



FBAnewsletter

Winter 2021

Federal Bar Association - Eastern District of Michigan Chapter - 63 years of service to our Federal Bench and Bar



Michael Carter

Photo courtesy of Neighborhood Defender Service.

Welcome Michael Carter New Chief Public Defender

For the first time in 25 years, there is a new chief public defender for the Eastern District of Michigan. On December 7, 2020, Michael Carter

became the executive director of the Federal Community Defender Office for the Eastern District of Michigan ("FCDO"). Carter took over from long-time Deputy Chief Richard Helfrick, who served as acting chief since March 2020, when Miriam Siefer retired after 25 years in the position. Carter is no stranger to the FCDO, having previously worked as a deputy defender.

Carter attended Wayne Law after his undergraduate studies at the University of Michigan. Although he wishes he could say legal giants such as Charles Hamilton Houston or Thurgood Marshall led him to the law, he was actually "inspired" by the character Eugene Young on the popular TV legal drama, *The Practice*. Carter went to law school intending to practice criminal defense, but not to be a public defender. His first job was working as an associate at the law office of John A. Shea in Ann Arbor.

(continued on page 2)



President's Column

Fred Herrmann

Chapter President-Elect Dan Sharkey and I first met as adversary counsel in a case many years ago. I don't remember the case, but I remember Dan:

professional, respectful, and cooperative—all while zealously representing his client. More recently I had a case with former Chapter President Tom Schehr. Same experience. And I am fond of relaying to younger lawyers a similar encounter I had with former State Bar President Lori Buiteweg, who was across from me in one of my earliest court appearances in Washtenaw County Circuit Court. It's no surprise that these lawyers are current or former leaders in our state and federal bar associations.

I know we all have stories like this to share. Yet, there is a less encouraging corollary to this history. On the occasions when I encounter lawyers unfamiliar with – or unwilling to abide by – our Civility Principles, I usually find they were not raised in a similar community of bar service. That's no coincidence. In the heat of advocacy, it is tempting to forget that we are, first and foremost, Officers of the Court. As a Chapter, this understanding runs like a silver thread through everything we do. We know how important it is to maintain our community of professionals. Our clients and society benefit from the efficiencies of professional zealous advocacy born of mutual respect.

This is why the Chapter focuses so much energy on our young lawyers and those new to our District. We want to share these stories, and ensure they remain part of our tradition. I am pleased to report our next generation of Chapter leaders is eager to carry that torch. Despite the pandemic, 2021 was a record attendance year for our New Lawyers Seminar ("NLS"). Our NLS Committee worked tirelessly, as always, to put on a modified yet thorough virtual tutorial for our newest professionals, and 88 new lawyers attended the program over two days in January! Recently, we followed up by

(continued on page 2)

WINNER
18 YEARS
National FBA
Outstanding
Newsletter
Award

INSIDE THIS ISSUE

Kinikia Essix	pg. 3
45th Annual New Lawyers Goes Virtual	pg. 3-4
U.S. Magistrate Judge Steven Whalen Retires	pg. 4-5
Bankruptcy Committee Co-Sponsors Pandemic-Related Contract Issues	pg. 5-6
Book Club	pg. 6
Wade Hampton McCree Jr. Luncheon	pg. 6-8
Civil Rights Étouffée	pg. 8
Seditious Conspiracy	pg. 9
Criminal Law Hosts Panel for Students	pg. 9-10
Officers and Directors Listing	pg. 11
Calendar of Events	pg. 11

President's Column (continued)

hosting a virtual happy hour for the lawyers who attended NLS. Thank you to all involved for making this such a successful event: our NLS Committee and Executive Director, our participating judges and attorneys who carved time from their busy schedules to make the event a success, and our attendees who voted loud and clear to become future leaders in our Chapter.

As we all know, NLS is just the beginning. This year our Chapter said "boo" to the pandemic and continued all of the great programming our Members deserve. In our Fall Book Club, we discussed Eric Foner's "The Second Founding." In December, we hosted our annual Holiday Party. FBA National President W. West Allen joined us and paid many kind compliments to our Chapter. Cohn Award recipient Jack Goldsmith discussed his book "In Hoffa's Shadow," and special guest Jasen Magic performed some pre-party magical shenanigans to the delight of family members young and old. In January, our Bankruptcy Committee co-sponsored a panel on Drafting and Enforcing Contracts in Light of COVID-19 and our Civil Rights Committee co-sponsored the National FBA's Civil Rights Étouffée CLE event. In February, our Criminal Law and Practice Committee doubled-down with a panel discussion on Seditious Conspiracy and a seminar on Criminal Federal Court Practice. We even held a Microsoft Office training event (for those who have trouble finding the computer "on" button...) We don't just get together—we engage.

And of course, in February we held our annual Wade H. McCree, Jr. Memorial Luncheon, where the McCree Award for the Advancement of Social Justice was bestowed upon the very deserving Legal Aid & Defender Association, Inc., a nonprofit organization providing comprehensive legal services to residents of Wayne, Oakland and Macomb counties who cannot afford an attorney. Our keynote speaker, Sixth Circuit Chief Judge R. Guy Cole, Jr., submitted to an interview led by Aaron (McCree) Lewis, Judge McCree's grandson. Once again, we tied a silver thread through generations of legal professionals.

While our gathering honoring the memory of Judge McCree is always an important highlight of our Chapter year, it was a particularly important point of reflection this year. Much has transpired to which we as lawyers are obligated to attend. In that vein, and with great thanks to the devotion of our Diversity Committee, please give attention to our commitment regarding equal justice in this issue of our Newsletter. Just as we come together in our bar association with mutual respect and professionalism toward each other, we must also approach the daunting challenges of society at large with the same perspective: a commitment to inclusivity, collaboration, and education toward the elimination of injustice.

