



FBA newsletter

Summer 2015

Federal Bar Association - Eastern District of Michigan Chapter - 57 years of service to our Federal Bench and Bar

Saul Green Honored with Civility Award at Annual Dinner

The 36th Annual Dinner Honoring the Judicial Officers of the Eastern District of Michigan was held on June 25 at the Westin Book Cadillac. The event was a huge success, and a great opportunity to once again honor the judicial officers and raise funds to benefit the Federal Bar Foundation.

After his welcoming remarks and introduction of the 18 judicial officers in attendance, out-going Chapter president Thomas Schehr introduced Chief Judge Gerald E. Rosen, who offered a few opening remarks. Chief Judge Rosen thanked Schehr for his service, and recognized one of the strengths of this Chapter—the dedication of its members, including the bench and the bar.

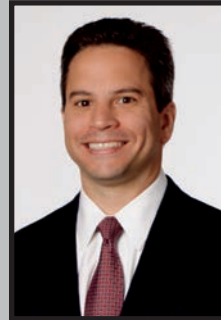
Chief Judge Rosen turned the microphone back over to Schehr, who conducted the official business for the evening. The Chapter elected the proposed slate of officers and board members, and Schehr then turned over leadership of the Chapter to Kim Altman.

As has become tradition, Altman asked Executive Director Brian Figot to come to the stage to present several books for Schehr to read during his newly found free time now that he is no longer Chapter president. Among this year's finds were a primer on ethics, and a biography of Michigan's boy

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President's Column

Thomas M. Schehr



The Chapter has completed another successful year. As my term as President concluded with the Annual Dinner, there are many people who I would like to thank for their contributions to the Chapter.

First, I want to thank the Court. Without the outstanding support and participation from the Bench, our Chapter would not be nearly as strong. As just two recent examples, fifteen judges attended the Annual Dinner on June 25, and eleven attended our Bench-Bar Outing on June 8. Chief Judge Gerald E. Rosen deserves special recognition for his substantial assistance with the Chapter's hallmark Luncheon Program and for his support of other programs and events throughout the year.

Second, my predecessor Michael K. Lee was a terrific leader and left the Chapter in an excellent position following his term. More importantly, he was a great friend and mentor. We are honoring Michael's legacy by renaming the annual event known as "Celebrating our Diverse Bar" in his name, with support from many other bar associations who participate in the event.

Third, our Executive Director Brian Figot deserves high praise. Brian provided meaningful advice and counsel throughout the year, as well as a steady hand as we redesigned our website (www.fbamich.org). Brian has also been a wonderful resource in terms of historical knowledge of the Chapter and District. The Chapter is fortunate to have him.

Fourth, I have had the pleasure of serving with a talented group of officers. My successor Kim Altman will be a great President, and I know she has some ideas that will take the Chapter to new heights. The other officers – Susan Gillooly, Jeff Appel, and Saura Sahu – made significant contributions to the Chapter and will be more than capable of

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President's Column (continued)

leading it in the future. Our new Program Chair for 2015-16 will be Matt Lund, who has done excellent work with the Bench-Bar Outing.

Fifth, our committee co-chairs have had an extraordinary year. Virtually every committee was responsible for a program this year, some of which were recorded and have been posted on our website. I want to make special mention of three committee co-chairs – Erin Behler, Susan Asam, and Nathan Dupes – who were responsible for multiple programs, including our Summer Program that will occur for the second year in a row at Fountain Bistro in Downtown Detroit on July 21. Erin, Susan, and Nathan were deservedly installed as new Board members of the Chapter at the Annual Dinner.

Sixth, I've extolled the work of Computing Source in a prior column, but I want to reiterate that the Chapter is grateful for the services that it has provided over the last year on a pro bono basis. The redesigned website would not have happened without Computing Source.

Last but certainly not least, thank you to the entire membership for giving me the opportunity to serve the Chapter. It has been a rewarding and satisfying experience.



Brian Figot, incoming Chapter President Kimberly Altman, and outgoing President Thomas Schehr at the Annual Dinner.

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

Annual Dinner *(from page 1)*

governor, Stevens T. Mason.

The Chapter then turned to the main event, as Judge Levy made her way to the stage to present the Julian Abele Cook, Jr.-Bernard A. Friedman FBA Civility Award to Saul Green. Judge Levy first spoke about the namesakes of the award—Judges Cook and Friedman. She then spoke about Green's distinguished career, his service to the public and the bar, and above all, his unwavering focus on civility.

Green was presented with a plaque honoring his achievement. He thanked his wife for all of her support, without which none of his accomplishments would have been possible. He also expressed special gratitude to Judge Ralph Guy, Jr. who, as then-United States Attorney for the Eastern District of Michigan, hired Green as an Assistant United States Attorney. The Chapter congratulates Saul Green on his accomplishments.

Special thanks to go to Annual Dinner co-chairs Michael Blalock, Linda Hylenski, Kevin Fanning, and Jason Klingensmith. We look forward to seeing everyone at next year's Annual Dinner.

Rutter Seminar Overview

The theme for The Rutter Group's annual federal practice seminar this year was magic tricks. On June 25, 2015, Chief Judge Gerald E. Rosen, Judge David M. Lawson, James M. Wagstaffe of Kerr & Wagstaffe LLP, and Thomas W. Cranmer of Miller Canfield held a panel discussion titled "Ten New 'Magic Tricks' For Federal Practice: Making Cases Disappear (or Not) in Federal Court" before a 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 removal and remand, personal jurisdiction, and the continuing implications of *Twombly* and *Iqbal*.

