

Federal Bar Association - Eastern District of Michigan Chapter - **58** years of service to our Federal Bench and Bar

Magistrate Judge Davis Investiture Ceremony by Kimberly Horsley*

On April 14, the Court held an investiture ceremony for its newest magistrate judge, Stephanie Dawkins Davis, in the Special Proceedings Courtroom with Chief Judge Denise Page Hood presiding. Accompanying Magistrate Judge Davis were her husband, Grant Davis, and her three children Kieunwa, Maya and Gyasi, together with numerous extended family members and close family friends.

Magistrate Judge Davis is a native of Kansas City, Kansas and received her Associate's and Bachelor's degrees from Wichita State University. She received her juris doctor degree from Washington University in St. Louis. Following law school, she started her legal career as a civil defense attorney at Dickinson Wright PLLC.

In 1997, she joined the U.S. Attorney's Office, where she served in the civil division before transferring to the criminal division in 2000. As a prosecutor, she practiced in both the general crimes unit and the controlled substances unit, where she served as the deputy chief and high intensity drug-trafficking area liaison.

In 2010, she was appointed to serve as Executive Assistant U.S. Attorney. In that position, amongst other responsibilities, she oversaw a variety of law enforcement and community

initiatives, including Project Safe Neighborhoods and the Detroit Youth Violence Prevention Initiative. She also led the Office's diversity efforts, redesigned and oversaw its legal intern program, and led the development of its Legal Fellows program.

As a result of her service at the U.S. Attorney's Office and service to the bar, she received a number of honors and

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President's Column Kimberly G. Altman

As I write my final President's Column, summer has arrived. Another year in our Chapter's history is in the books. The national award applications have been submitted, and we hopefully await the news that our Chapter is once again recognized for its success. We celebrated the end of our year at the Annual Dinner and welcomed our new Chapter President. It is an ending and a beginning. It reminds me of a lyric from a once popular, if not over-played, song:

Every new beginning comes from some other beginning's end.

This lyric, from the song "Closing Time" by the band Semisonic, is actually attributed to the Roman Stoic philosopher Lucius Annaeus Seneca. I will leave it to the Intellectual Property lawyers to figure out if the band properly credited the line.

For my "beginning's end," I want to take this opportunity to express my appreciation to our membership for the opportunity to serve as Chapter President. It has been a pleasure and a privilege. It has been a rewarding and satisfying experience which I have thoroughly enjoyed. I have tried to keep the trains running and make sure this year offered the same standard of excellence to which we have grown accustomed. I think this has been accomplished. And for this, I have many to thank.

First, I thank the Court. The generosity of the bench both financially and by active participation in our events is the key to our Chapter's success. I thank the judges for their engagement with the Chapter and the entire Court family for supporting our many events. Judge Rosen and Chief Judge Hood deserve special recognition for their efforts.

Second, a hearty thanks to the officer group. I had a talented team of officers starting with Immediate Past President Tom Schehr, who

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President's Column (continued)

was always available for advice and counsel. New President Susan Fairchild and I have worked closely to ensure a smooth transition. She is going to be an outstanding President. Jeff Appel, Saura Sahu, and Matt Lund worked hard in their respective roles and kept Chapter business in order. They are more than ready for their new roles. Finally, and by no means least, our Executive Director Brian Figot provided steady support. Brian's ability to provide a historical perspective is a treasure for our Chapter.

Third, the executive board and committee co-chairs deserve high praise. The only reason I do not list all of them is due to editing constraints. Each and every one of them worked tirelessly to provide programming that delivered value to our membership and the community at large. Programming is the heart of our Chapter. Our Executive Board and Committee Co-Chairs are responsible for the hallmark of our success.

For the "new beginning," I look forward to assuming what many have said is the best officer role – Immediate Past President. I will remain committed to the Chapter and dedicated to serving our membership. Thanks again.

Magistrate Judge Davis *(from page 1)*

awards, including the Department of Justice Director's Award for Superior Performance by a Litigative Team for the prosecution of officials in relation to the Detroit Public Pension System, the U.S. Attorney's Award for Outstanding Service, the Bridget Vance Vision of Service Award for her work with youth violence prevention, and the 2015 State Bar of Michigan Champion of Justice Award.

Chief Judge Denise Page Hood opened the ceremony by introducing the judges in attendance and reading the Statement of Purpose. A large number of district judges, bankruptcy judges, and magistrate judges were in attendance, along with several state court judges and an administrative law judge, including Edward Ewell, Jr. (Wayne County Circuit Court), Deborah G. Bledsoe-Ford (36th District Court), Donna Robinson Milhouse (36th District Court), and Rita Foley (Social Security Administration). Chief Judge Hood also recognized the presence of U.S. Marshal Robert M. Grubbs, Chief Federal Defender Miriam L. Siefer, and United States Attorney Barbara L. McQuade. Her uncle, Suffragan Bishop Roy C. Dawkins, offered the invocation. Villetta Green sang a beautiful rendition of "America the Beautiful."

As Chief Judge Hood administered the oath of office, her mother and step-father, Earline and Ronald Roland, held the Bible. Her husband and children then presented her with her robe.

Her eldest son, Kieunwa, started his remarks by noting that his mother is a "real hero" in his eyes. He lovingly referred

to her as a paragon of human potential, beautiful, strong and courageous. Speaking for the entire Davis "kingdom," he spoke of the pride that he felt for his mother and for all of her accomplishments.

The next speaker was Judge Linda V. Parker. Judge Parker noted that her relationship with Judge Davis began 25 years ago when she assisted in recruiting her to Dickinson Wright. While she was only at Dickinson Wright for five years, Judge Parker acknowledged that Judge Davis left an indelible footprint at the firm. In whatever capacity she has worked, she has been fully committed and does so with excellence. Judge Parker was confident that she would bring to the bench her commitment that each individual is entitled to equal protection under the law. Judge Parker highlighted Judge Davis' ability to bring truth and candor to any situation so that the individual is left with hope and a better perspective to move forward for the greater good.

U. S. Attorney Barbara L. McQuade praised Judge Davis' 18 years of work at the U.S. Attorney's Office, the last six years in management. McQuade identified three things that Chief Judge Hood needed to know about Judge Davis:

- First, she is very stylish. You can always turn to her for a breath mint, hand lotion, or a scarf.
- Second, she loves the law, and it shows in the pride with which she does her work. McQuade said that the U.S. Attorney's Office assigned her to the most complex cases because she handled her work superbly and secured important convictions, her success in the courtroom coming from meticulous preparation and her extraordinary attention to detail.
- Third, she is uplifting. Indeed, her efforts while serving as Executive Assistant U.S. Attorney uplifted both the office and the community at large. McQuade praised her parents for raising such an outstanding daughter.