We have much to be proud of, and much to share. Please invite others to join us.

Welcome Michael Carter

(from page 1)

Carter witnessed firsthand the difference quality lawyering could have in the outcome of criminal cases and decided that he wanted to provide the same high standard of practice he learned in private practice in the field of indigent defense. He left Shea's office in 2011 to become a staff attorney for Public Defender Services for the District of Columbia (PDS), where he handled hundreds of cases in D.C. Superior Court. It was there that he developed a passion for public defense.

Shea recalls a conversation he had with Carter when he announced he was leaving for PDS. "When Mike left Southeast Michigan some years ago for PDS, he assured me that he'd return to work in the indigent defense field. True to his word, he did." Shea has kept in touch with Carter and has high praise for him:

There are many strong lawyers and leaders in the criminal defense profession. It's much rarer to find someone who has Michael's combination of smarts, vision, commitment, interpersonal skills, and loyalty to our communities. I'm looking forward to him now leading the Federal Defender Office into its next phase.

In 2016, after five years in D.C., Carter returned home to work as deputy defender at the Federal Community Defender and to be closer to family. He spent three and a half years at the office before becoming a supervising attorney at the newly formed Neighborhood Defender Services of Detroit ("NDS") in August 2019.

Carter's vision for the FCDO combines his knowledge of what is currently working at the FCDO with the lessons he learned as an attorney at other public defense organizations and the commitment to excellence he developed working with Shea. Former Executive Director Miriam Siefer knows the FCDO is in good hands, noting:

Mike embodies all the qualities that make him the leader the Federal Community Defender Office needs now. He brings a wealth of trial experience, federal criminal defense experience and a genuine commitment to representing the indigent. Right person. Right time.

The FCDO governing board shares Siefer's confidence in Carter. Indeed, board member Gerald Evelyn has no doubts that Carter was the right choice for the position:

Mike Carter's combination of exemplary legal talent and extraordinary commitment to protecting the rights of indigent defendants makes him uniquely suited to be the new Executive Director of the Federal Community Defender Office. He will bring experience, energy, and inspirational leadership to an office that is already one of the top defender offices in the country.

Perhaps most importantly, Carter has the confidence of the FCDO staff. Benton Martin, an attorney at the office, believes most of the office feels the way he does:

When we heard Miriam Siefer was retiring, people were nervous. Miriam was an esteemed leader, and everyone wondered what a new chief would mean. When the board chose Mike, nervousness turned into excitement. He is a steady hand who understands the difficulties of the job and respects the work we have been doing, while at the same time is bringing new energy and ideas. He is a perfect choice.



Kinikia Essix, Court Administrator/ Clerk of Court

The Court continues to work remotely nearly a year after our initial closure (hard to believe it's been almost a year). A committee comprised of district and magistrate

judges and court staff continue to meet and have established protocols to implement once Court facilities are reopened. The most recent epidemic order from the Michigan Department of Health and Human Services lowered restrictions on certain gatherings, which allowed more businesses and organizations to reopen. The Court hopes to be among that number in the near future. Until then, the committee will continue to monitor trends and guidelines to help determine the best time to restart operations at the Court.

An administrative order was entered in response to recent disclosures of wide-spread breaches of both private sector and government computer systems. New security measures have been put in place to protect highly sensitive documents that need to be filed with the Court. The administrative order outlines the procedure on how to request the Court to determine that a filing is a highly sensitive document, and it describes how the Court will accept and store those documents. It also defines the factors to consider in determining which documents should be designated as highly sensitive.

The Court is preparing to conduct a test virtual civil jury trial in March. In collaboration with our counterparts in the Western District of Washington, who have already held a few virtual civil jury trials, a committee of judicial officers and court staff will establish protocols and procedures after examining the successes and challenges of the test civil jury trial. The entire civil jury trial will take place using the ZoomGov platform. The parties, counsel, witnesses, and jurors will not physically be present in the courtroom. At the conclusion of this trial, the Court will evaluate the process and consider scheduling additional trials.

Please be assured that the Court is doing everything it can to ensure the safety of its staff, members of the bar, and the public. For the most current information, please visit the Court's website.

If you have any suggestions or comments please contact me at: kinikia_essix@mied.uscourts.gov.

45th Annual New Lawyers Seminar Goes Virtual

The Chapter recently hosted its 45th Annual New Lawyers Seminar by Zoom. Eighty-eight attendees participated in the two-day seminar, learning all about the "in's and out's" of life as a new attorney. The New Lawyers Seminar (NLS) Committee is grateful to Chapter leadership, and especially the Executive Director, Mindy Herrmann, for the encouragement to go forward with this important event during the pandemic. It succeeded far beyond our expectations, garnered high marks from the attendees, and added some fresh faces to the Chapter as new members.

Prior to the seminar, our energetic Executive Director took the initiative to assemble an inaugural NLS newsletter, complete with pictures and interesting facts about each of our attendees as well as the committee co-chairs. The diverse and inspiring stories behind the career choices of the group were a great launchpad for getting to know one another better sans face-to-face contact.

The first day of the program focused on federal practice, with discussions on the elements of civil and criminal practice, bankruptcy law, employment law, and the nuts and bolts of practicing in federal court. The day concluded with an enjoyable meet and greet with state and federal judges and bar representatives. The following members of the judiciary shared their favorite books and movies with the new attorneys in a large Zoom session followed by breakout chat rooms: District Judges Terrence Berg, Sean Cox, Stephanie Dawkins Davis, Mark Goldsmith, Bernard Friedman, David Lawson, Matthew Leitman, Judith Levy, Laurie Michelson, Linda Parker, Victoria Roberts, Arthur Tarnow, and Chief Judge Denise Page Hood and Magistrate Judges Kimberly Altman,

(continued on page 4)

45th Annual *(from page 3)*

David Grand, Curtis Ivy, Anthony Patti, and Elizabeth Stafford. The Honorable Patricia Perez Fresard, Chief Judge Pro Tem of the Third Judicial Circuit also joined the fun. Additional special guests included our own chapter President Fred Herrmann, State Bar of Michigan President Robert Buchanan, and Samantha Orvis from the State Bar Young Lawyers Section.

