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FBA Newsletter

Spring 2004

Federal Bar Association - Eastern District of Michigan Chapter - 46 years of service to our Federal Bench and Bar

McCree Luncheon On February 12th

The Chapter will host its annual Wade Hampton McCree Jr. Memorial Luncheon on Thursday, February 12, at the Hotel Pontchartrain. A reception will begin at 11:30 a.m., followed by luncheon at noon.

United States Attorney Jeffrey Collins and Kary Moss, Executive Director of the American Civil Liberties Union of Michigan, will be our featured speakers. They will discuss the Patriot Act and its recent applications. Our Chapter will present the annual McCree Award for the Advancement of Social Justice to this year's recipient.

Tickets are $25.00 for FBA members and $30 for non-members. For more information, contact Program Chair Julia Blakeslee at jfblakeslee@yahoo.com or (248) 855-6729. You may also order tickets online at the Chapter website www.fbamich.org/Events & Activities.

News From National: The Defense Of Judicial Independence -- A Call For Action

By: Brian D. Figot, FBA Sixth Circuit Vice-President

There is nothing new about the concept of judicial independence or the tension between the judicial branch and the executive or administrative branches of government, and there exists a full body of well and thoughtfully written material on the subject. A survey of the legal literature reveals that both the concept and the attendant controversy

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President's Column

Dennis J. Clark

At the Chapter's recent Rakow/Historical Society luncheon, six law students - one from each of Michigan's law schools - received an Edward H. Rakow Scholarship presented by the Federal Bar Foundation of Detroit.

The Foundation was created to establish a scholarship award program in memory of Ed Rakow, who was instrumental in the founding and development of the local Federal Bar Association Chapter in the mid-1950's through the 1960's. The Foundation - in conjunction with the local Chapter - has annually sponsored the Rakow Scholarships since 1969.

The criteria for the selection of the Rakow Scholarship winners, as established by the Foundation with approval of the Chapter, are as follows: the Rakow Scholarship shall be awarded each fall to a student at each law school in Michigan, presently pursuing a J.D. degree, who demonstrates outstanding scholarly achievement in securities law or if a securities course was not available, then to an outstanding student in corporations or business law, as determined by the Dean of the law school.

The initial funds for the scholarship program were generously contributed by the sister and many friends of Mr. Rakow. Over the years, FBA members have donated to the Foundation. The primary sources of current funding are donations from the FBA resulting from any profit made on the Chapter's annual dinner held in the spring of each year, as well as any profit from the Bench/Bar Conference which has been held every three years since 1990.

However, the Chapter does its best to "hold

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President's Column (continued)

the line" on member costs of these events, and so profits are sparse. In order to avoid dissipating the principal, we need you to help raise additional funds to support the activities of the Foundation and in particular, the Rakow Scholarships. Contributions (checks payable to the Federal Bar Foundation of Detroit) are appreciated.

The Foundation is governed by a Board of Trustees, whose current members are: Edward M. Kronk, President; Robert E. Forrest, Vice President; Charles R. Rutherford, Secretary; Dennis J. Clark, Treasurer; and Geneva S. Halliday. Trustees are appointed annually by the Board of Directors of the local FBA Chapter.

News From National (continued)

trace their roots to a time long before the Constitutional Convention, where judicial independence was established as a component of the separation and balance of powers.

An ABA white paper, "An Independent Judiciary: Report of the ABA Commission on Separation of Powers and Judicial Independence," published in 1997 (available at www.abanet.org/govaffairs/judiciary/report.html), provides a worthwhile overview of the issue from the American perspective. Perhaps the most eloquent defense of judicial independence in the past two hundred years was John Marshall's statement that "The Greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent Judiciary."

The philosophical basis of judicial independence, in fact, is older even than the American republic, drawing its essence from "the common law judges of the seventeenth century, and the sages of early rabbinic Judaism a millennium and a half before them, and the prophets of Israel a millennium before them," as set forth in a paper presented by Professor Ronald Garet at a USC symposium which, in turn, drew heavily from a 1985 article by Robert Cover entitled "The Folktales of Justice: Tales of Jurisdiction."*

In that tradition,

> As a judge, one must be other than the King not because of the need for specialists in dispute resolution, but because of the need to institutionalize the office of the Prophet who would say to the King, as Nathan said to David, "You are that Man"; as Shimon ben Shitah said to Yannai, "Stand! before He who spoke and the World was created"; as Coke said to James I ". . . under no man, but under God and the Law." For that ultimate purpose — speaking truth to power – there must be a jurisdiction of the judge which the King cannot share.

