



FBAnewsletter

Fall 2011

Federal Bar Association - Eastern District of Michigan Chapter - **53** years of service to our Federal Bench and Bar

Book Club Will Meet on December 1

Scorpions: The Battles and Triumphs of FDR's Great Supreme Court Justices, by Noah Feldman, is the selection for the next Chapter Book Club meeting. Feldman's work has been praised by the New York Times as a "smart and engaging group biography of four larger-than-life justices appointed by Franklin D. Roosevelt": Felix Frankfurter, Robert Jackson, Hugo Black, and William O. Douglas. That book review went on to conclude that the visions expounded by these justices "still hold sway and, to a striking extent, their interpretive battles are the ones that continue to preoccupy lawyers, law professors and judges." Join fellow lawyers, judges, and Prof. Richard D. Friedman, a constitutional law expert at the University of Michigan Law School, in being preoccupied by these fascinating characters and their philosophies on December 1st, at noon, in Room 722 of the Courthouse.

The Book Club is designed to build relationships between the bench and bar through an informal but elevated dialogue. For more details, consult the Book Club flyer, or contact Andrew Doctoroff (adoctoroff@honigman.com) or Erica Fitzgerald (efitzgerald@bsdd.com).

New Lawyers Seminar December 6-7

The Chapter will once again sponsor the 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 6 and 7, in Room 115 of the Theodore Levin U.S. Courthouse.

The Seminar, now in its 36th year, is designed to assist those recent graduates in understanding certain areas of practice and procedures in the Court and in the

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President's Column

Michael J. Riordan

As we embark on our 53rd year of service to the Bench and Bar, welcome to the start of what is certain to be another outstanding page in the annals of our Chapter.

After hosting more than fifty programs and events over the past twelve months, the Chapter -- already one of the largest and most active in the Country -- is off to another excellent start this Fall. Our numbers are growing. Our programming is expanding and refining to meet the needs of the membership. In addition, the Chapter continued its impressive momentum at the recently concluded National FBA Annual Meeting and Convention in Chicago, garnering another Presidential Excellence Award and our ninth consecutive Outstanding Newsletter Recognition Award. Of the nearly 100 FBA chapters, totaling almost 16,000 members, the Eastern District of Michigan again has been recognized as one of the finest Chapters in the land.

The Chapter's successes over the last half-century plus would not have been possible without the dedication and hard work of a multitude of innovative and hard working members and the unwavering support of our Bench. Are we happy with these great successes? You bet. Are we content to rest on our laurels? Not a chance.

So, what's next? The Chapter will continue its focus on professionalism, service and social responsibility. We now have thirty committees working to serve the educational needs of our membership and to promote collegiality, civility and ethics in the Eastern District. We continue to serve the Bench and Bar in a myriad of ways, including our luncheon program which brings cutting-edge speakers of diverse legal backgrounds; our ever-improving communications network, comprised of our website, www.fbamich.org; our eBlasts and our quarterly FBA Newsletter; and, most recently, our outreach

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

President's Column (continued)

to the retired members of the "Federal Family" through the creation of the new Master Lawyers Committee. The Chapter also is aware of its commitment to the advancement of the administration of justice through our diversity efforts, by which we welcome all attorneys for inclusion at the FBA table; through the expansion of our charitable efforts to the less fortunate of our community and through the creation of a new Civic Outreach Committee. This new committee will focus its efforts on offering legal awareness programs to the public, the media and to secondary school social studies and government teachers.

Our continued success depends on the contemporaneous stewardship and service we provide the Chapter and the larger community. We need your involvement to keep the momentum going. Join a committee. Participate in a program. Offer your talents as a lawyer to others through our educational programs. Serve as a mentor to our younger members and to those who seek a federal practice. Offer up your name to the Court's pro-bono volunteer lists. Reach out to those who could benefit from the programs we offer and invite them to join the Chapter. Most importantly, get in the game. Don't sit on the sidelines. By becoming involved, you will find it to be a very worthwhile part of your professional life and a way to give a little bit back to the legal profession and our community. Be part of the legacy of the Eastern District of Michigan Chapter of the Federal Bar Association. You will find it to be a very, very worthwhile endeavor.

If you are looking for a way to get involved, check out our website and its list of the Chapter committees and co-chairs. Contact the co-chairs and tell them of your interest in becoming more active. Their names, phone numbers and e-mail addresses are on the website. If you have a suggestion for ways the FBA can better serve the Bench, Bar or you, call me at (313)226-9602, or send me an e-mail at michael.riordan@usdoj.gov. Your officers, directors and committees are eager to serve you and always are looking for new ways to enhance our mission. Remember, we all are the stewards for tomorrow's FBA. Now, it's on to another outstanding year for the Chapter.