The second day of the program began with a discussion on attorney grievance proceedings and continued with presentations concerning state law practice, including handling personal injury, workers compensation, criminal, and domestic relations cases, managing real property transactions, and practicing in probate and family court. The second day concluded with a mass swearing-in ceremony before Chief Judge Hood, when the new attorneys were admitted to practice in the Eastern District of Michigan.

The NLS Committee wishes to express its gratitude to all the members of the judiciary, bar representatives, court staff, and practicing attorneys who made this event possible. We especially thank our speakers, all of whom donate their time, and many of whom have done so year after year. They are Chief Judge Denise Page Hood, Richard T. Hewlett, Magistrate Judge Anthony P. Patti, Angela L. Jackson, Judge Laurie J. Michelson, David DuMouchel, Charissa Potts, Cathrine Wenger, Judge Stephanie Dawkins Davis, Judge Matthew F. Leitman, Angela Brown, Scott Warheit, Michael Goetz, Todd Flood, Tom Kabel, Lawrence Pepper, Albert Dib, Kay Malaney, and Andrea Hamm.

The Chapter put a final personal touch on the seminar by sponsoring a virtual happy hour on February 11th. Many chapter officers, board members, committee chairs, and even members of our Eastern District of Michigan Bench attended and got to know these new attorneys better. While this year's seminar was a major achievement for the FBA in that it was the first to be held virtually, the FBA is anxious to host its next seminar without the constraints of a pandemic! The dates are already set for January 25 and 26, 2022.

U.S. Magistrate Judge Steven Whalen Retiring

After 18-plus years on the bench, U.S. Magistrate Judge Steven Whalen is retiring this June. He was appointed in 2002 and has been Executive Magistrate Judge since 2003.

To hear Judge Whalen tell it, he never really aspired to a judicial career. During law school, he was employed as a work-study student at the Federal Defender Office where he developed a strong interest in both criminal law and legal writing and research. Following graduation, and after a short stint as a legal aid attorney, he joined the State Appellate Defender Office where he spent the next seven years arguing criminal appeals in the Michigan courts, as well as the U.S. Court of Appeals for the Sixth Circuit and the United States Supreme Court. Judge Whalen left SADO for private practice, where he continued in criminal defense, including state and federal trials in addition to his appellate work. In 2001, he published a comprehensive manual and form book for Michigan criminal appeals on



Get a real **INTELLIGENCE EDGE** over your adversary!

Exceptional attorneys always look for an edge. ASG provides actionable intelligence your opponent won't have. You don't need a New York or DC agency charging you New York and DC rates to get deep, verified, actionable intelligence; ASG is a real Private Intelligence Agency right here in Metro-Detroit.

- Background Intelligence Dossiers
- Deep Internet Profiles
- Real-Time Juror Profiles
- Surveillance
- Intellectual Property Investigations
- Corporate Investigations
- Locate Investigations
- Domestic and Foreign Due Diligence

BACKGROUND CHECKS
INTELLIGENCE • INVESTIGATIONS

888-677-9700 | ASGInvestigations.com

behalf of the Michigan Justice Training Commission. As a federal panel attorney, he tried cases before almost all of the District Judges in the Eastern District. (Apparently, they didn't hold that against him when he was selected to fill the Magistrate Judge vacancy.)

In 2001, Judge Whalen fortuitously saw the posting for the Magistrate Judge position, and thought "Well, it's a long shot, but why not apply?" The rest, as they say, is history. During his tenure, he has presided over a number of trials, including several prisoner and non-prisoner civil rights cases, products liability claims, insurance coverage disputes, and misdemeanors. Among his more memorable cases was *Flagg v. City of Detroit*, which involved reviewing a staggering 660,000-plus text messages by City of Detroit employees. He credits the Court's IT department and now-retired Magistrate Judge Michael J. Hluchaniuk for their help in completing the months-long project.

In addition to his own docket, Judge Whalen's duties as Executive Magistrate Judge include supervising the Court's staff attorneys and other significant administrative responsibilities. Yet, while those responsibilities consume significant chamber resources, Judge Whalen has steadfastly refused offers to reduce his docket, which would have resulted in a greater burden to the rest of the Magistrate Judge bench. But his former case manager, Johnetta Williams, recounts an instance where Judge Whalen opted for one of the rare perks of the position:

I opened Court and said, 'Court is now in session, the Honorable Executive Magistrate Judge R. Steven Whalen presiding.' After the hearing, he asked me: 'Why did you say Executive Magistrate Judge?' I replied, 'It's your official title.' And he said, 'Moving forward, that is how I want the Court to be opened!'

Magistrate Judge Patti notes:

Judge Whalen was a welcoming presence when I first came to the bench, and has become a trusted friend, from whom I have learned much. His sense of humor, musical ability and love for Spanish language and Mexican culture make him an especially interesting, well-rounded and colorful person. His fairness on the bench and concern for the "little guy" have served as a beacon of justice for all of us.

Among current and former law clerks and case managers, Judge Whalen is known for his excellent work ethic, his ability to supervise without micro-managing,

and most particularly his excellent judicial temperament. Judge Whalen attributes his patience and ability to overlook imperfect lawyering and good faith error to his long career on the "other side of bench." At the point that his staff would have given the "vaudeville hook" to verbose in-court litigants and jail time to parties filing 50-page summary judgment briefs in 10-point type, Judge Whalen's typically calm demeanor and proportional remedies carried the day.

