

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

Rakow Scholarship Awards, Rom Award, and Court Historical Society Annual Meeting

On Tuesday, November 27, the Chapter and Court Historical Society will host their annual luncheon event at the Westin Book Cadillac. A reception will begin at 11:30 a.m., followed by the luncheon at noon.

The annual Rakow Scholarship Awards will be presented by the Federal Bar Foundation to outstanding students from each of the Michigan law schools. The scholarship awards are named for Edward H. Rakow, who helped originate the Eastern District of Michigan Chapter of the Federal Bar Association.

The program will also feature the presentation of the seventh annual Barbara J. Rom Bankruptcy Award to a bankruptcy practitioner who demonstrates the same level of excellence and dedication in the practice of bankruptcy law as the Award's namesake. For a full description of the Award and nomination forms, please visit the Chapter website.

This event will have two speakers. The keynote speaker will be Craig B. Glidden, Executive Vice President and General Counsel at General Motors. Prior to joining GM, Glidden served as Chief Legal Officer for LyondellBasell Industries, and as General Counsel and Corporate Secretary for Chevron Phillips Chemical Co. Glidden also has experience in private practice, including founding and managing Glidden Partners LLP. Glidden holds a J.D. from Florida State University College of Law and a B.A. from Tulane University.

Since joining GM in 2015, Glidden has been responsible for overseeing the company's litigation strategy, including coordinating GM's response to the defective ignition switch litigation. In addition to his litigation duties, Glidden works

(continued on page 3)

INSIDE THIS ISSUE

Dave Weaver	pg. 3
Supreme Court Preview	pg. 3-5
New Federal Pro Se Legal Assistance Clinic	pg. 5
Judge Roberts Portrait Ceremony	pg. 5-8
Demystifying RLUIPA	pg. 8-9
State of the Court Luncheon	pg. 9-10
The Chapter Recognizes Military Veterans	pg. 10-11
Calendar of Events	pg. 11



President's Column

Saura Sahu

"Life Is What You Make It."
—Anonymous

In the Eastern District of Michigan Chapter of the Federal Bar Association, we are invested in your success, and we invite you to take full advantage of the benefits. Bar associations are what we make them. I hope you will join us in making your FBA Chapter experience as outstanding as mine has been.

The best way to have an impact is to get involved in our committees. For those new to the Chapter, the committees are where the action happens. If you would like to join one, jump in. If you are interested in a leadership role, see me. We will help get you on track to work closely with federal judges and lead practitioners to hold the events that drive our mission. And what is our mission? To advance the administration of justice by supporting the Court and elevating the bar.

Much of our committee work grows directly from our District Judges' observations about the needs of the bench, the bar, and our legal community. We are especially thankful for the continued support of Chief Judge Denise Page Hood and the Court. We are also delighted that Magistrate Judge David R. Grand has agreed to be our "Committee Czar," providing an overarching judicial liaison and resource for all our committees as we plan new events.

Whether you are a new or a Sustaining Member, this year offers tremendous opportunities to get involved and on track for higher leadership. Some are in our newest committees, and Immediate Past President Jeff Appel is generously devoting his time to these new committees to help them start off with a bang.

Do you have a particular area of interest? You can work closely with panelists and colleagues on cutting-edge programs. For example, our new Civil

(continued on page 2)

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President's Column (continued)

Rights Committee grew out of our Social Justice Committee with a distinct substantive focus. Within the past 6 months, under the leadership of Susan DeClercq (Chief, Civil Rights Division, U.S. Attorney's Office) and Robin Wagner (Pitt McGhee Palmer & Rivers), the Committee held three major events on open questions in *Twombly-Iqbal* pleading standards and religious freedoms in land use. These included the heavy involvement of District Judges Judith E. Levy and Stephen J. Murphy, III, U.S. Attorney Matthew Schneider, lead *Iqbal* counsel Prof. Alex Reinert, Professor Samuel Bagenstos, and many more.

With your help, similar programs are in the works in other new committees. In our new Securities Law Committee, co-Chairs Matt Allen (Miller Canfield) and E. Powell Miller (The Miller Law Firm), with In-House Liaison David Witten (Ford Motor Co.) are working on a panel involving key insights from both sides of the aisle.

Our new ERISA committee similarly involves the efforts of Rebecca O'Reilly (Bodman LLP) and Michael Asher (Sullivan Ward) to explore emerging ERISA litigation issues from the plaintiff and defense perspectives.

Meanwhile, the refreshed Antitrust and Appeals Committees embark on new initiatives with co-Chairs Matthew Powell (Kerr Russell), Darryl Bressack (Fink & Assocs.), and Marcy Hahn (Lotus Legal); and Meghan Sweeney Bean (Jones Day), Derek Linkous (Bush Seyferth & Paige) and Joseph Riochotte (Butzel Long), respectively.

Perhaps your passion is in topics that cross practice areas. Are you interested more generally in big, strategic decision-making? Kim Scott (Miller Canfield) is inaugurating a new Committee focused on federal case strategy and management in high-stakes and large matters.

Do you like media, journalism, or high-profile issues? In our Civic Outreach Committee, John Sier (Kitch Drutchas), Trent Collier (Collins Einhorn) and Judge Robert H. Cleland are looking for committee members to reinvigorate our Bench-Media Group, which brings together judges, lawyers, leading journalists, and journalism schools to make the federal process more familiar for the journalists who must accurately inform the public about these proceedings.