The panel gave the assembled group a number of hypotheticals and discussed their responses as to how each should be handled. The discussion started with a removal and remand issue, in which the panel considered the intricacies of complete diversity, both in the context of an individual, a limited liability corporation, and pursuant to the Class Action Fairness Act. In particular, the panel considered whether an action could be removed on diversity grounds, even where the state court complaint did not set forth an amount in controversy. The panelists pointed the group to *Shupe v. Asplundh Tree Expert, Co.*, 566 F. App'x 476, 478 (6th Cir. 2014),

involving a case removed from Kentucky state court to federal district court, despite a Kentucky Rule of Civil Procedure forbidding the plaintiff from stating a specific amount in controversy. The court concluded that the action was properly removed because the defendant proved the amount in controversy by a preponderance of the evidence. The panel noted that plaintiffs who want to remain in state court could plead a sum certain in the complaint and defendants who want to remove should engage in discovery as to removability, because they will have 30 days to remove from the time when the case becomes removable.

As to *Twombly* and *Iqbal*, the panel directed the group to *Levitt v. Yelp! Inc.*, 765 F. 3d 1123, 1127 (9th Cir. 2014) and described the circumstances: a small business filed a federal lawsuit against Yelp, an online directory that allows registered users to post reviews and rank businesses on a scale of one to five stars. The small business alleged in the complaint that Yelp extorted or attempted to extort advertising payments from it by manipulating user reviews and penning negative reviews of their business. The Ninth Circuit concluded that the plaintiff could not survive a motion to dismiss because it failed to sufficiently allege extortion in the complaint. Although most of the group questioned the reasoning to some degree, Wagstaffe gave the group a practical tip to survive a motion to dismiss: a complaint should plead enough facts to show it is not just a suspicion. The event was full of similar practical pointers for the assembled practitioners.

The panel also described proposed changes to the Federal Rules of Civil Procedure and the Federal Rules of Evidence. Of particular note, the timeline for service under FRCP Rule 4(m) and for issuing a scheduling order pursuant to Rule 16(b) would be shortened from 120 days to 90 days. There are also potential changes to the discovery rules, including a change in the description of the scope of discovery to require that the discovery be proportional and to allow service of Rule 34 requests related to electronically stored information prior to the Rule 26(f) conference. Potential changes in the FRE include a clarification that the hearsay opponent has the burden to show a lack of trustworthiness in the hearsay exceptions recognized in Rules 803(6), (7), and (8). If the proposed changes are approved, they will go into effect in December 2015.

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 event for those who practice in the federal courts.

Professor Sharri Diamond Presents on Juries

On June 19, the Chapter and the Fellows of the American Bar Foundation co-sponsored a luncheon program entitled “The Deliberations of Real Juries.” The featured speaker was American Bar Foundation Research Professor Sharri Diamond, who spoke in Room 115 of the Courthouse to a large crowd of judges, lawyers, and law student interns.

Professor Diamond is a nationally known expert on juries. She presented her research, which is based on the videotaped deliberations of fifty juries in civil cases. She discussed her findings on topics such as juries’ understanding of jury instructions, how they deliberate and discuss the facts of each case, the juries’ applications of the law in each case, and how they come to verdicts. She fielded numerous questions from the audience, who appreciated the opportunity to learn more about how juries function, which is an enormously important topic for those who practice in a courtroom.



Supreme Court Review M Bryan Schneider

The October 2014 Term ended as usual, with several closely divided decisions on cases of great public interest, most notably its decisions in the gay marriage and “Obamacare” cases. Typical of every term, however, the bulk of the Court’s work consisted of important decisions in cases impacting the day-to-day work of federal practitioners.

On its civil docket, the Court decided an important evidence issue in *Warger v. Shauers*, holding that Rule 606(b)’s prohibition on juror testimony to inquire into the validity of a verdict applies even where a party alleges that a juror lied during voir dire. The Court also decided two issues of appellate procedure, holding that a party need not file a cross-appeal to defend a judgment on an alternative ground, even where that alternative ground was rejected in the lower court (*Jennings v. Stephens*), and that where all of an individual’s claims are dismissed from a consolidated multidistrict litigation case, the party may immediately appeal (*Gelboim v. Bank of America*). In *Dart Cherokee Basin Operating Co. v. Owens*, the

(continued on page 4)

Supreme Court Review *(from page 3)*

Court ruled that a defendant's notice of removal under § 1446(a) need not be accompanied by an evidentiary submission that the amount in controversy exceeds the jurisdictional threshold; plausible allegations suffice.

In substantive civil matters, the Court decided a number of civil rights and discrimination cases. In *Young v. United Parcel Service*, the Court held that the familiar *McDonnell Douglas* framework for analyzing discrimination claims under Title VII applies to claims brought under the Pregnancy Discrimination Act. In Title VII cases, the Court held that the EEOC's statutory conciliation obligation is subject to judicial review, limited to ensuring that the Commission has given the employer notice and an opportunity to achieve compliance (*Mach Mining v. EEOC*), and that a plaintiff asserting a disparate treatment religious discrimination claim may prevail if she can show that her need for an accommodation was a motivating factor in the employer's decision (*EEOC v. Abercrombie & Fitch*). In an important decision under the Fair Housing Act, the Court held that disparate impact claims are cognizable under the Act (*Texas Dep't of Housing and Community Affairs v. Inclusive Communities Project*).

