



# FBAnewsletter

Winter 2012

Federal Bar Association - Eastern District of Michigan Chapter - 54 years of service to our Federal Bench and Bar

## Ken Starr to Keynote McCree Award Luncheon on March 5<sup>th</sup>\*

The Chapter will hold its annual Wade Hampton McCree, Jr. Award Luncheon on Monday, March 5th, at the Westin Book Cadillac. The reception will begin at 11:30 a.m. and the luncheon at noon.

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, in areas including poverty, promoting economic or educational opportunity, or fighting discrimination involving race, gender, ethnicity, national origin, religion, or economic status. The deadline for nominations for the Award has been extended to February 1st, and can be directed to the attention of Cynthia J. Haffey (haffey@butzel.com) or Miriam L. Siefer (miriam.siefer@fd.org).

The keynote speaker will be Kenneth Starr, President of Baylor University since June 2010. President Starr has had a distinguished career in academia, the law and public service. Prior to coming to Baylor, he served for six years as the Duane and Kelly Roberts Dean and Professor of Law at Pepperdine, where he taught current constitutional issues and civil procedure. He also is of counsel to the law firm of Kirkland & Ellis LLP, where he was a partner from 1993 to 2004, specializing in appellate work, antitrust, federal courts, federal jurisdiction and constitutional law.

Like Judge McCree, President Starr served as Solicitor

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General of the United States and as a U.S. Circuit Judge. President Starr was Solicitor General from 1989 to 1993, where he argued 36 cases before the U.S. Supreme Court. He served as U.S. Circuit Judge for the District of Columbia Circuit from 1983 to 1989. He also served as law clerk to Chief Justice Warren E. Burger from 1975 to

*(continued on page 2)*



## President's Column

*Michael J. Riordan*

### The New Lawyers Seminar 35 Years of Cooperation Between Bench & Bar

Over thirty-five years ago, on Tuesday, November 30, 1976, then Chief Judge Damon J. Keith welcomed 400 new State Bar of Michigan admittees to the Chapter's first New Lawyers Seminar. Judge Keith wrote in a press release announcing the inaugural event that the purpose of the seminar was for it to be "a first step in the process of acquainting the new practitioner with the Federal Court in this District and thereby making it more accessible to the people whom it serves." As true today as it was back in 1976, Judge Keith said that "continuing education seminars for lawyers concentrate on the experienced lawyer. There is a deficiency in the preparation of the new lawyer in the practicalities of Federal practice."

Since that November day in 1976, the Chapter, through the efforts of many, many members of the Bench and Bar over the years, has hosted almost 6,000 newly minted lawyers at fifty-nine seminars. Without question, as envisioned by Judge Keith 3½ decades ago, the spirit of cooperation between the Bench and Bar has made the Eastern District a better place to practice by training practitioners in the knowledge and the practical tools necessary to build a successful Federal Court practice.

Like the previous fifty-eight seminars (until 2001, they were conducted twice a year), the most recent edition was a two-day "nuts and bolts/how to do it" program designed to assist recent graduates in understanding areas of substantive practice and the fundamental procedures followed in the Eastern

*(continued on page 2)*

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## President's Column (continued)

District and in the State courts in Wayne, Oakland and Macomb counties. As in years gone-by, the faculty featured judges, private practitioners, public sector attorneys and Court personnel who covered a wide range of topics that would be most useful and informative for newer lawyers.

This year's seminar included presentations on navigating the Clerk's Office, e-filing and e-discovery (topics not imagined in 1976), the Court's Civility Principles, civil litigation, surveying the bankruptcy court, the basics of criminal law, practicing before the Sixth Circuit and various aspects of practice in the State courts. At the conclusion of the first day, seminar participants were provided the option to participate in the Mass Swearing-In for admission to practice in the Eastern District. On the second day, the participants had lunch at the Doubletree Fort Shelby with several members of the Eastern District bench, with the keynote address provided by Chief Judge Virgil Smith of the Wayne County Circuit Court.

Over the years, for a minimal cost, a multitude of new lawyers have had the opportunity to hear from many speakers and instructors who are nationally prominent, some who have been long-time adjunct professors at law schools, and others who have served as instructors at private and Department of Justice training programs.

