



FBAnewsletter

Summer 2011

Federal Bar Association - Eastern District of Michigan Chapter - 53 years of service to our Federal Bench and Bar

Annual Dinner at Ford Field - Woodard Honored with Civility Award

On June 9th, the Annual Dinner was held in the banquet facilities at Ford Field for the first time. The venue was an exciting location for the Chapter to once again honor the judicial officers and raise funds to benefit the Federal Bar Foundation.

Out-going President and Magistrate Judge Laurie Michelson presided over the Chapter's official business for the evening. The Chapter elected the proposed slate of officers and board members. Magistrate Judge Michelson then handed off leadership of the Chapter to Michael Riordan. Magistrate Judge Michelson was thanked for her leadership of the Chapter and accomplishments over the past year, and she received a plaque in honor of her service. As has become tradition, Executive Director Brian Figot also presented Magistrate Judge Michelson with numerous used books for her to read during her free time now that she is no longer the Chapter president.

The Chapter then honored two members of the bench who recently retired. First, the Chapter recognized

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the service to the Chapter and bench of Magistrate Judge Virginia Morgan. Sam Damren, a partner at Dykema Gossett, and long-time friend of Magistrate Judge Morgan, highlighted her impressive and varied legal career before presenting her with a plaque honoring her accomplishments.

The Chapter then recognized Judge Anna Diggs Taylor for her

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President's Column

Laurie Michelson

"Media and the Law" Lessons Learned From The Bench-Bar Conference

Maybe it's fortuitous, or coincidence, or we really did select a timely topic. But there have been many recent events involving the precise issues discussed at our "Media and the Law" Bench-Bar Conference in April.

The first panel provided insights on navigating a high profile trial. So much of what they talked about is being played out in the Dominique Strauss-Kahn case – the former IMF chair charged with sexually assaulting a hotel maid. We learned at the Conference that the authorities did not allow Martha Stewart to turn herself in because they probably wanted to subject her to the "perp walk" -- the "walk of shame" into the courthouse where the handcuffed defendant looks anything but innocent as the media scrambles to take his/her picture. The Strauss-Kahn perp walk was particularly controversial, with increased agitation in Strauss-Kahn's native France because French law bars the media from showing suspects in handcuffs before they are convicted.

Moreover, because the Strauss-Kahn case is in state court, cameras are allowed in the courtroom. It is difficult to deny the additional emotional impact from actually seeing one of the world's most powerful men looking haggard and unkempt, sitting amongst some of New York's petty criminals while the prosecutor gives the lurid details of the underlying offense.

But as our panelists discussed, criminal proceedings have become a form of entertainment. They explained that the media focuses on scandals and the negatives because that is what the public prefers to read and watch. So whether you favor Anderson Cooper,

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President's Column (continued)

Bill O'Reilly, Jon Stewart or Greta Van Susteren, there was no shortage of "legal analysts" and prosecutors and defense lawyers pontificating about this case. And very little of it bore any relationship to the fundamental concept underlying our criminal justice system: innocent until proven guilty. The city of New York was merciless. Its tabloids ran photographs of Strauss-Kahn with headlines like: New York Post: "Sleazy Money" and New York Daily News: "Le Perv." Respected *New York Times* columnist Maureen Dowd wrote an op-ed piece shortly after Straus-Kahn's arrest that began as follows: "Oh, she wanted it. She wanted it bad. That's what every hard-working, God-fearing, young widow who breaks her back doing menial labor at a Times Square hotel to support her teenage daughter, justify her immigration status and take advantage of the opportunities in America wants — a crazed, rutting, wrinkly old satyr charging naked out of a bathroom, lunging at her and dragging her around the room, caveman-style." And even Mayor Bloomberg was quoted as saying, "If you don't want to do the perp walk, don't do the crime." So now think about the direct application of the question Bob Morvillo posed in the video shown during the Conference: "Is there anyone in this room who thinks that [Dominique Strauss-Kahn] is innocent?"

During the Conference, the panelists also talked about the impact of social media. So it was not surprising when Channel 7 did a recent news story about a former Macomb County Commissioner, Carey Torrice — who TMZ previously declared one of America's "hottest politicians" — and her unfortunate passion for social media. Back in 2009, Torrice and her husband were convicted of conspiring to burn down their Chesterfield Township home. They are apparently on the hook for thousands of dollars that they have not paid to the insurance company. So the insurance company went on the offensive. According to the news report, a lawyer for the insurance company provided the court with documentation from Facebook and Twitter posts that suggested the Torrices are living a very comfortable lifestyle. Ms. Torrice apparently posted and tweeted about her lavish shopping sprees and purchases of luxury items. This contributed to the judge's decision to appoint a receiver.

Our luncheon speaker, Chris Hansen, talked about the success of "To Catch a Predator." Like the high-profile criminal trial, hidden camera investigations and "gotcha" journalism are good entertainment and popular with the public. And sometimes they yield positive results — like the convictions of many of the men Hansen confronted. Similarly, is there much doubt that after the news media secretly videotapes

a judge over the course of several weeks, collecting footage of the judge leaving home late, having long, leisurely lunches and shopping instead of being at the courthouse — that for at least a few months after that news story airs, the judge will be on time for oral argument and in her chambers for full days regardless of whether the news report accurately portrays the judge's work ethic or productivity?

Another recent event that captivated us was the killing of Osama Bin Laden by an elite team of Navy Seals. There was some discussion about whether Bin Laden should have been captured as opposed to killed since he may have been unarmed at the time of the attack. That would have been the ultimate in high-profile cases. And what would have been the reaction to any lawyer who dared to represent Bin Laden? Interestingly, Ike Sorkin, one of the Conference panelists, explained that he received much more "hate mail" over his representation of Bernie Madoff than he ever did representing Syrian arms dealer Monzer Al-Kassar. We will never know if Bin Laden's counsel would have received emails like the following sent to Sorkin: "Dear lowlife: you really are the lowest form of humanity representing this criminal . . . I hope your career is ruined. I'm sure you sleep well at night while others are in so much pain;" and "for defending the Madoff case you should be MURDERED or suffer to die in humiliation or possibly (but it would not be soon enough) you should suffer drastically from a serious illness for a number of years and then die."

The Bench-Bar Conference was just one of many events this year that gave us much to ponder. Think back to the State of the Court Lunch in September, when Chief Judge Rosen talked about the decaying nature of our Federal Courthouse. And the Criminal Law Committee's panel discussion on the death penalty where we learned how those cases get brought by the U.S. Attorney's Office and the specialization required to adequately defend such a case. And Dean Erwin Chemerinsky providing a flavor of what the Roberts' Court might look like for the next 30 years. And the "Celebrating our Diversity" event, focusing attention upon the fact that the legal profession is second to last in minority representation. And Governor Snyder asking us to all work together to help redefine our great state of Michigan.

Thank you to the Court, the FBA Officers, Board, Committee Chairs, Executive Director and members for making all of these events possible and for another wonderful year.

Annual Dinner *(from page 1)*

lifetime of public service. While Judge Taylor was unable to attend the event, AUSA Michael C. Leibson spoke, noting the fitting words on the plaque given to her by the Chapter, which included “a true pioneer in public and private practice.”

Next, the Chapter awarded the Julian Abele Cook, Jr.- Bernard A Friedman FBA Civility Award. This year’s recipient was AUSA William Woodard. Geneva Halliday, a past president of the Chapter and former colleague of Woodard at the U.S. Attorney’s office, introduced him and presented the award. Woodard has worked in the Defensive Litigation Unit of the U.S. Attorney’s office since 1989 as a trial attorney and supervisor. He specializes in defending federal law enforcement officers. Previously, Woodard worked at the City of Detroit Law Department and the Federal Defender Office in Detroit.

As an example of the type of lawyer Woodard is, one of his adversaries in a past case had this to say to say about him: “Bill Woodard crushed me in our case together, but he was very courteous when he was doing it. I can’t think of a more deserving honoree.” The Chapter congratulates Bill Woodard on his accomplishments.

