequate to bar federal habeas review merely because it is discretionary rather than mandatory (*Beard v. Kindler*, No. 08-992).

In sentencing issues, the Court will address whether a state court holding that a state law offense does not have the use of force as an element is binding on a federal court in determining whether the offense is a violent felony under the Armed Career Criminal Act (*Johnson v. United States*, No. 08-6925); whether the fact that a firearm is a machine gun is an element of the offense that must be found by the jury before a mandatory minimum sentence based on the use of a machine gun (*United States v. O'Brien*, No. 08-1569); and whether imposition of a nonparoleable life sentence on a juvenile offender constitutes cruel and unusual punishment (*Sullivan v. Florida*, No. 08-7621; *Graham v. Florida*, No. 08-7412).

In addition to these cases, the Court will consider a number of other constitutional and statutory issues on its criminal docket. The Court will hear cases challenging the constitutionality of both the statute authorizing court-ordered civil commitment of "sexually dangerous" persons (*United States v. Comstock*, No. 08-1224), and the

Sex Offender Registration and Notification Act as applied to persons convicted prior to the Act's enactment (*Carr v. United States*, No. 08-1301). The Court will also consider whether the statute prohibiting the provision of material support to a terrorist organization is unconstitutionally vague (*Holder v. Humanitarian Law Project*, No. 08-1498) and violates the Free Speech Clause (*Humanitarian Law Project v. Holder*, No. 09-89).

In two cases, the Court will consider the scope of 18 U.S.C. § 1346, which criminalizes denials of "the intangible right of honest services," as applied to both state officials (*Weyhrauch v. United States*, No. 08-1196) and private actors (*Black v. United States*, No. 08-876). The Court will also consider whether time granted to prepare pretrial motions is excludable under the Speedy Trial Act (*Bloate v. United States*, No. 08-728).

Following up on its decision last Term in *Melendez-Diaz v. Massachusetts* that forensic laboratory reports are "testimonial" hearsay subject to the Confrontation Clause, the Court will consider whether a state avoids violating the Clause if it does not call the analyst who prepared the report to testify but provides that the defendant has the right to call the analyst as his own witness (*Briscoe v. Virginia*, No. 07-11191). Finally, the Court will also consider the appropriate statistical measures in analyzing a claim that a defendant was denied a jury drawn from a fair cross-section of the community (*Berghuis v. Smith*, No. 08-1402), and whether counsel is constitutionally ineffective when he fails to investigate and properly advise a defendant of the mandatory deportation consequences of his decision to plead guilty (*Padilla v. Kentucky*, No. 08-651).

On the civil side of its docket, the Court will consider fewer cases involving civil rights and employment discrimination, and will focus more on business issues, particularly in securities and bankruptcy issues. With respect to securities issues, the Court will consider the appropriate starting date for the statute of limitations in federal securities fraud claims (*Merck & Co. v. Reynolds*, No. 08-905); the constitutionality of the Sarbanes-Oxley Act (*Free Enterprise Fund v. Public Company Accounting Oversight Board*, No. 08-861); and whether shareholders may bring a breach of fiduciary duty claim against an investment advisor for charging an excessive fee if the shareholder cannot show that the advisor misled the fund's directors (*Jones v. Harris Associates*, No. 08-586).

In bankruptcy issues, the Court will consider: whether a student loan may be discharged on grounds of undue hardship where the debtor merely declares the discharge in his Chapter 13 plan without proving undue hardship in an adversary proceeding (*United Student Aid Funds v. Espinosa*, No. 08-1134); a trustee's duty to object to a claim of exemption where a debtor claims an exemption equal to the value placed on the asset by the debtor (*Schwab v. Reilly*, No. 08-538); and in consolidated cases

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## Supreme Court *(from page 7)*

whether the prohibition preventing debt relief agencies from advising a debtor to incur more debt in contemplation of filing a bankruptcy petition is limited to advice to incur more debt with a purpose to abuse the bankruptcy system, whether attorneys are debt relief agencies under the statute, and whether the provision violates the First Amendment (*United States v. Milavetz*, No. 08-1225; *Milavetz v. United States*, No. 08-1119).

