



FBAnewsletter

Winter 2011

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

McCree Award Luncheon February 23rd*

The Chapter will hold its annual Wade Hampton McCree, Jr. luncheon on Wednesday, February 23rd, at the Westin Book Cadillac. The reception will begin at 11:30 a.m. and the luncheon at noon.

The keynote speaker will be Erwin Chemerinsky, the founding Dean and Distinguished Professor of Law at the University of California, Irvine, School of Law, with a joint appointment in Political Science.

Dean Chemerinsky's areas of expertise are constitutional law, federal practice, civil rights and civil liberties, and appellate litigation. He is the author of seven books, most recently, *The Conservative Assault on the Constitution* (October 2010, Simon & Schuster), and nearly 200 articles in top law reviews. He frequently argues cases before the nation's highest courts, and also serves as a commentator on legal issues for national and local media.

Dean Chemerinsky holds a law degree from Harvard Law School and a bachelor's degree from Northwestern University.

The Wade Hampton McCree, Jr. Award for the Advancement of Social Justice will be presented at the luncheon.

The Award honors individuals or organizations that have made significant contributions to the advancement of social justice. These contributions may include advancing social justice in areas involving poverty, promoting economic or educational opportunity, or fighting discrimination involving race, gender, ethnicity, national origin, religion, or economic status. The recipient may

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President's Column

Laurie Michelson

Membership Does Indeed Have Its Rewards



"In today's fast-paced, plugged-in, sometimes impersonal world, it is necessary to find ways to feel a real connection to others. Sometimes, it can seem as if one is drifting through life, consumed with all that 'needs to get done.' A way to become more grounded is to choose something meaningful and get involved through volunteering precious time, resources, or expertise."¹

This is certainly true of busy lawyers. Despite the demands of our day-to-day work, we strive to find time to devote to community projects, charitable groups and professional organizations. Indeed, we are inundated with opportunities and requests. There are, for example, countless local and specialty bar associations, State Bar sections, ABA sections, divisions and forums, industry-focused groups, and honorary professional societies. And most of them would identify very similar benefits of becoming actively involved:

- Networking and socializing opportunities
- Continuing education and expansion of skill sets
- Promotion of the profession
- Satisfaction of giving back to the profession and community
- Sharing experiences with people from diverse backgrounds
- Desire to enhance one's marketability

If you are reading this column then, presumably, you already have some level of involvement with the Chapter; but can the same be said of the National FBA? I wanted to take this opportunity to reiterate the recent message from the new National FBA President Ashley Belleau as to the benefits of membership in and involvement with the National FBA. The National FBA is the premier bar association serving the federal practitioner and the federal judiciary. It is dedicated to promoting the welfare, interests, education and professional development of all attorneys in federal practice.

Our Chapter has put together its own "Top 10 List" of the reasons to join the National FBA:

1. The Eastern District of Michigan Chapter is one of the

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**WINNER
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President's Column (continued)

80 local chapters of the Federal Bar Association. Our local chapter exists because the National FBA exists.

2. Members in the National FBA receive its monthly magazine, *The Federal Lawyer*, which contains a great deal of information pertinent to federal practice.

3. The National FBA website, www.fedbar.org, is likewise helpful to the federal practitioner, and includes a members-only directory (referrals!) and a list of service providers offering discounts.

4. Joining the National FBA helps our local chapter financially -- a portion of each member's National annual dues is rebated to the local chapter.

5. The National FBA employs a government relations counsel to inform and advocate concerning positions on issues adopted by the National FBA, such as present efforts to resolve the gridlock in Washington over judicial appointments.

6. The National FBA provides programming and networking opportunities through its 18 Sections, such as Antitrust & Trade Regulation, Bankruptcy, Criminal, Health, Federal Litigation, Intellectual Property and Labor & Employment.

7. The National FBA also offers renowned annual seminars providing the very best in continuing legal education for the federal practitioner, such as the Insurance Tax Seminar and the Federal Sentencing Guidelines Seminar.

8. The National FBA sponsors highly regarded annual conferences, such as the Labor and Employment Law Conference, the Tax Law Conference and the Indian Law Conference.

9. The National FBA has an office in Northern Virginia (Arlington), which members may utilize while working or vacationing in the Washington, D.C. area.

10. Members of our local chapter have served, and presently serve, in National FBA leadership positions, for which membership in National FBA is a prerequisite.

As you think about joining the National FBA, ask yourselves whether it is just a coincidence that three of the most successful advertising themes ever happen to be:

- "Membership has its rewards."[®]
- "National, go like a pro."[®]
- "Just do it."[®]

So as we enter the "season of giving," please consider joining and then giving a portion of your time to the activities and efforts of the FBA. "For the small investment of a few additional hours each month, it is possible to maintain a network for support . . . build on your existing skills, learn new skills, get connected with new people and become visible in your profession and community. Aren't you worth it?"²

¹ M. D'Archangelo, *Doing Good—The Benefits of Volunteering for Your Life, Your Career, Your World*, LabMedicine (2009).

² S. Edwards, *Are You Getting All You Can from Organization Memberships*, IEEE-USA Today's Engineer (July 2008).

McCree (from page 1)

be selected from any field of endeavor including law, social service, community organization, volunteer activities, journalism, teaching and academic research.

This year's recipient of the McCree Award is Mary Sue Coleman, President of the University of Michigan since August 2002. As president, she has unveiled several major initiatives that will have an impact on future generations of students, the intellectual life of the campus, and society at large. These initiatives include the interdisciplinary richness of the U-M, student residential life, the economic vitality of the state and nation, ethics in our society, and issues related to health care.

President Coleman is regarded as a national spokesperson on the educational value of diverse perspectives in the classroom. Her extensive leadership positions in higher education include serving on the Association of American Universities Executive Committee and the Internet2 Board of Trustees. Previous positions include membership on the National Collegiate Athletic Association Board of Directors and the Knight Commission on Intercollegiate Athletics.

Elected to the Institute of Medicine, President Coleman also is a Fellow of the American Association for the Advancement of Science and of the American Academy of Arts and Sciences. She co-chaired a major policy study of the Institute of Medicine, examining the consequences of uninsurance, and has become a nationally recognized expert on the issue.

In 2010, U.S. Commerce Secretary Gary Locke named President Coleman as co-chair of the National Advisory Council on Innovation and Entrepreneurship. She also is a member of the Detroit Renaissance Board of Directors; the Presidents Council, State Universities of Michigan; and the Michigan Strategic Economic Investment and Commercialization Board.