The next speakers were Magistrate Judge Elizabeth A. Stafford and AUSA Dawn N. Ison, who spoke of their fourteen-year friendship that began when Judge Stafford and Ison joined the U.S. Attorney's Office in 2002, where she was already a prosecutor. They asked the question, "What makes Judge Davis so special?" They indicated that some clues could be found in her favorite movie, *The Wizard of Oz*. Indeed, the speakers said that she possesses many Dorothy-like characteristics, including her affinity for modesty and truth-seeking. That said, the speakers warned not to mistake her kind spirit for weakness. Indeed, just being in her presence, say her friends, instills in you a desire to be a better person.

The final speaker was Derrick L. Lopez, Associate Superintendent of the Southfield Public Schools. Lopez and Judge Davis met at Dickinson Wright in 1993. He relied on Proverbs 31, comparing the characteristics of a virtuous woman to her. Lopez commented that harmony in faith and family are essential to productive work life and that she has achieved a balance such that she is able to fully bring her talents to the bench.

Magistrate Judge Davis then addressed the attendees. She began by first thanking the Merit Selection Panel for considering and selecting her as a finalist for the position. She



then thanked the district judges for selecting her and for the warm embrace of the Court family. She specifically thanked her fellow magistrate judges for folding her seamlessly into their ranks. She especially thanked her predecessor in Flint, former Magistrate Judge Michael J. Hluchaniuk, for assisting with her transition. She acknowledged her case manager, Tammy Hallwood, and her three law clerks, Angela Brown, Kimberly Horsley, and Karen Benjamin. She also thanked the Court staff both in Flint and Detroit for quickly and efficiently responding to all questions and requests.

Then she thanked her family and friends, some of whom traveled long distances, for making the sacrifice to be with her at the ceremony. Finally, she thanked everyone in attendance for the role that they each played in her professional journey.

She then highlighted some key moments from her professional life up to this point. As a young student, her interest in the law was sparked by the case *Brown v. Board of Education*. In fact, as a student living 45 minutes from Topeka, Kansas, she was directly impacted by the edicts that were put into place as a result of *Brown*. From that point forward, she knew that the law was powerful, that being a lawyer was a noble calling, and that she wanted to be a part of it.

She next heralded the many mentors who guided her professionally, providing needed advice, acumen, and friendship along the way. From her earliest time at Dickinson Wright, she praised the mentorship that she received from former Michigan Supreme Court Justice Mary Beth Kelly, trial attorneys Kathleen A. Lang and Lawrence G. Campbell, and now-Judge Linda V. Parker. She also thanked former U.S. Attorneys Saul Green and District Judge Stephen J. Murphy, III for their trust and confidence while overseeing the U.S. Attorney's Office.

Regarding current U.S. Attorney, Barbara McQuade, she stated that McQuade is a "fearless leader," a "dedicated public

servant," and an "even better friend." She acknowledged her gratitude for the years that they were able to stand shoulder-to-shoulder at the U.S. Attorney's Office dedicated to a common cause.

Then, she praised her "home team" - her family. She spoke of her grandmothers and the life lessons that they taught her. She next heralded her mother as her lifelong influence. While she lost her father at age four, her mother made sure that she was in a secure environment and that she maintained strong ties to her father's family. She also commented on the strong example of her step-father and his influence in her life.

She then thanked her husband Grant for bringing her to Michigan and for always supporting her in chasing her dreams. She also praised her children for their unwavering love and support.

She closed by quoting Langston Hughes' poem, "A Dream Deferred," and noted that she does not know what happens to a dream deferred because, for her, becoming a magistrate judge is a dream realized. Alluding once more to *The Wizard of Oz*, she noted that the bench feels like home, and there is simply no place like home.

All attendees joined in singing "Lift Every Voice and Sing." Suffragan Bishop Roy C. Dawkins offered the benediction, and Chief Judge Hood closed the proceedings.

Magistrate Judge Davis' chambers are

located in the Flint courthouse, where she has been holding court since being sworn in on January 4, 2016.

* Kimberly Horsley is currently serving as a law clerk to Magistrate Judge Stephanie Dawkins Davis. She is a graduate of Pepperdine University School of Law and has previously clerked for Sixth Circuit Court of Appeals Judge James L. Ryan, then-Magistrate Judge Laurie J. Michelson, and retired Magistrate Judge Michael J. Hluchaniuk.



Magistrate Judge Davis at her investiture with Chief Judge Denise Page Hood.

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



Magistrate Judge Davis, her husband Grant Davis, and their children at her investiture.

Photo courtesy of Harold White.



Supreme Court Review

by M Bryan Schneider

The work of the Supreme Court during the October 2015 Term was overshadowed by the unexpected death of Justice Antonin Scalia, who was not only one of the longest-serving Justices but also one of the most prolific and colorful intellects

to serve on the Court. Nevertheless, the work of the Court continued and the Court decided several cases of interest to the general public in areas such as abortion rights (*Whole Woman's Health v. Hellerstedt*), affirmative action (*Fisher v. University of Texas*), and election law (*Evenwel v. Abbott*, *Harris v. Arizona Independent Redistricting Commission*). However, as usual, the bulk of the Court's work was dedicated to more prosaic issues of great import to federal practitioners.

On the civil side of its docket, the Court decided two standing cases. In *Spokeo, Inc. v. Robins*, the Court held that a plaintiff cannot establish standing by showing a bare violation of a statute's procedural requirements; rather, the plaintiff must show that he suffered an actual, particularized injury. In *Wittman v. Personhuballah*, the Court held that a plaintiff must adduce evidence to support his claimed injury; a bare allegation of injury is insufficient to establish standing.

Turning to the related doctrine of mootness, the Court held in *Campbell-Ewald Co. v. Gomez* that a case is not rendered moot by a defendant's offer of complete relief that is not accepted by the plaintiff. The court also decided one personal jurisdiction case, holding that the citizenship of a trust for diversity purposes is determined by the citizenship of all of its members (*Americold Realty Trust v. Conagra Foods*). And in an important class action decision, the Court held that otherwise admissible representative and statistical evidence can be used to establish the class certification requirements of Rule 23 (*Tyson Foods v. Bouphakeo*).