In other business-related contexts, the Court will consider whether the National Football League and its member teams constitute a single entity under the Sherman Act for purposes of licensing their logos and trademarks (*American Needle v. National Football League*, No. 08-661), and whether a debt collector's legal error may qualify for the bona fide error defense under the Fair Debt Collection Practices Act (*Jermon v. Carlisle, McNellie, Rini, Kramer & Ulrich*, No. 08-1200).

In intellectual property-related cases, the Court will consider the patentability of a new process not tied to a particular machine or apparatus (*Bilski v. Kappos*, No. 08-964), and a federal court's jurisdiction to approve comprehensive settlement of copyright claims (*Reed Elsevier v. Muchnick*, No. 08-103).

In the civil rights and discrimination area, the Court will consider what level of deference is due an ERISA administrator's interpretation of a plan if that interpretation is made outside the context of the administrative claim for benefits (*Conkright v. Frommert*, No. 08-810); whether a city government has standing to pursue a civil RICO action based on an asserted injury arising from non-payment of taxes by non-litigant third parties (*Hemi Group v. New York, N.Y.*, No. 08-969); whether an EEOC charge alleging disparate impact discrimination on the basis of an employment practice must be filed within 300 days of the employment practice being announced, or within 300 days of the use of the discriminatory practice (*Lewis v. Chicago*, No. 08-974); and the scope of a prosecutor's immunity from civil suit for claims alleging that the prosecutor procured false testimony and introduced it at trial (*Pottawattamie County v. McGhee*, No. 08-1065).

Lastly, the Court will also consider a number of procedural and jurisdictional issues including whether a party may immediately appeal a district court's finding of waiver of the attorney-client privilege (*Mohawk Industries v. Carpenter*, No. 08-678), and the significance of a corporation's headquarters in determining citizenship for purposes of diversity jurisdiction (*Hertz Corp. v. Friend*, No. 08-1107). The Court will also consider whether an attorney fee award under a fee-shifting statute can be enhanced based solely on quality of performance (*Perdue v. Kenny A.*, No. 08-970), and whether such an award is payable to the attorney or the party, and thus subject to offset for a pre-existing debt owed by the prevailing party to the Government (*Astrue v. Ratliff*, No. 08-1322).

Finally, the Court will consider the power of a state legislature to prohibit federal courts from using the class action device for state law claims pursued in federal court (*Shady Grove Orthopedic Association v. Allstate Insurance Co.*, No. 08-1008).



## Focus On An FBA Member

**Barbara J. Rom**

*A continuing feature of the Newsletter is the periodic profiling of an FBA member. This is the eighth of such profiles.*

**By Michael J. Riordan\***

Barbara Rom, who went to law school on a dare, is now retiring after a thirty-seven year distinguished career. France is in her future.

In 1969, just months away from receiving her AB, with distinction, in education and psychology from the University of Michigan, Barbara spent a morning visiting with a friend who attended U of M Law School. "He told me about law school and how difficult it was," Barbara said. "He advised me that I should not even bother to take the LSAT because there was no way that I would do well enough to attend U of M Law. Well, that did it. I thought to myself, even though I had not considered law school up to that point, that I would show him."



*Barbara J. Rom*

Boy, did Barbara show him! She not only was one of the few women to be admitted to the law school that fall, but she went on to graduate and become one of the preeminent bankruptcy and commercial litigators in the United States. Now, after thirty-seven years in practice, Barbara will be retiring from Pepper Hamilton LLP

at the end of the year.

Growing up on Detroit's West Side, graduating from Bagley Elementary and Mumford High School, Barbara had plans to be an elementary school teacher until that fateful meeting in 1969. "My dad was in the scrap metal business and he thought I was crazy to forego three years of a public school teacher's salary to pay to go to law school," she recalled. "However, things could not have worked out better for me."