She is a trustee of the John S. and James L. Knight Foundation and the Gerald R. Ford Foundation. She serves on the boards of directors of Johnson & Johnson and the Meredith Corporation.

For those affiliated with organizations that are sponsors of the 2010-2011 Luncheon Series, tickets likely are available through your organization.

For others, the charge for the luncheon is \$25 for FBA members and \$30 for non-members. Tickets are available on-line at www.fbamich.org.

**The biographical information for Erwin Chemerinsky and Mary Sue Coleman was excerpted and reprinted verbatim from the following websites: http://www.law.uci.edu/faculty/profile_e_chemerinsky.html <http://www.umich.edu/pres/aboutmsc.php>.*

Chapter Mourns a Loss

By: Andrew J. Lievense*

Dores McCrary McCree, a long-time contributor to the Chapter and widow of the late Judge Wade Hampton McCree, Jr., died on Tuesday, December 7, 2010. She was 90 years old.

Mrs. McCree served the Chapter in many ways. She was the founding president of the Historical Society of the United States District Court for the Eastern District of Michigan, and was a Trustee of the Historical Society at the time of her death. She also continued to serve on the nominating committee for the Wade Hampton McCree, Jr. Award for the Advancement of Social Justice, an annual award presented by the Chapter.

Joel Shere, an early law clerk to Judge McCree, remembers Mrs. McCree fondly. "I have very good memories of Does. She was a very wise, strong person who endured all of life's experiences. She was very insightful and understood people. She was a true partner with Judge McCree, but she was also extremely effective and influential in her own right."

After her husband's death, Mrs. McCree remained active counseling students at the University of Michigan Law School, where Judge McCree had taught. Retired Magistrate Judge Steven Pepe remembers first meeting Mrs. McCree at a law school faculty event in the early 1980s. "One of my fondest memories, from a few years later after I had become a magistrate judge, was driving back to Ann Arbor from a Federal Bar Association dinner in Detroit with Wade, Does not being able to join us. Wade began reciting wonderful love sonnets he had written to Does while a Captain in Italy during WW II. As I came to know Does more, particularly after her husband's untimely death in 1987, I came to know why this intelligent, caring and amazing woman prompted such lovely expressions of devotion 50 years earlier."

The Chapter extends its condolences to the entire McCree family.

** Andrew J. Lievense is an Assistant United States Attorney and a member of the Newsletter Committee.*



Dores McCrary McCree

Rakow Luncheon/ Historical Society Meeting

On November 18th, the Edward H. Rakow Awards Luncheon and the annual meeting of the Historical Society of the U.S. District Court for the Eastern District of Michigan took place at the Westin Book Cadillac.

The program began with the presentation of the Rakow Scholarship Awards by Chapter President Laurie Michelson and Julia A. Caroff, Trustee of the Federal Bar Foundation and Past President of the Chapter. The Rakow awards are given annually to students at Michigan law schools who demonstrate outstanding scholarly achievement in securities, corporation or business law. The scholarships are endowed by the Federal Bar Foundation of Detroit in memory and honor of Edward H. Rakow, one of the Chapter's founders. The 2010 recipients of the Rakow awards are: Nicholas P. Paulucci, Michigan State University College of Law; Christopher R. Coccaro, Thomas M. Cooley Law School; Nolan Yaldo, University of Detroit Mercy School of Law; M. Kendra Klump, University of Michigan Law School; and Louis F. Meizlish, Wayne State University Law School.

Following lunch, the Historical Society presented its program. President Michael J. Lavoie introduced Ross Parker to discuss his recently-published book "Carving Out the Rule of Law: The History of the United States Attorney's Office in Eastern Michigan 1815-2008." Parker discussed highlights from the tenures of about 10 of the U.S. Attorneys featured in his book.

Presentation Of Portrait For Judge James L. Ryan

By: Amy J. Wenz*

On September 22nd, the Court of Appeals for the Sixth Circuit sat in a rare special session in Detroit, for the retirement and presentation of the portrait of the Hon. James L. Ryan.

Chief Judge Alice M. Batchelder, who calls Judge Ryan a "dear friend," presided over the special session, which began with the posting of the colors by the U.S. Navy Color Guard and a prayer by Monsignor John P. Zenz of Holy Name Church.

Judge Ryan's colleagues from the bench, family, friends, former clerks and many distinguished guests and admirers filled two courtrooms to honor his career. Most of the judges from the Sixth Circuit were in attendance, and so were a number of judges from the Eastern District (many of whom donned green ties to honor Judge Ryan) and numerous judges from other Michigan courts.

The Hon. Thomas E. Brennan, Judge Ryan's lifelong friend, charmed the audience with his kind words about

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Judge Ryan Portrait

(from page 3)

Judge Ryan's sense of humor and ability to bring the "gift of laughter to those around him." Judge Brennan noted that he had been called upon frequently to speak about Judge Ryan and that he was "running out of superlatives" to describe his friend.

The Hon. David M. Lawson, one of the first law clerks from Judge Ryan's time on the Michigan Supreme Court, spoke on behalf of Judge Ryan's 77 former law clerks and judicial assistants. Judge Lawson recalled looking up to Judge Ryan and being treated like family during his clerkship. And he spoke for all the former clerks when he recalled how Judge Ryan sought to educate and nurture the young legal minds of his clerks. Judge Lawson noted that Judge Ryan's most remarkable quality was his voice: one of reason.

Because clerking for Judge Ryan can only be described as a gift to all of his former clerks, his former



Judge Ryan's children unveil his portrait on September 22, 2010. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.

a camp scholarship in Judge Ryan's name at Angels' Place, one of Judge Ryan's favorite organizations. According to its Mission Statement, "Angels' Place provides people-centered services, including homes and professional support, for adults with developmental disabilities. Angels' Place homes offer a Christian family environment of love and compassion, coupled with an atmosphere of acceptance, dignity, well-being and the potential for personal growth and acceptance."

Judge Ryan's son, the Hon. Daniel P. Ryan, spoke on behalf of Judge Ryan's family. He

thanked Judge Ryan's wife, Loretta, for convincing Judge Ryan to sit for the portrait and shared heartwarming stories about Judge Ryan as a Dad and a Grandpa. The younger Judge Ryan credits his father with encouraging him towards a career as a true "public servant."

