



FBA newsletter

Winter 2005

Federal Bar Association - Eastern District of Michigan Chapter - 47 years of service to our Federal Bench and Bar

Rakow Luncheon November 17

The Chapter will continue its luncheon program on Thursday, November 17, 2005, at the Hotel Pontchartrain by hosting the Rakow Scholarship Award Luncheon. The Chapter will present scholarships to an outstanding student from each of Michigan's law schools. The scholarships are in memory of Edward H. Rakow, who served as Assistant Regional Administrator for the Securities and Exchange Commission in Detroit for 26 years, and who was instrumental in founding our Chapter.

The luncheon is held in conjunction with the Annual Meeting of the Historical Society. This year the Historical Society will present a documentary that it commissioned concerning the federal prosecution of six leaders of the Communist Party during the "red scare." The film's producers are Judith Monteil, who received an Academy award nomination for best documentary in 1991, and Ronald Aronson, Distinguished Professor of Humanities at Wayne State University.

The reception will begin at 11:30 a.m., with the luncheon following at 12:00 noon. Tickets are \$25.00 for Chapter members, \$30.00 for non-members, and \$20.00 for judicial clerks. To register online for the luncheon, visit the Chapter's website at www.fbamich.org and click on Events and Activities. For more information, contact Program Chair Elisa Angeli at (313) 496-7635 or e-mail at angeli@millercanfield.com.

Investiture of U.S. Attorney Murphy

On September 15, 2005, Chief Judge Bernard A. Friedman administered the oath of office as U. S. Attorney to Stephen J. Murphy, III. Held in the special proceedings courtroom, Murphy's public investiture was celebrated with great attendance and thoughtful words.

The ceremony began by Chief Judge Friedman introduc-

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President's Column

Julia Caroff Pidgeon

Making the Eastern District a Preferred Venue for the 21st Century

As the home for America's largest industry during the 20th and into the 21st Century, Southeastern Michigan has a legal community with the sophistication and specialization required to meet the needs of global manufacturing businesses. Members of our Chapter are among the leaders of this community, taking justifiable pride in the excellence of the services that they provide to their business and institutional clients. In its region's ongoing efforts to diversify its economy by developing and attracting technologically advanced businesses, our professional services infrastructure is part of the environment that supports and provides competitive advantages to these businesses.

To maintain the excellence of our legal services and to remain competitive, we as a bar must embrace new technology. In litigation practice, our District Court has led the way with the High-Tech Courtroom. One of the most technologically advanced courtrooms in the federal courts, the Eastern District's High-Tech Courtroom supports the presentation of electronic evidence to juries. The days of towering stacks of papers, misplaced exhibits fluttering across the courtroom, cumbersome binders and stacks of posterboard are coming to an end. In their place will be scanned and hyper-linked documents recalled with a click, touch screens for witnesses to illustrate their testimony, monitors for the juries and videos to illustrate the trial lawyer's arguments. Witnesses no longer will need to travel long distances as they will be able to testify by means of videoconferencing.

Electronic presentation of evidence advances several goals, including time savings (cutting trial time in half), efficiency,

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and perhaps most crucially, maintaining juror interest and comprehension. Using evidence presentation software, trial lawyers can organize and present voluminous documents quickly, highlight and annotate crucial documents without destroying the original, synchronize deposition segments with exhibits, and create video deposition clips. Trial presentation is faster, more compelling and much less expensive.

To encourage the use of the High-Tech Courtroom, the District Court, in conjunction with our Chapter and Michigan State University College of Law, has developed a technology-enhanced trial certification course for trial lawyers. This past August, representatives from each of our Chapter=s sponsoring firms participated in the first offering of this course. Through hands-on training, participants discovered the possibilities the presentation of electronic evidence offers to litigators who learn how to use this technology.

Demonstrating their commitment to the use of this technology in every federal courtroom in this district, the judges and the court administrators are taking the course this month. Members of the bar are next. To use the High-Tech Courtroom, attorneys must certified as having taken the training seminar.

Adopting electronic evidence technology and using the High-Tech Courtroom for trials keeps our bench and bar in the lead in the litigation of sophisticated issues. Take the class. Learn the technology – and use it. In the coming months, please check our Chapter website at www.fbamich.org for information and registration for this course, which will be offered monthly beginning in November.



Steve Murphy and his family.

at Sidley Austin Brown & Wood, LLP; and Michigan Supreme Court Justice Maura D. Corrigan. The keynote address was offered by Jennifer M. Granholm, Governor of the State of Michigan.

At the conclusion of the speeches, Murphy's wife, Amy E. Murphy, made the request for the administration of the oath of office. Then, using the Catholic Bible that had been a wedding present to them from Mrs. Murphy's parents, Murphy, accompanied by his wife, his son Stevie, and his daughter Natalie, took the oath of office.

The text of Murphy's remarks from this ceremony, as well as his remarks from the April 28, 2005 Gilman Award Luncheon, can be accessed at www.fbamich.org.

Spotlight on Judge John Corbett O'Meara by Marie Coombs

It was penned on thank you note stationery and arrived within a week after the judge had handed down a three-year sentence. "Your Honor," the convicted felon wrote, "Thank you for your kind disposition during my sentencing. You are truly a fair man and I hope that I will one day prove to you what type of man I am in my heart. Again, thank you for everything."