The last word goes to those who know him best, who of course are his Judicial Assistants. Judge Whalen has had just two judicial assistants in his 18 years as a judge, both of whom, in his own words, have made "invaluable" contributions to his time on the bench. His current JA, Terri Hackman says, "It has been my pleasure to work for MJ Whalen for the past ten plus years. He is not only a great judge but also a great person. He is always willing to lend a hand to anyone who needs assistance."

Gina Wilson, who worked with Judge Whalen from 2002 to 2009, sums up the sentiments of his current and former staff:

It was nothing short of a privilege and honor to have worked with Magistrate Judge Whalen. His commitment to fairness and justice was and remains admirable. His easy-going demeanor made it a pleasure to be part of his chambers.



*U.S. Magistrate Judge
Steven Whalen*

*Photo courtesy of US District
Court for EDMI.*

Bankruptcy Committee Co-Sponsors Webinar on Pandemic-Related Contract Issues

On Thursday, February 4, 2021, the Bankruptcy Committee partnered with the Debtor/Creditor Rights Committee of the Business Law Section of the State Bar of Michigan to present a webinar: "Drafting and Enforcing Contracts in Light of COVID-19." The panel-led discussion of contract issues and case law developments during the pandemic was a rousing success. More than 560 people, from all sectors of the Detroit legal community and around the state, registered for the event.

Judith Greenstone Miller, of Jaffee Raitt Heuer & Weiss, moderated the panel, comprised of Bankruptcy Judge Joel D. Applebaum, Steven G. Howell, of Dickinson Wright, Shanna M. Kaminski, of Kaminski Law, Michael S. Khoury, of Fisher Broyles, and Bradford S. Moyer, of Plunkett Cooney. Each panelist approached the timely conversation from a unique angle, informed by his or her practice.

(continued on page 6)

Bankruptcy *(from page 5)*

First, Howell began the discussion with an overview of force majeure clauses in contracts, equitable doctrines such as frustration of purpose and impossibility of performance, and UCC § 2-615. He explored contract drafters' relationships with these tools and their nuances. Second, Kaminski addressed the challenges litigators face in wielding force majeure clauses and equitable doctrines to excuse performance under a contract. Third, Khoury—through a transactional lens—highlighted important contract drafting themes in the COVID-19 era, where pandemics are foreseeable and allocation of risk is as difficult a balancing game as ever. Fourth, Moyer shed light on the unique aspects of insurance contract drafting and policy interpretations during the pandemic and gave an overview of courts' treatment of COVID-19-related coverage issues in Michigan and beyond. Finally, Judge Applebaum rounded out the discussion with an in-depth look at disparate interpretations of contracts by courts around the country during the pandemic thus far.

A few themes emerged that tied each of the panelists' presentations together. Above all, each contract is unique. Because parties' wants, needs, and expectations vary from negotiation to negotiation, a lawyer's attention to her client's goals is essential to determining whether and how to draft a force majeure clause or policy exclusion. Relatedly, there is no such thing as a boilerplate force majeure clause. It is incumbent upon lawyers to carefully negotiate, and then articulate, allocation of risk. As for litigation—although trends are emerging in case law, the panel observed that it will be difficult to predict any one judge's treatment of contract performance obligations until appellate courts weigh in.

The panelists' dynamic presentation of these issues could not have come at a better time. Case law is scarce, but the desire to gain leverage for clients during the pandemic, whether in court or while re-negotiating a contract, is at an all-time high. The Bankruptcy Committee is thrilled that over 500 people registered for this event, and it aims to continue offering programming on timely issues. On March 5, 2021, it will present another panelled webinar on the Consolidated Appropriations Act and its impact on bankruptcy law.

If you are interested in joining the Bankruptcy Committee and assisting with future programming like "Drafting and Enforcing Contracts in Light of COVID-19," please email Committee Co-Chairs Charissa Potts of Freedom Law (cpotts@freedomlawpc.com) and David Lerner of Plunkett Cooney (dlerner@plunkettcooney.com).

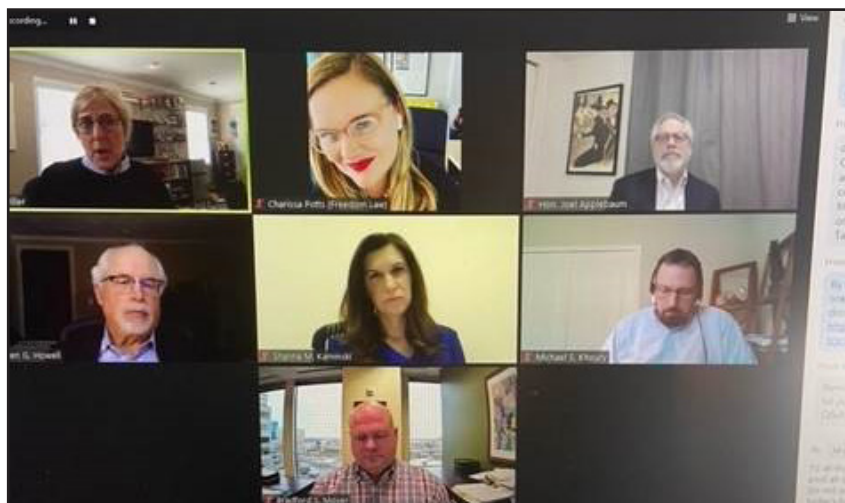
The Book Blub

The Chapter's book club hosted its biannual meeting on December 9, 2020, to discuss "The Second Founding: How the Civil War and Reconstruction Remade the Constitution," by Eric Foner, a Pulitzer Prize winner and history professor at Columbia University. The book examines the 13th, 14th, and 15th amendments of the U.S. Constitution that sought to establish equality and how those principles have changed over time.

