



# FBAnewsletter

Summer 2008

Federal Bar Association - Eastern District of Michigan Chapter - 50 years of service to our Federal Bench and Bar

## Gilman Award Luncheon

On May 22, 2008, the Chapter held its annual Leonard R. Gilman Award Luncheon at the Atheneum Hotel in Detroit. Each year, the Chapter celebrates the life and achievements of Leonard R. Gilman by presenting an award to an outstanding practitioner of criminal law. This year, Judge Lawrence P. Zatkoff presented the Gilman Award to Stephen T. Rabaut, a sole practitioner in Sterling Heights. Rabaut has consistently provided excellent service to the legal community for 28 years. Most recently, he was the defense attorney in the highly publicized Stephen Grant murder case. Although the case was very involved and very challenging, he achieved the best possible result while remaining focused and attentive to his other clients. Judge Zatkoff described Rabaut as a "lawyer's lawyer" who exemplifies the remarkable qualities of a Gilman award recipient.

Also honored at the luncheon was Geneva S. Halliday. Halliday is a retired Assistant U.S. Attorney, as well as a past Chapter President and 6th Circuit President. Among her many accomplishments, Halliday improved the National Leadership training program, coordinated the New Lawyers Seminar, and is a founder of the (Habeas) Chorus Line. Alan Harnisch, who presented the award to Halliday, described her as "the grand lady of the Eastern District of Michigan Chapter of the Federal Bar Association."

The luncheon concluded with remarks from the keynote speaker, famed author and attorney Scott Turow. Turow discussed the experiences that led him to choose law as a profession in addition to being a novelist. He cited his desire, as a young novelist, to write about the Chicago

rental market and the implied warranty of habitability as the experience that made him realize he was interested in the law. He believes that his choice to be an attorney has allowed him to meet more great people throughout his life than any other profession would have afforded him. See page 6 for photos.

### INSIDE THIS ISSUE

Mentoring Program	pg.2
Proper Redaction	pg.2
Terry Berg	pg. 2-3
Annual Dinner	pg.3-4
Tidbits & Trivia	pg.4-5, 8
<b>Special</b> Color Event Photos	pg.6-7
Recent Events Recap	pg. 8-11
From Dave Weaver	pg.9
Calendar of Events	pg.12



## President's Column

**Mark A. Goldsmith**

Interior Design

For as long as there have been lawyers and judges, they have sought out each other's company. To be sure, there is a utilitarian mo-

tive in these encounters, at least in part. Lawyers seek to lose their anonymity, and judges their isolation.

But there is something deeper involved, as well. Lawyers and judges play defined roles in our legal system. Each wears a mask prescribed by the character played, often obscuring the character within. Advocates must assert positions based on client interests – not their own values. Judges must make decisions based on their honest view of the law, which may well be at variance with their personal views of sound policy.

Although invaluable in promoting the public interest, this relentless role playing kindles within the thoughtful lawyer and judge a desire to share with their fellow legal actors an interior view of themselves: their individual identities and their personal values.

Bar associations serve as a medium for this kind of exchange. Discarding robes and briefs, judges and lawyers can engage in conversations without any mandates from the principals or institutions that they serve, revealing a dimension of their inner vision that often is screened from public view.

Bar organizations make possible revealing conversations not just about the law, but every facet of the human condition. Without the constraints of litigation as their frame of reference, lawyers and judges are free to express themselves on subjects that are, for the most part, absent from the litigation forum, such as politics, culture, religion and the arts.

(continued on page 2)

**WINNER  
5 YEARS**  
National FBA  
Outstanding  
Newsletter  
Award

## President's Column (continued)

In facilitating these exchanges, bar groups help to fulfill the promise many of us anticipated when we joined the legal profession: the promise of elevated personal growth, even as we learned and practiced our trade.

At the FBA, we have made fulfillment of that promise part of our mission. Our programs are designed not simply to make us better informed legal technicians, but more reflective human beings.

This past year we served up an abundant feast of programming in support of this mission. We sharpened the tools of our trade, with programs on immigration, EEOC practice, e-discovery, expert testimony, financial litigation and trial practice.

But we also provided venues to enhance self-revelation and mutual discovery of our values hierarchy:

- a program on terrorism, where we confronted the awful choices we must make in a democracy between liberty and security;
- a bench-bar conference, where we explored the role of lawyers in our society and the state of race relations;
- a book club, which highlighted the conflicting judicial philosophies that compete for our loyalty;
- the Careers in Justice program, which allowed us to share our personal career choices with underprivileged students.

As one administration closes and the next begins, there is a fixed star in the FBA constellation that continues to guide us: our commitment to providing opportunities to encounter ourselves and to discover the interior design of our legal joint adventurers.

By facilitating these encounters and discoveries, the FBA makes us more engaged professionals and nobler spirits. This transformative process is precisely what judges and lawyers have always sought in seeking each other's company throughout the ages.

## Chapter Launches Mentoring Program

On January 10, 2008, the Chapter launched its Mentoring Program for "newer" lawyers. The program focused on the handling of a trade secrets case from filing to conclusion of an evidentiary hearing. Five sessions were held and concluded on May 15, 2008, with closing arguments followed by a reception. Approximately 50 "newer" lawyers participated under the guidance of team leaders: Robert Brower of Bodman, Ed Kronk of Butzel Long, Kathleen Lang of Dickinson Wright, Tom Cranmer of Miller Canfield, Patrick Hickey of Dykema, and Bill Winsten of Honigman. The Mentoring Program took a "learn by doing" approach, and the participants were able to appear before Judges Cleland, Cox, and Hood and Magistrate Judges Morgan, Pepe, and Majzoub. The Mentoring Program was the brainchild of Judge Mark Goldsmith, Immediate Past President of the Chapter, and was coordinated by Kelly Walters of Dykema and Dennis Levasseur of Bodman.

