



FBA newsletter

Summer 2014

Federal Bar Association - Eastern District of Michigan Chapter - 56 years of service to our Federal Bench and Bar

Federal Defender Office Welcomes Two New Attorneys

The Federal Defender Office (FDO) is a community defender organization that provides court-appointed representation to indigent defendants charged with federal crimes in this district. Recently, the FDO, led by Chief Federal Defender Miriam Siefer, hired two new attorneys.

Brandy Y. Robinson joined the FDO as a Research and Writing Specialist in the main office in Detroit. Brandy started her legal career as an associate at Miller, Canfield, Paddock & Stone. She then worked as an Assistant Defender at the State Appellate Defender Office (SADO), left for two years to serve as a law clerk to Judge Julian Abele Cook, Jr., and then returned to SADO before joining the FDO. Brandy has also served as a law clerk at the U.S. Department of Justice in the Civil Rights Division and at the Public Defender Service for the District of Columbia. Brandy received her law degree and undergraduate degree from the University of Michigan.

Joan E. Morgan recently began working for the FDO in the Flint branch office. Most recently, Joan was a sole practitioner at her own firm, where she

specialized in criminal defense work and family law. Joan was an Editor of the *Gillespie Michigan Criminal Law and Procedure* from 1996 to 2010, and the *Defender Trial Book* for SADO from 1986 to 1998. She also has served on numerous bar

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President's Column

Michael K. Lee



This is my last President's Column, and by the time you read this I will have completed my term with the Chapter. Let me end where I began and thank

those who helped me get here, beginning with my predecessor, Immediate Past President Tom McNeill. Let me also thank my successor, Tom Schehr of Dykema. I know Tom will do a great job as our next President, and I pledge my support for anything that he wants to do during the next bar year. In addition, the other officers, Kim Altman, Susan Gillooly, and Jeff Appel, have all been supportive and informative. The officers, led by Tom, Kim and Susan, are also exploring some exciting new initiatives to upgrade the marketing materials of the Chapter. Stay tuned for these innovative changes, which we believe will take the Chapter to entirely new heights.

In addition, Saura Sahu of Miller Canfield has been nominated as the new Program Chair. By the time you read this, he should be solidly installed in office. The officers have watched Saura's progress for several years, and we are confident that he will make a good addition to the leadership team.

I again have to thank all of the members of the bench in the District for their willingness to work on our committees and participate in our programming. Of course, I again want to single out Chief Judge Gerald E. Rosen and Judge Mark A. Goldsmith. Chief Judge Rosen has continued to be our partner strategically, financially, and programmatically. Judge Goldsmith is the one who introduced me to

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President's Column (continued)

the Chapter and recruited me to become more involved years ago. I want to publicly thank Judge Goldsmith for his faith and support. This has been a marvelous experience, and I am in your debt for opening this door for me.

Of course, there is also the Executive Director, Brian Figot. This winter, Brian took a leave of absence for a medical procedure. He returned in mid-January and began his work like he was never away. Everyone should have the benefit of a top executive director, and we certainly have one in Brian. In fact, Brian did double duty this past year, as he also became the President of the Historical Society in November 2013. Brian's talents are so well-known that he is also the Executive Director for the Environmental Law Section of the State Bar of Michigan! All while continuing to practice law. Brian is leading our initiative to upgrade our website. These changes will make the website more user-friendly and give Brian more free time to devote to his other duties.

On April 29, we held the Gilman Luncheon. The Gilman Award was given to John R. Minock. We were able to secure Supreme Court Justice Bridget M. McCormack as the keynote speaker. Justice McCormack's parents were able to come to Michigan to attend the Luncheon. We were also able to enjoy the company of Dr. Daniel Krichbaum, who won the McCree Award but was not able to attend that Luncheon in February. On May 1, we again hosted the Law Day celebration, under the Leadership of Magistrate Judge David R. Grand, Secretary-Treasurer Susan Gillooly, and Megan McGown. On June 9, we held the Bench-Bar Social Event at the Plum Hollow Golf Course. The event was well attended and generated positive revenue.

In June, the Chapter submitted several applications for awards from the National Federal Bar Association. Among these were applications for the Chapter Activity Award and the Newsletter Award. We won both of these Awards in 2013 and I am hopeful that we will do so again in 2014. In fact, 2013 marked the eleventh straight year that this Chapter won a Newsletter Award.

I also want to send our heartiest congratulations to the new members of the bench in this District, all of whom will have had their investitures by now: Judge Judith E. Levy, Judge Laurie J. Michelson, Judge Linda V. Parker, and Judge Matthew F. Leitman. On behalf of the Chapter, I welcome them and invite their full participation (although Judge Michelson is a Past President and Judge Leitman was a Committee Co-Chair during the 2013-2014 bar year). With their addition, the Eastern District is now at full capacity. I also want to welcome new Bankruptcy Judge Mark A. Randon. Judge Randon has been a Magistrate Judge and a Committee Co-Chair in the past and is no stranger to the Chapter. We welcome them all and offer our full support in whatever lies on the road ahead. Thank you all, again, for allowing me to serve.

New Attorneys

(from page 1)

association committees and has authored numerous articles published in the Criminal Defense Newsletter. Joan began her legal career as an associate at the law firm Gromek, Bendure & Thomas, and also served as a law clerk to then-Magistrate Judge Steven W. Rhodes. Joan graduated from the University of Michigan and the University of Detroit School of Law.