Are you interested in shaping key professional development programs? Our important, newly invigorated Mentorship Committee grew from the prior efforts of Magistrate Judge Elizabeth A. Stafford, Federal Defender Miriam Siefer, and others to develop strong programs for rising civil and criminal litigators. Co-Chairs Norman Ankers (Foley & Lardner), Brad Darling (U.S. District Court) and Lena Gonzales (Bush Seyferth & Paige) are working with judges, other committee leaders, national FBA leaders, and our

incoming RISE (Newer Lawyer) Committee members to develop critical professional development programs at varying stages of experience. These include not only programs for law students and newer lawyers, but also a federal trial mentorship program for more senior attorneys who do not yet have much first-chair federal trial experience. You can help shape these programs.

Many other opportunities exist in our well-established committees. Are you newer to the law? Our RISE (Newer Lawyer) and Law Student Outreach Committees regularly hold social events and law school motion days, bringing federal judges and newer colleagues together in a friendly environment.

Or do you have decades of high-level experience to share? Our Master Lawyers Committee, which engages the bar's top lawyers to share their experiences with other practitioners, is actively seeking new members to begin transitioning into leadership roles and to grow our relationship with the State Bar's Master Lawyers.

Would you like to strengthen the bar by advancing inclusion? Our Diversity Committee leads the charge with several initiatives.

Finally, to ensure healthy succession planning and to regularly open leadership opportunities, we made several changes to our bylaws. They all bode well for you.

First, we implemented reasonable term limits: For any single committee, a person can only serve two 3-year terms, although they can later lead other committees. This helps to periodically introduce fresh eyes. Second, each committee can have up to three co-chairs (plus judicial and in-house liaisons). This provides ample room for collaboration and new blood, while continuing the service of experienced leaders.

Third, the President-Elect and Vice President split responsibilities helping to oversee and guide the committees. This promotes year-after-year cohesiveness and accountability.

Finally, we articulated expectations. We expect committees to produce an event or product each year. If nothing results for two years, they might be disbanded. Committee chairs are also expected to attend with certain regularity the meetings of the Executive Board and Co-Chairs. So, you can be sure you will be engaged.

Each of these items is designed so that our Chapter (i.e., you) has the best opportunity to have a vibrant, engaged set of current and future leaders.

Our officer team is excited about these opportunities and about the outstanding work happening in our committees this year. I think you will find your Chapter membership both fun and rewarding if you get engaged.

So, please jump in. We look forward to helping your career grow and to working with you to advance the administration of justice as we collectively support the Court and elevate our bar!

Awards and Luncheon *(from page 1)*

closely with CEO Mary Barra and other officers and directors at GM in order to provide counsel on a wide variety of transactions. Glidden's talk will shed light on his transition from private practice to in-house counsel, and he will provide attendees a glimpse into the day-to-day responsibilities of the lead attorney at a global corporation.

The Historical Society presentation will be delivered by Wayne State Professor and former Dean Robert Ackerman. Professor Ackerman graduated from Harvard Law School and was previously a professor at Pennsylvania State University's Dickinson School of Law and a professor and Dean at Willamette University College of Law. After serving as Dean of Wayne Law from 2008-2012, he returned to teaching and also has served as the director of the Levin Center in August 2017. He has written numerous publications, particularly in the fields of torts, dispute resolution, communitarian theory, and civic responsibility. His extended biography can be found at <https://law.wayne.edu/profile/dz4321>.

Tickets are \$45 for members and \$60 for non-members. Law clerks and students may purchase tickets for \$35. Tickets are available online at www.fbamich.org.



Dave Weaver Court Administrator/ Clerk of Court

The Theodore Levin U.S. Courthouse renovation continues at a good pace and should be complete by January 1, 2020 – yes, 2020. By the time you are reading this, the renovation of the 2nd floor

will be complete and the nine judges who reside on that floor should be comfortably back in their chambers. Next up for temporary relocation are the 7th floor judges, Pretrial Services Agency, and the U.S. Marshals.

The new stair and elevator tower construction has begun and a rather large opening has been made between the basement and the first floor. The second and third floor openings are underway, after which the giant crane on the Shelby side of the Courthouse will begin lifting steel into the light court.

Two additional facilities projects have been approved for the Levin Courthouse. The General Services Administration's Historic Preservation Office has funded a project to restore the main lobby to its original state. This will consist mostly of ceiling work including the removal of the ceiling tiles and restoration to its original plaster with decorative paint and design. Lighting throughout the lobby will be greatly improved.

As I mentioned in a previous article, an \$11 million Capital Security Program (CSP) project has been approved

and is included in anticipated Fiscal Year 2019 funding. The CSP, approved and funded by Congress on an annual basis through GSA, provides much needed security improvements, primarily in older court facilities. The project will include two major components – a fully functional sally port in the basement for secure prisoner transport and major re-designs of both building entrances. The new entrances will provide more efficient screening practices and have more protected queuing space.

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



Supreme Court Preview M Bryan Schneider

On October 1, the U.S. Supreme Court commenced its October 2018 Term. As of this writing, the Court has granted certiorari in 44 cases. Although the Court has not as of yet granted certiorari on any “hot button” issues, it will

consider a number of important issues of concern to federal practitioners.

The bulk of the Court's grants for this term thus far are on the civil side of its docket, and a number of those cases deal with procedural and jurisdictional matters.

As has been its wont in recent years, the Court will again address a number of issues relating to class actions. In *Frank v. Gaos*, the Court will address whether a settlement that awards all of the proceeds to third-party organizations, and none to the class members, can be “fair, reasonable, and adequate” under Rule 23. In *Home Depot v. Jackson*, the Court will consider whether third-party counterclaim defendants constitute “defendants” that can remove a class action to federal court under the Class Action Fairness Act. The Court will also, in *Nutraceutical Corp. v. Lambert*, decide whether the 14-day deadline for seeking leave to appeal an order granting or denying class certification is subject to equitable exceptions.

