



Federal Bar Association - Eastern District of Michigan Chapter - 60 years of service to our Federal Bench and Bar

Annual Dinner: Cranmer Honored with Cook-Friedman Civility Award

On June 21, approximately 135 members of the FBA, Eastern District of Michigan Chapter, and guests gathered at the Atheneum Hotel for the 39th Annual Dinner Honoring the Judicial Officers of the Eastern District of Michigan. The event was hosted by the Annual Dinner Committee of Cynthia Filipovich (Clark Hill PLC), Brittany Mouzourakis (Dykema Gossett PLLC) and Susan Fairchild (U.S. Attorney's Office). Table Sponsors included:

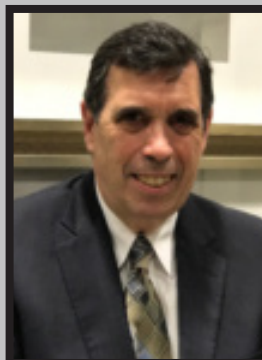
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(continued on page 2)

INSIDE THIS ISSUE

Bench/Bar Golf Outing	pg. 3
Supreme Court Review	pg. 4-5
Dave Weaver	pg. 5-6
Effective Advocacy in the Michigan Court of Appeals	pg. 6 & 8
Book Club	pg. 8-9
Past Presidents Luncheon	pg. 9
Uniform Commercial Real Estate Receivership Act Event	pg. 9
Shapero Bankruptcy Symposium	pg. 9-10
Schmooze Cruise	pg. 10
Healthcare Law Seminar	pg. 10
Law Day	pg. 11
Calendar of Events	pg. 11



President's Column

*Jeffrey Appel and
Incoming President
Saura Sahu*

It has been an absolute privilege to serve as Chapter President. The personal and professional relationships I have gained through my affiliation with the FBA have enriched my life.

I want to thank an extraordinary group of officers who were the foundation for a very successful year. Immediate Past President Susan Fairchild, incoming President Saura Sahu, Vice President Matt Lund, Secretary/Treasurer Fred Herrmann, and Program Chair Dan Sharkey were a pleasure to work with. In addition, our committee co-chairs and Executive Board members are a group of leading lawyers whose efforts were instrumental to our success.

Our Executive Director, Mindy Herrmann, has exceeded our expectations in bringing new ideas and energy to the organization. The Chapter also continues to receive the outstanding support of the judiciary. Chief Judge Denise Page Hood is a constant ally and friend of the Chapter, helping to shape the Chapter's goals and projects.

Her fellow judges continue to be active in all our programming and provide key guidance. We deeply appreciate their involvement, which is the foundation of our success and which is one of the best benefits of your Chapter membership.

I also have initiated a new membership benefit, which involves a group of our legal experts. In each major

(continued on page 2)

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President's Column (continued)

subject matter area, we are recruiting legal leaders to be available to you free of charge to consult and brainstorm about issues that arise in your practice. Expect to hear more about this in the coming year.

Our incoming President Saura Sahu, with his enthusiasm, dedication, and organizational talents, is going to be an amazing president. He is both focused and innovative. Like presidents before, the two of us have been working together since January on a variety of programs. I know that several of Saura's initiatives for the coming year involve expanding the base of sponsors, chairs and members, instituting a program to better equip new committee chairs in

preparing for their roles and tasks, and developing our new Advisory Committee as an asset for the Chapter.

To aid in these efforts, and with the other officers' enthusiastic consensus, Saura selected Jennifer Newby as our next Program Chair. She is a fantastic addition to the team.

Saura also made great use of his time with national FBA leaders in Washington DC in April and took extra time on Capitol Hill Day to meet with Congressional leaders and staff to advocate for the Courts' key budgetary priorities. He brought back a number of ideas about how to make use of additional resources for the chapter. He has also been meeting with leaders of other Bar Associations and other legal leaders

to deepen our ties across the state. We look forward to an exciting and productive year.

In closing, and to paraphrase a personal hero General Douglas Macarthur, "Old FBA Presidents never die, they just fade away." And rather than fading too quickly, I look forward to staying as involved in the Chapter this year as our other great past presidents.



Over the summer, Incoming Chapter President Saura Sahu took time away from his practice to work with other bar associations and the national FBA. Sahu represented the Chapter at the Bar

Leadership Forum at the Grand Hotel in Mackinac Island (above left). He also received training in Washington D.C. and participated in the FBA's Capitol Hill Day, where he

Annual Dinner

(from page 1)

Programs were provided by Clark Hill PLC, and table and floor signs were provided by D4 – E-Discovery Services.

The evening began with a social networking cocktail reception, which was followed by opening remarks from Chapter President Jeffrey S. Appel. President Appel introduced members of the judiciary in attendance including District Judges Sean F. Cox, Marianne O. Battani, George Caram Steeh, Terrence G. Berg, Mark A. Goldsmith, Judge Laurie J. Michelson, and Magistrate Judges Anthony P. Patti, David R. Grand, Elizabeth A. Stafford, and Stephanie Dawkins Davis.