## Proper Redaction of Documents

By Daniel J. LaCombe\*

A recent article in the Connecticut Law Tribune pointed out the continued problem of improper redaction techniques by attorneys and other end users. The Tribune reported that lawyers for General Electric improperly "redacted" information from pleadings filed with the U.S. District Court for the District of Connecticut. These documents were available on PACER, where someone simply copied the black bars covering the text and pasted them into a Word document. The underlying sensitive information (metadata) then was visible.

The problem emerges when a native format document is electronically converted to a .pdf format. If the document is first printed out, then scanned to .pdf before filing, the metadata is no longer accessible.

There are other effective means to delete metadata in a direct electronic conversion from a native document to a .pdf format. The simplest method is to omit the information from the original document. For example, a Social Security number can be included as XXX-XX-1234. Commercially-available software also can be used to redact, not just hide, the sensitive information. Redax from Appligent is one commercial product widely used by federal agencies. Adobe Acrobat 8.0 Professional is another commercial product with a robust and effective redaction tool that scrubs the metadata and other information from the document.

Effective techniques for removing metadata is key to avoiding the problems experienced by counsel for General Electric.

*\*Daniel J. LaCombe is a member of Barris Sott Denn & Driker PLLC.*



*Terry Berg and his daughter Helen Marie*

## **Terry Berg's Daughter Receives National FBA Scholarship**

AUSA Terry Berg's daughter, Helen Marie Berg, is the recipient of the Foundation of the FBA's Public Service Scholarship. Helen Marie is a recent graduate of Mercy High School in Farmington Hills. She lives in Detroit with her parents and her younger brother and sister.

Helen Marie was the Editor in Chief of Newsprint, Mercy's student newspaper, and is also active in drama, tutoring, and other volunteer work. She will attend the Catholic University of America, in Washington, D.C., in the fall to study history and political science. Her interests include politics, Detroit, and writing. She is considering pursuing a career in journalism or public service.

Helen Marie was very surprised and grateful to learn she won the Federal Bar Association scholarship. Congratulations!

## **29th Annual FBA Dinner Inaugural Presentation of Cook-Friedman Civility Award**

On June 17, 2008, our Chapter held its 29th Annual Dinner at the Detroit Athletic Club. The event was well-attended. There were over 250 guests, including federal appellate, district and magistrate judges; State court judges, private practitioners; U.S. Attorneys; federal defenders; judicial law clerks; and their guests. All gathered to pay tribute to and mingle with the judicial officers, to elect new officers and conduct other business, and to enjoy camaraderie with fellow FBA members.

As her first official act, President Barbara L. McQuade acknowledged the dedication, hard work, and leadership of outgoing President Judge Mark A. Goldsmith. The next order of business was the inaugural presentation of the Julian Abele Cook, Jr. - Bernard A. Friedman FBA Civility Award to Edward M. Kronk of Butzel Long.

The Award was established pursuant to the Chapter's resolution to annually honor an attorney who shall be chosen pursuant to the following criteria:

1. The attorney has been significantly engaged in the practice of civil law;
2. The attorney demonstrates the highest levels of legal competency and professionalism;
3. The attorney's conduct is in accordance with the highest standards of professional integrity and personal courtesy as set forth in the Civility Principles of the United States District Court for the Eastern District of Michigan;
4. The attorney has demonstrated, while fulfilling the fundamental duty to represent clients vigorously, a mindfulness of the equally important obligation to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful and efficient manner; and
5. The attorney is guided by a fundamental sense of dignity, decency, candor and fair play.



*Edward M. Kronk*

The Award is named in recognition of the dedication to civility of two outstanding jurists: former Chief Judge Julian Abele Cook, Jr., who, in 1996, constituted the first Civility Committee in the Eastern District of Michigan and fostered the implementation of the Court's Civility Principles; and Chief Judge Bernard A. Friedman who formed the Court's second Civility Committee in 2007, and fostered the implementation of the Eastern District's "Lawyer's Commitment of Professional Civility."

This year's recipient, Edward M. Kronk, is a shareholder based in Butzel Long's Detroit office and is Co-Chair of the firm's Litigation Department. Kronk joined Butzel Long as an associate in 1971 after earning his J.D. from the University of Michigan that year. He received his undergraduate degree (A.B. Political Science) in 1968 from the College of the Holy Cross, Worcester, Massachusetts; his undergraduate studies included a year in Vienna, Austria.

Kronk's practice has been devoted principally to litigation with emphasis on product liability defense and commercial litigation. Kronk has tried cases to conclusion in state and federal courts in Michigan, California, Utah, South Carolina, New Jersey, Nebraska and Mississippi, and has represented clients in arbitrations before the New York Stock Exchange and the American Arbitration As-

*(continued on page 4)*

## Annual Dinner *(from page 3)*

sociation. He is a member of the panel of Arbitrators for the American Arbitration Association and has served as an arbitrator in both commercial and insurance cases for the Association. He has also served as a special mediator in Michigan Circuit Court mediation.