Whether one agrees with that formulation, or disagrees with it (as Garet does), it is in this context that one begins to understand the contemporaneous threat to judicial independence and the significance of Chief Judge Zatkoff's remarks at the Chapter's State of the Court luncheon, decrying the Feeney Amendment to the "PROTECT" Act which serves to further restrict judicial discretion in sentencing:

> When I am forbidden to consider socio-economic status, lack of guidance as a youth, drug or alcohol dependency, economic hardship; and family ties, and I am discouraged to consider age, education and vocational skills, mental and emotional conditions, physical condition, employment record, family ties and responsibilities and community ties, military, civic, charitable or public service, then there is something wrong with our system.
>
> The American justice system has always considered these factors. It is a part of our individual justice system and sets us apart from other nations.
>
> To be prohibited from considering these factors violates religious and moral codes - i.e., "When the Day of Judgment arrives, you will be judged by your entire life's work, either good or bad."

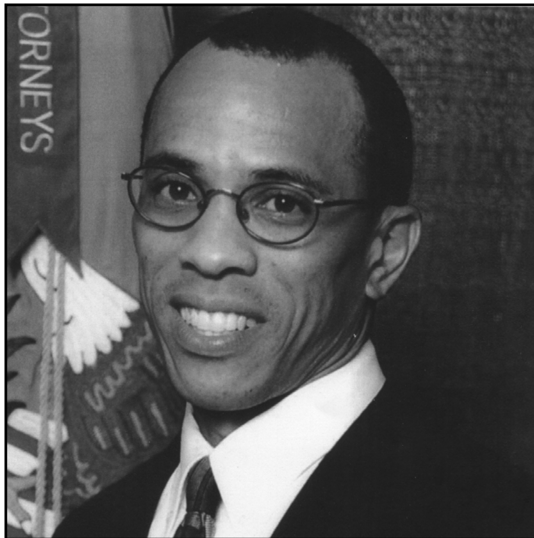
The full text of Chief Judge Zatkoff's address is available on the Chapter's website, at www.fbamich.org under About Us.

Shortly after the State of the Court Address, Chapter president-elect Dennis Barnes contacted the FBA's Government Relations Committee, attaching the remarks, expressing the concerns shared by many of the bench and bar in this district and requesting the GRC's investigation of the issue relative to formal action by the national organization. I am pleased to report that the FBA's Executive Committee has now charged the GRC with just that task, as highlighted in Joyce Kitchens' President's Message in the current issue of "The Federal Lawyer."

The FBA has taken the lead on other issues of concern to the Federal Judiciary, including judicial pay

erosion and the improper linkage of judicial and congressional salaries. Those economic issues, as noted repeatedly in the FBA/ABA White Paper, "Federal Judicial Pay: An Update on the Urgent Need for Action," are intrinsically linked to the independence of the Third Branch. No less so, however, than the fundamental imperative of judicial discretion, which provides the central core of independence and the philosophical basis of a separate judiciary. We must do all we can to protect it.

*www.usc.edu/dept/law/symposia/judicial/pdf/garet.pdf.


Jeffrey G. Collins, U.S. Attorney

USA Patriot Act Helps Fight Terrorism While Preserving Rights

By Jeffrey G. Collins
United States Attorney

People often ask how the USA Patriot Act is helping fight terrorism. While the Patriot Act provides a number of important tools, perhaps its most important contribution to the counter-terrorism effort is Section 218, which dismantled the figurative "wall" that once existed between intelligence investigators and criminal investigators.

Our strategy for fighting terrorism is not the traditional law enforcement practice, which was to react to crimes after they occurred. Instead, we want to prevent terrorist attacks before they occur. Section 218 permits that strategy by allowing the right hand to know what the left hand is doing.

Before the Patriot Act, intelligence investigators and criminal investigators were unable to share information. This well-intended idea had unintended consequences. For example, in 1996, federal prosecutors in New York began conducting a criminal investigation of Osama bin Ladin. The criminal prosecution team, comprised of prosecutors from the U.S. Attorney's Office and criminal investigators from the FBI, had access to a number of sources. They could – and did – talk to citizens, local police officers, foreign police officers, and even members of Al-Qaeda.

However, under the dysfunctional system that existed before the Patriot Act, the prosecution team was barred from talking to the FBI agents across the street assigned to a parallel intelligence investigation of Osama bin Ladin and Al Qaeda. The prosecution team could not provide the intelligence investigators with information, and vice versa. A system that lets criminal investigators talk to Al Qaeda but not certain FBI agents is government bureaucracy at its worst.

The Patriot Act remedied this flaw, so that now information can flow freely between criminal and intelligence investigators. As a result, we are able to use criminal prosecution as another tool for disrupting terrorist acts before they occur.

Prosecutors in my office have access to intelligence files that contain information gathered from sources around the world. These sources may be people who could never testify in court for fear not only of compromising their ability to obtain information in the future, but also for fear for their lives.

As a hypothetical example, intelligence information gathered from a variety of sources may show that someone attended an Al Qaeda training camp, met with Al Qaeda recruiters in Europe, holds a PhD in nuclear physics but works locally at a gas station, has bank records showing funds coming in from Al Qaeda accounts, has telephone records showing calls to and from the 9/11 hijackers, and has told sources that he is here "waiting to be tasked" by Al Qaeda. None of these factors is a crime, but together, they cause concern.