*(continued on page 10)*





## Ask the Counselor of Civility

*A new feature of the Newsletter will be a column addressing concerns of attorneys regarding civility in federal practice. This is the second of such columns. If you have a question for the Counselor of Civility, please e-mail it to [fbamich@fbamich.org](mailto:fbamich@fbamich.org).*

Dear Counselor of Civility:

I am defending a museum in a lawsuit brought by a man claiming ownership of the journal of Wander Mittens, an early 19th century explorer who studied the natural history and culinary uses of the Michigan muskrat. The museum's Executive Director is very upset by this claim to the Mittens journal, which is the pride of the museum's collection. The case has languished, mostly because of plaintiff's counsel's requests for additional time at every stage of litigation. I have agreed to her requests, despite my client's demands that the case be resolved quickly. Although I attribute her delays to her unwillingness to face the lack of merit in her client's case, she intimates that the cause is lack of fees and has hinted that she may have to withdraw as counsel.

I recently filed a motion for summary judgment. Plaintiff's brief, which was late, was one long argument for more delay. Now, just a week prior to hearing on my motion, opposing counsel has called me, asking for my consent to her motion to adjourn the hearing to the court's next available date so that she can take her former mother-in-law for outpatient surgery. With the holidays coming up and a heavy trial docket, the Court may adjourn the date for another four-to-six weeks. I'm a bit suspicious of her request and concerned that my agreement might harm my relationship with my client, who is planning a major fund-raiser, the Muskrat Ball, with Wander Mittens' explorations as a theme. Before the Executive Director signs a contract with the only caterer willing to serve marsh rabbit, he would like the litigation resolved and has insisted that I not agree to any extensions. Should I agree to her request for an adjournment or decline?

Signed,

Humbug Marsh

Dear Attorney Marsh,

Responding to opposing counsel's request for an adjournment is one of those rare instances when having the sole discretion to decide is not so enjoyable, especially with a vexed client whose opposition to the adjournment may have

some justification. As a member of our bar, you have been following the Civility Principles by agreeing to opposing counsel's earlier requests for extensions of time. The applicable principle holds:

(17) We will agree to reasonable requests for extensions of time . . . , recognizing that it is the attorney, and not the client, who has the sole discretion to determine the accommodations to be granted opposing counsel in all matters not materially or adversely affecting the client's legitimate rights. We will affirm that in such matters no client has the right to demand that his or her counsel shall be illiberal. Civility Principles, Attorney's Responsibilities, (17).

What troubles you now is the reasonableness of her most recent request and concern about the effect on your relationship with your client if you concur. Opposing counsel does not appear to have requested the adjournment to obtain tactical advantage, and her reason, while uncommon, is not unjustified. In asking for an adjournment to the next available date, she has expressed her willingness to have the matter heard promptly. Her request appears reasonable.

Your client's opposition to any further adjournments is a more delicate matter. Although you are understandably concerned about your relationship with your client, giving in to the insistence of its Executive Director that you not agree to adjournments is not an exercise of professional judgment and may leave you feeling a bit craven. However, you should consider whether the adjournment will have an adverse effect on the museum's legitimate rights.

Your letter doesn't state why the museum's Executive Director wants the case resolved well before the gala fund raiser. If his insistence that you not agree to any adjournments merely reflects his desire to enjoy the Muskrat Ball free of the cloud of litigation, you will be hard pressed to show that the adjournment would adversely affect the museum's rights. On the other hand, if he is concerned that the case may result in the loss of Wander Mittens' journal or an injunction barring any mention of it, thereby ruining the gala fund raiser and leaving the museum with hundreds of servings of marsh rabbit, the museum's rights may well be materially affected by the delay and you should either decline to concur with the request for an adjournment or obtain terms to protect your client's interests.

These considerations are more than exercises in professional courtesy. As required by Local Rule 7.1(a), opposing counsel sought your concurrence. Refusing to concur carries some risk, as the court may tax costs for unreasonable withholding of consent. L.R. 7.1(a)(3).

