



Federal Bar Association - Eastern District of Michigan Chapter - **61** years of service to our Federal Bench and Bar

Chapter Honors Sharon Woods with Civility Award

The 40th Annual Dinner Honoring the Judicial Officers of the Eastern District was held on June 19 at the Atheneum Suite Hotel.

Outgoing Chapter President Saura Sahu gave introductory remarks before welcoming Chief Judge Denise Page Hood to the podium. Chief Judge Hood recognized the other district judges in attendance and thanked all chapter members for their participation.

She then introduced incoming Chapter President Matthew Lund. Lund began by recognizing the Chapter's executive committee serving alongside him this coming year. He then announced plans to include attorneys practicing in the Northern Division in Chapter events. He noted that while the Eastern District encompasses the entire eastern half of the state, it historically had limited its activities to southeastern Michigan. In an effort to make the Chapter more inclusive to members practicing in the northern part of the District, Lund announced that satellite Chapter meetings would be held in the Bay City divisional courthouse.

Lund then welcomed Judge Bernard Friedman, the co-namesake of the Julian Abele Cook, Jr.-Bernard A. Friedman Civility Award, to give introductory remarks regarding the importance of the award. Judge Friedman emphasized the importance of civility in legal practice before welcoming Dennis Barnes of Barris, Sott, Denn & Driker to the podium to introduce his colleague and this year's recipient, Sharon Woods. *(continued on page 2)*

INSIDE THIS ISSUE

New Federal Law Clerk Database	pg. 2-3
Dave Weaver	pg. 3
Supreme Court Review by M Bryan Schneider	pg. 3-5
Formal Investiture of U.S. Attorney Schneider	pg. 5
Bench/Bar Social	pg. 6
Anniversary of Pro Se Legal Assistant Clinic	pg. 6-7
Scavenger Hunt	pg. 7
Bias Disruption Seminar	pg. 7-8
Immigration Talk	pg. 8-9
Mogill Receives Gilman Award	pg. 9
Past Presidents Luncheon	pg. 9
Book Club	pg. 11
Law Day	pg. 11
Calendar of Events	pg. 11

President's Column

Immediate Past President Saura Sahu



This last column of the fiscal year celebrates a terrific year, offers a few thanks and welcomes our new president, Matt Lund.

The 2018-19 fiscal year has been a year of renewed expansion. Thank you for staying true to our mission. Together over the past year, we've advanced the administration of justice by supporting the Court and elevating the Bar. Through diligent commitments and innovative measures we increased our membership from around 760 to over 900. We increased our Sustaining Member base from 94 to 135. We increased our number of Signature Luncheon sponsors from 43 to 59 and our Annual Dinner sponsors from 17 to 27. As a result, our fund base has more than doubled and is well poised to support even more valuable membership benefits in the years to come.

We also enhanced the involvement of firms and organizations in committee leadership and event sponsorship. As a result, we expanded the bench of future leaders, each of whom brings a unique perspective and contribution to strengthen the Chapter. We also offered numerous events for free not only to our members, but also to in-house counsel, court staff, students, and prospective members. I continue to encourage you to look for opportunities to involve in-house counsel, leaders of other organizations and students to participate in Chapter activities.

This year, we also focused outward, holding programs in Ann Arbor and Lansing and looking for opportunities to partner with the State Bar and firms outside Detroit. These efforts are in their early stages, and I'm excited about the geographic expansion initiatives that Matt Lund has for his presidency.

Finally, we expanded our programming by adding new efforts to address implicit bias in the profession, adding new committees in areas such as securities law, and reinvigorating committees with new panels in federal appellate law and other areas.

For these terrific developments, we have many thanks to offer. First, thanks to the Court and Chief Judge Denise Page Hood for their robust support and involvement. Thanks also

(continued on page 2)

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President's Column (continued)

to a terrific Chapter officer corps, each of whom will serve you well in their upcoming terms as President.

In particular, thanks to Past Presidents Jeff Appel and Susan Fairchild for their steadfast and continued involvement. Thanks to our luncheon keynote speakers, Chief Judge Hood, Craig Glidden, Senator Debbie Stabenow, and U.S. Attorney Matthew Schneider, for joining us and sharing your insights and enthusiasm. Thanks to our new sponsors for jumping in and to our established sponsors who increased their involvement.

Thanks to each of our Executive Board and Committee Chairs, who guide us and make our programs happen. While there are too many great co-chairs to mention, a special thanks is due here to Newsletter Co-Chairs Andrew Lieveense and Jim Gerometta (and recent Newsletter Co-Chair Christina Farinola) for maintaining the excellence of this Newsletter.

Finally, thanks to you as members for your support and commitment to this Chapter.

As I mentioned at the Annual Dinner, this organization has always been a standard bearer for excellence in the profession. Yet I am convinced that its best years are yet to come as the profession undergoes substantial changes. This FBA Chapter is full of preeminent attorneys from all sides of "the table," and I have never found a legal organization more collegial. In light of these strengths, the best will be found when we collaborate with each other to compete with the outside world. The best will emerge when we innovate to find new ways to include each other, open opportunities for each other and take risks on each other. Our best – and our long-term success in the national market – is actually found in each other's achievement.