In reviewing the intelligence file, criminal investigators may discover that the person also was involved in a credit card or mortgage fraud scheme to generate cash. Armed with that information, they can build an investigation into those crimes. By gathering evidence independent of the intelligence sources, they can obtain a criminal conviction with a prison sentence, and, perhaps at the conclusion of the sentence, deportation. To the public, this appears to be simply a minor fraud case, but the effect may be to disrupt a terrorist attack.

Just as Al Capone was ultimately convicted not for his organized crime activities, but for income tax evasion, many of our cases will not be "terrorism" cases per se, but other charges that appear mundane on their face. There is little glamour in such prosecutions, but to the extent they avert a terrorist attack, they are es-

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Patriot Act (continued)

sential. The information-sharing provisions of Section 218 of the Patriot Act make these prosecutions possible.

Other provisions of the Patriot Act are also important to the fight against terrorism. One important category of provisions are those that extend investigative tools to terrorism cases. For example, Section 201 of the Patriot Act amended the wiretap statute to add terrorism to the list of offenses for which wiretap orders may be used. Previously, wiretap orders could be sought in investigations of about 80 different federal offenses, such as drug offenses, organized crime, political corruption, and bank fraud, but not terrorism. As Senator Joseph Biden, D-Del., observed: Before the Patriot Act, "the FBI could get a wiretap to investigate the mafia, but they could not get one to investigate terrorists. . . . To put it bluntly, that was crazy."

Another important category within the Patriot Act contains provisions that keep up with technology. For example, Section 206 extends roving wiretaps to foreign intelligence and international terrorism investigations. Previously, roving wiretaps were permitted only in criminal cases. A roving wiretap simply permits a court to enter a wiretap order that is specific to a person rather than to a particular telephone line, so that suspects cannot thwart investigators by changing cell phones.

In this day of digital telephones, this change is a logical extension of a law that was enacted in 1978, at a time when multiple communications devices were not in widespread use. The roving wiretap provision contains all of the requirements of the traditional wiretap statute, such as probable cause, a showing that alternative means of investigation have been exhausted, and a requirement to minimize calls that are not pertinent to the investigation.

Similarly, Sections 214 and 216 of the Patriot Act update the pen register/trap and trace statutes by clarifying that they apply to email as well as to telephones. The pen register and trap and trace statutes previously permitted law enforcement agents to collect incoming and outgoing telephone numbers on a target's telephone. Although judges typically signed pen register orders for email accounts in the past, applying the rules for telephones by analogy, the statute did not expressly include email. This is because when the law was enacted in 1986, Congress did not contemplate the way in which email use would expand in the next fifteen years.

The Patriot Act makes it clear that a pen register/trap and trace order can be used to obtain incoming and outgoing email addresses. It does not permit the collection of content of messages, not even the subject line. These and other provisions help the law keep up with technology so that we aren't fighting a digital-age battle with rotary dial tools.

Some critics argue that the Patriot Act is "sweeping" legislation that abridges our civil liberties. Much of this criticism is based on a misunderstanding of what is and is not in the Patriot Act. The Patriot Act is "sweeping" only in that it contains 157 different sections, but most of those sections pertain to things that we can all agree on, such as financial assistance to victims of terrorist attacks, increased benefits for public safety workers, a condemnation of discrimination against Arab and Muslim Americans, and consumer protection from fraud by requiring disclosure in solicitations for charitable contributions after a terrorist attack.

Senator Dianne Feinstein, D-Calif., who recently conducted congressional hearings on the Patriot Act, stated that she believes there is "substantial uncertainty and perhaps some ignorance about what this bill actually does do and how it has been employed." Senator Feinstein said that although she had received letters from constituents criticizing the Patriot Act, when she asked the ACLU to provide her with specific examples of abuses of the Patriot Act, it was unable to do so.

The misunderstanding comes from confusion between the Patriot Act and other counter-terrorism initiatives. For example, critics are often surprised to learn that no one has been arrested or detained under the immigration provisions of the Patriot Act. Immigration arrests post-9/11 have all been made under preexisting immigration laws. Yet opponents of the Patriot Act often raise the internment of Japanese-Americans during World War II – certainly a low point in our nation's history – to criticize the Patriot Act. This comparison is simply unfounded.

Critics of the Patriot Act often cite other examples that are unrelated to the Act at all – enemy combat-

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ants, military tribunals, detentions at Guantanamo Bay, arrests of material witnesses, and monitoring of attorney-client communications have nothing to do with the Patriot Act. In this sound bite age, the Patriot Act has incorrectly become shorthand for all government counter-terrorism efforts. This oversimplification has caused unjustified criticism. While debate over the Patriot Act and other legislation is certainly appropriate and even healthy in a democracy, the debate should be based on facts, and not misinformation.

Congress included safeguards in the Patriot Act in the form of judicial or congressional oversight to ensure that it does not abridge our civil liberties. As a result, the Patriot Act provides the prosecutors in my office with the tools they need to fight terrorism, while preserving the freedoms that make America worth protecting.