Civil regards,

The Counselor of Civility



## Barbara Rom (from page 8)

Barbara began her legal career in 1972 at the Bendix Corporation. There she worked with CEO Michael Blumenthal, who went on to be Treasury Secretary in the Carter Administration, on the acquisition of Autolite Spark Plug from the Ford Motor Company. "Lee Iacocca was at Ford at the time and my supervising attorney and I helped foster the negotiations between Blumenthal and Iacocca. It was a marvelous way to begin a career as it was just my supervisor and me hammering out the deal with two separate teams of Ford attorneys." In 1975, she joined the law firm of Hertzberg, Jacob & Weingarten. There she worked with Stuart Hertzberg who became her mentor in the law, politics and community service. "Other than my late husband Marty Rom," who died in 2006, "Stuart had the biggest impact on my life and career. I was married to Marty for thirty-six years and he made innumerable sacrifices for my career. I would guess that I owe him over 4,000 home-cooked dinners that he missed because of my professional obligations," she said.

"When I began my bankruptcy practice, I was the first woman to practice in our bankruptcy court and several persons had advised me that I better watch out, be careful, or otherwise I would be eaten alive." But, Barbara said, the Bankruptcy Judges were "gracious, supportive and attentive" to her. "Judge Brody arranged for me to be the coordinator for a National Conference of Bankruptcy Judges. Through that I came to know judges and practitioners from throughout the United States. That platform was invaluable to my career." In 1989, Barbara joined Pepper Hamilton where her career has continued to flourish.

Barbara has been involved in twenty-one reported decisions. Among them are cases involving Highland Appliance, Sanders Confectionary, Revco, Chatham, Meyer Jewelry, Lasky Furniture, Great Scot, Diamond Reo Truck,

(continued on page 12)

### BOOK CLUB MEETS OCTOBER 27

The Chapter Book Club is in full swing again. Mark your calendars for Tuesday, October 27, 2009, at noon in Room 722 of the Courthouse. The Book Club will be discussing *Becoming Justice Blackmun*, by Linda Greenhouse.

Ms. Greenhouse was the Pulitzer Prize-winning reporter who covered the U.S. Supreme Court for *The New York Times*. A lively and interesting discussion is sure to take place. Please register at [www.fbamich.org](http://www.fbamich.org) or contact Brian Figot at 248-358-0870. For additional information about the Book Club, contact Andrew Doctoroff at 313-465-7360.

## Officers and Directors 2009-2010

These officers and directors were elected at the Annual Meeting on June 18, 2009.

### Officers

President:	Elisa Angeli Palizzi Miller Canfield
President-Elect:	Laurie J. Michelson Butzel Long
Vice-President:	Michael J. Riordan Assistant U. S. Attorney
Secretary:	Thomas G. McNeill Dickinson Wright
Treasurer:	Hon. Mona K. Majzoub U. S. Magistrate Judge
Program Chair:	Michael K. Lee Law Offices of Lee & Correll
Past President:	Barbara L. McQuade Assistant U. S. Attorney

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Chief Federal Defender  
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### **The Chapter welcomes the following new Law Clerks for the Eastern District and the Sixth Circuit:**

**Chief Judge Rosen**  
Marta Castaing – University of Michigan Law School

**Judge Feikens**  
Amy Purcell – University of Michigan Law School  
Stephanie Douglas – University of Michigan Law School

**Judge Cook**  
Brandy Robinson – University of Michigan Law School

**Judge Cohn**  
Joel Visser - University of Michigan Law School

**Judge Zatkoff**  
Kellen Killey – Michigan State University College of Law

**Judge Cleland**  
Nathanael Kibler – University of Tennessee Law School  
Brian Carter - William Mitchell College of Law

