



Federal Bar Association - Eastern District of Michigan Chapter - 59 years of service to our Federal Bench and Bar

Steven Fishman Receives Gilman Award

On April 18, the Chapter honored Steven Fishman by presenting to him the Leonard R. Gilman Award at the annual Gilman Luncheon.

Fishman is one of Detroit's top-rated Criminal Defense attorneys. Steve attended the University of Michigan, graduating in 1970. As a Wolverine, he played on the University of Michigan basketball team. He later served as President of the U-M "Letterwinners Club" in 1997, and in 2003 was inducted into the Michigan Jewish Sports Hall of Fame.

Following his 1973 graduation from Wayne State Law School, he has had a distinguished career defending people from all walks of life – the downtrodden to the infamous, including various elected officials, professional athletes, police officers, and others. For the past 30 years, he has been married to the love of his life, Jeri, and together they have two children – Eric (a Kalamazoo College graduate) and Rachel (a sophomore at the University of Michigan).

At the luncheon, retired AUSA Michael Leibson made brief introductory remarks about the origin of the award and the life of Leonard Gilman. He also paid tribute to Neil Fink, an earlier recipient of the award, who died late last year. Leibson then introduced the Honorable Timothy Kenny and Robert Morgan who, in turn, introduced Fishman. Both Judge Kenny and Morgan spoke of their admiration for Fishman's integrity and his contributions

to the cause of justice.

In his remarks, Fishman spoke with great emotion in describing things he learned about life from his father, his appreciation for the many who helped him along the way, and of his memories of Len Gilman. In conclusion, he said that no

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President's Column

Susan E. Fairchild



"If you want to change the world, start off by making your bed." – Admiral William H. McRaven (U.S. Navy Retired)

And so begins the book *Make Your Bed*, by William H. McRaven. The book is based upon the May 17, 2014, graduation speech given by Admiral McRaven to the University of Texas at Austin graduating class. In his address he shared the ten principles he learned during Navy Seal training that helped him overcome challenges not only in his training and long Naval career, but also throughout his life. He explained how the basic lessons he presents can be used to change yourself – and the world – for the better. His story, which he tells with great humility and optimism, provides simple wisdom, practical advice, and words of encouragement to inspire readers to achieve more, even in life's darkest moments.

Most certainly, and by no means, do I intend to suggest that serving as President of the FBA, Eastern District of Michigan Chapter, was as grueling or strenuous as becoming a Navy Seal (although at times, in my own mind, it felt comparable). My reference to this book pertains to his thoughts on leadership – beginning with his initial premise: making your bed. A small task undertaken at the beginning of the day, which can set your tone, motivation, and enthusiasm for the rest of the day and the tasks you will encounter. If your day then turns upside down with rush priorities, "fires" and impossible demands, you will have accomplished something, all by the time you walk out the door. Making your bed also reinforces the fact that little things in life matter. If you can't do the little things right, you will never do the big things right.

One of Admiral McRaven's other guiding principles, which has been precisely on point during my term as Chapter President this year, is best summarized in his quote:

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President's Column (continued)

"You can't change the world alone – you will need some help – and to truly get from your starting point to your destination takes friends, colleagues, the good will of strangers and a strong coxswain to guide them."

The help our Chapter and I have received this year from the Court, our Officers, Board Members, Committee Chairs, and our Immediate Past President Kim Altman, has been plentiful and indispensable. My sincerest thanks to all who have assisted and guided us this year.

Our programs in 2016/2017 have included seminars on Incivility in Complex Cases, Bankruptcy Court History, an Antitrust Legal Update, Prisoner's Rights Pro Bono Seminar, Bankruptcy Court: Motion Practice Do's and Don't's, Federal Trade Secrets Act, Race and the Criminal Justice System, New Lawyer's Seminar, and The Role of Personal Data Infrastructure in Company Legal Matters.

In addition, the Chapter hosted the State of the Court Luncheon, the Rakow/Rom Awards Luncheon, the McCree Luncheon, and the Leonard Gilman Award Luncheon. Other events included the Annual Dinner, the Annual Holiday Party, Schmooze Cruise, Ping Pong Social, Speed Judging, Book Club Meetings, Bar Association Fair, Judicial Family Reunion, Diversity Bar event, Law Day Celebration, Past President's Lunch, and the Annual Social/Golf Outing.

In addition, we welcomed Bankruptcy Judge Maria Oxholm to the bench with an investiture ceremony and a luncheon with the Bankruptcy Court in her honor. We also joined together for the retirement of Chief Judge Gerald E. Rosen, his portrait dedication at the courthouse, and the portrait dedication for Judge Nancy Edmunds. A very full year!

Just as important has been the contributions and participation of all our Chapter members. This year, as part of my "Presidential Agenda," we added the Executive Affiliate Member category to our membership options. This change is part of our membership application/notification and recruitment project, which has been directed by Matthew Allen of the Miller Canfield law firm, with technical assistance provided by Computing Source. Thank you to all Chapter members who have renewed as Sustaining Members, to our very first Executive Affiliate Member, Mark St. Peter from Computing Source, and to Matthew Allen.