New Lawyers *(from page 1)*

State courts in Wayne, Oakland and Macomb counties. The Seminar utilizes a well-qualified faculty comprised of practicing attorneys, court personnel and judges.

The first day of the Seminar is "Federal Day," with intensive focus on 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) Hotel, traditionally 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 \$95.00. Since membership in the FBA has many other benefits as well, we offer a reduced membership rate of \$75.00 in conjunction with Seminar attendance. Whether you want to join and attend or just attend, you may sign up on the Chapter's website under "Events and Activities."

In addition to the Seminar, attendees may take advantage of the Mass Swearing-In Ceremony taking place at the Courthouse on December 7, 2011 at 4:15 p.m. The swearing-in is open to all attorneys not yet admitted to practice in the District. Registration for the swearing-in is separate. For more information about this year's Mass Swearing In, visit the Court's website, at <http://www.mied.uscourts.gov/News/Docs/mass%20swearing%202009.pdf>

Space is limited to the first 115 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 but once a year.

For more information, or to assist with the Seminar, visit the Chapter's website, contact one of the Seminar co-chairs or contact the Executive Director.



From Dave Weaver Court Administrator

On a national note, James C. Duff, Director of the Administrative Office of the U.S. Courts, resigned his position with the Judiciary effective September 15, 2011. Mr. Duff led the Judiciary for five years and has now been named the President and CEO of the Freedom Forum. The Freedom Forum operates the Newseum in Washington, D.C., and is dedicated to the First Amendment and media issues. The Director of the Administrative

Office is appointed by the Chief Justice, and a successor to Mr. Duff has not yet been named.

Locally, the Eastern District of Michigan continues to brace for significant funding shortfalls anticipated for FY 2012, which begins on October 1, 2011. As Chief Judge Rosen reported during his State of the Court presentation, the Court is doing everything possible to ensure full service to the Bar and public. Unfortunately, the outlook for FY 2013 is even more bleak. However, our knowledgeable and dedicated staff are continually finding more efficient ways to carry out the work of the Court with ever-diminishing resources.

On September 16th, the State Bar of Michigan, in conjunction with the Wolverine Bar Association, held a luncheon and presentation at the State Bar's annual meeting regarding the *Milliken v. Bradley* case as part of the Legal Milestones program. A plaque commemorating the case was unveiled after the presentation and then turned over to the Court. The plaque and related materials will be on display in the Courthouse, where the case was tried. The plaque will be placed on the first floor in the Court Historical Society display area near the Lafayette entrance.

Questions and/or comments may be sent via email to me at david_weaver@mied.uscourts.gov.

McCree Award Nominations Due by January 12, 2012

The Wade H. McCree Jr. Award for the Advancement of Social Justice honors individuals or organizations that have made significant contributions to the advancement of social justice. These contributions may include advancing social justice in areas involving poverty, promoting economic or educational opportunity, or fighting discrimination involving race, gender, ethnicity, national origin, religion, or economic status. The recipient may be selected from any field of endeavor including law, social service, community organization, volunteer activities, journalism, academics, etc.

Please direct nominations to the attention of Cynthia J. Haffey (haffey@butzel.com) or Miriam L. Siefer (miriam.siefer@fd.org).

New AUSAs

A year ago, the Newsletter highlighted 12 new Assistant United States Attorneys hired at the U.S. Attorney's Office for the Eastern District of Michigan. Since then, the U.S. Attorney's Office has hired nine additional AUSAs. U.S. Attorney and former Chapter President Barbara McQuade commented that "we were fortunate to hire 21 new lawyers

before the Department of Justice implemented a hiring freeze. We hired outstanding lawyers from diverse backgrounds. Those different perspectives make us more effective in our work."

Libby Kelly Dill joined the Bay City Branch Office from the Saginaw County Prosecutor's Office. She earned her undergraduate and law degrees from Michigan State University.

Chantale Fiebig joined the Appellate Division after having worked in New York at the law firm of

Simpson Thacher & Bartlett LLP. She previously clerked for Judge Rosemary Barkett of the Eleventh Circuit Court of Appeals. She graduated from the University of Virginia and Stanford Law School.

Abed Hammoud joined the Criminal Division, White Collar Crime Unit. He previously worked at the Wayne County Prosecutor's Office. Born in Lebanon and fluent in Arabic and French, he earned a law degree and MBA from Wayne State University and has engineering degrees from two universities in France.

Patrick Hurford joined the Criminal Division, White Collar Crime Unit, having previously worked in New York at Cleary Gottlieb Steen & Hamilton LLP. He received his law degree from the Ohio State University Moritz College of Law and his undergraduate degree from Kalamazoo College.