And in prisoner civil rights cases, the Court held that a prison regulation preventing a Muslim inmate from growing a beard violated the Religious Land Use and Institutionalized Persons Act (*Holt v. Hobbs*); that a prior dismissal counts as a "strike" under the Prison Litigation Reform Act's three strikes provision, even where that dismissal is the subject of a pending appeal (*Coleman v. Tollefson*); and that a pretrial detainee alleging that he was subjected to excessive force need only show that the force used against him was objectively unreasonable, and need not meet the more difficult Eighth Amendment standard (*Kingsley v. Hendrickson*).

The Court also decided several important cases involving federal statutory rights outside the civil and employment rights contexts. In *Armstrong v. Exceptional Child Center*, the Court ruled that Medicaid providers do not have a private right of action to enforce the Act through a lawsuit. In *United States v. Kwai Fun Wong*, the Court held that the Federal Tort Claims Act's time limits for filing suit are subject to equitable tolling. In *Kellogg Brown & Root Services v. United States ex rel. Carter*, the Court held that the False Claim Act's "first-to-file" bar applies to a second-in-time claim only while the first claim is still pending. In *Integrity Staffing Solutions v. Busk*, the Court held that time employees spend waiting to undergo security screenings at the end of the day is not compensable under the Fair Labor Standards Act. In *Jesinoski v. Countrywide Home Loans*, the Court ruled that a borrower seeking to rescind a loan satisfies the Truth in Lending Act's three-year rescission provision by notifying the lender of his intent to rescind within three years, even if he does not file suit within that time. And in two ERISA cases, the Court held that ERISA plans must be interpreted according to ordinary principles of contract law, without applying any presumptions in favor of beneficiaries (*M&G Polymers v. Tackett*), and that even where a claim based on a fiduciary's breach of the duty to exercise prudence in selecting investments is untimely, a beneficiary may have a timely claim based on the fiduciary's separate duty to monitor and remove imprudent trust investments (*Tibble v. Edison Int'l*).

As it has been in recent years, the Court was particularly active in bankruptcy cases during this Term. In *Harris v. Viegelaahn*, the Court ruled that a debtor who converts a Chapter 13 case to a Chapter 7 case is entitled to return of any post-petition wages in the possession of the Chapter 13 Trustee that have not yet been distributed to creditors. In *Bank of America v. Caulkett*, the Court held that a Chapter 7 debtor may



HANSON RENAISSANCE

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not void a junior mortgage under § 506(d) even where the debt remaining on the senior mortgage exceeds the value of the collateral. In procedural bankruptcy matters, the Court held that a bankruptcy court’s order denying confirmation of a debtor’s proposed repayment plan is not a final order subject to immediate appeal (*Bullard v. Blue Hills Bank*); that bankruptcy judges may adjudicate non-core proceedings where the parties knowingly and voluntarily consent to the bankruptcy court’s jurisdiction (*Wellness International Network v. Sharif*); and that professionals entitled to recover fees from the bankruptcy estate are not entitled to additional fees incurred in defending the fee application (*Baker Botts v. ASARCO*).

The Court was also once again active in intellectual property cases. In patent cases, the Court decided that a defendant’s belief that a patent is invalid is not a defense to an induced infringement claim (*Commil USA v. Cisco Systems*); that contracts providing for payment of royalties after expiration of the patent are per se unlawful (*Kimble v. Marvel Entertainment*); and that the Federal Circuit must review a district court’s resolution of factual matters subsidiary to a claim construction under a clear error, not a de novo, standard of review (*Teva Pharmaceuticals v. Sandoz*). And, in trademark cases, the Court held that the question of whether trademarks may be “tacked” for purposes of determining priority is a factual question for the jury (*Hana Financial v. Hana Bank*); and that issue preclusion applies to matters adjudicated by the Trademark Trial and Appeal Board (*B&B Hardware v. Hargis Industries*).

In other business-related cases, the Court held that: a statement of opinion in a registration statement does not constitute an actionable “untrue statement of fact” under the Securities Act of 1933 merely because the opinion later turns out to be wrong (*Omnicare v. Laborers Dist. Council Construction Industry Pension Fund*); and that a state board controlled by active market participants may not invoke state-action immunity from the antitrust laws unless the board is subject to active supervision by the state (*North Carolina State Bd. Of Dental Examiners v. FTC*).

Although the Court’s criminal docket was significantly less than its civil docket, the Court issued a number of important criminal law decisions. In *Whitfield v. United States*, the Court held that enhanced penalties under the bank robbery statute are appropriate when a robber forces someone to accompany him over any non-*de minimis* distance; movement over a substantial distance is not required. In *Yates v. United States*, the Court held that under 18 U.S.C. § 1519, which makes it a crime to knowingly alter or destroy “any record, document, or

tangible object,” tangible objects are limited to objects used to record or preserve information. In *McFadden v. United States*, the Court held that when a defendant is charged with distributing an analogue substance under the Controlled Substances Act, the government must show that the defendant knew he was distributing a substance regulated under the Act. In *Elonis v. United States*, the Court held that a defendant can be convicted of transmitting a threat in interstate commerce under 18 U.S.C. § 875 only where the defendant had the purpose to communicate a threat or knowledge that the communication would be viewed as a threat. And in *Henderson v. United States*, the Court ruled that 18 U.S.C. § 922(g) does not bar a court-ordered transfer of a convicted defendant’s firearms to a person designated by the defendant.

