



FBAnewsletter

Summer 2010

Federal Bar Association - Eastern District of Michigan Chapter - 52 years of service to our Federal Bench and Bar

The Rutter Group and Federal Practice 2010

On June 24th, the Rutter Group held a seminar titled "Federal Practice 2010" at the Westin Book Cadillac Hotel. A panel of Chief Judge Gerald E. Rosen, Judge David M. Lawson and prominent practitioner Thomas W. Cranmer of Miller Canfield PLC, educated and entertained the huge crowd of attorneys and law clerks who attended on recent developments in Federal pretrial practice.

The presenters used hypotheticals to demonstrate the recent developments. Among the most important recent cases that the panel discussed was *Hertz Corp. v. Friend*, 130 S.Ct. 1181 (2010). In *Hertz*, the Supreme Court defined the "principal place of business" test for corporate citizenship in diversity cases using a "nerve center" test for corporations rather than the popular "totality of the circumstances" test. The presenters took an in-depth look at the *Hertz* decision, in addition to the requirements for jurisdiction and removal in regular and class actions.

The presenters also discussed the *Erie* doctrine as applied in another recent U.S. Supreme Court decision,

Shady Grove Orthopedic Associates v. Allstate, 130 S.Ct. 1431 (2010). Additional highlights included changes to the rules governing time limits, and updates on the attorney-client privilege, expert witnesses, electronic discovery, settlement negotiations, and pre-emptory challenges.

The seminar is a must for practitioners who want a brief, in-depth and entertaining update on Federal pretrial practice.

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President's Column

Elisa Angeli Palizzi

It's been a good year. At last year's Annual Dinner, we congratulated the outgoing president, Barb McQuade, and her immediate predecessor, Oakland County Circuit Judge Mark Goldsmith, on being recommended to President Obama as U.S. Attorney and U.S. District Judge, respectively. Six months later, we watched with pride as Barb McQuade was publicly sworn in as U.S. Attorney. Now, a few days before this year's Annual Dinner, the U.S. Senate confirmed Judge Goldsmith, 89-0, as a U.S. District Judge.

Each of these past presidents led our Chapter so well in pursuing its mission of:

1. Promoting professionalism, education, civility, ethics and fidelity to the rule of law.
2. Providing service to the federal bench and bar.
3. Enhancing public understanding of the importance of the rule of law, and the roles of lawyers and the federal judiciary in promoting a just society.
4. Supporting the enhancement of federal practice and collegiality among the bar in our District, and providing opportunities for participation and leadership in our Chapter to all federal practitioners in our District.
5. Participating in the National FBA.

They now will lead the larger population of our District in the pursuit of justice.

This year, in pursuit of our mission, we reached out to those within and outside the Chapter. We launched the twice-monthly E-Blast as a supplement to our award-winning Newsletter in order to streamline communications with our membership. The E-Blast also gives us an opportunity to publicize affinity bar events to our membership. We reached out to the Detroit Metropolitan Bar Association, the

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**WINNER
7 YEARS**
National FBA
Outstanding
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President's Column (continued)

Wolverine Bar Association, the Hispanic Bar Association and a number of other bars to cohost a wonderful event titled "Celebrating Our Diverse Bar."

Our ongoing outreach to the public continued with Courthouse tours and pro bono assistance for prisoner and foreclosure cases on an ongoing basis, and for a wider variety of cases during a clinic on Law Day. In yet another outreach to the community, District Judge David Lawson and FBA President-Elect Michael Riordan are developing a unique program to educate high school teachers about the role and importance of the federal judiciary.

Our outreach to law students and new lawyers has been well publicized. What you may not know about is our outreach to lawyers who have been practicing members of the bar for more than a year but are new to federal practice. We are developing a mentoring program to assist lawyers with their first federal case, and a survival kit with practical information about federal practice and the differences between state and federal court procedure.

For experienced federal practitioners, we formed the new Complex Litigation Committee. Its first event was a huge success. Our remarkable Bankruptcy Committee program closed the year with active participation in a Shapero Bankruptcy Symposium to remember. We drew attendees from outside the usual crowd to our luncheon series, with impressive keynote speakers that included U.S. Attorney General Eric Holder and City of Detroit Mayor Dave Bing. State and federal practitioners joined together to hear our healthcare fraud, appellate practice, and legal writing seminars.

Thank you to everyone who fueled this action-packed year. In particular, thank you to Chief Judge Gerald E. Rosen for his guidance and commitment, to District Judges George Caram Steeh and David Lawson for their service on the Executive Board, and to the entire U.S. District Court bench for their exceptional support.

Thank you to Executive Director Brian Figot for giving our Chapter a level of support that only a past president, past Sixth Circuit vice-president, brilliant writer, attorney and person ever could. And to Officers Laurie Michelson, Mike Riordan, Tom McNeill, Magistrate Judge Mona Majzoub and Michael Lee, members of the Executive Board, and Committee Chairs, for unwavering judgment, energy and commitment.