In Matt Lund's upcoming and innovative year, I look forward to seeing our Chapter's continued growth, development, and collaboration. Matt is an organized and thoughtful leader. It is with great pleasure – and no small bit of relief – that we welcome in his year as Chapter President.

field, recalling an interview with Oscar Mayer in which her interviewer suggested that she was only suited to drive the company vehicle along with the other female employees. It was at that moment that she decided to take a new path and become a lawyer. Woods also thanked her longtime colleagues at Barris Sott and the Chapter for the honor of the civility award.

The Chapter congratulates Sharon Woods on her accomplishments.

Special thanks go to Annual Dinner co-chairs Susan Fairchild, Brittany Mouzourakis, Mindy Hermann, and Cynthia Filipovich. We look forward to seeing everyone at next year's Annual Dinner.

Unique Federal Law Clerk Database Launches in July

With the support of the National Federal Bar Association, the Chapter's Law Clerk Committee has been busy compiling a first-of-its-kind searchable database of current and former law clerks. The database includes the law clerks of past and present judges in the District from the Sixth Circuit Court of Appeals, District Court, and Bankruptcy Court.

Law clerks who work in the District go on to practice across the country. The motivation for the project was to serve as a historical record and provide a valuable resource to keep the judicial "family" connected.

Chapter members can use the database to search by judge and identify his or her former and current law clerks, or search a particular law clerk to learn when they clerked and for whom. Judge Laurie Michelson, who is also a member of the Law Clerk Committee, said, "We want the clerkship experience to be enduring, the personal and professional connections should not end once you leave the courthouse." She added that with the database, "No matter where your future opportunities take you, your clerkship

family is only a few clicks away." The Chapter's outgoing President, Saura Sahu, said, "we are particularly excited to offer this opportunity for potential clients, counsel, and clerks from other jurisdictions to connect with our law clerks, who add tremendous value and insight to any matter."

In the coming weeks, the Law Clerk Database will be available to Chapter members through the Chapter's website, www.fbamich.org. At that time, instructions to access the database will be circulated to current and former law clerks.

Woods Honored

(from page 1)

Barnes spoke of Woods' legal acumen, and her willingness to give younger attorneys opportunities to take on substantive roles in cases. He noted that even with her zealous advocacy for her clients, Woods had always demonstrated outstanding civility, serving as a model for all attorneys.

Woods then took the microphone and spoke about her initial career path in the sciences. She spoke of the difficulty women experienced attempting to break into that



Judge Bernard A. Friedman, incoming Chapter President Matt Lund, and outgoing Chapter President Saura Sahu posed to congratulate Sharon Woods on receiving the Cook-Friedman Award at the Annual Dinner.

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

If you are a current or former law clerk for a judge in the database but not a member of the Chapter, you will have access to the database for the first six-months after it is launched to view your information. If you are a law clerk who should be added to the database or your information is incorrect, please contact Chapter Executive Director Mindy Herrmann at fbamich@fbamich.org.

Please see the Chapter's website for information on membership.

The Law Clerk Committee would like to thank the National Federal Bar Association for its support of the project and Mark St. Peter of Certified Service Professionals who helped to create the database.



Dave Weaver Court Administrator/ Clerk of Court

I am happy to report that the Court has established an official Twitter account! The handle for our account is @USDCMIED. It has been up for a few months and

as of this writing, we now have a total of three posts! We are taking some time to get familiar with the platform and to determine what information we will be regularly posting.

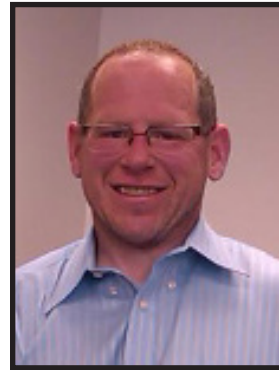
Some of the early categories will include information regarding court closings, our employment opportunities, public awareness issues, and other official or late-breaking information. This may include information regarding special events such as Law Day, proposed rule changes, etc. A separate account is being developed by our Probation Department which will help disseminate employment and other service information to their clients on supervision. The Bankruptcy Court also has a Twitter account which it uses to publish opinions and orders.

We would like to hear from you with any suggestions regarding useful information you would like to see through our account.

Just a couple of quick updates on the renovation of the Levin Courthouse. We recently had a "Topping Off" Ceremony on June 14, 2019. The event recognized a project milestone: the completion of the steel construction for the new stair/elevator tower in the light court. Approximately 2,500 individual pieces of steel were lifted over the top of the courthouse for assembly. A ceremonial Top Beam has been signed by all court staff for eventual display in the Court's historical display area.

Last, the new dedicated arraignment courtroom on the 1st floor is nearing completion. The existing arraignment courtroom was in the direct footprint of the new stair/elevator tower and had to be relocated. Arraignments have been taking place in a less-than-ideal temporary courtroom. The new courtroom is expected to be up and running by the end of August.