The Court also decided several Fourth Amendment cases during this Term. In *Heien v. North Carolina*, the Court held that a search may be reasonable under the Fourth Amendment even when based on an officer’s mistake of law. In *Rodriguez v. United States*, the Court held that police may not extend a traffic stop in order to conduct a dog sniff of the vehicle unless they have reasonable suspicion to justify the prolonged seizure. And, in *City of Los Angeles v. Patel*, the Court held that facial challenges may be brought under the Fourth Amendment, and that a city ordinance requiring hotel operators to allow inspection of registries upon demand is facially unconstitutional. The Court also continued to expound on its *Crawford* line of cases interpreting the Confrontation Clause, holding in *Ohio v. Clark* that a child’s statements of abuse made to his teachers did not constitute testimonial hearsay barred by the Confrontation Clause.

In an important sentencing case, Justice Scalia finally succeeded in his nearly decade-long quest to garner a majority holding that the Armed Career Criminal Act’s residual clause is unconstitutionally vague (*Johnson v. United States*). And in *Glossip v. Gross*, the Court held that Oklahoma death-row inmates had failed to show a likelihood of success on their claim that Oklahoma’s lethal injection protocol created an unconstitutional risk that they would suffer severe pain.

Finally, in two habeas corpus cases, the Court held that a state court unreasonably determined the facts in denying the petitioner a hearing to determine whether he was intellectually disabled, preventing imposition of the death penalty (*Brumfield v. Cain*); and that where a state court has found a constitutional claim to be harmless, the petitioner must show that the state court’s adjudication of the harmless error question was unreasonable to obtain relief (*Davis v. Ayala*).

Judge O'Meara Portrait Presentation

Judge John Corbett O'Meara was honored with the presentation of his official portrait at a special session of the Court on May 4. Family, friends, and colleagues gathered from around the country to join in the celebration. Judge O'Meara's immediate family members in attendance were his wife Julia Donovan Darlow; his children Meghan O'Meara; (Ray Burks), Sean O'Meara (Ann Mullen), Patrick O'Meara, Gillian Darlow, and Tighe O'Meara (Sebastian Graham); and grandchildren Grace, Corbett, and Patrick O'Meara, along with their mother Catherine O'Meara; and Jude and Lola O'Meara. Gillian's husband Chris Jones and their sons Peter and Evan were unable to attend.

Also in attendance were more than two dozen federal judges, several former law clerks and interns, extended family, friends, and members of the legal community. The event was expertly organized and carried out by the Judge's executive assistant, Jane E. Freeman.

After opening remarks by Chief Judge Gerald E. Rosen, tenor Carlos Enrique Santelli sang a delightful rendition of "America the Beautiful." Before Judge O'Meara's painting was unveiled, five speakers took the opportunity to color a portrait of his character. What emerged was a picture of a man who is admired for his judicial acumen, dedication to public service, courteous demeanor, kindness, and generosity.

Judge Denise Page Hood recalled fondly how Judge O'Meara would pass through her chambers every morning with a bag of fresh bagels to share with her and her staff. Appointed to the bench at the same time as Judge O'Meara (along with Judge Paul D. Borman), she described him as part of her "crew." She noted that "John has been described in many places as a gentleman's judge, courteous and fair, attentive."



Judge John Corbett O'Meara with his wife, Julia Donovan Darlow, at his portrait presentation.

Photo by Harold White.

Judge Paul D. Borman described how Judge O'Meara grew up in Hillsdale, Michigan: "He and his folks were the only Democrats in Hillsdale and proud of it." Judge Borman recounted Judge O'Meara's attempt to join the Notre Dame football team as a walk-on, revealing that the judge was offered a position better suited to his abilities—with the glee club. He outlined how Judge O'Meara served as a navy submariner after college at Notre Dame,

attended Harvard Law School, and then worked for Michigan Senator Phil Hart in Washington, D.C. Judge Borman described Judge O'Meara's work in Democratic politics, their long friendship, and how they both came to the bench "as the first wave of Clintonistas." Judge Borman ended by thanking Judge O'Meara "for giving me 50 years of friendship and wisdom."

Judge O'Meara's longtime career law clerks, Marie Coombs and Michelle Lund, injected irreverence into the proceedings with their take on President Obama's "Angry Translator" — the "Angry Law Clerk Translator."



Judge O'Meara with current and some former law clerks, left to right: Brandon Hofmeister, Paul Brown, Michelle Lund, Marie Coombs, and Kevin Plumstead

Photo by Harold White.

The audience enjoyed the Angry Law Clerk Translator's comic antidote to Judge O'Meara's generally calm,

reasonable, and courteous demeanor. However, both clerks also expressed deep gratitude for the opportunity to work with the Judge. Lund quoted Thomas Edison: "I never worked a day in my life; it was all fun." Borrowing a Jim Harbaugh family theme, Coombs asked Lund: "Who has it better than we do?" Lund responded: "Nooooobody."

Judge O'Meara's son Tighe, Chief of Police of Ashland, Oregon, then gave a warm tribute to his father's commitment to public service. Tighe spoke of how Judge O'Meara personified doing something "greater than yourself," which inspired him in his career as a police officer. Tighe also joked that Judge O'Meara was "built to be a federal judge." When as a teenager Tighe announced that he planned to copy a VHS tape from the video store for his own use, the future judge declared, "That is a federal crime, and you will not do it in my house." Tighe closed by encouraging the Judge's grandchildren to follow in his footsteps: "participate to the betterment of the community, give yourself to the team, give yourself to the class, give yourself to whatever organization you're a part of, as your grandfather, my father, has."

Judge O'Meara spoke to thank his staff and family and to recognize the accomplishments of each of his children, especially those of his late son, Corbett Edge O'Meara. The judge's wife, Julia, and their grandchildren then assisted in unveiling the portrait, which was painted by Gary D. Hoffman. Chief Judge Rosen accepted the portrait on behalf of the Court and provided some closing remarks. The Chief Judge said, "beyond the fact that [Judge O'Meara is] a warm, caring, elegant, fair-minded gentleman of a person, the one word that keeps coming to me is gracious, graciousness of a human heart." The ceremony concluded with "Simple Gifts," sung movingly by Santelli.