Also in attendance were Court Administrator David Weaver and Ombudsman and retired Oakland Circuit Court Judge Fred Mester.

Opening remarks were provided by Judge Cox, who praised and thanked the Chapter for hosting events and programs throughout the year at the courthouse. The members then elected new Chapter Officials including President Saura J. Sahu (Clancy PLC Legal Advisors), President-Elect Matthew J. Lund (Pepper Hamilton, LLP), Vice-President Fred Herrmann (Kerr, Russell & Weber), Secretary-Treasurer Daniel Sharkey (Brooks Wilkins Sharkey & Turco) and Program Chair Jennifer Newby (U.S. Attorney's Office).

FBA Foundation Trustees Edward Kronk, Dennis Clark, Kimberly Altman, Robert Frost, Geneva Halliday, and Susan Fairchild were elected to serve as Foundation Trustees.

Following the election of officers and Foundation Trustees, Incoming President Saura Sahu gave a glimpse of the planned programs for the Chapter in the 2018-2019 term. He emphasized that his priorities included leadership and committee participation. He thanked the Court, the Table Sponsors, and the Luncheon Sponsors for their continued support of and participation in Chapter activities.

In addition to the honors bestowed upon the Judicial Officers of the Eastern District of Michigan, honors were given to Thomas W. Cranmer, the winner of the 11th Annual Julian Abele Cook, Jr. – Bernard A. Friedman Civility Award.

The Julian Abele Cook, Jr. – Bernard A. Friedman Civility Award was established in 2008 to recognize a civil practitioner who is an outstanding example of professional excellence and civility. Thomas Cranmer, a Senior Principal and Co-leader of the Litigation and Alternative Dispute Resolution Section of Miller, Canfield, Paddock and Stone, practicing both criminal and civil litigation, was selected by prior winners of the award as this year's recipient.

Cranmer has an impressive legal background and has been recognized on prior occasions by legal and business organizations and bar groups for his outstanding demeanor, integrity and civility. Congratulations to Tom, his family and his law firm. Truly a deserving Cook-Friedman Civility Award winner!

Bench/Bar Golf Outing 2018

On June 25, approximately 70 golfers, including numerous Eastern District judges, magistrate judges, bankruptcy judges and lawyers enjoyed a fun-filled afternoon of golf during the 2018 Bench/Bar Social at Lochmoor Club in Grosse Pointe Woods.

This year's event, hosted by Co-Chairs George Donnini and Kevin Fanning, included an 18-hole scramble golf tournament followed by a cocktail hour and buffet-style dinner that was extremely well attended. The robust attendance during this year's outing, when coupled with generous sponsorships, allowed the revenue for the event to exceed costs by a healthy margin.

A rain-soaked weekend just before the event yielded to bright sunshine just in time for the event. During the check-in, one participant exclaimed to Kevin and George, "the weather this year could not have been scripted any better by you guys!"

After all attendees enjoyed a masterpiece buffet-style dinner, an announcement was made that the winning team finished with a score of 58, thirteen strokes under par. This news was met with a healthy applause followed by a din of conversation that centered upon various difficult holes. While participants shared their scores over dinner, one golfer could be seen looking quizzically at another patron's scorecard. "We got into deep trouble on the back nine as well," he explained.

While participants shared stories around the close competition on the course during cocktails and dinner, the perfect weather and the austere location were also popular topics of conversations at many tables.

Toward the close of dinner, a short program was held, and Chief Judge Hood oversaw the raffle process. As in prior years, Judge Hood personally selected each raffle ticket from a revolving mechanism to ensure total fairness. Many fabulous prizes were raffled off, including several wedges and putters, golf apparel, Detroit Tigers tickets, and other fabulous giveaways. After the post-dinner raffle was completed several attendees enjoyed a bright sunset on the Lochmoor Club deck which added to the conviviality of the event.

The event provided a unique and relaxed opportunity for interaction between the Eastern District bench and bar. The Chapter would like to thank all of the event sponsors – Sterling Attorneys at Law, Butzel Long, Clark Hill, Computing Source, Brooks Kushman, Pepper Hamilton, and Kerr Russell – for their generosity in making this event possible.



Chapter President Jeff Appel, Cook-Friedman Civility Award winner Thomas Cranmer, and incoming Chapter President Saura Sahu at the Annual Dinner.

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



George Donnini, Bankruptcy Judge Mark A. Randon, Judge Stephen J. Murphy III, Chief Judge Denise Page Hood, Judge Robert H. Cleland, and Kevin Fanning pose before teeing off at the golf outing.

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



Supreme Court Review

by M Bryan Schneider

The Supreme Court's recently ended term brought a number of high-profile decisions, including decisions upholding President Trump's "Travel Ban" (*Trump v. Hawaii*); striking down the federal prohibition on state's

authorizing sports gambling (*Murphy v. NCAA*); allowing states to tax internet sales to residents by out-of state retailers (*South Dakota v. Wayfair*); and striking down mandatory union agency fees as violating the free speech rights of non-union member public employees (*Janus v. AFSCME*).