Turning to another area that has been of particular concern to the Court in recent years, the Court has granted *certiorari* in three cases raising issues under the Federal Arbitration Act (FAA). In *Henry Schein, Inc. v. Archer & White Sales, Inc.*, the Court will decide whether a court can decline to enforce an agreement placing questions of arbitrability in the hands of the arbitrator if the claim of arbitrability is itself “wholly groundless.” In *New Prime Inc. v. Oliveira*, the Court will decide whether the applicability of the FAA's exemption to arbitrability for contracts of employment of seamen and railroad employees is itself subject to arbitration if questions of arbitrability

(continued on page 4)

Supreme Court Preview (from page 3)

have been delegated to the arbitrator. And in *Lamps Plus, Inc. v. Varela*, the Court will further clarify what level of specificity is required to show that the parties agreed to the use of class arbitration.

The Court will address two cases raising claims under the Foreign Sovereign Immunities Act (FSIA). In *Sudan v. Harrison*, the Court will decide whether service under the FSIA may be accomplished by mail via the foreign state's diplomatic mission in the United States. In *Jam v. International Finance Corp.*, the Court will decide whether international organizations' immunity under the International Organization Immunities Act is coextensive with foreign governments' immunity under the FSIA.

The Court will also consider two state immunity cases during this Term. Most significantly, in *California Franchise Tax Board v. Hyatt*, the Court will consider whether its decision in *Nevada v. Hall* (permitting a state to be sued in another state's courts without its consent) should be overruled. *Dawson v. Steager* will address whether the doctrine of intergovernmental tax immunity prevents a state from exempting from state taxation the retirement benefits of former state law enforcement officers without also exempting the retirement benefits of former federal law enforcement officers.

In an important Takings Clause case, the Court in *Knick v. Scott* will decide whether it should reconsider its prior holding in *Williamson County Regional Planning Commission v. Hamilton Bank*, which requires property owners to exhaust state court remedies before proceeding with a federal takings claim.

In two civil rights cases under § 1983, the Court will consider whether the existence of probable cause defeats a First Amendment retaliatory arrest claim (*Nieves v. Bartlett*) and whether private operators of public access television stations are state actors subject to liability under § 1983 (*Manhattan Community Access v. Halleck*).

Revisiting an area it has not addressed recently, the Court will also consider two cases under the Social Security Act, addressing whether a vocational expert's testimony can constitute "substantial evidence" of the availability of other work the applicant can perform when the expert fails to provide the underlying data upon which his testimony is based (*Biestek v. Berryhill*), and whether the statutory cap on attorney fees to 25% of the judgment in favor of the claimant applies solely to fees for representation before a court, or also applies to representation before the agency.

In two copyright cases, the Court will decide whether registration of a copyright (a prerequisite to suit under the Copyright Act) "has been made" once the application and fee has been submitted to the Copyright Office or rather only once the Copyright Office has acted on the application (*Fourth Estate Public Benefit Corp. v. Wall-Street.com*), and whether the Copyright Act's allowance of full costs to a prevailing party is limited to costs taxable under other statutes, or also includes non-taxable costs (*Rimini Street, Inc. v. Oracle USA Inc.*).

In other substantive civil matters, the Court will decide: whether an inventor's sale of an invention to a party that is obligated to keep the invention confidential constitutes part of the prior art for determining patentability of the invention (*Helsinn Healthcare v. Teva Pharmaceuticals*); whether consumers may sue for antitrust damages a party that delivers goods, even where the prices are set by third parties (*Apple Inc. v. Pepper*); the scope of the Secretary of the Interior's power to designate private land as protected "critical habitat" under the Endangered Species Act (*Weyerhaeuser Co. v. Fish & Wildlife Service*); whether the Age Discrimination in Employment Act's 20-employee minimum for coverage under the Act applies to political subdivisions of a state or is instead limited to private employers (*Mount Lemmon Fire District v. Guido*); whether, under the Securities Exchange Act, a misstatement that does not meet the elements for a fraudulent statement claim can nonetheless support a claim that the defendant engaged in a fraudulent scheme (*Lorenzo v. Securities and Exchange Commission*); and whether the Fair Debt Collection Practices Act applies to non-judicial foreclosure proceedings (*Obduskey v. McCarthy & Holthus LLP*).

The Court has granted certiorari in significantly fewer criminal cases thus far this Term, but the cases it has granted raise important issues. Perhaps most significantly, in *Gamble v. United States*, the Court will decide whether to overrule the "separate sovereigns" doctrine, under which the Double Jeopardy Clause does not bar state and federal prosecution for the same offense.

In another significant constitutional case, *Timbs v. Indiana*, the Court will decide whether the Excessive Fines Clause of the Eighth Amendment is applicable to the states.

In two capital cases, the Court will clarify what evidence a condemned defendant must present to show that a less painful alternative method of execution is available (*Bucklew v. Precythe*), and will decide whether the Eighth Amendment prohibits execution of a prisoner whose current mental disability prevents him from remembering the crime for which he was convicted (*Madison v. Alabama*).

In *Gundy v. United States*, the Court will consider whether the delegation of authority to the Attorney General to determine what sex offenders are required to register under the Sex Offender Notification and Registration Act violates the separation of powers' nondelegation doctrine.

In three cases raising claims under the Armed Career Criminal Act (ACCA), the Court will determine whether a state robbery offense constitutes a violent felony under the ACCA where the state offense requires overcoming "victim resistance" but where state courts have interpreted that element to require only slight force (*Stokeling v. United States*), and whether burglary of a mobile structure that is used for overnight accommodation qualifies as "burglary" under the ACCA (*United States v. Sims* and *United States v. Stitt*).