To the hundreds of lawyers, judges and court personnel who have mentored the thousands of young Federal practitioners who have attended the Chapter's first fifty-nine seminars: Thank you! (I will leave it to a future "Tidbits and Trivia" column to provide further details about the presenters and various illustrious participants). For now, suffice it to say that the New Lawyers Seminar, the Court, and the Chapter continue to carry on the mission articulated by Judge Keith in his address at the first program in 1976, when he recognized that, as lawyers and judges, it is "our responsibility to improve the caliber of Federal practitioners."

Here's to another thirty-five years, and more, of the Bench and Bar cooperatively carrying out this mission.

## McCree Luncheon (from page 1)

1977 and as law clerk to Fifth Circuit Judge David W. Dyer from 1973 to 1974. Starr was appointed to serve as Independent Counsel for five investigations, including Whitewater, from 1994 to 1999.

President Starr previously taught constitutional law as an adjunct professor at New York University School of Law and was a distinguished visiting professor at George Mason University School of Law and Chapman Law School. He earned his B.A. from George Washington University in 1968, his M.A. from Brown University in 1969 and his J.D. degree from Duke University Law School in 1973. He is admitted to practice in California, the District of Columbia, Virginia and the U.S. Supreme Court.

He is the author of more than 25 publications, and a book, *First Among Equals: The Supreme Court in American Life*. He has received a multitude of honors and awards, including the J. Reuben Clark Law Society 2005 Distinguished Service Award, the 2004 Capital Book Award, the Jefferson Cup award from the FBI, the Edmund Randolph Award for Outstanding Service in the Department of Justice and the Attorney General's Award for Distinguished Service.

For those affiliated with organizations that are sponsors of the 2011-2012 Luncheon Series, tickets likely are available through your organization. For others, the luncheon is \$25 for FBA members and \$30 for non-members. Tickets are available on-line at [www.fbamich.org](http://www.fbamich.org).

*\*The biographical information for President Starr was excerpted and reprinted from <http://www.baylor.edu/president/index.php?id=73711>*

## Bench/Bar Social and Golf Outing Returns

Golfers rejoice! The highly anticipated and ever-popular Chapter golf outing is returning on Monday, May 21st, at Plum Hollow Country Club in Southfield.

Not a golfer? Not a problem. In addition to the 18-hole scramble, the Bench/Bar Social will provide a variety of other health, educational, and entertainment activities. An afternoon of fun and society for Chapter members, judges, court staff, other federal practitioners and guests is assured. A fabulous reception and dinner will top off the event at the conclusion of the day's activities.

Further information will be provided as the program and activities are fully developed. In the meantime, mark your calendars and save the date for the first and foremost golf and social outing of the coming season. A limited number of sponsorship opportunities are still available for individuals, firms and corporate supporters of the event. For more information, contact Thomas Esordi at (313) 965-7446, [thomas.esordi@kitch.com](mailto:thomas.esordi@kitch.com), or Joseph Sullivan at (248) 489-6098, [sullivjg@trinity-health.org](mailto:sullivjg@trinity-health.org).

## Book Club Discusses Scorpions

The FBA Book Club met on December 1, 2011, to discuss its latest selection, *Scorpions: The Battles and Triumphs of FDR's Great Supreme Court Justices*, by Noah Feldman. *Scorpions* chronicles the contributions to constitutional interpretation made by four of FDR's Supreme Court Justices, Felix Frankfurter, Robert H. Jackson, Hugo L. Black, and William O. Douglas, and also highlights their sometimes combative and colorful personalities. Judging by the number of attendees, *Scorpions* proved to be a popular choice for the Book Club.

Professor Richard D. Friedman of the University of Michigan Law School was the guest moderator and guided the assembled group through a discussion of the book. The group discussed: the differences between how justices were viewed then versus today; the differences in the confirmation process; the fact that Roosevelt-era justices were more likely to have been political leaders and academics rather than appellate judges; and why these differences exist. The group also discussed the interactions between the justices and President Roosevelt, the professional and personal interactions among the justices themselves, and the inner workings of the Supreme Court that are highlighted in the book. The group also discussed the theories of constitutional interpretation adopted by each justice and how those theories are reflected on the Supreme Court today.

The Book Club looks forward to seeing you at its next event.

## Rakow Awards Luncheon Court Historical Society Annual Meeting

On November 17th, more than 250 Chapter and Court Historical Society members and friends met at the Westin Book Cadillac for their annual joint luncheon.

