



# FBA newsletter

Summer 2004

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



Robert Cares  
Assistant U.S. Attorney

## Governor To Speak At Gilman Luncheon Robert Cares to Receive Gilman Award

On Tuesday, April 20, 2004, the Chapter will host the 20th annual Leonard Gilman Award Luncheon at the Hotel Pontchartrain in Detroit. After a reception at 11:30 a.m., the luncheon will begin at 12:00 noon.

This year's recipient of the Gilman Award, presented to an outstanding practitioner of criminal law, is Assistant U. S. Attorney Robert Cares. Mr. Cares is the head of the U. S. Attorney's Office Counter-Terrorism Unit.

The guest speaker will be Governor Jennifer Granholm, a former Assistant United States Attorney.

Tickets are \$25 for FBA members and \$30 for non-members. For more information or to make reservations please contact Program Chair Julia Blakeslee at [jfblakeslee@yahoo.com](mailto:jfblakeslee@yahoo.com) or (248) 855-6729. To make reservations online using a credit card, visit the Chapter website at [www.fbamich.org/Events & Activities/Leonard Gilman Award Luncheon](http://www.fbamich.org/Events & Activities/Leonard Gilman Award Luncheon).

## News From National Register TODAY For The Sixth Circuit Judicial Conference

From May 5-8, 2004, attorneys will have a rare opportunity to meet, interact, and socialize with the Judges

of the Sixth Circuit, at the Sixth Circuit Judicial Conference. The Conference is open to interested practitioners who have been admitted to practice in the Sixth Circuit (*i.e.*, the Court of Appeals or any District Court in Michigan, Ohio, Tennessee or Ken-  
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## President's Column

Dennis J. Clark

Since the newsletter will not be published again until September, I am taking this opportunity to mention some upcoming events and activities and to invite you to participate in them.

In addition to the Gilman Luncheon (April 20) and Annual Dinner (May 13), your Chapter will help to host the Passing of the Gavel ceremony and reception honoring outgoing Chief Judge Lawrence P. Zatkoff and incoming Chief Judge Bernard A. Friedman on June 18, 2004. Over the summer, we hope to hold the Second Annual Summer Associates Program. Looking ahead to the Fall, we plan on sponsoring a United States Supreme Court program, including a swearing-in ceremony as well an address by the Courts Clerk, William K. Suter. Details will be available on the Chapter website.

It is not too late to register for the Sixth Circuit Judicial Conference which is being held May 5-8, in Louisville, Kentucky. It is open to interested practitioners who have been admitted to federal practice in the Sixth Circuit.

Also, the national FBA will hold its annual meeting in Cincinnati, October 2-5. The annual meeting is a great combination of continuing education, conducting the business of the FBA and social interaction among lawyers and judges from around the country. I recommend you consider joining your fellow FBA members for what will no doubt be an interesting and enjoyable event.

There is change on the horizon in our local Chapter. Our Executive Director for the last two-and-a-half years, John Mayer, has decided to step down from this position. He will be succeeded by a former Chapter President and current FBA Vice President for the Sixth Circuit, Brian Figot. We extend our deep gratitude to

(see page 2)

## President's Column (continued)

John for his excellent work, especially in modernizing the administrative functions of the organization. Brian will have big shoes to fill, but we know he is up to the task.

As we soon conclude our Chapter's 47<sup>th</sup> year, we continue to promote professionalism, social responsibility and service to the federal bench and bar.

## News From National (continued)

tucky). However, the deadline for registration is upon us – as you receive this Newsletter **immediate** action on your part is required.

The Conference, which is in Louisville, Kentucky this year, promises to be an interesting and stimulating event, both substantively and socially.

For attorneys, the first event is a reception, the evening of May 5, at the Kentucky Center for the Arts, an ultramodern architectural masterpiece which houses a diverse array of 20th-century works of art on permanent public display, featuring the works of world-renowned artists like Alexander Calder, John Chamberlain, Jean Dubuffet, Louise Nevelson, Joan Miro and others.

The next morning, after the formal opening of the conference by Danny J. Boggs, Chief Judge of the Sixth Circuit, the newest Sixth Circuit judges will provide a panel discussion of "First Impressions – The Newest Members of the Circuit Bench Discuss Effective Sixth Circuit Advocacy." The balance of the first morning will be a plenary session on the legal impact of scientific breakthroughs in human genetics, including the effects which have been felt in various areas of civil and criminal practice. Conference organizers have assembled a group of medical and legal experts which will not be replicated in any other forum.