To those who have had the pleasure of working for or appearing before Judge John Corbett O'Meara, it comes as no surprise that he received this note, as well as others like it over years, from someone he has sentenced. Judge O'Meara, known for his compassion, has made it his life's work to stand up for the little guy. It all may have started when he was a 13-year old summer camper at Culver Woodcraft Camp. There he came across a big bully threatening a rather diminutive camper. Though he knew he was no physical match for the roughneck, Johnny O'Meara stepped in anyway and confronted him directly. The bully backed

Investiture (continued)

ing his colleagues. He then introduced members of the state judiciary who were in attendance, including Michigan Supreme Court justices and Court of Appeals judges, as well as Wayne and Macomb County circuit judges. Of special note was the presence of Murphy's father - Judge Stephen Murphy, II, of the St. George, Missouri Municipal Court.

Following the invocation by Reverend Karl J. Kiser, S.J., President of University of Detroit Jesuit High School and Academy, and the singing of "America the Beautiful" by Monica Allen of Greater Grace Temple, several people offered remarks on Murphy's behalf: Michigan Attorney General Michael P. Cox; Judge Edward Ewell, Jr. of Wayne County Circuit Court; Thomas A. Gottschalk, Esq., Executive Vice President & General Counsel of General Motors Corporation; Bradford A. Berenson, Esq., Partner

down, and the future judge learned a lesson about protecting the rights of those who could not protect themselves.

Judge O'Meara was born and raised in Hillsdale, Michigan. His father had just been appointed postmaster by President Franklin D. Roosevelt; his mother was a former school teacher. After high school, he accepted a four-year, Navy ROTC scholarship to the University of Notre Dame. He honed his radio voice at WNDU, the college radio station, where he shared studio space with a couple of upperclassmen who never made it to federal judgeships, Regis Philbin and Phil Donahue.

His NROTC education obligated him to three years in the U.S. Navy, and he served a fourth year to qualify for duty on submarines, eventually serving as Engineer Officer on the Navy's first guided missile submarine. Although he professes not to be "a professional Irishman,"

Judge O'Meara does have the Irish gift of storytelling, especially when regaling others of his Navy experiences, for example, his interview with Admiral Rickover. Even after his active duty ended, O'Meara continued to serve in the Naval Reserve, attaining the rank of Commanding Officer of Submarine Reserve Unit 9-228.

O'Meara had been bitten by the political bug at an early age when his father took him to the Democratic National Convention in Philadelphia in 1948 where he witnessed the nomination of President Harry S. Truman. After he left the Navy, O'Meara went to work as staff assistant to U.S. Senator Philip A. Hart in Washington, D.C. That job allowed him to work in the presidential campaign of the young senator from Massachusetts, John F. Kennedy, and later in the first senate campaign of his younger brother Ted Kennedy.

By the time he entered Harvard Law School, O'Meara was older than his classmates; and in addition to his studies, he was appointed to the faculty of Harvard College, where he coached the freshman debate team and was a member of the staff of the freshmen dean.

Following law school he was hired by the Detroit law firm Dickinson, Wright, McKean & Cudlip, where he eventually founded and then led the firm's Labor and Employment Group for 21 years. Even as a management side labor lawyer, O'Meara had a reputation for fairness and a real appreciation of workers' problems, earning the respect of union officials who later endorsed his nomination to the federal bench. One of his partners at the firm

once complained, "John's the best friend the union workers ever had!"

As a young lawyer, O'Meara joined a group of Detroiters who traveled to Clarksdale, Mississippi, to assist the legal team representing Aaron Henry in federal court. Henry, a pharmacist, had been the first African American elected to the Mississippi Legislature since Reconstruction.

The legislature was attempting to redistrict Henry out of his seat. For a few days, O'Meara did legal work during the day and slept on the floor in Henry's house at night. Henry prevailed in his suit.

During his 32 years at Dickinson Wright, O'Meara's public service continued. He was politically active in the campaigns of a variety of candidates and causes--too many to mention by name--and held various positions in the Michigan Democratic Party.

In October 1994, Judge O'Meara was appointed to the U.S. District Court for the Eastern District of Michigan by President Clinton. Revered by his staff and respected by fellow judges and lawyers alike, Judge O'Meara is celebrating his tenth year on the bench. All but two of his former law clerks, including one from Los Angeles and two from New York City, returned last November for an anniversary brunch at Sweet Georgia Brown in Greektown. At the Sixth Circuit Judicial Conference last June, his current staff and several federal judges from Michigan celebrated again at a reception at Mackinac Island's Grand Hotel hosted by his former law clerk Paul Brown and Brown's sister and brother-in-law, Marlee and Dan Musser.

Judge O'Meara has been married for 30 years to Julia Darlow, of counsel at Varnum Riddering, who in 1986 became the first woman president of the State Bar of Michigan. They have six children. The couple recently moved from Grosse Pointe to Ann Arbor Township, a move that prompted the relocation of his chambers to the federal courthouse in Ann Arbor.

"Judges, like people, may be divided roughly into four classes: judges with neither head nor heart--they are to be avoided at all costs; judges with head but no heart--they are almost as bad; then judges with heart but no head--risky but better than the first two; and finally, those rare judges who possess both head and a heart--thanks to blind luck, that's our judge." Robert Traver, *Anatomy of a Murder*, (1958).



Former law clerk, Lee Khachaturian, law clerk Brandon Hofmeister, Judge O'Meara, Secretary Janie Freeman, Court Reporter Andrea Wabeke, former law clerk Paul Brown, and career law clerk Marie Coombs

Supreme Court Preview

by M Bryan Schneider

The Supreme Court's October 2005 Term opened on October 3rd with newly invested Chief Justice John G. Roberts Jr. presiding. In the civil procedure and federal jurisdiction areas, the Court has already granted certiorari in cases raising a number of important questions, including:

--Whether, and to what extent, a court of appeals may review the sufficiency of the evidence supporting a civil jury verdict where the party seeking review made a motion for judgment as matter of law under Rule 50(a) prior to deliberations, but neither renewed the motion after the verdict nor moved for a new trial under Rule 59. (*Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, No. 04-597).