My coxswain duties have now been surrendered to incoming President Jeff Appel. I am confident, with the assistance of our new Executive Director, Mindy Herrmann, and the returning Officers – Saura Sahu, Matthew Lund, Fred Herrmann, and Dan Sharkey, he will continue to move the boat forward and maintain this Chapter as one of the most active and involved FBA Chapters in the country.

Thank you for allowing me to serve as President and to captain the boat for the 2016/2017 term.

matter how much longer he may live, or whatever other awards may come his way, the receipt of the Gilman Award will mark the high point of his career.

The keynote speaker was Aimee Guthat, an expert in the area of immigration law. She is a Senior Attorney in the Troy office of Fragomen, Del Rey, Bernsen & Loewy and, since 2007, she has served as Adjunct Professor of Immigration Law with the University of Detroit-Mercy Law School. Guthat described the various areas of immigration law which have been, or may become, impacted by actions of the Trump administration.



Fred Herrmann, Jeff Appel, Susan Fairchild, Wayne County Circuit Court Chief Judge Timothy Kenny, Steve Fishman, Aimee Guthat, and Bob Morgan gathered for a photograph after Fishman was presented the 2017 Gilman Award.

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



Dave Weaver, Court Administrator / Clerk of Court

Several initiatives and changes have been approved by the Bench during their regular meetings over the last several months. As many of you know, the Court will reimburse certain expenses up to \$2,000 for attorneys who handle cases pro bono. These reimbursements are made from what is known as the Non-Appropriated Fund (NAF). This fund is derived from a portion of each attorney admission fee.

In the past, the Court only approved reimbursement of pro bono expenses over \$2,000 if approved by the judge assigned to the case and, for amounts over \$2,500, by the Chief Judge. Pursuant to a change approved by the Bench, any pro bono expenses expected to exceed \$2,000 now require pre-approval by the assigned judge and the Chief Judge. As the NAF is not an unlimited resource, this change

will allow the Court to better anticipate and plan for pro bono reimbursements based on the availability of funds in the NAF. A notice of the change and related information can be found on the Court's website.

The Bench has approved a recommendation of the Court's Pro Bono Committee to establish a Pro Se Clinic program for a one-year pilot. The Clinic will be established in conjunction with University of Detroit Mercy School of Law beginning in January 2018. The Clinic will operate adjacent to the District Court Clerk's Office in the Levin Courthouse. An adjunct professor will run the Clinic, which will include: time at the Court with students assisting pro se litigants, class time, and one-on-one time with students.

My office has also posted a new position for a Pro Se Case Administrator. This individual will be a deputy clerk in our Operations section and will provide up-front, non-legal procedural assistance to pro se litigants. The Clinic will then be available to offer legal guidance to interested pro se litigants. If the need for legal guidance exceeds what the Clinic can offer, the Pro Se Case Administrator will refer litigants to volunteer pro bono attorneys or bar association programs.

This is a very basic overview of the Clinic and there will be much more information to follow. Several individual attorneys, law firms, and bar associations have been instrumental in helping to devise and fund the Clinic.

Have a great Summer!



Supreme Court Review

by M Bryan Schneider

To the general public, with the exception of the long-awaited replacement of Justice Scalia with Justice Gorsuch, the Court's October 2016 Term was a rather ho-hum affair. With a short bench for most of the Term, the Court eschewed many of the hot-button issues that typically become the focus of media attention. The public's loss was the profession's gain, however, as the Court decided a significant number of important—if not always exciting—cases relevant to federal practitioners.

On the civil side of its docket, the Court decided a number of civil procedure cases. In jurisdiction matters, the Court held in *Lightfoot v. Cendant Mortgage Corp.* that the Federal National Mortgage Association's "sue and be sued" clause does not itself grant federal courts subject matter jurisdiction over all claims involving the Association. Similarly, in *BNSF Railway Co. v. Tyrrell*, the Court held that the Federal Employers' Liability Act does not grant personal jurisdiction over railroads in any state in which

they operate. And in *Bristol-Myers Squibb v. Superior Court of California*, the Court continued its recent trend of decisions restricting the scope of personal jurisdiction, holding that specific jurisdiction can be exercised only where there is a direct connection between the injury and the forum state.

The Court also addressed a number of issues relating to parties. In *Bank of America v. City of Miami*, the Court held significantly that a city has standing to bring suit under the Fair Housing Act. In another standing case, *Town of Chester v. Laroe Estates*, the Court ruled that a party seeking to intervene under Rule 24(a) to pursue relief not sought by the plaintiff must meet the constitutional standing requirements. The Court held in *Water Splash, Inc. v. Menon* that the Hague Convention does not prohibit service of process by regular mail if the receiving nation does not object.