The afternoon session on May 6, "Courtrooms of the Future," should be of particular interest to Chapter members. The session will be held in a retrofitted courtroom

which is similar to the one in Detroit, and provide a "nuts and bolts" overview and demonstration of the use of electronic presentation equipment.

On Friday, May 7, there will be morning breakout sessions on sentencing, evidence, punitive damages, and the proper role of Chapter 11 Examiners and Trustees in the discovery of corporate fraud, followed by a plenary session on the Courts and Congress with presenters who will include Senator Bill Frist and ABA President Dennis Archer. The entire afternoon is open, so that attendees may enjoy their choice of Louisville's countless attractions, including museums, festivals, events, and, yes, Churchill Downs. Bus transportation will be provided to the Downs, where attendees will be served a catered lunch and view the afternoon races from the luxurious Jockey Club Suites. That evening, the Conference Banquet will include remarks from Sixth Circuit Justice John Paul Stevens.

Finally, on Saturday morning, Conference attendees will meet with other participants from their home district in breakout sessions.

For further information, contact the Circuit Executive's Office at (513) 564-7200 or [ca06-conf@ca6.uscourts.gov](mailto:ca06-conf@ca6.uscourts.gov).

## McCree Award Luncheon

This year's Wade Hampton McCree, Jr. Award luncheon was held on February 12, 2004, at the Hotel Pontchartrain. Members of the bench and bar once again were able to honor the memory of Judge McCree. The McCree Award is given annually in recognition of individuals or groups committed to social justice. This year's recipient of the McCree Award was the Friends School in Detroit. Judge McCree's daughter, Kathleen McCree Lewis, presented the Award to the School.

The Friends School in Detroit was founded in 1965 when a group of prominent business and civil leaders, including Wade McCree, recognized the community's need for an academically challenging school, open to all qualified students, dedicated to justice in education. The leaders urged the local members of the Religious Society of Friends (Quakers) to establish a school

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based on Quaker traditions of cooperation and community spirit.

Today, Friends School in Detroit has approximately 150 students, from preschool to eighth grade. The School has gained national recognition for its dedication to the intellectual, social, and spiritual development of its students and is one of the preeminent independent schools dedicated to an urban education agenda.

The School has remained committed to values rooted in Quaker traditions: academic rigor, the right to a safe educational environment, non-violent conflict resolution, equality among all people, justice, honesty, community building and love, as the primary forces in creating a better world. In furtherance of these values, students are encouraged to make a commitment to egalitarianism and community service, and to study and practice non-violent conflict reconciliation. Courses in human rights are required study for students in the sixth through eighth grades.

The School's commitment to diversity and opportunity for all ensures that the student body includes enrollees from all parts of the metropolitan area, and reflects the cultural, religious, racial and economic diversity of the community.

The luncheon also featured presentations by United States Attorney Jeffrey G. Collins and Kary L. Moss, Executive Director of the American Civil Liberties Union of Michigan, who squared off on the USA Patriot Act. The debate is not over. In this edition of the Newsletter, you can read the ACLU's response to the U.S. Attorney's Patriot

Act article from the Spring 2004 issue of the Newsletter.



*Magistrate Judge  
Mona K. Majzoub*

## **Magistrate Judge Mona K. Majzoub**

**By Kimberly G.  
Altman**

An opportunity to view the law from a new perspective and a desire for change led Mona K. Majzoub to

become the newest Magistrate Judge of the Court. She began her eight-year term on January 6, 2004 and fills the vacancy created by Magistrate Judge Thomas A. Carlson's retirement last October. She comes to the court with twenty-seven years of litigation experience specializing in professional liability cases.

A native of Detroit, Magistrate Judge Majzoub graduated from the University of Detroit School of Law. She also earned bachelor's and master's degrees in English Literature from the University of Michigan and completed graduate studies at the American University of Beirut.

During law school, she worked for Michigan Legal Ser-

vices researching issues on juvenile justice. She also worked for the Recorder's Court's release on recognizance project where she supervised and selected candidates for release on bond. In addition, she managed to find time to clerk for local criminal defense firms and intern for the State Appellate Defender's Office. However, she was determined that she wanted to practice in the civil law arena, and in particular, professional liability litigation.