The memory of Chapter founding member Edward H. Rakow was honored by the presentation of scholarships in his name. This year's scholarship recipients were: Erica L. Weiss, Michigan State University College of Law; Gregory Saenz, Thomas M. Cooley Law School; Agnieszka Osowicka, University of Detroit Mercy Law School; Elliot de Carvalho, University of Michigan Law School; and Laura Rogers-Raleigh, Wayne State University Law School.

In a special event, which tied in with the Historical Society Program, State Bar of Michigan President Julie I. Fershtman presented a Legal Milestone Marker commemorating *Milliken v. Bradley* to Society President

Michael J. Lavoie, who accepted it on behalf of the Court. The Marker will be displayed in the Courthouse.

The Annual Meeting of the Court Historical Society was then convened by President Lavoie who introduced Professor Joyce A. Baugh, from Central Michigan University, author of *The Detroit Busing Case: Milliken v. Bradley and the Controversy Over Desegregation*. Although Professor Baugh has been at Central since 1988, she spoke from the perspective of a person of color growing up in Charleston, South Carolina in the 1960s.

She joined other commentators (e.g. Prof. Kevin Boyle, *Arc of Justice*) in concluding that entrenched residential segregation in Detroit and environs (*de jure* for decades, *de facto* in many areas to the present time) doomed efforts to desegregate the schools. She cautioned us that the struggle for a quality education for many minority students goes on and that we delude ourselves if we, as members of the bar and leaders of our communities, consider that there is nothing left to be done.



### From Court Administrator Dave Weaver

The Court welcomes Magistrate Judge David R. Grand who was sworn in on November 1st. He has been assigned to sit in Ann Arbor. His formal investiture is scheduled for January 30, 2012

at the Courthouse in Detroit.

As I wrote in the last issue, the Court has been bracing for significant funding shortfalls anticipated for FY 2012, which began on October 1, 2011. As I write this on Friday December 16th, we and the entire Federal Government are operating under a Continuing Budget Resolution that expires at midnight! Hopefully, a final, adequate budget will be approved and we will be back to work on Monday (and when you are reading this). I reiterate that the Court is doing everything possible to ensure a full level of service to the Bar and public, now and in FY 2013, which already is looking to be significantly more bleak.

Finally, a Happy New Year to all of you. Though we are facing significant challenges in the operation of the Court, I am confident that our experienced and dedicated staff will continue to provide the excellent service to which you are accustomed.

Questions and/or comments may be sent via email to me at [david\\_weaver@mied.uscourts.gov](mailto:david_weaver@mied.uscourts.gov)



## Holiday Party Fun

The Chapter threw its annual Holiday Party on December 14th at the Westin Book Cadillac. Over 100 guests attended, including State Bar of Michigan President Julie Fershtman and Executive Director Janet Welch. The tradition of all fun and no formal program continued this year. Guests enjoyed hors d'oeuvres and spirits while being treated to the music of Magistrate Judge Whalen's jazz quartet, *The Cat's Pajamas*. Special thanks to Event Chairs Thomas Cranmer, Jeffrey Sadowski and Elisa Angeli Palizzi for a fantastic evening.

*See photos on the facing page.*



### Supreme Court Preview by M Bryan Schneider\*

Three months into the Supreme Court's October 2011 Term, the term is shaping up to be an historic one in which the Court will address a host of hot-button issues, including the constitutionality of the new health care law and the limits of

Congressional power under the commerce clause, Arizona's attempt to enforce state immigration laws, and a federal court's powers to redraw legislative districts chosen by the Texas legislature. More mundane, but perhaps more significant in the long run, will be the Court's decisions in a number of cases relevant to federal practitioners.

On the civil side, the Court will consider several important First Amendment issues. In *Knox v. Serv. Emp. Int'l Union*, the Court will consider whether a state may condition public employment on the payment of union dues used for political purposes. In *Reichle v. Howards*, the Court will decide whether the existence of probable cause to effectuate an arrest precludes a First Amendment retaliatory arrest claim.