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



Supreme Court Review by M Bryan Schneider

The Supreme Court's recently ended term brought a smaller than normal number of high profile decisions, including another Establishment Clause muddle (*American Legion v. American Humanist Ass'n*), a kind-of-sort-of maybe on asking

about citizenship on the census (*Department of Commerce v. New York*), and a firm "no" to federal courts policing partisan gerrymandering (*Rucho v. Common Cause*). And *Auer* deference managed to survive (*Kisor v. Wilkie*), but probably not a good idea to go long on *Chevron*. 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 only three purely procedural cases. In *Home Depot v. Jackson*, the Court held that a third-party counterclaim defendant cannot remove a civil action to federal court under § 1441(a). *Nutraceutical Corp. v. Lambert* held that Rule 23(f)'s 14-day period for filing an appeal from an order decertifying a class is not subject to equitable tolling.

In *Republic of Sudan v. Harrison*, the Court held that service by mailing "to the head of the ministry of foreign affairs" for a suit under the Foreign Sovereign Immunities Act requires mailing directly to the foreign minister's office in the foreign state.

In a second foreign immunity issue, the Court held in *Jam v. International Finance Corp.* that, under the International Organizations Immunities Act, international organizations' immunity from suit is coextensive with foreign governments' immunity under the FSIA.

In one of its more significant decisions of the Term, the Court held in *Franchise Tax Board of California v. Hyatt* that states are immune from private suits brought in the courts of other states, overruling *Nevada v. Hall*.

The Court was once again very active this Term applying the Federal Arbitration Act. In *New Prime v. Oliveira*, the Court held that a court must determine whether an exclusion to arbitration under § 1 of the Act applies before ordering arbitration. The Court decided two issues in *Lamps Plus v. Varela*, holding both that an order compelling arbitration and dismissing the claims is a final decision subject to appellate review and that ambiguous agreements cannot provide a basis for compelling class arbitration notwithstanding any state law contract doctrines for interpreting ambiguous agreements. Finally, in *Schnein*

(continued on page 4)

Supreme Court Review (from page 3)

v. Archer & White Sales, the Court held that the FAA does not permit a court to decline to enforce an arbitration agreement based on the court's determination that the claim of arbitrability is "wholly groundless."

In substantive civil matters, the Court returned in force to an area of law that it has not addressed recently, issuing three separate decisions involving disability benefits under the Social Security Act. In *Biestek v. Berryhill*, the Court held that a vocational expert's testimony can constitute substantial evidence even where the expert refuses to provide the market survey data upon which the expert relied in concluding that the claimant can perform a significant number of jobs in the economy. The Court further held in *Smith v. Berryhill* that an Appeals Council dismissal of an appeal from an ALJ's benefits denial determination on timeliness grounds is a final decision subject to judicial review. And in *Culbertson v. Berryhill*, the Court held that the § 406(b), which caps fee awards at 25% of past-due benefits awarded, applies only to the fees for court representation.

The Court also decided several intellectual property cases this Term. In two patent cases, the Court held that "on sale" bar to patentability may apply even where the prior sale is to a third party required to keep the invention confidential (*Helsinn Healthcare v. Teva Pharmaceuticals*), and that the government is not a "person" who may institute administrative review proceedings before the Patent Trial and Appeal Board (*Return Mail v. United States Postal Service*).

In two copyright cases the Court held that "registration" permitting a copyright claimant to sue for infringement occurs upon actual registration by the Copyright Office and not upon the filing of an application for registration (*Fourth Estate Public Benefit Corp. v. Wall-Street.Com*), and that "costs" that may be awarded under the Copyright Act are limited to categories of costs in the general federal cost statutes (*Rimini Street, Inc. v. Oracle USA*).

Finishing off the work it started in *Matel v. Tam*, the Court in *Iancu v. Brunetti* concluded that the Lanham Act's prohibition on the registration of immoral or scandalous trademarks violates the First Amendment.

The Term just ended featured not one, but two, maritime cases. In *Air & Liquid Systems v. DeVries*, the Court held that in the maritime tort context a manufacturer has a duty to warn when its product requires incorporation of a part the manufacturer knows or has reason to know is dangerous, while in *Dutra Group v. Batterton*, the Court held that punitive damages are not available in connection with claims of unseaworthiness.

The Court also decided two bankruptcy matters, holding that a debtor's rejection of an executory contract under § 365 does not rescind rights that the contract previously granted the creditor (*Mission Product Holdings v. Tempnology, LLC*), and that a court may hold a creditor in contempt for violating a discharge order regardless of the creditor's good faith belief that the discharge order did

not apply to the creditor's conduct (*Taggart v. Lorenzen*).

In employment matters, the Court held that Title VII's administrative charge filing requirement is not jurisdictional and a non-filing defense is therefore subject to forfeiture by a defendant (*Fort Bend County v. Davis*), and that the Age Discrimination in Employment Act applies to state and municipal employers without regard to the number of employees (*Mount Lemmon Fire District v. Guido*).

The Court decided a number of important civil rights and civil constitutional cases during this Term. In *Nieves v. Bartlett*, the Court held that the existence of probable cause precludes a First Amendment retaliatory arrest claim as a matter of law. In a second § 1983 case, *McDonough v. Smith*, the Court held that a fabricated arrest claim accrues for limitations purposes when the criminal proceeding terminates in the plaintiff's favor.