Following graduation, Magistrate Judge Majzoub began her legal career at the law firm of Kitch and Suhrheinrich where she remained for 27 years. During her long tenure with the Kitch law firm, she handled numerous professional liability cases for a variety of individual and institutional clients. She is a renowned expert on professional liability issues and has given frequent presentations to members of the bar and health care institutions around the country. While in private practice, she most enjoyed her role as advocate for her clients and treasured the attorney-client relationship. She also found that litigation provides lawyers with the opportunity to continuously educate themselves - one of her favorite aspects about the law.

In her years of practice, she has led the way for women in the law. She was the first woman hired by the Kitch law firm (at a time when the firm had only a handful of attorneys) and its first female partner. She is the first Arab-American woman to have served as president of the Arab-American Bar Association. She is also the second principal from the Kitch law firm to be appointed to a position in the federal courts. In 1984, Judge Richard F. Suhrheinrich was appointed to the federal bench. Judge Suhrheinrich spoke at Magistrate Judge Majzoub's investiture and she credits him as a mentor in her legal career.

Although Majzoub has handled numerous professional liability cases, one of her most memorable cases was a case of a very different nature. It was a case involving First Amendment issues where she defended a Christian Science practitioner in a suit brought by parents of a child. She argued the case all the way to the United States Supreme Court.

Majzoub sees her transition from advocate to judicial officer as an exciting change and interesting challenge. It is also an opportunity to use her skills and experience in a new, more reflective way. She looks forward to her new role and to working with the bench and bar to effectively resolve cases.

An advertisement for 'Personalized Courtroom Artwork'. The ad features a black and white illustration of a courtroom scene with a judge, a lawyer, and a witness. Text on the ad includes: 'Personalized Courtroom Artwork', 'powerful, dramatic art for - your office wall - web-site - business card - self-promotion', 'created live in the courtroom or learn your favorite phrase', '313-561-7291', 'Carole Kabrin', 'many award winning artist', and a list of clients: 'work seen on ABC, CBS, NBC, ESPN, WXYZ, WBTV, ABC, WUPH, WJZ, The U.S. Supreme Court, Oklahoma Boarding, Galt v. Georgia, WJLA, Election Hearing, Houston Arraignments, White Water, Mike Tyson, Noriega, and many more...'



## Corps Hosts Tuskegee Airmen

By Christine M. Dowhan-Bailey

The Detroit District of the Army Corps of Engineers concluded its celebration of Black History Month with a visit by three representatives of the famed Tuskegee Airmen Corps. During World War II, the Air Force trained approximately 970 Black military aviators at an isolated complex near the town of Tuskegee, Alabama and at the Tuskegee Institute. Four hundred and fifty African American fighter pilots under the command of Colonel Benjamin O. Davis, Jr., fought an aerial war over North Africa, Sicily, and Europe, flying in succession, P-40, P-47 and P-51 aircraft. These brave men flew 15,553 sorties and completed 1,578 missions. Col. Davis later became the U.S. Air Force's first African-American General and ultimately rose to the rank of Lt. General.

Perhaps the most compelling legacy of the Tuskegee Airmen is that despite the disparities they suffered as minorities in a segregated military (their training as airmen was viewed as an experiment), they succeeded so brilliantly. Known by the Germans who feared and respected them as the "Schwartz Vogelmenchen" (Black Birdmen), the Tuskegee Airmen amassed an amazing combat record coming home with 150 distinguished flying crosses, Legions of Merit and Red Stars of Yugoslavia. The 99th Fighter Squadron which distinguished itself early in North Africa, Sicily, and Anzio subsequently joined three other Black Squadrons (the 100th, the 301st, and the 302nd) to comprise the largest fighter unit, the 332nd Fighter Group in the 15th Air Force Division. From Italian bases the 332nd

destroyed enemy rail traffic, surveillance stations and hundreds of vehicles on air-to-ground strafing missions. White bomber pilots revered their "Black Redtail Angels" (so named due to the identifying red paint on their tail assemblies) whose reputation for escorting those pilots safely through missions was legendary.

The organization, now known as Tuskegee Airmen, Inc., was founded in Detroit in 1972, and has a museum and

monument on the grounds of Historic Ft. Wayne. The organization has chapters throughout the United States, Europe, and Japan. It is comprised primarily of armed forces veterans and active duty personnel of all branches of service. The Tuskegee Airmen support a national scholarship fund for high school seniors who excel in math and science, and have the primary goal of offering inspiration and motivation to young Americans.