As the Chapter moves ahead to its summer planning sessions, we welcome your suggestions and ideas. We have an inspired leader in President Laurie Michelson. I thank you for letting me serve as your President, and look forward to an exciting year.

Past Presidents' Luncheon

May 24th marked yet another memorable gathering of the Past Chapter Presidents. This annual collaboration between current officers and past Chapter leadership provides a special forum for review of the Chapter's activities and approval of the successor officers' proposed slate, the final step before the slate is officially voted upon by the general membership at the Annual Meeting.

This year there also was discussion of the bylaw change that combines the positions of Secretary and Treasurer, thereby shortening the leadership ladder from Program Chair to the Presidency. The Past Presidents enthusiastically endorsed the move while lauding the current strength of Chapter membership, and the Chapter's remarkable array of top-notch programs, luncheons, and outreach efforts. All concurred that the Chapter's talented, dedicated officers led from the heart by an exceptional president, Elisa Angeli Palizzi, were the force behind full-tilt success from start to finish.

On a sad note, the group acknowledged the loss of friend and colleague, Russ Paquette. Wally Riley and Judge Mester provided their reminiscences and continued the tradition of imparting wisdom and guidance to the upcoming leadership with their remarks and observations. Their valuable legacy provides the foundation for the continued excellence of a Chapter that once again returned from the National FBA Convention with a Chapter Activity Presidential Excellence Award, Outstanding Newsletter Recognition Award, and three Presidential Citation Awards for "exceptional efforts or results on a given activity, event, or project."

The District Court's "Pro Se Help Desk Project" was one of the substantive items discussed, as the Past Presidents concurred with the view that a meaningful contribution of effort may be anticipated from the Chapter membership which has historically assisted on Law Day by providing assistance to the unrepresented. More details will be forthcoming as the effort develops.

Past President Joe Dillon and current Vice President Tom McNeill served as consummate hosts at the Detroit Athletic Club where the delicious food and venerable ambience set the perfect stage for a warm, collegial meeting among old friends. Affection, mutual respect, and whole-hearted support for the continued success of the organization were the hallmarks of the afternoon.



From Court Administrator David J. Weaver

Amendments to Local Rules

On June 7, 2010, the Judges approved amendments to the following local rules, effective July 1, 2010, including LR 3.1, Civil Case Cover Sheet; LR 9.1, Special Rules of Pleading; LR 16.1, Pretrial Conferences; LR 83.11, Assignment and Reassignment of Civil Cases to Judges; and LR 83.50, Bankruptcy Cases and Proceedings. These amendments set forth similar procedures contained in a Bankruptcy Court Administrative Order and provide the Court with the ability to randomly assign subsequent cases resulting from a bankruptcy case of unusual complexity. Pursuant to Fed. R. Civ. P. 83, proposed amendments to these local rules were previously published for comment. Additional information regarding these changes can be found on the Court's website.

The Judges also approved for publication and comment proposed new LR 47.1, Juror Communication. This proposed rule addresses issues related to the use of the Internet and social media sites such as Facebook by jurors. This has become an increasingly troublesome issue in courts across the country. The Judicial Conference of the United States Courts recently issued model jury instructions to help federal judges address the problem and many state courts are pursuing similar instructions and policies.

Jury Matters

Chief Judge Gerald E. Rosen recently appointed

an ad hoc committee of judges and court staff to review the Court's jury system. The Committee is taking a comprehensive look at the Court's Juror Selection Plan, issues related to the summoning of jurors and how non-respondents and no-show jurors are handled. It will also be implementing a public outreach program to highlight the importance of jury duty and to encourage all individuals to respond when called for jury duty. The Committee's overriding goal is to ensure that the Court's policies and procedures result in a diverse, cross-representation of citizens on all jury panels. The Committee will be working with Paula Hannaford-Agor, Director of the Center for Jury Studies at the National Center for State Courts, over the next three to six months.

Public Hours

Just a reminder, the public hours of the Clerk's Office at all locations have been changed effective June 2, 2010. Public hours have been reduced by one-half hour. We will continue to open at 8:30 a.m., but will now close at 4:30 p.m. instead of 5:00 p.m. This change only affects the public hours for the Clerk's Office and will provide staff the ability to focus on important end-of-the-day case processing and financial reconciliations. The procedure for non-business hours emergency filings can be found on the Court's website at <http://www.mied.uscourts.gov/Visiting/hours.cfm>

As always, if you have questions or comments, please email me at david_weaver@mied.uscourts.gov



Douglas R. Mullkoff and Kenneth M. Mogill. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.

Gilman Award Luncheon

On April 22nd, the Chapter held its Annual Leonard R. Gilman Award Luncheon. This year's recipient of the Gilman Award was Douglas R. Mullkoff, a renowned criminal defense attorney, with the law firm of Garan Lucow Miller P.C. He was introduced by his friend and colleague Kenneth M. Mogill. In accepting the Gilman Award, Mr. Mullkoff discussed his career in the law and the role and importance of criminal defense lawyers in the judicial system.