In *Manhattan Community Access Corp. v. Halleck*, the Court held that the operator of a public access cable network is not a state actor subject to suit under § 1983. And in an extremely significant Takings Clause case, *Knick v. Twp. of Scott*, the Court overruled its prior judicial exhaustion requirement, holding that a Takings claim may be brought as soon as the government takes property without compensation, with no further requirement that the plaintiff exhaust judicial remedies in the state courts.

In other civil cases, the Court held: iPhone users are direct purchasers who may bring an antitrust claim against Apple for sales of applications by third-party app producers (*Apple, Inc. v. Pepper*); a business engaged in only nonjudicial foreclosure proceedings is not a "debt collector" under the Fair Debt Collection Practices Act (*Obduskey v. McCarthy & Holthus*); dissemination of false or misleading statements by someone who is not the "maker" of the statements can still be actionable under Rule 10b-5 (*Lorenzo v. SEC*); and the Freedom of Information Act exemption for confidential commercial information applies to commercial information treated as private by the owner and provided to the government under an assurance of privacy, without a further showing of competitive harm (*Food Marketing Institute v. Argus Leader Media*).

The Court decided far fewer cases on the criminal side of its docket, but issued a number of important decisions nonetheless. In statutory interpretation cases, the Court held that a prosecution under § 922(g) for knowingly possessing a firearm by an illegal alien requires proof that the defendant knew both that he was in the country illegally and that he possessed the firearm (*Rehaif v. United States*); generic "remaining in" burglary under the Armed Career Criminal Act (ACCA) can be shown when the defendant forms the intent to commit the crime at any time while unlawfully in the structure (*Quarles v. United States*); "burglary" under the ACCA includes burglary of a vehicle that is customarily used for overnight accommodation (*United States v. Stitt*); and a "robbery" under the ACCA requires overcoming the victim's resistance as an element of the offense (*Stokeling v. United States*).

In *United States v. Davis*, the Court struck down as unconstitutionally vague the residual clause of the felony

firearm possession statute, § 924(c), doing-in what was probably the last remaining residual clause of the federal criminal code. In an important double jeopardy case, *Gamble v. United States*, the Court declined to overrule the dual sovereignty doctrine, which permits prosecution by the state and federal governments for the same criminal conduct.

In a significant Fourth Amendment case, *Mitchell v. Wisconsin*, the Court held that exigent circumstances permit a warrantless blood test when an unconscious driver cannot be given a breath test. *Garza v. Idaho* held that when a criminal defendant instructs his counsel to appeal and counsel fails to do so, the defendant is entitled to a presumption of prejudice even if he signed an appellate waiver as part of a plea agreement. And in *Gundy v. United States*, the Court rejected a non-delegation challenge to the Sex Offender Registration and Notification Act provision giving the Attorney General broad authority to decide how to apply the act to pre-enactment offenders.

The Court also decided several sentencing cases during the Term. In *Mont v. United States*, the Court held that time spent in pretrial detention which is later credited to a new conviction tolls the running of a defendant's supervised release term. In *United States v. Haymond*, the Court held that a defendant has a constitutional right to a jury trial in connection with a supervised release violation where the statute at issue permits the judge to sentence the defendant beyond the sentence authorized by the jury's original verdict.

In an important Eighth Amendment case, the Court held that the Excessive Fines Clause is applicable to the states through the Fourteenth Amendment Due Process Clause (*Timbs v. Indiana*).

Finally, in two capital sentencing cases, the Court held that to support any claim challenging a method of execution the defendant must identify a feasible alternative procedure that would reduce the risk of pain (*Buckley v. Precythe*), and that a prisoner's inability to remember committing the crime of conviction does not necessarily preclude executing him so long as he can still comprehend why the state is executing him (*Madison v. Alabama*).

Formal Investiture of U.S. Attorney Schneider

On June 13, it was standing room only as the Court held a special session for the investiture of United States Attorney Matthew Schneider.

Schneider was originally appointed to the position in January 2018 by the Attorney General as an interim appointment. When that appointment expired, the District Court reappointed him in May 2018 to remain in the post pending his formal nomination by the President. He was nominated in June 2018 and confirmed by the U.S. Senate by unanimous consent on January 2, 2019.



Chief Judge Denise Page Hood and U.S. Attorney Matthew Schneider at his formal investiture.

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

Chief Judge Denise Page Hood opened the proceedings by introducing the federal judges in attendance as well as other dignitaries.

Michigan Court of Appeals Judge Jonathan Tukul made opening remarks and

served as Master of Ceremonies for the event.

Following the pledge of allegiance led by Schneider's children, former Michigan Supreme Court Justice Kurtis T. Wilder gave the invocation.

Three speakers gave formal remarks. First, Judge Avern Cohn spoke about, among other things, the history of the position of U.S. Attorney. Next, Detroit Mayor Mike Duggan provided comments about the importance of federal, state, and local governments partnering to reduce violent crime in Detroit and how Schneider has already shown his commitment to that partnership. Finally, Schneider's mentor, former Michigan Chief Justice Clifford Taylor, spoke warmly about Schneider and wished him well in the position.

Chief Judge Hood administered the oath to Schneider, who was surrounded by his wife, Rebecca, and their children.