As Senator Carl Levin stated at the time he voted in support of this law, the Patriot Act "responds to these dangerous times by giving law enforcement agencies important new tools to use in combating terrorism without denigrating the principles of due process and fairness embedded in our Constitution."

Immigration Law Seminar

The Chapter, in conjunction with the American Immigration Lawyers Association, will sponsor a seminar on Immigration Law and Legal Issues. The seminar, with a reception following, will be held on April 2, 2004, at the University of Detroit Mercy School of Law, beginning at 12:30 p.m.

It is anticipated that the program topics will include: Constitutional Law and Civil Liberties Issues after 9/11; Aggravated Felons and Immigration Law; Immigration Court Update; and Federal Court Habeas Corpus Hearings. Look for future updates regarding the specific speakers for the seminar.

Law Students Honored; Keith Case Discussed

The Edward H. Rakow Awards Luncheon and the Annual Meeting for the Historical Society of the Eastern District of Michigan were held in a joint session on November 18, 2003 at the Pontchartrain Hotel.

The luncheon program began with the presentation of the Rakow Scholarship Awards by Chapter President Dennis Clark. The Rakow awards are given annually to students of Michigan law schools who demonstrate outstanding scholarly achievement in securities, corporation or business law.

The 2003 recipients of the Rakow awards are: Michael Longmeyer from the Ave Maria School of Law; Ammie Rouse from Thomas M. Cooley Law School; Tamika Hale from Detroit College of Law at Michigan State University; Heather Sampson from the University of Detroit Mercy School of Law; Jon-Michael A. Wheat from the University of Michigan Law School; and Mark Bredeweg from Wayne State University Law School.

In keeping with tradition, the Historical Society presented a program on a significant case arising out the Eastern District of Michigan. Featured at this year's luncheon was the "Keith Case." District Judge John Feikens was the moderator for the program which included the following panel participants: Circuit Judge Damon J. Keith, Circuit Judge Ralph B. Guy, Jr., and attorney Leonard Weinglass, all of whom talked about their memories of the Keith Case.

Elsewhere in this newsletter is an excerpt of an article about the Keith case written by Samuel C. Damren of Dykema Gossett which describes the Keith Case as well as the role of the panel participants. The full text of the article, as well as other articles on the Keith Case, can be found in the November 2003 issue (Vol. XI, No. 4) of The Court Legacy, the newsletter of the Historical Society of the U. S. District Court for the Eastern District.

The Keith Case Revisited

The following is an excerpt from an article about the Keith case written by Samuel C. Damren of Dykema Gossett. The full text of the article, as well as other articles on the Keith Case, can be found in the November 2003 issue (Vol. XI, No. 4) of The Court Legacy*, the newsletter of the Historical Society of the U. S. District Court for the Eastern District.*

On January 25, 1971, United States District Judge Damon J. Keith issued what later became known as, the "Keith Case." The opinion rejected Attorney General John N. Mitchell's assertion that the Executive Branch had the inherent right to conduct warrantless electronic surveillance on domestic groups that posed a threat to national security. The decision achieved landmark status when the United States Supreme Court unanimously affirmed the decision on June 19, 1972.

The affirmance of the Keith Case caused the government to dismiss a conspiracy case arising out of the September 29, 1968 dynamite bombing of a Central Intelligence Agency recruitment office located in Ann Arbor, Michigan. No one was injured in the blast. The bombing was one of eight anti-establishment

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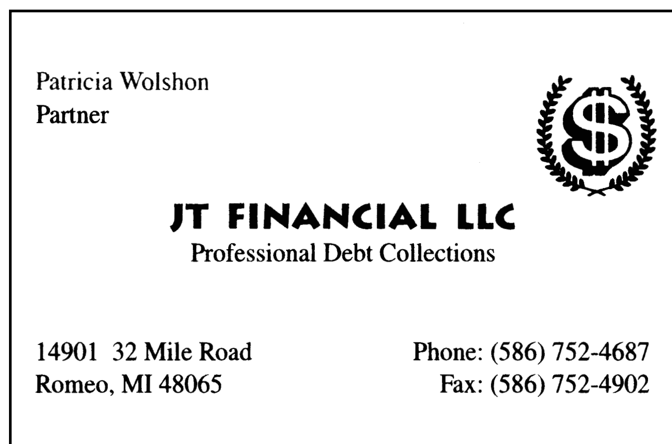
bombings that had occurred in the Detroit area at the time. A sealed indictment was returned by a grand jury on October 7, 1969. The named defendants were John Sinclair, Laurence Robert "Pun" Plamondon, and John "Jack" Waterhouse Forrest. The defendants were all members of the radical White Panther Party. Sinclair was the Chairman of the party, Plamondon was the Minister of Defense, and Forrest was Deputy Minister of Education for Detroit.