In keeping with a year full of impressive luncheon speakers, Detroit Mayor Dave Bing

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Gilman Award *(from page 3)*

was the keynote speaker. Mayor Bing was introduced by the Deputy Mayor and former U.S Attorney Saul Green. Mayor Bing talked about his experiences as mayor over the past year, the improvements the City has made since he took office, and the improvements he still hopes to make in the City. He also talked about the role Chapter members can play in the City's future.

Finally, Chapter President Elisa Angeli Palizzi presented former Chapter President and newly installed U.S. Attorney Barbara McQuade with a congratulatory gift from the Chapter.

2010 Summer Associate/ Law Clerk Program by Carrie Waggoner*

On July 1st, the Chapter hosted its annual Summer Associate & Law Clerk Luncheon program.

Once again, the program was very well attended by Summer Associates from area law firms, law clerks, and judicial interns. Participants were given an opportunity to enjoy lunch and to network before hearing from Judges Avern Cohn and George Caram Steeh.

Judge Cohn discussed the importance of effective trial practice and brief writing. He advised new lawyers to consider, in the context of civil practice, the time, expense and practicalities of each lawsuit. He remarked on the importance of knowing each judge's values, temperament, and local court rules. One must know what they want from the Judge in a particular case and why they want it before ever setting foot in the courtroom or in chambers.

He also emphasized the importance of effective brief writing. Practitioners must know the local rules and follow them, make the brief brief, learn the art of an informative cover page, beware of over-citation, and pay attention to prose and style in their legal writing.

Judge Steeh discussed the importance of civility in legal practice. While many thousands of new law-

yers graduate from law school each year around the country, legal practice itself often occurs within a small circle where a lawyer's reputation is everything. He noted that a lawyer's reputation is one of the most important things he or she has, and judges and adversaries alike are always happy to work with a lawyer known for his or her civility and professionalism. He highlighted the conflicting duties of a lawyer to his or her client and to the court. While civility is not always the easy path for a lawyer, as Judge Steeh noted, it is one that pays off in the long run.

Newly Installed Chapter President Laurie Michelson closed the luncheon program with some remarks on the activities of and opportunities for involvement in the Chapter. Student memberships in the FBA are free, and more information is available at www.fbamich.org

**Carrie Waggoner is a Judicial Intern for Judge Cohn and a student at Michigan State University College of Law.*



▲ Judges Avern Cohn and George Caram Steeh, Answering questions at the July 1 Event.



◀ Court interns Melissa Clawson (left) and Kelsey Vidaillet listened along with others to Judge Avern Cohn at the July 1 Event. Both photos by Taryn Hartman, courtesy of Detroit Legal News Publishing LLC.



Laurie Michelson (Chapter President), Brian Figot (Executive Director), Judge Avern Cohn, Samantha Smith (Event Co-Chair), Judge George Caram Steeh, Chanille Carswell (Event Co-Chair) and Phyllis Golden Morey (Event Co-Chair). Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.



Tidbits, Trivia, and, This Time, Mostly News

The 31st Annual Dinner

by Brian D. Figot

There have been some Annual Dinners that were better attended and many that were not. Some Annual Dinners were on the site where this one was held, then called the Sheraton-Cadillac; many more after that venue had been closed - some when it had been boarded up for decades. However, none has been more memorable than the one held on June 24th in the Woodward Room of the renovated Book Cadillac Hotel.

The Chapter's 31st Annual Dinner Honoring the Judicial Officers of the Eastern District and for the benefit of the Federal Bar Foundation was celebrated by 225 people, including federal appellate, district and magistrate judges; State court judges (including a past Chapter president confirmed the same week to be a district judge), private practitioners, government attorneys, law school deans, the President of the State Bar of Michigan, judicial law clerks, and their guests.

As befits the jam-packed twelve months of activities undertaken since the Chapter's last Annual Dinner, during the presidency of Elisa Angeli Palizzi, it was difficult to fit all the evening's festivities in the Dinner Program, even with multiple inserts.

After a cocktail reception and introduction of the judicial officers and dignitaries, the Chapter conducted its official business (pursuant to notice and with a quorum present), passing on a voice vote the proposed bylaw amendment (combining the offices of Secretary and Treasurer) and electing the slate nominated by the Past Presidents. The exemplary service of Executive Board members Judge George Caram Steeh, Miriam Siefer, Robert Vercruysse and Kathleen Moro Nesi was acknowledged by outgoing President Palizzi, whose own accomplishments were then recognized as the first order of business by new President Laurie Michelson.

The two-part tradition that has arisen over the past decade has been that the outgoing president is first given a plaque that bears the words that summarize his or her year in office. For Elisa, the plaque reads:

Kindness, Commitment, Enthusiasm, Dedication

Then, following lighthearted tradition, the Executive Director presented the outgoing President with an armful of used books from John K. King (that five-story blue building off the Lodge Freeway, just before the Joe Louis Arena). The books are chosen to reflect not just the officer's undertakings as President but also the proclivities and interests that the officer has suppressed while awaiting the appellation "Immediate Past President." Among the titles bestowed this year were: biographical works on Supreme Court Justices Hugo Black and Sandra Day O'Connor; and the dual biography of E.B. White and Katharine Sargeant (nee Angell) White, who shared a love for each other and a dedication to the common profession that brought them together.