In other civil procedure matters, the Court held that a federal district court has a limited power to recall a jury for further deliberations after the jury has been discharged (*Dietz v. Bouldin*), and that a federal law making certain Iranian assets available to satisfy judgments against Iran in specific cases did not impermissibly direct a rule of decision in a pending case in violation of separation of powers principles (*Bank Markazi v. Peterson*).

In *Franchise Tax Board of California v. Hyatt*, the Court held that it violates the Full Faith and Credit Clause for a state court to permit a damages award against a sister state greater than could be obtained against the forum state. The Court clarified in *Menominee Indian Tribe v. United States* that equitable tolling of federal statutes of limitations is available only when a plaintiff establishes both that it pursued its rights diligently and that an extraordinary circumstance prevented timely filing.

In two ERISA cases, the Court held that a Vermont law requiring disclosure of information relating to health care claims is preempted by ERISA (*Gobeille v. Liberty Mutual Insurance Co.*), and that a plan may not, under ERISA's equitable relief provision, recover a third-party settlement from a plan participant's general assets once the participant has dissipated the identifiable settlement funds (*Montanile v. Board of Trustees of National Elevator Industry Health Benefit Plan*).

The Court decided a number of civil rights and discrimination cases during this past Term. In Title VII cases, the Court held that the limitations period for a constructive discharge claim does not begin to run until the employee actually resigns (*Green v. Brennan*), and that a defendant need not obtain a favorable ruling on the merits in order to be considered a prevailing party entitled to attorney fees (*CRST Van Expedited v. EEOC*). In *Heffernan v. City of Paterson*, the Court held that a public employee may bring a First Amendment claim when he is demoted based on his perceived political activity, even where the defendant was mistaken that the employee actually engaged in that speech.

In procedural civil rights matters, the Court held that the Prison Litigation Reform Act's exhaustion provision is mandatory and does not permit courts to recognize a "special circumstances" exception (*Ross v. Blake*), and that a prisoner's filing fee responsibilities in multiple cases are subject to simultaneous, not sequential, recoupment under the PLRA (*Bruce v. Samuels*).

The Court decided three intellectual property cases during the October 2015 Term. In patent cases, the Court held that enhanced damages for exceptional cases under § 284 are available in the district court's considered discretion and are not subject to any mechanical test or heightened evidentiary burdens (*Halo Electronics v. Pulse Electronics*), and that the Patent Office's determination not to conduct inter partes review of the validity of a patent is not subject to judicial review (*Cuozzo Speed Technologies v. Lee*). Employing similar reasoning in *Kirtsaeng v. John Wiley & Sons*, the court held that the objective reasonableness of a losing party's position is an important, but not controlling, factor in determining the appropriateness of attorney fees in a copyright action.

In bankruptcy matters, the Court held that the actual fraud exception to discharge encompasses all fraudulent conveyance schemes, even if they do not involve an actual false representation (*Husky International Electronics v. Ritz*), and that Puerto Rico may not seek relief under Chapter 9 of the Bankruptcy Code (*Commonwealth of Puerto Rico v. Franklin California Tax-Free Trust*).

In other civil matters, the Court held that:

- special counsel seeking to collect debts on behalf of the state do not violate the Fair Debt Collections Practices Act by communicating with debtors on state attorney general letterhead (*Sheriff v. Gillie*);
- a RICO civil enforcement action may be based on extraterritorial predicate acts where the underlying predicate acts themselves have extraterritorial reach, but is limited to

recovery of damages to domestic business or property (*RJR Nabisco v. European Community*); and

- an Army Corps of Engineers jurisdictional determination that wetlands are subject to the Clean Water Act constitutes final agency action subject to judicial review (*Army Corps of Engineers v. Hawkes Co.*).

Turning to the Court's criminal docket, the Court decided a number of cases interpreting federal criminal laws. In particular, the Court decided three cases interpreting the Hobbs Act. In *McDonnell v. United States*, the Court held that a Hobbs Act bribery charge requires the government to show that the defendant agreed to perform a specific, formal exercise of governmental power. In *Taylor v. United States*, the Court held that the government may establish the Hobbs Act's jurisdictional interstate commerce element by showing that the defendant robbed or attempted to rob drugs or drug proceeds without additionally showing that the drugs moved in interstate commerce. And in *Ocasio v. United States*, the Court held that a defendant can be guilty of conspiring to obtain the property of another under color of official right even where the "other" from whom the property was obtained was himself a member of the conspiracy.

In a number of cases, the Court decided whether certain state crimes constitute predicate offenses for various federal criminal statutes. In *Voisine v. United States*, the Court held that a state domestic assault conviction constitutes a misdemeanor crime of domestic violence prohibiting gun possession even where the conviction could be based on recklessness. Reaching a contrary conclusion in *Mathis v. United States*, the Court held that because Iowa's burglary law is broader than the generic crime of burglary, a conviction under the Iowa law cannot constitute a predicate felony under the Armed Career Criminal Act. In *Lockhart v. United States*, the Court held that sexual abuse of an adult constitutes a predicate for enhanced sentencing under the child pornography statute. And in *Luna Torres v. Lynch*, the Court held that a state offense constitutes an aggravated felony under the Immigration and Nationality Act when it mirrors the elements of a listed federal crime except for a jurisdictional element requiring a connection to interstate or foreign commerce.

The Court also decided a number of constitutional criminal procedure cases. In Fourth Amendment cases, the Court held that the Fourth Amendment permits warrantless breath tests following arrests for drunk driving, but not warrantless blood tests (*Birchfield v. North Dakota*), and that an initially unconstitutional investigatory stop does not mandate exclusion of evidence seized pursuant to the defendant's arrest following the officer's discovery of a valid outstanding arrest warrant (*Utah v. Strieff*).

In two Sixth Amendment right to counsel cases the Court held that a pretrial restraint of untainted assets needed to retain counsel violates the Sixth Amendment (*Luis v. United States*), but that it does not violate the Sixth Amendment to enhance a sentence on the basis of a valid but uncounseled prior trial court conviction (*United States v. Bryant*).