In an important case involving sanctions for bad-faith conduct, *Goodyear Tire & Rubber Co. v. Haeger* held that an award of fees under a court's inherent authority to sanction bad faith conduct is limited to the fees that the bad-faith conduct caused the opposing party to incur. In *Microsoft Corp. v. Baker*, the Court held that a court of appeals lacks jurisdiction to review an order denying class certification where the named plaintiffs have voluntarily dismissed their claims. And in two immunity decisions, the Court held that exceptions to the Foreign Sovereign Immunity Act must be determined by a trial court at the outset of the litigation (*Bolivarian Republic of Venezuela v. Helmerich & Payne International Drilling*), and that tribal immunity does not extend to a tribal employee sued in his individual capacity (*Lewis v. Clarke*).

In substantive civil matters, the Court decided several cases involving civil rights. In *Ziglar v. Abbasi*, the Court declined to extend a Bivens cause of action to plaintiffs challenging their conditions of confinement after the September 11 attacks. In a significant First Amendment case, *Matal v. Tam*, the Court held that the Lanham Act's prohibition on registration of trademarks that "disparage" any person or group violates the First Amendment. Continuing its strong protection of free speech rights, the Court held in *Packingham v. North Carolina* that a state law making it a felony for a registered sex offender to access any social networking site is unconstitutional. And in *Expressions Hair Design v. Schneiderman*, the Court held that a state law preventing merchant's from charging a "surcharge" for credit card use but which allowed a discount for payment by cash regulates speech and is therefore subject to the First Amendment.

Turning to the Fourth Amendment, in *County of Los Angeles v. Mendez* the Court held that a Fourth Amendment claim does not lie against an officer whose use of force was reasonable, even if the officer provoked the initial confrontation. In *Manuel v. City of Joliet*, the Court held

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Supreme Court Review (from page 3)

that a claim challenging pretrial is cognizable under the Fourth Amendment.

The Court also decided a number of civil cases interpreting federal statutes. In *Kindred Nursing Centers v. Clark*, the Court held that a state court rule rendering arbitration agreements entered into by a person acting pursuant to a power of attorney invalid in the absence of a clear statement that the power of attorney encompasses such a power is invalid under the Federal Arbitration Act. In two securities related cases, the Court held that an SEC disgorgement action must be brought within the five year statute of limitations set forth in 28 U.S.C. § 2462 (*Kokesh v. Securities and Exchange Commission*), and that the statute of limitations governing actions under § 11 of the Securities Act is not subject to equitable tolling (*California Public Employees' Retirement System v. Anz Securities*). The Court also decided two cases under the Fair Debt Collection Practices Act, holding that a "debt collector" under the Act does not include a party that purchases debts for its own account (*Henson v. Santander Consumer USA*), and that the filing of an untimely claim in a bankruptcy proceeding does not constitute a false, deceptive, or misleading act prohibited by the FDCPA (*Midland Funding v. Johnson*). And in a significant bankruptcy case, *Czyzewski v. Jevic Holding Corp.*, the Court held that a bankruptcy court cannot approve a structured dismissal of a Chapter 7 proceeding that distributes estate assets outside the ordinary priority rules with the consent of the disfavored creditors.

The Court was extremely active this Term in intellectual property cases, particularly patent cases. In *Impression Products v. Lexmark International*, the Court held that a patentee's sale of a patented article exhausts all of its rights to restrict resale of the article as a matter of patent law, regardless of any restrictions included as a term of sale and regardless of whether the first sale occurs domestically or in a foreign market. In *Life Technologies v. Promega Corp.*, the Court held that supplying a single component of a multicomponent invention does not give rise to liability for infringement. The Court also held that the "article of manufacture" for determining a proper damages award under § 289 of the Patent Act can consist of only a component of an infringing product and need not necessarily include the entire end product (*Samsung Electronics v. Apple Inc.*).

In other patent matters, the Court held that laches is not a viable defense to a claim for damages brought within the limitations period (*SCA Hygiene Products Aktiebolag v. First Quality Baby Products*), and that the residence of a corporation under the patent venue statute is limited to the corporation's state of incorporation (*TC Heartland v. Kraft Foods Group Brands*). In its sole copyright case of the Term, *Star Athletica v. Varsity Brands*, the Court held that a design incorporated into a useful article is eligible

for copyright protection if it can be perceived as a work of art separate from the useful article and, if so conceived, would itself be eligible for copyright protection.

Turning to criminal matters, the Court decided two cases interpreting federal criminal statutes. In *Shaw v. United States*, the Court held that the bank fraud statute's prohibition on schemes to "defraud a financial institution" include acts that target a customer's account. Interpreting the insider trading statute in *Salman v. United States* the Court held that a jury may infer that an insider who provides a tip to a trading relative personally benefited from the relative's trading. In *Manrique v. United States*, the Court held that a defendant wishing to appeal a restitution order entered after sentencing must file a separate notice of appeal from that order.

The Court also decided a number of constitutional criminal procedure cases. In *Pena-Rodriguez v. Colorado*, the Court held that the general rule prohibiting impeachment of a jury verdict by juror testimony must give way when a juror has relied on racial animus in reaching his decision. In *Bravo-Fernandez v. United States*, the Court held that the Double Jeopardy Clause does not bar retrial where the jury returned irreconcilably inconsistent verdicts of acquittal and conviction.