And, just as the Whites' profession was accompanied by three children's books, Mike and Elisa Angeli Palizzi have three children along with their legal careers. Therefore, the books also included three books dedicated to answering children's "imponderable" questions (like *How Do Astronauts Scratch an Itch?* and *Why Do Clocks Run Clockwise?*). Since two of the Palizzi children are twins (and the third a son named Daniel), the bounty included a 1915 first edition of *The Bobbsey Twins at Meadow Brook* (obtained for the princely sum of \$3). Finally, for the children (and the parents), there was the quintessential book about bad days, *Alexander and the Terrible, Horrible, No Good, Very Bad Day* by Judith Viorst, and for Elisa there was *Ordeal of the Presidency* by David Cushman Coyle.

There were then three more presentations. The first two were in special recognition of the retirements of Magistrate Judge Donald A. Scheer and Circuit Judge James L. Ryan, two ex-Marines with calm demeanors and restrained temperaments whose legal careers have particularly appropriate meaning to the themes of the Annual Dinner as they have both contributed greatly to the practice of law through their collegiality with their peers and their civility to those who have practiced before them.

The plaque presented to Judge Scheer by his longtime friend Michael Leibson provides:

With Gratitude and Appreciation
Presented To
Donald A. Scheer

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Tidbits and Trivia *(from page 5)*

United States Magistrate Judge
A Valuable Contributor to the Chapter
Your Candid and Wise Counsel, Dedication
to Public Service and Commitment to
Excellence Have Met the Highest Standard.
Thank You For Your Outstanding Service

The plaque presented to Judge Ryan by his first law clerk on the Michigan Supreme Court, now U.S. District Judge David M. Lawson, provides:

Honoring a Distinguished Career
Dedicated to the Service of
Country, State and the Rule of Law
Captain, Judge Advocate General Corps
United States Court of Appeals for the Sixth Circuit
Michigan Supreme Court
Wayne County Circuit Court, Justice of the Peace
Respected Educator
Civility, Collegial Decision Making
Commitment to Excellence

The formal pre-dinner program then concluded with the presentation of the third annual Julian Abele Cook, Jr. – Bernard A. Friedman FBA Civility Award. The Annual Dinner has always provided a testament to the respect and cooperation between the Bench and Bar and to the camaraderie of the Bar in a stressful and contentious profession. The occasion, therefore, has provided a particularly appropriate setting for this award, for which the history and criteria may be found on the Chapter's website at www.fbamich.org/index.cfm?location=178&ParentID=1

There could be no more appropriate recipient than Carl H. von Ende, whose career of more than 40 years has been a model for which this Award could have been named and who has been the embodiment of its values. As set forth in the nomination submitted by one of his most notable mentees, Tom Cranmer (the full text of which is online at <https://www.fbamich.org/index.cfm?location=178&ParentID=1>

“Aside from his many professional accomplishments and contributions to the legal community, Mr. von Ende is deserving of the Civility Award because he is the most courteous, ethical, and truth-minded attorney that I know. I am nominating Mr. von Ende because, among other qualities:

- He demonstrates the highest levels of legal competency and professionalism in his daily practice;
- His conduct always comports with the highest standards of professional integrity and personal courtesy as set forth in the [Court's] Civility Principles;
- He 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
- He is at all times guided by a fundamental sense of dignity, decency, candor and fair play.”

Rounding out the evening was a short performance by the men of the musical parody troupe, A (Habeas) Chorus Line. Some say an FBA tradition; others say a bad habit; clearly, they are (in the name of their revue) Repeat Offenders.

Annual dinner chairs David Grand and Carrie Pastor Cardinale are specially thanked for making the 31st Annual Dinner a great success -- and a very special callout goes to Sandy Bera -- Miller Canfield's Coordinator, Strategic Business Events, without whose organizational skills, technical savvy and downright hard work the Dinner could not have been accomplished.

Annual Dinner Sponsors

The Chapter thanks its sponsor firms for their support. 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 PC
Butzel Long
Charles Taunt & Associates, PLLC
Clark Hill PLC
Cummings, McClorey, Davis & Acho PLC
Dickinson Wright
Dykema Gossett PLLC
Honigman Miller Schwartz and Cohn LLP
Howard and Howard Attorneys PLLC
Law Offices of Lee & Correll

Miller Canfield (three tables)
 Pastor & Associates PC
 Strobl & Sharp PC
 Sullivan, Ward, Asher & Patton PC
 The Kitch Firm
 Thomas M. Cooley Law School

Law Day 2010

On Monday, May 3, 2010, the doors of the Courthouse were open to the public to celebrate Law Day. The event, which is jointly sponsored by the Chapter and the U.S. District Court, has become a popular tradition. Law Day 2010 attracted over 300 people, who enjoyed free hot dogs, chips, cookies and candy.