The government attorneys involved in the prosecution were United States Attorney Ralph B. Guy and Assistant United States Attorneys J. Kenneth Lowrie and John H. Hausner. In 1976, Guy was appointed to the United States District Court for the Eastern District of Michigan. He was appointed to the United States Court of Appeals for the Sixth Circuit in 1983. Defendants Sinclair and Plamondon were represented by Leonard I. Weinglass and William Kunstler, who had previously represented radical defendants in the infamous chaotic trial of the Chicago 8 before Judge Julius Hoffman. Hugh M. Davis, a 27 year old lawyer with the Detroit branch of the National Lawyers Guild, represented Forrest.

The case was originally assigned to United District Judge Talbot Smith, but was randomly reassigned to Judge Keith when Smith recused himself for personal reasons. Upon learning that his good friend Damon Keith had been assigned to preside over this highly contentious litigation between the "law and order" Justice Department and the leaders of the anti-establishment radicals, E. Donald Shapiro, the director of the Practising Law Institute in New York, wrote a short note to Judge Keith which began "(A)ren't you the lucky guy? Good luck!"

Judge Keith was appointed to the federal bench of the Eastern District of Michigan in 1967. At the time, he was one of only a handful of African American judges in the federal judiciary. In 1977, he was appointed to the United States Court of Appeals for the Sixth Circuit.



As was his habit, Judge Keith scheduled an early pretrial conference for the lawyers to get together prior to the development of any litigation driven acrimony. Judge Keith served coffee and warm buns. In this uncontentious setting, the participants first discussed the case. To the prosecutors, it was a "bricks and mortar" case since the prosecution was based on tangible damage to a building operated by an agency of the United States government. To the defense, it was a case of political reprisal that threatened the rights of every American. Judge Keith did not want a repeat of the antics that confounded the Chicago 8 prosecution where the defendants staged inflammatory outbursts of politically tagged content during the proceedings and where the court in response ordered the defendants gagged and physically restrained. On that, he was clear.

On October 5, 1970, the defense filed a motion for the disclosure of electronic surveillance. The motion was supported by an affidavit by attorney Kunstler in which he stated that, although he had no knowledge of whether electronic surveillance had been conducted by the government in the *Sinclair* case, he was familiar with prior instances in which the government had conducted illegal surveillance against so-called counter-culture radicals. In response to the motion, the prosecution and defense entered into a stipulation. In the stipulation, the prosecution represented to the court that it had no knowledge of any electronic surveillance of the defendants and that the local office of the FBI was also unaware of any electronic surveillance. The United States Attorney's Office also stated that it had asked the Justice Department to conduct an inquiry of the FBI in Washington, D.C. to check its records regarding electronic surveillance of the defendants. The prosecution further stipulated that it would turn over any electronic surveillance that might come to its attention as a result of this inquiry to Judge Keith for inspection.

In his decision granting the defendants' motion to disclose government surveillance, Judge Keith rejected the government's position, known as the "Mitchell Doctrine," which asserted that the Attorney General, as a representative of the Executive Branch, had the inherent constitutional power both to authorize electronic surveillance in "national security" cases without judicial warrant and to unilaterally determine whether a particular circumstance falls within the scope of a "national security" concern.

> The great umbrella of personal rights protected by the Fourth Amendment has unfolded

> slowly, but very deliberately, throughout our legal history.
>
> The final buttress to this canopy of Fourth Amendment protection is derived from the [Supreme] Court's declaration that the Fourth Amendment protects a defendant from the evil of the univited ear.
>
> It is to be remembered that the protective sword which is sheathed in the scabbard of Fourth amendment rights, and which insured that these fundamental rights will remain inviolate, is the well-defined rule of exclusion. And, in turn, the cutting edge of the exclusionary rule is the requirement that the Government obtain a search warrant before it can conduct a lawful search and seizure. It is this procedure of obtaining a warrant that inserts the impartial judgment of the Court between the citizen and the Government.

Judge Keith, in words that would ring for decades after his decision, concluded: "We are a country of laws and not of men."

In its appeal, the government sought a writ of mandamus against Judge Keith to require him to release the surveillance tapes of the Sinclair defendants that he had impounded. As a result, Judge Keith found himself a party to the appellate litigation and in need of his own counsel. William T. Gossett, the lawyer that Judge Keith chose to represent him, was not the first lawyer whose name might have sprung to mind to litigate an appellate issue involving a matter of constitutional exclusionary principles in a criminal case.

The petition was denied by the United States Court of Appeals for the Sixth Circuit in a two to one decision. The Government then sought and was granted certiorari by the Supreme Court. Although in retrospect it may seem that the Supreme Court decision affirming the Keith Case almost wrote itself, at the time the result was startling. In an 8-0 opinion, with Justice Rehnquist abstaining because he had been a member of the Justice Department that originally formulated the government's position, the Court not only rejected the Mitchell Doctrine, but entirely stripped away its veneer of legitimacy.

> We cannot accept the Government's argument that internal security matters are too subtle and complex for judicial evaluation. Courts regularly deal with the most difficult issues of our society. There is no reason to believe that federal judges will be insensitive to or uncomprehending of the issues involved in domestic security cases. Certainly courts can recognize that domestic security surveillance involves different considerations from the surveillance of 'ordinary crime.' If the threat is too subtle or complex for our senior law enforcement officers to convey its significance to a court, one may question whether there is probable cause for surveillance.