Left to right: Lorenzo Holloway III, Buford Alexander, Lt. Col. Thomas Magness, Lorenzo Holloway Jr.

## Bankruptcy Practice Committee

By Claretta Evans\*

This FBA year has been filled with excitement and change. The Bankruptcy Section has sponsored three in a series of four luncheons at the Hotel Pontchartrain. The turnout has been tremendous.

On October 23, 2003, Chief Bankruptcy Judge Steven W. Rhodes kicked off the Bankruptcy Luncheon Series with his annual "State of the Bankruptcy Court" address. Bankruptcy filings for consumer cases are continuing to skyrocket, and there is no reason to believe that this trend will stop in the near future.

On December 16, 2003, Bankruptcy Judge Thomas J. Tucker presented the bankruptcy bar with an opportunity to ask him questions pertaining to his observations and perceptions after presiding over bankruptcy cases for approximately six months. Judge Tucker, formerly unknown to the local bankruptcy bar, shared some insight into his personal and professional background.

Then on March 3, 2004, Marci B. McIvor, United States Bankruptcy Judge, accepted the challenge from her staff to be "funny". It was one thing to reveal that her staff told her that she had to be funny, but to pull it off could have been a formidable task. Of course, Judge McIvor made it appear effortless.

At the conclusion of Judge McIvor's presentation, co-chairs of the Bankruptcy Tribute Committee, Wallace Handler and Stuart Gold, and Michael Baum, Treasurer, presented to the Federal Bar Association the Endowment Funds to establish the Walter Shapero Bankruptcy Symposium. FBA Vice President Julia Caroff Pidgeon accepted the check

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on behalf of FBA. The funds will be used to invite bankruptcy experts from other jurisdictions to speak at the Bankruptcy Luncheons.

The fourth and final luncheon in the series will be held on May 17, 2004. Bankruptcy Judge Phillip J. Shefferly will speak to the bankruptcy bar. In keeping with the tradition of encouraging judges to speak on any subject they desire, Judge Shefferly's topic will not be revealed until the date of the luncheon. We anticipate, however, that the judge will include some observations and perceptions as a result of his experience on the bench for approximately twelve months. Please reserve this date on your calendars.

The luncheon series not only provides an opportunity for practitioners to hear and see the judges in an informal setting, but also allows the judges to meet and talk to practitioners about matters that are not pending before the court. Many thanks to the bankruptcy bar and bench for making these luncheons possible.

*\*Claretta Evans is an attorney with the U.S. Department of Justice/Office of the U.S. Trustee and Co-chair of the Bankruptcy Section.*

## **FBA Student Division: Our First Year at a Glance**

**By Kelly A. Walters,  
President FBA Student Division,  
University Detroit Mercy School of Law**

The FBA – Student Division at the University of Detroit Mercy School of Law is winding down its first year, and it has proven very successful. Our membership has reached over forty; our functions have been well-attended; and the caliber of speakers and events has remained true to the FBA's reputation for excellence.

We are particularly proud of our Luncheon Series, which opened with Judge Patrick Duggan in September, discussing the differences between Federal and State practice. It was informative, entertaining, and practical. Although some expressed feelings of Civil Procedure anxiety, both students and faculty relayed positive feedback over the next couple of weeks.

The following month, Len Niehoff discussed Constitutional Law and his recent handling of Affirmative Action and Reyes Syndrome cases. Students appreciated Mr. Niehoff's candid recognition that he did not enjoy tax law as he initially thought he might and was very fortunate to have been directed toward a different area of practice. We all took to heart his suggestion that we keep our eyes open for our opportunity, take advantage of it when it comes, but realize that it might not be in the immediate future.

Just before Thanksgiving, Chris Dowhan-Bailey and Thuy Dau gave us a thorough understanding of environmental law. In addition to a Powerpoint presentation, they brought posters, charts, photographs, and even a video clip. The beachfront property issues that reached the headlines in Michigan last year suddenly became very real. The

Government's protection of the lakes and shorelines in this regard was appreciated anew.

During our second semester, Mike Leibson, of the U.S. Attorney's Office, discussed the federal prosecutor's role in criminal law and the tremendous responsibility that prosecutors bear, particularly when capital punishment is an issue. He expressed a very human and realistic perspective on a finding of "guilty" in such cases that a purely theoretical point of view overlooks.