The theme for this year was “Law in the 21st Century: Enduring Traditions, Emerging Challenges.” As in past years, the agenda included Courthouse tours, “Ask the Lawyer” free legal advice, bomb-sniffing dogs, and interactive displays from the following agencies: ATF, Consumer Bankruptcy Association, Courthouse Museum, Customs and Border Patrol, DEA, FBI, Federal Defender’s Office, ICE, IRS, NLRB Region 7, Ralph M. Freeman Memorial Library, Secret Service, U.S. Attorneys Office, U.S. Bankruptcy Court, U.S. District Court, the Marshals Service, Pretrial Services, Probation, and the Wayne County Sheriff’s Department.

The highlight of the event was the dedication of the newly installed Presidents Wall. The Presidents Wall display was jointly created by Chief Judge Gerald E. Rosen and Judge Damon J. Keith. A portrait of each president now hangs in the Courthouse in a beautiful photographic display.

Special thanks to AUSA Susan Gillooly and Department of Veterans Affairs attorney Dona Tracey who co-chaired the event. Thanks also to the many hardworking volunteers who made the day a success.



▲ Law Day Co-Chairs Susan E. Gillooly and Dona Tracey.



◀ At the Dedication of the Presidents Wall on May 3: Chief Judge Rosen, Circuit Judge Keith and J. David Hood (Acting Regional Commissioner, GSA Region 5). Both photos by John Meiu, courtesy of Detroit Legal News Publishing LLC.



At the Dedication of the Presidents Wall on May 3: Chief Judge Gerald E. Rosen and Circuit Judge Damon J. Keith, with Committee Members: District Judge David M. Lawson, Michael Leibson, Brian Figot, Cathy Beck, Michael Lavoie, Judy Christie, Matthew Schneider. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.



Laurie Michelson, Magistrate Judge Mona K. Majzoub and Elisa Angeli Palizzi.



Administrative Law Judge Yasmin Elias with Michael K. Lee.



Elizabeth Stafford and Theresa Serra.



Susan Gillooly, Judge Robert H. Cleland and Matthew Schneider.

Susie von Ende and Cook-Friedman FBA Civility Award Recipient Carl von Ende.

Kimberly Berger, Anthony Agosta and Cynthia Filipovich.



Christina Farinola, Neil Carter and Thomas Es

Scenes from the Annual Dinner and Gilman Award Luncheon

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

Michelle Harrison and Doreen Hoffman with Susan Gillooly.



Nancy McGunn, Miriam Siefer and James Gerometta.



Magistrate Judge Mona K. Majzoub and Judge Denise Page Hood.



Tyronda Curry, Jennifer Newby, Krystal Johnson and Judge Victoria A. Roberts.

More Scenes from Gilman Award Luncheon and Other Special Events

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



At the Complex Litigation Seminar held on April 19: Michael Palizzi (co-chair); Chief Judge Gerald E. Rosen (speaker); Brian M. Akkashian (co-chair); Magistrate Judge Michael J. Hluchaniuk (speaker); Jeffrey A. Sadowski (co-chair).



◀ *At the Walter Shapero Symposium held on May 12: Bankruptcy Judge Walter Shapero and Peter S. Goodman (speaker).*



Christine Hoppe with Laurie Michelson at the Gilman Award Luncheon.



▲ *At the Gilman Award Luncheon held on April 22: City of Detroit Deputy Mayor Saul Green, Elisa Angeli Palizzi (Chapter President) and City of Detroit Mayor Dave Bing.*

◀ *At the Social Media Program held on April 15: Patrick Seyferth (Moderator); John Birmingham, Judge Robert H. Cleland and J. Stott Matthews (speakers).*

► *At the Gilman Award Luncheon held on April 22, Elisa Angeli Palizzi (Chapter President), Barb McQuade, United States Attorney, and Michael K. Lee (Program Chair and Newly Installed Treasurer)*



Judge Cook's Portrait Presentation

by Zoraida Fernandez and
Brandy Y. Robinson*

In the afternoon of this year's summer solstice (June 21, 2010), the Court sat in special session for the presentation of the portrait of Judge Julian Abele Cook, Jr. Judge Cook is a senior judge who served as Chief Judge of the Court from 1989 to 1996.

Chief Judge Gerald E. Rosen presided over the special session, which was attended by judges, current and former law clerks, family, friends, and members of the Detroit legal community. The ceremony featured speakers, a digital slide show of photographs depicting Judge Cook's family and legal career over the years, as well as words from Judge Cook.

Peter Cook, one of Judge Cook's three children and a distinguished architect in Washington D.C., was the master of ceremonies. Before introducing the speakers, he spoke of Judge Cook as a man deserving of the title of "Honorable." He talked about a chance encounter on an airplane with former President Jimmy Carter who appointed Judge Cook to the bench in 1978. When asked by President Carter how his father had done as a judge, Cook responded that "the world is a better place to have had him as a federal judge."

Current Judge Cook law clerks Brandy Y. Robinson and Zoraida Fernandez presented the Top 10 Confessions of a Judge Cook law clerk, inspired by late-night TV host David Letterman's notorious top ten lists. The confessions revealed that Judge Cook's law clerks become part of his family. Other confes-

sions included Judge Cook's love for Duke University basketball and a pastime of visiting estate sales with his wife Carol.