**Judge Edmunds**  
Matthew Moussiaux – Wayne State University Law School

**Judge Hood**  
Jenna Cobb – Harvard Law School  
Kelly Rimmer – Wayne State University Law School

**Judge Borman**  
Ben Anchill – University of Cincinnati College of Law  
Marybeth Collon – Wayne State University Law School

**Judge Tarnow**  
Howard Weisel –Cardozo School of Law

**Judge Steeh**  
Jolene Griffith – University of Michigan Law School

**Judge Lawson**  
Miriam Nemeth – University of Pennsylvania Law School

**Judge Ludington**  
Michael Schoepf – University of Minnesota Law School

**Judge Murphy**  
Britton St. Onge – Notre Dame Law School

**Judge Keith**  
India Geronimo – Fordham University School of Law  
Jennifer Lane – Harvard Law School  
Justin Hansford – Georgetown University Law Center

**Judge Kennedy**  
Joseph Mead – University of Michigan Law School  
Brian Borchard – Georgetown University Law Center

**Judge Ryan**  
Luke Reilander – Ave Maria School of Law

**Judge Clay**  
Victoria McCoy – Vanderbilt University Law School  
Mary Hanna-Weir – University of Michigan Law School  
Ned Macey – University of Michigan Law School  
Kimberly Nortman – New York University School of Law

**Judge Kethledge**  
Roger Meyers – University of Michigan Law School  
Donald Burke – University of Virginia Law School  
Bradley Moore – University of Michigan Law School  
Daniel Schwei - University of Pennsylvania Law School

**Judge White**  
J. Andrew Boyle - UCLA School of Law  
Scott Kaplan – University of Pennsylvania School of Law  
Kerry Kornblatt – University of Virginia School of Law

**Magistrate Judge Mazjoub**  
Lisa Anderson - University of Detroit Mercy School of Law

**Magistrate Judge Randon**  
Brad Darling – University of Michigan Law School

## **Barbara Rom** *(from page 8)*

US Truck, Coventry Commons, Allied Supermarkets, and Washtenaw Huron. Because Chapter 11 is a federal statute, Barbara participated in cases all over the country -- Texas, Delaware, California, New York, Colorado, Oklahoma, Missouri, Wisconsin, Kansas, and Indiana.

"An aspect that made it all so interesting was the variety of industries, although the bulk was industrial. Along with the automotive, steel and plastics industries, I handled matters involving a dairy farm, a cattle ranch, an advertising agency, a telecommunications provider, retail operations and distributors in the supermarket, apparel, fitness equipment, furniture, jewelry, and drug store industries, among others. It was that variety that kept the work so interesting over decades of practice. Each industry had its unique challenges."

Among her public service accomplishments, Governor Jennifer Granholm appointed Barbara to serve on the Michigan Gaming Control Board, and she also received a state executive appointment to serve on the Military Appeals Tribunal. She was the president of Inforum (formerly the Women's Economic Club of Detroit). She is a Past President of the Detroit Metropolitan Bar Association and served as a board member and vice-president of this Chapter. She also has acted as a chair of numerous debtor-

creditor bar-related committees and groups. More recently, she chaired the District Court's Merit Selection Panel to recommend bankruptcy judges for appointment and was on Senator Levin's and Stabenow's advisory committee for nominations to the District Court and for U.S. Attorney.

However, Barbara said, she is proudest of her work as National Chair of the University of Michigan Law School Fund. "Where, other than at the University of Michigan, could the daughter of a scrap-metal dealer and a homemaker, from a family that had very limited means receive the type of education that I did? It not only changed my world but it gave my brother Dr. Howard Miller, M.D., who now lives in Texas, the opportunity to become a psychiatrist. My mother and father never thought, in their wildest dreams, when they were raising us that their daughter would become a lawyer and their son a doctor. This all was possible because of the University of Michigan."

Looking toward the future, Barbara married Ron Davis, an owner of a deep foundation construction company, in 2007. "We have the idea that we would like to move to France but, so far, we have done nothing to implement the plan." As to the friend who advised Barbara that she could not do well enough on the LSAT to attend Michigan Law, he dropped out of law school back in 1970.