The evening concluded with entertainment provided by *A (Habeas) Chorus Line*. Special thanks go to Annual Dinner co-chairs David Grand, Caridad Pastor Cardinale, and George Donnini for making the event a great success.

Laurie Michelson Sworn In as U.S. Magistrate Judge

On February 22, 2011, Chapter President Laurie Michelson was sworn in as a U.S. Magistrate Judge for the Eastern District of Michigan. Her Investiture was held on March 31, 2011, in the Special Proceedings Courtroom of the Courthouse, with Chief Judge Gerald E. Rosen presiding and serving as master of ceremonies.

Judge Michelson’s Investiture was a family affair, as she was welcomed to the Court family with the assistance

of her parents, siblings, nephews and nieces, and joined by her professional and FBA families.

Chief Judge Rosen introduced the judges in attendance and then shared some of the comments made to investigators during Judge Michelson’s background investigation, confiding to the audience that Judge Michelson was revealed to be incredibly hard working, meticulous, a very generous person, unsparing in her thoughtfulness of others, and had excellent skills as an attorney.

The formal proceedings then opened with her niece,

Rebecca Michelson, playing the National Anthem on the saxophone. Judge Michelson’s nephew, Connor Renusch, assisted U.S. Circuit Court Judge Cornelia G. Kennedy (for whom Judge Michelson clerked as a new lawyer) in administering the oath.

Judge Kennedy described Laurie as an excellent clerk who demonstrated great care for others; sharing, in particular, an anecdote about Judge Michelson’s dedication to the plight of a law student with Kenyan citizenship upon

learning, just prior to the student assuming his clerkship for Judge Kennedy, that federal law clerks had to be U.S. citizens. Judge Michelson dedicated herself to researching whether the student could clerk and /or obtain U.S. citizenship.

After taking the oath, Judge Michelson’s nieces and nephew, Rebecca Michelson, Brooke Michelson and Connor Renusch, presented her judicial robe.

The Chapter’s Immediate Past President Elisa Angeli Palizzi spoke on behalf of Judge Michelson’s FBA family, noting Michelson’s humble personality and sharp intellect. Michelson received a bachelor’s degree from the University of Michigan in 1989; her law degree from Northwestern University School of Law in 1992; and, after clerking for Judge Kennedy, joined Butzel Long where she earned an outstanding legal reputation. Palizzi described Michelson’s tremendous leadership of the Chapter as its president for the past year, noting in particular Judge Michelson’s work in establishing the vibrant Law Clerk Committee, in planning the outstanding Bench-Bar Conference held in May, and in leading over 14 events in only the last six months of her tenure as president.

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Pamela Renusch, Jim Michelson, Magistrate Judge Michelson, Elisa Angeli Palizzi and Dave DuMouchel.

Judge Michelson *(from page 3)*

Judge Michelson's sister, Pamela Renusch, entertained attendees with the humorous anecdotes, heartfelt sentiments and personal insights that can only come from one's identical twin. Renusch described Judge Michelson as her better half and "a truly good person," who is tough, but fair, just, and honest. Renusch listed Judge Michelson's prior titles as a basketball and softball athlete, including "Team Captain," "Team MVP," and "All American," and her current golf title for three years running of "Club Champion" at Franklin Hills Country Club.

Judge Michelson's mentor Dave DuMouchel spoke on behalf of her Butzel Long family. DuMouchel discussed how Judge Michelson was a "star in every respect" at the firm -- consistently working among the longest hours, producing excellent work and contributing to the firm's management. Candidly, he admitted that others have observed that he may have to "come out of retirement" and "get back to work" upon losing his "right hand." After establishing a reputation in general civil and intellectual property litigation, he recounted

how Michelson had come to work with him, focusing on white collar criminal defense, including defense of lawyers and judges in professional licensure cases, and representation of parties against securities fraud and health care charges. DuMouchel described Judge Michelson as outgoing, ever positive and optimistic (in contrast to himself, he added) and a consummate team player who will be missed by her clients and colleagues. Finally, he recalled Judge Michelson expressing great admiration and respect for Judge Kennedy, who helped to shape Judge Michelson's understanding of what a judge should be.

It was evident from the remarks of Jim Michelson, Judge Michelson's father, that she inherited his great sense of humor. Between the humorous anecdotes and comments, however, the audience also heard Judge Michelson's father reminisce on her life, and the strong work ethic, commitment and dedication to excellence that led to her many accomplishments. Her position on the federal bench, he added, fulfilled a lifelong ambition. Mr. Michelson noted proudly that Judge Michelson takes her responsibilities seriously, while not taking herself too seriously -- a point amply illustrated when Judge Michelson was given her chance at rebuttal and responded in kind to the presentations with her own wit, insights and wisdom.

Judge Michelson began by thanking the speakers, Chief Judge Rosen, Judge Kennedy, the Eastern District Bench, the Chapter, her family, friends and colleagues, and the merit selection committee. Judge Michelson explained that while her entire family chose a career in advertising with Simons, Michelson, Zieve, Inc., she was more interested in the intellectual property rights behind the products being advertised and instead joined Butzel Long, where she felt privileged to practice for 17 years. She introduced her law clerks Charlotte Carne, who is an experienced labor lawyer, and Eric Lee, who recently clerked for U.S. District Judge John Feikens and has practiced intellectual property law. Michelson expressed that she felt great responsibility in joining the federal bench. She was obviously anxious to begin her duties as a magistrate judge, and expressed the hope that she may perform those duties promptly and fairly, with wisdom, consideration and impartiality.

The Chapter is proud and delighted for its President and now U.S. Magistrate Judge Laurie J. Michelson. Congratulations!



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In Memoriam Judge John Feikens

On May 15, 2011, Judge John Feikens passed away at his home at the age of 93. Judge Feikens was permanently appointed as a district judge in December 1970. In October 1960, he received an interim appointment, but relinquished the bench to return to private practice. Judge Feikens served as Chief Judge from 1979 to 1986, after which he assumed senior status.

He received a B.A. from Calvin College in 1938 and a J.D. from the University of Michigan in 1941. He was a fellow of the American College of Trial Lawyers, and received an honorary Doctor of Laws degree from the University of Detroit in 1979 and from the Detroit College of Law in 1981.

Printed below is Chief Judge Gerald E. Rosen's Eulogy for Judge Feikens, which captures in perfect detail the life and legal career of this illustrious jurist.

"John Feikens was a man of family and a man of institutions that he treated as family. I am here today to speak for one of those families, his Court family of more than forty years. All of us who have had the great privilege and good fortune to be bathed in the warm glow of John's friendship know well that over his many years, he was many things at many times to many people. This was because John was a man with a great heart and a deep commitment to those people and institutions that were so much a part of his life. And, as we all know, when John Feikens became a part of something, he did it fully and completely, with no half-hearted measures. In today's sports vernacular, John Feikens never just "mailed it in" -- in his long life, he gave it everything he had and he left nothing out on the court.

To his colleagues during his long and storied tenure, John was a larger-than-life-presence who guided us from our earliest days as Judges with the example of his commitment to justice, compassion for people and devotion to the Court. To say that John was the spiritual leader of the Court captures only some of the regard and esteem his colleagues held for him. In many ways, he was more than that. John was truly the beating heart of the life of our Court, a unique combination of visionary

and play-maker, who not only saw a bright future for the Court, but had the energy, insight, perseverance and finesse to shape it.