- The scope of the probate exception to federal jurisdiction, particularly in cases brought under a federal court's federal-question jurisdiction (*Marshall v. Marshall*, No. 04-1544).

- In what state or states is a national banking association considered to be a citizen for purposes of diversity jurisdiction. (*Wachovia Bank v. Schmidt*, No. 04-1186).

- What legal standard governs the award of costs and attorney fees under 28 U.S.C. § 1447(c) when a removed case is remanded to state court. (*Martin v. Franklin Capital Corp.*, No. 04-1140).

- Whether an entity not named or joined as a defendant can nevertheless be deemed a "real party in interest" so as to destroy complete diversity in a removed action, and whether the appropriate place of citizenship of a limited partnership is determined by the states of citizenship of the partners or rather by whether the partnership's activities establish a nexus with the state. (*Lincoln Property Co. v. Roche*, No. 04-712).

Federal criminal practitioners will also be greeted by a host of important decisions by the time the Term ends in June. As is typical, the Court has already granted certiorari in several Fourth Amendment cases. Most notably, the Court will consider:

- Whether an occupant may give consent for a search to common areas of a home shared with another, even though the other occupant is present and objects to the search (*Georgia v. Randolph*, No. 04-1067).

- The permissibility of an anticipatory search warrant where the warrant's triggering condition is not set forth in the warrant or affidavit (*United States v. Grubbs*, No. 04-1414).

- Whether a parolee may be searched solely on the basis of his parole status, without a showing of reasonable suspicion (*Samson v. California*, No. 04-9728).

- Whether the inevitable discovery doctrine provides an exception to the exclusion of evidence obtained in violation of the Fourth Amendment's knock-and-announce requirement (*Hudson v. Michigan*, No. 04-1360).

The Court will also consider this Term whether a sentence imposed in reliance on the Sentencing Guidelines, in violation of its decision last Term in *Booker*, can constitute harmless error (*Washington v. Recuenco*, No. 05-83).

More notable cases of national import before the Court for this Term also include such questions as:

- The constitutionality under the First Amendment of the Solomon Amendment, which requires that institutions of higher education provide the same access to military recruiters as they provide to other potential employers. (*Rumsfeld v. Forum for Academic and Institutional Rights*, No. 04-1152).

- The correct standard to use in deciding a facial challenge to a statute regulating abortion, and whether New Hampshire's parental notification requirement is constitutional. (*Ayotte v. Planned Parenthood of Northern New England*, No. 04-1144).

- The scope of the federal government's authority to regulate wetlands as part of the "navigable waters" of the United States (*Rapanos v. Army Corp of Engineers*, No. 04-1034, and *S.D. Warren Co. v. Maine Bd. of Environmental Protection*, No. 04-1527).

- Whether the Attorney General permissibly construed the Controlled Substances Act to prohibit the distribution of controlled substances for the purpose of facilitating an individual's suicide, regardless of state law authorizing such distribution. (*Gonzales v. Oregon*, No. 04-623).

- Whether Title II of the ADA, as applied to prisons, is a valid exercise of Congress's power under section 5 of the 14th Amendment, and whether it validly abrogates states' sovereign immunity. (*United States v. Georgia*, No. 04-1203, and *Goodman v. Georgia*, No. 04-1236).

- The constitutionality under the First Amendment of the federal prohibitions on "electioneering communications" and of Vermont's limits on campaign expenditures (*Wisconsin Right to Life v. Federal Election Comm'n*, No. 04-1581, and *Randall v. Sorrell*, No. 04-1528).

New Lawyers Seminar December 6 And 7

The nationally acclaimed (and copied) annual New Lawyers Seminar will be held on Tuesday and Wednesday, December 6 and 7, 2005, at the Hotel Pontchartrain in downtown Detroit.

The Seminar, now in its 29th year, utilizes a "nuts and bolts" how-to-do-it approach which is designed to assist recent graduates in understanding certain areas of substantive practice and the fundamental procedures followed in the U. S. District Court for the Eastern District of Michigan and in the State courts in Wayne, Oakland and Macomb counties, featuring a faculty that is made of judges, court personnel and practicing attorneys who are well qualified to present the subjects upon which they speak.

The first day of the Seminar, December 6, is "Federal Day," with intensive focus upon the practicalities of federal practice, followed by a swearing-in ceremony which will be coordinated by the Clerk's Office. (Separate registration with, and payment to, the Clerk's Office is required for the swearing-in ceremony click on: www.mied.uscourts.gov/index.html)

The second day, December 7, is "State Day" and leads the uninitiated through the vagaries of the tri-county court systems, with a luncheon at the Hotel Pontchartrain, usually addressed by the Chief Judge of the Wayne County Circuit Court.

Additionally, for each subject covered, there is an accompanying outline and/or substantive article, conveniently formatted for word searching on a CD-ROM.

Over the years, this Seminar has been copied, first nationally by other FBA Chapters and more recently by local bar associations and law firms. However, it remains unparalleled both in content and in cost. The two-day Seminar, reception, luncheon and Seminar materials are all provided for only \$65.00 to FBA members; \$95.00 to non-members. A special price of \$140.00 includes the seminar plus one year of membership in both the national Federal Bar Association and the Eastern District Chapter.

Co-chairs for the seminar are attorneys Brian Akkashian, Christine Dowhan-Bailey, Brian Figot, Grant Gilezan, Geneva Halliday and Cathrine Wenger.