In other constitutional criminal procedure decisions the Court held that:

- a challenge to the sufficiency of the evidence must be evaluated in light of the elements of the crime, not the elements incorrectly instructed to the jury (*Musacchio v. United States*);
- the Sixth Amendment speedy trial right does not apply to sentencing proceedings (*Betterman v. Montana*);
- a defendant's right to due process was violated when a state supreme court justice failed to recuse himself from postconviction proceedings involving a case commenced when the justice was the prosecutor (*Williams v. Pennsylvania*); and
- Puerto Rico does not constitute a "separate sovereign" and thus it violates the Double Jeopardy Clause for both the United States and Puerto Rico to prosecute a defendant for the same conduct.

Finally, the Court decided several sentencing cases during the Term. In *Kansas v. Carr*, the Court held that the Eighth Amendment does not require a court to instruct a capital sentencing jury that mitigating circumstances do not need to be proven beyond a reasonable doubt. In *Hurst v. Florida*, the Court held that a Florida capital sentencing scheme which requires findings by the trial judge before imposition of the death penalty violates the Sixth Amendment jury trial right. In *Welch v. United States*, the Court held that its decision in *Johnson v. United States*, holding the residual clause of the Armed Career Criminal Act void for vagueness, applies retroactively to cases on collateral review. Similarly, in *Montgomery v. Louisiana* the Court held retroactively applicable its decision in *Miller v. Alabama* preventing imposition of mandatory life without parole sentences on juveniles. And in *Molina-Martinez v. United States*, the Court held that where a district court applies the wrong guidelines range, a defendant can show that a forfeited plain error affected his substantial rights even if the sentence imposed falls within the correct guideline range.



**Dave Weaver,
Clerk of Court/
Court Administrator**

The Court's automated CJA processing and payment system will be live on July 1. The Court's CJA Plan has been revised to allow for the use of the new system and was approved by the Sixth Circuit Judicial Council on June 16. Information about eVoucher, related training, and the revised CJA Plan can be found on the Court's website under the Attorneys link on the Home page.

The Flint water problems continue to be monitored closely by the Court as to the Flint courthouse. The General Services Administration (GSA) has concluded the process of

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Dave Weaver *(from page 5)*

installing water filters at all water sources in the building. The ongoing water testing provided by GSA indicates the filters are working properly, however they will continue to provide bottled water to everyone working in the courthouse and for visitors including members of the Bar, litigants, and the public.

Regarding the renovation of the Theodore Levin U.S. Courthouse, court staff and the GSA have completed what we refer to as a Sequence Plan. The Sequence Plan outlines when and where court staff, including judges and chambers, will be temporarily relocated when renovation work affects their assigned space. Each relocation will last approximately six months. We will have a dedicated section on our public website that will detail renovation activity that impacts the Court and to advise when the location of judges, chambers and other Court staff are being affected.

Have a great summer!

Remember, if you have any comments, questions or suggestions, do not hesitate to contact me at: david_weaver@mied.uscourts.gov.

Civility Award to John Runyan

The 37th Annual Dinner Honoring the Judicial Officers of the Eastern District of Michigan was held on June 23 at the Crowne Plaza Detroit. Despite having to compete with 80's rock band Guns N' Roses for attendees (and parking), the event was a huge success, and a great opportunity to once again honor the judicial officers and raise funds to benefit the Federal Bar Foundation.

Outgoing Chapter President Kim Altman presided over the proceedings. After her welcoming remarks and introduction of the 18 judicial officers in attendance, Altman introduced Judge Sean Cox, who read the opening remarks of Chief Judge Denise Page Hood, who was unable to attend the event. After thanking the Chapter and its members, Judge Cox then turned the microphone back over to President Altman, who conducted the official business for the evening. The Chapter elected the proposed slate of officers, executive board members, and foundation trustees. Altman then turned over leadership of the Chapter to the new president, Susan Fairchild.

President Fairchild thanked Altman for her service to the Chapter, and presented her with a plaque and flowers. She

then turned to the main event—the presentation of the Julian Abele Cook, Jr.-Bernard A. Friedman Civility Award. Judge Edmunds, who unfortunately was unable to attend, presented the award via video to John Runyan of Sachs Waldman P.C. Judge Edmunds spoke about the namesakes of the award—Judges Cook and Friedman—before talking about Runyan's distinguished career, his service to the public and the bar, and, above all, his unwavering focus on civility.

Runyan was presented with a plaque honoring his achievement. He thanked his wife for all of her support, without which none of his accomplishments would have been possible. The Chapter congratulates John Runyan on his accomplishments.

Later in the evening, Executive Director Brian Figot returned to the stage to present several books to Altman to read during her newly found free time now that she is no longer Chapter President.

Special thanks go to Annual Dinner co-chairs Michael Blalock, Linda Hylenski, and Cynthia Filipovich. We look forward to seeing everyone at next year's Annual Dinner.



Outgoing President Kimberly Altman and incoming President Susan Fairchild at the Annual Dinner.

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

ABA Rules Roadshow

The Federal Rules of Civil Procedure changed significantly effective December 1, 2015. In the words of Chief Justice John Roberts, these amendments are “a big deal.”

Accordingly, on May 19, the American Bar Association Section of Litigation and the Chapter brought the ABA's Federal Rules Amendment Roadshow to Detroit to a sellout crowd of jurists and practitioners.

After a welcome by Chief Judge Denise Page Hood and regional chair Daniel Quick of Dickinson Wright, Professor Steven Gensler of the University of Oklahoma College of Law, Professor John Rabiej of the Duke University School of Law, and Judge Jeffrey Sutton of the Sixth Circuit Court of Appeals described the rule revision process and the philosophy which guided the amendments.

To discuss the centerpiece of the amendments – revisions to the scope of discovery in Rule 26 – a panel of jurists and practitioners shared their impressions of the needs which led to the changes and their predictions on how the new rules would be implemented. Lending their expertise were District Judge Victoria A. Roberts and Magistrate Judge David R. Grand along with Reginald Turner of Clark Hill and Kathleen Bogas of Bogas & Koncius.

David Christensen of Christensen Law and Dan Quick updated the audience on state court rule revision initiatives, both within Michigan and nationally.

Finally, case administration and best practices were discussed by District Judge David M. Lawson and Magistrate Judge Anthony P. Patti along with Kenneth Watkins of Sommers Schwartz and Elizabeth Hardy of Kienbaum Oppenwall Hardy & Pelton.

Afterwards, the speakers and audience enjoyed a reception sponsored by the ABA, the Chapter, Dickinson Wright, Brooks Sharkey Wilkins & Turco, and Stout Risius Ross.