Finally, in *Garza v. Idaho*, the Court will decide whether a defendant is entitled to a presumption that he was prejudiced by counsel's failure to follow his instructions to

file a notice of appeal where the defendant's plea agreement includes a waiver of the right to appeal.

In addition to these cases, the Court is likely, based on recent trends, to add another 20-30 cases to be argued this term. These cases should provide some useful guidance to federal courts and practitioners in a number of significant areas of federal law.

New Federal Pro Se Legal Assistance Clinic

by Jewel Haji*

The Federal Pro Se Legal Assistance Clinic, which opened on January 17, 2018, provides no cost, limited scope legal representation to low-income litigants in the Eastern District of Michigan. Led by staff attorney Kevin Carlson, the clinic is made up of law students from the University of Detroit Mercy School of Law. As a second-year University of Detroit Mercy law student I had the opportunity to volunteer at the clinic from January to May of 2018.

Detroit Mercy Law provides a dynamic legal education and puts an emphasis on ethics and service to others. As such, the purpose of this new clinic is to assist unrepresented litigants as they navigate an often confusing and highly technical process of filing or responding to a federal lawsuit.

Pro se litigants do not always choose to represent themselves, rather, some are forced into self-representation due to inadequate financial resources or an inability to locate an attorney who will agree to take their case. Since there is no generally-recognized right to court-appointed counsel in federal civil cases, we are available to assist those litigants.

Located in Room 463 of the Levin Courthouse (though temporarily in Room 1040 during renovations), the clinic operates on Mondays, Wednesdays, and Fridays from 1:00–5:00 p.m. In addition to the staff attorney and law students, the assistance of volunteer attorneys is welcomed. Clinic services are limited to non-prisoner pro se litigants. While we do not provide full representation on behalf of the litigant, we do offer a number of services, including, but not limited to: review of cases filed in federal court, discovery assistance, clarification of legal claims, legal research, assistance with drafting pleadings, and assistance with motions.

Pro se litigants who are interested in our services are encouraged to call our office at (313) 234-2690 to inquire about receiving assistance. We may also provide advice over the phone for those who request minimal hands-on help.

One aspect of the clinic that makes it very useful is that pro se litigants need not commute to our office in Detroit in order to receive assistance. After completing an intake questionnaire and ensuring that the pro se litigant qualifies for our services, we may assist them via phone, email, or mail. This is especially beneficial for the low-income pro se

litigants who have a more difficult time with transportation and employment arrangements. The nature of our clinic structure makes it easier to help as many pro se litigants as we can.

Participating in this clinic has been the most noteworthy experience I have had in law school to date. Working with the staff attorney and other students was an exceptional experience because we all shared a common goal of wanting to learn more and do what we could to help our clients.

As law students, we know what we have learned in the classroom, but we cannot learn everything from a textbook. Given the wide range of cases the clinic assists with, it is crucial to have a knowledgeable person to spearhead this clinic. Staff attorney Kevin Carlson's knowledge of many diverse areas of the law has been crucial to allowing the student attorneys serve clients. We were well-equipped because of Mr. Carlson's assistance.

Of the many things I appreciated about this clinic, one that I valued most was the opportunity to meet with clients face-to-face at the courthouse. That atmosphere made it a well-rounded experience because we were able to do substantive work while also helping clients on a personal level. This made all the difference in the quality of the client's involvement at the clinic, and it helped students to learn and grow in the process.

I speak for many of my fellow students when I say that serving low-income pro se litigants who are fighting for their rights is an experience comparable to none.

**Jewel M. Haji, Law Review Editor-in-Chief, University of Detroit Mercy School of Law.*

Judge Roberts Portrait Ceremony

by Sarah Higgins*

"There is a path that unwinds in each of our circles of life, and I trust that so far I have been on the right path. But I have learned enough to know that this life I have been given is not my own. I've just said 'yes' to it. Each moment has been in preparation for the next."

In a program that can be described as reflective, heartfelt, and memorable, the portrait ceremony for Judge Victoria A. Roberts, held on August 10, was a fitting celebration of her notable twenty-year career as a judge in the Eastern District of Michigan.

The program began with an invocation by Rev. Georgia Hill and Deacon Jonathan Gehrls, Judge Roberts' son, of Plymouth United Church of Christ in Detroit. Next, Executive Magistrate Judge R. Steven Whalen and his band, featuring Faye Bradford on vocals, performed a soulful rendition of the American classic "This Land is Your Land."

Befittingly, Chief Judge Denise Page Hood, presiding, commented, "well you can see that this is a special session

(continued on page 6)

Portrait *(from page 5)*

of our Court. Usually there isn't such good music, and not that kind of clapping."

Chief Judge Hood then introduced the judges seated with her on the dais, including judges from the Circuit Court, District Court, and Bankruptcy Court, and introduced the various state court judges, agency administrators, court staff, and other distinguished guests present during the ceremony.

Next, Magistrate Judge Elizabeth A. Stafford, one of Judge Roberts' first law clerks, provided remarks. She reflected on how in 1991, Judge Roberts hired her to be her law clerk at Goodman, Eden, Millender, & Bedrosian, where Judge Roberts was once managing partner. "I was very excited to be hired into Goodman, Eden, which was the first interracial firm in the country. But I did not know at first that I had been blessed with the fiercest role model, mentor, and advocate that I could imagine," said Magistrate Judge Stafford. She then provided highlights of Judge Roberts' distinguished career, including serving as general counsel to Detroit mayor-elect Dennis Archer's transition team, and becoming the first black woman in the country to serve as a State Bar president.