Kronk is a member of the State Bar of Michigan and has been admitted to practice in the U.S. District Courts for the Eastern and Western Districts of Michigan, the Central District of Illinois, the District of Nebraska and the District of South Carolina, as well as the United States Courts of Appeals for the 4th, 6th, 8th and Federal Circuits. He has been admitted pro hac vice in several other state courts.

He is a past president of this Chapter, and a member of the Detroit Metropolitan, Oakland County and American bar associations, Michigan Defense Trial Counsel (past President), the Defense Research Institute and the Products Liability Advisory Council. He is a fellow of the American College of Trial Lawyers and is listed in The Best Lawyers in America (Personal Injury Litigation - Products Liability) and Chambers USA: America's Leading Business Lawyers.

The evening concluded with a performance by our legal community's talented musical parody troupe, A (Habeas) Chorus Line, consisting of Brian Figot, Sara Fischer, Justin Klimko, Joseph LaBella, Michael Leibson, Mark Lezotte, James Robb, Angela Williams, and Judith Zorn.

The Chapter thanks its eighteen sponsor firms for their support of the 29th Annual Dinner. Thanks in large part to these sponsors, our Chapter is once again able to contribute several thousand dollars to the Federal Bar Foundation. This year's sponsors were:

Barris Sott Denn & Driker, PLLC  
Bodman LLP  
Brooks Kushman P.C.  
Butzel Long  
Charles Taunt & Associates, PLLC  
Clark Hill PLC  
Conway, MacKenzie & Dunleavy  
Dickinson Wright PLLC  
Dykema  
Foley & Lardner LLP  
Harness, Dickey & Pierce, P.L.C.  
Honigman Miller Schwartz and Cohn LLP  
Howard & Howard  
Kitch Drutchas Wagner Valitutti & Sherbrook  
Miller Canfield Paddock and Stone, P.L.C.  
Pepper Hamilton LLP  
Rader, Fishman & Grauer PLLC  
Sullivan, Ward, Asher & Patton

Annual Dinner chairs Theresa Serra, Cameron Evans and Susan Evans are owed a particular debt of gratitude for their dedication in making this 29th Annual Dinner a memorable one.

## Past Presidents' Luncheon

The Chapter's annual Past Presidents' luncheon meeting was held on May 15th and as usual, provided a unique opportunity for the past, present and future Chapter leadership to successfully mix business with pleasure. Our consummate host, Joe Dillon, arranged for excellent accommodations at the Detroit Athletic Club. This event is always a highlight as the regard and affection of the past presidents for each other is always apparent.

The Chapter's continued progress during its recently concluded Golden Anniversary year was noted by some of our early leaders, including Wally Riley, Russ Paquette, Richard Tarnas and the Fred Mester, who also contributed their considerable wisdom and historical perspectives. Following Mark Goldsmith's recounting of the year's events, the past presidents unanimously concluded that during Judge Goldsmith's year as president, he, the officers, the Board and Committee Chairs have truly outdone themselves with a year of hard work and stellar achievement. The impressive new energy generated by programs such as mentoring, the book club, the reformatted Bench and Bar Conference, and the celebration of our half century mark received excellent reviews. The membership is the healthiest that any of us can recall, and our luncheon programs, seminars, and other traditional activities also garnered applause. Needless to say, the proposed slate of officers and board members for next year was enthusiastically endorsed for presentation to the membership at the Annual Dinner.



### **Tidbits and Trivia** By Brian D. Figot

#### **Ed Rakow, the Foundation, the Luncheon and Scholarship Awards**

Edward H. Rakow was a visionary who more than 50 years ago recognized the need for a Detroit Chapter of the Federal Bar Association, and volunteered to help organize a chapter. Those who knew him describe a warm, friendly individual who had many friends in the area and who put an extensive amount of effort into organizing the Chapter. Within several years, the membership multiplied from a few individuals to several hundred members.

After 26 years as an attorney with the SEC, Ed retired in 1966 and entered private practice. At the Annual Dinner in 2007, his friend Charlie Rutherford recalled:

“The Guardian Angel of the Detroit Chapter in the early years from 1957 until his death in 1968 was Edward R. Rakow who we pay tribute to annually at the Rakow luncheon. Ed never held office in the Federal Bar, always preferring to be in the background. He was a dedicated public servant throughout his adult life. He retired from Federal practice in 1966 and passed away in February 1968.”

Ed Rakow was only 66 years old. Numerous FBA members traveled to attend his funeral in Burlington, Wisconsin. Immediately after the funeral service, Wallace Riley, Charlie Rutherford, Arthur Alan Smith, Dave Patton, John Ziegler, Jay Hammen and Ron DeBona met with Mr. Rakow's sister, Mrs. Dempsey Passmore, and a suggestion was made to start a scholarship in Ed's memory. Mrs. Passmore contributed the seed money to begin the Edward H. Rakow Memorial Fund, with scholarships to be awarded to deserving students of Michigan law schools who demonstrate outstanding scholarly achievement in securities, corporation or business law, based upon the assessment of the law school deans.

In 1969, the Federal Bar Foundation was formed in order to manage the scholarship fund and award the scholarships. Since 1970, each year the Chapter has dedicated one luncheon per year to the memory of Ed Rakow and the recognition of the scholarship recipients. After 38 such luncheons, this longest running continuous program of its type has awarded \$149,500 to 188 scholars!