Dave Weaver
Court
Administrator /
Clerk of Court

The Eastern District has begun implementation of eVoucher, an electronic processing system for Criminal Justice Act (CJA) vouchers. We are, along with the rest of the 6th Circuit, expected to go live in the Eastern District by mid-November 2015.

Using eVoucher, attorneys and expert service providers can create and submit their vouchers online with reduced preparation time and better accuracy. The system will provide the Court with a full range of functionality in managing CJA Panels and the appointment of attorneys. Originally developed by the District of Nevada, the Administrative Office of the U.S. Courts has adopted eVoucher as a model system for the entire Federal judiciary.

eVoucher will eventually be integrated into CM/ECF NextGen (next generation) which is currently in development. Implementation of CM/ECF NextGen will be a major upgrade from the current version of CM/ECF and will include a single sign-on feature allowing attorneys to move seamlessly between CM/ECF systems in different districts. We will be providing a great deal of information and training related to CM/ECF NextGen later this year.

Have an enjoyable summer!

Remember, if you have any comments, questions or suggestions, do not hesitate to contact me at: david_weaver@mied.uscourts.gov.

Investiture of Magistrate Judge Anthony P. Patti

On Friday, April 24, 2015, surrounded by six of his seven children, his wife, Helen, and his extended family and friends, Magistrate Judge Anthony P. Patti celebrated his investiture in the Levin Courthouse in Detroit.

The occasion and the speeches given were a reflection of Magistrate Judge Patti's commitment to the law, his tenacity, and his dedication to all that he takes on; be it his service to the public or his commitment to his family and friends.

The Invocation was offered by Rev. Fr. Charles Irvin, a lawyer himself by training, followed by the pledge of allegiance, led by Magistrate Judge Patti's second oldest son, Marcello.

Chief Judge Gerald E. Rosen introduced Magistrate Judge Patti and administered the oath, honoring Judge Patti's special request to repeat the oath as administered, word for word. In taking the oath, Judge Patti used the middle names given to him at both his Baptism and Confirmation, in honor of his two grandfathers.

The robes were presented by Judge Patti's daughters, Francesca Patti and Lucia Patti, followed by the presentation of the gavel by Gianpaolo M. Patti.

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Magistrate Judge Patti *(from page 7)*

Upon joining his fellow judges on the bench, Judge Patti was privileged to be honored by Chief Judge Rosen, who spoke a few words of the new judge.

Chief Judge Rosen, who has known Anthony as both a practicing lawyer and as a candidate for the position of magistrate judge, said that Judge Patti's best character traits are his "persistence and tenacity."

Remarks were made by friends, colleagues, and family, who spoke of Judge Patti's accessibility from courtroom to home life.

The first remarks were made by Thomas H. Howlett, president of the Oakland County Bar Association. Howlett said that he was one of Judge Patti's opposing counsel in a court case in 2002. The two remained civil and professional during the proceedings and after the case remained friends.

Howlett said that he has come to appreciate how deeply Judge Patti cares about the law, the people, and the ethics of the legal profession. He likened Judge Patti to a "renaissance man," emphasizing that he can just as easily converse about the law as he can about history, travel, and sports.

He said he believes that Judge Patti's courtroom will be a reflection of their time together as lawyers: "I have no doubt that Judge Patti's court will be one where, even in hotly contested cases, professionals will litigate in an atmosphere that promotes equal justice and mutual respect."

The next remarks were made by Angela L. Jackson, Judge Patti's long time colleague and friend at Hooper Hathaway, P.C. Jackson expressed admiration for Judge Patti's ability to be dedicated to his work and maintain his relationships and family life.

Following Jackson, Judge Patti's friend and fellow lawyer, John Blase, who he met 28 years ago at the University of Notre Dame Law School, made remarks. Blase brought down the house with his dry humor, but also spoke about how Judge Patti's appointment will be a blessing to the community. "It is rather miraculous and comforting that our most important and influential positions are still filled with people like this," Blase said.

Next, Judge Patti's eldest daughter, Gabriella Patti, spoke on behalf of the Patti family, offering a personal perspective on how Judge Patti's family life influences him as a judge. "My dad puts family first, a trait that may not seem important to the workplace, but I believe that it is crucial. I know that like my dad makes our family stronger and more united, we give him strength as well."

Remarks were also made by Bruce T. Wallace, Judge Patti's mentor and colleague. Wallace said that he will miss his presence at the firm.

In his response, Hon. Anthony P. Patti thanked his family and his parents, Beatrice M. Patti and Anthony V. Patti, and honored several people in the audience, most notably retired Magistrate Judge Paul J. Komives.

Judge Patti spoke about the kind of judge he would like to be. "I want to recognize the dignity of each person, and you do that, and you're a person of love, by listening, by encountering the drama that humans go through without fear or coldness. I want to be just, but I want to be just without guile, and I want to be a person of goodwill."

The ceremony was ended with a benediction, done by Deacon Daniel R. Foley, J.D., from the Diocese of Lansing. After the dismissal of the court, guests celebrated the investiture of Judge Patti with a reception.