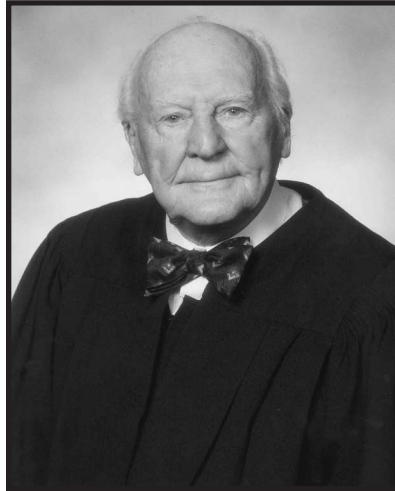
I don't think there was ever a day during John's more than four decades on our Bench that he did not wake up and say to himself: "What can I do to make the life of our Court better." John's hopes and dreams for the Court usually manifested themselves in projects large and small. Whether it was his vision of creating

the Court's comfortable and welcoming Conference Center which now bears his name, or initiating and seeing to fruition the renaming of our Courthouse for his dear friend and mentor, Judge Theodore Levin, John would pursue these projects with the tenacity, vigor and single-mindedness of a one-man panzer division.

To be sure, in furtherance of his commitment to a project or an idea, John could be stubborn – perhaps even a bit obstinate – and certainly difficult to dissuade from a course of action once he was set upon it. No surprise there, I'm sure, to his friends and family – he was, of course, a Dutchman. But, those of us whom he involved in his projects always recognized that it was precisely this single-minded dedication and determination that allowed him to accomplish so many of the remarkable things that he did in his life.

As a Judge, John's energy, commitment and perseverance found their outlet in his pursuit of what he believed was a just and fair result. John's focus was never on cold, detached legal analysis, but rather on the larger issues of the good of society and our community, and the role a judge could play in deciding those issues. Sometimes this would put him at odds with the parties, and, at times, even his friends on the Court of Appeals. As some of you here today know, John had a generous and capacious view of a Judge's "inherent powers" - - the doctrine of "judicial restraint" did not find a warm embrace in John's judicial approach, particularly when he thought that the cold letter of the law might get in the way of resolving issues in a case in the best way he thought possible.

Much has been written and said about John's epic saga in presiding for almost 35 years over the Detroit Water and Sewer case, and certainly that case will be the headline of his judicial legacy. No doubt, as many have observed, his approach to managing the case – and the determination with which he pursued his objectives
(continued on page 6)



Judge John Feikens

Judge Feikens *(from page 5)*

– were, shall we say, unorthodox and creative. And some disagreed with John’s robust approach, including various parties at various times. However, I could not help but notice that in the news reports and commentary this week, even those who had opposed some of the more creative things that he did in the case, ultimately gave John great credit for deftly steering that very difficult case through the shoals of controversy and division to the bright uplands of a stable system that now provides high quality water and sewage treatment to our greater metropolitan community.

Many have asked why John had such a long-standing passion for this case – which after all involved water and sludge. I think that at bottom, John was driven by his great desire, evident throughout his life, to bring people together toward a common good, and in this case, John consistently and persistently worked tirelessly to bring together the City of Detroit and its suburbs. And, who would gainsay that in this long, complicated case that presented such a myriad of complex legal, political and environmental issues – not to mention personalities – John didn’t work miracles. Agree with him, or not, I can assure you of this: whether in the water case or in his many other cases great and small, John’s focus was always dead center upon using his judicial authority for the betterment of our community and our society - - and our community and society is much better off for having had the benefit of John Feikens’ judicial tenure.

But, beyond his professional life and remarkable record of achievement, what I loved most about John was his fundamental humanity, because underlying his dedication and perseverance was a compassion for people, and particularly for his family, friends and colleagues. When I was a young lawyer and John was the Chief Judge of the Court, I thought that he was an almost forbidding figure - - when he came through the door into that beautiful, historic almost Church-like Courtroom where his portrait now hangs, I thought God himself had descended into our midst. But, when I joined the Bench, as a very young and inexperienced Judge, John could not have been a warmer friend and colleague, always making time for me for advice and consultation, and always with wisdom, insight and good humor.

In ancient cultures and tribes, the history and traditions of the society were passed down from older generation to younger generation by story telling, often while gathered around a fire. And so it is with our little tribe of Judges. Perhaps no one in the history of our Court was ever a better or more assiduous and affectionate

teller of the stories of our history and traditions than John. As I think about the many things about John I treasure, it’s some of these small, intimate moments that stand out. John relished talking about the Court and its people. We didn’t have a fire, but for warmth, some of us would gather around a bottle of Scotch, and John would regale us with stories of our past.

It wasn’t always about history that John wanted to talk, though. When he would call late on a Friday afternoon at the end of a long week, and say with his inimitable chuckle, “Let’s have a snort. I’d like to seek your advice about something”, I knew that not only was this was my cue to break out the good Scotch, but, as I learned over time, this was usually a prelude to recruiting me into one of his “projects.” And then, when he really wanted to make his case for a project by sharing a confidence, he would preface it by saying, “What I am about to tell you now, Jerry, is within the bosom of our friendship.” Of course, when John would approach you this way, it was very hard to say “no” to him.

When I think about the pleasure of John’s company, I am reminded of Winston Churchill’s wonderful description of the enjoyment he felt in the company of his great friend Franklin Roosevelt. Churchill said, “With all of his buoyant sparkle and his iridescence, being in Franklin’s company is like opening your first bottle of champagne.”

All institutions bear the stamp of the men and women who have served in them, and are the sum of the different parts each of those men and women contribute – and that is certainly true of our Court. But John Feikens has done more than simply leave an imprint on the Court. He has been one of its greatest leaders. In things large and small, it is hard to look at any area of our Court life and not see the fruits of John’s creative ideas and persistent devotion to our Court. Even in his last years, rather than reducing his commitments and winding down, he continued to dedicate himself to making the future of our Court and its work more secure and rewarding for his colleagues and our staff. His legacy of commitment and devotion to our Court will inspire generations of Judges and lawyers for years to come.

It’s hard to know how to end a farewell like this -- and maybe that is because we don’t want it to end – but I thought that given how much John has meant to so many of us over so many years, I’d close by sharing a few verses from W. H. Auden’s work “Stop All The Clocks”. With apologies to Mr. Auden’s memory, both for my ineloquent delivery and because I have taken some poetic license and paraphrased his poem to fit our circumstances:

Stop all the clocks, cut off the telephone,
Prevent the dog from barking with a juicy bone,
Silence the pianos and with muffled drum
Bring out the coffin, let the mourners come.

Let the aeroplanes circle moaning overhead
Scribbling on the sky the message "He is Dead",
Put crepe bows round the white necks of the
public doves,
Let the traffic policemen wear black cotton gloves.

He was our North, our South, our East and West,
Our working week and our Sunday rest,
Our noon, our midnight, our talk, our song,
We thought he would go on forever;
we were wrong.

Speaking for your Court family, John, good-bye dear friend, and thank you for the pleasure of your company these many years. May God speed you on to your next project."



**From Court
Administrator
Dave Weaver**

**Technology Brings
Changes to the
Clerk's Office**

Since the implementation of the Case Management/Electronic Case Files (CM/ECF) system, the traditional functions of the Clerk's Office have changed dramatically. One of the most notable changes is the reduction in public traffic to our Clerk's Offices at each Court location in the district. We have found that public traffic in our Ann Arbor Clerk's Office has diminished to the point that I have recommended and the Bench has approved closing that office to the public. The judicial officers and Court functions in Ann Arbor will be fully supported. However, the cost of maintaining a public office where there is virtually no public traffic could not be supported. Beginning on July 11, 2011, the Ann Arbor Clerk's Office will be open to the public only on Tuesdays and Thursdays from 8:30 a.m. to 4:30 p.m. Effective September 6, 2011, public hours will be discontinued. Chambers and other Court agencies will remain open and individual jurors will report to the second floor juror assembly room when called.