Reservation checks should be made payable to the Federal Bar Association, and mailed to New Lawyers Seminar, Box 310610, Detroit MI 48231-0610.

On-line registration with secure payment by credit card is available at www.fbamich.org.

If you have questions, email the FBA at fbamich@fbamich.org or call Brian Figot at (248) 593-5928.



Pro bono Attorneys and Award Recipients at the State of the Court Luncheon.

State Of The Court Luncheon A Success

The Chapter kicked off its luncheon series with the annual State of the Court Luncheon at the Hotel Pontchartrain on September 8, 2005. Over 200 lawyers and judges enjoyed an inspiring and informative program.

The program began with a welcome from Chapter President Julia Caroff-Pidgeon. Judge Arthur J. Tarnow remarked on the important contributions of attorneys

who provide *pro bono* service to the Court. The group includes students who participated in the Wayne State University Law School Civil Rights Litigation Clinic, under the direction of Daniel E. Manville. Judge Tarnow presented certificates of appreciation from the Court to fifty-three attorneys and twenty-one students.

The Chapter extends its thanks to Judge Denise Page Hood and her staff, in addition to Court Administrator David Weaver and his staff, for recognizing these well-deserving practitioners.

Following the recognition of pro bono honorees, Magistrate Judge Paul J. Komives was presented the Federal Magistrate Judge Association's Founder's Award "in grateful recognition of his valuable contributions to the Magistrate Judge System and the United States Courts." The presentation was made by Magistrate Judge Steven D. Pepe, who described the many reasons why Magistrate Judge Komives is so deserving of this prestigious honor. The complete text of

Magistrate Judge Pepe's speech is available online at the Chapter's website at www.fbamich.org. In addition, the Newsletter's Summer 2002 edition, also available online, features an article on Magistrate Judge Komives.

Following recognition of the pro bono honorees, Chief Judge Bernard A. Friedman delivered the State of the Court address. Chief Judge Friedman first listed for each district judge the several committees on which he or

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Magistrate Judge Komives, Magistrate Judge Pepe and Chapter President Julia Pidgeon.



Chief Judge Friedman

State of the Court (continued)

she serves, reminding us all of our very active bench. Chief Judge Friedman discussed several of the Court's recent initiatives, including the availability of the Court's Ombudsman, George J. Bedrosian, the recent seminar on the hi-tech courtroom, and the upcoming Sixth Circuit Judicial Conference in Detroit. The overall focus of the address

was on the Court's function as a service-provider to the bench and community. Chief Judge Friedman's remarks are also available online.



George J. Bedrosian

Meet Your Ombudsman by George J. Bedrosian

At the Federal Bar Association luncheon held on February 22, 2005, Chief Judge Bernard A. Friedman administered the oath of office to me as Ombudsman for the Eastern District of Michigan.

Chief Judge Friedman previously called and informed me that he had established the position of Ombudsman with the support of the members of the bench, and briefly described the role and responsibilities of an ombudsman. On behalf of the Judges of the Eastern District, he asked me whether I would be willing to serve, without compensation, as the first Ombudsman for the Court, the eighth largest federal court in the nation. I was deeply honored by his request, and immediately accepted the appointment.

Although ombudsmen are utilized in state and local government, as well as corporations and educational institutions, there is only one other federal court with an ombudsman program and that is the U. S. District Court for the District of Delaware, established in 1997.

The role of the Ombudsman is described in the Administrative Order of appointment: "Mr. Bedrosian will serve as an intermediary between the judicial officers of the Eastern District of Michigan and the bar. He will act on an informal basis to interface and address those matters lacking an institutional mechanism or forum for redress."

My duties as the Eastern District of Michigan's first Ombudsman are evolving. I do not actively seek complaints or issues to review or resolve, and become involved in matters only when contacted by an attorney or judge who perceives a problem exists or may develop in the future. The bench has vested me with discretion to decide whether or not an issue should be addressed by the Ombudsman.

I regard confidentiality and anonymity of paramount importance, to the utmost extent possible. When contacted, the party is informed at the outset that our conversation is privileged and confidential; that there will be no notes or recording of our discussion; and that there will be no action taken by me unless specifically requested and authorized by the party. Following an informal discussion, I would then determine whether the grievance presented comes within my responsibilities as Ombudsman and what procedure would be appropriate to recommend.

If I am consulted regarding the actions of a judge in pending litigation, the concerned party is informed that I will confidentially communicate with each attorney in the case and inform them that I have been requested to investigate the issue, and that it may be necessary to contact the judge. In doing so, ex parte communication will be avoided. It may be inevitable that counsel in the case, as well as the judge, will conclude the identity of the attorney who contacted the Ombudsman in spite of efforts to safeguard anonymity. This should not, however, deter an attorney from contacting the Ombudsman.

On occasion, conversation with the Ombudsman may be all that is necessary to alleviate or minimize the concerns of the attorney or judge. In other words, verbally ventilating will be sufficiently therapeutic to resolve an issue. At other times, more involvement by the Ombudsman may be required. Most importantly, fear of retaliation by Judges of the Eastern District is unfounded, and should not be the determinative factor in deciding whether to contact your Ombudsman.

My past legal experience includes partnership in the law firm of Goodman, Eden, Millender & Bedrosian for over thirty-five years. For the past ten years, my practice has been exclusively specializing in alternative dispute resolution, including facilitation, mediation and arbitration. I maintain an office at 65 Cadillac Square, Suite 2810 Cadillac Tower, Detroit, MI 48226, and can be contacted at (313) 965-6250 or gjblaw@aol.com. A curriculum vitae will be forwarded upon request.

Is Doing A Trial Your Game?