The Keith Case stands today, as it has for over 30 years, as a beacon to the judiciary to vigilantly guard against attempts by the Executive Branch to secure an "uninvited ear" to the private conversations of citizens, especially when those attempts are premised on an opaque assertion of national security. The opinion honors the heritage of the United States District Court for the Eastern District of Michigan and the independence of the Federal Judiciary.

New Lawyers Seminar

The Chapter presented its 51st New Lawyer Seminar on December 9th and 10th, 2003, at the Pontchartrain Hotel in Detroit. Once again, a blue-ribbon cast of judges and lawyers presented at the Seminar. The Seminar was attended by more than seventy new lawyers, each of whom received a CD that included helpful materials concerning the topics discussed at the Seminar.

Federal court practice was the subject of the first day of the Seminar. Chief Judge Zatkoff opened the morning session, which concentrated on civil practice. Judge Patrick Duggan offered a practical perspective on motion practice in federal court. Judge Robert Cleland presented the trial of a civil case, drawing on his substantial trial experience as a prosecutor and as a trial judge. Magistrate Judge Steven Whalen discussed practice before Magistrate Judges.

Court Administrator, David Weaver, discussed procedures in the Clerk's office. AUSA William Woodard discussed discovery in a civil case, and his colleague Elizabeth Larin discussed pre-trial proceedings in a civil case. Bankruptcy practitioner Stanley Bershad of Goldstein, Bershad & Fried concluded the morning session by discussing bankruptcy practice.

The afternoon session of the first day focused on criminal practice. Leroy Soles of the Federal Defender's office discussed the provision of effective assistance of counsel to indigent defendants. David DuMouchel of Butzel Long presented grand jury practice. AUSA Alan Gershel discussed policies and procedures of the U. S. Attorney's Office, and AUSA Michael Leibson spoke on post-trial matters, includ-

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Seminar (continued)

ing motions, sentencing practices and procedures, probation and parole. Margaret Sind Raben of Gurewitz and Raben. discussed pretrial proceedings in criminal cases, and Thomas Cranmer of Miro, Weiner & Kramer presented trial in a criminal case. The federal day concluded with a swearing-in ceremony at the Federal Courthouse. Thomas Schehr of Dykema Gossett moderated the federal portion of the Seminar.

The second day of the Seminar involved practice in State courts. Chief Judge Mary Beth Kelly of the Wayne County Circuit Court discussed procedures in circuit court. Richard Hewlett of Butzel Long presented on Michigan civil practice, and Brian Legghio presented on the handling of criminal cases in state courts. Elaine Fieldman of Barris, Sott, Denn, & Driker offered an overview of a grievance proceeding.

Danielle Smith of Dykema Gossett discussed domestic relations cases, and Robert Rollinger presented real property transactions. Timothy Wittlinger of Clark Hill discussed mediation, and Lawrence S. Pepper presented practicing in Michigan Probate Court and Family Court. Cathrine F. Wenger of Trinity Health Corp. presented employment law, and John W. Simpson presented workers' compensation cases. Joseph Conrad Smith concluded the State day with a presentation on establishing a personal injury practice. Brian Akkashian of Dickinson Wright moderated the State court portion of the Seminar.

Special thanks are due to Grant Gilezan, Brian Figot, Geneva Halliday, Christine Dowhan-Bailey, Cathrine Wenger, and Brian Akkashian for their substantial efforts in co-chairing another highly successful Seminar.

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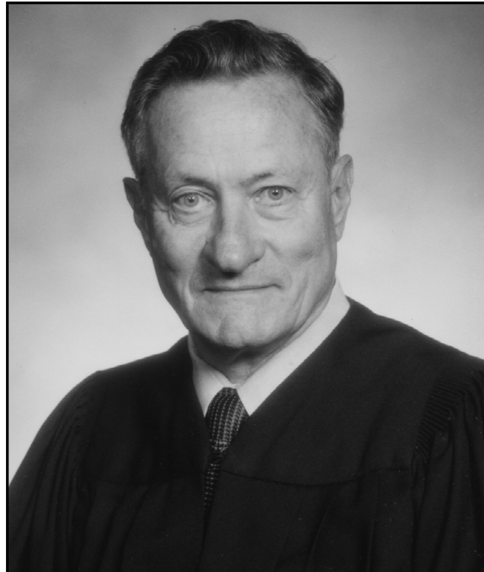


Judge Patrick J. Duggan

Judge Patrick J. Duggan

By Thomas M. Schehr

The British barrister Francis Bacon's statement that "[n]othing is pleasant that is not spiced with variety" is certainly applicable to Judge Patrick J. Duggan's distinguished and enjoyable career as a United States District Judge for the Eastern District of Michigan for almost 17 years.

While attending Xavier University, where he graduated with a degree in economics in 1955, Judge Duggan was recruited to attend law school by Father Bayne of the University of Detroit School of Law. He received his law degree, cum laude, from the University of Detroit in 1958.