Speed Judging

On June 21, the RISE Committee hosted the Third Annual Speed Judging Event at the Theodore Levin U.S. Courthouse. Building on the success of the prior year, this event was a rare opportunity for new lawyers to meet and get to know district and magistrate judges in a casual social setting. The event gave several groups of new lawyers five minutes to chat with each judge before the “gavel fell,” prompting each group to rotate to a new table and meet a new judge. During the course of the event, new lawyers had the unique opportunity to ask the judicial officers questions like: what is your favorite nonlegal movie or book? After the final round, the participants joined the judges for lunch.

Eleven district and magistrate judges graciously volunteered their time to participate in this year’s event, with almost 30 new lawyers and interns participating. Speed Judging was a success for the third year in a row.

New Federal Rules Seminar

This year’s annual federal practice seminar hosted by The Rutter Group left no one in attendance disappointed or dissatisfied.

On June 23, Judge Gerald E. Rosen, Judge David M. Lawson, and Thomas W. Cranmer of Miller Canfield held a panel discussion titled “New Federal Rules for a New Frontier” that entertained and challenged the minds of the judges, law clerks, attorneys, and interns who were in attendance at the Crowne Plaza Hotel. The invigorating discussion touched upon a variety of topics and issues arising out of changes to the Federal Rules of Civil Procedure which were implemented on December 1, 2015.

The panel members interacted with each other and the attendees through a number of hypothetical situations and topical discussions that covered some of the changes that have already begun to affect attorneys practicing in federal court. The rules and issues covered included:

- Rule 26 and how the relevancy and proportionality of the information needed in a discovery request has changed;
- Rule 34 and how boilerplate objections under the revised rules are no longer going to be permitted (if they

ever were at all);

- Rule 37 and how judges have new options when it comes to sanctions for a party’s failure to cooperate or preserve electronically stored information; and
- how Rule 8 has essentially been eliminated and effectively overruled by *Twombly* and *Iqbal*.

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Professor Steven Gensler, University of Oklahoma College of Law, Magistrate Judge David R. Grand, Professor John Rabiej, Duke University School of Law, District Judge Victoria A. Roberts, District Judge Paul Grimm of the District of Maryland, Kathleen Bogas, Reginald Turner, Sixth Circuit Judge Jeffrey Sutton, and Daniel Quick at the ABA Rules Roadshow.

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



Judge George Carem Steeh provides his perspective to two new lawyers at the Speed Judging event.

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



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New Federal Rules *(from page 7)*

The discussion started with the need for and importance of proportionality and relevancy of any information requested, and how any information requested through discovery now needs to be proportional to the needs of the case. Judge Rosen and Judge Lawson noted that they will look at all factors, including whether there exists any other means for a party to obtain the information sought and whether the burden or expense of the discovery outweighs its likely benefit. The highlight of the first topic was that the proportionality of the need for the information sought is critical when weighing whether a discovery request is appropriate or not.

The next discussion highlighted the need for specificity when objecting to a discovery request for electronic information on any grounds pursuant to Rule 34. The panel emphasized that when stating an objection, the party must specify why and specify what information is being withheld under Rule 34.

A large part of the time was spent covering the new amendments to Rule 37 and the changing of the word “provide” to “preserve” in the language of Rule 37(a)(3)(e). The panel highlighted that information should be preserved if there is any anticipation of future litigation or controversy for which the information should be saved. Also, the courts now may not use any measures greater than necessary to cure a prejudice resulting from a party’s failure to take reasonable steps to preserve needed information. Judge Rosen noted that while Michigan does not have any ethical rules for lawyers to follow regarding staying up to date on new ESI rules, there are still large malpractice liabilities if an attorney does not attentively advise a client to preserve any potentially needed information.

Lastly, with the assistance of an attorney in attendance, the panel discussed the ever increasing need for a party to have all necessary information presented in their complaint because of the Supreme Court’s rulings in *Twombly* and *Iqbal*. A top patent attorney in attendance contributed his knowledge and expertise, explaining to everyone that you will be doing your client a disservice if you do not bring everything you know up front in your complaint. This topic ended with the conclusion that the bare-bones pleading requirements of Rule 8 are a thing of the past.

In all, the panel filled the information-packed afternoon with great banter and humor that kept the crowd engaged. It ended on a wonderful note when Judge Rosen informed the group that the Tigers had just won their game against the Mariners with a walk-off run in extra innings. The seminar was a walk-off win for the people in attendance as well.

Ping-Pong Social Event

On June 16, the Intellectual Property, RISE, and the Law School Outreach Committees hosted a ping-pong social event at Drive Detroit, a ping-pong social club near the Theodore Levin United States Courthouse.

About three dozen judges, law clerks, attorneys, and interns attended the event and enjoyed themselves socializing and playing ping-pong.

There were many excellent ping-pong players, including Judge George Caram Steeh who showed off his considerable ping-pong skills. Michael Solt of Howard & Howard LLP and Joseph Nunez of Darrow Mustafa P.C. were awarded trophies. Many judicial interns also received trophies for their efforts.

The event was sponsored by Darrow Mustafa P.C.



Competitors at the Ping-Pong Social included Chapter Executive Director Brian Figot, Joseph Nunez, Nadine Mustafa, Mark Zylka, Lesia Fedorek, Andrew Dixon, District Court Judge George Steeh, Ryan Carnago, Christopher Darrow, Mayer Englesburg, and Tully Williams.

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

Law Clerk Lunch-and-Learn

On June 14, the Chapter Law Clerk Committee hosted a Lunch-and-Learn event in Room 115 of the Courthouse. The audience included law clerks, summer associates, interns, and newer lawyers.