The Court's term also brought a number of high profile non-decisions, with narrow decisions that failed to resolve the extent to which political gerrymandering claims are justiciable (*Gill v. Whitford*); provide significant guidance on the balancing of Free Exercise rights against state antidiscrimination laws (*Masterpiece Cakeshop v. Colorado Civil Rights Comm'n*); and the contours of First Amendment retaliation claims based on a retaliatory arrest (*Lozman v. City of Riviera Beach*). The Court even found time for a case raising a Contracts Clause issue (*Sveen v. Melin*).

Oh, and Justice Kennedy announced his retirement. As always, however, the Court took time away from these mundane matters to decide a number of cases of import for federal practitioners.

On the civil side of its docket, the Court decided a number of important cases raising jurisdictional and procedural issues. In *Artis v. District of Columbia*, the Court held that the supplemental jurisdiction statute's provision tolling the limitations period during the pendency of a federal court action suspends the limitation period, rather than an absolute 30-day grace period. In another statute of limitations case, *China Agritech v. Resh*, the Court held that although a putative class member may generally file a prompt individual action following the denial of class certification notwithstanding the expiration of the limitations period while the class action was pending, she may not file a new class action after the limitations period has expired.

The Court found moot the claims of criminal defendants whose cases had concluded challenging a Southern District of California policy permitting the use of full restraints on defendant's produced for non-jury proceedings in *United States v. Sanchez-Gomez*.

In two appellate jurisdiction cases, the Court held that an appellate court has jurisdiction over an appeal from a finally decided case that had been consolidated with other cases that are not yet final (*Hall v. Hall*), and that FRAP

4(a)'s time limit for requesting an extension of time to file an appeal is not jurisdictional (*Hamer v. Neighborhood Housing Services*).

In *Animal Science Products v. Hebei Welcome Pharmaceutical*, the Court held that a federal court determining foreign law under FRCP 44.1 is not bound to give conclusive effect to a foreign government's litigation submission stating its view of the governing law. And continuing its expansive interpretation of the *Federal Arbitration Act*, the Court in *Epic Systems v. Lewis* held that arbitration agreements requiring individualized proceedings must be enforced, even in the labor context.

In substantive civil matters, the Court issued three patent decisions, including two decisions addressing inter partes review of the validity of a patent. In *Oil States Energy Services v. Greene's Energy Group*, the Court held that inter partes review by the Patent and Trademark Office violates neither Article III of the Constitution nor the Seventh Amendment civil jury trial right. In *SAS Institute v. Iancu*, the Court further held that, in conducting inter partes review, the Patent Office must decide the patentability of all the claims challenged by the party seeking review. *Westerngeco v. Ion Geophysical Corp.* held that lost foreign profits are recoverable damages for a defendant's patent infringement arising from the shipment of components for assembly overseas.

The Court also decided three bankruptcy cases during the Term. In *Lamar, Archer & Cofrin v. Applying*, the Court held that under the §523(a)(2)(A) exclusion from discharge for debts arising from false representations except those "respecting the debtor's financial condition," a debtor's statement concerning a single asset can constitute a statement respecting the debtor's financial condition. Interpreting the fraudulent conveyance provision of §548(a) and the provision providing safe harbor from avoidance for payments made by or to a financial institution under § 546(e), the Court in *Merit Management Group v. FTI Consulting* held that the only relevant transfer under § 546(e) is the same transfer the trustee seeks to set aside under § 548(a). And in *U.S. Bank v. Village at Lakeridge*, the Court held that a bankruptcy court's determination that a creditor is an insider (and thus cannot consent to a cramdown plan) is subject to review for clear error.

In other civil cases decided during the Term, the Court held that: automobile dealership service advisors are "salesmen" exempt from the overtime pay requirements of the Fair Labor Standards Act (*Encino Motorcars v. Navarro*); to recover under the anti-retaliation provision of the *Dodd-Frank Act*, a plaintiff must have reported a violation of the securities laws to the SEC (*Digital Realty Trust v. Somers*); American Express's provisions preventing merchants from steering customers to other credit cards do not violate federal antitrust law (*Ohio v. American Express*); and foreign corporations may not be defendants in suits under the Alien Tort Statute (*Jesner v. Arab Bank*).

The Court was less active on the criminal side of its docket, but nevertheless it issued a number of important decisions, particular on the Fourth Amendment. In the

most significant decision, *Carpenter v. United States*, the Court held that the government's acquisition of cell-site location information to catalog a suspect's past movements constitutes a search under the Fourth Amendment. In *Collins v. Virginia*, the Court held that the automobile exception does not permit officers to enter a home or its curtilage to search a vehicle.