The Court held in *Jae Lee v. United States* that a counsel's erroneous advice regarding the immigration consequences of a guilty plea can constitute ineffective assistance of counsel entitling the defendant to vacature of the plea. In another ineffective assistance case, *Weaver v. Massachusetts*, the Court held that a defendant must show prejudice arising from counsel's failure to raise a public trial violation claim, even though that underlying claim constitutes structural error. And in *McWilliams v. Dunn*, the Court held that its prior decision in *Ake v. Oklahoma* clearly establishes a defendant's right to appointment of an available and independent mental health expert when his mental condition is relevant to guilt or punishment.

The Court also decided several sentencing issues during the Term. In *Beckles v. United States*, the Court held that the U.S. Sentencing Guidelines are not subject to challenge on vagueness grounds. *Moore v. Texas* held that a state court's failure to rely on medical guidance to determine whether a defendant suffers from a mental impairment prohibiting imposition of the death penalty violated the Eighth Amendment. In *Dean v. United States*, the Court held that, when imposing an appropriate sentence for an offense, the trial court may consider a mandatory minimum sentence that will also be imposed for another offense.

Finally, the Court decided three immigration related cases during the current Term. In *Maslenjak v. United States*, the Court held that to secure a conviction for procuring naturalization in violation of the law, the government must prove that the defendant's false statement was material to the naturalization decision. The Court also

held that to constitute an aggravated felony subjecting an alien to deportation, a crime for “sexual abuse of a minor” requires that the victim be less than 16 years old (*Esquivel-Quintana v. Sessions*). Finally, in *Sessions v. Morales-Santana*, the Court found unconstitutional an immigration statute providing citizenship to children born abroad to unwed citizen parents on different terms depending on whether the citizen was the mother or father.

Bench/Bar Golf Outing

On June 26, approximately 70 golfers, including numerous Eastern District judges, magistrate judges, and lawyers enjoyed a fun-filled afternoon of golf during the 2017 Bench/Bar Social at the Forest Lake Country Club in Bloomfield Hills.

This year’s event, hosted by Golf Committee Co-Chairs George Donnini and Kevin Fanning, included a golf tournament followed by a cocktail hour and buffet-style dinner that was extremely well attended. Attendance during this year’s outing exceeded last year’s participation levels to such a degree that, when coupled with generous sponsorships, revenue for the event exceeded costs by a healthy margin.

Each foursome was paired with a judge to compete in a five-person scramble tournament. A steady wind created challenges on the 18-hole course for many teams as the lively group of talented golfers endured many tricky holes on the Forest Lake course.

After it was announced that the winning team finished 13 strokes under par, there was a healthy applause followed by a din of conversation that centered upon various difficult holes. As participants discussed the close competition on the course during cocktails and dinner, one conversation meandered toward the strategy behind the “Ball of Justice,” a special ball that could be purchased for a nominal donation and used by the judges on the putting green to reduce strokes. As one dinner participant observed, “the strategic use of the Ball of Justice remained a critical element this year. The winning team’s strategy to use Balls of Justice to drive scores lower undoubtedly paid off for them, especially given today’s windy course conditions.”

Although the wind added an element of challenge on the course, the sun managed to keep a steady appearance for most of the day, which added to the conviviality of the event. A cocktail hour and seated dinner followed the tournament, where many fabulous prizes were raffled off, including gifts certificates to local restaurants, Tigers tickets, putters, and golf clubs, including two valuable drivers, and other fabulous giveaways.

The event provided a unique and relaxed opportunity for interaction between the Eastern District bench and bar. The Chapter would like to thank the event sponsors

– Sterling Attorneys at Law, Conway MacKenzie, Butzel Long, Clark Hill, Honigman, Computing Source, Brooks Kushman, Pepper Hamilton, and Kerr Russell – for their generosity in making this event possible.



George Donnini, Judge Stephen F. Murphy, Judge Victoria A. Roberts, Judge David M. Lawson, Chief Judge Denise Page Hood, Judge Robert H. Cleland, Magistrate Judge David R. Grand, Public Information Officer David Ashtenfelter, and Kevin Fanning at the Annual Golf Outing

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

To Thine Title be True: Mistitling of the Magistrate Judge by Ruth Dapper*

The United States Magistrate Judge position has roots reaching into the eighteenth century and

was formally created through congressional legislation nearly fifty years ago. In 1990, as the magistrate judge role was modified and expanded, Congress passed legislation modifying the position’s title from United States Magistrate to United States Magistrate Judge. Despite the passage of a quarter century since the title change, the judicial position continues to be incompletely referred to as “magistrate.” This article explores the prevalence of the titling error in an effort to promote the accurate reference to magistrate judges.

Creation Of The Magistrate Judge

The magistrate judge is the result of congressional action under Article I of the Constitution of the United States, rather than authority provided in Article III. Even so, magistrate judges are not a separate court, and instead serve in the United States District Court, along with district judges. Magistrate judges are appointed by each district’s district judges for eight-year terms and require reappointment, unlike some other federal judges who enjoy lifetime tenure.