Andrew Lievense joined the Civil Division, Defensive Litigation Unit, after having worked at Honigman Miller Schwartz and Cohn LLP. Previously, he clerked for Judge Avern Cohn. He graduated from the University of Michigan Law School and Ohio Wesleyan University and is co-chair of the Chapter Newsletter Committee.

John Neal joined the Health Care Fraud Unit, having previously spent about nine years working for the Department of Justice in Washington, DC, where he worked in both the Fraud Section of the Criminal Division and the

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*Assistant U.S. Attorneys Chantale Fiebig, Abed Hammoud,
Douglas Salzenstein, Anjali Prasad, Patrick Hurford,
Sara Woodward and Andrew Lievense*

New AUSAs (from page 3)

Civil Fraud Unit. He also clerked for Judge Charles Wilson of the 11th Circuit Court of Appeals. He graduated from Columbia Law School and the University of Richmond.

Anjali Prasad joined the Drug Task Force from the Philadelphia District Attorney's Office. She has a law degree from Emory University, a master's degree in English from the College of William & Mary, and a bachelor's degree from the University of Michigan.

Douglas Salzenstein joined the Criminal Division, General Crimes Unit, having come from the law firm of Honigman Miller Schwartz and Cohn LLP. He previously clerked for Judge Paul Borman. He graduated from Wayne State University Law School and the University of Michigan, and is co-chair of the Chapter Membership Committee.

Sara Woodward joined the Criminal Division, General Crimes Unit, after having worked at Bodman LLP. She previously clerked for Judges Helene White and Julian Abele Cook, Jr., and worked at the National Center for Youth Law as a Skadden Fellow. She graduated from the University of Michigan Law School and Western Michigan University. She is co-chair of the Chapter Federal Law Clerk Committee.

Rakow Scholarship Awards/ Historical Society Luncheon

The annual joint luncheon of the Chapter and the Historical Society will be held on Thursday, November 17th beginning at 11:30 a.m., at the Historic Westin Book Cadillac Hotel on Washington Blvd in downtown Detroit.

The program will feature the presentation of the Federal Bar Foundation's annual Rakow Scholarship Awards to a student from each Michigan law school and a very special Historical Society program featuring Joyce Baugh, the widely acclaimed author of "The Detroit School Busing Case: *Milliken v. Bradley* and the Controversy over Desegregation," published earlier this year, about one of the most famous and controversial cases to have originated in the Eastern District of Michigan.

In *Milliken v. Bradley*, a group of parents of Detroit Public School students sought to mandate application of the desegregation principles of *Brown v. Board of Education* in the northern, suburban setting presented in the midst of "white flight" in the 1960s, as a patchwork quilt of small, predominantly white school districts came to surround Detroit's predominantly black school district.

The class action lawsuit, commenced in 1970 (only 16 years after *Brown v. Board of Education*) resulted in a controversial remedial order, issued by U.S. District Judge Stephen Roth during the Summer of 1972, mandating two-way busing of students between Detroit and the

suburbs. The issue erupted, with broad consequences on local events--ranging from threats on Judge Roth's life and the rise of grass roots organizations that rallied against civil rights to, and the further acceleration of white flight to farther flung suburbs. The ripple had national consequences on presidential electoral politics that year and in the subsequent appointment of conservative Supreme Court justices.

After another two years had passed, when the case reached the high Court for the first time in 1974, the liberal Warren Court had been replaced by a conservative majority and the remedy was reversed despite the acknowledgement that a wrong existed. Justice Douglas, in his dissent, noted:

"Today's decision . . . means that there is no violation of the Equal Protection Clause though the schools are segregated by race and though the black schools are not only separate but inferior."

The case continued another 15 years, during a period of demographic and political change, spanning an entire generation and spawning a litany of causes and effects that are the subject of Professor Baugh's comprehensive research and considerable reflection.

District Judge Avern Cohn, who inherited the case when appointed to the seat vacated upon the death of Judge Roth, commented in a recent article in the Detroit Legal News that when the case was finally dismissed in 1989, "It went out without much of a bang" as "most of the issues had dissipated, no question, . . . The school district had an entirely different configuration."



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Detroit Legal News writer Art Aisner, who interviewed Judge Cohn and the author, noted “Baugh said the case still has relevance today, and when dissected shows the current struggles of the Detroit Public Schools can be traced to that era.” Aisner quoted the author as saying “The crisis prohibited the movement of teachers and resources. And once that cycle was put in motion, it didn’t stop. You can’t look at Detroit’s shortcomings without looking at the *Milliken* case.”

Aisner continued, noting that Baugh told him that by looking back “she hopes to help Detroit schools move forward” -- that she is “hoping that this book will help people rethink the negativity and hostility directed toward the Detroit schools for so long and try to remedy some of the problem without just pointing the finger in anger and then throwing our hands up in the air in frustration.”