Later and continuing to this day, the proceeds from the Annual Dinner were dedicated to helping the Fund grow. Together with contributions from our Membership and the hard work of the Foundation's Trustees (who obtained 501c(3) status for the Foundation in 1974), the goal of making the Fund self-sustaining is finally within reach.

I have begun compiling a history, with biographical sketches of the 188 recipients. Some have recognizable names; others have names we will come to know in the future. There are still many gaps in the research and questions for which no answers have been found (such as: why were there only two scholarships awarded the first year; were there any recipients in 1989, the year Lee Bolinger was keynote speaker; and who were the speakers and what were the luncheons venues, from 1970 through 1980?). At this point, however, we know enough to state with some assurance, reviewing the careers of the scholarship recipients from 1970 to 1979, that the deans for the most part have chosen well and receipt of the Rakow Scholarship is a moderately reliable indicator of future success.

The first recipients, in 1970, were Michael E. Houtari of the University of Michigan Law School and Thomas J. Beale of Wayne State University Law School.

Tom Beale made a name for himself in the areas of real estate taxation and the then emerging law of condominium development. After 30 years in practice, including many years as a partner in the Detroit law firm Honigman Miller Schwartz and Cohn, Mr. Beale semi-retired to Seattle, Washington, in 2000, where he still resides.

Mr. Houtari, whose classmates included future judges David McKeague and Thomas Brookover as well as Ed Kronk, the first (and recent) recipient of the Julian Abele Cook, Jr. - Bernard A. Friedman FBA Civility Award, found his niche in the health care industry, first in public service and then in the private sector. For three years he was an Assistant Attorney General representing the Colorado Department of Health. In this capacity, he served as counsel for the Colorado Department of Health, the Colorado Board of Health, and the Health Facilities Review Counsel. He then served on the Colorado Hospital Commission, which established a program of uniform reporting and prospective rate settings for Colorado hospitals. In 1981, he went into private practice and for 15 years was a name partner in the Denver law firm Yu, Stromberg, Huotari and Cleveland. From 1996 to 2000, he was Executive Vice President and General Counsel for Blue Cross Blue Shield Plans and affiliated HMOs in Colorado, Nevada, and New Mexico. He is now executive director of the Colorado Association of Health Plans, which represents 11 of the state's largest insurers.

In 1971, there were three scholarships awarded: to Robert Dean, Wayne McCoy and Robert Nix II (respectively from the law schools at University of Detroit, University of Michigan and Wayne State). Mr. Nix is the most familiar to local denizens, practicing at Kerr, Russell and Weber, PLC, where he is co-chairperson of the firm's Real Estate Practice Group. His firm's website lists his many accomplishments and accolades, which include service as chair person of the real property law section and the investment entity committee of the American College of Real Estate Lawyers.

Wayne McCoy settled in the Chicago area, where he joined the law firm Schiff, Hardin & Waite immediately after graduation. He became a partner after only five years and during his career was general counsel to the Chicago School Finance Authority, and also represented the Chicago Housing Authority, the Chicago Transit Authority and Cook County. He was involved in securing financing for the new Comiskey Park and the international terminal at O'Hare Airport, and he was counsel to basketball legend Michael Jordan in several legal matters. Mr. McCoy passed away on August 29, 2000, at the age of 58. Mr. Dean passed away on December 27, 1998, which coincidentally was contemporaneous to the first run showing of "Enemy of the State," in which Will Smith portrayed an attorney named . . . Robert Dean.

The remaining 36 scholarships of the 1970s were distributed as follows: 1972: Sammie L. Shank, James D. Lumley, David A. Lang, J. Robert Chambers; 1973: Gary F. Toth, Randolph Phifer, Katherine L. Gerstenberger, Benjamin F. Rosenthal; 1974: Daniel F. Berry, Thomas Dale Burkhart, Thomas F. Koernke, Gregory G.D. Schultz; 1975: Michael Stakias, Vincent A. Romano, Barbara L. Stoops, Edsell M. Eady, Jr., Thomas R. Hoffman; 1976:

*(continued page 8)*

## Gilman Award Luncheon



*Left to right, Laurie J. Michelson, Hon. Mark A. Goldsmith, Scott Turow, David DuMouchel.*

## Careers In Justice



*Brian D. Figot; Hon. Michelle Friedman Appel, Chief Judge, 45B District Court; Michael K. Lee; Julia Caroff Pidgeon; Hon. Paul J. Paruk, Chief Judge, 31st District Court.*



*Left to right, Hon. Mark A. Goldsmith, Stephen T. Rabaut, Hon. Lawrence P. Zatkoff.*

## Scene From Recent Event

## Russian Judges Visit



*Aleksandr Samorodov, Natalya Miryasova, Judge Rosen, Natalya Lipendina and Tatyana Mitrokhova, Yuriy Zhadnov. Photo by John Meiu, courtesy of Detroit Legal News.*



*Michael K. Lee; Oak Park High School Assistant Principal Charity Jones, Hon. Michelle Friedman Appel, Chief Judge, 45B District Court; Julia Caroff Pidgeon; Hon. Paul J. Paruk, Chief Judge, 31st District Court.*



## Employment Law Seminar

## Daubert Seminar

*First Row: Michael K. Lee of Lee & Correll; Judge Marianne O. Battani; Judge Denise Page Hood; Laurie Young, EEOC Regional Attorney; Deborah Barno, EEOC Supervisor.*