Update on Divisional Boundary

In my last article, I reported on a proposal being

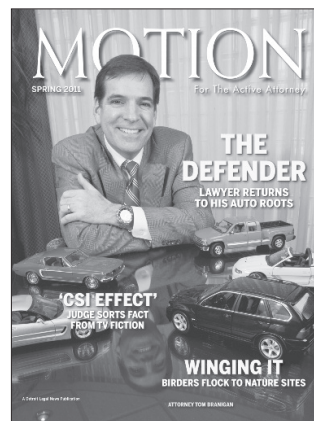
considered by the Bench to eliminate the North/South divisional boundary line in the District. Doing so would provide the Court with maximum flexibility in balancing the caseload in the District and eliminate opportunities for judge shopping. The Court met with stakeholders that would be affected by the proposal and received many other thoughtful written comments. The Bench will likely take up final consideration of the proposal over the Summer. If it is approved by the Bench, the proposal would then be presented for approvals from both the Sixth Circuit Judicial Council and the Judicial Conference of the United States. Ultimately, Congress would have to approve an amendment to 28 U.S.C. § 102. This is the statute that establishes the two divisions within the District and lists the names of counties included within each division.

Judicial Vacancies

As of this writing, the Court continues to have two vacant district judge positions and one vacant magistrate judge position. While a new magistrate judge should be on board in the Fall, the status and timing for filling the district court judgeships is not currently clear.

As always, questions and/or comments may be sent via email to me at david_weaver@mied.uscourts.gov.

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Portrait Dedication Ceremony for Judge Zatkoff

By: Jim Carroll*

On Friday, June 10th, at 11:00 a.m., the Court met in special session for the presentation of Judge Lawrence P. Zatkoff's portrait. The ceremony, scheduled to coincide with Judge Zatkoff's twenty-fifth anniversary on the Court, was attended by his wife Kelly; daughters Catherine and Lizzie, and son Joe; as well as numerous family friends and members of his staff, including most of his former law clerks, and many of his colleagues on the Court.

Chief Judge Gerald E. Rosen presided over the intimate ceremony which opened with the Pledge of Allegiance. After noting some of Judge Zatkoff's career achievements, intellect, leadership of the Court and (very) dry sense of humor, Chief Judge Rosen introduced Robert Biskup, the Judge's first law clerk, to speak on behalf of all twenty-six law clerks who have worked for him. Rob had asked each law clerk to provide a single word to describe the Judge. They submitted the following words: steady, thoughtful, honorable, wry, mischievous, entertaining, scrutinizing, captain, brave, unwavering, dedicated, leader and, finally, wise, the single word Rob chose.

In explaining why he chose the word "wise" to describe Judge Zatkoff, Rob noted that wisdom is not simply intelligence or knowledge, but rather the combination of those two ideals together, put to good use. He stated that wisdom is difficult to attain, even more difficult to live day-in-and-day-out, and a gift not shared by all. In closing, on behalf of the Judge's law clerks, Rob conveyed what they see in him: "a wise teacher, a wise mentor, and a friend."

Judge Bernard A. Friedman, in the roles of colleague and friend, began by presenting Judge Zatkoff a white wig (an allusion to that period when he sat by invitation on the Royal Court in England), which he (has not) promised he will wear while presiding in Port Huron. Judge Friedman read a list of words or characteristics he associates with Judge Zatkoff including: friend, mentor, patriot, guts, father, hobbies, judge, funny, grandfather, knowledge, cares, calls, shares, style, class, laughs, smiles, analyze, reads, Kelly, loyal, remembers where he came from, thoughtful, flowers and leader.

Judge Friedman recalled how, about a week after he began working at the Courthouse, Judge Zatkoff came to his chambers with a "big smile," a "bagful of headache remedies," and a bench book that was invaluable for a new Federal Judge – a bench book Judge Zatkoff presented to many other colleagues when he or she joined

the Court. Judge Friedman described Judge Zatkoff as available, willing to listen, non-judgmental and helpful in that he always tried to reach a conclusion. He further described him as calming, a friend in good times and bad, someone who knows how to take a situation and pull all the pieces together--whether it be in court or a Judges' Meeting--someone who has a sense of humor that touches everyone, and a person who boosts you up when you are down and flies with you when you are high.

Judge Friedman extolled Judge Zatkoff's leadership qualities, particularly while Chief Judge of the Eastern District from January 1, 1999, to June 16, 2004. Among other things, Judge Zatkoff: provided leadership for the program that led to paperless filings; initiated procedures for cost-containment within the Court; fostered development of a professional purchasing department for the Court; was responsible for the restoration of the historical Chief Judge's courtroom to its original beauty and luster; recognized the importance of the Federal Bar Association and supported Court funding to finance some of its important programs; brought congeniality and consensus to the Bench; and was the force behind the construction of the high security and ceremonial courtroom in which the Portrait Ceremony was held, a big asset to the Eastern District. In closing, Judge Friedman expressed that Judge Zatkoff is a true leader, mentor and a friend, a giant of a human being and a giant of a judge.

Michigan Supreme Court Justice Brian Zahra, Judge Zatkoff's third law clerk, recounted several memories and valuable life lessons he experienced while working for the Judge:

- a tour of the Air Force Museum in Dayton, Ohio, after a Court of Appeals sitting in Cincinnati – examples of two of the many work and/or educational field trips that the Judge regularly affords his law clerks;
- working late into the night on the tax evasion trial of *U.S. v. Elbert Hatchett*;
- traveling with the Judge to the Warren City Hall to observe the Christmas display that was challenged by the ACLU; and
- sitting in front of Judge Zatkoff in the bench trial of *Sediaglu v. Chrysler Corporation* - a breach of contract action brought against Chrysler by two Turkish businessmen who bargained for the exclusive right to sell the Chrysler Snow-Runner in Turkey and then sold this product, intended for use in the snow, to the Turkish military for use in the desert, where sand clogged the gears and engine.

Justice Zahra mentioned a gift the law clerks prepared and presented to the Judge before the ceremony

consisting of letters from each law clerk describing the impact that the Judge had on his career and/or life.

The last speaker was Judge Zatkoff's daughter, Catherine Lewis, who spoke on behalf of her family about the Judge as a dad and as an individual. Catherine offered a unique perspective of her father's patriotism and entertained the audience with a tale of his affinity for blaring music such as "The Stars and Stripes Forever" early on Saturday mornings. The music would cause the windows to rattle and rouse his kids out of bed and bring them bounding downstairs. There, the Judge, as commanding officer, would order the kids to fall into line and then lead them in a march around the house. In doing so, he expressed the importance of love of this country in a magical way for the kids.

Catherine related what it was like to observe and participate in her Dad's campaign for U.S. Congress in 1976, including the sacrifices and disappointments during that campaign. She spoke of his extensive efforts on behalf of Governor William G. Milliken and the Republican Party in the mid-to-late 1970s.

Catherine said she was especially proud of her father's efforts in helping locate and bring home the remains of Major Robert Tucci, a fighter pilot from Fraser, whose plane crashed in Vietnam in 1969 and who remained missing-in-action until 2002. When serving as a Roseville City Attorney, Judge Zatkoff had become involved in the search for Tucci by providing legal help to Tucci's family. Among other things, he had traveled to the Vietnamese embassy in Paris seeking answers, with a petition signed by 80,000 U.S. citizens, including that of President Gerald R. Ford.

In conclusion, Catherine expressed how proud she is of her Dad, who started out as a child of working

class parents, worked his way through college and law school, and then embarked on a journey with many twists and turns, maneuvering through them "with great skill, infinite wisdom and tenacity" to become a Federal Judge at age 47. She then addressed her Dad, telling him that he has been her mentor, a man who she holds in the highest esteem and whose ethics, integrity and dedication to the truth she respects on and off the bench.

Following these heartfelt speeches, Kelly Zatkoff and artist Michael Del Priore unveiled the portrait. Chief Judge Rosen accepted the portrait on behalf of the Court.

In his closing remarks, Judge Zatkoff thanked everyone for coming and introduced his family and friends in attendance. He expressed his gratitude for

the near-genius ability of Mr. Del Priore to paint such a terrific portrait given the subject with which he had to work. The Judge recognized his law clerks and expressed his appreciation to them for making his life easier by doing the work they had done over the years. He thanked the Federal Bar Association for the contributions it made in connection with the ceremony.