The Court will also consider several civil rights questions, including three cases addressing immunity. In *Rehberg v. Paulk*, the Court will consider whether a government official who presents perjured testimony as a complaining witness is entitled to absolute immunity from civil damages. In *Filarsky v. Delia*, the Court will decide whether a private lawyer retained by the government may assert qualified immunity, unlike other private parties performing governmental functions pursuant to a contract with the government. In *Coleman v. Court of Appeals*, the Court will determine whether Congress validly abrogated the states' sovereign immunity under the Eleventh Amendment in passing the self-care leave provision of

the FMLA. In *Minneci v. Pollard*, the Court will consider whether it should imply a cause of action under the *Bivens* doctrine for constitutional violations committed by private companies providing prison services.

In other significant civil matters, the Court will consider:

- whether disparate impact claims are cognizable under the Fair Housing Act and, if so, how they should be analyzed (*Magner v. Gallagher*);
- the ministerial exception to employment discrimination laws applies to a teacher at a religious school (*Hosanna-Tabor Church v. EEOC*);
- the Fair Labor Standard Act's outside sales exemption applies to pharmaceutical sales representatives (*Christopher v. SmithKline Beecham*);
- the Equal Protection Clause is violated by a local taxing authority's failure to refund payments made by those who have fully paid their assessments, while forgiving the obligations of other taxpayers who are paying over a multi-year installment plan (*Armour v. Indianapolis*);
- the scope of corporate liability for violations of the law of nations under the Alien Tort Statute (*Kiobel v. Royal Dutch Petroleum*).

In intellectual property matters, the Court will consider two patent cases and one copyright case. In *Kappos v. Hyatt*, the Court will address whether a plaintiff seeking judicial review of the PTO's denial of an application for patent may introduce new evidence that could have been, but was not, presented to the PTO. In *Mayo Collaborative Serv. v. Prometheus Lab.*, the Court will determine whether a claim covering observed correlations between test results and patient health is patentable. In the copyright case, *Golan v. Holder*, the court will consider whether Congress may, consistent with the Copyright Clause, take a work out of the public domain once it has already been freely available.

The Court also will consider a number of significant issues of criminal law and procedure during the 2011 Term. In two significant Fourth Amendment cases, the Court will consider both whether the warrantless use of a tracking device on a vehicle to track the vehicle's movements on public streets constitutes a search under the Fourth Amendment (*United States v. Jones*), and whether the *Malley/Leon* standards, which grant officers qualified immunity for, and require that a court not suppress evidence obtained in, unconstitutional searches based on a warrant as to which the officers could have a good faith belief in its validity, should be reconsidered (*Messerschmidt v. Miller*). In a third Fourth Amendment case, *Florence v. Bd. of Chosen Freeholders*, the Court will consider whether  
*(continued on page 8)*

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## Scenes from the Holiday Party

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



*Monica Navarro and Marc Vezina*



*Kelly Dehn, Judge Denise Page Hood and  
Kaeran Baskin*



*Elisa Angeli Palizzi, Jeffrey Sadowski and  
Magistrate Judge Laurie J. Michelson*



*Chief Judge Gerald E. Rosen and  
Magistrate Judge Mona K. Majzoub*



*Lavon Ammori, Samantha Galecki and Emma Chen*



## Around Town

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



*Recently admitted members of the State Bar of Michigan are sworn into the Eastern District during the New Lawyers Seminar.*



*Organizers and presenters at the pro bono training seminar:  
Front: Patrice Arend, Judge Denise Page Hood,  
Patricia Selby and Nick Suciu, III.  
Back: Professor Paul Reingold, Judge Arthur J. Tarnow  
and Professor Daniel Manville.*



*Some of the attendees at the December 2011 Book Club event, including  
Bankruptcy Judge Walter Shapero, Judge Avern Cohn, Professor Richard Friedman,  
Magistrate Judge Mona K. Majzoub, Gordon Gold, Andrew Doctoroff,  
Erica Fitzgerald, and Judge Mark A. Goldsmith.*



*The inaugural meeting of the Chapter's Master Lawyers  
Committee, including Joseph Dillon, Arthur Weiss,  
Christine Dowhan-Bailey, David Murphy,  
Julia Caroff, Martin Reisig and Dennis Clark.*



*Bankruptcy Trial Advocacy  
Workshop attendees Heather  
McGivern, Laura Hawley, Cara  
Lassner, Bankruptcy Judge Daniel  
S. Opperman, Adam Reatherford,  
Leslie Berg, Bankruptcy Judge  
Phillip J. Shefferly, Melissa Byrd,  
Karen Rowse-Oberle, Brian Figot  
and Ian Bolton.*