Throughout the course of her judicial career, Judge Roberts has cultivated a large village of former law clerks and staff. Magistrate Judge Stafford noted that Judge Roberts' village started out small, consisting of her judicial assistant, case manager, and court reporter, who all still serve with Judge Roberts, and two law clerks.

Magistrate Judge Stafford then read tributes written by law clerks and staff, most of whom were present and stood as their tributes were read, detailing the impact that Judge Roberts had on their personal and professional lives. "You have shaped and inspired all of us," Magistrate Judge Stafford stated, before presenting a check for over \$5,000 on behalf of the former law clerks to the court's University of Detroit Mercy School of Law Pro Bono Clinic, an initiative spearheaded by Judge Roberts.

Judge Roberts' commitment to invest in the careers of young lawyers extends beyond her family of clerks. As Magistrate Judge Stafford noted, Judge Roberts created the Wolverine Bar Association's Judicial Externship Program for law students of color, and brought the Just the Beginning

Foundation's Summer Legal Institute for pre-law students of color to Detroit.

Illustrative of her far-reaching impact on the local and global community, three individuals spoke of their interactions with Judge Roberts over the years. Andrew Densmo of the Federal Defenders Office said that Judge Roberts has treated every one of his clients "as citizens first, and defendants second," and that "he never had a client that complained" about her. Densmo said that his clients felt that Judge Roberts put them on equal footing with the government, and he knew that she would treat his clients with impartiality. Densmo credited Judge Roberts with making him a better lawyer, and called her "an amazing judge."

Afterwards, former Acting U.S. Attorney Daniel Lemisch provided remarks, and described Judge Roberts as "a judge who knows how to find justice within the law," and "a judge you would want judging you or your loved ones." Characterizing Judge Roberts as a leader of an organization, Lemisch referred to her staff as an "exemplary" reflection of Judge Roberts' excellence.

Commenting on Judge Roberts' love for travel, Lemisch reflected on the international work he and Judge Roberts have done, helping to develop the legal systems of various countries around the world. Specifically, Lemisch highlighted their travels to Nepal, whose criminal justice system lacked a

plea-bargaining process. In conversations with Nepali judges, rather than lecture them on what they should do, Judge Roberts "did what good judges do, she listened." Nepal recently enacted its own plea-bargaining law, which, according to Lemisch, was a direct result of Judge Roberts' efforts. Judge Roberts has proven to be not just a "judicial tourist," but, as Lemisch said, "she travels to improve the lives of people around the world."

"I could not even imagine as a child having the opportunity to become a federal judge in my hometown," Judge Roberts would go on to say during her remarks. She has displayed her love for Detroit over the course of her career, and has played a positive role in shaping its history. Specifically, Judge Roberts served as a mediator in the Detroit bankruptcy case. Rodney Sizemore, vice president of the Detroit Police Lieutenants and Sergeants Association, spoke next on his work with Judge Roberts during the bankruptcy. Sizemore said that without her help



Many dignitaries attended Judge Roberts' portrait ceremony, including (l-r) retired Oakland County Circuit Judge and Court Ombudsman Fred Mester, Wayne County Circuit Judge Ulysses Boykin, Michigan Supreme Court Justice Kurtis Wilder, Judge Roberts, Oakland County Circuit Judge Denise Langford Morris, 36th District Court Judge Demetria Brue, and Wayne County Probate Judge Terrance Keith.

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

and guidance, it would not have been possible for the public safety unions to reach an agreement in mediation. He also credited Judge Roberts' efforts with providing hope to Detroit, a hope that has led to its revitalization.

Next, with the help of her three-year-old grandson, Judge Roberts' portrait was revealed. It was painted by Detroit native and Yale graduate Richard Lewis, and its background captures images important to Judge Roberts. It includes her commission from President Bill Clinton and the seal of the Eastern District of Michigan, which she said gives her "the authority to act."

Also painted in the background is a quilt hanging in Judge Roberts' chambers that reads "reaching back, lifting up," reminding her of those who have helped her along her journey, and of her responsibility to help those coming behind her.

A painting of the Scottsboro Boys, nine black teenagers who in 1931 were wrongfully convicted of a capital crime, also hangs in her chambers and is featured in the portrait, symbolizing her "obligation to do justice."

Even in her twentieth year on the bench, Judge Roberts' commitment to doing justice has not waived. In June 2018, the court launched a two-year pilot of the Early Mediation Program for Pro Se Prisoner Civil Rights Cases, which aims to encourage the speedy resolution of disputes between state prisoners and corrections institutions, avoiding costly and lengthy litigation. The program is modeled after one in the District of Nevada, and it was Judge Roberts who led the efforts in bringing the program to this court.

After the portrait was revealed, Rachel Felix, Judge Roberts' daughter, provided remarks. Felix explained that her mother has never defined herself as being a judge, but that "being a judge is just a natural continuation of who she is." She admired her mother's ability to juggle her professional responsibilities, while still ensuring that she and her brother lived enriching childhoods. Teacher, nurturer, disciplinarian, advocate, chauffeur, nurse, chef, counselor, and trend setter, are some of the roles Felix ascribed to Judge Roberts. Concluding her poignant remarks, Felix said to her mother, "with all of your career achievements, you should also relish in perhaps your most challenging but hopefully most rewarding endeavor as mom."

The honoree herself spoke next. In preparing for this celebration of her twentieth year on the bench, which she said was her staff's idea, Judge Roberts said that she spent time reflecting on the circle of her life, "the connections

between people and events," and how "there are not any accidents" in life. "This life is not my own," she continued, "but something far more divine has been at work."