Fifteen judges and lawyers attended the virtual meeting, the first of its kind for the book club. They engaged in a robust discussion about the amendments, their history, and their application today, especially in light of current events and the renewed emphasis on social justice. The group adapted easily to the virtual format, and the discussion thrived.

The book club will host its next meeting in spring 2021. Stay

tuned to the e-blast for the book selection and date. Contact Co-Chairs Andy Doctoroff, Erica Fitzgerald, or David Fink if you have any book recommendations or questions.



Bankruptcy Committee Webinar

Photo by Melinda Herrmann.

2021 Wade Hampton McCree Jr. Award Virtual Luncheon

On February 24, 2021 the Chapter hosted its annual Wade Hampton McCree Jr. Award Luncheon for the Advancement of Social Justice via Zoom. The nationally-recognized McCree Award is given annually to an individual or organization who has made significant contributions to the advancement of social justice.

In lieu of mingling in person at the Atheneum Hotel before the program, this year's luncheon attendees convened in "small group socials" on Zoom for roughly a half an hour. With roughly ten attendees—a mix of lawyers and judges—per Zoom room, the small group setting

fostered conversation, introductions, and the atmosphere of camaraderie typical of pre-pandemic FBA luncheons. After half an hour of socializing, Chapter President Fred Herrmann launched the program with opening remarks.

Chief Judge Denise Page Hood introduced the program's keynote speaker, Chief Judge R. Guy Cole, Jr., of the U.S. Court of Appeals for the Sixth Circuit. In an interview-style discussion, Chief Judge Cole entertained questions from Herrmann and Wade McCree Jr.'s grandson, Aaron McCree Lewis of Covington & Burling LLP. Chief Judge Cole reflected on topics ranging from leading the Sixth Circuit Court of Appeals through the pandemic to his definition of social justice. In the spirit of the McCree Award, the conversation highlighted Chief Judge Cole's lifelong vision of law as a vehicle to effect change in society. That vision has roots in Chief Judge Cole's childhood in Birmingham, Alabama, surrounded by civil rights leaders who heavily influenced his understanding of justice and the importance of public dialogue to social progress.

After Chief Judge Cole's interview-address, Erica Fitzgerald of Barris, Sott, Denn & Driker presented the McCree Award to this year's recipient: Legal Aid and Defender Association, Inc. President and CEO Nicole Neal Goodson accepted the award on the Association's behalf. Goodson expressed what an honor it is for Legal Aid and Defender Association, a 501(c)(3) Michigan nonprofit organization based in Detroit, to receive this prestigious

award. Legal Aid and Defender Association serves the Metro Detroit community by offering civil legal services to residents of Wayne, Oakland, and Macomb counties who cannot afford an attorney. While it has a long and impressive history—it is the oldest provider of free civil legal assistance to low-income Michigan residents—Legal Aid and Defender Association has risen to the challenges of present-day hardships facing the neediest members of our community. Critically, it understands the link between legal issues and broader issues like access to safe and affordable housing, economic stability, and adequate health care. In recent years, it has also offered victim-centered, trauma-informed holistic legal services to survivors of domestic/dating violence, sexual assault, and stalking.

The McCree Award is named for Judge Wade Hampton McCree Jr., who began his legal career in Detroit after graduating from Harvard Law School. McCree served on the Wayne County Circuit Court and was appointed by President John F. Kennedy to the U.S. District Court in 1961. In 1966, President Lyndon B. Johnson appointed McCree to the U.S. Court of Appeals for the Sixth Circuit. McCree accepted an appointment to U.S. Solicitor General by President Jimmy Carter in 1977. After service as Solicitor General, McCree taught at the University of Michigan Law School until his death in 1987. Judge McCree is renowned for his passion for education, service to the legal profession, and service to the Detroit community.

(continued on page 8)



AVALON Legal

Detroit's forensic collection experts



CONTACT AVALON TODAY

Avalon Legal can collect data from all devices, including desktop computers, mobile devices, and the cloud, and recover deleted files like old emails or texts. Using advanced encryption to maintain a fully defensible chain of custody, our team collects data from computer files, webmail, enterprise systems, social media networks, and more.

TROY RICHARD
Managing Partner

248.955.9200 or 313.407.4624
troy.richard@teamavalon.com

www.avalonlegal.com

Local Service • Quick Turnaround • Remote & On-Site Collection

Several honored guests attended the McCree Jr. Award Luncheon this year, including members of the McCree family—James McCree, Wade Harper McCree, Karen McCree Harvey, David Lewis, and Aaron McCree Lewis—as well as representatives of three affinity bar associations: Isheeta Patel and Kanika Ferency of the South Asian Bar Association of Michigan, Rita White of the Black Women Lawyers Association of Michigan, and Betty Widgeon of the Hispanic Bar Association of Michigan.

Civil Rights Étouffée

The Chapter recently co-sponsored the Civil Rights Étouffée, a national CLE event organized by the Civil Rights Section of the national FBA. With nearly 600 registrants, from 20 co-sponsoring chapters around the country, this two-day all online event was the largest webinar-style conference to be hosted by the FBA. The Civil Rights Section hosts this event every other year in New Orleans and adapted to an online program in light of the pandemic.

Judge Bernice Bouie Donald of the Sixth Circuit kicked off the program on Thursday, January 28, sharing the stage with Col. Heston Silbert, Director of the Arizona Department of Public Safety, to discuss how they each approach concerns about implicit race bias in the courts and in policing. Col. Silbert described an exercise he conducts with new cadets to help these young people appreciate the very real ways that they make immediate, and mostly incorrect, assumptions about people. Judge Donald focused on the ways in which trial attorneys can address implicit bias, explaining that they could explicitly bring it to potential jurors' minds through a question like, "raise your hand if you know what a drug dealer looks like."