Finally, Schneider spoke to the assembled crowd about his goals for the U.S. Attorney's Office. Among other things, he spoke about his commitment to the office and the importance of prosecutors treating everyone – from the judges and court staff to defense counsel and defendants – with the utmost respect while seeking justice.

Chief Judge Hood then closed the session and the crowd assembled for a reception where attendees congratulated Schneider and wished him well as U.S. Attorney.

Prior to his appointment, Schneider was the Chief Deputy Attorney General for the State of Michigan. He previously served as Chief Legal Counsel for the Michigan Office of Attorney General, where he was the lead counsel representing the Governor and the State of Michigan in the City of Detroit federal bankruptcy case.

Schneider previously served as Chief of Staff and General Counsel for the Michigan Supreme Court, Assistant United States Attorney in Detroit, Senior Advisor and Assistant General Counsel in the White House Budget Office, and practiced international law with the Washington, D.C. firm of Wiley Rein LLP.

He is a graduate of the University of Michigan Law School and Michigan State University's James Madison College.

(continued on page 6)

Bench/Bar Social

On June 24, approximately 74 golfers, including numerous district judges, magistrate judges, and lawyers enjoyed a fun-filled afternoon of golf during the 2019 Bench/Bar Social at Lochmoor Club in Grosse Pointe Woods.

This year's event, hosted by Golf Committee Co-Chairs George Donnini, Mike Asher, and Kevin Fanning, included an 18-hole scramble golf tournament followed by a cocktail hour and buffet-style dinner. The robust attendance and generous sponsorships for the event enabled revenue for the event to exceed costs by a healthy margin.

A rain-soaked spring yielded to bright sunshine for this year's event. After all attendees enjoyed a delicious dinner, an announcement was made that a three-way tie had occurred, with the three winning teams finishing with a score of 59, twelve strokes under par. This news was met with a healthy applause. Participants shared stories about the close competition on the course during cocktails and dinner, and the perfect weather and the gracious surroundings were also popular topics of conversations at many tables.

Toward the close of dinner, a short program was held and Magistrate Judge Stephanie Dawkins Davis picked the winning tickets during a lively raffle. Judge Davis personally selected each and every raffle ticket from a revolving mechanism to ensure total fairness. Many fabulous prizes were raffled off, including two putters, golf apparel, Detroit Tigers tickets, Rocket Mortgage Classic 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 2019 Bench/Bar Social provided a unique and relaxing opportunity for interaction between the District bench and bar. The Chapter would like to thank all of the event sponsors – Butzel Long, Clark Hill, Sullivan Ward,

BSP Law, Honigman, Kerr Russell, Brooks Kushman, Pepper Hamilton, and Clarence Pozza – for their generosity in making this event possible.

Community Partners Celebrate First Anniversary of Pro Se Legal Assistance Clinic

On June 18, over 100 attorneys, judges, law students, and other supporters gathered for the Pro Se Clinic Soiree, a fundraising event celebrating the first anniversary of the Federal Pro Se Legal Assistance Clinic. The reception was held at Miller Canfield's Detroit office and sponsored by the Chapter, as well as the Oakland County Bar Association, Dickinson Wright, Jones Day, Honigman, James C. Thomas, Esq., and Varnum.

The event raised over \$11,000 in support of the Federal Pro Se Clinic's work providing no-cost legal assistance to low-income individuals representing themselves in the Court. The clinic is staffed by the University of Detroit Mercy School of Law and operates with the support of the Court, the Chapter, and several other community partners. The clinic has provided over 5,000 hours of free legal services to more than 350 litigants since opening in January 2018.

Detroit Mercy Law Dean Phyllis L. Crocker began the event program by welcoming the attendees, thanking community partners, and discussing the clinic's successful first year.

Chief Judge Denise Page Hood and Judge Victoria A. Roberts discussed the clinic's

impact and the importance of pro bono legal services in the Court. Both judges were integral to the launch of the clinic and are involved in its continued operation.

Clinical Director Kevin Carlson also delivered remarks, thanking supporters and commending the 34 Detroit Mercy Law students who participated in the clinic on their work. DaiChanai Jones, a 2019 graduate of Detroit Mercy Law, shared her experience in the clinic, calling it



Participants at the Bench/Bar Golf Social included George Donnini, David Ashtenfelder, Judge Stephen J. Murphy III, Judge George Caram Steeh, Judge Robert H. Cleland, Judge Victoria A. Roberts, Kevin Fanning, Judge Laurie J. Michelson, and Bankruptcy Judge Mark A. Randon.

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



On hand for the celebration to raise funds for the clinic were (l-r) Gerald Gleeson, DaiChanai Jones, Clinical Coordinator Rebecca Nowak, Judge Victoria A. Roberts, Prof. Nick Schroeck, Chief Judge Denise Page Hood, Detroit Mercy Law Dean Phyllis Crocker, Wendy Richards, Clinic Director Kevin Carlson, and Prof. Anne Yantus.

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

“one of the most beneficial learning experiences of her law school career.”

Nick Schroeck, associate professor and director of Clinical Programs at Detroit Mercy Law, provided closing remarks and encouraged attorneys interested in doing pro bono work through the clinic to connect with his team.