Throughout her remarks, Judge Roberts highlighted influential people in the different stages of her life. She started with her family. She is one of seven siblings, and the daughter of Manuel and Grace Roberts. Her parents migrated to Detroit from the South, "without the benefit of high school educations for a better life." Her father was a steel worker for thirty-five years at Great Lakes Steel on Zug Island, and her mother was a homemaker and cleaned homes before working at J.L. Hudson tagging merchandise. "In this family, we learned the benefit of hard work, of industry, of rebounding over and over again,"

and "how smart but uneducated people," like her parents, "knew intuitively that education was the path to a different life." A product of Catholic schools, Judge Roberts graduated from St. Martin de Porres High School in Detroit, which she said prepared her for her career.

Judge Roberts noted that she and her siblings drilled the importance of education into their own children, and said that her son Jonathan, born with special needs, illustrated to her that "it is the task of parents to discover the potential of each child, and to exploit it." It was also her son who made her a better advocate and lawyer, and "a believer that our system of justice has an obligation to help those who have disabilities

and needs" that make it difficult for them to advocate for themselves.

A graduate from the University of Michigan, Judge Roberts initially pursued a career in journalism. However, her "journalism dream was shattered" when during an interview she was told that the paper had already hired a black reporter. Her ex-husband, who was a law student at the time, told her following the interview that she had "to fight that kind of injustice." Beforehand, she had not considered attending law school, but said his words "propelled" her into a legal career. She ultimately graduated from Northeastern University School of Law in Boston.

The late Judge Julian Abele Cook Jr.'s encouragement and persistence is "the only reason" that in 1996, Judge Roberts applied to be a federal judge. "He believed what I could not see, that I could really be one of his colleagues." She said that his belief shows that "sometimes we have to look at ourselves through someone else's prism in order to get the best perspective on ourselves." Judge Cook went as far as sending the application to her law office. Her assistant, Linda Vertriest, who began working with Judge Roberts in

(continued on page 8)



Several members of Judge Roberts' family were on hand for the special ceremony, including (l-r) her grandson August Felix, her son-in-law Donald Felix, her granddaughter Sloane Felix, her daughter Rachel Felix, and her son Jonathan Gehrls.

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

Portrait (from page 7)

1988, stood in her doorway waiving the application on the morning it was due and said, “we should do this.” Judge Roberts credited Ms. Vertriest’s organizational skills in helping her complete the application on time.

“It is so clear that I could not have made this journey by myself,” Judge Roberts said as she thanked many other friends and colleagues present during the ceremony. Beyond this, she honored the black and female judges and lawyers “who struggled to get a foothold in this profession and made the journey easier” for her. Reflecting on her life’s journey, she “could not think of a better fulfillment of the American Dream” for her than becoming a federal judge.

In conclusion, Judge Roberts stated that “many judges, including me, are ordinary people with extraordinary powers and extraordinary responsibilities.” Yet, as Magistrate Judge Stafford said, throughout her career, Judge Roberts has displayed “super-human abilities to get things done,” and her “accomplishments are beyond extraordinary.” It is her strength, and her humility, that makes Judge Roberts an inspiration to all.

**Sarah Higgins obtained her undergraduate degree in Industrial Engineering from the University of California, Berkeley, and her J.D. from New York University School of Law. She clerked for Judge Roberts and now clerks for Judge Damon J. Keith.*

Demystifying RLUIPA

On October 30, a day when the first of the victims of the mass killing at the Tree of Life Synagogue in Pittsburgh were laid to rest, it was somehow appropriate timing for about 40 attorneys, judges, and law clerks gathered in the Detroit Room at the Levin Courthouse to learn more about the Religious Land Use and Institutionalized Persons Act (“RLUIPA”).

U.S. Attorney Matthew Schneider moderated a panel featuring Judge Stephen J. Murphy, III; Eric Treene, Special Counsel for Religious Discrimination at the Department of Justice, Civil Rights Division; Thomas Meager of Foster Swift Collins & Smith; Carolyn Normandin, Regional Director of the Anti-Defamation League; and Rev. Stancy Adams of Russell Street Missionary Baptist Church.

Treene started the conversation by providing a brief history of RLUIPA and addressing the Act’s protection of religious communities seeking to build or expand places of worship and other buildings of religious use from restrictive zoning and landmarking laws. Treene explained that the DOJ may bring suits for injunctive or declaratory relief under RLUIPA, and he discussed several important cases brought under the Act. These examples illustrated some of the hallmarks of a RLUIPA violation: where other organizations like unions or clubs have been granted zoning variances, but a religious organization was denied



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the same request; or where the zoning denial burdens religious exercise by leaving a congregation with few or no viable options.

One familiar example was the proposed Michigan Islamic Academy in Pittsfield Township, and both Treene and Meager discussed this case. Meager represented Pittsfield Township in the matter and shared his insights from the Pittsfield Township case and other RLUIPA cases he has litigated. He stressed that RLUIPA is foreign to most people sitting on municipal zoning boards, which means a lot of basic education about the law and its requirements must occur. For instance, he explained that the Act's "substantial burden" language extends favorable treatment to religious institutions in a way that zoning board members can find difficult to grasp, seeing as they are used to being told to apply their zoning regulations even-handedly. Adding to this first challenge of grasping the requirements of the law, both sides in a RLUIPA dispute can be challenged by the need to understand the other side's position. The zoning board members may not appreciate the strictures of the religious group's faith, while the applicant religious group may not have invested in getting to know and understand the board members and the community in which they wish to establish a congregation.