*Robert Hamor, Michael K. Lee, Jessica Lashier, Executive Magistrate Judge R. Steven Whalen, Jennifer Foster, Professor Alan Gershel, Assistant Dean Lisa Halushka and Fahad Hague were among the participants and organizers of the Motion Day.*



*Executive Magistrate Judge R. Steven Whalen hearing arguments from one of the lawyers at the Motion Day held at Thomas M. Cooley Law School in Auburn Hills.*



*Michael Lavoie, Professor Joyce Baugh and Judge Avern Cohn at the Rakow Scholarship Awards/Historical Society Luncheon.*



*The Edward H. Rakow Scholarship Award recipients and law school representatives Elliot Carvalho, University of Michigan Law School; Professor Vic Khanna, University of Michigan Law School; Agnieszka Osowicka, University of Detroit Mercy School of Law; Associate Dean Andrew Moore, University Detroit Mercy School of Law; Laura Rogers-Raleigh, Wayne State University Law School; Dean Robert Ackerman, Wayne State University Law School; Gregory Saenz, Thomas M. Cooley Law School; and Associate Dean John Nussbaumer, Thomas M. Cooley Law School.*



*Debra Chmielewski, Judge Patrick J. Duggan, Christine Dowhan-Bailey, Wayne County Circuit Court Chief Judge Virgil C. Smith, Dawn Blanton, Judge Paul D. Borman, Kym London and Kellen Myers were among the organizers and speakers at the 2011 New Lawyers Seminar.*

## Supreme Court Preview (from page 5)

a jail may conduct suspicionless strip searches of every individual arrested regardless of the circumstances.

Continuing to develop its post-*Crawford* Confrontation Clause jurisprudence, the Court will determine whether a state rule of evidence permitting an expert to testify about the results of DNA testing that the expert did not perform violates the Clause in *Williams v. Illinois*. In a case with potentially far-reaching consequences, *Perry v. New Hampshire*, the Court will consider whether the due process protections against unreliable identifications that result from impermissibly suggestive identification procedures apply to all identifications made under suggestive circumstances, or only those in which the suggestive circumstances were orchestrated by the police.

In two other cases with potentially significant impact, the Court will consider both whether a defendant who pleads guilty can assert ineffective assistance of counsel based on counsel's failure to communicate a more favorable plea offer (*Missouri v. Frye*) and whether a defendant who is convicted following a fair trial may assert an ineffective assistance claim based on counsel's failure to communicate a plea offer (*Lafler v. Cooper*).

In other criminal matters, the Court will consider:

- whether a defendant who must first raise an ineffective assistance of trial counsel claim in a post-conviction proceeding has a right to counsel in that proceeding (*Martinez v. Ryan*);
- the appropriate method for applying harmless error analysis (*Vasquez v. United States*);
- yet another *Brady* claim arising out of the New Orleans prosecutors' office (*Smith v. Cain*);
- whether when a jury deadlocks on a lesser offense and announces that it voted against guilt on the greater offense, the Double Jeopardy Clause permits retrial on the greater offense (*Blueford v. Arkansas*);
- whether a prisoner is always "in custody" for purposes of the *Miranda* rule any time he is isolated from the general prison population (*Howes v. Fields*).

The Court will consider several sentencing issues. In *Sester v. United States*, the Court will decide whether a district court may order a federal sentence to run consecutive to an anticipated, but not yet imposed, state court sentence. In two consolidated cases, *Miller v. Alabama* and *Jackson v. Hobbes*, the Court will consider whether sentencing a 14-year-old to life imprisonment without parole for a homicide offense violates the Eighth Amendment's ban on cruel and unusual punishments.

In *Southern Union Co. v. United States*, the Court will address whether the *Apprendi* rule, which requires any facts which increase punishment to be found by a jury beyond a reasonable doubt, applies to criminal fines. And in two

consolidated cases, *Dorsey v. United States* and *Hill v. United States*, the Court will consider whether the Fair Sentencing Act, which raised the quantities of crack cocaine required to trigger enhanced penalties, applies to defendants who committed their crimes before passage of the Act but were not sentenced until after the Act's effective date.