The Great Lakes Legacy Program: Remediating and Managing Contaminated Sediment Sites

Have you ever heard of a program where the U.S. Environmental Protection Agency (EPA) funds up to 65% of cleanup costs in a voluntary arrangement with industry, state, and community partners? You have if you attended the Great Lakes Legacy Act (GLLA) webinar, co-sponsored by the Chapter's Environmental Law Committee and the Litigation Committee of the Environmental Law Section of the State Bar of Michigan on June 11.

This unique program focuses on cooperation, instead of enforcement, to address impacted sediment issues throughout the Great Lakes system. Now in its tenth year, the GLLA program has spent \$338 million of federal funding, leveraged with \$227 million in non-federal partner contributions, to restore beneficial uses to some of the region's most valuable natural resources, the Great Lakes waterway system. In the process, the GLLA program

has spurred economic as well as environmental recovery.

Marc Tuchman of EPA's Great Lakes National Program Office and Susan Prout of the Office of Regional Counsel, EPA Region V, presented a compelling picture of the strides that can be made when diverse parties with common goals pool their resources to effectuate positive changes to the environment. As Marc and Susan explained, the GLLA is a spare act in environmental terms, adding only eight pages to the Clean Water Act in 2002, but it has made significant impacts in the areas it has touched.

The program was developed to accelerate impacted sediment cleanup in the 30 U.S.-based areas of concern identified in the Great Lakes Water Quality Agreement with Canada in 1987. The program has no regulations, no enforcement, no liability releases for contributors, and no cost-recovery for EPA.

So how does it work? Non-federal partners willing to fund 35% to 50% of the costs propose projects to the GLLA program that are designed to address sediment impacts in identified areas of concern. If the project fits the program criteria and funding is available, the GLLA team negotiates with non-federal partners to develop a scope of work and a partnership and funding agreement.

The program's focus is on removal of impacted sediments, but site characterization (investigation) and habitat restoration are often included. In fact, EPA will fund 100% of the site characterization costs. The federal contribution is paid directly to contractors conducting the work, often to fund dredging.

Non-federal partner contributions can take the form of cash contributions, in-kind services (personnel and equipment), land and even landfill space used for sediment disposal. Non-federal partners have included state governments, local governments and authorities, industries, environmental groups (including Riverkeepers) and economic development groups. Work can be conducted in phases, so a party that agrees to fund an effort to identify a feasible remedy is not committed to funding the remedy itself.

The GLLA program does not fund projects where enforcement is ongoing or imminent, but it may provide funding to enhance ongoing remediation projects. Marc and Susan discussed a project on the Sheboygan River in Wisconsin where significantly impacted sediments were being removed under an existing enforcement order. In a supplemental project

funded by GLLA and several non-federal partners, less-impacted sediments were also removed, to make the navigation channel cleaner and deeper. Following the project, local boating and tourism increased, and the GLLA project won an ENR Midwest Best Projects Award for 2013.

The State of Indiana has leveraged Natural Resource Damage Assessment and Restoration Fund monies into a 35% non-federal partner share in order to maximize the reach of those funds to address sediment impacts in a series of GLLA projects along the Calumet River.

According to its website, the GLLA program has conducted seven projects in Michigan, including a recently completed feasibility study of sediments in the Trenton Channel of the Detroit River.

Thus far, 37 industries have signed onto GLLA project agreements, taking advantage of federal funding, reducing their potential for future liability, addressing cleanup in a phased and collaborative approach, and benefitting from the positive public relations resulting from these restoration projects.

Marc and Susan emphasized the role of early and frequent community engagement in these projects. The success of the program has been evident in its continued funding. The program's initial funding in 2004 was \$9.9 million. Now it shares in annual funding of \$300 million available through the Great Lakes Restoration Initiative. Anyone wanting more information about the program and potential projects is encouraged to call Marc Tuchman at the Great Lakes National Program Office at (312) 353-1369.



**Court
Administrator
Dave Weaver**

Just a few thoughts and reports as summer has finally arrived. The Court's four new district judges are on board, have been sworn in, and have their caseloads. Judges Levy, Michelson, Leitman, and Parker are a talented bunch and a welcome addition to the Bench.

As I previously reported, we are in the process of filling two magistrate judge vacancies. Interviews are taking place over the summer and the Bench

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Dave Weaver *(from page 3)*

should make its selections at its September meeting. Once selected, the two successful candidates will be required to undergo full background checks before being sworn in.

Given the lengthy selection process, the Court had requested and received approval from the Sixth Circuit Judicial Council and the Judicial Conference Committee on the Administration of Magistrate Judges System to recall two retired magistrate judges. Magistrate Judge Donald Scheer has been recalled to assist in Detroit with its daily Duty Call. Magistrate Judge Scheer will be included in the weekly rotation of magistrates handling first appearances, arraignments, and detention hearings. Magistrate Judge Charles Binder retired on April 24, 2014, but was recalled to assist with the Court's social security docket. Not exactly how I would want to begin my retirement, but Magistrate Judge Binder's willingness to accept an immediate recall is greatly appreciated and will help to prevent a backlog in the Court's social security docket. Magistrate Judges Scheer and Binder will serve until the two new magistrate judges are sworn in.