Chief Judge Gerald E. Rosen and Magistrate Judge Anthony P. Patti at his April 24, 2015 Investiture

Photo by John Meiu, courtesy of Detroit Legal News Publishing



Magistrate Judge Anthony P. Patti and members of his family at his Investiture

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

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David L. Lemisch Receives Gilman Award

On April 21, the Chapter honored Daniel L. Lemisch by presenting him the Leonard R. Gilman Award. Lemisch is the Chief of the Criminal Division of the U.S. Attorney's Office for the Eastern District. He previously served as the Deputy Chief of the Controlled Substance Unit, where he prosecuted cases involving narcotics conspiracies, money laundering, and homicide. During his career as a federal prosecutor, Lemisch also handled cases involving public corruption, health care fraud and violent crimes. He has also lectured on trial advocacy, public corruption, and criminal procedure code reform in Russia, Nigeria, Indonesia, the Czech Republic, Montenegro, Serbia, Bangladesh, Philippines, Ukraine, Thailand and Pakistan.

Prior to joining the Department of Justice, Lemisch was a trial lawyer and Chief of Appeals at the Oakland County Prosecutor's Office in Pontiac, Michigan. While at Oakland County, he prosecuted numerous felony jury trials and argued cases before the appellate courts. Lemisch also practiced civil law in Philadelphia, Pennsylvania, where he specialized in commercial litigation. He graduated from Temple University in Philadelphia and studied law at the University of Detroit School of Law.

U.S. Attorney Barbara M. McQuade warmly introduced her friend and colleague and presented him with the Award. Lemisch began his comments by expressing gratitude for the Award, and thanking and acknowledging his friends in the defense bar, those in the law enforcement community, his colleagues in the U.S. Attorney's Office, and the keynote speaker Mayor Duggan for their important and tireless work. Lemisch then spoke about the importance of an independent judiciary to our system of government and the administration of justice. Lemisch recounted stories from overseas where citizens cannot rely on an independent justice system, and how justice directly contributes to the health and stability of a country. He

concluded his remarks by thanking everyone in the room for their contributions to the justice system in the United States.

Judge Patrick J. Duggan introduced the keynote speaker, his son, Detroit Mayor Michael (Mike) Duggan. Mayor Duggan spoke with his usual fervor about the challenges facing the City. He discussed his connection to the City, the impact of the bankruptcy, and the fresh start it has provided. He talked about how he and his team have sought to aggressively address and solve problems in the City, including street lighting, abandoned homes, and economic development, and he demonstrated an energy and a passion for re-making Detroit.

To watch the video of the Gilman Luncheon, including both Lemisch and Mayor Duggan's comments, visit <https://fbamich.org/videos/> and contact Brian Figot at fbamich@fbamich.org for password information.



*United States Attorney Barbara McQuade,
Daniel Lemisch, Mayor Mike Duggan,
Judge Patrick J. Duggan, and Thomas Schehr
at the Gilman Luncheon*

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

Veterans Treatment Courts Event

The Chapter Federal Disability Benefits Committee presented a seminar on Veterans Treatment Courts (VTC) on April 21 at the Levin Courthouse. The seminar

provided an overview on the further development and maturation of VTCs. Retired Judge David Jordan provided an overview of the latest initiatives on the local and national level regarding VTCs. Judge Carrie L. Fuca, 41B District Court, and Judge Jodi Debbrecht Switalski, 51st District Court, provided their philosophies and perspectives on their respective courts. Nannette Colling, Veterans Justice Outreach Coordinator, Department of Veterans Affairs, provided an update regarding the VA's evolving role with the VTCs. Lynn Hedges, Quality of Life Analyst from the Michigan Veterans Affairs Agency, provided an overview of the organizational structure and the services provided to veterans at the State level.

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.

Diggin' Our Diversity Event

On June 6, the Chapter Diversity Committee, supervised by The Greening of Detroit and the USDA/USFS Great Lakes Restoration Initiative, held its fourth annual Diggin' Our Diversity event. Volunteers planted trees along Detroit streets in the area of Sunderland and Stahelin from 7 Mile to Outer Drive. The event was co-sponsored by the Albanian Bar Association, Armenian-American Bar Association, Association of Corporate Counsel - Michigan Chapter, Chaldean-American Bar Association, D. Augustus Straker Bar Association, Detroit Metropolitan Bar Association, Incorporated Society of Irish-American Lawyers, Jewish Bar Association of Michigan, Michigan Asian Pacific American Bar Association, Michigan Employment Lawyers Association, South Asian Bar Association of Michigan, Stonewall Bar Association, Wolverine Bar Association and Women Lawyers Association of Michigan.

Marcy Rosen, a co-chair of the Diversity Committee and chair of the event, reported that the volunteers had perfect weather this year and the neighborhood residents were very appreciative of the volunteers' efforts. The Diversity Committee plans to continue the event next year, likely at the end of May or beginning of June 2016. There is no experience

necessary to participate and everyone is welcome, including family members and friends.



Lending a hand at the Diggin' Our Diversity event were Andrew Priebe, Kelly Priebe, David Palizzi, Elisa Angeli Palizzi, event co-chair Marcy Rosen, Chad Techner, Clayton Thompson, and Chantez Knowles.

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



Law Day committee members Amy Johnston, Susan Gillooly, Magistrate Judge David Grand, Megan McGown, and John Sier.

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

Law Day: The Magna Carta

On May 1, the Court, the Chapter, and the Wolverine Bar Association co-hosted an open house at the Levin Courthouse to celebrate Law Day. This year's theme celebrated the 800th Anniversary of the Magna Carta-Symbol of Freedom Under Law. The Magna Carta, which was sealed in 1215, has become an international symbol of the rule of law and an inspiration for many basic rights Americans hold today, including due process, habeas corpus, trial by jury, and the right to travel. Magistrate Judge David R. Grand, Assistant U.S. Attorney Susan Gillooly, Amy Johnston, Megan McGown, and John Sier co-chaired the event.