In another automobile case, *Byrd v. United States*, the Court held that a driver lawfully in control of a rental car has a reasonable expectation of privacy in the car protected by the Fourth Amendment even if the driver is not listed on the rental agreement. And in a statutory case the Court held that a wiretap order that was otherwise sufficient did not become facially insufficient merely because it authorized interception of communications outside the territorial jurisdiction of the issuing court. In *Class v. United States*, the Court held that a guilty plea does not by itself prevent a defendant from appealing on the basis that the statute of conviction is unconstitutional.

In other constitutional criminal procedure cases, the Court held that the Sixth Amendment grants a defendant the right to insist that his counsel refrain from admitting guilt (*McCoy v. Louisiana*), and that under the Double Jeopardy Clause an acquittal on one count does not bar a second trial on a separate count when the defendant consented to severance of the charges (*Currier v. Virginia*).

The Court also issued a number of sentencing decisions during the Term. In *Hughes v. United States*, the Court held that a defendant who pleads guilty and agrees to a specific sentence under Rule 11(c)(1)(C) may nonetheless seek a sentence reduction based on a change to a sentencing guidelines provision that formed the basis for the agreed-upon sentence. Conversely, in *Koons v. United States*, the Court held that defendants sentenced on the basis of statutory mandatory minimum sentences may not seek a sentence reduction based on a guidelines amendment.

Rosales-Mireles v. United States held that a guidelines miscalculation error that is plain and affects a defendant's rights will usually also affect the fairness or integrity of the sentencing proceeding and thus warrant plain error relief.

Finally, in *Lagos v. United States*, the Court held that restitution for expenses incurred in the investigation or prosecution of the offense under the *Mandatory Victims Restitution Act* is limited to expenses incurred for participation in a government investigation or criminal proceeding and does not extend to a victim's private investigation.

In addition to *Trump v. Hawaii*, the Court considered two other important immigration cases. Under the *Immigration and Nationality Act*, an alien subject to removal can seek cancellation of removal if he has been continuously present in the United States for more than 10 years. The serving of a notice to appear for a removal hearing stops this period. In *Pereira v. Sessions*, the Court held that a notice that fails to specify the time and place of the removal hearing does not trigger this stop-time rule.

In *Sessions v. Dimaya*, the Court held that the provision authorizing deportation of an alien for committing a felony

that by its nature involves a risk of physical force—the so-called “residual clause”—is unconstitutionally vague. And in *Jennings v. Rodriguez*, the Court held that aliens held in custody as inadmissible for entry are not entitled to periodic bond hearings during the course of their detention.

The Court will return for the October 2018 Term on October 1, with a new opening-day lineup for the second consecutive term.



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

On January 12, 2018, James C. Duff, Director of the Administrative Office of the U.S. Courts, announced the formation of the Federal Judiciary Workplace

Conduct Working Group. The group was established at the request of Chief Justice John G. Roberts to examine the safeguards currently in place intended to protect all judiciary employees from inappropriate workplace conduct.

The Working Group issued its report to the Judicial Conference of the United States on June 1, 2018, after soliciting the views of current and former law clerks, court employees and many others. The report contained many important recommendations. If you have not reviewed the report, I encourage you to do so. It can be found at www.uscourts.gov.

When the issues prompting the creation of the Working Group came to light, our Bench met to review and discuss the policies related to workplace conduct at the national and local level. During and following that meeting, the judges offered their comments and ideas as to how those protections could be clarified and strengthened. Chief Judge Denise Page Hood then forwarded those ideas to the Working Group for its consideration.

More recently, Chief Judge R. Guy Cole of the Sixth Circuit Court of Appeals announced the formation of the Sixth Circuit Ad Hoc Workplace Conduct Committee which will review the recommendations of the Federal Judiciary Workplace Conduct Working Group to ensure the necessary policies, processes and training needs are in place throughout the Sixth Circuit. Chief Judge Hood has also shared the Court's comments with this group.

I found the following statement from the Working Group's report to be quite insightful: “It is therefore vital that judges and court executives ensure, through educational programs, performance reviews, and other mechanisms for motivating positive change, that judges, executives, supervisors, and managers at every level throughout the Judiciary demonstrate the same strong commitment to workplace civility.”

(continued on page 6)

Dave Weaver *(from page 7)*

The Federal Judiciary, this Court, and I take these matters very seriously, which I hope you see in the efforts being taken at the National, Circuit and local level. Chief Judge Hood and I are planning training for all Court employees to ensure everyone is aware of these efforts, our policies and what they can do to both prevent, and if necessary, to respond to workplace harassment.

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

Effective Advocacy in the Michigan Court Of Appeals, as Viewed by a Rookie Judge and Former Federal Practitioner

***by Jonathan Tukel**

Articles discussing how to effectively practice in appellate courts generally and Michigan appellate courts in particular are legion.¹ Such articles tend to emphasize a rules-based approach to handling cases as opposed to a more real-world oriented approach, no doubt because there are as many different real-world approaches as there are judges and lawyers. Without in any way denigrating the importance of understanding the rules, I here offer some insights as the newest Michigan Court of Appeals judge² and someone who was unfamiliar with state court practice having spent my career practicing in federal court, in the hopes that this will help some attorneys find more effective means of thinking about and presenting cases.