Judge Zatkoff expressed his pride in being a member of the bench of the Eastern District of Michigan, a bench that has a culture and a custom that is very rare. He explained that culture as one that typifies the culture of Detroit, the manufacturing business and the business of getting things done, declaring: "This is a bench that gets things done; they get the job done, all the time, every time." With that, Judge Zatkoff closed by saying, "I am very proud to be a member of this bench . . . Thank you, colleagues, for permitting

me to be part of your bench."

Judge Zatkoff's portrait will be hung in the Special Proceedings Courtroom on the first floor, currently used by Judge Friedman.

**Jim Carroll is Judge Zatkoff's Career Law Clerk.*



Judge Lawrence P. Zatkoff at his portrait dedication ceremony. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.



Lizzy Fisher, Kelly Zatkoff, Judge Zatkoff, Joe Zatkoff, and Catherine Lewis. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.

Annual Dinner

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



Kimberly and Bill Altman.

*Susan Gillooly, Saima Mohsin
and Matthew Schneider.*



*Magistrate
Judge Virginia
Morgan, Bill
Woodard,
Magistrate
Judge Laurie
Michelson
and Michael
Riordan.*

*Judge George Caram Steeh, Julie Plawecki,
Chief Judge Mark Plawecki, Yvonne Guy and Judge Ralph B. Guy.*



Judge Lawrence P. Zatkoff and his law clerks at his portrait dedication ceremony.



Judicial officers in attendance at the portrait dedication ceremony. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.

Gilman Luncheon

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



*Lisa Mikalonis and
Jason Thompson.*



*Jill Krolikowski and
Rodney Ploucha.*



*Wayne Pratt
and Michael Leibson.*



*Chief Judge Rosen,
Governor Snyder and
Magistrate Judge Michelson.*



*...ance at Judge Cohn's portrait
by John Meiu, courtesy of Detroit*



Judge Avern Cohn and his law clerks and staff at his portrait dedication ceremony.

Portrait Dedication Ceremony for Judge Cohn

By: Andrew S. Doctoroff*

Mothballed in the Courthouse basement for more than a decade, the portrait gathered dust, abandoned.

Its subject, a singular jurist on whom the spotlight still frequently shines, neither wanted nor needed additional attention.

But forces -- his wife, the chief judge, the artist himself -- prevailed upon him to relent, which, uncharacteristically, he did.

And so, on May 19th, hundreds of people -- those whom he has touched, those who have been the objects of his affection, admiration and agitation -- assembled on the Courthouse's first floor to witness the unveiling of the portrait of Judge Avern Cohn, which was painted by Birmingham artist Glen Michaels. The unveiling took place during a special session of the Court.

The rendering captures the essence of Judge Cohn. It portrays him wearing his robe, sitting at a mahogany trestle desk in a dark-toned library, which serves as the background. Viewers' eyes gravitate to the painting's two islands of light -- Judge Cohn's face and an open book that he is studying. His expression is pensive, somewhat stern; he is staring at his audience, seemingly admonishing us for intruding upon his deliberations.

Throughout the ceremony, Judge Cohn was flanked by 30 of his judicial colleagues -- District Judges, Bankruptcy Judges, Magistrate Judges and Sixth Circuit Court of Appeals Judges, all of whom attended to pay tribute to the honoree's 32-year career

on the bench. On this day, ideology was irrelevant, a fact underscored by the presence of Michigan Supreme Court Chief Justice Robert P. Young, Jr.

In his remarks following the unveiling, Judge Cohn addressed Chief Justice Young, saying, "It's especially pleasing to see you here today. It certainly means that we know how to disagree without being disagreeable."

The special session, over which Chief Judge Gerald E. Rosen presided, moved briskly. In addition to Chief Judge Rosen, four people closest to Judge Cohn offered honest testimonial and praise: Judge Paul D. Borman (in whose courtroom the portrait of Judge Cohn will hang); Eugene Driker, a founding member of Barris, Sott, Denn & Driker; Julie Owens, Judge Cohn's case manager; and Lois Cohn, Judge Cohn's wife.

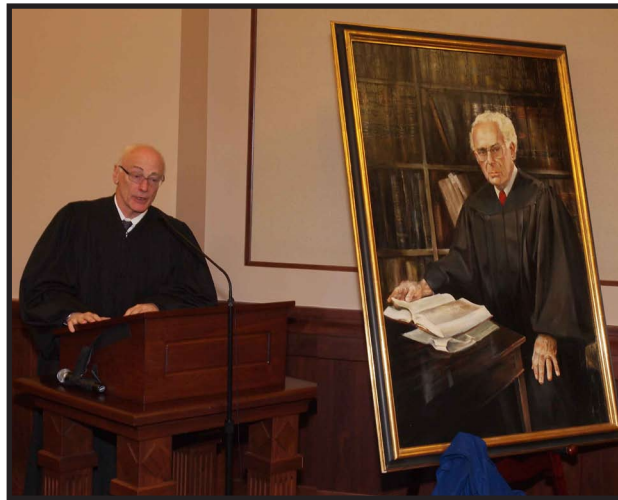
The ceremony was refreshingly, and lovingly, candid. Because his place in Michigan's judicial history is so firmly established, because he is so widely held in high esteem, because he is not one to stand on ceremony

or assume imperious airs, the speakers presumably felt free to tweak Judge Cohn, which they did -- about his being a prolific author of epistles that appear in the media, about his rumored immoderation.

Collectively, those paying tribute to Judge Cohn drew a profile of a remarkable man -- someone fiercely committed to the law, his family, his faith and his community, someone defined by his preternatural vigor and intellectual curiosity.

"His portrait should have the [Detroit Institute of Arts'] Rodin sculpture of 'The Thinker' alongside him," Judge Borman said of

Judge Cohn. "He likes complex cases. He thrives on intellectual challenges[.] . . . He reads while we are



Judge Paul D. Borman at Judge Cohn's portrait dedication ceremony. Photo by John Meiu, courtesy of Detroit Legal News Publishing



Lois Pincus Cohn, Judge Avern Cohn, and portrait artist Glen Michaels. Photo by John Meiu, courtesy of Detroit Legal News Publishing

(continued on page 14)

sleeping and the next morning calls up and says, ‘Have you seen this yet?!’”

In words that rang true, Driker explained Judge Cohn’s unflagging ebullience by quoting the author, Pearl Buck, who observed, “To find joy in work is to discover the fountain of youth.”

“Avern,” Driker added, “has relished in the joy of his work and that has kept him youthful in intellect, interest and intensity.”

Owens made the audience convulse with laughter as she gave an insider’s account of the workings of Judge Cohn’s chambers, particularly when she affirmed that his “favorite story to tell the attorneys is one about the boy, a pony and a pile of manure.”

Judge Cohn’s remarks were brief.

Judge Cohn allayed any concerns about the fact that his gaze will forever be fixed on Judge Borman. “Paul should understand that there’s no way I can talk to him from that wall.”

And, then, after offering sincere thanks to his family, staff and law clerks, he concluded by saying, “This is a grand day for me as a judge. It is second only to a day in late May, 1978 when I received a phone call from Senator Donald Riegle who said to me as I picked up the phone, I want you to go on the bench, Avern.”

Following the ceremony, guests attended a reception in Room 115 where they were served some of Judge Cohn’s favorite foods, including coney dogs from Lafayette Coney Island (the only real place for coney dogs, per Judge Cohn’s oft-issued injunction).

On this day, large floral arrangements adorned the entire first floor of the courthouse, including Room 115. Judge Cohn’s current and former staff and law clerks provided the flowers.

That seventeen of Judge Cohn’s former law clerks attended the unveiling (one traveled from Japan to Michigan) spoke volumes about their strong fondness for the man and the impact he has had on their lives.

The unveiling was tinged with a bittersweetness, because it fell on the same day on which the memorial service for the venerable Judge John Feikens took place. The juxtaposition of the two ceremonies underscored in many peoples’ minds that we are lucky to have a giant walking among us.