Professor Baugh’s remarks to the FBA gathering for the Rakow Luncheon are sure to be riveting; relevant to where we are today and not just to the study of law and the history and politics of how we got here. This is an FBA/Court Historical Society luncheon that should not be missed.

Sixth Circuit Mediation Conferences

On June 28th, the Appellate Practice Committee held a telephonic, phone-in seminar dealing with practice before the Sixth Circuit Mediation Office. The program featured Sixth Circuit Mediator Marian Yevin, who discussed the composition of the Mediation Office, how cases are selected for mediation, what attorneys and parties can expect when a case goes through mediation in the Sixth Circuit, and several practice suggestions for making effective use of mediation. Because it was run as a telephonic seminar (which mimics the way in which Sixth Circuit mediations are generally conducted), participants from both the Eastern

and Western District FBA Chapters were able to attend at no cost and submit questions by e-mail. The Appellate Practice Committee extends its thanks and gratitude to Marian Yevin for the time, effort and energy she devoted to making the event a success.



*State of the Court Luncheon attendees
Hala Jarbou and Megan McGown.
Photo by John Meiu, courtesy of Detroit Legal News
Publishing LLC.*

State of the Court Luncheon

The Chapter began its program year with the annual State of the Court Luncheon, which took place on September 22nd at the Westin Book Cadillac. More than 200 were in attendance.

After opening remarks, the Chapter took time to recognize attorneys who had taken on pro bono matters over the past year. Judges Paul D. Borman, Denise Page Hood, and Arthur J. Tarnow announced the award recipients, and

the names of those recognized are published elsewhere in this issue.

The Luncheon’s guest speaker, Chief Judge Gerald E. Rosen, then spoke on the state of the court. After recognizing and remembering various members of the Bench, he focused the balance of his speech on discussing the dire state of the Theodore Levin Courthouse and the Court’s budget.

Expressing deep frustration at the intransigence of the General Services Administration (“GSA”), Chief Judge Rosen described myriad problems facing Courthouse facilities, including a number of serious security threats, and cautioned that the Court’s “best hope” would be for GSA to find funds for FY 2015. He even suggested that the situation had grown so dire that the Court might need direct congressional support to overcome the many obstacles ahead.

Chief Judge Rosen went on to describe the precarious state of the budgets of the

Eastern District of Michigan and the federal judiciary nationally. In addition to the underfunding that occurred

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*Judge George Caram Steeh, Judge Lawrence P. Zatkoff,
Chief Judge Gerald E. Rosen, Thomas McNeill and Michael
Riordan. Photo by John Meiu, courtesy of Detroit Legal News
Publishing LLC.*

State of the Court *(from page 5)*

in FY 2011, the Court faces even steeper reductions in FY 2012. Thus far the Court has withstood funding cuts without a serious impact on service to the public; but without serious changes, he warned that the Court faces rolling furloughs, staff reductions, and further budget cuts.

Chief Judge Rosen's full remarks are available on the Chapter website at: www.fbamich.org under Documents/Remarks.

Just the Beginning Foundation Offers First Summer Legal Institute in Michigan

The Federal Bar Association is a proud supporter of the Just the Beginning Foundation ("JTBF"). JTBF is a Chicago-based non-profit started by federal judges of color. It has been helping to diversify the legal profession for twenty years by inspiring young men and women from under-represented groups to consider law as a career. This summer, in addition to programs in Chicago, Houston, Indianapolis, Minneapolis-St. Paul, Seattle, and Washington, D.C., JTBF launched its first-ever Summer Legal Institute in Michigan, at the Courthouse in Detroit. The Court, Oakland University and Thomas M. Cooley Law School partnered to present this week-long law exploration program.

Twenty-four students from sixteen metropolitan Detroit high schools spent the week of July 11th-15th learning about the law and the legal profession, including full days devoted to an introduction to the rule of law, the federal courts, the life of a lawyer, financial literacy and college admissions, and oral arguments in a high school search

case. Funding for the program came from our Chapter, the State Bar Young Lawyers Section, Wal-Mart, Oakland University, the Straker Bar Association, and Cooley Law School. Dickinson Wright, Miller Canfield and Oakland University graciously hosted the events for the students.

The program was made possible through the efforts of Chapter Board Member Judge Victoria Roberts and Cooley-

Auburn Hills Campus Dean John Nussbaumer, who also serve as Co-Chairs of the State Bar Presidential Diversity and Inclusion Advisory Group. Judge Roberts also recruited individual lawyer-mentors for each of the students.

Those lawyers attended the closing reception and agreed to serve as mentors beyond the end of the formal program.

"The excitement and enthusiasm generated by the Summer Legal Institute -- felt by students, lawyers and judges -- have made all of the preparation worth it," said Judge Roberts. "The students engaged and made

connections, and programs such as this are designed to do just that. If we can build on this through the mentoring program and continue this momentum next year, we can grow a crop of new minority lawyers who will add to the diversity of our profession."