Finally, Dona Tracey shared personal and practical advice about balancing a legal career and family. She emphasized the need to be flexible enough to deal with changes forced upon us and to realize that, while the law may have to take a secondary position in our lives, we can always come back to it later. Life is full of other rewards that should not be missed.

In addition to these wonderful presentations, the UDM Law Student Division also scheduled several other events. Although our U.S. Courthouse tour was cancelled due to weather, Judge Bernard Friedman graciously hosted a mini-tour and chat session with the handful of students who missed the cancellation message. Perhaps most importantly, Judge Friedman reminded us once again that life is not just about the law and warned us to be careful that we do not sacrifice quality of life for less important desires. Judge Friedman will also be hosting another Motion Day at the University of Detroit Mercy School of Law on April 12.

Students continue to Meet & Greet at the various FBA Chapter luncheons and have begun plans for new events next year. The Student Chapter Board is currently conducting "Operation Book Drive" in which we are collecting books to send to U.S. Soldiers stationed overseas. A Bankruptcy lecture presented by Barbara Rom is being planned for the Fall. Fundraising continues and, at the present time, we have available the Eastern District's logo on both reusable vinyl (for use on windows) and regular adhesive paper (for use on less permanent items). These may be purchased for \$3 and \$1 respectively. If interested in purchasing either of these items, please contact Ralph Engle at [spartan308@hotmail.com](mailto:spartan308@hotmail.com).

Finally, we held elections and are very pleased with the new Student Board. Their enthusiasm promises to keep the Student Division strong and growing. The new Board is as follows: President Ralph Engle, [spartan308@hotmail.com](mailto:spartan308@hotmail.com), Vice President, Kim Dinda, [kls501@excite.com](mailto:kls501@excite.com), Secretary Julie Higgins, [higginju@students.udmercy.edu](mailto:higginju@students.udmercy.edu), Treasurer Scott McFarland, [rugby12@hotmail.com](mailto:rugby12@hotmail.com).

As President of the outgoing Board, I would like to personally thank all of those individuals who have motivated and encouraged us in chartering the Student Division and ensuring our success. I will not dare to list names because space is limited; however, a special "Thank You" is in order for Chris Dowhan-Bailey who was instrumental in our establishing the Student Division last year, and Dan Sharkey who was able to help organize and attend our Luncheon Series. Our most sincere best wishes to the FBA in its continued success at all levels. I hope to join you in the Fall as an attorney and continue to take an active part in the FBA in the near future.

## From Court Administrator Dave Weaver

On March 1, 2004, the Court officially launched the Case Management/Electronic Case Files (CM/ECF) portion of its Internet website at [www.mied.uscourts.gov](http://www.mied.uscourts.gov). The new site allows attorneys to register for electronic filing and access an online CM/ECF tutorial. ECF Policies and Procedures, a full User's Manual and frequently asked questions are also posted. The site contains information on how to contact the CM/ECF help desk as well.

In my last article, I indicated that the implementation of electronic filing for the Bar would likely be pushed back. The new implementation date for the Bar is June 1, 2004. Please take the time to review the CM/ECF portion of our website and to register for electronic filing. The site will have information regarding training opportunities for the Bar in the very near future.

On another subject, the Federal Judiciary is experiencing severe funding reductions this fiscal year. This has had a dramatic impact on the Eastern District of Michigan, resulting in 16 total staff reductions between the Clerk's Office, Pretrial Services Agency and the Probation Department. Fortunately, all reductions were achieved voluntarily through early-out retirements. Regardless of the budget impact on personnel, the goal of all Court staff in the Eastern District of Michigan is to maintain the highest level of service possible to the Bar and public.

On a final note, on November 3, 2003 the Court appointed Magistrate Judge R. Steven Whalen as Executive Magistrate Judge. As such, Magistrate Judge Whalen will be the primary liaison between the district and magistrate judges and handle numerous other administrative matters assigned by the Court.

Remember, if you have any questions or comments, please send them to me at [mie\\_fba@mied.uscourts.gov](mailto:mie_fba@mied.uscourts.gov).

## Electronic Case Filing (ECF)

By Dan LaCombe

The launch of the Eastern District of Michigan's electronic case filing (ECF) system for the civil practice bar has been delayed until June 1, 2004. An early launch of the ECF system for the U.S. Attorney's and the Federal Defender offices has been moved up to April 1, 2004. The objective of the Court is to begin with the smaller launch for the criminal bar. An additional two months of experience with the criminal bar should smooth the launch of the system for the much larger civil practice bar.