The next two panels included Detroit area attorneys. Robin Wagner, of Pitt McGehee Palmer Bonanni & Rivers, moderated a panel with Wayne State Law Professor, Chris Lund, and Lambda Legal's Director of Constitutional Litigation, Camilla Taylor, on the growing number of law suits that pit First Amendment religious rights against LGBTQ rights. These two panelists explained the legal issues in *Fulton v. Philadelphia*, a case argued last November and currently pending before the Supreme Court. *Fulton* challenges a local nondiscrimination law that prevents religious organizations—in this case, a Catholic organization—from providing foster and adoption services if they either refuse to service LGBTQ youth or refuse to evaluate LGBTQ parents for adoption and fostering. This panel drew a lot of questions, and the panelists graciously extended the conversation into a zoom-based "virtual beignets and coffee" lounge that was open throughout the event for participants and panelists to gather and get to know each other between sessions.

Then, Phil Mayor, of the ACLU of Michigan, and Jennifer Lord, of Pitt McGehee Palmer Bonanni & Rivers, joined NYU law professor, Vincent Southerland, to discuss artificial intelligence ("AI") and its growing impact on civil rights. Professor Southerland cautioned against certain features of AI that create the greatest risks to civil rights: for instance, our shared, misplaced deference to machines and computers as inherently objective and infallible. Phil Mayor described his recent work on behalf of Detroit resident Robert Williams, who was arrested on January 9, 2020 by Detroit Police based on an obviously erroneous AI facial recognition that was not checked or reviewed before the warrant was issued. Jennifer Lord described the ongoing litigation against the State of Michigan's Unemployment Agency arising out of the so-called MiDAS program that processed unemployment applications automatically and flagged the vast majority as fraudulent. The panelists discussed litigation strategies as well as a number of safeguarding measures against problems that AI can create, including oversight panels and transparency hearings prior to government purchases.

The first day of the program concluded with attorney Joe Bondy discussing the ethics involved in using social media to support your client's case. Bondy, who represents Lev Parnas in ongoing issues arising from the Ukraine investigation, created the #LetLevSpeak to combat the intimidation his client was receiving from the Trump administration. Bondy emphasized the importance of maintaining a high level of client trust and ensuring that you are always aware of the different motivations and agendas that journalists have when you engage with them to voice your client's story. Bondy recounted how an appearance with his client on the Rachel Maddow Show in particular changed the narrative around Lev's role in the Ukraine matter, garnering him important credibility.

On January 29, the program continued with four more panels. The first panel involved a group of education law experts and the discussion centered on the uptick in lawsuits and administrative actions involving special needs children against the backdrop of virtual schooling. The second panel involved leading Title IX attorney, Ann Olivarius and Mica McKinney, General Counsel for Utah State University. This discussion focused on the history of Title IX and how institutions are reacting to the changing regulations regarding standards and due process expectations for addressing sexual harassment on campus. The third panel introduced the very new field of environmental justice—that is, the intersection of environmental rights with other aspects of civil rights such as race, poverty, and incarceration. Finally, the day concluded with an engaging conversation between J. Remy Green, Shankar Duraiswamy, and Samuel Spital, all of whom are key architects of the litigation brought in early November 2020 against the United States Postal Service to ensure that ballots were delivered on time.

The Civil Rights Section encourages you to join us in NOLA for the next Civil Rights Étouffée, which we hope to host in February of 2022!

Seditious Conspiracy

On February 18, 2021, the Chapter hosted a panel discussion regarding seditious conspiracy. The discussion, moderated by the Judge Victoria Roberts, focused on sedition in the context of *United States v. Stone*, a 2010 case filed in the Eastern District against several members of a Michigan militia known as Hutaree. The panel included: Barbara McQuade, former United States Attorney; the Judge Jonathon Tukul, former Chief of the National Security Unit and current Michigan Court of Appeals Judge; Richard Helfrick, of the Federal Community Defender's Office; and William Swor and James Thomas, both criminal defense attorneys. McQuade and Tukul filed numerous charges against the defendants in the Stone case, including seditious conspiracy and weapons charges. Helfrick, Swor, and Thomas represented the defendants.

The FBI began investigating the Hutaree militia after receiving information that they possessed illegal weapons and were conducting weapons training. According to Tukul, the United States Attorney's Office viewed Hutaree as a quasi-anarchist group that generally opposed government in all forms. McQuade noted that the investigation was consistent with the United States' post-9/11 law enforcement strategy to disrupt attacks before they occur, rather than bring charges after harm has been done. She identified this strategy as "left of boom," meaning that the arrests and charges would be brought prior to the attack, or "boom." McQuade further stated that the FBI received information that the Hutaree militia had discussed killing a police officer, and subsequently planting improvised explosive devices at the officer's funeral procession in order to inflict even greater damage on law enforcement. She explained that the tension with the "left of boom" strategy is timing – how long law enforcement should let a plot play out in order to gather more evidence, before making the arrests necessary to stop the attack.

Thomas, speaking on behalf of the defense, disputed that the Hutaree militia were anarchists or that they otherwise advocated the violent overthrow of the government. Accordingly, the defense team's strategy was to show a group of people merely discussing their dissatisfaction with the government. Both Thomas and Swor made a point to note the role of a confidential informant within the Hutaree militia, who they believed improperly encouraged the actions of militia members. Helfrick, discussing the elements of seditious conspiracy, explained that while the prosecution properly alleged certain overt acts in its indictment, including weapons training, they were ultimately not able to provide sufficient evidence of a conspiracy. Helfrick noted that most of the offensive speech from the militia came from the group's leader, David Stone Sr., while the other Defendants in the case were silent. Helfrick contended that silence cannot equal acquiescence to a criminal conspiracy. McQuade pushed back, noting that conduct consistent with speech advocating criminal activity can in fact evidence criminal

intent. She also argued that certain speech by the defendants encouraged violence, and was thus not protected by the First Amendment.