*\*Michael J. Riordan is an Assistant U. S. Attorney and Chapter Vice-President.*

## **"What Every Attorney Needs To Know About The Ever Changing Requirements in Intellectual Property Litigation"**

The Federal Bar Association, Eastern District of Michigan Chapter, Intellectual Property Committee is excited to sponsor a Panel to discuss recent changes in Intellectual Property litigation. The Panel is composed of United States District Judge Robert H. Cleland, Professor David C. Berry, and long time IP practitioner, Patent Expert and Special Master Richard Grauer. The panel will be moderated by IP Committee co-chair John S. Artz. The discussion will focus upon the direction in which the IP law pendulum is swinging and will include the following:

- The current standard for proving fraud with respect to a trademark registration.
- The current standards for pleading and proving the defense of inequitable conduct as it relates to an issued patent.
- The new standard for demonstrating entitlement to injunctions in patent cases (both preliminary and permanent) in view of recent Supreme Court precedent.
- The evolution of the patentability of methods – a view from 10,000 feet. What does the future hold?

Students, faculty, local attorneys and interested members of the public are invited and encouraged to attend.

**Date: Thursday, October 29, 2009, 5:30 p.m.—7:00 p.m.**

**Location: Thomas M. Cooley Law School — Auburn Hills campus, Room 145  
2630 Featherstone, Auburn Hills, Michigan**

Questions? Please contact Leigh Taggart, [lct@raderfishman.com](mailto:lct@raderfishman.com), or Robin Cerka, [cerkar@cooley.edu](mailto:cerkar@cooley.edu)

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## Pro Bono Recognition

September 15, 2009

Jean-Vierre T. Adams	Miller Canfield	Paul D. Reingold	U of M Clinical Law Program
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Patrice S. Arend	Jaffe Raitt	Daniel G. Romano	Drazin & Romano
Daniel R. Assenmacher	Your Legal Service	Marcy L. Rosen	Miller Canfield
Scott P. Batey	Batey Law Firm	P. Rivka Schochet	Miller Canfield
Colin M. Battersby	Miller Canfield	Alexis J. Schostak	Bodman (Troy)
Kimberly A. Bedigian	Stevenson & Bullock	Patricia L. Selby	Patricia L. Selby
Leslie K. Berg	U.S. Trustee's Office	Rebecca Simkins	Barris Sott
Gary W. Bimberg	Levine Benjamin	Andre M. Sokolowski	The Lex Firm
Lorray S.C. Brown	Michigan Poverty Law Program	Michael J. Steinberg	ACLU Fund of Michigan
Colleen H. Burke	Collins Einhorn	John J. Stockdale	Schafer & Weiner
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Alicia B. Chandler	Bodman	Joseph W. Uhl	Miller Canfield
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David M. Eisenberg	Erman, Teicher	Alan S. Wittenberg	Alan Wittenberg
Yasmin J. Elias	Michigan Assistant AG	Doron Yitzchaki	Dickinson Wright
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### Thomas M. Cooley Law School

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Center for Ethics, Services and Professionalism  
Monica Bozenski, Student  
Michelle Drouillard, Student  
Jenisha Evans, Student  
Mary McAuliffe, Student  
Renae Moore, Student  
Karan Nayee, Student

### Holiday Party December 2

Mark your calendars for Wednesday, December 2 for the Chapter's annual Holiday Party at the Westin Book Cadillac. Come and enjoy some holiday cheer and camaraderie.



## New Members 2009

The Chapter welcomes the following members who have joined since January 1, 2009.