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Mistitling *(from page 5)*

Although forms of the magistrate judge have existed for many years, it was the Federal Magistrates Act of 1968 that created “a new class of federal judicial officers” to relieve the caseloads of United States District Courts. Magistrate judge duties depend on each district’s needs, with magistrate judges handling duties ranging from criminal initial appearances, detention hearings, and arraignments, to civil settlement conferences, discovery motions, and consent jury trials. Dispositive matters may also be “referred” by a district judge for the preparation of a “report and recommendation” by a magistrate judge. The number of full-time magistrate judge positions has increased greatly over the years, and there are now 536 full-time and 34 part-time magistrate judge positions. The Supreme Court recently remarked: “[I]t is no exaggeration to say that without the distinguished service of [magistrate judges], the work of the federal court system would grind nearly to a halt.”

Initially, magistrate judges were referred to as “magistrates.” In 1990, after years of discussion, the title of the office changed through the Judicial Improvements Act of 1990, which provides:

Change of Name of United States Magistrates

After the enactment of this Act, each United States magistrate appointed under section 631 of title 28, United States Code, shall be known as a United States magistrate judge, and any reference to any United States magistrate or magistrate that is contained in title 28, United States Code, in any other Federal statute, or in any regulation of any department or agency of the United States in the executive branch that was issued before the enactment of this Act, shall be deemed to refer to a United States magistrate judge appointed under section 631 of title 28, United States Code.

Following the title change, the United States Code was modified to reflect the “magistrate judge” title throughout. Federal rules comport with the statutes, with “a magistrate judge” being included in the definition of “Federal judge” in the Federal Rules of Criminal Procedure. The remainder of the criminal Rules, as well as the Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure, and Federal Rules of Evidence all include the full magistrate judge title throughout, with numerous Rules including notes to address the 1990 title change.

Now more than twenty-five years since the 1990 legislation, the term “magistrate judge” has been the title longer than “magistrate” was. The Federal Magistrate Judges Association continues to advocate for use of the proper title, as well as address the misconception that magistrate judges and district judges sit in separate courts.

Mistitling of the Magistrate Judge

With the unanimity of the statutes and rules, one might assume courts would be equally consistent in their use of the modified magistrate judge title. However, opinions of

the Supreme Court of the United States have misstated the title of the magistrate judge several times. An opinion from 2006, for example, described the underlying federal district court proceedings by noting the court “assigned the case to a Magistrate who conducted discovery.” The opinion continued by discussing what “the Magistrate recommended” and that the district judge “accepted the Magistrate’s recommendation.” Some mentions of “magistrate” may be understandable because they do not identify a United States Magistrate Judge but instead refer to a neutral magistrate, state proceeding, or foreign tribunal. Even removing these instances from consideration, numerous judicial opinions issued well after the passage of the 1990 Act reference “the Magistrate.” At times use of the truncated title is not a mistake, but instead is by design. At least two recent Supreme Court opinions provide, “A Federal Magistrate Judge (Magistrate),” thereby defining the title as “Magistrate” and referring to the magistrate judge accordingly for the balance of the text. The Supreme Court is not alone, with recent federal court of appeals opinions from every federal circuit court including instances of similar magistrate judge mistitling.

The widespread use of “magistrate” alone is not limited to judicial opinions, and is prevalent in secondary sources as well. This is true despite magistrate judges receiving considerably less discussion in scholarship than federal appellate judges. Instances of mistaken mistitling abound, as do more purposeful instances such as: “For the purposes of this Note, the term ‘judge’ refers to a district judge, appeals court judge, or Supreme Court Justice The term ‘magistrate’ refers to a United States magistrate judge” Top-ranked law reviews are not immune to mistitling, with recent publications by the flagship journals of some of the nation’s top law schools printing statements such as, “Like U.S. Magistrates, they are appointed by the judiciary itself, but lack the full protections of ... the Article III judiciary.” One published note on objections to magistrate judge rulings identified the Judicial Improvements Act of 1990 as changing the magistrate judge title, but continued to reference “magistrates.” Perhaps unsurprisingly considering the other cited sources, Westlaw includes a “key number” entry entitled “United States Magistrates.”

Instances of the mistitling are plentiful in practice as well. Recognizing the importance of referring to a judge by his or her proper title, some courts have taken it upon themselves to educate parties. One order by a district judge provided:

Unaccountably, the rest of defendant’s brief incompletely and incorrectly refers to “Magistrate Margolis” or “the Magistrate.” One is constrained to wonder whether the United States Attorney’s office is either unaware of, or chose in this case to disregard out of pique, [the Judicial Improvements Act of 1990]. Twenty-two years should be sufficient time for the denizens of a United States Attorney’s office to learn the legally correct way to refer

to a Magistrate Judge, a judicial officer sensible attorneys routinely address as “Judge.” Throughout this Ruling I will respectfully refer to “Judge Margolis.”