First, some background on appellate practice in the Michigan Court of Appeals. The Court currently has 27 judges who represent four districts of approximately equal populations. As a result of legislation, the court is in the process, through attrition, of being reduced from a total of 28 judges (seven per district) to 24 (six judges per district).³ While judges are elected from a particular district, each judge hears cases from all across the state. The Court is busy: for the year 2017, it disposed of 5,450 case, issuing 2,320 opinions. That equates to about ninety opinions per judge each year. There were also more than 5,500 new case filings.

Cases are heard in monthly sessions referred to as case call. Each judge has case call eleven times per year, and each case call involves about 28-30 cases per judge, spread over two days. On average, therefore, each judge is reading close to thirty cases per month, and is the author for an opinion in eight to ten. As a result, speed and efficiency are paramount. Being aware of those facts can be a great advantage for an attorney.

There are of course some practices in the Michigan Court of Appeals which are quite different from federal court practice. In federal court, with a few exceptions, appeals can only be taken from a final order of a trial court.

In the Michigan Court of Appeals, an appeal of right will lie from a final order, but the Court of Appeals also has discretion to grant leave to appeal over any non-final order.⁴ In federal court, therefore, routine trial court decisions, such as denial of a motion to suppress evidence, denial of a motion for summary judgment, or rulings regarding amendment of a civil complaint cannot be appealed until trial court proceedings have been completed; thus, cases generally proceed uninterrupted at the trial court level. It is common for all of these to be the subject of an application for leave to appeal in the Michigan Court of Appeals; of course, the Court may deny the application, and one common ground for doing so is that the Court is “not persuaded that review is warranted at this time,” thereby deferring an appeal until final judgment. Still, the fact that such a procedure is available, which if granted interrupts the trial court proceedings, and that appellate judges have to spend a not-insignificant amount of time deciding whether to grant an interlocutory appeal is quite different from the federal practice.

Given the number of cases heard, oral argument can be a free-wheeling enterprise. Oral arguments generally jump from subject area to subject area as cases involving criminal appeals, termination of parental rights, medical malpractice, and other subject are called. It is quite common for a particular issue, such as the application of sovereign immunity, to appear in more than one case, which can make it a bit difficult to recall exactly the particular factual nuance of a given case. As a result, one of the most effective advocacy suggestions I can make to an appellant is, when the case is called, to give a one or two sentence summary of the case grounded in the legal issue presented.

This is not to familiarize the panel with the case; the panel has read the briefs and research reports as well. It also is not truly the beginning of the argument. It is simply a recognition that the panel will need a minute to shift gears from the previous case to the current case, and will need something to jog the judges’ memories as to what this case is. A sentence such as “This is the case involving a claim of medical malpractice, and an argument for summary disposition on behalf of the nurse only. The argument does not involve the doctor. The trial court denied the motion for summary disposition.” Or “This is the criminal appeal by the defendant convicted of home invasion, in which the homeowner had been storing money in the grill. There was no physical evidence or testimony connecting this defendant to the crime.”

These facts serve to remind the court about the case, give the judges a chance to shift their focus to it, and, most importantly, are singular enough that even if there is another medical malpractice or home invasion case, they should allow the judges to know which was is being argued.

The most ineffective form of oral argument which I have heard since joining the court goes something like this: “I know the court is very familiar with the case, so unless it has questions I will rely on my brief.” Judges do not want to look foolish any more than any other person, and probably

(continued on page 8)

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Effective Advocacy *(from page 7)*

less so. If the judge isn't sure that he or she remembers precisely what this case involves and the contours of any questions, then this sort of presentation runs a substantial risk that the judge will simply say no questions. At that point, counsel has lost whatever chance there was to try to engage the judge on the topic. As one Supreme Court Justice has put it, "There should be some comfort derived from any question from the bench. It is clear proof that the inquiring justice is not asleep. If the question is relevant, it denotes that he is grappling with your contention, even though he has not grasped it. It gives you opportunity to inflate his ego by letting him think he has discovered an idea for himself."⁵

Judges, of course, strive not only to reach the correct answer legally, but also must then deliver the answer in a written opinion which, one hopes, makes the issue explicable to lawyers, trial court judges, sometimes to law students, and sometimes to the public. Providing the judge with all of the raw materials which need to go into an opinion is the greatest service you can provide to your client.

For example, the application of even complicated statutes usually turns on the facts involved. One of the most helpful things the parties can provide is a comprehensive timeline of events, with a citation to the record in the briefs. This is much better than requiring the judges to pick through briefs and the record to determine which events happened on which date. Providing the timeline will allow the court to use it, after verifying its accuracy, in writing an opinion.