To learn more about the Pro Se Clinic, visit <http://www.law.udmercy.edu>. Those interested in volunteering in the clinic should contact Rebecca Nowak, clinical coordinator, at simkinrg@udmercy.edu or 313.596.9409.

Chapter Hosts Scavenger Hunt

On June 6, the Chapter and the law firm Darrow Mustafa arranged a legal themed scavenger hunt near the federal courthouse in Detroit.

Participants were placed in teams of four people who then searched for legal-themed historical sites. Those sites included locations related to: Michigan’s first federal judge Augustus Woodward; Clarence Darrow and the Ossian Sweet case; a prohibition speakeasy visited by Al Capone and the Purple Gang; the Underground Railroad; and Michigan’s first federal court house.

Taking first place was the team organized by Judge Stafford’s law clerks, which included Karen Benjamin, David Mellem, Nathan Cole, and Brian Wassom.

Chapter Hosts Speakers on Bias Disruption

We all have unconscious biases. Some of our biases are positive, and some of them are not so positive. Either way, we can all take steps to make the unconscious conscious. If we learn to disrupt our biases, we can improve our personal and professional relationships with all people.

Distilled down, this was the message delivered by Sixth Circuit Judge Bernice Donald and Professor Sarah Redfield at the Chapter’s “Become a Bias Disruptor” and the Court’s unconscious bias training hosted on May 28. The many lawyers, judges, law clerks, and court staff

in attendance learned how to foster more egalitarian professional relationships with clients, opposing counsel, fellow attorneys, and judges. Attendees also learned to use the skills outside their professional lives.

Judge Donald and Professor Redfield are experts on implicit bias. Professor Redfield edited the book *Enhancing Justice: Reducing Bias* to which Judge Donald contributed a portion. Because Judge Donald and Professor Redfield are much sought-after trainers on unconscious bias, bringing them to the Eastern District was a joint effort by the Court and the Chapter. For the first time, the Federal

Court’s Diversity & Inclusion Committee and the Chapter’s Diversity Committee joined forces to plan an event, or more precisely, two events.

In the morning Judge Donald and Professor Redfield provided training to judges and court employees. Those in attendance included Chief Judge Denise Page Hood, Judge Laurie J. Michelson, Judge Judith E. Levy, Judge Terrence G. Berg, Judge Paul D. Borman, Judge David M. Lawson, Judge Avern Cohn, Judge Marianne O. Battani, Magistrate Judge David R. Grand, and Magistrate Judge Anthony P. Patti. In addition, people from across the courthouse showed an interest in becoming more conscious of their biases. Attendees included law clerks and members of the Court’s probation, pretrial, court services, financial, and human resource departments.

In the afternoon, Judge Donald and Professor Redfield provided training to Chapter members and other lawyers who practice in the Eastern District. Over 90 Chapter members registered to take the three-hour training on the day after Memorial Day, demonstrating

the Chapter’s strong commitment to diversity and inclusion.

Such a large undertaking-involving two committees, unique funding, a sitting Court of Appeals judge, and a busy law professor-came together easily. Planning and supporting this event were the Chapter President and the Executive Board, the Chapter’s Diversity Committee, and the Court’s Diversity and Inclusion Committee. Special thanks to Saura Sahu, Mindy Herrmann, Chief Judge Denise Page Hood, Jim Carroll (Chief Judge Hood’s law clerk), Jeff Appel, and Diversity Committee members Eric Lee, Matt Monahan, and Dawn Ison.



Nathan Cole paused for a “selfie” with scavenger hunt teammates (l-r) Brian Wassom, Karen Benjamin, and David Mellem.



Speakers and attendees at the Bias Disruption event were (front, l-r) Chief Judge Denise Page Hood, Circuit Judge Bernice Donald, Professor Sarah Redfield, and (back, l-r) Matt Monahan, Chapter Diversity Committee Co-chair Eric Lee, Chapter President Saura Sahu, State Bar of Michigan Director of Diversity Greg Conyers, and Chapter Diversity Committee Co-chair Dawn Ison.

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

(continued on page 8)

Bias Disruption *(from page 7)*

While the mechanics of the event (who planned it, who spoke, and when) are all noteworthy, more important is the event's take-home message. Judge Donald and Professor Redfield urged everyone to become more aware of their unconscious biases. "But how do I become more conscious of my implicit biases?," you ask. Judge Donald and Professor Redfield suggested taking the Implicit Association Test at <https://implicit.harvard.edu/implicit/takeatest.html>. In fact, that was homework for all in attendance.

"And once I have insight into my implicit biases, what can I do about them?," you ask. Judge Donald and Professor Redfield also provided help answering that one. For one, just becoming aware of our unconscious biases is a great start. It helps us be especially diligent in those situations where we might be prone to unconsciously treat someone a bit differently. However, the speakers offered other techniques to combat unconscious bias, including creating objective assessment criteria (all job candidates with a 3.5 GPA and above make the first cut) and then sticking with those criteria even if they yield unexpected results. Judge Donald and Professor Redfield also suggested the following thought experiment as a means for combating unconscious bias: if we have a bias against a certain trait, imagine an identical person without the trait; then ask ourselves if we would say and do the same things.