Professor Sarah Welling of the University of Kentucky College of Law, who is currently the reporter for the Sixth Circuit Pattern Criminal Jury Instructions Committee which Judge Cook has chaired since its inception in 1986, talked about the Sixth Circuit being one of only a few federal circuits that have developed their own pattern jury instructions. She credited Judge Cook for this accomplishment, lauding him as "the best mentor ever."

Judge Cook's oldest son, Julian Abele Cook, III, who is a law professor at the University of Georgia Law School, spoke of Judge Cook's love of college basketball, jazz, and comedies. He recalled an episode of "The Jeffersons" where George Jefferson purchased a new Bible to replace an old one because of purported updates. Cook suggested revising a verse which speaks of John the Baptist to read, "There has been no greater man born to a woman than my father."

James Nabrit, III, Judge Cook's longtime friend and also an accomplished attorney, talked about his friendship with Judge Cook over the years. Nabrit was present thirty-two years ago when Judge Cook was sworn in as a federal judge of the Eastern District

of Michigan and offered a vintage photograph of the 1978 event.

Judge Cook's daughter and youngest child, Susan Cook, presented a slide show collection of photographs and articles showing Judge Cook from his

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Judge Cook at Portrait Ceremony.



Judge Cook and Staff. Photo by John Minnis, courtesy of Detroit Legal News Publishing LLC.

Judge Cook (from page 11)

earliest years as a young child in Washington D.C. to his years on the federal bench. The slide show also included pictures of Judge Cook's family as well as his law clerks and staff.

When Judge Cook made his remarks, he expressed his gratitude to his family and to the law clerks and staff members who have helped him "immeasurably" over the years. In an emotive gesture, he thanked his wife of more than fifty years, Carol Cook, "the love of [his] life."

Chief Judge Rosen concluded the ceremony by wishing Judge Cook a happy 80th birthday (his birthday was the day after the unveiling) and accepting the portrait on behalf of Judge Cook's colleagues and the Court.

The portrait, which was unveiled by Judge Cook's grandson Christopher and his father Peter, is an oil painting by artist Alex Zapata of La Paz, Bolivia.

**Zoraida Fernandez and Brandy Y. Robinson are Judge Cook's current law clerks. Both are graduates of the University of Michigan Law School.*

Supreme Court Review by M Bryan Schneider*

The Supreme Court's 2008 Term resulted in a number of decisions of importance for federal practitioners. Although not a comprehensive discussion of the Court's docket or its more noteworthy decisions, this article provides a quick snapshot of some of the decisions sure to impact both criminal and civil practitioners.

In a number of cases, the Court construed the scope or assessed the validity of federal criminal statutes. In *Carr v. United States*, the Court held that the Sex Offender Registration and Notification Act, which requires a sex offender who travels in interstate commerce to register in his new state, does not apply to offenders whose travel preceded the effective date of the act.

In *Skilling v. United States* and *Black v. United States*, the Court construed the "honest services" fraud statute, which prohibits fraud depriving a victim of his intangible right to the defendant's honest service, to reach only frauds involving bribery and kickbacks.

As so construed, the Court found that the statute was not unconstitutionally vague.

In another vagueness decision, *Holder v. Humanitarian Law Project*, the Court held that the federal statute prohibiting a person from providing material support to a foreign terrorist organization is not unconstitutionally vague. And in *United States v. Stevens*, the court held that the federal statute criminalizing the commercial creation and distribution of depictions of animal cruelty is substantially overbroad and therefore facially unconstitutional under the First Amendment.

The Court also considered a number of sentencing issues during the term. In *Graham v. Florida*, the Court held that the Cruel and Unusual Punishment Clause prohibits the imposition of life imprisonment without parole on a juvenile convicted of a non-homicide offense. In *United States v. O'Brien*, the Court held that a firearm's status as a "machinegun" is an element of the offense that must be proved to the jury for purposes of the enhanced mandatory minimum under 18 U.S.C. §924(c). The Court also upheld the Bureau of Prisons' method of calculating good-time credits (*Barber v. Thomas*) and a sentencing court's power to order restitution even where the 90-day time limit in 18 U.S.C. §3664 has been exceeded (*Dolan v. United States*).

With respect to habeas corpus procedures, the Court decided three cases. In *Beard v. Kindler*, the Court held that a state procedural rule is not automatically inadequate to establish a state procedural default merely because the rule is discretionary rather than mandatory. In *Holland v. Florida*, the Court held that the one-year statute of limitations applicable to habeas corpus petitions is subject to equitable tolling, and that equitable tolling may be available for extraordinary attorney error. And in *Magwood v. Patterson*, the Court held that, where a petitioner obtains relief and a new sentencing judgment in state court based on that relief, a subsequent petition challenging the amended judgment, even on grounds that could have been raised with respect to the first judgment, is not a prohibited "second or successive" petition.