Judge Duggan started in private practice at the firm of Brashear, Brashear, Mies and Duggan in 1959. The constant in his practice was variety. He practiced across an assortment of areas, from collections work to personal injury cases to real estate matters, and everything in between.

He was also involved in diverse community organizations. He served as President of the Livonia Bar Association, President of the Michigan Jaycees, Chairman of the Board for the Livonia Family YMCA, President of the Livonia Chamber of Commerce, and was a member of the Board of Directors of Northwestern Wayne County Guidance Clinic.

Madonna University has been one of Judge Duggan's passions, where he has served as a member of its Board of Trustees and as an adjunct professor in its Legal Assistant Program. He has also been involved with the American Inns of Court at the University of Detroit Mercy Law School for many years, serving as its President for the last five years.

The diversity of his practice and community involvement prepared him well to serve on the Wayne County Circuit Court, to which he was appointed by Governor William Milliken. Judge Duggan very much enjoyed his tenure on the Wayne County bench from 1977 to 1986. Due to more liberal venue rules in place at the time, he was able to preside over numerous complex cases, including product liability cases involving

the automotive companies, and several complicated medical malpractice cases.

In one of the highlights of his career, President Ronald Reagan telephoned Judge Duggan in 1986 to appoint him to the United States District Court for the Eastern District of Michigan after Judge John Feikens took senior status. Since taking the federal bench, Judge Duggan has presided over numerous high profile cases, including the Denny McClain criminal trial, the constitutionality of Michigan's term limits, and the recent case involving the student who wore to school a t-shirt stating that George W. Bush is an "International Terrorist." See Barber ex rel. Barber v. Dearborn Public Schools, 286 F. Supp. 2d 847 (E.D. Mich. Sep 30, 2003).

Judge Duggan may be best known for his decision in one of the University of Michigan affirmative action cases, Gratz v. Bollinger, 122 F. Supp. 2d 811 (E.D. Mich. 2000), involving the University's admissions policy to the College of Literature, Science and the Arts. Judge Duggan held that diversity in education could be considered a compelling governmental interest, and the University's use of race as a factor in one of its admissions policies was narrowly tailored to serve that interest. Id. at 816-30. In a pair of landmark decisions in June 2003, the United States Supreme Court disagreed with Judge Duggan's application of the law to the facts, but agreed with him in finding that diversity in education could be considered a compelling governmental interest, and that an applicant's race can be considered in a narrowly-tailored admissions policy. See Gratz v. Bollinger, 123 S.Ct. 2411 (2003); Grutter v. Bollinger, 123 S.Ct. 2325 (2003).

Although the Gratz case went all the way to the United States Supreme Court, it has not yet concluded. Lost in much of the attention regarding the Supreme Court's decision was the fact that the case was remanded to Judge Duggan for a determination regarding damages. Pretrial proceedings are currently underway.

Although variety has been the spice of life for Judge Duggan, he has found one constant regarding litigating lawyers. He believes that many of the problems that litigating lawyers encounter are due in large part to a lack of communication, whether with opposing counsel or with the court staff. In an ideal world, Judge Duggan would require opposing counsel near the outset of every case to grab a drink or a bite to eat together in order to promote communication and civility. If counsel would work together on matters such as scheduling and discovery, Judge Duggan believes that the practice of law would be more enjoyable for all participants in the process.

Judge Duggan also believes that a great deal of anxiety about appearing before him can be alleviated by contacting his highly competent deputy clerk, Marilyn Orem, for guidance and tips. Ms. Orem has been with Judge Duggan for 18 years, and there is hardly a situation that she has not encountered and addressed. Advice from Ms. Orem could save a lawyer a sleepless night or two.

From Court Administrator Dave Weaver

The Court's implementation of the new Case Management / Electronic Case Files (CM/ECF) system continues. The internal conversion to CM/ECF was moved to January, 2004 and the March 3, 2004 date may need to pushed back slightly as well. The change in implementation dates is not the result of any one specific problem, simply the efforts involved in converting approximately fifteen years of existing Court data!

Judge Robert Cleland, working with a group of judges, court staff and attorneys has developed a policies and procedures manual that will govern the use of the electronic filing system. At its December 1, 2003, meeting, the Bench approved the policies and procedures which will be made available on the Court's website at www.mied.uscourts.gov.

Attorneys will be able to register for CM/ECF via the Court's website, take advantage of on-line tutorials and access a training database. The tutorials and training database will allow attorneys to get the look and feel of the new system. Training information for the Bar should be available by the time you read this.

Magistrate Judge Mona K. Majzoub was sworn in on January 6, 2004. Magistrate Judge Majzoub fills the vacancy created by Magistrate Judge Carlson's retirement last October. Please join me in congratulating Magistrate Judge Majzoub on her appointment.

Congratulations to attorney CaraLee B. Epp of Clark Hill in Birmingham. Ms. Epp was the first attorney to submit a question to me. As promised, she received an official CM/ECF coffee mug emblazoned with the Court Seal! Ms. Epp had several questions related to the CM/ECF implementation.