Over 350 individuals attended the event, including three high school classes, and guests enjoyed the hot dog, chips and cookies lunch that has become a Law Day tradition in the Eastern District. One of the high school classes provided art work and posters depicting the progression of the Magna Carta into current law. Television screens were placed in the hallway for viewers to

watch clips of movies relating to the Magna Carta.

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Law Day *(from page 11)*

For the first time, the Eastern District's official court reporters participated in Law Day. They enjoyed representing their profession and showcasing it to the legal community, the public, and students. The court reporters demonstrated their deft real-time transcription capabilities and gave a PowerPoint presentation and brochure of tips for attorneys to ensure the best record is made of their proceedings.

As in past years, numerous groups and federal agencies participated in Law Day, including: Bureau of Alcohol, Tobacco, Firearms and Explosives; Coast Guard; Consumer Bankruptcy Association; Court Historical Society; U.S. Customs & Border Protection; Drug Enforcement Administration; Federal Bureau of Investigation; Federal Defender Office; Immigration and Customs Enforcement; Internal Revenue Service; National Labor Relations Board; Ralph M. Freeman Memorial Library; Secret Service; U.S. Attorney's Office; U.S. Bankruptcy Court; U.S. District Court; U.S. Marshals Service; U.S. Pretrial Services Agency; U.S. Probation Department; and the Wayne County Sheriff's Department. The organizations had information booths where guests could meet their representatives and learn about their respective roles in the administration of justice.

As part of the Law Day Activities, and in the spirit of continuing assistance to the public, the "Ask a Lawyer" pro bono program was offered for those in need of legal assistance. This successful program attracted many citizens who had legal issues and gave them an opportunity to discuss those issues with the volunteer attorneys. The Chapter and the Court recognize and thank the following volunteer attorneys: Sherry D. O. Taylor, Tamira T. Chapman, Kendall Lott-Tucker, Paula Johnson, Patrice S. Arend, Joseph Golden, Timothy H. Howlett, James J. Parks, Marlo Johnson Roebuck,

Alexander Simpson, Katheryne Zelenock, Jeffrey Ammons, Carmen Dorris, Ryan Bohannon, Jerome Crawford, Dawn R. Copley, Lindsay DeMoss, Andrea Johnson, Jeffrey S. Kopp, Bradley M. Krul, Thomas R. Warnicke, L. Pahl Zinn, Trina Mengesha, Randall Tatem, Aaron Burrell, and Sarah Firnschild. The Chapter and the Court would also like to thank the following student volunteers from Cooley Law School: Kelsey Carpenter, Torrey Johnson, Brendette Walker, Monique Merritt, Jeffrey Perlman, Reda Taleb, Nehemiah Williams, and Meikal Summey. The "Ask a Lawyer" program would

not have been possible without the time and effort these volunteers contributed.

The Chapter and the Court thank everyone who helped make Law Day 2015 a tremendous success.



Book Club attendees Ryan Hampstead, Susan Gillooly, David Fink, Andrew Doctoroff, Ken Gold, Judge Avern Cohn, Geneva Halliday, Erica Fitzgerald, Judge Marianne Battani, Magistrate Judge Elizabeth A. Stafford, Tim Devine, and Magistrate Judge Anthony P. Patti.

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

Book Club Takes "Blindfolds Off"

Federal judges and lawyers met on May 26 for a robust discussion of *Blindfolds Off: Judges on How They Decide*, by Joel Cohen. The book comprises interviews

of 13 judges on significant cases they decided—from Judge Denny Chin of New York on sentencing Bernie Madoff to 150 years in prison to Judge Charles Kocoras of Illinois on excluding expert testimony in a \$45 billion class action. The judges' answers go behind their rulings to reveal the influences and experiences—whether inside or outside the courtroom—that led to the decisions.

Moderated by Andy Doctoroff, the Book Club discussed the effect of judges' personal experiences on their decisions, the impact of judicial decisions being made in isolation instead of in consultation with other judges, and whether judges' consideration of factors outside the courtroom is fair to litigants. Both the book and the discussion offered unprecedented and fascinating insights into the complex decision making behind every judicial opinion.

Stay tuned for the Book Club's next selection coming this fall.

Bench/Bar Golf and Tennis Outing

On June 8, Eastern District judges joined over 50 lawyers for an afternoon of golf, tennis, drinks and dinner at the 2015 Bench/Bar Social. This year, the Chapter held the outing at the Detroit Golf Club. Each of the foursomes was paired with a judge to compete in a 5-person scramble tournament. There was a tie for first place between the Butzel Long team (David DuMouchel, Damien DuMouchel, George Donnini, and Justin Klimko) and the Miller Canfield team (Tom Cranmer, Clarence Pozza, Rob Morad, and Marc Swanson). In the tennis tournament, Jason Thompson earned the first place title.

Although the forecast called for rain, the sun managed to make an appearance for most of the day. The tournament was followed by a cocktail hour and seated dinner, where many fabulous prizes were raffled off, including gifts certificates to local restaurants, Tigers tickets, and a Big Bertha driver. 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, Computing Source, Brooks Kushman, Miller Canfield, Bush Seyferth Paige, Pepper Hamilton, and Barris Sott Denn & Driker – for their generosity in making this event possible.

Superfund Cleanup Allocation and Apportionment Webinar

Do you have clients who have received a request for information or, worse yet, a general or special notice letter from the U.S. Environmental Protection Agency (EPA) inviting them to participate with others in the cleanup of an environmentally impacted site? Have you been asked to estimate their legal share of costs, only to see your clients turn pale at the prospect of joint and several liability for site cleanup and restoration? Have you wondered how you can help your clients reduce their potential liability to a manageable level?