Do you want to take depositions? Do you want to travel to rural areas of Michigan and visit strange places? Do you want to try a case or two? If you answered yes to all of these questions, you will want to attend the Pro Bono Training Seminar in Courtroom 718, at the U. S. District Court in Detroit on November 16, 2005. Registration begins at 8:30 a.m., with continental breakfast being provided. The program will last from 9:00 a.m. until 12:40 p.m.

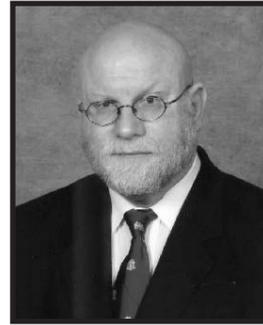
The U. S. District Court and the FBA are participating in a joint venture to provide newer lawyers an opportunity to gain trial experience by providing pro bono representation. In exchange for your participation the FBA, in conjunction with the Court, will provide training and other assistance as you develop your skills in providing presentation in an assigned pro bono case.

Most pro bono cases involve litigation filed by prisoners which have survived dispositive motions, and the judges have determined that these cases should be developed for trial. Many lawyers are hesitant to accept a pro bono assignment to a prisoner's rights case because (1) it is an area of the law that they are not familiar with; (2) they are not familiar with the prison environment, which is generally perceived as hostile; and (3) they believe that the client will be extremely difficult. Albeit there is some truth to each of these concerns, the FBA has established a mechanism for handling these concerns.

In addition to the Pro Bono Training Seminar, bi-monthly seminars, on specified issues to be determined, will be offered. A web-page is being created which will contain model pleadings, briefs and other useful information. Also, the newer lawyers will have the opportunity to consult with Dan Manville, a respected expert in prisoner rights litigation as they develop their cases.

Most newer lawyers do not get the opportunity to take depositions, to argue motions, and to present a case to a judge or jury. The FBA project is intended to provide newer lawyers this opportunity. In meeting this need of newer lawyers, the FBA will also meet its goal of providing services to the Court and to the community. By participating in this project, the newer lawyers and their respective firms will meet their pro bono commitments.

If you have questions or if you wish to attend the Pro Bono Training Seminar, send an email to Dan Manville, at dmanville@wayne.edu, and provide your name and firm name.



News From National by Brian Figot, 6th Circuit VP

Sausage Making In Fort Lauderdale

In the near future, the FBA's membership will be asked to ratify sweeping changes to the association's constitution and by-laws which were steamrolled through at the Annual Meeting last month in Fort Lauderdale. Some of the contemplated changes may turn out for the best. Some remain – in my view – inadvisable. However, the single most issue which emerged from the meeting was one of process. In short, the methods used by the proponents of change constituted a blatant misuse of parliamentary procedure which gave rise to a fundamentally anti-democratic result. At the end of the day, my sense of revulsion was akin to what a Vegan must feel after touring a slaughterhouse.

According to Robert's Rules of Order, one of the core values of parliamentary procedure is the "due regard for every member's opinion." In order to assure fairness, an independent parliamentarian is indispensable. Noted parliamentarian Jim Slaughter writes:

"You especially need a parliamentarian if you know a dispute is coming up; if you're working on revision of bylaws; if you're in litigation or a grievance procedure; or if you're having an annual convention or board meeting and want to be sure that it's legal and the officers look good. . . . You can be the best president 364 days of the year, but if, on that 365th day, you preside over a horrible convention . . . where people feel they weren't treated fairly, that can wreck the rest of it."

Outgoing FBA president Tom Schuck unwittingly became an illustrative example of Slaughter's instructive warning, as the wise initiatives and actions instituted during his presidency were dwarfed by his actions as an advocate for the comprehensive change envisioned by the Governance Review proposal. President Schuck acted as his own parliamentarian in conducting the Annual Meeting. His bias permeated the proceedings.

The bias was evident in the agenda for the meeting, as the governance issue was scheduled for the end of the session despite its precedence as a proposal to fundamentally alter the nature of the organization. Thus, the issue was left for late in the day, when the proponents could be assured that the delegates would be more likely to accept short shrift. And, short shrift they got.

The bias was manifested further in the president's first ruling as parliamentarian and chair, when he disregarded the FBA by-law which provides that the Constitution, By-laws and Rules Committee shall consider all proposed

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News From National (continued)

changes “and shall report on them . . . before the dates on which notice must be provided of the [meeting] at which such proposed amendments may be acted upon.” There was no report, much less a report in the time frame envisioned. The by-law concludes: “The provisions of this By-law shall not be suspended.” The president/parliamentarian refused to enforce the by-law. The National Council debated and then voted upon language which still has not been revealed.

Next, over objection, the chair limited debate to two minutes per speaker, thereby ignoring the guidance of Roberts Rules that would limit debate to ten minutes per speaker. However, the first speaker, the movant for the proposal, was given unlimited time to speak and the second proponent was presented in the form of lengthy correspondence read into the record by the Chair. This one-sided approach was reminiscent of the “debate” which preceded the Annual Meeting, in which only proponents were permitted access to the FBA website, access to The Federal Lawyer and permitted time to speak to incoming chapter presidents at the leadership training which was conducted in D.C. last April.

In the end, there was no debate on the merits of the proposal. Instead, there was a limited debate on four proposed amendments to the proposal (two of which passed). When the first amendment passed by a vote of 47-43, President Schuck tried to declare the defeat of the proposal – initially ruling (as parliamentarian) that abstentions and those not voting would count as nays. Then, as Eastern District of Michigan Chapter President Julia Pidgeon stood to be recognized, to propose an amendment, Melissa Gilbert (chair of the Government Relations Committee) scurried to a microphone and “called the question” – a parliamentary device which is to be used only when all who want to be heard have been heard. See generally, Sturgis, *The Standard Code of Parliamentary Procedure* (1988), at 61.