Finally, the Court will consider a number of important habeas corpus issues. In *Gonzalez v. Thaler*, the Court will provide guidance on when a conviction becomes "final" for purposes of commencing the one year limitations provision governing habeas application, and in *Wood v. Milyard*, the Court will consider whether the statute of limitations may be raised by a court sua sponte and whether a state's representation that it will not challenge, but does not concede, the limitations issue constitutes a waiver of the limitations defense.

In *Maples v. Thomas*, the Court will consider whether the state court's failure to mail a decision to the petitioner after it was returned by petitioner's counsel of record unopened constitutes "cause" excusing the petitioner's procedural default in failing to comply with a state time limitation. And in one decision issued by the Court thus far in an argued case, the Court held in *Greene v. Fisher* that "clearly established federal law" under § 2254(d) is determined as of the date of the state court decision that addressed the claim on the merits. In *Martel v. Clair*, the Court will consider the circumstances in which a death row inmate pursuing a habeas petition is entitled to substitution of habeas counsel.

*\*M Bryan Schneider is career law clerk to Magistrate Judge Paul J. Komives.*

## Bankruptcy Trial Advocacy Workshop

On October 27th and 28th, the Bankruptcy Court, along with the FBA and Consumer Bankruptcy Association, conducted a two-day Trial Advocacy Workshop. Chief Bankruptcy Judge Phillip J. Shefferly oversaw the program and all the Bankruptcy Judges participated, graciously closing the Court and presiding over mock direct and cross-examinations by the students in connection with a mock consumer lien stripping case. Thirty-six lawyers participated as "students" at a cost of \$300 each. These participants were divided up into twelve teams which each had a faculty leader. The twelve faculty leaders were Dennis Haley, Mark Shapiro, Lisa Gretchko, Steven Alexsy, Charles Bullock, Mark Berke, Larry Rochkind, Paul Randel, Karen Rowse-Oberle, Karen Evangelista, Michael Hammer and Howard Sher.

Each of the participants was given the opportunity to examine live witnesses in front of a Bankruptcy Judge in the courtroom. The Bankruptcy Judges and team leaders



offered comments to the participants following each of their exams. At the beginning of the first day, District Judge David M. Lawson and attorney Thomas Cranmer gave a presentation on witness preparation, examination of witnesses, and introduction of documents into evidence. The first day ended with a cocktail reception. At the beginning of the second day, Michael Lieb and Thomas McNeill gave a presentation on the examination of expert witnesses.

The Workshop was a tremendous success. Special thanks to the Workshop Planning Committee consisting of Judge Shefferly, Leslie Berg, Brian Figot, Caralyce Lassner, Stuart Gold, Craig Shoenherr, Sr., and Richardo Kilpatrick, and to all of the Bankruptcy Judges for participating and allowing the use of their courtrooms.

## **U.S. Magistrate Judge Holds Motion Call at Cooley's Auburn Hills Campus**

On October 18th, 2011, Executive Magistrate Judge R. Steven Whalen conducted his motion call at Cooley Law School's Auburn Hills campus. The Judge heard several motions, including an employment case brought by the Equal Employment Opportunity Commission, in which the EEOC sought to amend its complaint, and a motion for attorney fees in connection with a successful First Amendment challenge against the City of Dearborn. The latter case involved the city preventing the plaintiff from proselytizing at the City's annual Arab-American festival. Cooley's trial courtroom was packed and the feedback from the students was very positive.

## **Pro Bono Training Seminar**

On October 25th, the Court and the Chapter co-sponsored a seminar to provide lawyers training in prisoners' rights cases. The seminar was part of the State Bar of Michigan and the American Bar Association's Pro Bono Month, and was well-attended by both the bench and the bar.

Most newer lawyers do not get the opportunity to take depositions, argue motions, or present a case to a judge or jury. Pro bono cases provide such an opportunity. It is believed that, if given some training, newer lawyers would be willing to accept assignments to pro bono cases for both the experience they would get and to assist the court in providing a much-needed service. This belief was confirmed by the number of lawyers who agreed to accept a pro bono case immediately after the seminar.

The seminar was well-presented by those who volunteered their time and expertise. Patrice Arend of Jaffe,

Raitt, Heuer & Weiss, P.C., one of the three co-chairs of the Chapter's Pro Bono Committee (Dean John Nussbaumer and Sherry Taylor are the other co-chairs), welcomed the lawyers and introduced the various presenters.