*Back Row: Judge David M. Lawson; Judge Robert H. Cleland; Jeffrey Steele of Clark Hill; Vanessa Miree Mays, Deputy Chief, Defensive Litigation, U. S. Attorney's Office. Photo by John Meiu, courtesy of Detroit Legal News.*



## Bench Bar Conference

*Hon. Mark A. Goldsmith together with Bench Bar Event Co-Chairs Magistrate Judge Mona K. Majzoub, and Jeffrey A. Sadowski. Photo by John Meiu, courtesy of Detroit Legal News.*



*George Donnini, Matthew Leitman; Stephanie Dawkins Davis; Judge David M. Lawson.*



*Clarence Darrow, portrayed by actor Graham Thatcher of Periakto Productions. Photo by John Meiu, courtesy of Detroit Legal News.*

## Pro Bono Program



*Steve Borgsdorf, Joseph Infante, Steven Cares and Amanda Hickman.*

---

## **Tidbits & Trivia** *(from page 5)*

John Rohe, John J. Schrot, Jr., John P. McDonald, Pamela S. Hyde, James R. Hurlbert; 1977: Diane Bernick, Stuart A. Fraser, IV, David F. Wightman, John B. Sherrell, Sheryl A. Giddings; 1978: Kimberly Miles, Janet G. Callahan (Barnes), Maureen Burke, Steven M. Harris, Ronald Majka; 1979: Thomas Harvey, Victoria M. Desmarais, Norman L. Sims, P. Sherrill Neff, Louise E. Tudzarov.

This latter group is a (mostly) prominent, incredibly diverse group about whom more will be written at a later date. They include a labor arbitrator, an attorney who specializes in ecclesiastical disputes, several corporate counsel, patent attorneys, real estate lawyers, appellate attorneys, at least two attorneys in current government service, two venture capitalists, and one former attorney (who transferred to inactive status in 1996, in a stipulation reached with the Attorney Discipline Board). They are dispersed throughout the U.S.A., in Ohio, California, Illinois, Pennsylvania and Florida, and throughout the State of Michigan. I have not located or found anything (and welcome any information you may have) regarding Lang, Schultz, Stakias, Stoops, Hoffman, McDonald, Hyde and Hurlbert.

If you would like to assist the Foundation in making scholarships available to deserving students in 2008 and beyond, please send your tax deductible donations to the Chapter Office, 30100 Telegraph Rd., Ste 428, Bingham Farms MI 48025-4564.

## **Chapter Hosts Russian Judges**

Open World judges from Russia arrived in Detroit on Saturday, March 29th, for a week-long program to promote mutual understanding between Russian and American legal counterparts. The Detroit Metropolitan Bar Association in partnership with Judge Gerald E. Rosen hosted the Open World "Specialized Rule of Law" delegation. Russian jurists traveling to Michigan included judges from the Ulyanovsk Oblast in Russia: Natalya Lipendina, Natalya Miryasova, Aleksandr Samorodov, and Yuriy Zhadnov and Tatyana Mitrokhova from the Kaluga Region.

Managed by the independent Open World Leadership Center at the Library of Congress, Open World is designed to enhance understanding and capabilities for cooperation between the United States and the countries of Eurasia and the Baltic States by developing a network of leaders in the region who have gained significant, first-hand exposure to America's democratic, accountable government and free-market system. The Open World Program is a U.S. Congress-supported project and is one of America's major citizen diplomacy initiatives. Its ultimate goal is to develop ongoing collaboration, partnerships, and joint projects between U.S. and Russian judges.

Judge Rosen and the Court planned a week-long professional program to promote mutual understanding and share ideas about the Rule of Law as the foundation of a civil society. The Russian judges observed court proceedings and met with district and magistrate judges at the Court as well as officials at the Oakland County Circuit Court, the Washtenaw County Trial Court and the Michigan Court of Appeals.

The Open World delegates experienced American family life by staying with host families. Volunteers with the Detroit Metropolitan Bar Association introduced the Russian visitors to numerous Detroit area attractions, including the Charles H. Wright Museum of African American History, the Henry Ford, the DIA, a People Mover tour of downtown Detroit, and a Red Wing hockey game. Of particular interest was a reception for the delegates sponsored by the DMBA and hosted by the law offices of Bodman which included a tour of Ford Field. The delegates' visit was completed with an elegant farewell banquet at the Renaissance Club, co-hosted by the Chapter, complete with many toasts and gift exchanges between the Russian visitors and their hosts. See page 6 for photo.

## **Law Day At The Courthouse**

On Thursday, May 1, 2008, the Court and the Chapter co-sponsored an open house at the Courthouse in downtown Detroit to celebrate the 50th anniversary of Law Day. The theme this year was, "The Rule of Law: Foundation For Communities of Opportunity and Equity."

Over 400 people participated, breaking previous records. Increased publicity helped increase attendance. The Court sent letters to pro se plaintiffs informing them of the pro bono "Ask the Lawyer" program. Chief Judge Friedman was interviewed on radio stations WDET and WWJ. In addition, the publicity effort included press releases, emails and flyers that encouraged the public to visit the Courthouse from 11:00 a.m. to 2:00 p.m. and enjoy free hot dogs and soft drinks.