On May 27, the Chapter Environmental Law and Practice Committee partnered with the Litigation Committee of the State Bar's Environmental Law Section to present a webinar on Superfund cleanup allocation and apportionment to discuss some of the options for making Superfund liability at a multiparty site manageable.

Sorting out how much each potentially liable party (PRP) at a multiparty Superfund site should pay toward remediation and restoration costs is a special field of expertise practiced by the webinar's featured speaker, John Tatum of John Tatum, P.C. in Bloomfield Hills. John combines his technical and legal training with years of practice in the environment law arena to assist PRP groups in finding

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Tom Cranmer, Chief Judge Gerald E. Rosen, Rocky Pozza, Rob Morad and Marc Swanson.

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



Golf Outing

Matt Lund, Bankruptcy Judge Mark A. Randon, Magistrate Judge David R. Grand, District Judge Robert H. Cleland, Chief Judge Gerald E. Rosen, Judge David M. Lawson, Judge Victoria A. Roberts, Judge George Caram Steeh, and Tiffani Sadek.

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

Superfund *(from page 13)*

a formula for the allocation of cleanup costs that is defensible and maximizes the level of participation and funding for the cleanup. As discussed in more detail below, John's presentation focused on reasons why a party should participate in a PRP group at a multiparty site and the factors that an allocation consultant may consider in developing an allocation formula for the group.

As a lead-in to John's presentation, Sharon Newlon of Dickinson Wright, who chairs the Chapter Environmental Law and Practice Committee, provided an update of recent Superfund apportionment and allocation cases. As Sharon explained, apportionment is a legal defense to the general applicability of joint and several liability in Superfund cases. If a PRP can demonstrate a distinct harm or a reasonable basis for determining the PRP's contribution to a single, divisible harm, the PRP may be able to avoid joint and several

liability. Allocation, on the other hand, is an equitable determination of how much each party should pay among jointly and severally liable PRPs. One court recently described apportionment as separate checks at a restaurant and allocation as one check divided equitably among the diners who can pay. Courts have rarely found that an adequate basis has been established for apportionment in Superfund cases. However, in 2009 the U.S. Supreme Court upheld a district court's apportionment of cleanup costs on the bases of geography, time and volume in *Burlington Northern & Santa Fe Railway Company v. United States*, 556 U.S. 599 (2009). Sharon's presentation focused on appropriation cases decided since *Burlington Northern* but also touched on the factors generally used by courts in allocating Superfund liability. Sharon noted that while courts appear to be more willing to consider appropriation, they still struggle with the information required to demonstrate divisible harm.

John Tatum began his presentation affirming the need for reasoned allocation at most multiparty



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Superfund sites, as divisibility is generally difficult and time consuming to establish. John noted that parties who fail to participate in PRP groups to address their collective remediation liabilities may face a myriad of internal, external and social costs. The internal costs may be dominated by financial disclosures and internal litigation costs. External costs include attorney and technical expert fees, the risks of government and private party enforcement, and cost recovery. John explained that on a social level, nonparticipating parties can earn a bad reputation with government agencies, and can be targeted by the press, environmental groups and toxic tort plaintiffs. Participation can lessen these risks, while providing some control over the development of information, the selection of the remedy and the allocation of costs.

John presented an overview of several factors that may be used to develop an allocation for remediation costs associated with a multiparty Superfund site. Although many private party allocations begin with a

comparison of volumes of waste disposed at a Superfund site by each PRP, allocations may also consider the nature of a PRP's relationship to a site, the nature, extent and divisibility of site impacts, and the nature and divisibility of the components of the remedy. John identified various sources of historic information that an allocation consultant may consider: site records, witness and neighbor interviews, government records, PRP records and even newspaper articles. Development of the allocation is generally a dynamic mediation/facilitation process, involving interaction between the allocator and the PRPs, subgroups pursuing common interests and the overhanging threat of the costs of dropping out. Ultimately, John noted, if you have a resolution where nobody is happy, but nobody is angry, you can count that as a success.

Copies of John's and Sharon's Power Point presentations are available through the State Bar Environmental Law Section website.

Calendar of Events

July 21 **Thirteenth Annual Summer Associate/ Intern Event** – Fountain Bistro
 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 p.m. – 8:00 p.m.
 At the Fountain Bistro, in Campus Martius Park on Woodward

Sept. 16 **Court Historical Society Luncheon**
 Doubletree Fort Shelby, Crystal Ballroom
 Speaker: Hon. Steven W. Rhodes
 Topic: Thirty Years as a Judge

Late Sept. – Early Oct. **State of the Court Luncheon**
 Speaker: Hon. Gerald E. Rosen
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Nov. 10 **Rakow Scholarship Awards/ Historical Society Luncheon/ Rom Award**
 Westin Book Cadillac Hotel
 Speaker: Kevyn Orr
 11:30 a.m. Reception
 12:00 p.m. Lunch

Dec. 8-9 **New Lawyers Seminar**
 Theodore Levin U.S. Courthouse
 8:30 a.m. Registration
FEBRUARY 2015 and PRIOR BAR PASSERS: REGISTER NOW

Dec. 10 **Holiday Party**
HOLD THE DATE
 Westin Book Cadillac Hotel
 Registration Coming Soon!

Online registration is available for most events at www.fbamich.org under "Events and Activities." See updates and further developments at www.fbamich.org under "Hot News" and "Events & Activities."

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