Judge Ryan's other children, James R. Ryan, Colleen M. Hansen, and Kathleen A. Ryan, unveiled the portrait painted by Jamie Lee McMahon of Memphis, Tennessee.

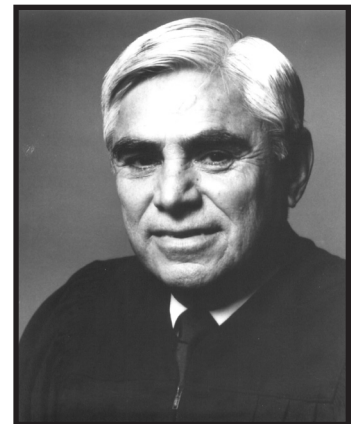
**Amy J. Wenz was a Law Clerk to Judge Ryan from 1998-1999 and is currently Senior Tax Counsel at Motorola.*

Remembering Judge George La Plata

Judge George La Plata passed away on November 14, 2010 at the age of 86. Judge La Plata was appointed District Judge by President Ronald Reagan on April 4, 1985. He served as a District Judge for 11 years before his retirement on August 3, 1996.

Prior to his service in the District Court, Judge La Plata served in the United States Marine Corps from 1943-1946, and again from 1952-1953, eventually attaining the rank of Colonel. He was also an Oakland County Circuit Court Judge from 1979 until 1985.

Upon his retirement from the bench, he returned to private practice in Birmingham, Michigan, and was a





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Professor at Detroit College of Law. Judge La Plata was also a published author, penning the book *From the Barrio to the Bench* -- a memoir about an ambitious young attorney's journey from a humble office in a Spanish-speaking barrio to the United States District Court.

Judge La Plata lived in Naples, Florida for the past several years with his wife, Frances. In addition to his wife, he is survived by children AJ Rard (Kerry) and Dr. Marshall La Plata (Cindy); grandchildren Marci, Franci and Joshua; and ten great grandchildren.

Portrait Presentation for Judge Duggan

By: Lauren N. Mandel*

At three o'clock in the afternoon on the day before Thanksgiving, Judge Patrick J. Duggan and his staff usually are in chambers or in the courtroom working hard to issue one more opinion or wrap-up a trial before the holiday. This year was different, however. Judge Duggan and his staff instead joined the Court as it sat in special session for the presentation of his portrait.

Judge Duggan chose the eve of Thanksgiving for this special occasion because he wanted his family-- the most important people in his life-- to share it with him. This included: the Judge's wife Joan; sons Mike, Dan, Jim, Bob, and Tim; daughters-in-law Lori, Sharlene, Stephanie, and Albina; grandchildren Carolyn, Eddie, Patrick, Mary, Mark, Sydney, Erin, Danielle, AJ, Stephen, Milana, Dmitri, Ryan, and Brandon; sister Mary and brother-in-law Bill Cassabon; and brother-in-law Tom Murray and sister-in-law Carol. Also in attendance at this special session, over which Chief Judge Gerald E. Rosen presided, were judges of the federal and state courts, current and former law clerks



Judge Duggan and his wife, Joan, at the November 24, 2010 Portrait Ceremony.

and deputy clerks, friends, and members of the Detroit legal community.

Judge Duggan's fourteen grandchildren opened the session with the Pledge of Allegiance. Speakers followed who painted the "whole picture" of Judge Duggan. They portrayed a just and honest man, who is loved and respected by his family, who raised his children thoughtfully, who puts his family first, and who may be frugal with his money but is overly generous in his devotion to his wife, children, and grandchildren.

Judge Duggan's youngest son, Tim, spoke first, addressing his father's exemplification of the word "commitment." Although recognizing the Judge's commitment to the law, to justice, to his staff, to his colleagues, and to his country, Tim focused on his dad's commitment to his family. Tim shared a memory from when he was eight or nine years old, when his dad made a commitment to him that they always would be close. As Tim explained, his father has kept that commitment for the thirty-five years that followed by doing such things as coaching his little league teams, serving as

his adviser, being a mentor who illustrated right and wrong, and by being a friend who "backed off and trusted his son to make his own mistakes and learn appropriately."

Tim's story reflected a soft side to Judge Duggan that those who know him professionally would find surprising-- particularly the luckless attorneys who have appeared before him unprepared or misrepresenting the contents of a transcript or the holding of a case. No one who knows Judge Duggan, however,

was surprised by the stories that followed reflecting upon his commitment to justice and equality as told by his oldest son Mike, or his unwavering integrity as expressed in his second oldest son Dan's speech.

Mike referred to several of his father's decisions as a federal judge that have served to teach the community about equality and justice and he shared several stories that

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Judge Duggan's Family.

Judge Duggan *(from page 5)*

conveyed how his father taught his sons similar lessons as they were growing up. As Mike explained, the Judge's decision in the case of *Fialka-Feldman v. Oakland University* reflects the values his dad sought to impart to his sons when he took them to visit a camp for mentally disabled children back in 1968: that despite the campers' disabilities they were no different than and had something they could teach Mike and his brothers. *Barber v. Dearborn Public Schools*, Mike observed, reflects his father's tolerance of varying viewpoints and the value he places on fostering an environment where people are encouraged to share their opinions without fear of reprisal. That Judge Duggan encouraged his sons to speak freely was manifested by the next speaker, his son Dan.

With rapid-fire wit, Dan conveyed to the audience his father's integrity, prudence in avoiding the waste of money (or as Dan put it, being "cheap"), passion for the law, the City of Detroit, and his family, and special relationship with his grandchildren. Although acknowledging that it was "Captain Detroit" (his dad) who put Detroit icons Denny McLain and Bob Probert in jail, Dan recognized that the decision to do so reflected the depth of his father's integrity. As Dan explained, integrity requires "doing something you really don't want to do, but you do it anyway because you know it's the right thing to do." Dan provided that this was a lesson that his dad taught him and his brothers.

Dan also spoke about how his father has shared his passion for the law and the judiciary with his grandchildren. On the Friday after Thanksgiving every year, Judge Duggan and his fourteen grandchildren visit his courtroom, where they hold a mock trial. As each child takes a turn acting as the judge, the Judge teaches them about the law and the importance of justice. Dan joked that some of the greatest decisions from his father's chambers probably were made on those Fridays after Thanksgiving. However, with incredible appreciation for his father's relationship with his grandchildren, Dan also reflected on how the kids express that these Friday court sessions are the greatest times of their lives.