Judge Roberts, the presiding judge in the Stone case, explained that at the close of proofs, all defendants moved for a judgment of dismissal of the seditious conspiracy charges. Judge Roberts ultimately granted the motion. She explained that while there was discussion of a plan to kill a police officer and attack his funeral procession by the primary defendant, there was scant evidence that the other defendants agreed. She further noted that the confidential informant testified that the Hutaree militia never established a date, time, or target for this plan of attack. Because she believed the jury was being asked to find guilt based on mere speech and association, she entered a judgment of acquittal on the seditious conspiracy charges. McQuade acknowledged that reasonable minds could have disagreed on the seditious conspiracy charges, but wished that Judge Roberts had allowed the jury to reach a verdict prior to ruling on the defendants' motion so that the prosecution could appeal an adverse decision.

This discussion of course took place against the backdrop of the January 6 attack on the United States Capitol. McQuade noted that the threat landscape has changed since the Stone case was brought in 2010, and that violence is more easily organized via social media, as seen from the January 6 attack. Swor noted that while the government could not prove seditious conspiracy in the Stone case, there is much stronger proof in the January 6 cases that the defendants were seeking to oppose the government by violence when they sought to stop the certification of electoral votes.

The panel discussion concluded with Swor noting that the primary defendant in the Stone case, Stone Sr., went on to successfully run for public office and now serves as the supervisor of his township. Judge Roberts expressed her relief that none of the defendants have committed any offenses since her judgment of acquittal. The panel discussion was an informative event enjoyed by all.

FBA Criminal Law Committee Host a Panel for Students

On February 25, the Chapter's Criminal Law Committee hosted a virtual panel on federal criminal practice for area law students. Acting United States Attorney Saima Mohsin introduced the panel consisting of District Judge Sean F. Cox, AUSA Jules DePorre, AUSA Barbara Lanning, Assistant Defender James Gerometta, attorney Alan Crawford, and Marina Pino, law clerk to District Judge Gershwin A. Drain. The purpose of the panel was to introduce law students to the practice of criminal law in federal court. Judge Cox led off the discussion by highlighting the high level of practice in federal court.

(continued on page 10)

Criminal Law

(from page 9)

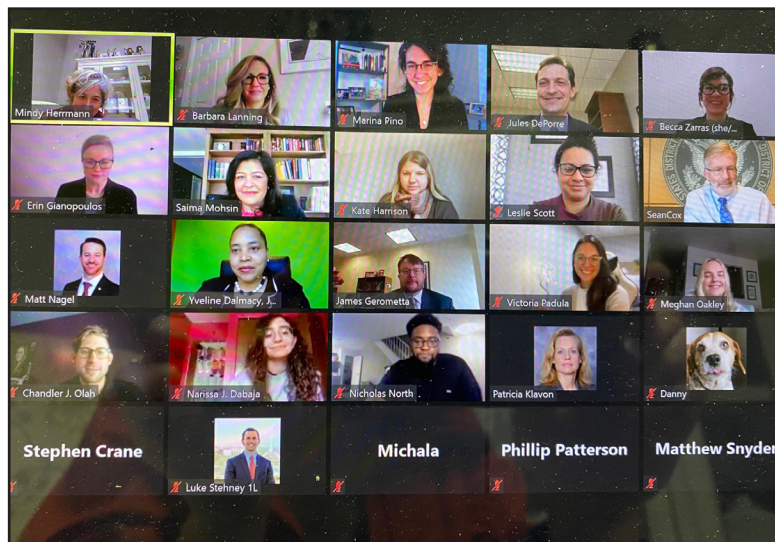
Echoing Judge Cox's comment about the high level of quality among federal attorneys, the panelists also noted that federal criminal practice required intensive preparation and attention to detail.

The students were particularly interested in learning how the panelists became involved in federal practice. The panelists had taken varied paths to federal court. AUSA Lanning was state prosecutor for a number of years before joining the Criminal Division of the United States Attorney's Office. AUSA DePore was a federal law clerk before joining the Department of Justice Honor Program in the Tax Division. He then transferred to the Criminal Division in the Eastern District of Michigan. Assistant Defender Gerometta worked as a clerk for the Federal Community Defender while in law school and "hung stuff on the wall" so they were forced to hire him. Alan Crawford worked with his uncle, noted Detroit criminal defense attorney Anthony Chambers before

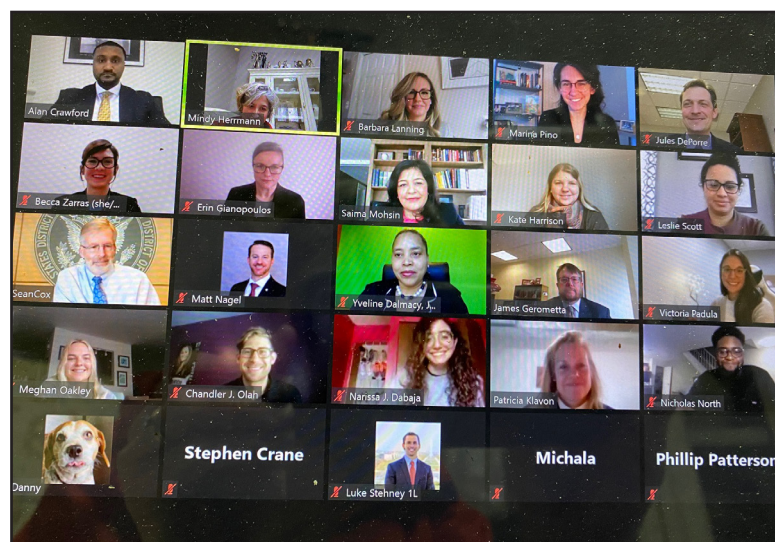
opening his own practice. Pino, who would like to do criminal appellate work after her clerkship, sought out judges who were former public defenders with whom she had something else in common, such as attending the same law school. Judge Cox stressed networking and collegiality as important to his career advancement. The panelists all agreed with Judge Cox that networking and developing connections was important and had played a role in advancing their careers. They similarly all agreed that local attorneys, particularly members of the Chapter, were generally more than willing to take time to mentor law students and that students should not be afraid to reach out to seek advice. On cue, FBA Executive Director Mindy Herrmann let those in attendance know that student membership is free and invited them to join the Chapter. The panel was recorded and will be available for other interested law students.