Bomb-sniffing dogs, counterfeit currency and confiscated firearms were among the exhibits brought by participating agencies including: the Bureau of Alcohol, Tobacco, Firearms and Explosives, Coast Guard, Border Patrol, Consumer Bankruptcy Association, Courthouse Museum, Drug Enforcement Administration, Federal Bureau of Investigation, Federal Defender's Office, Immigration and Customs Enforcement, National Labor Relations Board, Secret Service, U.S. Attorney's Office, U.S. District Court, U. S. Probation, U.S. Marshal Service and Wayne County Sheriff's Department.

Co-chairs Daniel Sharkey of Butzel Long, and Dona Tracey of the Department of Veterans Affairs extend a heartfelt thank you to the many volunteers who contributed to the successful day.

## Careers In Justice Initiative

This year, Chapter President Mark Goldsmith made a commitment to creating a greater FBA presence in the community. To that end, he suggested that FBA members volunteer to go into area public schools and speak with students about different professional opportunities in the field of justice. The Careers in Justice Initiative was designed to highlight opportunities in the area of practicing law as well as other areas such as law enforcement (FBI), the judiciary, and administrative professions (Pretrial Services Agency).

Miriam Siefer and Michael K. Lee took the lead in implementing the Initiative. On April 23, 2008, the Initiative visited Pepper Elementary School in Oak Park. The presenters spoke to a group of third, fourth and fifth graders. Judge Gerald Rosen was among those who spoke to the students. This was a special treat for both the students and for Judge Rosen who attended Pepper Elementary School. The staff at Pepper happily gave Judge Rosen a guided tour down memory lane, and he remarked on how many of the things were exactly the same as when he himself was a student at Pepper.

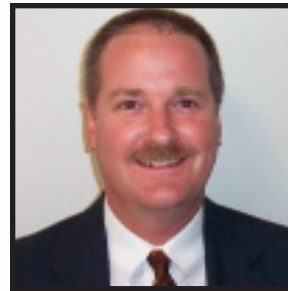
Of course, it was also an invaluable experience for the students to see someone who once was in their school now sitting on the federal bench as a Judge. Michael Lee acted as moderator, and students heard from Susan Gilmore from the Pretrial Services Agency, Miriam Siefer from the Federal Defender Office, and Michael Leibson from the U. S. Attorney's Office. The students also heard from John Scarbrough of the FBI, who brought along some of his surveillance tools such as a baseball cap with a camera installed in it. After the presentation, the students surrounded Judge Rosen, who stayed behind to answer questions.

On April 24, 2008, the Initiative visited Oak Park High School. The students there heard from a panel that consisted of Judge Michelle Friedman Appel of the 45-B District Court in Oak Park, Judge Paul J. Paruk of the 31st District Court in Hamtramck, Chapter Executive Director Brian Figot, Julia Pidgeon from the U.S. Attorney's Office, and Michael Lee. Jeff Appel functioned as our official photographer. The panelists described the varied paths that led them to their present careers, and gave the students suggestions on how to achieve their goals.

Both programs were highly successful. The administrators in each school were enthusiastic, and we were invited to return again next year. See page 6 for photos.

## New Member Breakfast Held

On June 3, 2008, the Chapter hosted a breakfast to welcome the many new Chapter members added during this year's membership drive. The breakfast took place in Room 115 of the Courthouse. Several long-time Chapter members and officers, new members, and potential new members attended. The breakfast also marked the return of Chief Judge Friedman, who welcomed everyone. President Goldsmith highlighted the benefits of Chapter membership. Judge Cleland also spoke about the great success of this year's trial practice program for new lawyers.



### **From Court Administrator Dave Weaver**

I want to thank the FBA for its phenomenal efforts for the Law Day 2008 celebration in the Court. We had a great turnout in general and about 90 individuals for the "Ask the Lawyer" portion of the program, which was an increase of about 90 from 2007! All of the volunteers did a great job.

On March 10, 2008 the Court began providing attorneys the option of filing a civil complaint electronically and paying the filing fee online with a credit card. In May 2008, attorneys filed almost 200 civil complaints. Please remember that effective August 1, 2008 the filing of all civil complaints electronically will be mandatory. The Court is also making plans to allow non-incarcerated pro se filers to file electronically. A number of other federal courts have already begun to allow pro se filers to file electronically with great success.

A revised transcript policy recently approved by the Judicial Conference of the United States is being implemented. Generally, all transcripts filed with the Clerk will not be publicly available via PACER for a period of 90 days. Parties in a case will have that 90-day period to address any redaction issues as well. Please visit the Court's website for information related to these new procedures and all other CM/ECF information.

The General Services Administration (GSA) recently completed a significant project to restore the entryway and lobby of the federal courthouse in Port Huron. This project was initiated and funded by GSA under its "First Impressions" program that strives to demonstrate design excellence in the public spaces of existing federal buildings. The project was a great success and restored many of the original design elements in this historic building. If you find yourself in Port Huron, I encourage you to stop and have a look!

---

## News From Criminal Practice Committee: Daubert Program

The goal of the Criminal Practice Committee's Daubert program was to provide federal litigators -- both civil and criminal practitioners -- with practical tips concerning expert witness rules and procedures. Judge David M. Lawson began by reviewing the fundamentals of expert testimony admissibility under the *Daubert* and *Kumho Tire* decisions. Judge Lawson stressed that counsel must be careful to confine proposed expert testimony to the expert's true area of expertise. He also emphasized that the Court's focus in the *Daubert* context is upon the validity of the expert's analytic technique -- not upon whether the expert has reached the correct result in his analysis. Judge Lawson advised attorneys confronted with questionable expert testimony to challenge the admissibility of that testimony in a pretrial motion in limine. Finally, Judge Lawson emphasized that while experts may rely upon inadmissible evidence in forming their opinions, such evidence may not be disclosed to the jury unless its probative value substantially outweighs its prejudicial effect.