Executive Magistrate Judge R. Steven Whalen provided an overview of the Prison Litigation Reform Act which must be understood if a lawyer is to litigate a prisoners' rights case. Professor Paul Reingold from the University of Michigan Clinical Program then discussed the different elements of establishing a Section 1983 claim.

Next, attorneys Benjamin McCracken, Patricia Selby and Kelly Dehn discussed issues involving client interaction. They noted that navigating a visit with a client in jail is not difficult if the attorney is properly informed of the procedure. They further emphasized the importance of contacting the client soon after accepting an appointment and providing the client copies of all letters, pleadings, and discovery generated during the litigation. It is also important to plan ahead when client interaction is needed, as these clients do not have ready access to fax machines and electronic mail.

A discussion of discovery issues was presented by Cynthia Heenan, a well-known litigator of prisoners' rights cases. She discussed some of the problems with obtaining discovery from prison officials and other unique aspects of the prison system.

*(continued on page 10)*



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## **Pro Bono** *(from page 9)*

Magistrate Judge Mark A. Randon then reviewed the various motions that the parties could file and provided tips for handling them. Judges Nancy G. Edmunds and George Caram Steeh discussed how to prepare a prisoners' rights case for trial. The judges generally recommended that the parties consent to having the case tried before one of the magistrate judges.

Professor Daniel Manville discussed whether settlement was possible in prisoners' rights cases. He discussed various strategies to settlement and provided examples from his own experiences handling these cases. Professor Manville recommended that the mentality of the attorney should be that the case will go to trial.

Court Administrator/Clerk of Court David Weaver discussed various costs that the Clerk's Office will reimburse to the lawyer during pro bono litigation if the case is not successful.

Probably the most enjoyable part of the seminar to the participants was the panel of attorneys who had previously handled pro bono cases for the Court. The panelists were Michelle Heikka and Nick Suci. Judge Denise Page Hood served as the moderator. The panel discussed their handling of pro bono cases, what they achieved for their client, and what they got out of the case.

Next, Judge Arthur J. Tarnow, Professor Manville, and Daniel Quick of Dickinson Wright discussed recent developments and trends in case law. This session was beneficial to both newer lawyers and those practitioners who had previously handled a prisoners' rights case.

Finally, to be a litigator of prisoners' rights cases in federal court, a lawyer needs to know how these cases are processed by the Court. Felicia Moses and Kim Grimes discussed how the participants could sign up with the Court to be considered for appointment for a prisoners' rights case. All of the seminar participants agreed to take a case.

## **Trial Practice & Mentoring Program Courtroom Experience For Newer Lawyers**

In February, the Chapter will once again present a Trial Advocacy & Mentoring Program for newer lawyers (i.e., those who have been practicing five years or less) to obtain hands-on experience in fundamental trial skills, working in tandem with federal judges and seasoned attorneys who will offer valuable guidance on direct and cross examination, opening statements and closing arguments.

The 2012 Mentoring Program will focus on a civil case trial, from openings through the presentation of witness testimony to final arguments. An introductory session

in the early evening of February 9th will be followed by two full-day sessions on February 13th and 14th in the courtrooms of Judges Cox, Goldsmith, Hood and O'Meara at the Courthouse.

At the Introductory Session, newer lawyers will be grouped into teams of five and assigned to a team leader. Team leaders include distinguished private practitioners

*(continued on back cover)*

## **Luncheon Sponsors**

*The Eastern District of Michigan Chapter  
of the Federal Bar Association gratefully  
acknowledges the following sponsors  
of the 2011-2012 Luncheon Program:*

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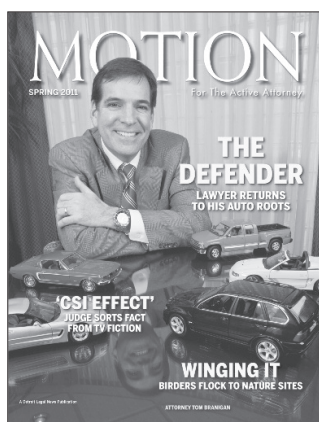
## Milliken Clarification

The article on page 4 of the Fall 2011 issue about the Rakow Scholarship Award/Historical Society luncheon and the *Milliken v. Bradley* case requires clarification.