Registration for use of the ECF system will remain optional, but strongly encouraged by the Court. Registered members of the civil bar may use the ECF system beginning June 1, 2004 through December 1, 2004. Registered users must use the ECF system after December 1, 2004. Those who decline registration may continue to file in the traditional manner at the office of the Clerk.

Experience in other districts indicates that nearly all members of the District's civil practice bar will elect to become ECF system users. The system will dramatically reduce the cost and time involved in filing by allowing users to file and receive Court documents by email. Its technical requirements are minimal.

The technical requirements for ECF system users are:

- A computer with internet access.
- A good quality scanner.
- A PACER account number (available at the PACER website, <http://pacer.pcs.uscourts.gov>).
- An ECF system login and password identification number (available to users upon ECF registration).

The Clerk's Office has now made a training environment and registration available to attorneys. There will be no fee for registration. Training can be done online in less than two hours.

There will be several general exceptions to electronic filing by users. These will be:

- Initiating papers (i.e. civil complaints, criminal complaints, indictments or informations, and any other document filed with the Court that creates a new case name and file number on the Court's docket).
- Sealed documents.
- In camera filings.
- State Court records and other Rule 5 materials under 28 U.S.C. § 2254.

Thus, once a case is initiated, almost all documents can be filed electronically.

The system is designed to automatically generate a notice of electronic filing (NEF) to all registered filing users associated with that case. However, Fed. R. Civ. P. 5(b) and Fed. R. Crim. P. 49(b) do not permit electronic service

Patricia Wolshon  
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of process at this time. Therefore, service of process must be effected in the traditional manner.

Signatures on electronic filings of both the attorneys and judges will be with the use of an “/s”. The filing user’s login and password will establish the user’s identity. The Court is continuing investigation of secure methods of entering signature facsimiles of the judged orders. The Court may also enter routine, text-only orders, which will appear only as a docket entry.

In the event of a technical malfunction of the Court’s system, a filing user may file in the traditional manner with an affidavit evidencing two electronic filing failures during the afternoon of the filing deadline. Filing users may seek relief from the Court if they suffer prejudice as a result of a malfunction of the filing user’s own equipment.

Filing users may file electronically up to 12:00 midnight (Eastern Time) on the day required. A paper filed electronically will be deemed filed on the date and time stated on the notice of electronic filing (NEF).

Exhibits that are in hard copy must be scanned if less than five megabytes. Exhibits that are larger than five megabytes may be scanned and filed in separate five megabyte segments. This is required to prevent the system from bogging down with voluminous exhibits. Exhibits that cannot be authentically converted to electronic form may be filed in the traditional manner, with a notice of traditional filing.

ECF is governed by Fed. R. Civ. P. 5(e), L.R. 5.1.1 and the Electronic Filing Policies and Procedures of the Eastern District of Michigan (available on the Court’s website).

You can register and learn more about the ECF filing system by visiting the Court’s website at [www.mied.uscourts.gov](http://www.mied.uscourts.gov) and clicking on the ECF icon.



Kary Moss

## **The USA- Patriot Act** By Kary L. Moss Executive Director, ACLU of Michigan

When Attorney General Ashcroft appeared before the Senate Judiciary Committee shortly after September 11, he accused the ACLU and other defenders of civil liberties of

aiding the terrorists and weakening America’s resolve with our criticism of some government policies. It was a statement unworthy of the Office of Attorney General.

The Patriot Act has been the topic of many debates and

discussions – both in and out of legal circles. There is no doubt that both Patriot Act detractors and defenders alike have sometimes had difficulty wading through the arcane details of the Foreign Intelligence Surveillance Act (FISA) and other complex federal laws that the Act amends. It does not help matters when the Department of Justice (DOJ) makes misleading and inaccurate statements about the Act – such as that reported by the *Springfield (MA) Union-News* on January 12, 2003, that “U.S. citizens cannot be investigated under this act” or that “the standard of proof before the [Foreign Intelligence Surveillance Court] is the same as it’s always been.”

In fact, U. S. citizens can be investigated with Patriot Act powers, as the text of sections 215, 505 and other provisions of the Act makes clear, so long as the investigation is not based “solely” on First Amendment activities. Section 218 of the Act lowered the standard for FISA electronic surveillance by requiring only that a “significant purpose” of the surveillance be the acquisition of foreign intelligence (instead of the primary purpose). Section 215 of the Act lowered the standard for FISA business records searches from “specific and articulable facts that the records pertain to an agent of a foreign power” to allow records to be obtained whenever the FBA certifies they are “sought for” an authorized intelligence or terrorism investigation.