Janet Allen, Judge Duggan's first law clerk when he was appointed to the Wayne County Circuit Court and now a Circuit Court Judge herself, also spoke. Janet acknowledged Judge Duggan's twenty-eight "clerk victims" and then shared an Irish Limerick conveying the experience of a law clerk working for him.

Jim and Bob Duggan, the judge's third and fourth sons respectively, unveiled the portrait painted by artist Michael DelPriore. Judge Duggan then made his remarks, in which he expressed gratitude to Joan, his wife of fifty-three years, for being his best friend and his biggest supporter. The Judge also acknowledged his daughters-in-law, sharing a story about each that reflected their special place in his

heart and what a terrific addition they have been to the Duggan family.

Judge Duggan concluded by expressing how much he loves coming to work every day because he has "the greatest job in the world" and because of the staff he gets to work with, who are part of his family. He then thanked those present for coming to the portrait ceremony. Judge Duggan's grandchildren closed the program with an Irish blessing.

**Lauren Mandel is Judge Duggan's Career Law Clerk and a Chapter member.*

Judicial Institute For Teachers

By: Amy Bloom*

On October 22nd, the Chapter held its first annual Federal Judicial Institute for teachers. Designed for high school civics and government teachers, the Institute highlighted the structure, function, and importance of the judicial branch. Over 40 teachers from Oakland, Macomb, and Wayne counties participated in the full day event held at the Courthouse in Detroit.

After welcoming remarks from Chief Judge Gerald E. Rosen, the morning session featured a panel discussion about the relationship between state and federal judicial systems including sovereignty, comity, supremacy, and federalism. Moderated by WSU Law Professor Robert Sedler, the morning panel included Judge Nancy G. Edmunds, Michigan Supreme Court Justice Stephen J. Markman, and Brian Dickerson of the Detroit Free Press. In the afternoon, the focus was on the anatomy of a case. The panel, led by Judge David M. Lawson, discussed the Vincent Chin case and illuminated the distinction between civil and criminal cases for teachers. The day also included a tour of the historic Courthouse and a visit and conversation with Judge Arthur J. Tarnow.

Teachers enjoyed the intellectually challenging sessions and the opportunity to ask questions of the panelists and judges. "This is one of the best professional development gigs I have ever been to (in 25 years)," stated Mark Madorski from Chippewa Valley High School. An overwhelming number of participants expressed the desire to be invited back in subsequent years. Teacher participation was made possible through the intermediate school districts in Oakland, Macomb, and Wayne counties.

AUSA and President-Elect of the Chapter Michael J. Riordan emceed the event and served on the planning committee along with Judge Lawson and Amy Bloom from Oakland Schools.

**Amy Bloom is a History/Social Studies Consultant with Oakland Schools.*

State Of The Bankruptcy Court

On October 20th, the Bankruptcy Committee hosted the Bankruptcy Court's State of the Court address by Chief Judge Phillip Shefferly. Chief Judge Shefferly addressed the 185 in attendance, providing developments in the Bankruptcy Court, the District's ranking nationally (5th overall with more than 54,000 filings in the last year) and first in the nation for the number of cases per judge.

Chief Judge Shefferly also announced, along with Jim Plemmons of Dickinson Wright, the formation and funding, through the State Bar of Michigan Access to Justice donations, of a pro bono program to assist debtors who cannot afford counsel to file for bankruptcy. The program will greatly assist those in need to obtain counsel and assist the Court and the process in addressing pro bono matters. Those interested can contribute through the Access to Justice program through the State Bar.

The Court handed out over 50 awards to those who have given of their time in handling pro bono cases for the past year. The Court also announced that the Eastern District of Michigan is participating in the audio transcript program, making available digital transcripts from hearings. The Bankruptcy Court is among the first in the country to offer the digital recordings. The Bankruptcy Committee of Leslie Berg, Mike Hammer and David Lerner thank all who attended and especially thank Chief Judge Shefferly. The Committee looks forward to providing additional programming throughout the year to come.

Call for Civility Award Nominations

The Chapter is requesting nominations for the 2011 Cook-Friedman FBA Civility Award, which will be presented at the Chapter's Annual Dinner. The deadline for nominations is March 17. The criteria are as follows:

In selecting an attorney to receive the award, the following criteria shall be utilized:

1. The attorney has been significantly engaged in the practice of civil law;
2. The attorney demonstrates the highest levels of legal competency and professionalism;
3. The attorney's conduct is in accordance with the highest standards of professional integrity and personal courtesy as set forth in the Civility Principles of the United States District Court for the Eastern District of Michigan;
4. The attorney has demonstrated, while fulfilling the fundamental duty to represent clients vigorously, a mindfulness of the equally important obligation to the administration of justice, which is a truth-seeking process

designed to resolve human and societal problems in a rational, peaceful and efficient manner; and

5. The attorney is guided by a fundamental sense of dignity, decency, candor and fair play.

If you believe an individual is worthy of consideration, please submit the name of the nominee and a brief statement in support of the nomination. Visit the Chapter's website for further information about how to submit a nomination.

Amendments to FRCP 26 and 56

By: Michael G. Brady*

As many federal court practitioners are aware, Federal Rules of Civil Procedure 8, 26, 56 and Illustrative Form 52 were amended as of December 1, 2010. These amendments govern all proceedings filed on or after December 1, and will also govern all previously pending proceedings "insofar as just and practicable." 4/28/10 Supreme Court Order; 28 U.S.C. 2074(a). This article will focus on Rules 26 and 56, which contain the most significant changes.

Rule 26

Rule 26 was amended to apply work-product protection to testifying expert draft reports and, with three important exceptions, communications between certain expert witnesses and counsel. The rule also makes clear that attorneys relying on experts who are not specifically required to provide a Rule 26(a)(2)(B) report must provide a more limited disclosure.

Rules 26(a)(2)(B) and (C) clarify that non-Rule 26(a)(2)(B) testifying experts must only provide an abbreviated disclosure.

Rule 26(a)(2)(B) had previously provided that a written report must be provided by any witness "retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony." This language, which has remained unchanged, did not expressly require written reports from experts who fall outside the foregoing definition, such as treating physicians or in-house experts who do not regularly provide expert testimony, but Rule 26 was silent as to what type of disclosure was required of these types of experts. As a result, some courts required that written reports be submitted by experts who fall outside the definition in Rule 26(a)(2)(B).