George Donnini from Butzel Long addressed important procedural changes related to expert testimony. He focused on the recent changes to 6th Circuit Criminal Pattern Jury Instruction 7.03. He also highlighted a recent decision from the Court of Appeals for the Sixth Circuit (*United States v. Johnson*) in which the Court held that an attorney seeking to admit expert testimony should not ask the court to find, in the jury's presence, that the witness is an "expert." Instead, counsel should seek permission for the witness to offer opinion testimony. Mr. Donnini also stressed that where the Government in a criminal case presents both fact and opinion testimony from a single witness -- usually a police officer -- counsel must ask for an instruction from the court establishing a clear line of demarcation between personal observation -- fact testimony -- and what the expert is being asked to opine about -- opinion testimony.

Stephanie Dawkins Davis from the United States Attorney's Office then spoke about expert witness issues in criminal drug prosecutions. She reiterated the necessity for practitioners to readjust their examinations of expert (i.e. "opinion") witnesses to successfully establish the witness's qualifications to give a particular opinion without expressly requesting the court to "qualify" the witness on the record. She also addressed several recurring areas of expert testimony in drug prosecutions, including: (1) evaluating the need for a chemist to testify concerning narcotics analysis versus obtaining a stipulation; (2) soliciting the opinion of a physician to establish what falls within and without the scope of legitimate medical practice in prosecutions for the illegal distribution of prescription drugs; and (3) soliciting testimony from individuals with expertise in identifying fraudulent prescriptions such as pharmacists,

academics, physicians and regulatory officers. Additionally Ms. Davis advised attorneys to be mindful that lay testimony can sometimes be used as effectively as so-called "expert" testimony, when the actions of a particular doctor or pharmacist blatantly fall outside the usual course of professional practice.

Finally, Matthew Leitman from Miller Canfield highlighted a few expert witness "hot topics." He noted that the admissibility of expert testimony on handwriting analysis is very much an open question in the Sixth Circuit. Likewise, he explained that there is currently a split of authority on whether, and to what extent, expert testimony concerning the weaknesses of eyewitness identification is admissible. Finally, he urged defense attorneys to challenge the admissibility of fingerprint evidence and noted that at least a few judges have been receptive to such challenge. See page 7 for photo.

## 2008 Bench Bar Conference

On April 17, 2008, the Chapter hosted its annual Bench Bar Conference at the Dearborn Inn. Conference Co-Chairs Magistrate Judge Mona K. Majzoub and Jeffrey A. Sadowski of Howard & Howard Attorneys, P.C., coordinated a thought-provoking program which began with keynote speaker, Helen Thomas. Following lunch, Graham Thatcher of Periakto Productions, LLC, performed, "Clarence Darrow: Crimes, Causes and the Courtroom".

Afterward, Judge Gordon J. Quist from the Western District of Michigan moderated panelists Andrew Densmo of the Federal Defender Office; Assistant United States Attorney Michael C. Leibson; Bankruptcy Judge Marci B. McIvor; and Judge Robert H. Cleland in a discussion of the potential ethical issues arising from four trials enacted by Thatcher: Darrow's defense of Leopold and Loeb, Henry Sweet, the McNamara brothers, and John Scopes.

The 206 attendees (comprised of twenty-five judges, twenty-eight law clerks, and 153 other attorneys including participants from the Northern District of Ohio and the Western District of Michigan) were seated at round tables of 10, with a judge at each table, to facilitate discussion. The "Day of Camaraderie" concluded with an hors d'oeuvres and cocktail reception. See page 7 for photos.

## News From Labor And Employment Committee: Employment Law Seminar

The Employment Law Seminar on June 4th was a huge success. The seminar featured workshops on civil litigation, labor law, and employment discrimination. Presenters

included U.S. District Judges, EEOC attorneys, attorneys from the federal and private sector, and a representative from the National Labor Relations Board. Judges Marianne Battani, Denise Page Hood, David Lawson and Robert Cleland provided valuable insight about their courtroom practices, with particular emphasis on summary judgment motions, jury selection, discovery disputes and other pre-trial matters. Attorney Michael Lee, managing partner of Lee and Correll, did an excellent job as moderator for the judges' panel.

During the second workshop, Patrick Labadie, NLRB Group Supervisor, talked about recent NLRB cases. Deborah Barno, EEOC Supervisory Attorney, discussed the caseload of the EEOC's Detroit Field Office. Mimi Gendreau, EEOC Administrative Judge, informed the seminar participants about federal sector EEO practice. Attorney Jeffrey Steele, Clark Hill, PLC, delivered the EEO Law Update and provided a comprehensive handout for the attorneys.

The seminar concluded with a delicious lunch and a lecture from Laurie Young, Regional Attorney for the EEOC in Indianapolis, Indiana. Attorney Young discussed issues related to prohibited use of genetic testing information and the growing number of EEO cases involving teenage and young adult workers. The Chapter received very favorable feedback on the seminar evaluations and plans to host a similar program in the future. See page 7 for photo.