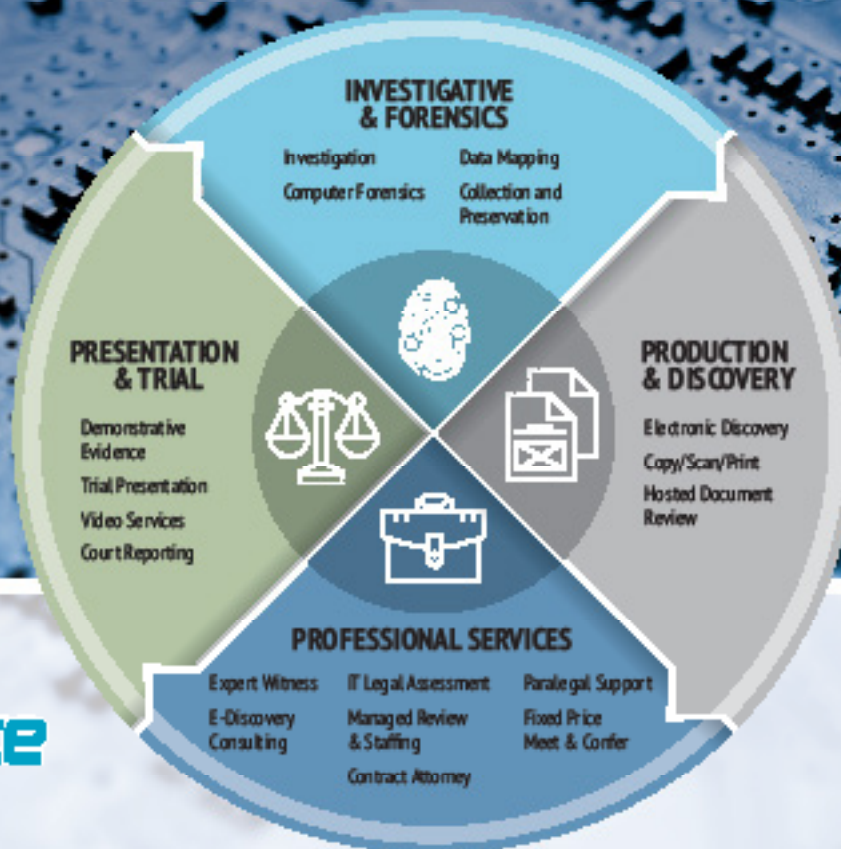
Attendees heard from a panel of current and former law clerks representing a wide range of rewarding careers. The panelists explained their backgrounds and discussed how their clerkships helped them on their career paths. Afterwards, they took questions from the attendees.

The Law Clerk Committee would like to thank the panelists for providing the attendees with valuable information and advice on clerkships and the opportunities that come from clerking. Our gratitude goes to:

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Lunch-and-Learn *(from page 9)*

- Matthew Allen, Principal at Miller Canfield;
- Sarah Resnick Cohen, Assistant United States Attorney;
- Bradley R. Hall, Administrator for Michigan Appellate Assigned Counsel System;
- Susan McKeever, Senior Associate at Bush Seyferth & Paige PLLC;
- U.S. Magistrate Judge Elizabeth Stafford, and
- Adam Wiener, In-House Counsel at Robert Bosch LLC.

The event was very successful and continues to be a popular event on the summer calendar.

Diversity Committee Hosts Schmooze Cruise

On June 9, a mostly sunny sky and perfect temperature embraced more than 30 participants, including lawyers, interns, and Magistrate Judge Elizabeth Stafford, as they “schmoozed” along the Detroit Riverwalk during the Chapter Diversity Committee’s first Schmooze Cruise.

They walked for over a mile while taking the time to discuss significant landmarks along the way, such as the monument to the Underground Railroad and Hart Plaza, for the benefit of those who were unfamiliar with the area. After strolling to the Riverwalk Carousel, the group returned to



Magistrate Judge Elizabeth Stafford and participants at the Schmooze Cruise.

Granite City in the Renaissance Center where they met up with even more “schmoozers” and chatted for hours on end.

So much fun was had by all that many expressed interest in participating in another voyage real soon.

Bankruptcy Court History

On June 9, the Bankruptcy Committee and the Court Historical Society presented Kevin M. Ball speaking about his new book, *Adversity and Justice: A History of the Bankruptcy Court for the Eastern District of Michigan*, published by Wayne State University Press.

Ball is a longtime bankruptcy attorney. He gave a history of the Court, from its humble beginnings, through its scandals and the reorganization of the City of Detroit in the largest municipal bankruptcy proceeding in the United States.

A top-notch panel discussion included District Judge Avern Cohn, Bankruptcy Judge Walter Shapero, Kevin Ball, and Charles Bullock. The bankruptcy community supported the program and the book in force.

The program culminated in a wonderful reception organized by Leslie Berg and a book signing by Ball. Books are still available.

Many thanks to the District Court staff, the book committee, the judges who participated, Leslie Berg, and, of course, Kevin Ball for a great program.

Panel on Incivility in Complex Cases

Most lawyers agree that there is a growing culture of unprofessionalism, rudeness, and intentional uncooperativeness in civil litigation—a trend that has led many courts, including the Eastern District, to reaffirm the importance of civility in the law. This is especially true in “complex cases,” where the stakes are high.

On June 7, the Chapter’s Complex Civil Litigation Committee hosted a panel of four district judges who offered advice on how to deal with various common scenarios of incivility. The panelists included Judges Bernard A. Friedman, Robert H. Cleland, Laurie J. Michelson, and Matthew F. Leitman. Committee Co-Chairs A. Michael Palizzi of Miller Canfield, Jeffrey A. Sadowski of Howard & Howard, and Mark Aiello of Foley & Lardner moderated the

discussion.

As Palizzi noted, incivility comes in many different forms, including rude, condescending, or bullying behavior, lying, and gamesmanship tactics or “strategic incivility.” And while incivility squanders clients’ money, wastes the Court’s resources, and obscures truth and justice, such tactics are nevertheless common. Worse, they can be difficult to address,

(continued on page 12)

Complex Cases *(from page 11)*

leaving a lawyer reluctant to file any motion out of fear of coming off as part of the problem.

The judges offered various suggestions for lawyers confronted with an uncivil opposing counsel. First and foremost, the judges cautioned that attorneys should always do the right thing, regardless of the other side's behavior. As Judge Friedman emphasized, a lawyer's reputation is earned and is the one thing lawyers cannot afford to tarnish.

Judge Cleland also stressed that it is important for lawyers to choose their battles when deciding whether to file a motion. Not every discovery dispute, for example, needs to result in a motion.

However, that is not to say that lawyers should be reluctant to bring legitimate disputes to the Court's attention. Judge Michelson discussed how she often addresses incivility in connection with discovery disputes informally with a conference call before the parties commence motion practice. And Judge Leitman suggested that he is eager to resolve issues that come up during discovery—even if it means presiding over a deposition in Court, as he once had to do.

But what is the best way to stem incivility? As one judge suggested, "drink beer together." In other words, members of the bar should get to know to each other better. A bar with lawyers more familiar with one another would perhaps be a more civil bar.

Bench/Bar Golf Outing

On May 16, Eastern District judges joined over 60 lawyers for an afternoon of golf, tennis, drinks, and dinner at the 2016 Bench/Bar Social.