In another instance, a magistrate judge who left the state bench to join the federal bench recalls an attorney asking her why she “gave up being a judge” (presumably referencing her state court service) in order to be a “magistrate.” Another magistrate judge reports a litigant asked him if he was training to be a real judge. There have even been instances when litigants have referred to a magistrate judge by last name only. In one instance, attorneys from “three prestigious firms,” attempting to skirt local word count rules, responded to an objection to a report and recommendation prepared by a magistrate judge but referred to the magistrate judge by her last name alone. The district judge evaluating the objection noted, “[T]his Court cannot recall reading a motion, brief, or other paper—even from the most hapless of pro se litigants—that referred to a federal magistrate judge by her last name only. No one does this because it is disrespectful to the magistrate judge.” Although not as extreme as removing the title altogether, referring to a magistrate judge by the wrong title is no less inaccurate or disrespectful to the position.

Why this Matters

This article is not an indictment of any court, publication, or person. Instead, it is intended as a wake-up call. When magistrate judges, empowered through an act of Congress and serving a court created by Article III, are repeatedly addressed incorrectly by their colleagues, the inaccuracy reflects poorly on the judiciary. When practitioners and scholars make the same omission, it reflects poorly on the profession. Admittedly, in light of the weighty issues presented to the courts each day, the title of any judicial officer is not paramount. But the legal profession is built on the premise words matter. The value of words carries with it the value of titles. Using “magistrate” to refer to a magistrate judge artificially removes these judicial officers from their post in the judiciary.

The change of the magistrate judge title was made to educate litigants about the magistrate judges’ status as judicial officers. Decades have passed since the title change, and it is time for a more uniform change in the language of those trained in the law.

** Ruth Dapper is a litigation attorney in the San Diego office of Littler Mendelson P.C., having previously served as a federal judicial clerk. This article is modified from a law review article published in the Federal Courts Law Review, which contains citations to the publications discussed herein. See Ruth Dapper, A Judge by Any Other*

Name? Mistitling of the United States Magistrate Judge, 9 FED. CTS. L. REV. 1 (2015), available at http://www.fclr.org/fclr/articles/pdf/Dapper_Final_Publication2_Vol9_Issue2.pdf. This article is being published in this modified form with the author’s permission.

Trade Secret Event

On April 12, 2017, the Chapter’s Intellectual Property Committee organized a seminar on a new federal trade secret law, The Defend Trade Secrets Act of 2016 (“DTSA”). The DTSA for first time creates a federal civil cause of action for trade secret misappropriation. The new law will likely result in more trade secret litigation in federal courts.

Speaking at the event was Professor Sharon Sandeen of the Mitchell Hamline School of Law. Professor Sandeen is an internationally recognized expert on trade secret law. The Chapter and Committee thank Professor Sandeen for coming to Detroit to present on this new statute.



Christopher Darrow, Professor Sandeen, and Dean Amburn at the Trade Secret event.

Past Presidents Luncheon

A beautiful spring day, a landmark Detroit restaurant, and a group of loyal Chapter stalwarts again describe this year’s Past Presidents’ Luncheon. President Susan Fairchild and her fellow officers hosted the memorable gathering at The Whitney on May 11. Everyone enjoyed the historic ambiance and delicious food, surpassed only by the wealth of good chapter news and the pleasure of one another’s company.

Following tradition, President Fairchild introduced the proposed slate of officers. The Past Presidents unanimously approved it, a prerequisite for presenting the slate to the general membership for voting at the Annual Dinner. Fairchild also introduced our able, new Executive Director, Mindy Herrmann. She then directed the group’s attention to booklets summarizing in words and pictures the Chapter’s recent accomplishments, as well as the ambitious schedule of upcoming seminars and social opportunities. She underscored the wonderful work of our Newsletter Committee which garnered yet another award for excellence at the national FBA Annual convention.

Fairchild presented and explained the need for an increase in local dues, which she noted had not risen in more than 20 years. Fairchild asked all present to consider taking the extra step to become sustaining members. As an enticement, sustaining members will now be recognized with permanent, special nametags.

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Past Presidents *(from page 7)*

After praising the contributions of her fellow officers, board members, and committees, Fairchild ceded the floor to her successor, Jeff Appel. President-Elect Appel previewed the forthcoming year and, sporting a smile, told the group to expect a “chatty” leadership style. He emphasized his desire to focus on the mentoring of newer attorneys as a key Chapter goal. Appel also enthused over the leadership training he received at the national FBA mid-year meeting. Overall, his experience with the national organization impressed him greatly.

Before adjourning, Appel and the Past Presidents expressed their admiration for the breadth and depth of our robust chapter led so ably by Susan Fairchild and the other dedicated officers this past year. The Past Presidents departed fulfilled by the renewal of friendship and an FBA keepsake filled with goodies.

Panel On Race and Criminal Justice

The Chapter’s Criminal Law and Practice and Book Club Committees co-hosted a panel discussion about race and the criminal justice system on May 3 in the Detroit Room of the federal courthouse.