**Andrew S. Doctoroff is a former law clerk to Judge Avern Cohn (1990-1992) and a partner at Honigman, Miller, Schwartz & Cohn.*

Past Presidents’ Luncheon

The date was May 10th, the setting was the Detroit Athletic Club, and the attendees included the past presidents, current officers, and Board member, Newsletter Co-Chair and nominated Program Chair, Kimberly Altman. Led by our outstanding President, Honorable Laurie J. Michelson, the group reviewed the year’s outstanding Chapter accomplishments and approved the impressive proposed slate of officers and Board members to be voted upon by the general membership at the Annual Meeting.

Highlighted events included the luncheon program that now boasts 33 sponsors and a sold out venue at the Westin Book Cadillac that literally required Program Chair, Tom Schehr, to request a larger banquet room! Esteemed featured speakers that comprised a knockout lineup included Chief Judge Gerald E. Rosen, author and former U.S. Attorneys’ Office Criminal Division Chief, Ross Parker, University of Michigan President, Mary Sue Coleman, and Michigan Governor Rick Snyder.

Judge Michelson also praised the successful Bench-Bar Conference entitled “Media and the Law” that brought some of the nation’s high-profile legal talent and NBC correspondent Chris Hansen to the lovely Henry Hotel in Dearborn. Joined by prominent local lawyers and judges, the panelists debated and discussed the challenges of the relationship between the media and the bench and bar.

President-Elect Michael Riordan explained the Judicial Institute and Secondary Education Workshop; Tom McNeill summarized membership initiatives; and Michael K. Lee reported on pro bono projects including the pro se help desk.

Immediate Past President, Elisa Angeli Palizzi, spoke at length of the Chapter’s diversity efforts, underscoring the importance of this program to the officers and members.

As a testament to the robust Chapter that we have become, time did not permit verbal recognition of all of the 2010-2011 activities. However, President Michelson directed everyone’s attention to the 10-page chronology which included among other terrific initiatives of Past President Honorable Mark Goldsmith, a fascinating Book Club experience with Christopher Graveline, co-author of *The Secrets of Abu Ghraib Revealed: American Soldiers on Trial*.

Despite the press of time, the past presidents would not depart before enthusiastically singing the praises of President Michelson, her fellow officers, and Board for

(continued on page 14)

Presidents' Luncheon *(from page 13)*

a simply remarkable year. Magistrate Judge Michelson was singled out for her infectious sense of humor that imbued fun into an ambitious agenda solidly packed with legal programs, seminars and outreach programs. They noted that once again, National recognized the Chapter's success with multiple awards including its 8th consecutive outstanding newsletter designation. They reminisced about the Chapter's modest beginnings and expressed a sense of wonder over its current exemplary trajectory. On a final note, they remembered with great pride the recent investitures of Judges Goldsmith and Michelson, accomplishments so emblematic of the quality of our leadership.

Gilman Award Luncheon

Chapter members once again were addressed by a prominent leader at this year's Leonard R. Gilman Award Luncheon, the 27th such event honoring the excellence, professionalism, and commitment to public service of Len Gilman, who was U.S. Attorney at the time of his death in 1985. This year, the keynote speaker was Michigan Governor Rick Snyder, who focused upon the basic principles that underlie his plan for the reinvention of State government. The Governor was introduced by his longtime friend, Chief Judge Gerald E. Rosen, the person who got him interested in politics thirty years ago.

The Award recipient, Wayne Pratt, an Assistant U. S. Attorney and Chief of the Health Care Fraud Unit, was introduced by his own longtime friend and colleague, Chapter Past President Michael Leibson (himself a former Gilman Award recipient), who recalled Len Gilman as "a man who spent his entire professional life in public service as a prosecutor yet never forgot that every case involved unique human beings and that compassion was not weakness."

"This Award," Leibson continued, "is given annually to a person who emulates Len's commitment to excellence, professionalism and public service in the criminal justice system." This led him to a description of the recipient, who "so clearly represents what Lenny was all about" -- including the belief "that the lawyer's code of ethics is not a ceiling but a floor and that conduct has to be more than ethical, it has to be right."

"Wayne's World," Leibson concluded, is not merely a fictional basement in Saturday Night Live reruns but rather is a real venue in the U.S. Attorney's

Office. "The key words in this real Wayne's World are honesty, integrity, compassion, competence, intelligence and humility"; and Wayne Pratt is "a man who by his every action sustains the memory and values of Len Gilman." Pratt then addressed the audience, expressing his gratitude in receiving the award, which he considered a highlight in his career.

Law Clerk Panels

In March and April of this year, both current and former Federal law clerks participated in panel discussions with current students at all law schools in Michigan. These panel discussions focused on both the Federal clerkship application/hiring process and the experiences gained during the clerkship itself. The panel format also allowed for direct student/panel member interaction and questions, which led to discussions ranging from the practical aspects of clerking to the Federal judicial process and structure itself.

The panels generally involved a joint effort between the law schools' career services departments and the Chapter's Law Clerk Committee. As such, the law schools and Committee were very thankful, not only to all of those current and former clerks who participated



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in the panels – including Krystal Johnson, Brad Darling, Chantale Fiebig, Andrew Lievense, Christina Farinola, Rita Foley, Steven Cares, Sean Cowley, Michelle Quigley, Andrew Goetz, Sara Woodward, and others – but also to all of the judges who provided the experiences and allowed their clerks to participate.

Bench-Bar Conference: Media and the Law

On April 28th, Chris Hansen, NBC Correspondent, host of “To Catch a Predator” and former WDIV-TV reporter, captivated nearly 200 members of the Chapter’s bench and bar while he spoke at this year’s Bench-Bar Conference at the Henry Hotel in Dearborn. His discussion of his experience with the local and national media perfectly suited this year’s Conference theme of “Media and The Law.”

Magistrate Judge Mona K. Majzoub hosted the program which, in addition to Chris Hansen, consisted of two panel discussions about media and the law. The first panel, entitled “Navigating a High Profile Case,” was moderated by Chief Judge Gerald E. Rosen. Nationally recognized and respected attorneys, who have represented high-profile clients, shared their experiences and offered insights about handling such cases, including Charles Babcock (counsel for Oprah Winfrey), Anthony Chambers (counsel for Umar Farouk Abdulmutallab), William Jeffress (counsel for Scooter Libby), Robert Morvillo (counsel for Martha Stewart), and Ira Sorkin (counsel for Bernie Madoff). District Judge Nancy G. Edmunds completed the panel, providing a judicial perspective on managing such cases.

The second panel discussion was entitled “Expectations: Can’t Live With Them, Can’t Live Without Them.” It was moderated by Rod Hansen, long time WJR radio personality and current Media Liaison for the Eastern District of Michigan. The panel, comprised of journalists, lawyers and judges, provided a lively and frank discussion and a wide array of viewpoints and perspectives on numerous issues pertaining to the relationship between the bench, bar, and media, including access to grand jury witnesses, post-trial access to jurors, the impact of social media, and the pros

and cons of talking to or not talking to the media.

The panelists included Circuit Judge Richard Suhrheinrich, Judge David M. Lawson, U. S. Attorney Barbara McQuade, David Ashenfelter (Detroit Free Press), Thomas Cranmer (Miller Canfield/WXYZ-TV), Kevin Dietz (WDIV-TV), Marie Osborne (WWJ Radio), Bankole Thompson (Michigan Chronicle), David DuMouchel (Butzel Long) and Richard Helfrick (Federal Defender Office). The lively program was followed by a fabulous hors d’oeuvres and cocktail reception.



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



Magistrate Judge Mona K. Majzoub and Chris Hansen. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.

Many thanks to Miller Canfield for hosting all of the panelists in a suite at Comerica Park the evening prior to the Conference. All of the panelists, particularly those from out-of-town, thoroughly enjoyed their experience at Comerica Park.