The Chapter held the outing at the Detroit Golf Club again this year. Despite holding the event in mid-May, attendance exceeded last year's level. A judge was added to each foursome to create a five-person scramble tournament. The steady wind had only a minimal impact on the lively group of talented golfers, and the winning team finished well under par.

The close competition on the course was discussed during cocktails and dinner, when the conversation meandered toward

the strategy behind the "Ball of Justice," a special ball that could be purchased for a nominal donation and used by the judges on the putting green to reduce strokes. As one dinner participant observed, "The strategic use of the Ball of Justice undoubtedly separated the victors from the vanquished out there today."

After dinner, many fabulous prizes were raffled off, including gifts certificates to local restaurants, Tigers tickets, and golf clubs, including a valuable driver.

The event provided a unique and relaxed opportunity for interaction between the bench and bar. The Chapter would like to thank the sponsors – Stout Risius Ross, Conway MacKenzie, Butzel Long, Clark Hill, Honigman, Computing Source, Brooks Kushman, Miller Canfield, Pepper Hamilton, and Kerr Russell – for their generosity in making this event possible.



Bankruptcy Judge Mark A. Randon, Magistrate Judge David R. Grand, District Judge Stephen J. Murphy III, Chief Judge Denise Page Hood, Andrew Lievense, George Donnini, District Court Administrator David Weaver, District Judge Victoria A. Roberts, Kevin Fanning, and District Judge David M. Lawson at the Bench/Bar Golf Outing.

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

Shapero Symposium

On May 17, the Walter Shapero Bankruptcy Symposium hosted Professors Melissa Jacoby and John Pottow for a dinner event at the Atheneum Suite Hotel in Detroit. The Shapero Symposium is a section 501(c)(3) organization that promotes the pursuit of academic examination of bankruptcy issues affecting consumers and businesses, and is named in honor of Bankruptcy Judge Walter Shapero.

Melissa Jacoby is a law professor at the University of North Carolina School of Law at Chapel Hill and is the American Bankruptcy Institute's Scholar in Residence. She regularly appears on podcasts discussing timely bankruptcy issues.

Professor Pottow is a law professor at the University of Michigan Law School and regularly comments on and has assisted in U.S. Supreme Court cases on bankruptcy issues.

Professors Jacoby and Pottow delighted the audience with their knowledge of constitutional and practical political issues surrounding the financial crisis in Puerto Rico. They discussed the recent U.S. Supreme Court decision relaxing the "actual fraud" standard for non-dischargeable debts, and a case involving structured dismissals in Chapter 11 that do not follow the priorities of payment under the Bankruptcy Code that may be headed to the U S Supreme Court.

Tax-deductible donations to the Shapero Symposium to continue this important program are always welcome. Forms are available from either Leslie Berg at leslie.k.berg@usdoj.gov or David Lerner at dlerner@plunkettcooney.com.

Book Club

The spring Book Club meeting took place in the Judges' Conference Room in the Courthouse on Tuesday, May 10. Federal judges and lawyers gathered to discuss *The Quartet: Orchestrating the Second American Revolution, 1783–1789*, by Pulitzer Prize-winning author Joseph J. Ellis.

While we often think of the country's origin as the Declaration of Independence, the federal government as we know it was not created until the ratification of the Constitution. After the American Revolution, the states diverged on foreign policy, taxes, slavery, western expansion, interstate commerce, and supporting the veterans of the Revolution. In fact, the states were on track to be a collection of independent countries, more like Europe.

Through the unflagging efforts of four men—George Washington, Alexander Hamilton, John Jay, and James Madison—the states finally agreed to be governed by a federal government under core principles in place of the prior Articles of Confederation. Author Joseph Ellis offers engaging portraits of these men and others during the process of drafting, debating, compromising, and negotiating, which might just change your view about interpreting the Constitution.

Stay tuned for the next selection for the fall book club meeting, co-chaired by Andy Doctoroff, David Fink, and Erica Fitzgerald.

Veterans Treatment Court Seminar

The Chapter Federal Disability Benefits Committee presented its Fourth Annual Seminar on Veterans Treatment Courts (VTCs) on May 3. It was held in Room L-44 at the Western Michigan University Thomas M. Cooley Law School,

2630 Featherstone Road in Auburn Hills from 1:00 – 4:00 p.m.

The seminar covered the purposes of VTCs; how VTCs assist veterans who have become involved in the criminal justice system; and the benefits of successfully completing the VTC program. It also featured the current progress of the production of a manual covering the Mentor Program.

The seminar featured experts regarding VTCs who have established and implemented VTCs and continue in their administration and improvement. They included Dean Lisa Halushka, Cooley Law School; Scott Strickler, 41B District Court Director of Probation; Judge David Jordan, retired, 54B District Court; John Caterino, former Mentor Coordinator, 54B District Court; and, Lynn Hedges, Michigan Veterans Affairs Agency.



Scott Strickler, Dean Lisa Halushka, Judge David Jordan, Lynn Hedges, John E. Walus, and John Caterino at the Veteran Treatment Court Seminar.

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

Particularly noteworthy was the variety of organizations represented among the attendees. Attendees came from as far as Eaton County and Monroe. The event provided an excellent networking opportunity to assist the attendees in their respective courts.

Immigration Event

The Chapter Immigration Committee held a Brown Bag lunch program on May 4 at the Levin Courthouse.

The topic of the lunch

was denaturalization and the discussion was led by Jonathan Goulding, Senior Attorney at U.S. Customs and Immigration Enforcement. Goulding has extensive experience in denaturalization cases and gave an very interesting speech regarding the law of denaturalization and what actions by a person would cause the government to institute denaturalization proceedings.

Russell Abrutyn, a private practitioner, spoke on defenses to denaturalization. Abrutyn is with the law firm of Marshall Hyman & Associates and has an extensive practice in immigration law. He recently handled a complex denaturalization case in the Eastern District.

The speakers engaged in a good discussion with the audience and the Brown Bag lunch was well received. Many thanks to Jonathan Goulding and Russell Abrutyn.

Law Day 2016: *Miranda*

On May 2, the annual Law Day event was held at the Theodore Levin Courthouse. The theme of this year's event was *Miranda: More than Words* in recognition of the 50th Anniversary of the *Miranda* decision. The Law Day celebration included courthouse tours and a panel discussion of the *Miranda* legal decision and its impact on society. As in past years, numerous groups and federal law enforcement agencies had booths where guests could meet representatives of the organizations and learn about their respective roles.