In other criminal matters, the Court held that:

- A suspect's silence during interrogation does not constitute an invocation of the right to remain silent under *Miranda* (*Berghuis v. Thompkins*).
- Counsel's failure to inform a defendant whether his plea carries a risk of deportation constitutes

deficient performance under the Sixth Amendment (*Padilla v. Kentucky*).

- The time spent preparing a pretrial motion is not automatically excludable under the Speedy Trial Act (*Bloate v. United States*).

- For purposes of the Double Jeopardy Clause, a trial judge has broad discretion in determining whether “manifest necessity” requires a mistrial based on jury deadlock (*Renico v. Lett*).

On the civil side of its docket, the Court considered several cases involving questions of civil procedure. In *Krupski v. Costa Crociere*, the Court held whether amended claims against a new party may “relate back” under Rule 15 depends on whether the party to be added knew or should have known that it would have been originally named as a party but for a mistake as to its identity, not on the amending party’s knowledge or timeliness. In *Shady Grove Orthopedic Associates v. Allstate Insurance*, the Court held that a New York statute prohibiting a class action to recover certain damages conflicts with Rule 23, and that under the *Erie* doctrine Rule 23 controls. And in *Hertz Corp. v. Friend*, the Court held that for purposes of diversity jurisdiction a corporation’s “principal place of business” is the corporation’s “nerve center” where the high-level officers direct, control, and coordinate the corporation’s activities.

In two cases interpreting the Federal Arbitration Act, the Court held the Act does not permit the imposition of class arbitration on parties who did not agree to class authorization (*Stolt-Neilsen v. Animalfeeds International*), and that where the parties agree that the arbitrator will determine the enforceability of the agreement to arbitrate, a district court may consider a challenge to the enforceability of that particular agreement to arbitrate, but not a challenge to the enforceability of the agreement as a whole (*Rent-A-Center v. Jackson*).

The Court also considered three attorney fee issues. In *Astrue v. Ratliff*, the Court held that attorney fees awarded under the Equal Access to Justice Act are payable to the litigant, rather than the attorney, and thus are subject to offset to satisfy the litigant’s pre-existing debt to the government. In *Hardt v. Reliance Standard Life Insurance*, the Court held that a party need not be a “prevailing party” to receive a fee award under ERISA. And in *Perdue v. Kenny A.*, the Court held that the lodestar calculation of an appropriate fee may be enhanced based on an attorney’s superior per-

formance, but only in extraordinary circumstances.

The Court also considered two securities cases. In *Merck & Co. v. Reynolds*, the Court held that the statute of limitations for securities fraud actions begins to run when the plaintiff discovers, or a reasonably diligent plaintiff should have discovered, the facts constituting the violation, including the facts necessary to establish scienter. And in *Morrison v. National Australia Bank*, the Court held that neither §10(b) of the Securities and Exchange Act nor SEC Rule 10b-5 provides a cause of action for foreign plaintiffs suing American defendants for conduct in connection with securities traded on foreign exchanges.

In three bankruptcy cases, the Court held that:

- Attorneys who provide bankruptcy assistance are “debt relief agencies” for purposes of the Code (*Milavetz, Gallop & Milavetz v. United States*).

- In calculating a debtor’s projected disposable income for purposes of a Chapter 13 plan, the bankruptcy court may take into consideration changes in the debtor’s income or expenses that are known or virtually certain at the time of confirmation (*Hamilton v. Lanning*).

- The trustee need not object to retain the state’s interest in property over the claimed exemption where the debtor lists the exemption and the fair market value as the same amount (*Schwab v. Reilly*).

In other civil cases, the Court held:

- A police officer had no reasonable expectation of privacy under the Fourth Amendment in city-provided pagers (*City of Ontario v. Quon*).

- A Title VII plaintiff who does not timely file a charge challenging the adoption of an employment practice may assert a disparate impact claim in a timely charge challenging the employer’s later application of that practice (*Lewis v. Chicago*).

- The bona fide error defense under the Federal Debt Collection Practices Act does not apply to a debt collector’s mistaken interpretation of the legal requirements of the Act (*Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich*).

- A district court has subject matter jurisdiction over a properly instituted class action for copyright infringement, even if some of the non-named class members have not registered their copyrights (*Reed Elsevier v. Muchnick*).

- A discovery order requiring disclosure of matters alleged to be protected by the attorney-client

(continued on page 14)

Supreme Court Review *(from page 13)*

ent privilege is not immediately appealable under the collateral order doctrine (*Mohawk Industries v. Carpenter*).

A fuller discussion of the Court's decisions from this Term may be found at www.scotuswiki.com.

**M Bryan Schneider is a career law clerk to U.S. Magistrate Judge Paul J. Komives.*

Orientation Seminar for Court Interns

Each spring, the Courthouse is filled with law students, fresh from their first year of law school and eager to begin their internships with the various federal judicial officers. On June 3, 2010, the Chapter's Law Clerk Roundtable Committee, chaired by President-Elect Laurie Michelson, hosted an orientation seminar to assist them in their endeavors.