John Nussbaumer, Anthony Jenkins, Judge Victoria A. Roberts, Greg Conyers and Paula Lucas.

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



Attendees, Faculty and Administrators of Just the Beginning Foundation Summer Legal Institute.
Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.

National FBA Annual Meeting Detroit Shines In Chicago

The National FBA convened its annual meeting and convention in Chicago from September 8th-10th, and the Chapter turned out in force with Chief Judge Gerald E. Rosen, former Chapter Presidents Alan C. Harnisch and Dennis J. Clark, current President Michael J. Riordan and officers Thomas G. McNeill and Michael K. Lee (President-elect and Vice President, respectively) among the 400 plus in attendance.

Once again, our Chapter brought home hardware: Presidential Excellence Award (the highest award conferred by the National FBA) with reference to across-the-board excellence in programming; and, for the ninth year in a row, the Outstanding Newsletter Recognition Award with special kudos to the *Counselor of Civility* column (once again, congratulations to editors Kimberly Altman and Christina Farinola).

Among the offering of educational programs, Chief Judge Rosen expertly moderated *Revolution or Reaffirmation--The Supreme Court's New Class Action Decisions*, an examination of the import and impact of *Wal-Mart Stores Inc. v. Dukes*, *AT&T Mobility v. Concepcion*, and *Smith v. Bayer* by a national panel comprised of Chief Judge James Holderman (N.D. Ill.), former Judge Layn Phillips (W.D. Okla., now of Irell & Manella, Newport Beach, CA), Northwestern University law professor James Pfander, Frank Carroll (Cox Smith, Dallas, for a defense perspective) and Elizabeth Cabraser (Lief Cabraser, San Francisco, for a plaintiff's perspective). With recommendation from its board member Tom McNeill, the Federal Litigation Section recruited Chief Judge Rosen to spearhead the planning of this program and, based upon the high marks received from the seventy attendees, the Section has invited Chief Judge Rosen and the entire panel to again present on class action developments at next year's FBA national meeting.

High marks also were accorded to Dean Irwin Chemerinsky (University of California Irvine School of Law) for his presentation of the most significant decisions from the Supreme Court's 2010-11 term (*Wal-Mart* and *AT&T* made the list, with a nod to Chief Judge Rosen's panel); *Gideon v. Wainwright -- a Multi-Media Presentation: Looking Backward, Going Forward*; a Saturday morning session on *Diversity in the Legal Education and the Legal Profession: Diversity Models that Work*; a thought-provoking presentation on *The Top Three Issues for Representing Health Care Providers*, and an Architectural Boat Tour on the Chicago River.

Bringing further distinction to our Chapter, The Foundation of the Federal Bar Association (chartered by Congress in 1954), elected Dennis Clark as its President for 2011-13.

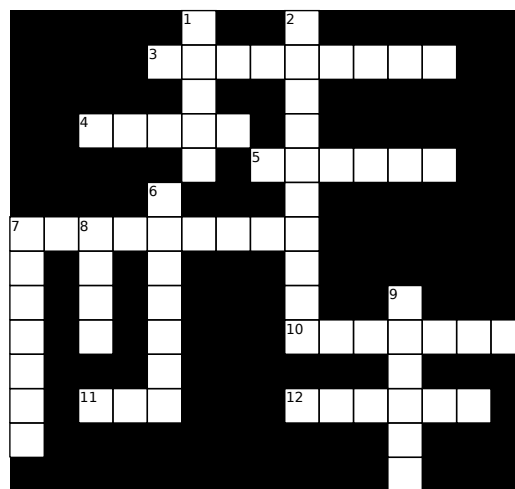
Perhaps borrowing from our Chapter's Law Clerk's Roundtable initiative, the FBA's Federal Litigation Section announced the establishment of a national subsection for former judicial clerks and has enlisted Mike Riordan among its founding organizers. The Federal Litigation Section also selected Tom McNeill to join the host committee for the September 19, 2011 event at the U.S. Supreme Court honoring Associate Justice Elena Kagan as an honorary life fellow of the FBA Foundation.

Also on the business side of the agenda, during its Saturday afternoon session, the National Council announced the formation of a national law school division to engage law school students and faculty (as our Chapter has done in Michigan for several years). At the closing dinner Saturday night, the FBA elected as its 84th President Fern C. Bomchill (Mayer Brown, Chicago) and bid adieu to outgoing President Ashley Belleau (Montgomery Barnett, New Orleans).

The FBA will hold its 2012 national meeting in San Diego, CA (September 20-22) and then in San Juan, Puerto Rico in 2013.