## **Book Club Holds Second Session**

This year under the direction of immediate Past President Mark Goldsmith, the Chapter initiated a book club whose primary purpose is to facilitate an informal but elevated dialogue between the bench and the bar. The book club, which is scheduled to meet quarterly, is non-partisan. So far, the book club has held two sessions. The first session was held on January 22, 2008, to discuss "The Nine" by Jeffrey Toobin. The second session was held on April 28, 2008, at which Justice Antonin Scalia's book, "A Matter of Interpretation: Federal Courts and the Law" was discussed. Each session was moderated by C.J. Peters, an associate law professor at Wayne State University. Both sessions have been well attended by both lawyers and judges, and the discussions have been dynamic, providing a unique opportunity for lively dialogue outside of the courtroom. The next session is slated for the fall. Andrew S. Doctoroff is Chair of the Book Club Committee, and Judge George Caram Steeh serves as the club's Judicial Liaison.

## **News From Pro Bono Committee: Prisoner Civil Rights Seminar**

On April 10, 2008, the Court and the FBA Pro Bono Committee sponsored a Pro Bono Training Seminar at the Courthouse. The Seminar focused on civil rights cases filed by State and federal prisoners brought under 42 U.S.C. § 1983 and *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), and reviewed the requirements of the Prison Litigation Reform Act. The Seminar introduced attorneys to the various aspects of litigating a civil rights case. Presentations included a basic overview of the elements of a prisoner civil rights case, administrative issues, how to interact with and manage a prisoner as a client, discovery tools and the use of experts, motion practice, and trying the case.

For the more experienced civil rights lawyer, the Seminar included a presentation on the recent developments and trends in the case law. Presenters at the seminar represented all aspects of the practice of law. Judges Avern Cohn, Denise Page Hood and Gerald E. Rosen and Magistrate Judges Paul J. Komives and Virginia M. Morgan provided useful insight from the judicial perspective on issues such as motion practice and trying a case. Professors Dan Manville and Paul Reingold and ACLU Michigan Director Michael J. Steinberg instructed the group on the law. Practitioners Sheldon Toll, Margaret Costello and Cynthia Heenan provided practical advice on dealing with clients, discovery and trying the case.

Five staff attorneys currently work on prisoner civil rights cases at the Court. These staff attorneys screen the cases before pro bono counsel are even appointed. The staff attorneys first determine whether the Court has jurisdiction and whether venue is proper in this district. They then screen the case to determine whether the prisoner has "three strikes" under the Prison Litigation Reform Act. Finally, the staff attorneys screen out cases which are frivolous or malicious, fail to state a claim, or seek damages from someone entitled to immunity.

It is only after a case passes the initial screening that it might get assigned to pro bono counsel. It is part of the job of pro bono counsel to determine/prove whether the facts are true and/or are subject to only interpretation and not proof. Unfortunately, the number of prisoner civil rights cases exceeds the number of pro bono attorneys willing to take them. If you are interested in performing an important civic duty (in addition to gaining invaluable trial experience), please contact the chambers of Judge Denise Page Hood to obtain assignment of a civil rights case. See page 7 for photo.

## Calendar of Events

- Sept TBD State Of The Court Luncheon**  
Speaker: Hon. Bernard A. Friedman  
Atheneum Hotel, Greektown  
11:30 A.M. Reception  
12:00 P.M. Lunch
- Nov 18 Rakow Scholarship Awards**  
Historical Society Luncheon  
Speaker: Greg Stohr,  
Bloomberg News Service  
Author: A Black and White Case:  
How Affirmative Action Survived Its  
Greatest Legal Challenge”  
Atheneum Hotel, Greektown  
11:30 A.M. Reception  
12:00 P.M. Lunch
- Dec 3-4 New Lawyers Seminar**  
Theodore Levin U.S. Courthouse  
8:00 A.M. Registration
- Dec 4 Chapter Gala Holiday Reception**  
Detroit Club  
4:30 P.M.  
Hold the Date: Further Details to Follow

**Updates and further developments at  
[www.fbamich.org](http://www.fbamich.org)  
See “Hot News” and “Events & Activities”**

### Newsletter Committee:

Kimberly G. Altman,  
Co-Editor in Chief  
Career Law Clerk to  
Hon. Avern Cohn  
(313) 234-5160

Christina Farinola,  
Co-Editor in Chief  
Career Law Clerk to  
Hon. Paul J. Komives  
(313) 234-5200

Michael J. Riordan  
Assistant United States Attorney  
(313) 226-9602

Christine M. Dowhan-Bailey  
U.S. Army Corps of Engineers  
(313) 226-6822

Thomas M. Schehr  
Dykema PLLC  
(313) 568-6659

John P. Mayer  
Management Consultant  
(734) 558-5593

Dennis J. Levasseur  
Bodman LLP  
(313) 393-7596

Thomas D. Esordi  
Kitch Drutchas Wagner Valitutti &  
Sherbrook  
(313) 965-7446

### Executive Director:

Brian D. Figot  
Stephen M. Landau PC  
(248) 358-0870  
[fbamich@fbamich.org](mailto:fbamich@fbamich.org)

**Federal Bar Association  
E. D. Michigan Chapter**  
30100 Telegraph Rd., Suite 428  
Bingham Farms, MI 48025-4564

**RETURN SERVICE REQUESTED**

PRESORTED  
STANDARD  
U.S. Postage  
PAID  
Wyandotte, MI  
PERMIT #153

**WINNER  
5 YEARS**  
National FBA  
Outstanding  
Newsletter  
Award