Finally, GSA soon will be announcing the selection of the architect/engineering firm to design and carry out the multi-year renovation of the Theodore Levin U.S. Courthouse. The selected firm will begin its design work in the Fall of 2014 with meetings and consultation with the Court.

Have a great summer and be sure to join the judges at the State of the Court luncheon in September.

If you have any questions or comments, please do not hesitate to contact me via email at: david_weaver@mied.uscourts.gov.

Chapter Honors Eugene Driker with Civility Award

The 35th Annual Dinner Honoring the Judicial Officers of the Eastern District of Michigan was held on June 19 at the Westin Book Cadillac. With over 300 attendees, the event was a huge success, and presented a great opportunity to once again honor the judicial officers and raise funds to benefit the Federal Bar Foundation.

Outgoing Chapter President Michael K. Lee welcomed the guests and judicial officers in attendance before introducing Chief Judge Gerald Rosen, who

offered a few opening remarks. Judge Rosen thanked Michael for his service, and recognized one of the strengths of this Chapter—the dedication of its members, including the bench and the bar. Judge Rosen then turned the microphone back over to Michael Lee, who conducted the official business for the evening. The Chapter elected the proposed slate of officers and board members, and Lee then handed off leadership of the Chapter to its new president, Tom Schehr.

As has become tradition, Schehr asked Executive Director Brian Figot to come to the stage to present Michael Lee with numerous books for him to read during his newly found free time now that he is no longer Chapter president. Schehr then outlined the officers' priorities over the next year, including revamping the home page of the Chapter's website, and the cultivation of RISE, the Chapter's young lawyers section.

Judge Rosen then returned to the stage to present the Julian Abele Cook, Jr.-Bernard A. Friedman Civility Award to Detroit attorney Eugene Driker. Driker is a partner and founding member of Barris Sott Denn



U.S. Attorney Barbara M. McQuade, Edward Kronk, Chief Judge Gerald E. Rosen, Incoming Chapter President Thomas M. Schehr, Civility Award Recipient Eugene Driker, and Brian Figot.

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

& Driker PLLC, whose list of legal accomplishments and contributions to the community is too lengthy to recite here. Referring to Driker as the “dean” of the State Bar of Michigan, Judge Rosen spoke about Driker’s dedication as a lawyer, a Tigers fan, and a co-mediator in the historic Detroit bankruptcy. Judge Rosen told the Chapter that when he first contacted Driker about helping with the mediation, Driker was riding his bike up north. Instead of telling Judge Rosen that he would call him back, he asked Judge Rosen to hang on for a second while he got off his bike. He then pulled off to the side of the road and talked to Judge Rosen for about 20 minutes. This was just one example of Driker’s dedication, and his willingness to drop everything and jump in when needed.

Driker was presented with an engraved crystal plaque honoring his achievement. He thanked his wife for all of her support, without which he said none of his accomplishments would have been possible. The Chapter congratulates Eugene Driker on his accomplishments.

Special thanks go to Annual Dinner co-chairs Michael Blalock, Linda Hylenski, Kevin Fanning, Jason Klingensmith, and Emily Tyler, and Judge Rosen’s assistant, Donna Vinson, for making the evening a success. We look forward to seeing everyone at next year’s Annual Dinner.

Diversity Committee and Affinity Bars Plant Trees in Detroit

On June 7, the Chapter’s Diversity Committee organized its third annual “Diggin’ Our Diversity” event to plant trees in Detroit alongside members of affinity bar associations. The Chapter was delighted to join with the Armenian Bar Association, Detroit Metropolitan Bar Association, and Michigan Asian

Pacific American Bar Association, in co-sponsoring the event. Many other affinity bar associations publicized the event to their memberships and sent members to the planting.

This year, the group planted trees along city streets in the Greenwich Park Neighborhood. The Greening of Detroit and the USDA/USFS Great Lakes Restoration initiative once again provided support and supervision. Diversity Committee Co-Chairs Elizabeth Stafford, Emma Chen, and Jonathan Karmo attended, and recruited family and friends to join in the fun. They report that the camaraderie and satisfaction from contributing to the greening of a Detroit neighborhood far outweighed the time and effort put forth.



Magistrate Judge David R. Grand; Jax from the Bureau of Alcohol, Tobacco, Firearms and Explosives; Susan Gillooly; and Megan McGown at Law Day.

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

The Diversity Committee encourages you to look for “Diggin’ Our Diversity” next spring: no experience is necessary and everyone is welcome, including children and other family members and friends. Special thanks to Diversity Committee Co-Chair Marcy Rosen, who conceptualized the event and chaired this year’s planting.

Law Day 2014

On May 1, the Court, the Chapter, the Wolverine Bar Association, and the U. S. Attorney’s Office co-hosted an open house at the Courthouse in Detroit to celebrate Law Day. This year’s theme was “Why Every Vote Matters.” Magistrate Judge David R. Grand, AUSA Susan Gillooly, and Megan McGown co-chaired the event.

Over 400 individuals attended Law Day, including three classes of high school students from Romeo, Wixom, and Grosse Pointe. Wayne State University Law School Dean Jocelyn Benson and Michigan Director of Elections Chris Thomas participated in a panel discussion on historical and current issues regarding voting and the election process. In addition

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Law Day 2014 *(from page 5)*

to the panel discussion, a representative from the Secretary of State's Office was on hand to register citizens to vote. In keeping with tradition, attendees at Law Day enjoyed a hot dog lunch that also included chips and cookies.