Adding on to Meager's observations about the gap in what each side tends to understand about each other, Normandin explained that "Not in My Back Yard" sentiments are behind most of the RLUIPA cases her organization sees. She agreed with Meager's points that each side needs to ensure that it has an appropriate spokesperson for these often-public disputes so that the issues focus on practicability and the benefits of diversity to a community, rather than having the discourse devolve into mean-spirited arguments.

Rev. Adams called for the protections of RLUIPA to go further than they currently do, as small congregations can be constructively denied their rights through unaffordable local taxes on land usage and storm drainages.

Of course, another concern several panelists mentioned was that these cases occur within a community and both sides should seek to remain good neighbors at all stages of the litigation.

Judge Murphy discussed two recent Sixth Circuit decisions, one addressing a challenge brought under the "substantial burden" portion and the other on the "equal terms" provision. In evaluating the differences among the circuits regarding evaluation of what "substantial burden" means, the Sixth Circuit ultimately rejected adoption of a strict test and instead chose a fact-driven evaluation

of whether the zoning decision created an allowable "mere inconvenience" or a substantial burden. *Livingston Christian Schools v. Genoa Charter Township*, 858 F.3d 996 (6th Cir. 2017)

The second case, from earlier this year, was *Tree of Life Christian Schools v. City of Upper Arlington*, 905 F.3d 357 (6th Cir. 2018). After reviewing its sister circuits' approaches to the equal-terms provision, the Sixth Circuit adopted different circuits' tests for different portions of the burden-shifting evaluation and rejected the use of a "compelling state interest" standard for analyzing the challenged regulation.

Judge Murphy advised litigants to be very explicit with the facts and to highlight which facts they believe support their arguments, given the different provisions of RLUIPA and the different tests applied by the courts.

The Chapter's Civil Rights Committee, along with the U.S. Attorney's office, the Anti-Defamation League, and the Civil Rights Law Section of the National FBA sponsored this event, which is part of the Chapter's initiative to expand informative programming for our members. A special thanks to the Chapter, the ADL, and the FBA Civil Rights Section for providing lunch at this event.



Chapter Vice President Fred Herrmann, Program Chair Jennifer Newby, and Chapter President Saura Sahu joined Chief Judge Hood at the State of the Court Luncheon.

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

2018 State of the Court Luncheon

Chief Judge Denise Page Hood and new Chapter President Saura Sahu launched a new Chapter program year on September 21 at the Westin Book Cadillac in Detroit.

After presiding over some brief Chapter business and acknowledging the luncheon's sponsors, President Sahu introduced Chief Judge Hood.

In her remarks, Chief Judge Hood thanked her staff, and then discussed the Eastern District of Michigan's Pro Se Legal Assistance Clinic. The Pro Se Clinic seeks to assist low-income individuals who intend to represent themselves in civil lawsuits in federal court. The Pro Se Clinic opened its doors in January 2018, and is operated by law students from the University of Detroit Mercy School of Law. The clinic provides free research and legal advice to litigants who qualify for assistance. The Pro Se Clinic is open three days a week (Monday, Wednesday, and Friday) from 1 – 5 PM, and is conveniently located inside the Levin Courthouse. More information about the Pro Se Clinic can be found here: <https://www.mied.uscourts.gov/index.cfm?pageFunction=proSe>

(continued on page 10)

State of the Court *(from page 9)*

Chief Judge Hood reported that seven senior judges continue to contribute substantially to the work of the Court: Judges Avern Cohn, Bernard A. Friedman, Robert H. Cleland, Nancy G. Edmunds, Arthur J. Tarnow, George Caram Steeh, and Marianne O. Battani, who all receive case assignments at the same rate as judges in active service. Additionally, Chief Judge Hood acknowledged that Bankruptcy Judge Phillip J. Shefferly continues to serve as Chief Judge of the Bankruptcy Court.

Chief Judge Hood acknowledged the passing of Judge Anna Diggs Taylor, who died on November 4, 2017 at the age of 84. Appointed by President Jimmy Carter, Judge Diggs Taylor was Michigan's first black female federal judge. She presided over many high-profile cases during her career, and served as Chief Judge from 1996-1998.

Chief Judge Hood also provided statistical information about the Court, and a report containing full information may be found online at www.mied.uscourts.gov under Court News, 2018 Annual Report.

As always, the Chapter thanks Chief Judge Hood for her update regarding the Court.

The Chapter Recognizes its Military Veterans

In recognition of Veteran's Day, which is celebrated on November 11 each year, the Chapter asked members about their military service in a recent E-Blast.

If you missed the request, it is not too late: please send information about your military service to Mindy Herrmann at fbamich@fbamich.org.

For those who did respond, the Chapter would like to recognize and thank you for your service. Below is a summary of the service of the veterans who have already responded.

Chris Bernard. Bernard graduated from the U.S. Naval Academy as a Marine Corps 2nd Lieutenant in 1988. He served as an infantry officer and deployed to Operations Desert Shield/Desert Storm and participated in the invasion of Kuwait. He left active duty in 1996 with the rank of Captain. Bernard was promoted to Major while serving in the Reserves and attending Wayne State University Law School.

Charles Binder. Magistrate Judge (retired). Magistrate Judge Binder served as an Air Intelligence Officer in the Michigan Air National Guard (1982-1994) and also served in the Air Force Reserve (1994-2004). He rose to the rank of Major during his service.

Mike Cox. Cox served in the U.S. Marine Corps from 1980 to 1983 as a Marine Rifleman.