In short, the Chapter's "Become a Bias Disruptor" training and Federal Court's unconscious bias training were great starts to becoming better legal professionals. The Court's Diversity and Inclusion Committee and the Chapter's Diversity Committee are very thankful for the

support they received in bringing this important training to the Eastern District and hope to host events of similar impact in the future.

First Annual Immigration Talk

The Chapter's Immigration Law Committee held its First Annual State of the Immigration Law Talk on May 22.

The featured speaker was Judge Paul Schmidt, a retired Board of Immigration Appeals chairperson and former Immigration Judge.

Judge Schmidt presented a speech on the current status of the immigration courts and due process within those courts. Schmidt expressed his belief that the lack of due process stems from the fact that immigration court is part of the executive branch. He believes that the immigration courts need to be made part of the federal judiciary. His speech demonstrated the abhorrent courtroom conditions for persons appearing before the immigration courts, as well as for the immigration judges themselves. These conditions include high caseloads, rocket dockets (where cases are heard almost immediately without the opportunity to obtain evidence and prepare for the hearing), and mass hearings without individualization. According to Schmidt, the system is set up to deny due process to persons appearing before immigration courts, and to deprive immigration judges of the tools they need to do their jobs.

Afterwards, there was a lively question and answer session on the current state of the immigration courts and the drastic need for changes. Among the changes discussed was the need to restore professionalism and independence to immigration judges. Many attendees felt that currently



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immigration judges are treated like factory clerks with no independence in making decisions. Another change discussed was the possibility of requiring the application of the Federal Rules of Evidence in immigration court. The perceived lack of due process in immigration court dominated a lot of the discussion.

The talk was attended by immigration law practitioners, federal career law clerks, members of academia, and representatives of local non-profit organizations.

The Immigration Law Committee is looking for topics and speakers for next year's event. Please contact members of the committee, Caridad Pastor Cardinale (248-619-0065) and Michael Carlin (313-961-0200), with suggestions.

Mogill Receives Gilman Award

On May 23, the Chapter honored Kenneth M. Mogill by presenting him with the Leonard R. Gilman Award at the annual Gilman Luncheon. The luncheon was held at the Crowne Plaza Detroit Downtown Riverfront, where attendees filled the room to recognize Mogill and hear from the keynote speaker, U.S. Attorney Matthew Schneider.

Mogill is a partner in Mogill, Posner & Cohen. He is an exceptional criminal defense lawyer and, since 2002, he has been an adjunct professor at Wayne State University Law School. He has argued three times in the U.S. Supreme Court and was co-counsel in the landmark case of *Obergefell v. Hodges*. He was Chair of the State Bar of Michigan's Committee on Professional Ethics (2014-17) and is a past member of the American Bar Association Center for Professional Responsibility Committee on Continuing Legal Education.

Mogill is president of the board of directors of the Michigan Campaign for Justice and a past president of Criminal Defense Attorneys of Michigan (1990-94). He earned his undergraduate and law degrees from the University of Michigan.

At the luncheon, after an introduction by Chapter President Saura Sahu, Chief Judge Denise Page Hood led the crowd in a moment of silence in honor of Circuit Judge Damon J. Keith, who recently passed away.

Sahu returned to the podium to introduce Schneider.

In his remarks, Schneider gave an informative and entertaining presentation on the history of public corruption cases in the Eastern District. He not only addressed the more recent cases, such as the prosecution of former Detroit Mayor Kwame Kilpatrick, but he also educated the crowd on some older cases, such as former Detroit Mayor Richard Reading, who was mayor in the late 1930s and later convicted of taking bribes, and former Detroit Mayor

Louis Miriani, who was mayor from 1957-1962, and was convicted of tax crimes.

After lunch, Wayne Pratt, Chair of the Gilman Award Committee and a prior Gilman Award recipient, spoke about the Gilman Award. He introduced Douglas Mullkoff, who then presented the award to Mogill.

In accepting the award, Mogill spoke about being motivated by the civil rights movement to attend law school, the mentors to whom he is indebted, the friendships made while litigating in the District, and an early lesson in ethics he received from his late father in the course of playing little league baseball.

The Gilman Award is given annually to an outstanding practitioner of criminal law who exemplifies the excellence, professionalism, and commitment to public service of Len Gilman, who was U.S. Attorney at the time of his death in 1985.

Past Presidents Luncheon

On May 9, in keeping with a now four-year tradition, the Chapter's Officers and Past Presidents gathered at the historic Whitney to enjoy excellent food and the pleasure of one another's

company.

Chapter President Saura Sahu introduced the proposed slate of officers, which included the addition of George Donnini as incoming Program Chair. The slate was unanimously approved by the Past Presidents.

Sahu 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.

Sahu 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, Sahu ceded the floor to his successor, President-Elect Matt Lund. Lund previewed the forthcoming year and told the group to expect a continuation of the standard of excellence our Chapter enjoys. Vice President Fred Herrmann summarized the key activities from the past year. Secretary-Treasurer Dan Sharkey provided an overview of the finances and summarized the past year's four luncheons.

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



Gilman Award attendees included (l-r) retired Judge Fred Mester, Jennifer Grieco, Jeffrey Appel, Maureen Shaughnessy, Dan Sharkey, Ken Mogill, U.S. Attorney Matthew Schneider, Jennifer Newby, and Saura Sahu.