And once again Law Day featured the "Ask a Lawyer" pro bono program, which gave the public an opportunity to discuss their legal issues with volunteer attorneys.

This year, in addition to the normal guests, the Chapter was fortunate to have approximately 200 high school students participate. Their attendance was made possible by a grant from National FBA which paid for school bus transportation to the Courthouse. Schools from Belleville, Detroit, Harper Woods, and Livonia participated in the program.

In addition, many members of the court staff and community attended Law Day. A picnic-style lunch with hot dogs, chips, and cookies was served to all attendees. The cookies were purchased from Jo Brighton Bakery in Wyandotte, a vocational training program for students.

The Chapter and the Court thank everyone who helped make Law Day 2016 a tremendous success.

Appealing Tips from Appellate Clerks

On May 3, the Law Clerk Committee jointly with the Appellate Committee presented a panel of current and former circuit court clerks to provide practice tips from those working behind-the-scenes. The panel was moderated by K. Scott Hamilton from Dickinson Wright PLLC, who is a co-chair of the Appellate Committee and former law clerk to the late Hon. Cornelia G. Kennedy.

The presentation began with an explanation of what the clerks do, how cases are assigned, and differences between judges. According to panelists, whether judges share bench memos with other judges varies by judge, and some judges have a strong preference for succinct writing—even from their clerks. The panelists then provided tips for effective appellate writing and oral argument. The clerks shared plenty of tips and cautionary tales and took numerous questions from the audience.

The event was well-attended and well-received. The committees would like to thank the panelists for sharing their time and specialized knowledge: Stephanie A. Douglas, former law clerk to Hon. Raymond M. Kethledge; Andrew

Goetz, former law clerk to Hon. Mary Beck Briscoe; Molly Hamilton, career clerk to Hon. Richard F. Suhrheinrich; Patricia F. Suhrheinrich, career clerk to Hon. Ralph B. Guy, Jr.; and Melissa Salinas, former law clerk to Hon. Eric L. Clay.



Magistrate Judge David R. Grand, Amy Johnston, John Sier, Susan Fairchild, and Chief Judge Denise Page Hood at Law Day.

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

Past Presidents' Luncheon

The confluence of a beautiful spring day, a landmark Detroit restaurant, and a group of loyal Chapter stalwarts describes this year's Past Presidents' Luncheon.

President Kim Altman and her fellow officers hosted the memorable gathering at The Whitney on May 5, a departure from the traditional Detroit Athletic Club venue. Everyone enjoyed the beautiful mansion and delicious food, surpassed only by the wealth of good Chapter news and the pleasure of one another's company.

Altman introduced the proposed slate of officers, which was unanimously approved by the Past Presidents, a prerequisite for presenting the slate to the general membership for voting at the Annual Dinner. Altman also directed guests' attention to a multipage handout summarizing the Chapter's recent accomplishments, as well as the ambitious schedule of spring and summer seminars, ceremonies, and social opportunities. Altman underscored the wonderful work of the Newsletter Committee which garnered yet another award for excellence at the national FBA Annual Convention. After praising the contributions of her fellow officers, board members, and committees, and the tireless work of Executive

Director Brian Figot, Altman introduced her nominated successor, Susan Fairchild.

President-Elect Fairchild previewed the forthcoming year, emphasizing her intention to run efficient meetings. She also stressed the importance of increasing membership, a key goal of her presidency.

Collectively, the Past Presidents expressed their admiration for the breadth and depth of our robust chapter led so ably by Altman and the other dedicated officers this past year. Wally Riley remembered Chapter co-founder and Past President Richard Tarnas who died just 10 days earlier at the age of 92. A contemporary of Ed Rakow, Tarnas' contributions to the Chapter and the legal community were emblematic of the unique group of individuals who charted the course to where the Chapter is now. So, it was especially fitting that the Past Presidents' Luncheon brought both ends of the Chapter continuum together for this delightful and meaningful occasion.

Evelyn Receives Gilman Award

On April 18, the Chapter honored Gerald Evelyn by presenting to him the Leonard R. Gilman Award at the annual Gilman Luncheon.

Evelyn is a cum laude graduate of Michigan State University and Antioch School of Law in Washington, D.C. An attorney specializing in criminal defense and general civil litigation, Evelyn is a life-long Detroiter committed to the City of Detroit in general and in particular to its youth.

In 1982, Evelyn went into private practice with his mentor Myzell Sowell, with whom he practiced until Sowell's retirement. He has been an active member of a number of legal organizations, including the National Conference of Black Lawyers (Past Chapter President), Wolverine Bar Association, the National Association of Criminal Defense Lawyers, and the Criminal Defense Attorneys of Michigan (Past Board Member).

He has also served on the faculty of the Wayne County Criminal Advocacy Program and the Michigan Institute for Continuing Legal Education, and he has taught seminars at Wayne State University Law School and the University of Michigan Law School. During his 37-year career, Evelyn has handled many complex cases in both state and federal court. He was warmly introduced by his friend and colleague Juan Mateo, who spoke of Evelyn's integrity and dedication both to the practice of law and to his clients.

Valparaiso University Law School Dean Andrea Lyon provided the keynote address for the luncheon, and spoke on death penalty litigation and her experience in representing defendants in capital cases. Prior to her appointment in 2014, Dean Lyon defended more than 30 potential capital cases at the trial level. She took 19 through penalty phase and won all 19. Dean Lyon authored or co-authored numerous publications, book chapters and articles, including *Angel of Death*

Row: My Life as a Death Penalty Lawyer (2010), *Team Defense* (2014) and *The Death Penalty: What's Keeping it Alive* (2015).

To watch the video of the Gilman Luncheon, visit <https://fbamich.org/videos/> Contact Brian Figot at fbamich@fbamich.org for password information.



*Dean Andrea Lyon, Kimberly Altman, Gerald Evelyn,
and Susan Fairchild
at the Gilman Award Luncheon.*

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

For Your Information:

- The annual State of the Court Luncheon is going to be held in late September. Reserve your Sponsorship now! To inquire about a Sponsor's Season Table Ticket contact Program Chairperson Fred Herrmann at (313) 961-0200 or by email at fherrmann@kerr-russell.com.
- The New Lawyers Seminar is tentatively scheduled for December 6-7 in room 115 at the Courthouse. Details to follow.
- The Holiday Party is tentatively scheduled for December 8. Location to be determined.

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