Finally, thanks to Conference Co-Chairs AUSA Sarah Resnick Cohen and Frank Ortiz of Dickinson Wright as well as the following Committee members for their hard work in developing this year’s Conference: Magistrate Judge Laurie Michelson, Brian Figot, Kim Altman, Jennifer Newby, Matt Allen, Andrew Densemo, Joe Richotte and Mike Leib.

Rutter Seminar Held

On June 23rd, the Rutter Group held a seminar titled “Game Changers” at the Westin Book Cadillac Hotel. Chief Judge Gerald E. Rosen, Judge David M. Lawson, and prominent practitioner and Chapter member Thomas W. Cranmer of Miller Canfield led the well-attended seminar. Using entertaining hypotheticals designed around “James Bond” books and movies, the presenters educated attorneys and law clerks on the December 2010

(continued on page 16)

Rutter Seminar *(from page 15)*

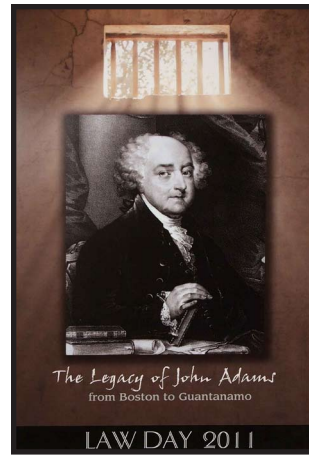
amendments to the Federal Rules of Civil Procedure and recent case law.

Among the most important amendments the panel discussed were the amendments to Fed. R. Civ. P. 56. The panel warned practitioners to be aware of the shift of the rule's subsections and identified the various changes to the rule. This includes the deletion of the delay required before a motion is filed (subsection (b)), a provision permitting the court to enter an order setting forth material facts not genuinely in dispute and that will be treated as established in the case (subsection (g)), and express permission for courts to sua sponte enter summary judgment (subsection (f)(3)). Significantly, Rule 56 now reflects what case law previously required: that a party must support assertions with citations "to particular parts of materials in the record" or "show[] that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1) (emphasis added).

Relevant to the evidence required to support or respond to a summary judgment motion, the panel discussed the Court of Appeals for the Sixth Circuit's decision in *Arel, S.R.L. v. PCC Airfoils, L.L.C.*, 448 F.3d 899 (2006). In *Arel*, the Sixth Circuit softened its instruction on how courts should treat an affidavit that contradicts the affiant's prior sworn testimony. According to *Arel*, the court first should determine whether the affidavit directly contradicts the prior sworn testimony. 448 F.3d at 908. "A directly contradictory affidavit should be stricken unless the party opposing summary judgment provides a persuasive justification for the contradiction." *Id.* Where there is no direct contradiction between the affidavit and prior sworn testimony, the Sixth Circuit instructed that "the district court should not strike or disregard that affidavit unless the court determines that the affidavit 'constitutes an attempt to create a sham fact issue.'" *Id.*

The panel identified Fed. R. Civ. P. 26(b)(4)(B) and (C) as containing "perhaps the biggest changes in the rules" with the 2010 amendments. These changes include the privilege afforded to an expert witness' draft report(s), regardless of the form, and certain pre-trial communications between a party's attorney and an expert.

The seminar provided an entertaining update on the Federal Rules and Sixth Circuit case law relevant to pretrial practice. It is a must for practitioners seeking to stay on top of their game.



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

Law Day 2011 The Legacy of John Adams

On Monday, May 2nd, the Court, the Chapter, and the United States Attorney's Office co-hosted an open house at the Courthouse to celebrate Law Day. The theme of this year's event provided an opportunity to explore and celebrate the life of John Adams, second President of the United States, resistance leader and patriot, advocate and diplomat, constitutional theorist and political activist. Law Day exhibits, presentations and displays focused on the legacy of John Adams as a lawyer who defended the rights of the accused, even in cases involving unpopular clients and in matters that generated public controversy. Courthouse tours were also given, which were attended by many local students.

Chapter members AUSA Susan Gillooly and VA Staff Attorney Dona Tracey co-chaired the event. Participants included members of the Federal Judiciary, Federal and State law enforcement agencies, and Federal agencies including the Department of Defense, Secret Service, Department of Justice, and National Labor Relations Board.

Once again, the "Ask the Lawyer" pro bono program provided consultations to over 80 self-represented litigants. The program included 30 volunteer lawyers, four court staff, six Cooley Law School students, and two Cooley administrators. Altogether, they served 82 self-represented litigants who each received a minimum 30-minute consultation. Judge Denise Page Hood and Judge Victoria A. Roberts and their staffs also were major contributors.

The Chapter and the Wolverine Bar Association Pro Bono Committees worked together to organize the event. The Chapter would like to thank the following volunteer lawyers, many of whom are Chapter members: Patrice Arend, Kevin Carlson, Emma Chen, Vince Colella, Trent Collier, Chris Cornwall, Rhonda Craig, Tanisha Davis, Michael Dezsai, David Eisenberg, Douglas Eyre, Robert Fetter, Michelle Fisher, Tim Howlett, Karen Kienbaum, Matthew F. Leitman, Daniel Manville, Elisa Angeli Palizzi, Jim Parks, Mark Pieroni, Toni Raheem,

(continued on page 18)



Ask the Counselor of Civility

Dear Counselor of Civility,

I am outside counsel for a Big Ten university. After the University's administration learned that some alums with more money than sense may have transgressed some of the National Collegiate Athletic Association's more persnickety rules, they had me file a declaratory judgment action against the NCAA, in the hopes of avoiding a fine, or worse. Attorney Buck I. Fann, of Yuplay, Ower, Rulz & Suffr, represents the NCAA.

Apparently concerned that my client may not have declared all in its complaint and Rule 26 exchanges, Attorney Fann filed discovery requests. The University responded with some of the information sought but objected to other requests. Although Attorney Fann and I had a brief telephone conversation about the requests and responses, we didn't have enough time to discuss the issues and agreed to talk some time soon, exchanging cell phone numbers.

A few weeks later, the NCAA's motion to compel popped up in my ECF notifications on Monday morning, along with an email sent early the previous Friday evening, requesting my concurrence. In the motion, Attorney Fann represented that his office had sought my concurrence by "electronic means" on an unspecified date but was unable to reach me. Later that day, I discovered that his assistant, Jen Y. Textre, sent a text message to my cell phone late on Friday afternoon and wrote on my firm's FaceBook wall, requesting my concurrence.

Please know that I never text and have never looked at my firm's FaceBook wall as I consider such forms of communication to be undignified. I do use e-mail and a cell phone to communicate, although I prefer to use letterhead on bond paper.

Did Attorney Fann fulfill his obligation to seek concurrence as required by Local Rule 7.1(a)? If not, should I move to strike?

Technologically confounded,
Attorney Maisie N. Blew

Dear Attorney Blew,

No, Attorney Fann did not comply with either the letter or the spirit of Local Rule 7.1(a), requiring that a movant ascertain whether a contemplated motion will be opposed. Perfunctory gestures will not satisfy the obligations imposed by LR 7.1(a). Movant's counsel must show that he made a genuine effort to seek concurrence, but, was unsuccessful:

(2) If concurrence is not obtained, the motion or request must state:

(A) there was a conference between attorneys or unrepresented parties and other persons entitled to be heard on the motion in which the movant explained the nature of the motion or request and its legal basis and requested but did not obtain concurrence in the relief sought; or

(B) despite reasonable efforts specified in the motion or request, the movant was unable to conduct a conference.

LR 7.1(a)(2) (A) and (B). To encourage meaningful efforts by all parties to avoid unnecessary motions, the rule allows the Court to tax costs for the "unreasonable" withholding of consent. Knowing failure by a movant to fulfill his or her obligation to seek concurrence with a motion can lead to sanctions for non-compliance. LR 11.1.

In your first conversation with Attorney Fann, you agreed to a later call to discuss concerns with your client's discovery responses and provided him with a means of contacting you easily: your cell phone. He didn't call you. His last minute efforts through his legal assistant to seek your concurrence moments before filing the motion to compel were not reasonable, nor were his general representations of his efforts at electronic communication a candid disclosure in the motion that meets the requirements of LR 7.1(a).