Local Magistrate and Sixth Circuit Judges

Andrew J. Lievense



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| 4 | Barnard | | Commission |
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| | Wildcat, J.D. | | lawyer |
| 10 | Original | 6 | Law clerk at D.C. |
| | Magistrate | | Circuit |
| 11 | Former US | 7 | Studied in |
| | Attorney | | Lebanon |
| 12 | Detroit Board | 8 | Classmate of a |
| | of Ed. Lawyer | | former President |
| | | 9 | Blue Devil, J.D. |

For answers, please see Chapter website.



Supreme Court Review

by M Bryan Schneider*

The Supreme Court's 2010 Term resulted in a number of decisions of importance for federal practitioners. Although not a comprehensive discussion of the Court's docket or its more noteworthy decisions, this article provides a quick snapshot of some of the decisions sure to impact both criminal and civil practitioners.

On the criminal side, the Court construed two criminal statutes and several sentencing statutes. In *Fowler v. United States*, the Court held that the statute making it a crime to kill another person with intent to prevent communication by that person of information relating to a federal crime to a federal law enforcement officer does not require a showing that the defendant had some identifiable law enforcement official in mind; it is sufficient if the government establishes a reasonable likelihood that the victim's communication would have been made to a federal officer. In a more far-reaching decision, the Court held in *DiPierre v. United States* that the term "cocaine base" as used in 21 U.S.C. § 841 includes all cocaine in its chemically base form, and not just crack cocaine.

Turning to sentencing, in *Abbott v. United States*, the Court construed 18 U.S.C. § 924(c), which governs use, carrying or brandishing of a firearm, and provides that a defendant must be sentenced to the highest mandatory minimum sentence applicable to his conduct that is prescribed in § 924(c) unless a greater minimum sentence is otherwise provided by law. The Court held that the exception applies only to other statutory minimum sentences for the conduct proscribed by § 924(c).

In *McNeill v. United States*, the Court held that whether a state offense is a "serious drug offense" so as to count as a prior conviction under the Armed Career Criminal Act must be determined by reference to the maximum term of imprisonment for that offense at the time the defendant was convicted of that offense. In *Pepper v. United States*, the Court held that in imposing a new sentence after a defendant's sentence has been reversed on appeal, the sentencing court may take into consideration the defendant's post-sentencing rehabilitation. However, the Court held in *Tapia v. United States* that a court may not impose or lengthen a prison term in order to foster a defendant's rehabilitation.

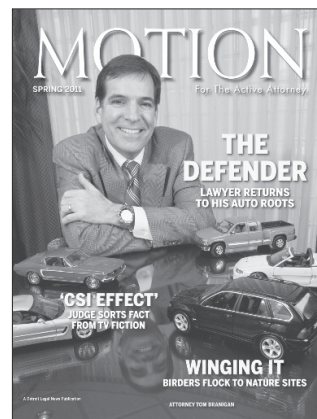
Addressing criminal procedure matters, the Court held in *United States v. Tinklenberg*, that the Speedy Trial Act's exclusion from the speedy trial clock of the period between the filing and disposition of a pretrial motion does

not require that the pretrial motion actually cause, or be expected to cause, a delay of the trial. In *Bond v. United States*, the Court held that a criminal defendant has standing to challenge the federal statute with which she is charged on the ground that it runs afoul of the Tenth Amendment.

Turning to Fourth Amendment issues, the Court held in *Kentucky v. King* that the exigent circumstances exception to the warrant requirement applies even where police conduct created the exigency, so long as the police did not engage or threaten to engage in conduct which itself violates the Fourth Amendment. The Court also held in *Davis v. United States* that searches conducted in reasonable reliance on binding circuit precedent are not subject to the exclusionary rule.

Explicating further its Confrontation Clause decision in *Crawford v. Washington*, the Court held in *Michigan v. Bryant* that a victim's identification of his shooter to police does not constitute "testimonial" hearsay barred by the Clause where the objective circumstances indicate that the purpose of the statements was to assist the police in meeting an ongoing emergency. The Court also held in *Bullcoming v. New Mexico* that the Clause does not permit the police to introduce a forensic laboratory report containing a testimonial certification through the in-court testimony of an analyst who did not sign the report or perform the test reported. In *J.D.B. v. North Carolina*, the

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Court held that a minor's age is an appropriate factor to consider in determining whether a suspect was "in custody" for purposes of the Miranda rule.

Finally, in several habeas matters, including *Harrington v. Richter* and *Premo v. Moore*, the Court again reminded the Ninth Circuit that Congress meant what it said in enacting the AEDPA, emphasizing that a federal habeas court's review of a state conviction is highly deferential. The Court also held in *Cullen v. Pinholster* that, where the state courts adjudicated a claim on the merits, review is limited to the factual record before the state court and may not include newly developed evidence offered in the habeas proceedings.