The discussion was inspired by the book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, by Michelle Alexander, a previous Book Club selection. The committees secured an excellent panel that included: Chief Judge Denise Page Hood, Judge Sean F. Cox, Acting U.S. Attorney for the Eastern District of Michigan Daniel Lemisch, and Chief of the Federal Defender Office Miriam Siefer. The discussion was moderated by Book Club co-chair Andy Doctoroff.

In front of a robust audience, the panel discussed their views on the controversial and provocative book, offered insights from their own experiences, and shared thoughts about opportunities to address racial disparities. The attendees had a chance to ask questions and exchange ideas with the panel. The event increased awareness

of an important topic and encouraged practitioners to acknowledge their role in the treatment of race within the criminal justice system.

Shapero Bankruptcy Symposium

On May 9, 2017, the Shapero Symposium, in partnership with the American Bankruptcy Institute, hosted a debate between retired Bankruptcy Judge Robert Gerber and William Weintraub, an attorney in New York.

The debate was about whether purchasers of assets

through bankruptcy sales should be immune from successor liability claims. The debate was quite timely given that the United States Supreme Court denied a writ of cert to review the Second Circuit Court of Appeals decision concerning General Motors liability for ignition switch litigation.

Judge Gerber was the bankruptcy judge who oversaw the General Motors bankruptcy proceeding in 2009. Judge Gerber took the position that purchasers at bankruptcy asset sales should be immune from successor liability

claims, while Mr. Weintraub, who represents ignition switch litigants, argued otherwise. The debate was lively between these two highly intellectual giants in the bankruptcy world.

Over 90 members of the bankruptcy bar along with the local bankruptcy judges and retired Judge Shapero attended. Judge Shapero was once again thanked in a standing ovation for his years of service and dedication to the bankruptcy bench and bar.

The Shapero Symposium has entered a new era with its partnership with the American Bankruptcy Institute which brings to the program its nationwide resources of speakers and programs to Detroit. The Symposium is a 501(c)(3) organization and through the American Bankruptcy Institute will sponsor yearly programs exploring relevant bankruptcy topics for the bar and public.



Panel moderator Andy Doctoroff (top row on the left) joined with panelists (bottom row) Chief Federal Defender Miriam Siefer, Chief Judge Denise Page Hood, Judge Sean F. Cox, and (top row on the right) Acting U.S. Attorney Daniel L. Lemisch.

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

Law Day

On May 1, the annual Law Day event was held at the Theodore Levin U.S. Courthouse. The theme of this year's event was The 14th Amendment: Transforming American Democracy. The Law Day celebration included courthouse tours and a presentation from the United States Citizenship and Immigration Services. Chief Judge Denise Page Hood and Magistrate Judge David Grand also welcomed students to Law Day and gave them a brief tour and presentation in the Court's historic "Million Dollar Courtroom."

As in past years, numerous groups and federal law enforcement agencies had booths where guests could meet representatives of the organizations and learn about their respective roles. Also, Law Day again featured the "Ask a Lawyer" pro bono program, which gave the public an opportunity to discuss their legal issues with volunteer pro bono attorneys.

In addition to the normal guests, the Court welcomed approximately 350 high school students to Law Day. Their attendance was made possible by a grant from the National FBA, which provided funds for bus transportation to the Courthouse. Belleville High School, Cass Technical High School, Golightly, Robichaud, Bad Axe, Douglass Academy for Young Men, Western International, Westside Academy, and Jack & Jill, Incorporated, Oakland County Chapter participated in the program.

A picnic-style lunch with hot dogs, chips, and cookies was served to all attendees. The cookies were purchased from Mi Cookie Project in Melvindale, Michigan, an agency that provides hands on work-skills training for individuals with developmental disabilities.

The Chapter and the Court thank everyone who helped make Law Day 2017 a resounding success.

Oxholm Bankruptcy Event

On May 17, Bankruptcy Judge Maria Oxholm presented at the Chapter's Bankruptcy Committee Luncheon. The topic was her first impressions on the Bankruptcy Court, and she provided bankruptcy pointers and best practice tips. Judge Oxholm took the bench in August 2016. She is the second woman, and first Hispanic, bankruptcy judge in the Eastern District of Michigan. Over 130 people attended the event.



Bankruptcy Judge Maria Oxholm and Kelley Callard at the May Bankruptcy Luncheon

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

Book Club Event

The Chapter Book Club met on May 23 to discuss *Love Wins: The Lovers and Lawyers Who Fought the Landmark Case for Marriage Equality*, by Debbie Cenziper and Jim Obergefell.

Cenziper, a Pulitzer Prize winning investigative reporter for the Washington Post, participated in the meeting by phone along with Al Gerhardstein, the Cincinnati civil rights attorney who represented the plaintiffs in the trial court and on appeal.

A departure from the Book Club's usual selections, the book focuses on the lives of the named plaintiffs, co-author Jim Obergefell and his husband John Arthur, who were married in Maryland and living in Ohio, which did not recognize same-sex marriages performed in other states.