While using Facebook, Twitter or other social media to communicate has its hazards for the famous and not-so-famous, the Local Rule does not limit the means of conferring. Although I share your nostalgia for letterhead, text messages are a widely accepted means of communicating by cell phone. This is not to say that a substantive discussion of discovery issues should be conducted by text or tweet - if nothing else, thumbs would ache-but, texting a brief message to a personal cell phone to arrange a conference is appropriate. Where Attorney Fann fell short was in failing to follow up on your agreement to confer with him regarding your client's discovery responses, and then having his assistant engage in last-minute gestures intended to meet the form, but not the substance, of the Local Rule. He also breached the Civility Principle that calls for attorneys to make good faith efforts to amicably resolve objections to matters contained in discovery requests.

As to how you should respond, follow the Local Rule. Call him to explain the grounds for your contemplated motion to strike. Then, remind him that Local Rule 37.1, governing motions to compel discovery, requires that the parties confer in advance of the hearing "in a good faith effort to narrow the areas of disagreement." Ask him to confer with you on the substance of his motion to compel before your response is due, and see if you can't resolve the issues. Chances are, you'll meet and get the motion resolved. If he won't meet, then you may just want to inform the Court of your willingness to confer in your response to his motion, as hurling cross-motions regarding discovery disputes rarely aids resolution of the case.

As for his assistant's scrawl on your Facebook wall, let him know that unless he wants all the "friends" of your firm to see his communications with you, he might want to ask Jen Y. Textre to use voice-mail.

Civil regards,
Counselor of Civility



Law Day *(from page 15)*

Wendy Readous, Wendy Richards, John Stockdale, Jr., Sherry O. Taylor, and L. Pahl Zinn.

Over 300 guests enjoyed an all-American lunch of hot dogs, chips and cookies as part of the festivities.

Law School Motion Days – Year In Review

In the Eastern District, we are lucky to have judges who are not only active in the Chapter, but also willing to open their time and their dockets to local law school students. During the Chapter's Law School Motion Days, judges hear motions from actual pending litigation in front of an audience of law students and discuss the process with the students. These days are a fantastic opportunity for students to see federal practice in action and for the Chapter to introduce itself to aspiring federal practitioners.

This year, the Motion Days were a great success, with Judges Bernard A. Friedman, John Corbett O'Meara, Victoria A. Roberts, George Caram Steeh and Arthur J. Tarnow hearing motions before full houses of students from Wayne State University Law School, Thomas M. Cooley Law School, University of Michigan Law School, and University of Detroit Mercy School of Law.

In late January, Judge Friedman heard argument on summary judgment motions in Wayne Law's Patrich Auditorium. Each year, Professor Anne M. Burr, Director of the Legal Research and Writing Program, arranges Motion Day to kick off the second semester advocacy program for 1L students at Wayne. This year, over two hundred 1Ls attended to gain perspectives on oral advocacy. The event was followed by a luncheon honoring Judge Friedman attended by Professor Burr, Wayne Dean Robert Ackerman, select members of the faculty, and 3L members of moot court and law review. In practice oral argument sessions for their own moot court problem held later in the week, the 1L students expressed appreciation for the opportunity to observe federal court at Wayne Law.

In early February, UDM law students in Professor Gary Maveal's first-year Civil Procedure class packed



"Ask the Lawyer" program during Law Day.

Judge Tarnow's courtroom to hear oral arguments on summary judgment. The courtroom, including the jury box, was standing room only. The Court kept the litigants on their toes, and the students asked great follow-up questions. As an added treat, Judge Tarnow scheduled a criminal plea, which the students also heard. Special thanks to Cynthia Filipovich and law students Gordon

Pritchard and Nolan Yaldo for making the afternoon such a resounding success.

Cooley's students had twice the fun. Under Dean Joan Vestrand's leadership, students at the Ann Arbor campus helped to organize a permanent Chapter Student Committee. As a first order of business, in late February, they arranged a field trip to Judge O'Meara's courtroom to hear his motion docket. The Committee plans to keep the general student population informed about hearing dates on interesting cases for additional trips to the courthouse.

Then, in early March, Judge Roberts traveled to the Auburn Hills campus to hear several dispositive motions, including some very interesting employment law issues she selected. Before the hearings, the Court met over lunch with student leaders, Professor Alan Gershel and Dean John Nussbaumer. Afterwards, the motion hearings in the Mock Courtroom were very informative for all the attending classes. The Court and the lawyers stayed late to answer questions, and the students continued to discuss the cases for days, eager to hear how the Court resolved the matters. Special thanks to Professor Gershel and Choi Portis, President of the Auburn Hills FBA Chapter, for her help in putting the event together.

Most recently, Judge Steeh took time out on March 31st (before attending Past President Laurie Michelson's investiture as a U. S. Magistrate Judge that afternoon!) to travel to the University of Michigan. The Court selected two great motions to dismiss for Professors Nick Bagley and Len Niehoff's civil procedure and evidence students. In the first hearing, a packed house saw a lively intellectual property dispute about a TV commercial, which offered a fun and funny view into the practice.

The second motion drew a standing room only crowd to hear expert oral argument in a complicated securities matter. The Court's and the lawyers' abilities to simplify and get to the heart of the matter was impressive and highly instructive. Special thanks to Assistant Dean David Baum and UM Law School Student Senate President Rob Swenson for helping to make the day such a success.

It is a rare treat for our local law students to get such direct exposure to the Federal Bench. All in all, these days provide an important and (word has it) memorable experience. So, with the students' summer break in full swing, here's looking forward to Motion Days next year!

Book Club Meets

On May 26, 2011, the FBA Book Club gathered to discuss *The Eyes of Willie McGee: A Tragedy of Race, Sex, and Secrets in the Jim Crow South*, by Alex Heard.

Willie McGee, an African American man, was arrested, tried and convicted three times, and ultimately executed, for the rape of a white woman in 1940s Mississippi. The book is an account of the trials, but it also is an account of the political and social context in which the trials took place, including a discussion of the assumptions about race and sex during that time period and the notoriety the case received over the course of the many trials and appeals. The author seeks to solve the mystery of whether McGee was guilty or not.

The Chapter's Book Club co-chairs Andy Doctoroff and Matthew Schneider led the discussion. Topics included: issues of racism, sexism, and racial injustice; life in the deep south in the 1940s; the significance of the book's title; whether remnants of an unequal justice system pervade the legal system today; the impact of outside forces, such as publicity, on court proceedings; and the author's ultimate conclusion regarding McGee's guilt or innocence. The event was well attended and the book was well received by the group.

The Book Club's next meeting date and book selection will be announced as soon as they are known. Book suggestions for future meetings of the club can be directed to the Book Club co-chairs.

Calendar of Events

July 20 **Ninth Annual Summer Associate/Intern Event**
 Summer associates and interns are provided with practical advice and suggestions that will serve them well as future lawyers and are afforded the opportunity to network with each other and meet members of the local legal community and federal judiciary.
 11:30 A.M. Registration,
 Networking and Lunch
 12:15 P.M. to 1:15 P.M.
 Substantive Programming

Sept 22 **State Of The Court Luncheon**
 Speaker: Hon. Gerald E. Rosen
 Westin Book Cadillac Detroit
 11:30 P.M. Reception
 12:00 P.M. Lunch

Nov 17 **Rakow Scholarship Awards/ Historical Society Luncheon**
A Wrong Without a Remedy: Milliken v. Bradley and the Controversy Over School Desegregation
 Westin Book Cadillac Detroit
 11:30 P.M. Reception
 12:00 P.M. Lunch

Dec 6-7 **New Lawyers Seminar**
 Theodore Levin U.S. Courthouse
 8:00 A.M. Registration

Dec 7 **Chapter Gala Holiday Reception**
 4:30 P.M.
 Hold the Date:
 Further Details to Follow

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

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