The reality is that there is much that is not objectionable about the Patriot Act but there are a number of provisions within the law that we believe are unconstitutional and undermine our delicate system of checks and balances. Moreover, the general public has identified the whole panorama of sweeping “anti-terrorism” activities with this law. In the public eye, the Act has become the lightning rod for mass arrests and prolonged detentions, holding American citizens incommunicado in military prisons (so-called “enemy combatants”) and even the Guantanamo Bay detentions.

The concern is so wide-spread that over 265 communities from thirty-seven different states, including three state legislatures, have passed “civil liberties resolutions” questioning the wisdom, if not the legality, of the Patriot Act and related federal actions in the “war on terrorism.” While clearly, there are “legal arguments” both for and against the various provisions within the Act, the major function of the “civil liberties resolution” campaigns has been to affirm the commitment to American core values, as expressed in the Bill of Rights.

In Michigan, communities that have been involved in “civil liberties resolutions” have inevitably had to address comments from the U.S. Attorney’s office who have focused their defense solely on the Act, trying to narrow the scope of public scrutiny away from a litany of new federal policies that pose a severe threat to the Bill of Rights.

The major arguments, as outlined by U.S. Attorney Hagen Frank in a letter to the Grand Rapids police chief, are as follows:

*“No section of the Patriot Act authorizes or encourages restrictions on First Amendment rights of public assembly or religion... [While] the Attorney General recently rescinded the administrative prohibition against passive*

(see page 8)

## USA-Patriot Act (continued)

*surveillance of public gatherings...this amendment did nothing more than enable FBI agents to go into the same public places as other citizens, on the same terms.”*

In a dramatic reversal of longstanding policies developed as a response to previous DOJ abuses during the era of civil rights and Vietnam War protests, as outlined by the U.S. Senate Church Committee, the DOJ suggests that somehow FBI agents are discriminated against by virtue of those policies. To equate the rights of the ordinary citizen to speech and association when their purpose is to speak and associate, with a “right” for FBI agents to spy upon them while they exercise those rights, turns the First Amendment on its head. The right to speech and association depends upon the right to be free from vast powers at the disposal of the government without individualized suspicion.

Initial actions by the DOJ since the guideline changes should cause serious scrutiny and concern. For example, an undercover member of the “Joint Terrorism Task Force” joined a twenty-year-old faith-based peace group in Washington and Oregon. The Justice Department has attempted to obtain the names of every person who attended a conference on “Women and Islam Law” at the University of Texas Law School and at a peace conference (including subpoenaing the entire membership list of one of the organizing groups) at Drake University in Des Moines, Iowa. And a recent FBI memo requested local police agencies to videotape anti-war rallies to locate “potential terrorists.”

Moreover, it is impossible to assess the “chilling effect” that the full range of anti-terrorism policies, like those described above, may be having on legitimate First Amendment activities. In affidavits that we filed in our case challenging Section 215 of the Patriot Act – a case now pending in federal court here in Michigan — two Muslim and Arab community and civil rights organizations – the Muslim Community Association of Ann Arbor and the Islamic Society of Portland – have reported that their members have left or become less active, fundraising has dried up, and attendance at prayers and community events has dropped specifically because of fear the government could use the Patriot Act to obtain the organizations’ records and target their members for investigation. In one case, a board member even resigned from the association.

*“The assertion that the Patriot Act restricts Sixth or Fifth Amendment rights to counsel or Fifth Amendment Due Process guarantees..., is incorrect, without exception.”*

Again, the DOJ sidesteps the question by failing to acknowledge its policy of declaring U. S. citizens as “enemy combatants,” insisting that the more than 650 people held at Guantanamo have no right to any judicial review or even to a hearing before military officers. The U.S. Supreme Court is now poised to rule on the legality of this issue following rulings from both a district court and the U.S. Court of Appeals that such a policy is unconstitutional.

The ACLU has filed an amicus brief in the Supreme Court with a number of legal, human rights, and religious organizations: the American Jewish Committee, Amnesty International, the Anti-Defamation League, the Association of the Bar of the City of New York, Human Rights Watch, Islamic Circle North America (Relief), the Law Society of England and Wales, the Lawyers Committee for Human Rights, the National Association of Criminal Defense Lawyers, the National Association of Social Workers LDF, the National Council of Churches, People for the American Way, the Religious Action Center, the Rutherford Institute, Trial Lawyers for Public Justice, and Union for Reform Judaism.