Turning to the civil side of the docket, the Court bulked up Civil Procedure casebooks, deciding two significant personal jurisdiction cases. In *J. McIntyre Machinery v. Nicastro*, the Court limited its previous "stream of commerce" metaphor for specific personal jurisdiction, explaining that personal jurisdiction is appropriate only where the defendant engages in activities that manifest an intention to submit to the power of the jurisdiction. The fact that the defendant's machine had ended up in the forum, with no evidence of a single contact with the state, was insufficient.

In *Goodyear Dunlop Tires v. Brown*, the Court held that a defendant's placing of items in the stream of commerce that might support specific personal jurisdiction was insufficient to give rise to general personal jurisdiction subjecting the defendant to suit on claims unrelated to any of the defendant's activities in the forum state. In another civil procedure matter with potentially far-reaching consequences for class action litigation, the Court in *Wal-Mart Stores Inc. v. Dukes* held that certification of a class of female employees raising disparate treatment discrimination claims was not appropriate under Rule 23, because each class member was subject to different employment actions from different supervisors and because claims for back pay are not appropriate for class treatment.

The Court considered anti-retaliation provisions of two discrimination statutes giving each a broad reach. In *Thompson v. North American Stainless*, the Court held that firing an employee's fiancé, who is also employed by the defendant, in retaliation for the employee's protected conduct under Title VII constitutes unlawful retaliation and gives rise to a cause of action by the discharged fiancé. In *Kasten v. Saint-Gobain Performance Plastics*, the Court held that the filing of "any complaint" for which an employee may not be subject to retaliation under the Fair Labor Standards Act includes oral as well as written complaints. Dealing with another discrimination statute, the Court held in *Sossamon v. Texas* that states, in accepting federal funding, do not consent to waive their sovereign immunity to suits for money damages under the Religious Land Use and Institutionalized Persons Act.

The Court also issued a number of decisions concerning civil rights claims under § 1983. With respect to jurisdiction matters, the Court held in *Camreta v. Greene* that it has jurisdiction to review a lower court's underlying constitutional ruling on the basis of an appeal by defendants who have nevertheless prevailed below on the basis of qualified immunity. In *Ortiz v. Jordan*, however, the Court held that a defendant may not appeal the denial of summary judgment on qualified immunity grounds after the district court has conducted a full trial on the merits. And in *Skinner v. Switzer*, the Court held that a state prisoner's claim seeking DNA testing of evidence is cognizable in a civil rights suit under § 1983.

The Court also issued two decisions limiting the scope of a supervisor's or municipality's liability under § 1983. In *Los Angeles County v. Humphries*, the Court held that the rule that a municipality is liable only where its own "policy or custom" caused the constitutional violation applies regardless of whether the plaintiff seeks monetary or injunctive relief. The Court also emphasized that establishing a "policy or custom" generally requires more than showing a single constitutional violation, holding in *Connick v. Thompson* that a prosecutor's office could not be held liable on a failure-to-train theory for a single instance of suppression of exculpatory evidence by an assistant prosecutor.

Bankruptcy practitioners will have to grapple with two significant decisions issued by the Court. In *Ransom v. FIA Card Services*, the Court held that a Chapter 13 debtor who does not make any actual loan or lease payments may not take the car-ownership deduction in determining his disposable income. The Court limited Bankruptcy Court jurisdiction in *Stern v. Marshall*, holding that Article III of the Constitution did not permit a bankruptcy judge to exercise jurisdiction over a state-law tort counterclaim, even though such jurisdiction was authorized by the Bankruptcy Code and the counterclaim was a compulsory one.

Finally, the Court also decided two significant patent cases. In *Global-Tech Appliances v. SEB*, the Court held that liability for induced infringement under 35 U.S.C. § 271(b) requires a showing that the defendant had knowledge that the acts he induced constitute patent infringement. The Court explained that deliberate indifference to the risk that a patent exists is not sufficient, but knowledge can be established by showing the defendant's willful blindness to the facts. In *Microsoft Corp. v. i4i Limited Partnership*, the Court held that an invalidity defense under § 282 to a patent infringement action must be proved by the defendant by clear and convincing evidence.

Those interested in a full list of the Court's decisions from this Term may find the Scotusblog website at <http://www.scotusblog.com/case-files/terms/ot2010/>.