An oral argument which picks up on the two or three most important events in that timeline will allow the court to focus in on those facts during oral argument. By having provided a timeline, the court will be able to see those facts in the chronological context.

Attaching documentary exhibits to your briefs allows the court to quickly see the important parts of the record, rather than having to hunt through volumes of the trial court record. Remember that the judge will be less familiar with the record than you are, so the best briefs also include an index to the exhibits, which allows a judge to quickly find the particular document for which he or she is looking.

I recently heard a case which involved 237 pages of exhibits. Only one related to the sentencing, and in reviewing for oral argument it was the one I wanted to see again. Counsel had not provided an index, and, as it

turned out, the exhibit I wanted to see was on page 207. It would have been a lot easier had there been an index. And given the advent of efilng, briefs which contain hyperlinks, allowing the judge to skip directly to the section of the brief (and exhibits) which he wishes to see are very convenient.

Remember, if your argument is good and if you have made it easy for a judge to re-read a particular section of your brief because you have included a hyperlink, the judge is much more likely to review that section.

Finally, professionalism matters quite a bit. It is surprising to me how often lawyers will make personal attacks on the integrity of opposing counsel, not only at oral argument but in briefs as well. Having recently been a practicing lawyer trying cases, I understand the temptation and motivation.

As a judge, I can tell you: don't do it. It does not help your case.

The judges still have to decide the legal issues involved, and the resolution of those issues will almost never turn on whether or not your opponent was a jerk for refusing to reschedule a deposition. And it wastes the few minutes you have to talk about the actual issues. So stick to the issues which really matter, not the ones which give you psychic satisfaction.



Among those who gathered for the Book Club meeting were (left to right) U.S. Attorney Matthew Schneider, Chapter President Elect Saura Sahu, Tim Devine, David Fink, Ken Gold, Judge Mark Goldsmith, Andrew Lievense, Andy Doctoroff, Ned Greenberg, Erica Fitzgerald, and David Atallah.

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

^{*}Jonathan Tukul, Judge, Michigan Court of Appeals. Governor Snyder appointed Judge Tukul to the Court, effective December 1, 2017. Prior to his appointment, Judge Tukul was an Assistant U.S. Attorney for the Eastern District of Michigan, and most recently had been the Chief of the National Security Unit. He is a graduate of the University of Michigan and the University of Michigan Law School, and he is a Lecturer in Law at the University of Michigan Law School. The views expressed herein are his own.

¹See, e.g., <https://www.wnj.com/WarnerNorcrossJudd/media/files/uploads/images/The-Insider%E2%80%99s-Guide-to-the-Michigan.pdf>.

²Although I was the least senior judge at the time this article was conceived and written, Judge Anica Letticia was appointed to the Court in June 2018. I am now the second-most junior judge on the court and still every bit a rookie.

³See 2012 PA 624, codified at MCL 600.303a.

⁴See MCR 7.203(A)(1), 7.203 (B)(1).

⁵Robert Jackson, *Advocacy Before The Supreme Court*, 37 A.B.A. Journal 801, 862 (1951).

Book Club

The Chapter's Book Club met on May 22 to discuss *Killers of the Flower Moon: The Osage Murders and the Birth of the FBI*, by New Yorker staff writer David Grann.

Several federal judges and lawyers attended the meeting to discuss this New York Times bestseller, which received

stellar reviews in the press as a captivating nonfiction mystery.

Led by Andy Doctoroff, the discussion started with the historical event at the book's center: the murder of more than two dozen members of the Osage Indian nation in Oklahoma in the 1920s. After local authorities failed to solve the crimes and public pressure mounted, the investigation was taken over by the newly formed and modernizing FBI, led by J. Edgar Hoover.

The group shared thoughts about why the events chronicled in the book are not well-remembered as an important historical occurrence, the social factors that led to the events, the role of the judiciary and the FBI in the case, and the lessons of the story for the modern day.

Stay tuned for the Book Club's next selection and meeting date this fall. Contact the Book Club co-chairs Andy Doctoroff, Erica Fitzgerald, and David Fink for more information or to recommend a book.

Past Presidents' Luncheon

On May 10, in keeping with a now three year tradition, the Officers and Past Presidents gathered on a sunny day at the historic Whitney to enjoy excellent food and the pleasure of one another's company.

President Jeff Appel introduced the proposed slate of officers, which included the addition of Jennifer Newby as incoming Program Chair. The Past Presidents unanimously approved it.

Appel also introduced our able Executive Director, Mindy Herrmann, and expressed his gratitude for all of the hard work she has done in moving the Chapter forward.

Appel also highlighted many of the programs held during the year. The Past Presidents then received reports from the Treasurer and Program Chair who reported the Chapter is on a solid financial footing and the luncheon program continues to enjoy success.

After praising the contributions of the Past Presidents, his fellow Officers, Board Members, and Committees, Appel ceded the floor to his successor, Saura Sahu. President-Elect Sahu previewed the forthcoming year and told the group to expect a continuation of the standard of excellence our Chapter enjoys. Sahu also was enthused over the leadership training he received at the national FBA meeting.