To resolve this issue, new Rule 26(a)(2)(C) provides the disclosure requirements of those expert witnesses who are not expressly obligated to submit a report under Rule 26(a)(2)(B). Under this new subrule, a party must only provide a written disclosure of the subject matter on which the witness will testify, and a summary of the facts

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Scenes From Around Town



U.S. Navy Color Guard at Judge Ryan's September 22, 2010 Portrait Ceremony. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.

Chief Bankruptcy Judge Phillip J. Shefferly at the October 20, 2010 Bankruptcy Luncheon. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.



Judge Lawson and panelists speak to teachers about criminal and civil law using the Vincent Chin case at the October 22, 2010 Federal Judicial Institute for Teachers. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.



Geneva S. Halliday, Christine M. Dowhan-Bailey, Paul Sax, Hon. Mary Beth Kelly and Brian D. Figot at the December 2010 New Lawyers' Seminar. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.



Michael J. Lavoie, Laurie J. Michelson and Ross G. Parker at the November 18, 2010 Rakow Luncheon. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.



Laurie J. Michelson, Theresa M. Serra, Geneva S. Halliday, Hon. Gerald E. Rosen, Grant P. Gilezan and Brian D. Figot at the December 2010 New Lawyers' Seminar. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.



Morning panelists Brian Dickerson of the Detroit Free Press and Michigan Supreme Court Justice Stephen Markman discuss the process of judicial selection by election. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.



Hon. James L. Ryan at his September 22, 2010 Portrait Ceremony. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.



Teachers from Oakland, Wayne, and Macomb Counties learn about Chief Judge Rosen's historic courtroom. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.



Cooley Law School student Mandi Bucceroni, Joseph A. Golden, Sherry D. O'Neal Taylor, and Cooley students Latoya Palmer and Alena Vackova at the November 15, 2010 Employment Discrimination Law Clinic. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.



Laurie J. Michelson, Hon. Gerald E. Rosen and Thomas W. Cranmer at the December 8, 2010 Holiday Party. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.

Amendments to FRCP 26 and 56 *(from page 7)*

and opinions to which the witness is expected to testify. This less burdensome reporting obligation should foster disclosure and discovery while taking into consideration the fact that these non-retained experts may not be as willing as retained experts to prepare a detailed report. The Rule 26(a)(2)(C) disclosure may be prepared by counsel.

Rules 26(a)(2)(B)(ii) and 26(b)(4) expand the scope of the work product protection for certain communications between an attorney and testifying expert.

Rule 26 was also amended to address the inefficient and costly discovery practices that have evolved with respect to attorney communications with their experts. The Advisory Committee on Civil Rules recognized that lawyers have been forced to take elaborate steps to avoid creating a discoverable record of their communications with their experts, while other attorneys also spend a great deal of time in discovery attempting to unearth information about the interaction between the opposing counsel and her expert. Rule 26 has been amended to allow attorneys to more freely collaborate with their experts without fear that certain communications will be exposed in discovery. The Advisory Committee also made clear that these rules should be applied pragmatically, to allow for proper protections while also permitting legitimate discovery of the expert's opinions:

- Only facts/data in expert reports: Rule 26(a)(2)(B)(ii) has been amended to require that an expert report include “the facts and data” that the expert considered in forming her opinion. The rule previously required that the report include “the data or other information” to be disclosed; however, this reference to “other information” opened the door to the disclosure of attorney-expert communications and draft reports. The change is meant to focus the report on the factual ingredients considered or relied upon by the expert, and not the mental impressions of counsel.

- Protection of draft reports/disclosures: Under amended Rule 26(b)(4)(B), draft reports or disclosures are now deemed to be attorney work product under Rule 26(b)(3)(A) and thus generally not discoverable. This subrule applies to retained experts and employees who regularly testify as well as experts who are not required to provide an expert report.

- Protection of communications with retained experts: Under amended Rule 26(b)(4)(C), any form of communication between a party's attorney and any witness required to prepare an expert report is deemed to be attorney work product under Rule 26(b)(3)(A) and generally not discoverable, with three important exceptions. This new protection does not apply to communications that:

1. relate to the expert's compensation;
2. identify facts or data that the party's attorney

provided and that the expert considered in forming her opinions;

3. identify assumptions that the party's attorney provided and that the expert relied on in forming her opinions.

It should be recognized that this protection under Rule 26(b)(4)(C) does not apply to experts who are not required to prepare a report under Rule 26(a)(2)(B). In addition to the three categories identified, discovery of communications or draft reports will be permitted under Rule 26(b)(3)(A) on a showing of substantial need for the discovery and an inability, without undue hardship, to obtain the substantial equivalent by other means.

Rule 56

Rule 56 has been extensively rewritten and reorganized, although the changes are procedural in nature. They are meant to improve the way Rule 56 motions are presented and decided, and to harmonize the rule with the procedures in many courts. The substantive standards for granting summary judgment have not changed. Among others, these amendments include:

- Pinpoint citations to the record: Rule 56(c)(1) now provides that a party asserting that a fact cannot be or is genuinely disputed “must” support the assertion by “citing to particular parts of materials in the record ...” or by “showing that the materials cited do not establish the absence or presence of a genuine dispute ...” This “pinpoint citation” requirement is based on the required practice in many district courts. Its purpose is to allow the parties and the court to efficiently and effectively address the facts at issue. The new subrule does not address the form for providing the required record support, and practitioners should consult each district court judge's practice guidelines for further instruction.

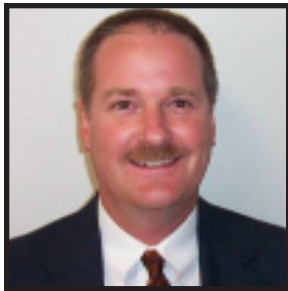
- A court “shall” grant summary judgment: Rule 56(a) now sets forth the standard for granting summary judgment (previously found in Rule 56(c)). The new subrule states that the court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact ...” The use of “shall” in the new version instead of “should” in the prior version, or the word “must”, is meant to express the direction to grant summary judgment while also recognizing that a judge maintains discretion in handling summary judgment motions.