Fred Dewey. Dewey enlisted in the Army Reserves in 2001. In 2002, he deployed to Guantanamo Bay, Cuba to conduct detention operations. In 2005, he deployed to Iraq, where his Battalion primarily operated the Theater Interment Facility at Camp Bucca. In 2006, he re-enlisted in the Louisiana Army National Guard for three years. In 2008, he was deployed to Houma and Grand Isle, Louisiana for several weeks to assist with security and rescue operations necessitated by Hurricane Gustav. In 2009 his military service ended.

George Donnini. Donnini service in the US. Marine Corp: he was commission in May 1995 and served on activity duty from 1999 to 2003. He served as a Judge Advocate and attained the rank of Captain.

Stephen P. Dunn. Dunn was commissioned a Lieutenant in 2006 and still serves as a Major in the U.S. Army Reserve Judge Advocate General Corps.

Joseph L. Falvey. Falvey is a veteran of the U.S. Marine Corps (1981-2011). Recently, he was nominated for and confirmed for a seat on the U.S. Court of Appeals for Veterans Claims.

Fred Herrmann. Following graduation from the U.S. Naval Academy in May 1988, Herrmann served on active duty with the Marine Corps from 1988-1993 and as a Reservist until 1996. During his time on active duty, Herrmann deployed overseas with the 2nd Battalion 9th Marines, an infantry battalion., and then served on the logistics staff of the 1st Marine Division. During law school, Fred served in the reserves.

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Mindy Herrmann. Our Executive Director graduated from the U.S. Naval Academy in 1988 and was commissioned a 2nd Lieutenant in the Marine Corps. She served as the Peacetime Wartime Support Team Officer for 1st Battalion 24th Marines during their 2006-2007 deployment to Iraq when the unit lost 23 heroic Marines. She retired in 2016 after 28 years of service.

Fred Mester. Mester served from 1990-1994 as Officer, Adjutant, 2nd Medium Tank Battalion, 1st Calvary, Combat Command A, 3rd Armored Division.

Hank Moon. Moon was a 2004 Distinguished Graduate of the U.S. Air Force Academy, graduating with Academic, Military, and Athletic distinction. As a Logistics Readiness Officer, Moon served as a Flight Commander at Grand Forks AFB before volunteering for a year-long deployment as an embedded trainer to the Iraqi Army in Al Anbar Province, Iraq. He also served in Islamabad, Pakistan, as a NATO logistics expert after the 2010 floods.

Eric Nemeth. Nemeth served in the U.S. Army Reserve from 1989 through 2000, primarily as a JAG officer. He also worked on deployments and readiness for various units in Desert Shield, Desert Storm, and Kosovo.

Clarence L. Pozza. Jr. Pozza served in the U.S. Army National Guard from 1970-1976. He was part of the 156th Signal Battalion stationed in Ann Arbor, Michigan.

Michael Rataj. Rataj served in the Infantry of U.S. Marine Corps from 1980 through 1983.

Charles Rutherford. Rutherford joined the FBA in 1962 and served as Chapter President in 1976, but before that had many years of service to his country. He enlisted in the U.S. Army in August 1946 and he served for 14 months in the Occupation of Japan, stationed in Korea. He was discharged in January 1948 with the rank of Corporal. Later, he was commissioned in the U.S. Air Force as a 2nd Lieutenant and in 1958 to the Judge Advocate General Department Reserves, eventually completing 30 years of reserve duty. He retired with the rank of Colonel.

Dan Sharkey. Sharkey was commissioned as an artillery officer. After graduating law school, he transitioned to the Judge Advocate General's Corps. He completed Airborne (a/k/a "Jump") School, and was then stationed with the 3rd Infantry Division (Mechanized) from 1995-1999. He acted as prosecutor for a brigade of 4,000 soldiers.

Chris Tabor. Tabor served 14 years with the Coast Guard as a Morse code radio operator, mostly in the Pacific islands.

Calendar of Events

Nov. 27 Rakow Scholarship Awards/Historical Society/Rom Award Luncheon
Chapter's Presentation of Rakow Scholarships to students from each of Michigan's law schools and the Annual Barbara J. Rom Award for Excellence in Bankruptcy Practice, coupled with the Annual Meeting of the Court Historical Society.
Location: Detroit Marriot, Renaissance Center, Mackinac Ballroom (5th Floor)
11:30 AM – 1:00 PM
Members: \$45 | Non-Members: \$60 | Law Clerks/Students: \$35
Tickets available online and through organizations that sponsor the luncheon series.
Special Keynote Speaker: Craig B. Glidden, Executive Vice President and General Counsel, General Motors Company.
Historical Society Speaker: Robert M. Ackerman, professor, former Dean, and Director of the Levin Center, Wayne State University Law School.

Dec. 4-5 43rd Annual New Lawyers Seminar
Theodore Levin U.S. Courthouse
8:30 AM Registration
9:00 AM – 4:00 PM
Cost: \$125, includes two-day seminar, presentation materials, luncheon, and one year of Chapter membership.
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<https://fbamich.org/event/2018-new-lawYer-seminar/>

Dec. 5 Holiday Party
Detroit Club, 712 Cass Avenue
5:00 PM – 7:30 PM
Hors d'oeuvres available
Musical entertainment by The Cat's Pajamas
Valet parking available for \$10
Tickets: Members: \$60 | Non-Members: \$80
Law Clerks/Students: \$50
Contact Mindy Herrmann at fbamich@fbamich.org
Register by November 27 at
<https://fbamich.org/event/2018-fba-holiday-party/>

Dec. 5 Book Club
Theodore Levin U.S. Courthouse, Room 722
Noon – 1:00 PM
Evicted: Poverty and Profit in the American City, by Matthew Desmond
Members: Free | Non-Members: \$10
Bring your own lunch, or lunch is available for \$10.

Updates and further developments at
<https://fbamich.org/featured-events/>



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