Before adjourning, Sahu and the Past Presidents expressed their admiration for the breadth and depth of our robust Chapter led so ably by Appel and the other dedicated Officers this past year. The Past Presidents departed fulfilled by the renewal of friendship and meaningfulness of the occasion.

Uniform Commercial Real Estate Receivership Act Event

On May 23, 2018, the Chapter's Bankruptcy Committee held a joint program on Michigan's New Uniform Commercial Real Estate Receivership Act. The Committee hosted the event along with the Debtor/Creditor Rights Committee of the Business Law Section of the State Bar of Michigan and the Real Property Law Section of the State Bar of Michigan.

The Act went into effect on May 7, 2018, and provides for broader powers for receivers to handle commercial real estate. The panel consisted of Judge Shefferly, the Chief Judge of the Bankruptcy Court for the Eastern District of Michigan, Judge Christopher Yates, the

Business Court Judge for Kent County Circuit Court, J. Adam Behrendt of Bodman PLC, and Kay Standridge Kress of Pepper Hamilton LLP. Michael Leib of Leib ADR LLC served as the moderator.

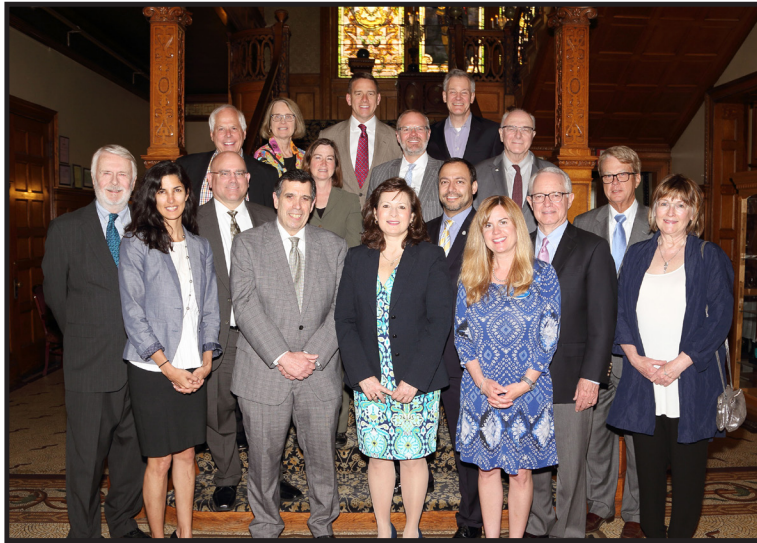
The program was sold out with standing room only. The new Act may well change the way that commercial real estate is handled upon default in Michigan, and impact future bankruptcy proceedings as well given the interplay between receivership and bankruptcies. The materials were excellent and the program was videotaped for the State Bar of Michigan.

Shapero Bankruptcy Symposium

On May 10, the Chapter's Bankruptcy Committee hosted the Walter Shapero Bankruptcy Symposium along with the American Bankruptcy Institute.

For the Symposium program, Judges Mary Grace Diehl from the Bankruptcy Court for the Northern District of Georgia and Judge Michael Wiles from the Bankruptcy

(continued on page 10)



Approximately a dozen past Chapter presidents gathered with current Chapter leadership at the Past Presidents' Luncheon.

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

Bankruptcy Symposium *(from page 10)*

Court for the Southern District of New York held a lively debate on whether 3rd party releases should ever be permitted in bankruptcy proceedings.

This is a hotly contested issue especially in large Chapter 11 cases in which not only the Debtor wishes to be released of liabilities, but also non-debtor parties such as officers and directors and potentially jointly liable companies wish to be released from debts even though they themselves filed for bankruptcy. The program was well attended with capacity seating at the Westin.

The Walter Shapero Bankruptcy Symposium was formed to honor the legacy of Judge Walter Shapero and to provide a forum for intellectual discussion on bankruptcy topics. The Symposium is moving to the next level by participating in the Conrad Duberstein National Moot Court Competition Regional Finals. The program will be held in February, 2019, where law schools participate in the Duberstein Moot Court Competition, with the Regionals being held in Detroit as part of the Walter Shapero Bankruptcy Symposium Series.



Attendees at the annual "Schmooze Cruise" seen taking a moment away from conversation. Among those enjoying the outdoor setting in Detroit were (seated, l-r) Greg Terryn, Lindsey Ferguson, Amanda Pierzynski, and Eric Lee; (standing) Amanda McNeil, Joy Brickerson, Sarah Cravens, Brian Nowinski, Richard Diggs, Sam Heller, Alex Kurrie, and Mazen Hajali.

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

Schmooze Cruise

On Friday, June 29, members of the Chapter's Diversity Committee schmoozed and cruised in Campus Martius's Beach Bar. Easily mistaken for any number of the Great Lake State's iconic beaches, Beach Bar played host to Judge Paul D. Borman and Magistrate Judge Elizabeth A. Stafford alongside members of the Michigan Bar and summer interns.