- Failure to support fact or address issue: Under new Rule 56(e), when a party fails to properly support or respond to a factual assertion, the court may: (1) provide an opportunity to rectify the deficiency, (2) consider the fact undisputed, (3) grant summary judgment if the material submitted shows the movant is entitled to it, or (4) issue any other appropriate order. This new rule is consistent with Supreme Court authority that a party should not obtain summary judgment by default if the opposing party provides an inadequate response. Likewise, a motion should

not be denied by default if the movant fails to reply to the nonmovant's response.

For more information regarding the amended rules, you may consult the Advisory Committee Notes to each rule as well as an excerpt of the Judicial Conference Report at <http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Supreme%20Court%202009/Excerpt-ST-CV.pdf>.

**Michael G. Brady is a business litigation partner with Warner Norcross & Judd LLP in Southfield, Michigan.*



From Court Administrator Dave Weaver

Ombudsman

On November 17, 2010, the district judges held a luncheon with Ombudsman George Bedrosian. Mr. Bedrosian was appointed Ombudsman by then Chief Judge Bernard Friedman on February 22, 2005. The Eastern District is only one of three federal district courts that have such an office. The Bench meets occasionally with Mr. Bedrosian to discuss his role as Ombudsman.

As Ombudsman, Mr. Bedrosian is charged with maintaining the confidentiality of all communications. He does, however, advise the Court regarding the overall number of contacts he receives and whether that number has increased or decreased. While Mr. Bedrosian has had legitimate contacts from the Bar, he reported that he often receives calls regarding matters that are not within his purview or there is an unrealistic expectation on the part of caller. The stated purpose of the Ombudsman is to "act on an informal basis to interface and address those matters lacking an institutional mechanism or forum for redress." To this end, Mr. Bedrosian will, with the consent and participation of all parties to the matter, work towards a resolution if the matter falls within the stated purpose. The Court is working to enhance information regarding the Ombudsman on its website to help the Bar better understand this important but limited role.

Magistrate Judge News

The Court is pleased to welcome Chapter President Laurie Michelson to its corps of magistrate judges. Ms. Michelson obtained her undergraduate degree from the University of Michigan and her Juris Doctor from Northwestern University School of Law. Ms. Michelson's appointment is being processed and we hope to have her on board in the January/February 2011 time frame.

The Court will be appointing a new Merit Selection Panel in January 2011 to begin vetting magistrate judge candidates to fill a vacancy being created by the retirement

of Magistrate Judge Virginia Morgan in April 2011. Check our website for the position announcement.

Reminders

Please remember that the Court has a procedure for non-business hours emergency filings. Information regarding this procedure can be found on the Court's website at <http://www.mied.uscourts.gov/Visiting/hours.cfm>.

With the Winter upon us, you can also visit our website to determine if any of our court locations are closed due to weather emergencies. Look on our main page at www.mied.uscourts.gov.

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

The Death Penalty In Federal Court

On February 18, 2011, the Chapter's Criminal Practice Committee will present "Death Penalty Litigation in Michigan." The State of Michigan abolished the death penalty more than 150 years ago; but there are still death penalty cases here. The death penalty is an available sanction for a limited number of federal crimes, and prosecutors in Michigan have sought the death penalty in recent federal criminal cases in our State.

A distinguished panel of experts will discuss federal death penalty cases in Michigan and will offer thoughts and observations on issues including how prosecutors choose whether to seek the death penalty, how the availability of the death penalty influences jury selection, how a potential death sentence influences both defense and prosecution trial strategy, whether judges approach death penalty cases differently, and the unique procedures involved in the penalty phase of a capital case.

Panelists include: Judge Arthur J. Tarnow; AUSA Daniel Lemisch (Chief of the Criminal Division); attorney Richard Kammen (counsel for several capital defendants); attorney Juliet Yackel (death penalty sentencing mitigation specialist); and Harold Gurewitz (local defense attorney who has participated in federal death penalty cases). The program will be held from noon to 1:30 p.m. in Room 115 of the Courthouse. This is a "brown bag" event, and audience members should feel free to bring a lunch.

Book Club Meets

On December 14th, the Chapter's Book Club resumed with a well-attended meeting to discuss *The Secrets of Abu Ghraib Revealed: American Soldiers on Trial*, by Christopher Graveline and Michael Clemens. Graveline was the Army prosecutor involved in the criminal prosecutions stemming from the Abu Ghraib scandal and was the lead

(continued on page 12)

Book Club *(from page 11)*

prosecutor of Lynndie England. Currently, Graveline is an Assistant United States Attorney in the Eastern District of Michigan. Clemens was a special investigator for the Abu Ghraib prosecution team.

The book chronicles the Army's efforts to investigate and prosecute American soldiers charged with prisoner abuse at the Abu Ghraib detention facility in Iraq. Graveline attended the Book Club meeting and his presence made for a particularly vibrant discussion. Graveline provided important background regarding why he wrote the book, and he answered numerous questions about the book. The group discussed numerous topics raised by the book, including some popular misconceptions about what happened at Abu Ghraib, insights into the military justice system, the impact of the prosecutions on soldiers and the soldiers' relationships with Iraqi citizens, and the importance of training and supervision in preventing abuse from happening elsewhere in the military. The book appeared to have been enjoyed by all, even though it deals with a controversial topic.

The Book Club's next meeting date and book selection will be announced as soon as they are known.

Employment Discrimination Law Clinic for Pro Se Litigants

On November 15, 2010, the Chapter's Pro Bono Committee and Employment Law Committee joined with the Court's Pro Bono Committee, chaired by Judge Denise Page Hood, to present the Chapter's first clinic for pro se litigants with cases pending in federal court.

A total of 16 litigants attended this three-hour program, thanks to the efforts of Court Administrator David Weaver's office and Judge Hood's staff, who identified all of the pro se litigants with employment discrimination cases pending in the Eastern District and then sent them each a personal letter inviting them to attend. The Court also provided snacks and beverages for those in attendance.

Judge Hood began the program by welcoming the pro se litigants and thanking Chapter members and Pro Bono Committee Co-Chairs Patrice Arend, Rick Haberman, and John Nussbaumer for organizing the program.