Is the resultant proposal, thereby “adopted” meritorious? That question requires additional thought before we vote. However, regardless of the merits, the process was tainted so badly as to call for additional discussion and continued debate.



From Court Administrator Dave Weaver

Amendments to Local Rules

In my last article, I wrote about several proposed amendments to the Local Rules. All of the proposed amendments

have been approved by the Bench and are now in effect. Most notably, LR 5.1.1, Filing and Service by Electronic Means, makes electronic filing mandatory as of December 1, 2005. The Court had already approved mandatory training in the use of the Case Management / Electronic Case Files (CM/ECF) system.

If you have not yet contacted the Court to register for training, please do not wait! Available classes are filling quickly. Training is available at the Court and on-line and other off-site venues are being scheduled. Please visit the Court’s official CM/ECF Web site accessible at www.mied.uscourts.gov. The site has all of the information and resources an attorney needs to register, sign up for training and start e-filing!

LR 83.31, Conduct in Federal Court Facilities, now allows attorneys to carry cellular phones and any other device with wireless communication capabilities into federal court facilities and use them in designated areas. The rule also allows the resident district judge at the Court’s remote locations to determine what the local practice will be regarding cell phone usage. Please remember, if you use your cell phone in violation of the rule it will be confiscated and you will be fined!!

Deputy Court Administrator Mary Miers

Deputy Court Administrator Mary Miers has announced her retirement effective December 2, 2005. Mary has been with the District Court for more than 16 years. She previously worked in the Bankruptcy Court for 8 years, which included 4 years as courtroom deputy clerk to Bankruptcy Judge Steven Rhodes.

Mary has been Deputy Court Administrator since 1999 and had direct oversight of the day-to-day operations of the Clerk’s Office. Since January 2003, Mary also served as Project Manager for the Case Management/Electronic Case Files (CM/ECF) system. Her leadership was instrumental in the Court’s successful implementation of CM/ECF.

Mary has been a dedicated employee, a trusted colleague and my friend. Join me in wishing her a long, happy and healthy retirement....in Montana, where she is relocating with her husband Ken!

Hurricane Katrina

At the September Judges’ Meeting, the Bench unanimously approved a \$10,000 donation to aid the victims of Hurricane Katrina. A portion of the donation went to the American Red Cross and the remaining amount went to the Federal Court Clerks Association (FCCA). The donation to the FCCA will be distributed to judicial officers, chambers staff, other court staff and employees of the federal defenders office. The donation was made on behalf of the Bench and Bar of the Eastern District of Michigan.

Remember, if you have any questions or comments, please send them to me at mie_fba@mied.uscourts.gov.

Judge Suhrheinrich Portrait Presentation

The Court sat in special session on Friday, August 19, 2005, for the presentation and dedication of the portrait of the Honorable Richard F. Suhrheinrich. Judge Suhrheinrich, who currently sits as a Senior Judge of the Sixth Circuit, sat in the Eastern District from 1984 to 1990.

Former Chief Judge Lawrence P. Zatkoff presided over the special session. Also in attendance were judges of the Sixth Circuit, bankruptcy judges, magistrate judges, a Justice of the Michigan Supreme Court, current and former law clerks, and family and friends of Judge Suhrheinrich.

Artist Jamie McMahan of Memphis, Tennessee painted the portrait, which was donated to the Court by friends and family of Judge Suhrheinrich. Judge Suhrheinrich's grandchildren: Rachael, Ryan, and Patrick Restum; Andrew Hartman; and Madeline and Richard F. Suhrheinrich, II, had the honor of unveiling the portrait. Judge Zatkoff accepted the portrait on behalf of the Court. Jamie's other portrait of Judge Suhrheinrich, which was donated to the Court of Appeals in Cincinnati, Ohio, was recently featured in the magazine *International Artist*, voted the best artist magazine in the world.

Judge Zatkoff, Richard Kitch, former law clerks Tim Ryan and Tim Melton, and Richard J. Suhrheinrich, the Judge's son, were the speakers at the special session. Judge Zatkoff explained that because of his longstanding friendship with Judge Suhrheinrich, Chief Judge Friedman had graciously allowed him to preside over the event. Judge Zatkoff initially remarked upon the large number of judges attending the ceremony. He humorously explained that when the notice of the event was sent to the judiciary, there was a misprint and that the invitation to the hanging of Judge Suhrheinrich's portrait omitted the word "portrait."

Judge Zatkoff observed that he and Judge Suhrheinrich had been "playing career tag" for thirty-nine years. Judge Zatkoff said that he graduated after Judge Suhrheinrich from the Detroit College of Law, and followed Judge Suhrheinrich's path to the law firm of Moll Desenberg Purdy Glover & Byer, then to the Macomb County's prosecutor's office, back to Moll Desenberg, and eventually to the federal district court bench. Their friendship has endured.

Mr. Kitch characterized Judge Suhrheinrich as the embodiment of the American Dream. He told of the Judge's humble beginning in tiny Lincoln City, Indiana, from poor, working-class parents, to the second highest court in the

United States. He told how the Judge's parents moved to Detroit, where he attended Southeastern High School, and also met his wife, then Beverly Ryan. With Beverly's support, the Judge attended Wayne State University and the Detroit College of Law.