Criminal Law Panel
Photo by Melinda Herrmann.



Criminal Law Panel
Photo by Melinda Herrmann.



Criminal Law Panel
Photo by Melinda Herrmann.

Officers and Directors 2020-2021

These officers and directors started their terms at the Annual Meeting in June 2020.

OFFICERS

President:	Fred K. Herrmann <i>Kerr Russell & Weber PLC</i>
President-Elect:	Dan Sharkey <i>Brooks, Wilkins, Sharkey & Turco, PLLC</i>
Vice President:	Jennifer L. Newby <i>Assistant United States Attorney</i>
Secretary/Treasurer:	George Donnini <i>Butzel Long</i>
Program Chair	Andrew Lievense <i>Assistant United States Attorney</i>
Past President:	Matthew J. Lund <i>Troutman Pepper LLP</i>

EXECUTIVE BOARD

Term Ending June 2021

Hon. Sean F. Cox, <i>United States District Judge</i>
Hon. Stephanie Dawkins Davis, <i>United States District Judge</i>
Hon. Mark A. Randon, <i>United States Bankruptcy Judge</i>
Hon. Hala Y. Jarbou, <i>United States District Judge</i>
Nathan D. Dupes, <i>Bodman PLC</i>
William E. Altman, <i>The Murray Law Group PC</i>
Sara D. Woodward, <i>Assistant United States Attorney</i>

Term Ending June 2022

Hon. Patricia T. Morris, <i>United States Magistrate Judge</i>
Hon. Anthony P. Patti, <i>United States Magistrate Judge</i>
Susan K. DeClercq, <i>Assistant United States Attorney</i>
Kevin Fanning, <i>Clark Hill, PLC</i>
Erica Lynn Fitzgerald, <i>Barris Sott Denn & Driker, PLLC</i>
Patrick G. Seyferth, <i>BSP Law</i>
Jennifer McManus, <i>Fagan McManus, P.C.</i>

Term Ending June 2023

Hon. David Grand, <i>United States Magistrate Judge</i>
Hon. Judith E. Levy, <i>United States District Judge</i>
Dawn N. Ison, <i>Assistant United States Attorney</i>
Thomas McDonald, <i>Bankruptcy Trustee</i>
Charissa Potts, <i>Freedom Law, PC</i>

Joseph Vernon, *Miller, Canfield, Paddock and Stone, P.L.C.*

Adam Wenner, *Honigman LLP*

EX OFFICIO MEMBERS

Kinikia Essix
*Court Administrator/Clerk of the Court,
United States District Court*

Katherine B. Gullo
Clerk of the Court, United States Bankruptcy Court

Hon. Fred M. Mester, *District Court Ombudsman*

EXECUTIVE DIRECTOR

Melinda Herrmann
PO Box 5249, Northville, MI 48167-1544
Phone: 313-408-2857
fbamich@fbamich.org

Calendar of Events

March 11	Legal Ethics Committee Practicing During the Pandemic 12-1:30pm Lunch and Learn (Register at fbamich.org)
March 18	Appeals Committee Better Know a Sixth Circuit Judge w/ Hon. Eric Murphy 12-1:30 pm (Register at fbamich.org)
March 18	Bankruptcy Dinner Mortgage Issues in the Wake of Covid-19 7:00pm (Register at fbamich.org)
March 23	Multidistrict Litigation Seminar Judges Caldwell, Lawson, and Leitman will be participating as panelists 12 - 1:30pm (Register at fbamich.org)
April 9	You Can Teach an Old Dog New Tricks: Excel 3-4pm (Register at fbamich.org)

**Updates and further developments at
www.fbamich.org
Log-in with your user name and password FIRST
in order to save time and obtain
Member pricing**

Federal Bar Association
E. D. Michigan Chapter
P.O. Box 5249
Northville, MI 48167-1544

PRSRT STD
US POSTAGE
PAID
Permit #6067
Detroit, MI

Executive Director

Melinda Herrmann
Phone: (248) 231-7887
fbamich@fbamich.org



Newsletter Committee:

James Gerometta
Co-Editor in Chief
Federal Community Defender
(313) 967-5839

Zainab S. Hazimi
Co-Editor in Chief
Warner Norcross + Judd LLP
(248) 784-5169

Christina L. Farinola
Career Law Clerk to Hon. Anthony P. Patti
(313) 234-5200

Judge Michael J. Riordan
Michigan Court of Appeals
(313) 972-5662

John P. Mayer
(734) 558-5593

Lauren N. Mandel
Career Law Clerk to Hon. Linda V. Parker
(313) 234-5148

Erin Lange Ramamurthy
Assistant United States Attorney
(313) 226-9788

Joshua L. Zeman
Troutman Pepper LLC
(248) 359-7309

Susan Pinkowski
Case Manager to Hon. David M. Lawson
(313) 234-2662

Shannon Duggan
Honigman LLP
(313) 465-7664