Chapter member Sherry O'Neal Taylor, a partner at Dickinson Wright, spoke next, covering the basics of employment discrimination cases. She prepared and provided the pro se litigants with a seven-page handout that covered the nuts and bolts of Title VII, the Civil Rights Act of 1866, the Age Discrimination in Employment Act, the Michigan Elliot Larsen Civil Rights Act, the Americans with Disabilities Act, the Michigan Persons with Disabilities Civil Rights Act, and retaliation claims under these different statutes. The format of her presentation was very interactive, taking many questions from the litigants as she covered the material, with answers provided by her and the other volunteer lawyers present, including Chapter members Tim Howlett, head of the employment law group at Dickinson Wright, and Joe Golden, a partner at Pitt, McGehee,

Palmer, Rivers, & Golden. The topics covered included not only the substantive law related to these causes of action, but also the strategy and tactics involved in these cases.

Joe Golden spoke next, presenting the plaintiff's perspective and providing valuable practical and common sense insights about how pro se litigants can level the playing field in going up against opposing parties represented by counsel, and about the impact of the current economic downturn on juror psychology in employment discrimination cases. This generated many questions from the litigants and a very lively discussion. Golden also discussed motions for summary judgment, discovery tactics, and the timing and art of settlement negotiations.

Following this part of the program, eight volunteer lawyers provided free, individual half-hour consultations to the 16 litigants in attendance. In addition to Sherry O'Neal Taylor and Joe Golden, lawyers Patrice Arend (Jaffe Raitt), Tiffany Buckley-Norwood (Dickinson Wright), Nicole Foley (Jaffe Raitt), Tim Howlett (Dickinson Wright), Lee Khachaturian (Dickinson Wright), and Cary McGehee (Pitt, McGehee, Palmer, Rivers, & Golden) also participated. Three students from Thomas M. Cooley Law School -- Mandi Bucceroni, LaToya Palmer, and Alena Vackova -- paired up with three of the volunteer lawyers to observe these consultations.

The pro se litigants expressed their thanks for the program, and we are considering replicating it for other subject areas by partnering with other Chapter committees and



Andrew S. Doctoroff, Laurie J. Michelson, Matthew Schneider, Hon. Avern Cohn, Hon. Arthur J. Tarnow and Christopher Graveline at the December 14, 2010 Book Club meeting. Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.

volunteer lawyers. We have asked Judge Hood and David Weaver for their suggestions about other subject areas that generate a large amount of work for the Clerk's Office and the Court. Stay tuned!

Justice-Elect Mary Beth Kelly Addresses New Lawyers Seminar

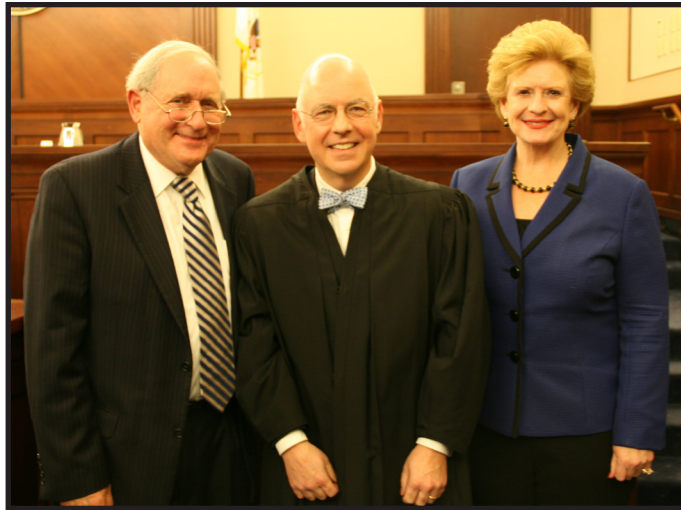
The 58th successful New Lawyers Seminar is in the books! Ninety-six attorneys enjoyed learning the "nuts and bolts" of practice from some of the best State and Federal legal talent in the Metropolitan Area on December 7th and 8th. The Seminar luncheon was a highlight when Michigan Supreme Court Justice-Elect Mary Beth Kelly graciously addressed the group regarding how to practice in the Wayne County Circuit Court. A review of the impressive history of this event revealed that Judge Kelly attended the Seminar as a new lawyer in 1987.

Our Chapter also performed the honor of sponsoring these new attorneys admission to practice before the Eastern District of Michigan during a mass swearing in ceremony. District Judges Hood, Murphy, and Tarnow presided over the admissions ceremony which emphasized civility in law practice. Local attorneys who served as sponsors included Peter Caplan, Thomas Esordi, and Christine Dowhan-Bailey.

Registration in the Seminar entitles participants to one year of Chapter membership, so please welcome these new counselors at our events. Thus far, 34 of the attendees have also joined National FBA. Another benefit is the Ohio State Bar Association's recognition of this event as a means of fulfilling its practice

requirements pre-requisite for admission to its Federal districts.

Seminar Co-Chairs Brian Figot, Grant Gilezan, Geneva Halliday, Terri Serra, Cathrine Wenger, and Christine Dowhan-Bailey would like to thank moderators, Paul Sax and Thomas Myers, as well as all of the busy practitioners and members of the judiciary who volunteered their time to assist these new members of our legal community. Two of our speakers, David DuMouchel (grand jury practice) and Stanley Bershad (bankruptcy) have presented at every Seminar but one!



United States Senators Carl M. Levin and Debbie Stabenow with Judge Goldman at his November 8, 2010 investiture.

A Warm Welcome to Hon. Mark A. Goldsmith

By: Michael D. Socha*

On November 8, 2010, hundreds of family members, friends, colleagues and members of the bar gathered in the Courthouse to officially welcome the newest member of the bench, Hon. Mark A. Goldsmith, at his formal investiture ceremony.

Judge Goldsmith is a Detroit native. He attained his undergraduate degree from the University of Michigan (1974) and his law degree from Harvard Law School (1977). Judge Goldsmith then spent his formative years in New York at the law firm of Paul Weiss before returning to

Michigan in the early 1980s, where he spent several years as a solo practitioner. In 1987, Judge Goldsmith joined Honigman, where he remained as a litigation partner for 17 years, also serving as a part-time Magistrate in the 45B District Court from 2002-2004. In 2004, Governor Jennifer M. Granholm appointed Judge Goldsmith to the Oakland County
(continued on page

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Judge Goldsmith *(from page 13)*

Circuit Court. On February 4, 2010, President Barack Obama appointed Judge Goldsmith to the Eastern District of Michigan, and he was unanimously confirmed by the Senate on June 21, 2010.

Judge Goldsmith also recently served as a president of the Chapter, and has held leadership positions with several community and charitable organizations throughout his career.