Numerous federal agencies also participated in Law Day, including: DEA, ATF, Secret Service, ICE, Homeland Security, Federal Defender Office, U.S. Attorney's Office, National Labor Relations Board, U.S. Bankruptcy Court, U.S. Postal Service, U.S. Marshals Service, U.S. Pretrial Services, U.S. Probation Department, Court Historical Society, and the Courthouse Library. The agencies set up information booths where Law Day guests could meet representatives from the agencies and familiarize themselves with the role the agencies play in the administration of justice.

Attendees at Law Day also had the opportunity to participate in the "Ask a Lawyer" pro bono program. The program attracted many citizens who had legal issues to discuss with attorneys who volunteered to assist. The Chapter and the Court recognize and thank the following attorneys who provided pro bono services: Jerome Crawford, D. Lee Khachaturian, Shanta S.W. McMullan, Lindsay DeMoss, L. Pahl Zinn, Amy Sabbota Gottlieb, Marlo Johnson Roebuck, Leslie A. F. Calhoun, Bruce A. Henderson, Thomas R. Warnicke, Tiffany Buckley-Norwood, Dawn R. Copley, Joseph Golden, Timothy

H. Howlett, Aaron Burrell, Salina M. Hamilton, Patrice S. Arend, James J. Parks, Bradley M. Krul, Alexander Simpson, Jennifer Newby, Dennis W. Archer, George P. Butler, Christopher A. Cornwall, Sherry D. O. Taylor, and Ray Littleton.



Law Day 2014 Voting and Election Process panelists Jocelyn Benson and Christopher Thomas.

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

The Chapter and the Court also recognize and thank the following Cooley Law School students who volunteered: Darnell Smith, Reda Taleb, Meikal Sumney, Michael Long, Lauren Sitto, Samantha Jones, Monique Merritt, and Sarah Colling.

The Chapter and the Court thank everyone who helped make Law Day 2014 a success.

Shapero Bankruptcy Symposium

On May 22, the Chapter's Bankruptcy Committee, along with co-sponsors the Consumer Bar Association, the Debtor-Creditor Committee of the State Bar of Michigan, Access to Bankruptcy Court, and the Turnaround Management Association, hosted a reception for the Eastern District's newest bankruptcy judge (and former U.S. Magistrate Judge) Mark A. Randon. About 150 people turned out to enjoy cocktails and hors d'oeuvres to welcome Judge Randon to the bankruptcy community.



Sherry O'Neal Taylor and Cooley Law Students Meikal Summey, Michael Long, Darnell Smith, and Samantha Jones at Law Day.

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

Judge Randon delighted attendees with a clever poem as he thanked everyone for their support and warm welcome to the bankruptcy bench. He is the seventh bankruptcy judge in the District, joining Chief

Judge Phillip J. Shefferly, Judges Steven W. Rhodes, Walter Shapero, Thomas J. Tucker, Marci B. McIvor, and Daniel S. Opperman.

Following the reception, the Bankruptcy Committee and the trustees of the Walter Shapero Bankruptcy Symposium joined in welcoming 125 people for dinner, followed by a thoughtful and entertaining presentation from Professor Kara Bruce of the University of Toledo, who was this year's Symposium speaker. She was the American Bankruptcy Institute Resident Scholar in 2013.

In her remarks, Professor Bruce gave an insightful analysis of bankruptcy reform since 1978 and, in particular, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). She emphasized some of the more troubling aspects of bankruptcy reform which came from the BAPCPA, pointing out some of the law's unintended consequences.

Professor Bruce encouraged everyone to make their experiences under the BAPCPA known to those committed to achieving a better and more effective bankruptcy law reform, such as the American Bankruptcy Institute, whose Commission on Bankruptcy Reform thus far has limited its study to the reform of Chapter 11. Thank you, Professor Bruce, for an insightful and interesting evening!

"Lessons Learned" About Veterans Treatment Courts



Bankruptcy Judges Thomas J. Tucker, Steven W. Rhodes, Mark A. Randon, and Chief Bankruptcy Judge Phillip J. Shefferly at the Shapero Bankruptcy Symposium.

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



Veterans Treatment Courts Seminar presenters Gail Pamukov-Miller, Nanette Colling, Judge Mark S. Switalski, Judge Carrie L. Fuca, and John Walus.

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

The Chapter Federal Disability Benefits Committee presented a seminar on Veterans Treatment Courts (VTCs) on April 29, in Room 115 at the Levin Courthouse from 1:30-4:00 p.m.

The seminar provided a "lessons learned" approach to the establishment and operation of VTCs. Judge Mark S. Switalski, Macomb County Circuit Court, and Judge Carrie L. Fuca, 41B District Court, shared the podium and provided their perspectives on their respective courts. Their session ran longer than scheduled due to the number of questions that were asked. Nannette Colling, Veterans Justice Outreach Coordinator, Department of Veterans Affairs, provided an update regarding the VA's evolving role with VTCs. Gail Pamukov-Miller, Past President of the Macomb County Bar Association, provided a unique perspective on the emerging case law in this area and the role of the defense attorney. John Walus provided an in-depth analysis of the VTC's Mentor Program and provided insight on how to start and maintain

the program.