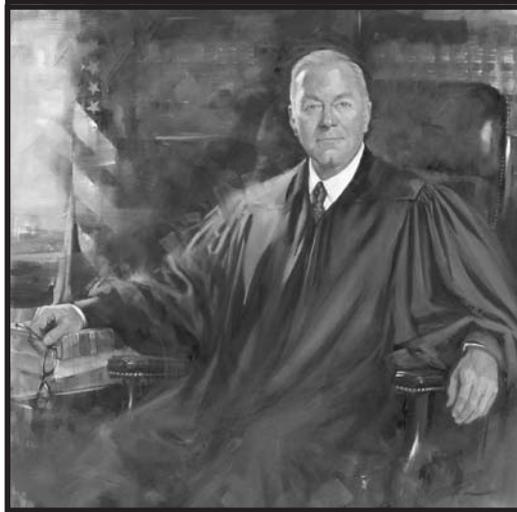
Mr. Kitch said that he and the Judge met at Moll Desenberg, and that several years later, on January 1, 1969, they formed the firm of Kitch and Suhrheinrich. He stated that when the Judge was not trying lawsuits, he was "rainmaking." Mr. Kitch said that the firm has grown from four lawyers to over one hundred today, and that the firm's growth and success are due in large part to the legacy of Judge Suhrheinrich.

Tim Ryan is currently affiliated with the Kitch firm. He served as a law clerk to Judge Suhrheinrich in 1985-1986. He described his year with Judge Suhrheinrich as "the most educationally rewarding year of my life." He explained that Judge Suhrheinrich helped him not only improve his research and writing skills, but most importantly, "made me a much more critical thinker." He explained that the greatest value of his clerkship was the development of a close personal relationship with the Judge, which continues to this day. He described the Judge's capacity to serve many people as a friend, role model, and mentor, in addition to being an outstanding attorney and judge.

Tim Melton is a partner in the Chicago office of Jones Day, where he is co-head of the capital markets practice. He served as a law clerk to the Judge in 1987-1989. He explained that in addition to being a spectacular lawyer, the Judge "was great in giving life's lessons" and that from Judge Suhrheinrich he also learned how to be a professional. Most importantly, he explained that the Judge taught him a work ethic. He concluded saying that he was extremely proud to be part of the incredible legacy of law clerks and friends of Judge Suhrheinrich.

Richard Jon Suhrheinrich is an equity partner in the Kitch firm, practicing in its Okemos office. Rich noted initially that the other speakers had described his father as tough, demanding, but fair, and that as his son, he could "[o]bviously . . . weigh in on those subjects." He stated that he had been "in the Suhrheinrich courtroom" throughout his entire life, and assured the audience that the Judge "was more than qualified to hand out punishment." He stated that, in actuality, the Judge was a very tolerant father, that he had certain rules, and that if you lived by those rules, there were no problems. He also described the other side to his father, and reminisced about the wonderful times they spent together as a family.

(see page 10)



Portrait (continued)

Rich stated that as he gets older, he appreciates just how hard his father worked to provide their family with a wonderful home, great vacations, a wonderful upbringing, educational opportunities; in short, every opportunity to succeed. He noted that, in addition to being a good attorney, the most important things he has learned from his father are honesty, integrity, loyalty, and love of family. He thanked his father on behalf of the family, expressing the great love and pride they feel for their father.

For his part, Judge Suhrheinrich stated that he had been very lucky in his life to have become a lawyer, to have met Mr. Kitch and his wife, and to have been appointed to the U. S. District Court. He stated that it was very difficult for him at first to learn to be a dispassionate, quiet, considerate judge, and that he often looked to judges Avern Cohn and Phillip Pratt for advice. He also commented on the wonderful diversity of the Eastern District bench.

After the special session, a reception hosted by the Federal Bar Association was held in the main hallway of the Courthouse.

Advanced Technology And Electronic Evidence Training Program

The Advanced Technology Courtroom on the second floor of the Levin Courthouse is a 21st Century marvel and valuable resource for trial lawyers to present their advocacy through the use of digital video/display technology. The Courtroom allows counsel to switch from displaying exhibits, realtime transcripts, video recordings or multimedia presentations with the push of a button and includes:

- Flat-screen monitors in the jury box and at the counsel tables;
- A monitor in the witness stand which allows on-screen drawing and highlighting to emphasize specific details for display throughout the courtroom;
- A monitor at the Bench, from which the judge can control the presentation of evidence;
- A document camera which can be used to display exhibits such as documents or three-dimensional objects;
- Special connections for multi-media presentations or images from a portable computer so that documents and images can be displayed on any monitor in the courtroom;
- A visual image printer to produce a 3"x 5" print of any image that is displayed ;
- Video conferencing capability, for remote presentation of off-site testimony (which was used by Judge Battani in one case in order to allow testimony from a California witness who was 8-1/2 months pregnant and unable to travel); and

- Realtime transcription from the court reporter
- However, special certification is required in order to employ the as-yet vastly underutilized facility.

On August 24, the Chapter, together with the District Court and the MSU College of Law "rolled out" the much anticipated Electronic Courtroom Training Program with a presentation by Sixth Circuit Judge David McKeague, a nationally renowned expert in this exciting new area.

Judge McKeague focused upon the numerous reasons why attorneys should obtain certification, explaining that, with minimal training, attorneys can present photos, documents, objects, videotapes and electronic presentations to focus juror attention on critical details. The level of juror interest when the technology is used "is nothing short of extraordinary," according to Judge McKeague. "Their eyes are glued to the screen until it goes dark."

In the near-term, the Chapter, the District Court and MSU College of Law will regularly schedule additional training sessions. In the long term, we can look forward to a day when digital trial will become as commonplace as computer research and word processing, and the "paper trial" will go the way of onion skin and the Decennial digests.