Judge Goldsmith's interest in the law came early. As a young boy, he sometimes took the bus downtown, inevitably finding himself observing the activities in Detroit's courtrooms. Finding inspiration in the generation of lawyers before him, he knew from an early age that he would one day find himself back in the halls of justice as a practicing attorney. "I knew my future was in the law, and I am humbled to have had the opportunity to become a judge, something I could only dream about as young boy," remarked Judge Goldsmith.

Transitioning from Oakland Circuit, Judge Goldsmith remarked that although his general volume of cases on the federal bench is lighter, the complexity of matters before him is quite remarkable and the time required to prepare and analyze his caseload has certainly increased. Judge Goldsmith enjoys this new balancing act, stating that it exemplifies the need of the bench and the litigants to work together in order to bring about an efficient and just result. "The administration of justice is a collaborative effort, and I approach my role on the bench in that fashion," explained Judge Goldsmith.

As anyone who appears before Judge Goldsmith knows, he highly values civility and sets an example for it, both on and off the record. He expects attorneys to carry it forward in their daily dealings. "Civility plays a critical role in today's justice system and as attorneys, we must maintain constant professionalism," stated Judge Goldsmith.

Judge Goldsmith presides in Flint, commuting from his home in Oakland County each day. Although his commute is longer in comparison to his days on the Oakland Circuit bench, he is thankful for the time it provides for reflection of his daily activities (he also survives his drive with audio books and satellite radio). Judge Goldsmith is married to his wonderful wife Judy. They have two children and a beautiful granddaughter.

(continued on page 15)

Sustaining Members

We gratefully acknowledge the additional support provided to our Chapter by the following current members who in recent months have joined or renewed their membership at the Sustaining Member level of \$100.00. We thank each of them for contributing to our ability to fund essential programming.

Christopher A. Andreoff
John S. Artz
Julia A. Caroff
James M. Catchick
Dennis J. Clark
Jeffrey R. Clark
Norton J. Cohen
Thomas W. Cranmer
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Judge Goldsmith *(from page 14)*

At his investiture, Judy remarked that her husband has been her best friend and a wonderful partner in their journey together. Likewise, the Eastern District of Michigan community is fortunate to have a consummate professional and well-respected jurist join us as a new partner in the administration of justice.

During this special session of Court, attorney Jeffrey S. Appel was the Master of Ceremonies. Several people spoke on behalf of Judge Goldsmith, including U.S. Attorney Barbara L. McQuade, Judge Edward Sosnick of the Oakland County Circuit Court, attorney Gary H. Torgow, U.S. Senators Carl M. Levin and Debbie Stabenow, and Judge Goldsmith's wife, Judy. Attorney Eugene Driker read the Commission of Appointment, and Judge Goldsmith's brother, Merwin, sang "America the Beautiful" and "God Bless America." The prayer for country was offered by Rabbis Neil Cooper and Chanoch Hadar.

** Michael D. Socha is a litigation partner at Dickinson Wright PLLC and a member of the Newsletter Committee.*

Holiday Party

More than 100 Chapter members enjoyed an evening's respite from the busyness of the holiday season by spending time with one another on December 8th. The beautiful Westin Book Cadillac hotel, adorned in seasonal finery, provided the setting for jazz by the talented Cat's Pajamas as well as delicious hors d'oeuvres and spirits. It was a grand party meant solely for relaxation and reinforcing the bonds of friendship that our Chapter has fostered among its members. We applaud the event Co-Chairs Tom Cranmer and Jeff Sadowski for organizing this successful party.

Save The Date - March 16th Current And Former Law Clerks

Are you a current or former law clerk to a Sixth Circuit judge sitting in Michigan, district judge, bankruptcy judge, magistrate judge, or administrative law judge? If so, the Chapter's Law Clerk Committee will be hosting a judicial family reunion for judges and their law clerks on Wednesday, March 16, 2011 at Bodman, LLP's law offices located at Ford Field. More details to follow!

Calendar of Events

- Jan 11** "Getting to Know You: Newer Member Breakfast"
Welcoming members who have joined over the past two years.
Theodore Levin U.S. Courthouse, Room 115
8:30 A.M. to 10:00 A.M.
- Jan 12** Labor & Employment Doubleheader Seminar:
• Federal Summary Judgment: Standards and Motions
• Facilitating Settlement in the Federal System
Theodore Levin U.S. Courthouse, Room 115
12:30 P.M. to 3:15 P.M.
- Jan 19** Meet Judge Goldsmith
An open house breakfast reception at the Flint U.S. Courthouse, to meet and greet the newest occupant on Church Street, Judge Mark A. Goldsmith
U.S. Courthouse, 600 Church Street, Flint, MI 48502
9:00 A.M. to 10:30 A.M.
- Feb 18** Brown Bag Luncheon Series:
"The Death Penalty in Federal Court"
From the perspective of those who have tried death penalty cases.
Theodore Levin U.S. Courthouse, Room 115
12:00 P.M.
- Feb 23** Wade H. McCree Award Luncheon
Keynote Speaker: Dean Erwin Chemerinsky.
Award Recipient: Mary Sue Coleman
Westin Book Cadillac Hotel
11:30 A.M. Reception
12:00 P.M. Luncheon
- March 3** Second Annual Reception
Celebration of Diversity
Location to be determined
- March 16** Current & Former Federal Law Clerks
Hold the Date for the long-awaited Judicial Family Reunion
- late April date TBA** Complex Commercial Litigation Seminar
Theodore Levin U.S. Courthouse, Room 115
Check www.fbamich.org for further information
- late April date TBA** Leonard R. Gilman Award Luncheon
Westin Book Cadillac Hotel
11:30 A.M. Reception
12:00 P.M. Luncheon
Check www.fbamich.org for further information
- April 28** **Hold the Date**
Bench-Bar Conference

**Updates and further developments at
www.fbamich.org**

**See "Hot News" and "Events & Activities"
Online registration available for most events.**

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Bench-Bar Conference Coming In April

Save the date! The Chapter will hold a Bench-Bar Conference on April 28, 2011 at The Henry Hotel in Dearborn, formerly The Ritz-Carlton. The theme will be "Media and the Law" and will feature panel discussions with several judges, national and local attorneys, and members of the media. Chris Hansen, formerly of WDIV in Detroit and currently with NBC, will be the keynote speaker. This should be a very interesting and informative conference, not to mention the opportunity to visit The Henry. Stay tuned for more details!

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