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

THE FEDERAL BAR ASSOCIATION
EASTERN DISTRICT OF MICHIGAN CHAPTER, LAW CLERK COMMITTEE PRESENTS



Judicial FAMILY REUNION

**ATTENTION CURRENT AND FORMER LAW CLERKS
TO THE 6TH CIRCUIT, DISTRICT, MAGISTRATE &
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Please join our Judges, along with fellow and former law
clerks, at the Sixth FBA Judicial Family Reunion!

THURSDAY, OCTOBER 17, 2019 | 5:30 – 7:30 PM
HONIGMAN'S DETROIT OFFICE
660 Woodward Avenue | Detroit, Michigan 48226
Hors d'oeuvres will be served. Parking provided.

MEMBERS \$20 | NON-MEMBERS \$30
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BENEFITS OF JOINING THE FBA:

- Access to outstanding educational programming
- Network with extraordinary professionals, both practitioners and judicial officers
- Promote professionalism, service and social responsibility within the federal bench and bar



Book Club

Federal judges, lawyers, and guests met on May 14, 2019, for the Chapter's spring Book Club to discuss *Dreamland: The True Tale of America's Opiate Epidemic*, a National Book Critics Circle Award winner by Sam Quinones.

Following the Book Club's recent discussions of mass incarceration and landlord-tenant relationships, this book continued the group's examination of current social issues and the legal system's role in those issues.

Opioid addiction is of particular importance in this District, as one recent study from May 2019 reported that Michigan has the second highest rate of drug use in the nation, behind only Washington, DC.

The group discussed the role of many players in contributing both to the crisis and to possible solutions, including pharmaceutical companies, law enforcement, regulators, doctors, courts, small towns, dealers, addicts, and their families.

The Book Club will meet again in the fall. Stay tuned for the next book selection!

Law Day

Around the Levin U.S. Courthouse, May 1 has become synonymous with Law Day, an annual event in which the Court opens its doors to students and other community members, offering them the opportunity to tour our beautiful Courthouse, and to learn about current legal issues, careers in the law, and how our legal system functions. Each year, Law Day follows a particular theme to highlight the importance of that idea as it affects the legal process. This year's theme was, "Free Speech, Free Press, Free Society."

Law Day's main sponsor, the American Bar Association, described the importance of this topic in today's world:

In the United States and around the world, freedom of speech and the press are among the most important foundations for a free society. Free speech and free press are prominent topics in public discourse and litigation. It is impossible to imagine a free society without these individual liberties, yet historical and current debates surrounding them continually challenge us to consider their boundaries and resilience. Changes in technology have reshaped how free speech and free press work in the everyday world.

Unfortunately, due to the Court's ongoing renovation project, the Chapter was unable to conduct its traditional program this year. Instead, members of the Chapter's Law Day Committee are visiting local high schools to bring Law Day to them.

Calendar of Events

Oct. 17 Judicial Family Reunion

Current and former law clerks to the Sixth Circuit, District, Magistrate, and Bankruptcy Judges in the Eastern District are invited to join the Judges for the Sixth Judicial Family Reunion.
Honigman's Detroit Office, 660 Woodward Avenue
5:30-7:30 p.m. (Parking Provided)
Members: \$20 | Non-Members \$30
RSVP by October 7
www.fbamich.org/FBAEvents.asp

Oct. 23 State of the Court Luncheon

Speaker: Hon. Denise Page Hood
Location: TBD
11:30 a.m. to 1:00 p.m.
RESERVE YOUR SPONSORSHIP TODAY
To inquire about a Sponsor's Season Table Ticket contact Program Chair George Donnini at donnini@butzel.com or Mindy Herrmann, Chapter Executive Director at 248.231.7887 or fbamich@fbamich.org.
Individual tickets: Members: \$45 | Non-Members \$60

Nov. 20 Rakow Scholarship Awards/Historical Society Luncheon/Rom Award

Location and speaker: To be announced.
11:30 a.m. to 1:00 p.m.
Individual tickets: Members: \$45 | Non-Members \$60
| Law Clerks: \$35

Dec. 3-4 New Lawyers Seminar

Theodore Levin U.S. Courthouse
8:30 a.m. Registration
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Dec. 4 Holiday Party HOLD THE DATE

5:00 – 7:00 p.m.
Members: \$60 | Students/clerks: \$50 | Non-Members \$80
Location: to be announced
Registration Coming Soon!

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

Thus, on May 9, Magistrate Judge David Grand and attorney Doaa Al-Howaishy visited Belleville High School, and spoke with students about their First Amendment rights in the public school setting. The two discussed *B.L. v. Mahanoy Area School Dist.*, a 2019 case from the Middle District of Pennsylvania. In that case, a public high school student was dismissed from its cheer team for an off-campus, weekend Snapchat post she made that contained a few choice four-letter words about her school and the cheer team. The "subject matter" definitely piqued the students' interest, and they all felt, as did the district judge who decided the case, that the student should prevail. The district judge found that the student's words were protected by the First Amendment.

The Chapter looks forward to resuming its regular Law Day activities next year.

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