**M Bryan Schneider is Career Law Clerk to Magistrate Judge Paul J. Komives.*

Bankruptcy Panel Discussion

On September 20th, the Chapter Bankruptcy Committee and the Debtor-Creditors' Rights Committee of the Business Law Section of the State Bar of Michigan co-hosted a panel discussion on the Supreme Court's recent decision in *Stern v. Marshall* at the offices of Jaffe Raitt Heuer and Weiss. The *Stern* case held essentially that the section of Title 28 which grants bankruptcy judges "core" jurisdiction to enter final orders and judgments on "counterclaims by the estate against persons filing claims against the estate" is unconstitutionally overbroad, as applied to the specific counterclaim in the case before it, even though that counterclaim was compulsory, not permissive. The case also received notoriety because the parties are the representatives of the estates of the late Anna Nicole Smith and the late J. Howard Marshall, the Texas billionaire who married Anna when she was 26 and he was almost 90.

The panel, moderated by Bankruptcy Judge Thomas J. Tucker, included Professor John A.E. Pottow from the University of Michigan Law School, Judith Greenstone Miller of Jaffe Raitt Heuer and Weiss, and Michael S. Leib of Maddin Hauser Wartell Roth and Heller. They explained the development of bankruptcy court jurisdiction since the Bankruptcy Reform Act of 1978, and the facts of the *Stern* case. A lively discussion ensued on the impact this decision may have, not only on counterclaims against a bankrupt estate, but also on claims arising in bankruptcy cases not otherwise dependent upon bankruptcy law for their adjudication. About 70 people were in attendance and enjoyed a delicious dinner and an enlightening presentation.

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Bankruptcy Event Panelists Judith Greenstone Miller, Michael Leib, Bankruptcy Judge Thomas J. Tucker and John Pottow.

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

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(continued on back cover)

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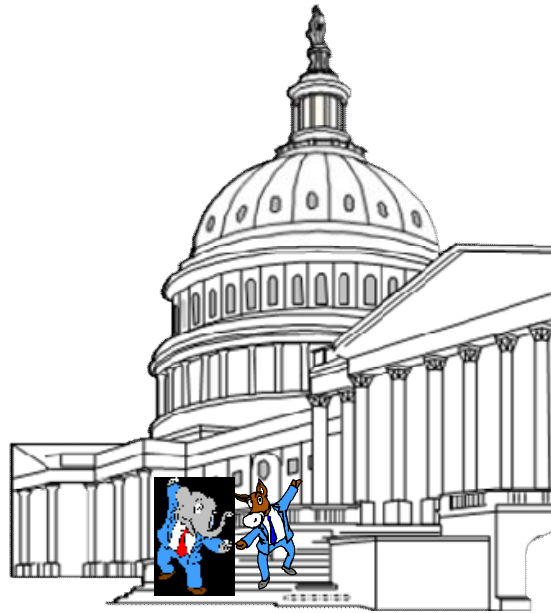
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We gratefully acknowledge the additional support provided to our Chapter by the following individuals, who opted during the fiscal year ended July 31, 2011, and in the first part of fiscal year 2011-2012, to renew their membership at the Sustaining Member level of \$100. We thank each of you for contributing to our ability to fund essential programming.

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Calendar of Events

Oct. 27-28

FBA-CBA Bankruptcy Trial Advocacy Lectures

Judge David M. Lawson and practitioners Thomas Cranmer and Michael Leib will present lectures on evidence and trial skills during morning sessions, for which there is open registration.

Both morning sessions, only \$50.00

Theodore Levin U.S. Courthouse, Room 115
8:30 a.m. Registration

Nov. 17

Rakow Scholarship Awards/Historical Society Luncheon

Presentation of Rakow Scholarships to students from each Michigan law school and Annual Meeting of the Court Historical Society.

Speaker: Joyce Baugh, author of *The Detroit School Busing Case: Milliken v. Bradley and the Controversy over Desegregation*

Woodward Ballroom,

Westin Book Cadillac Detroit

11:30 a.m. Reception

12:00 p.m. Luncheon

Dec. 1

Book Club: Selected for Discussion

"Scorpions: The Battles and Triumphs of FDR's Great Supreme Court Justices," by Noah Feldman. Discussion will be moderated by Prof. Richard Friedman, from the University of Michigan Law School.

Theodore Levin U.S. Courthouse, Room 722
12:00 p.m.

Dec. 6-7

New Lawyers Seminar

Theodore Levin U.S. Courthouse, Room 115
8:00 a.m. Registration

Dec. 7

Chapter Gala Holiday Reception

Westin Book Cadillac Detroit

4:30 p.m.

Hold the Date: Further Details to Follow

Feb. 9

FBA Newer Lawyer Trial Practice Mentoring

Late afternoon, early evening introductory session

Followed by all-day sessions on

February 13 and 14

Hold the Dates: Further Details to Follow

May 21

FBA Bench Bar Spring Social

Plum Hollow Golf Club, Southfield

Afternoon activities and Dinner following

Hold the Date: Further Details to Follow

**Updates and further developments
at www.fbamich.org**

**See "Hot News" and "Events & Activities"
Online registration available**

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