State of the Bankruptcy Court Luncheon

Chief Bankruptcy Judge Steven W. Rhodes presented the "State of the Bankruptcy Court" at the Bankruptcy Section's first luncheon program of the season. Judge Rhodes highlighted the many changes bankruptcy practitioners and the Court are now undergoing. These include the implementation of CM/ECF on July 1, 2005, as well as the passage and imminent implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") on October 17, 2005. He praised the efforts of Sheila Tighe, Clerk of the Bankruptcy Court, and her staff, as well as the bankruptcy bar, for the successful rollout of the electronic case filing system.

In addition, Judge Rhodes discussed various aspects of the BAPCPA. In particular, he announced that the Rules Committee of the Judicial Conference has promulgated a set of proposed interim rules. Some of these interim rules will be adopted into local rules because the process of adopting them as national rules is anticipated to take three years. These rules amend the existing Federal Rules of Bankruptcy Procedure significantly, and Judge Rhodes encouraged all to study the new rules. The proposed changes to the local rules will be published for comment and adoption before the effective date of the new law on October 17th. For the complete text of Judge Rhodes' remarks, visit the Chapter's website at www.fbamich.org.

With changes abounding in bankruptcy, we can all anticipate a busy and interesting year ahead!

Mark your Calendars for the 2006 Sixth Circuit Judicial Conference by Barbara Rom

It has been 26 years since the Sixth Circuit Judicial Conference visited Detroit. No one seems to know why it has been so long, and I suppose, in retrospect, it really doesn't matter. The key point is that the Judicial Conference will be here, headquartered at the Detroit Marriott Renaissance Center, Wednesday through Saturday, May 17-20, 2006. Furthermore, following the recent practice of alternating open and invitational conferences, it will be open to all attorneys admitted to practice before the Court of Appeals or any district court in the Circuit. It is a unique opportunity to converse personally with Judges throughout the Circuit – Magistrates, Bankruptcy Judges, District Judges, and Circuit Judges.

On the recommendation of Chief Judge Bernard A. Friedman, the Circuit has invited the Chapter to play a substantial role in presenting the Conference. A committee consisting of co-chairs Dona Tracey, Jeff Sadowski, Tom McNeill and Barbara Rom and members Grant Gilezan, Judge Mark Goldsmith, Tom Cranmer, Brian Figot, Kathleen Nesi, Julia Pidgeon, Julia Blakeslee, Reginald Dozier, Caridad Pastor Cardinale, Susan Gillooly, Kathryn McCool, Saima Mohsin, and Reginald Turner is already hard at work. The committee submitted many program suggestions to the Circuit Standing Committee.

The general format of the Conference will be as in the past. Meetings of Circuit committees will take place Wednesday morning, May 17th and meetings of judges are scheduled for Wednesday afternoon. Wednesday evening, a reception will be held in the GM Wintergarden.

The Conference will open formally at 8:00 a.m., Thursday. The opening session will be The Law, the Courts, and the Future of the American Automobile Industry, moderated by David E. Cole, chairman of the Center for Automotive Research in Ann Arbor.

Following this plenary session, there will be breakout sessions highlighting changes in bankruptcy law, sentencing, communications, and appellate practice. Another plenary session will focus on Class Actions and Related Jurisdictional Issues. Thursday evening, the Sixth Circuit Life Members will host a reception.

Friday morning's plenary session begins with the annual Supreme Court Update by Duke University Law Professor Erwin Chemerinsky. Following that, there will be a presentation by two University of Wisconsin law professors on Independent Judiciary: An Historical Overview. Then, Circuit Judge Julia Gibbons will moderate a panel on Independent Judiciary: Present Status and Future Prospects.

(see page 12)

Calendar of Events

November 16 Pro Bono Training Seminar
Courtroom 718
Theodore Levin United States
Courthouse
Registration 8:30 a.m.
(Continental Breakfast provided)
Program: 9:00 -12:40
Contact: Dan Manville
313-577-1897 (leave message)
or probono@wayne.edu

November 10-11 First Annual Detroit
Bankruptcy Conference,
"Practice Under the New
Bankruptcy Law"
Sponsored by the American
Bankruptcy Institute
For additional details, go to
www.abiworld.org

November 17 Rakow Scholarship Awards
Luncheon & Historical Society
Annual Meeting
Special Event: Preview of the
documentary film commissioned
by the Society and produced by
previous Academy Award
nominee Judith Monteil, and
Ronald Aronson, Distinguished
Professor of Humanities
Hotel Pontchartrain
11:30 a.m.
Contact: Elisa Angeli,
313.496.7635 or register on-line
at www.fbamich.org

December 6-7 New Lawyers Seminar
Hotel Pontchartrain
8:15 a.m.
Contact: Brian Figot, at
248.593.5928 or register on-line
at www.fbamich.org

April 6, 2006 Leonard R. Gilman Award
Luncheon
Special Event:
Speaker: Elmore Leonard
Hotel Pontchartrain
11:30 a.m.
Contact: Elisa Angeli,
313.496.7635 or register on-line
at www.fbamich.org

May 17-20, 2006 Hold The Date For The Sixth
Circuit Judicial Conference
Details To Follow

2006 Sixth Circuit Judicial Conference (continued)

Thursday and Friday afternoons will offer a variety of activities for attendees and guests including the traditional golf outing, venue to be determined.

At the Banquet, Friday evening, Circuit Justice John Paul Stevens will make remarks.

The featured speaker will be Michael Barone, Senior Writer, U.S. News & World Report. Saturday morning, there will be breakout sections by district in order to facilitate open discussion between judges and lawyers of matters of mutual concern. As more detailed information and registration materials for the Conference become available, the Chapter will disseminate them by broadcast email and through this newsletter.

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