The event offers new and long-tenured attorneys a laid-back chance to build new relationships and strengthen existing ones. A special thanks to Dona Tracey for coming out of retirement to put the event together.

Healthcare Law Seminar on the False Claims Act

On May 2, the Chapter's Healthcare Law Committee presented a seminar entitled "The False Claims Act Today."

Michael Asher commenced the seminar by introducing the presenters and giving an overview of the subject matter, including a short history of the Act, which was enacted during the Civil War to punish war profiteers who defrauded the federal government.

While battling fraud committed against federal government remains the core mission of the Act, the seminar presentations focused on the substantial changes brought about by the 1986 and 2009 Amendments, as well as the impact of the 2010 Patient Protection and Affordable Care Act.

The presenters were: David Haron, who focused on the plaintiffs' potential claims and necessary actions; Abraham Singer, who presented the defense perspective and strategic considerations; Assistant U.S. Attorney Peter Caplan, Chief of the Civil Division of the U.S. Attorney's Office, who gave the government's perspective and approach as to cases filed in the Eastern District; and U.S. District Judge David Lawson, who gave an in depth presentation of the unique role of the courts in the filing, litigation, and resolution of these cases. Scott Oswald of the Federal Bar Association – Qui Tam Section, was the moderator.

Given the significant payments that emanate from the federal government in the healthcare sector, the seminar focused on claims arising out of payments to hospitals, nursing homes, physicians, rehab facilities, and pharmaceutical companies. In this context there was substantial discussion of the qui tam provisions of the Act which allows an individual to bring an action on behalf of the government as well as himself.

As part of that colloquy, the legal requirements to be a "relator" (or more commonly referred to as a whistleblower), and the required interaction with the federal government including the likelihood and impact of government intervention were discussed, analyzed, and debated. Similarly, the issues that arise in the settlement of cases including the "relator's share" of a settlement or award were discussed by a number of the presenters.

After the individual presentations, Oswald followed up with his own specific questions as to the current developments in False Claims Act litigation as well as calling on attendees to do the same.

Law Day

On May 1, the Theodore Levin U.S. Courthouse was the location for the annual Law Day event hosted by the Chapter. This year was the event's 60th anniversary, and its theme was "Separation of Powers – Framework for Freedom."

Law Day 2018 was a huge success! Thanks in large part to a transportation grant the Chapter received from the FBA National Association, more than 200 Detroit-area high school students were able to attend the event. A number of judicial clerks provided tours of the Courthouse to the students, who also met with Chief Judge Denise Page Hood in the Court's historic "Million Dollar Courtroom."

The students also participated in a panel discussion with three distinguished speakers – United States District Judge Victoria A. Roberts representing the Judicial Branch, Congresswoman Debbie Dingell representing the Legislative Branch, and United States Attorney Matthew Schneider representing the Executive Branch.

As in past years, numerous groups affiliated with the Court and federal law enforcement agencies staffed booths where students and other guests could meet representatives of the organizations and learn about the important work they do.

Law Day also featured the "Ask a Lawyer" pro bono program, which gave members of the public an opportunity to discuss their legal issues with volunteer pro bono attorneys and law student volunteers.

The Chapter and the Court thank everyone who helped make Law Day 2018 a tremendous success.



Some of the students receiving a tour of the Levin courthouse.

Photo courtesy of the New Lawyers Seminar Committee.



The Law Day "Ask a Lawyer" table was staffed by Kim Grimes, Case Manager Supervisor, Clerk's Office; Richard Diggs Law Clerk, Chief Judge Denise Page Hood; and Charlene Gill, Judicial Assistant, Chief Judge Denise Page Hood.

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

Calendar of Events

Sept. 5 **First Executive Board and Committee Meeting**
Theodore Levin U.S. Courthouse
12:00 p.m. to 1:00 p.m.

Sept. 21 **State of the Court Luncheon**
Speaker: Hon. Denise Page Hood
Westin Book Cadillac Hotel,
Crystal Ballroom
11:30 a.m. to 1:00 p.m.
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To inquire about a Sponsor's Season Table Ticket™ contact Program Chair Jennifer Newby at Jennifer.newby@usdoj.gov or Mindy Herrmann, Chapter Executive Director at 248.231.7887 or fbamich@fbamich.org.

Nov. **Rakow Scholarship Awards/ Historical Society Luncheon/ Rom Award**
Location and speaker:
To be announced.
11:30 a.m. Reception
12:00 p.m. Lunch

Dec. 4-5 **New Lawyers Seminar**
Theodore Levin U.S. Courthouse
8:30 a.m. Registration
FEBRUARY 2017 and PRIOR BAR PASSERS: REGISTER NOW!

Dec. 5 **Holiday Party**
HOLD THE DATE
Location: to be announced
Registration Coming Soon!

Updates and further developments at
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