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

Sixth Circuit Judicial Conference

The 2004 Sixth Circuit Judicial Conference will be held from May 5-8, 2004 in Louisville, Kentucky. The Conference is open to all attorneys who have been admitted to practice in the Sixth Circuit. Under Rule 205 of the Sixth Circuit Court of Appeals, all attorneys who attend an open Conference will receive credit toward life membership in the Conference. Attendance at three open Conferences and a recommendation from an Article III judge entitles an open attendee to life membership.

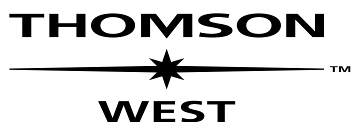
Information brochures are available at www.ca6.uscourts.gov. In order to receive the registration materials when they are distributed in March, attorneys are encouraged to complete and return the questionnaire found in the brochure as soon as possible. Submission of the questionnaire in no way obligates the attorney to attend.

Gilman Award Nominations

Nominations are now being accepted for the recipient of the 2004 Leonard Gilman Award for an outstanding practitioner of criminal law. The award will be presented at the Gilman Award Luncheon in April 2004.

This award honors the memory of Leonard Gilman who served as United States Attorney in this district from 1981 until his death in 1985. Len is remembered as a man who spent his entire professional life in public service as a prosecutor yet never forgot that every case involved unique human beings and that compassion was not weakness. This award is given annually to a person who emulates Len's commitment to excellence, professionalism and public service in the criminal justice system

Nominations for this award should be submitted by March 1, 2004 to Michael Leibson, 211 West Fort, Suite 2001, Detroit, MI 48226.



Electronic Case Filing

Although, as indicated in the article by Mr. Weaver, access to the training environment for the Eastern District's new Electronic Case Filing system has been slightly delayed and the go-live date for the system may be pushed back to later than March 3, 2004, electronic filing will remain optional from the go-live date until September 1, 2004 under the current Policies and Procedures of the Eastern District. Traditional filing will remain available to all until September 1, 2004.

Supreme Court Admission Ceremony

The Younger Lawyers Division of National FBA is again sponsoring its annual Supreme Court Admissions Ceremony. The event on June 1, 2004 is open to all FBA members. The cost is $100 for admission to the bar of the Court plus $15 per person for the reception following Applicants take their oath in the historic Supreme Court courtroom before all nine Justices. Several justices are expected to stay for the reception. Tours of the Supreme Court building will be given by the Court Historian. The deadline for submission of applications is 5 p.m., April 9, 2004. Participation is limited to the first 50 applicants. Additional information can be obtained from National FBA headquarters at www.fba-yld.org or by contacting Alli Parrott at 202-785-1614 or aparrott@fedbar.org.

Calendar of Events

February 12
Wade H. McCree Jr. Award Luncheon
Hotel Pontchartrain
11:30 AM
Contact: Julia Blakeslee (248) 855-6729.

April (date to be announced)
Leonard Gilman Award Luncheon
Hotel Pontchartrain
11:30 AM
Contact: Julia Blakeslee (248) 855-6729.

April 2
Immigration Law Seminar
12:30 PM
UDM School of Law

May 6-8
Sixth Circuit Judicial Conference
Louisville, Kentucky

May 13
Annual Dinner and Meeting

FEDERAL BAR ASSOCIATION
EASTERN DISTRICT OF MICHIGAN CHAPTER
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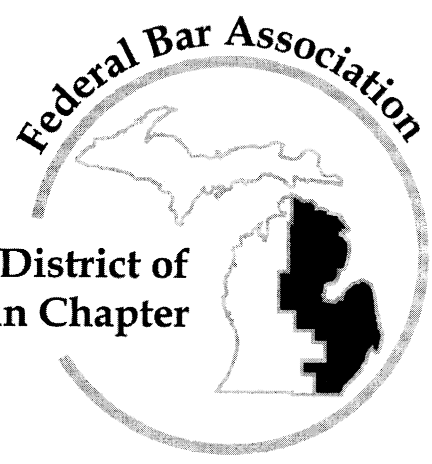

NOTE: If you prefer, you may now join or renew your membership in the Eastern District of Michigan Chapter of FBA online using a secure credit card connection. Go to the Chapter website at www.fbamich.org and click on Join FBA (new members) or Member Services (renewals).

LOCAL CHAPTER DUES INFORMATION

Note: Local Chapter Dues are supplemental to dues paid to the national Federal Bar Association.

Chapter Sustaining member $100.00 _____

Chapter Regular member $25.00 _____

Chapter membership if admitted less than 5 years $15.00 _____

Court Historical Society $10.00 _____

Law Student member -- Complimentary until October of year of graduation from law school

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______Federal Laws – Social Security
______Federal Laws -- Taxation
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______Newer Lawyers
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______Social Justice

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Please take this opportunity to join the national FBA either by application or online at http://www.fedbar.org/join.html

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7/07/2003

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