The article gave the impression that Judge Avern Cohn inherited the case immediately after Judge Stephen J. Roth's death. In fact, Judge Robert E. DeMascio next presided over the case. Then, several years later, a three-judge panel including Judges John Feikens, Patricia J. Boyle, and Cohn took over. Judge James P. Churchill replaced Judge Boyle upon her resignation to accept appointment to the Michigan Supreme Court. Eventually, Judges Feikens and Churchill withdrew, and the case proceeded under Judge Cohn's stewardship until it ended in 1989.

Between May 2008 and June 2009, *The Court Legacy*, the Court Historical Society's newsletter, published a four-part series on *Milliken*, for those interested in learning more about the case.

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## Calendar of Events

- Jan. 24** Health Law Committee Meet & Greet Breakfast  
Networking and informal discussion of current health law topics for future roundtable conferences.  
Theodore Levin U.S. Courthouse, Room 115  
8:30 A.M. to 10:00 A.M.
- Feb. 2** Labor & Employment Committee Meeting  
Networking and discussion of topics for future programs.  
Theodore Levin U.S. Courthouse, Room 115  
Noon to 1:30 P.M.
- Feb. 9** Trial Practice Mentoring - Introductory Session  
First of three-part program for newer lawyers to hone their trial skills under the tutelage of experienced practitioners.  
Theodore Levin U.S. Courthouse, Room 115  
Late afternoon, early evening introductory session followed by all-day sessions February 13 and 14.
- March 5** Wade H. McCree Jr. Award Luncheon  
Keynote Speaker: Judge Kenneth Starr  
Award Recipient: Nominations accepted until Feb. 1  
Westin Book Cadillac Hotel  
11:30 A.M. Reception  
12:00 P.M. Luncheon
- March 15** Third Annual Celebration of Diversity Reception  
Fishbone's Rhythm Kitchen Café  
400 Monroe St. (International Center Building)  
5:00 to 7:00 P.M.
- March 19** Complex Commercial Litigation Seminar  
Theodore Levin U.S. Courthouse, Room 115  
Check [www.fbamich.org](http://www.fbamich.org) for further information.
- March 28** Health Care Roundtable  
Theodore Levin U.S. Courthouse, Room 115  
8:30 A.M. to Noon
- May 1** Law Day at the Courthouse: A Downtown Tradition  
Welcoming your staff, clients and downtown neighbors to visit the Courthouse and the Judges, between 11:00 a.m. and 2:00 p.m.  
Live demonstrations, such as bomb-sniffing dogs, and tours of the Courthouse. It's becoming a tradition! Don't miss it this year.
- May 9** Leonard R. Gilman Award Luncheon  
Westin Book Cadillac Hotel  
11:30 A.M. Reception  
12:00 P.M. Luncheon  
Speaker: Judge Michael B. Mukasey, Former Attorney General of the United States, November 2007 to January 2009  
Check [www.fbamich.org](http://www.fbamich.org) for further information.
- May 21** Bench/Bar Social and Golf Outing at Plum Hollow  
In addition to an 18-hole scramble, the Bench/Bar Social will have tennis courts & a variety of other activities.  
Plum Hollow Golf Club, Southfield, Michigan  
Afternoon activities and dinner following.

**Updates and further developments  
at [www.fbamich.org](http://www.fbamich.org)**

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

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## Practice & Mentoring Program

*(from page 10)*

Thomas Cranmer, Dennis Haffey, Edward Kronk, Kathleen Lang, Powell Miller, Thomas O'Brien, and Bill Winsten, along with Assistant U.S. Attorney Elizabeth Stafford.

The case will be introduced and a discussion presented on the key aspects of trial practice, opening statements, examination of witnesses and closing arguments. Participants will meet with their team leaders and will be responsible for preparing and presenting/conducting opening and closing statements and direct and cross examinations before one of the judges. During the two day mock trial, participants will receive individual feedback from the team leaders and judges.

Following opening statements, the plaintiff will present a case through several witnesses then the defense will do likewise. After closing arguments, there will be a brief reception for the judges, team leaders and participants. Participation is limited to just 40 lawyers.

The 2010 program was an unqualified success, with one newer lawyer praising the program as "the most valuable educational experience that I have had since law school." This opportunity is a real bargain, only \$170 for members of the National FBA and \$210 for non-members, which includes all course materials and lunches. For only \$265, a participant can register for the program and join the National FBA.

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