Particularly noteworthy were the variety of organizations that were represented by the attendees. The interest level bodes well for the future of VTCs in Michigan.

Scenes from Judge Matthew Leitman's June 13 Investiture



Judge Leitman with family and guests at his investiture June 13.



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Gilman Award Bestowed on John Minock

The 29th Annual Leonard R. Gilman Award Luncheon was held on April 29 at the Westin Book Cadillac. The Gilman Award is given annually to an outstanding practitioner of criminal law who exemplifies the excellence, professionalism and commitment to public service of Leonard Gilman. The selection is made by prior recipients of the Award.

This year's Gilman Award recipient was John R. Minock. Minock is a partner at Ann Arbor based Cramer, Minock & Sweeney PLC. He has had a distinguished career as a criminal defense attorney spanning over 35 years. He is a past president of the Criminal Defense Attorneys Association of Michigan and is still involved with that organization. He has represented individuals in several high profile criminal cases including Sam Riddle and Detroit Water and Sewage Department Chief Victor Mercado. Minock was appreciative of the Gilman Award and addressed the crowd with remarks about his commitment to defending the accused.

Michigan Supreme Court Justice Bridget McCormack was the keynote speaker and spoke about the use of scientific and forensic evidence in criminal cases.



Gilman Award recipient John R. Minock, Justice Bridget M. McCormack, Judge Judith E. Levy and Chapter President Michael K. Lee

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

the attention of the press and public during the Supreme Court's recently concluded October 2013 Term. Federal practitioners have plenty to mull over from the Term in the coming weeks. The following is a nonexhaustive look at some of the highlights.

On the civil docket, the Court issued a number of important civil procedure decisions. Returning, as it has in recent years, to the issue of personal jurisdiction, the Court held in *Walden v. Fiore* that a defendant's contacts with a resident of the forum state is not sufficient to establish personal jurisdiction; only the defendant's own contacts with the forum are

relevant. In *Daimler AG v. Bauman*, the Court held that a corporation is not subject to general personal jurisdiction based on the contacts of its subsidiaries. In other civil procedure matters, the Court held that a contractual forum selection clause may be enforced by a motion to transfer venue under 28 U.S.C. § 1404 (*Atlantic Marine Const. v. U.S. Dist. Ct.*); that a claim alleging a violation of federal law by a state utility board order subject to state court review is not subject to *Younger* abstention (*Sprint Communications*

v. Jacobs); that a claim brought solely by a state on its own behalf and seeking restitution for injuries to its citizens is not a "mass action" involving 100 or more plaintiffs subject to the requirements of the Class Action Fairness Act (*Mississippi ex rel. Hood v. AU Optronics Corp.*); and that the time for filing an appeal runs from the date of the district court's merits decision, not its later decision awarding fees and costs, even where fees and costs are an element of damages (*Ray Huluch Gravel Co. v. Central Pension Fund*).

The Court's civil docket this term was dominated by intellectual property, and in particular, patent cases. In *Alice Corp. v. CLS Bank Int'l*, the Court held that a computer method for mitigating settlement risk in financial transactions was ineligible for patent protection as an abstract idea. In *Nautilus, Inc. v. Biosig Instruments, Inc.*, the Court rejected the



Supreme Court Review M Bryan Schneider

A number of issues – from greenhouse gas regulation to the contraception mandate of the Affordable Care Act to the President's recess appointment power – captured

Federal Circuit’s view that a patent is invalid for indefiniteness only if it is not amenable to construction and is insolubly ambiguous; rather, the Court held, a patent is indefinite only if the claims, specification, and prosecution history fail to inform those skilled in the art about the scope of the patent with reasonable certainty. Where no one person has directly infringed a method patent by performing all of the required steps of the patent, the Court held in *Limelight Networks, Inc. v. Akami Technologies, Inc.*, a defendant cannot be liable for inducing infringement. In procedural matters relating to patents, the Court held that the patentee bears the burden of persuasion on the issue of infringement in an declaratory judgment action, even though it is nominally the defendant in that action (*Medtronic, Inc. v. Mirowski Family Ventures*); that a finding that a case is “exceptional” justifying an award of attorney fees under the Patent Act does not require a showing that the case involved inappropriate conduct or was objectively baseless (*Octane Fitness v. Icon Health & Fitness, Inc.*); and that a district court’s exceptional case determination is subject only to abuse of discretion review (*Highmark, Inc. v. Allcare Health Management Systems*). In copyright decisions, the Court held that laches cannot bar a claim for damages that is timely under copyright law, although it may provide a basis for denying certain forms of equitable relief (*Petrella v. Metro-Goldwyn-Mayer, Inc.*), and that a business that captures over-the-air television broadcasts and allows subscribers to stream those broadcasts “publicly performs” the work under the Copyright Act (*American Broadcasting Cos. v. Aereo, Inc.*).