Shanta S. Anderson-Williams  
 Daniel R Assenmacher  
 Malita L. Barrett  
 Yvette M. Barrett  
 Robert R. Beaupre  
 Peter B. Bundarin  
 Melissa S. Byrd  
 Nedra Campbell  
 Frances L. Carlson  
 Charlotte G. Carne  
 Charles E. Chamberlain  
 Omar N. Chaudhary  
 Catherine L. Conine  
 Lynn Dodge  
 Julie L. Druzinski  
 Leonid Feller  
 Robert D. Fetter  
 Levi T. Fishman  
 Rita Elizabeth Foley  
 James S. Fontichiaro  
 Hon. Patricia P. Fresard  
 Trevor B. Garrison  
 John F. Geraghty  
 Nicholas B. Gorga  
 John M. Halan  
 Richard T. Hewlett  
 Kim K. Hillary  
 Shirley L. Horn  
 E. Christopher Johnson  
 Irina N. Kashcheyeva  
 Maureen T. Krasner  
 Michael G. Latiff  
 Joseph W. Mead  
 G. Michael Meihn  
 E. Powell Miller  
 Racine M. Miller  
 Christopher A. Mitchell  
 Trish Morris  
 Moheeb H. Murray  
 Kristen M. Niemi  
 Kurt A. Olson  
 Lauren Schumacher Oriani  
 Joseph T. Ozormoor  
 S. Thomas Padgett  
 Brian P. Parker  
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 Andre M Sokolowski  
 Paul J. Stablein  
 Bryan A. Sunisloe  
 Kurt Thornbladh  
 Paschal C. Ukpabi  
 Leon J. Weiss  
 Cole M. Young

A special congratulatory welcome to the following new members who passed the February Michigan Bar Examination:

Patrick Arella  
 Lesley Anne Durant  
 Stephanie T. Goecke  
 Anisa Lari  
 Alanna P. O'Rourke  
 Karen E. Reed  
 David M. Regnier  
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## Calendar of Events

- Oct 22** Health Care Fraud Thursdays - Session I  
 First of three monthly seminars sponsored by the Criminal Practice and Health Care Comm.  
 Theodore Levin U.S. Courthouse, Room 115  
 Noon: Bring your own lunch or reserve one online for a small fee
- Oct 27** Book Club: *Becoming Justice Blackmun*  
 Discussion of *Becoming Justice Blackmun* by Linda Greenhouse  
 Theodore Levin U.S. Courthouse, Room 722  
 Noon: Bring your own lunch or reserve one online for a small fee
- Oct 29** What Every Attorney Needs to Know about the Ever-Changing Requirements in Intellectual Property Litigation  
 Panel: Hon. Robert H. Cleland, Prof. David Berry & Spec. Master Richard Grauer  
 Note Special Location: Thomas M. Cooley Law School  
 5:30 p.m. to 7:00 p.m. Auburn Hills campus, 2630 Featherstone Rd.
- Nov 12** Health Care Fraud Thursdays - Session II  
 Second of three monthly seminars sponsored by the Criminal Practice and Health Care Comm.  
 Theodore Levin U.S. Courthouse, Room 115  
 Noon: Bring your own lunch or reserve one online for a small fee
- Nov 19** Rakow Scholarship Awards/Historical Society Annual Luncheon  
 Speakers: Professors Rebecca Scott and Trevor Broad  
 Topic: *Plessy v. Ferguson* and Its Author: Justice Henry Brown of Michigan  
 Westin Book Cadillac, Detroit  
 Noon Reception  
 12:30 p.m. Luncheon
- Dec 1-2** New Lawyers Seminar  
 Theodore Levin U.S. Courthouse, Room 115  
 8:00 a.m. Registration
- Dec 2** Chapter Gala Holiday Reception  
 Westin Book Cadillac  
 4:30 p.m.  
 Hold the Date: Further Details to Follow
- Dec 3** Health Care Fraud Thursday – Session III  
 Third of three monthly seminars sponsored by the Criminal Practice and Health Care Comm.  
 Theodore Levin U.S. Courthouse, Room 115  
 Noon: Bring your own lunch or reserve one online for a small fee

**Updates and further developments at [www.fbamich.org](http://www.fbamich.org).  
 See "Hot News" and "Events & Activities."  
 Online registration available for most events.**

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