*“[T]he assertion that the Patriot Act in any way changes the criminal burden of proof, allows for selection prosecution of persons based on ethnicity, or permits unconstitutional searches is simply untrue.”*

This is wrong. Section 213 substantially lowered the standard for government agents to come into your house, look around, and even take property. These “sneak and peek” warrants no longer require, as they did in some circuits, that notice be given within seven days – an indefinite “reasonable time” is the new standard. Nor do they require the government to show specific harms from notice, instead permitting the government to get a delay under a catch-all provision that applies whenever harm to the prosecution may result. Thus, not only does Section 213 substantially reduce the requirements for obtaining such a warrant, it also substantially reduces judicial oversight. Since FISA court investigations can now be used for regular criminal prosecutions, this relaxation of judicial oversight is significant.

An additional problem relates to FISA court warrants which can now be used in regular criminal investigations and prosecutions as long as “foreign intelligence or terrorism” is articulated as partial rationale for the warrant. Attorney General John Ashcroft acknowledged, in testimony before Congress, that “[t]he major difference between the two relates to the **probable cause** requirement.” (emphasis added.)

Moreover, most provisions provide that the court **MUST** issue the requested order on certification by the AG (or someone else fairly high up in the administrative chain) that they believe they may obtain information relevant to an in-



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vestigation. There are no criteria, and the judge has nothing to decide. This is not meaningful judicial review.

This concern is shared by a large cross-section of the U.S. Congress. The Security and Freedom Ensured (SAFE) Act of 2003 is a measure to narrow the sweeping surveillance and law enforcement powers in the Patriot Act.

To deny selective prosecution of persons based on race or ethnicity is also not credible. A 198-page report issued by the inspector general — an internal Justice Department watchdog — paints a disturbing picture of the department's dragnet against 762 illegal immigrants, especially of Middle Eastern descent, in the wake of the attacks. It found that many of the immigrants were detained on nothing more than uncorroborated tips. Once arrested, they were denied timely access to lawyers or family and subjected to a "pattern of physical and verbal abuse."

Those held in New York's Metropolitan Detention Center were treated particularly badly, the report said. Their cell was flooded with light 23 hours a day, and prison guards repeatedly taunted them that they were going to die there.

According to an editorial in *The Detroit News*, their family members were on some occasions denied any information about their whereabouts and on others turned away without being allowed visitation. (6/12/03)

As *The News* observed: "It is true that all the detainees were in the country illegally and authorities had a right to arrest them. But the law requires that they be charged with a visa violation within a few days of detention. And the government is supposed to hold a hearing within 90 days to determine whether they should be released or deported. But Justice followed none of these procedures. It refused to tell many of the detainees why they were being held and let many languish in jail for months without pressing formal charges."

Before throwing the baby out with the bathwater, it is critical that we all ask whether the Patriot Act and other Executive Branch policies are necessary in the war on terrorism.

There are many provisions in the Act which human rights and civil liberties groups do not oppose. Yet it is clear that the War on Terrorism has been used to justify a whole range of new initiatives that expand the power of the Executive branch, reduce judicial oversight, and pose a serious threat to fundamental human rights in this country.

Forums like the one held last month by the FBA, discussion and debate in the press, civil liberties resolution campaigns at the local level, public forums, and legislative hearings ensure a national conversation and are central to a meaningful democracy.

For more information on this topic, visit: [www.aclumich.org](http://www.aclumich.org).

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## Calendar of Events April-May 2004

Go to Chapter website  
[www.fbamich.org/Events & Activities](http://www.fbamich.org/Events%20&%20Activities)

- April 12  
Motion Day at UDM School of Law  
1:00 p.m.
- April 20  
Leonard Gilman Award Luncheon  
Governor Jennifer Granholm speaking  
Hotel Pontchartrain, 11:30 a.m.
- May 13  
Annual Dinner and Meeting, 6:00 p.m.  
Detroit Marriott Renaissance Center
- May 17  
Bankruptcy Section Luncheon  
Bankruptcy Judge Phillip J. Schefferly  
Hotel Pontchartrain, 12:00 noon
- June 18  
Passing the Gavel Ceremony, 3:00 p.m.  
Theodore Levin United States  
Courthouse

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