Notwithstanding the predominance of patent questions, the Court issued a number of important decisions in other areas of law. In securities cases, the Court declined to overrule or modify the Basic rule, which allows a plaintiff in a private securities fraud action to prove reliance on a misrepresentation by invoking a presumption that the price of stock reflects all available public information (*Halliburton Co. v. Erica P. John Fund*), and that the Securities Litigation Uniform Standards Act’s prohibition on class actions based on misrepresentations in connection with the sale of a “covered security” does not preclude actions based on misrepresentations involving uncovered securities, even where the alleged misrepresentation is that the uncovered securities were backed by covered securities (*Chadbourne & Parke LLP v. Troice*). The Court also held that the whistleblower provisions of

the Sarbanes-Oxley Act apply to a public company’s private contractors and subcontractors (*Lawson v. FMR LLC*). In bankruptcy matters, the Court held that a bankruptcy court may not order a debtor to use exempt property to pay attorney fees as a sanction for litigation-related conduct (*Law v. Siegel*), and that funds held by a debtor in an inherited IRA are not “retirement funds” exempt from bankruptcy (*Clark v. Rameker*). In tax matters, the Court held that severance payments constitute taxable wages for purposes of the Federal Insurance Contributions Act (*United States v. Quality Stores, Inc.*), and that a taxpayer may examine IRS officials about their reasons for issuing a summons if he can point to specific facts or circumstances raising an inference of bad faith (*United States v. Clark*). In ERISA cases, the Court held that contractual limitations periods in ERISA plans are enforceable (*Heimeshoff v. Hartford Life & Accident Ins. Co.*), and that a fiduciary in an Employee Stock Ownership Plan (ESOP) is subject to the same duty of prudence as other ERISA fiduciaries (*Fifth Third Bancorp. v. Dudenhoeffer*). And in *Sandifer v. United States Steel Corp.*, the Court held that the time an employee spends donning and doffing protective gear is not compensable time under the Fair Labor Standards Act.

Turning to the Court’s criminal docket, the Court issued a number of decisions interpreting the scope of federal criminal statutes. In *Abramski v. United States*, the Court held that a defendant’s false statement that he was the actual purchaser of a gun is a material misstatement subjecting him to prosecution under 18 U.S.C. § 922(a)(6), even where the ultimate purchaser is eligible to legally purchase the firearm. In another firearms case, the Court held that a defendant aids and abets the use and carrying of a firearm in connection with a drug trafficking crime under 18 U.S.C. § 924(c) where the defendant actively participates in the drug trafficking crime with advanced knowledge that his codefendant would use or carry a gun. In *Loughrin v. United States*, the Court held that under the federal bank fraud statute, the government need not prove that the defendant intended to defraud a financial institution. In *Burrage v. United States*, the Court held a drug defendant is not subject to the enhanced penalty available when the drug causes a victim’s death unless the drug was an independently sufficient or “but-for” cause of the victim’s death. In *Bond v. United States*, the defendant was charged with using

(continued on page 12)

Supreme Court Review *(from page 11)*

a chemical weapon under the statute implementing the International Convention on chemical weapons when she attempted to poison a rival for her husband's affections. In a prior term, the Court unanimously held that Bond had standing to bring a Tenth Amendment challenge to the statute. The case returned this term after the court of appeals rejected this challenge. The Court sidestepped the Tenth Amendment question, ruling instead that the statute could not be construed to reach these types of purely local crimes, making Carol Bond the first person to go 18-0 in the Court on the same case. In *Kansas v. Cheever*, the Court reaffirmed that the government may introduce the results of a court-ordered psychiatric examination to rebut a defendant's assertion of a mental-status defense. In sentencing matters, the Court held that Florida's statutory requirement that a defendant sentenced to death show an IQ score of 70 or below before being permitted to introduce evidence that he is intellectually disabled and therefore not subject to execution violates the Eight Amendment (*Hall v. Florida*). The Court also clarified the scope of restitution under the child pornography statute, holding that a defendant is liable for restitution only for the losses he has proximately caused the victim, not for the aggregate losses caused the victim (*Paroline v. United States*).

The Court also issued important Fourth Amendment decisions during this Term. Most significantly, in *Riley v. California* the Court held that police generally may not, incident to arrest, search digital information stored on a cell phone without first obtaining a warrant. In *Fernandez v. California*, the Court held that a joint occupant's consent to search is valid when the consent is given after the objecting occupant has left (or been removed from) the premises, even if the objection is known to the police. And in *Prado Navarette v. California*, the Court held that a 911 call reporting that the caller had been run off the road by a specific vehicle provided probable cause to stop the vehicle on a suspicion of drunk driving. Finally, in habeas corpus matters the Court reiterated the substantial deference state court decisions must be shown under the habeas statute, holding that the Sixth Circuit erred in rejecting a state court's factual findings and concluding that counsel was ineffective based on a silent record (*Burt v. Titlow*), and that a state court does not "unreasonably apply" federal law when it fails to extend a legal principle to a context in which it should control (*White v. Woodall*).

Author Addresses Book Club

Federal judges, lawyers, and Court staff gathered around the Judges' Conference Center table to discuss *The Great Dissent: How Oliver Wendell Holmes Changed His Mind – and Changed the History of Free Speech in America* on May 14. Author Thomas Healy joined the meeting by video conference.

While freedom of speech is commonly viewed as a bedrock principle of American jurisprudence, Healy explained that the First Amendment right had no real significance before Holmes's dissenting opinion in *Abrams v. United States*, 250 U.S. 616 (1919). The principles espoused by Holmes were eventually embraced in the 1970s as the fundamental right that we now understand as freedom of speech.