Layered over the personal lives of Gerhardstein and other plaintiffs who joined the suit, their story makes its way to the U.S. Supreme Court, which ruled in their favor and legalized same-sex

marriage in 2015. The plaintiffs in a parallel case before Judge Friedman in the Eastern District of Michigan were represented by local attorneys including Ken Mogill, who attended the Book Club meeting to share his experiences. Judge Goldsmith, who ruled in 2015 that Michigan must recognize certain same-sex marriages, also offered insight into the court's role in the landmark decision.



John Sier, Susan Fairchild, Megan McGown Holms, Regina Goshorn, and Sherry O'Neal at the Drug Enforcement Administration's booth at Law Day.

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

Chapter Honors E. Powell Miller with Civility Award

The 38th Annual Dinner Honoring the Judicial Officers of the Eastern District of Michigan was held on June 22 at the Crowne Plaza Detroit.

Outgoing Chapter President Susan Fairchild presided over the proceedings. After her welcoming remarks, Fairchild turned the microphone over to incoming Chapter President-Elect, Saura Sahu, to honor and remember his friend and mentor, Judge Julian Abele Cook, Jr. Judge Cook was an icon in the law, and a beloved member of the Court family and legal community. Sahu offered condolences to Judge Cook's friends and family, many of whom attended the event, and led the Chapter in a moment of silence in his memory.

Fairchild then returned to introduce the 15 judicial officers in attendance. Fairchild welcomed Chief Judge Denise Page Hood to provide remarks. After thanking the Chapter and its members, Judge Hood spoke about recent initiatives at the Court. She then turned the microphone back over to President Fairchild, who conducted the official business for the evening. The Chapter elected the proposed slate of officers, executive board members, and foundation trustees. Fairchild then turned over leadership of the Chapter to the new president, Jeff Appel.

President Appel thanked Fairchild for her service to the Chapter and presented her with a plaque. He then turned to the main event—the presentation of the Julian Abele Cook, Jr.-Bernard A. Friedman FBA Civility Award.

Kevin O'Shea presented the award to his long-time colleague and friend, E. Powell Miller. O'Shea spoke about Miller's civility, citing examples going all the way back to their time together on their high school debate team. After talking about Miller's distinguished career, his service to the public and the bar, and above all, his unwavering focus on civility, O'Shea—assisted by Appel—presented Miller with a plaque honoring his achievement.

Miller thanked his wife, longtime mentors, and law partners for their support throughout the years. He then thanked his father for being a friend and mentor, before dedicating the award to his mother, who passed in 2006, but who Miller said was responsible for instilling the virtue of civility in him at a young age.

The Chapter congratulates Powell Miller on his accomplishments.

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

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Scenes from the Annual Dinner



New Chapter President Jeff Appel, Immediate Past President Susan Fairchild, and E. Powell Miller at the Annual Dinner

The above photo by John Meiu, courtesy of the Detroit Legal News Publishing, LLC. Other photos on this page are scenes from the Annual Dinner provided by Chapter Executive Director Mindy Herrmann.



Judge Laurie J. Michelson (second from left) with Justin Bagdady, Alexandra Markel, and Nathan Dupes



Magistrate Judges Elizabeth A. Stafford and Stephanie Dawkins Davis.



Marc Newman and Mike Cox.



Larry Saylor, Chief Judge Denise Page Hood, and Bob Verduyse.

Calendar of Events

August 1 Federal Courts Day

Federal Courts Day is an all day event at the federal courthouse for area high school students, sponsored by the Chapter's Diversity Committee and the Just the Beginning Foundation.

Theodore Levin U.S. Courthouse
For details contact fbamich@fbamich.org

Early Oct. State of the Court Luncheon

Speaker: Hon. Denise Page Hood
Location: To be announced.

Reserve Your Sponsorship Now
To inquire about a Sponsor's Season Table Ticket™ contact Program Chair Dan Sharkey at (248) 971-1800 or by email at sharkey@bwst-law.com.

Nov. 14 Rakow Scholarship Awards/ Historical Society Luncheon/Rom Award (tentative)

Location and speaker: To be announced.
11:30 a.m. Reception
12:00 p.m. Lunch

Dec. 5-6 New Lawyers Seminar

Theodore Levin U.S. Courthouse
8:30 a.m. Registration
February 2017 And Prior Bar Passers: Register Now!

Dec. 6 Holiday Party (tentative)

HOLD THE DATE
Location: to be announced
Registration Coming Soon!

**For more information visit
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Assistant United States Attorney
(313) 226-9665

Judge Michael J. Riordan
Michigan Court of Appeals
(313) 972-5662

John P. Mayer
(734) 558-5593

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Career Law Clerk to
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(313) 234-5148

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(313) 226-0295

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Bodman PLC
(313) 392-1077

John T. Sheets
Barris Sott Denn & Driker PLLC
(313) 965-9725

Ashlie D. Depinet
Law Clerk to
Hon. Anthony P. Patti
(313) 234-5200



Plaques recognizing the winners of the Cook-Friedman Civility Award, the Wade Hampton McCree, Jr. Award, and the Leonard R. Gilman Award are on display on the second floor of the Levin Courthouse.