The interns received advice on how to get the most of their internships from AUSA Elizabeth Stafford, former law clerk to Judge Victoria Roberts; Terri Serra, Career Law Clerk to Judge Nancy Edmunds; Linda Hylenski, Career Law Clerk to Chief Judge Gerald E. Rosen; Ann Malayang Daley, Career Law Clerk to Judge Denise Page Hood; Krystal Johnson, Term Law Clerk to Judge Victoria Roberts; and Bryan Schneider, Career Law Clerk to Magistrate Judge Paul J. Komives.

The panel highlighted some of the unique opportunities presented to these law students from across the country.

- Take the time to learn professional skills by witnessing the variety of trials and motion hearings that take place in the Courthouse;
- Take advantage of the variety of events scheduled by Judge Edmunds' Judicial Assistant, Karen Hillebrand, including lunches/seminars at the U.S. Attorney's Office, trips to Wayne County Criminal Court, and presentations by specialized agencies like the DEA and departments like Pretrial and Probation;
- Take the time to get to know the Judges and their staffs;
- Learn to be a better, more analytical writer; and, most importantly,

- Be cognizant of the fact that your reputation as a lawyer is your most valuable commodity and civility is a large part of that reputation.

Sound advice for anyone.

Complex Commercial Litigation Seminar

On April 19, 2010, the Chapter's Complex Commercial Litigation Committee hosted "Litigating a Complex Case -- A Discussion with the Bench." The seminar featured two panel discussions centered on topics unique to trying a complex case in Federal Court. During the first panel discussion, Chief Judge Gerald E. Rosen and Magistrate Judge Michael J. Hluchaniuk offered their views on issues relating to pretrial proceedings in a complex case. They highlighted best practices for briefing and arguing motions, the advisability of using technology during motion practice, and the importance of simplifying issues and educating the judge or magistrate judge about your case during pretrial hearings and conferences.

The second panel discussion featured Judges Avern Cohn and Robert H. Cleland, who discussed issues specific to trying a complex case to a jury. With the aid of Jerry Galante of Plunkett Cooney, a former Board member for the International Association of Defense Counsel, Judges Cohn and Cleland discussed topics from the IADC's National Jury Trial Innovations Project. These included trial time limits, the efficacy of pre-instructing the jury, jury tutorials, and the difficulties inherent in trying a complex case to a jury.

The seminar was very well attended, and the discussion was interesting, informative and entertaining. For more information about the Chapter's Complex Commercial Litigation Committee or to get involved, please contact one of the co-chairs, Brian Akkashian, Michael Palizzi, or Jeffrey Sadowski.

Bankruptcy Symposium Held

On May 12, 2010, the Chapter's Bankruptcy Committee hosted the Walter Shapero Bankruptcy Symposium with guest speaker Peter Goodman, national economic reporter for the *New York Times*. Mr. Goodman has written about the deepening insolvency

crisis in the United States in his book, *Past Due: The End of Easy Money and the Renewal of the American Economy*. He entertained and enlightened the audience with stories of real people falling into insolvency, some of the causes for the current economic crisis and possible solutions. His talk was thought-provoking and well-received by the audience composed of bankruptcy and insolvency professionals.

The E-Blast is here!

The E-Blast is designed to consolidate our communications with you while continuing to provide members with timely information on upcoming events. The E-Blast will be sent out bi-monthly, usually on the 1st and 15th of each month.

Submitting events to the E-Blast:

Email event information to Linda Hylenski at linda_hylenski@mied.uscourts.gov. Please also email your event information to our Executive Director, at fbamich@fbamich.org, so he can include your event on the website.

Event information should be sent to Linda and the Executive Director at least one week before the issue date.

Calendar of Events

Sept 15 State of the Court Luncheon

Speaker:
Chief Judge Gerald E. Rosen
Westin Book Cadillac Detroit
Venetian Ballroom
11:30 A.M. Reception
12:00 P.M. Lunch

Oct 22 Save The Date

In conjunction with the District Court, the Chapter is planning a day-long seminar designed for high school curriculum coordinators, social studies and government teachers on the role of an independent judiciary. A case study of the Vincent Chin case will be part of the program. Details will follow.

Nov 18 Rakow Scholarship Awards/ Historical Society Luncheon

Details will follow.

Dec 7-8 New Lawyers Seminar

Theodore Levin U.S. Courthouse
8:00 A.M. Registration

Dec 8 Save The Date Chapter Gala Holiday Reception

4:30 P.M.
Details will follow.

Updates and further developments
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Sandra Humenny, General Manager
2301 West Big Beaver Road, STE 925
Troy, MI 48064
Telephone: 248 - 205-7010 x 80201
Fax: 248-205-7040
shumenny@esquiresolutions.com
www.esquiresolutions.com

Newsletter Committee:

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

Christina L. 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

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

Thomas D. Esordi
The Kitch Firm
(313) 965-7446

Michael D. Socha
Dickinson Wright
(313) 223-3162

Andrew J. Lievense
Honigman Miller Schwartz & Cohn
(313) 465-7572

Federal Bar Association
E. D. Michigan Chapter
30100 Telegraph Rd., Suite 428
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