In his book, Healy looked behind the scenes to uncover how Holmes was transformed from an individual rights opponent before 1919 to a free speech champion in late 1919. Starting with Holmes's unexpected encounter on a train with Learned Hand, Healy discussed the role of Holmes's intellect, his fellow justices, and – most importantly – his friends, on changing his views on free speech.

Stay tuned for the next book club selection. Contact Book Club Co-Chairs Andy Doctoroff, David Fink, or Erica Fitzgerald with recommendations or questions.



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Investiture of Judge Judith E. Levy

Family, friends, professional colleagues, former students, and fellow judges gathered on June 6, for the investiture ceremony celebrating new Judge Judith E. Levy. Investiture ceremonies for newly-confirmed judges are commonly joyous occasions, and Judge Levy's was no different. In fact, the large and energetic crowd of more than 400 filled Judge Friedman's courtroom and also watched the proceedings in two overflow rooms.

As guests arrived, Glen Thomas Rideout, the Music Director at the First Unitarian Universalist Congregation in Ann Arbor, provided a solo a cappella singing performance. Chief Judge Gerald E. Rosen opened the ceremony and provided welcome remarks, which was followed by an invocation by Reverend Gail Geisenhainer, also of the First Unitarian Universalist Congregation in Ann Arbor.

After additional remarks by Chief Judge Rosen, U.S. Attorney Barbara McQuade presented Judge Levy with the Commission signed by President Obama. As Judge Levy's friend and former boss at the U.S. Attorney's Office, McQuade expressed how much her office was going to miss Judge Levy, joking that "while all of you have been rooting for her to get through this process quickly, I've been sticking voodoo pins in my Judy Levy doll to stay and do the great work she has done at the U.S. Attorney's Office."

Next, Judge Friedman, for whom Judge Levy served as a law clerk after law school, provided warm comments about Judge Levy before administering the oath.

Judge Levy's daughters, Rianna, Kayla, and Micah, formally presented her with her robe, and her brother, Paul E. Levy, gave heartfelt remarks about his sister before presenting her with the gavel.

At that point, Judge Levy joined her new colleagues sitting on the bench as other speakers took their turn. U.S. Senator Carl Levin went first, followed by Saul A. Green, but Judge Levy's daughter Rianna stole the show with thoughtful remarks about her mother, her mother's new role, and the importance of judges to the administration of justice. Rianna concluded her remarks by saying:

"[my mother]...is a person who strives every day to be better, to do good for this world, and we

are all so thankful for that. We're all in this courtroom today for a good thing. We're here, confident and safe, claiming this place for a group of people, a family, and a community that doesn't always get enough of a voice, enough of a say in our judicial system, in our laws, in our government. We're a lucky group because we're here on our own terms, invited in. We get to see what I saw

as a four-year-old; a place not good or bad, but brimming with possibilities. I hope my mom will keep this energy in her court with her fairness and her unique tenderness. It is not a weakness, I know, because it is so much of what has made me strong. I have so much faith, and just in case, she'll have all those lollipops Judge Friedman gave her.

Today, we're here to show our confidence in an imperfect person who will have to make tough choices every day. I'm so proud of my mother as she embarks on this journey with history on her shoulders and so much ahead."

Judge Levy concluded the formal remarks. She thanked everyone who travelled from near and far to be there. Most importantly, she thanked the "one person without whom I would not be here today and without whom I would likely never have become a lawyer, much less a judge. This is my friend, my sweetheart and my spouse, Janet Johnson."

(continued on page 14)



Rianna Johnson-Levy, Kayla Johnson-Levy, Judge Judith E. Levy, Micah Johnson-Levy, and Janet Johnson at Judge Levy's investiture.

Judge Levy

(from page 13)

Reverend Gail Geisenhainer gave the benediction, followed by closing remarks from Chief Judge Rosen. Attendees then gathered outside the Million Dollar Courtroom for refreshments and an opportunity to congratulate Judge Levy.



From L to R:

*George Donnini, Daniel Rustmann
Judge Laurie J. Michelson, Damien Paul
DuMouchel, and David DuMouchel.*

In the tennis tournament, Christopher Darrow earned the first place title for the second year in a row. The event provided a unique and relaxed opportunity for interaction between the Eastern District bench and bar.

The Chapter would like to thank its sponsors -- Stout Risius Ross, Conway MacKenzie, Honigman, Brooks Kushman, Miller Canfield, Bush Seyferth Paige, Pepper Hamilton, and Lee & Correll -- for their generosity in making this event possible.

Bench/Bar Social

On June 9, judges from the Eastern District joined over 75



From L to R:

*Magistrate Judge David R. Grand,
Matthew Lund, Judge Laurie J. Michelson, Judge
David M. Lawson, Judge Victoria A. Roberts,
Judge George Caram Steeh, Tifani Sadek, and
Bankruptcy Judge Mark A. Randon.*

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

lawyers for an afternoon of golf, tennis, and dinner at the 2014 Bench/Bar Social. For the third year, the Chapter held the outing at Plum Hollow Country Club in Southfield. Each of the foursomes was paired with a judge to compete in a 5-person scramble tournament. The Butzel Long team – David DuMouchel, Damien DuMouchel, George Donnini, and Dan Rustman – paired with Judge Laurie Michelson, took first place in the tournament. The Conway MacKenzie and Pepper Hamilton teams tied for second place.

Rutter Seminar Overview

Answer: “Blockbuster,” “Staggering,” and “Bombshell.” Question: “What are words used to describe recent case law developments at The Rutter Group’s annual federal practice seminar?” On June 19, Chief Judge Gerald E. Rosen, Judge David M. Lawson, and Miller Canfield attorney Thomas W. Cranmer held a panel discussion titled “The Brave New World of Federal Practice: New Rules, New Issues” before a large crowd of judges, law clerks, and attorneys at

the Westin Book Cadillac Hotel. The panel discussed a variety of issues touching upon federal practice, devoting a substantial amount of time and comment to “revolutionary” decisions in the areas of personal jurisdiction and venue selection jurisprudence.

On personal jurisdiction, the



From L to R:

*Clarence Pozza, Steve Fishman, Chief
Judge Gerald E. Rosen, Larry Dudek,
and Lee Barringer.*

panel noted two Supreme Court decisions which significantly narrow the scope of both general and specific jurisdiction: *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014) and *Walden v. Fiore*, 134 S.Ct. 1115 (2014). In *Bauman*, the Supreme Court emphasized that a court only has general jurisdiction over a foreign corporation if that corporation is “at home” in the forum state. That is, and absent “exceptional” circumstances, a corporation is “at home” only where it is incorporated and where it has its principal place of business.

In *Fiore*, a decision Chief Judge Rosen characterized as “maybe untying” *International Shoe*, the Supreme Court rejected the notion that a plaintiff’s contacts with a forum state combined with a defendant’s knowledge of foreseeable harm in that forum state satisfies the “minimum contacts” inquiry. Rather, “whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation.” This relationship “must arise out of the contacts that the defendant himself creates . . . not the defendant’s contacts with persons who reside there.”

The panel concluded its discussion of personal jurisdiction by noting the ever-changing case law addressing the sufficiency of internet contacts to establish personal jurisdiction, as well as providing practice pointers for how to use a defendant’s web presence to establish or limit personal jurisdiction. Such advice, as Judge Lawson pointed out, might all be for naught given *Walden* and *Fiore*.

Turning to venue, the panel discussed the new analytical framework a court must apply when examining a forum selection clause after the Supreme Court’s decision in *Atlantic Marine Constr. Co. v. U.S. Dist. Ct.*, 134 S.Ct. 568 (2013). Procedurally, a motion to transfer venue based upon the terms of a forum selection clause must be brought under 28 U.S.C. § 1404(a), not Rule 12(b)(3). On substance, *Atlantic Marine* holds that when parties enter into a valid and enforceable forum selection agreement, a court may only consider public interest factors when evaluating a motion to transfer venue. In other words, once the parties agree to such a provision, consideration of private factors like convenience of the parties and non-party witnesses automatically weighs in favor of the preselected forum.

In addition to discussing these “groundbreaking” decisions, the panel addressed other changing areas

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Calendar of Events

July 22

Twelfth Annual Summer Associate/Intern Event

Fountain Bistro at Campus Martius Park (800 Woodward). Summer associates and interns are provided with practical advice and suggestions that will serve them well as future lawyers and are afforded the opportunity to network with each other and meet members of the local legal community and federal judiciary.
5:00 PM – 8:00 PM

Early Sept.

State of the Court Luncheon

Speaker:
Chief Judge Gerald E. Rosen
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Nov. 20

Rakow Scholarship Awards/ Historical Society Luncheon

SAVE THE DATE
Location and speaker TBA
11:30 AM Reception
12:00 PM Lunch

Dec. 4

Holiday Party

SAVE THE DATE
Westin Book Cadillac Hotel
Registration Coming Soon!

Dec. 9-10

New Lawyers Seminar

Theodore Levin U.S. Courthouse
8:30 AM Registration
February 2014 and Prior Bar Passers Register Now!

**Additional details, updates and further developments at www.fbamich.org
See “Hot News” and “Events & Activities”
Online registration available for most events.**

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Rutter Seminar *(from page 15)*

of federal practice, including: (1) ensuring the propriety of diversity jurisdiction and removal with respect to citizenship and amount in controversy allegations, as well as the requisite removal procedures; (2) the continued impact that *Twombly* and *Iqbal* have had on pleading requirements, emphasizing that the Sixth Circuit has rejected the argument that a plaintiff may use discovery to obtain facts sufficient to state a claim, *New Albany Tractor, Inc. v. Louisville Tractor, Inc.*, 650 F.3d 1046 (6th Cir. 2011); (3) summary judgment practice, *Tolan v. Cotton*, 134 S.Ct 1861 (2014); (4) ethical considerations during discovery and motion practice, including the Sixth Circuit's conclusion in *Bowers v. The Ophthalmology Group* that a court must rule on a motion for disqualification of counsel prior to ruling on a dispositive motion, 733 F.3d 647 (6th Cir. 2013); and (5) the recent changes to the subpoena process under Rule 45, as well as the proposed -- and substantial -- changes to the rules governing case management and discovery.

In all, the panel highlighted a myriad of changes to federal practice, and did so in an informative, entertaining, and practical manner. It continues to be a must-attend for those who practice in the federal courts.

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